

Background

Alpenrind is a company active in the meat sector. It has a factory in Salzburg Austria. **In 2007**, Alpenrind entered into a contract with Martin-Meat, established in Hungary, under which Martin-Meat undertook to cut and pack 25 sides of beef per week. The work was performed at the premises of Alpenrind by workers posted to Austria. **On 31 January 2012, Martin-Meat discontinued its meat-cutting operations** and thereafter performed slaughterings for Alpenrind.

On 24 January 2012, Alpenrind concluded a contract with **another Hungarian company Martimpex**, also established in Hungary, under which Martimpex undertook to cut 55 000 tonnes of beef for Alpenrind in the **period from 1 February 2012 to 31 January 2014**. The work was performed at the premises of Alpenrind (which it had leased, including all factory equipment) by workers posted to Austria. Martimpex took charge of the sides of beef which were then cut and packed by its workers.

From 1 February 2014, **Alpenrind again concluded an agreement with Martin-Meat** for the latter to carry out the meat cutting work at the abovementioned premises.

For the **250 workers posted by Martimpex from 1 February 2012 to 13 December 2013** the Hungarian social security institution issued **A1 certificates** attesting that the Hungarian social security system applied, this is an advantage if they keep the social insurance in Hungary because it is cheaper than the social insurance in Austria.

Definition A1 certificate

an A1 certificate showing the affiliation of the worker to the social security system of the Member State of origin is binding.

*(some A1 certificates are attested by Hungary with **retroactive** effect and some in cases in which the Austrian social security institution had already determined that the workers concerned were subject to compulsory insurance in Austria.)*

The decision of the Austrian social security institution establishing that the workers were subject to compulsory insurance in Austria was **challenged before the Austrian courts**.

So where is the case about?

So the Austrian social security institution said the 250 workers were subject to compulsory insurance in Austria and Hungary said not because they gave out the A1 certificates to them.

It is against that background that the Verwaltungsgerichtshof (Upper Administrative Court, Austria) **asked the Court of Justice (hof van Europa)** to **clarify the EU rules** relating to the coordination of social security systems and, in particular, the binding effect **of the A1 certificate**.

Preliminary ruling

In those circumstances the Verwaltungsgerichtshof (Supreme Administrative Court, of Austria) decided to stay proceedings and to refer to the Court the following questions for a preliminary ruling:

Court decision

Question 1

- '(1) Does Article 5 of Regulation No 987/2009 also apply in proceedings before a court or tribunal within the meaning of Article 267 TFEU?

QUESTION 1

The court answer this question with YES, the A1 certificate binds not only the institutions of the Member State in which the activity is carried out, but also the courts of that Member State.

This question is there to ensure that EU law has the same meaning and effect in all the Member States.

- **Article 5 of Regulation No 987/2009**

Legal value of documents and supporting documents issued in another Member State

- **Article 267 TFEU**

Article 267 TFEU (ex Article 234 EC) gives the Court of Justice jurisdiction to deliver preliminary rulings on the validity and interpretation of EU law. The primary purpose of Article 267 is to ensure that EU law has the same meaning and effect in all the Member States.

Question 2

- (a) does the aforementioned binding effect also apply where proceedings had previously taken place before the [Administrative Commission] and such proceedings did not result either in agreement or in a **withdrawal** of the contested documents?
- (b) Does the binding effect also apply **retroactively** in such cases?

QUESTION 2 first part

The **Court (hof van Europa)** holds that an A1 certificate issued by the competent social security institution of a Member State (Hungary in this case) is binding on both the social security institutions and the courts of the Member State in which the activity is carried out (Austria) so long as that certificate has not been **withdrawn** or **declared invalid** by the Member State in which it was issued (Hungary).

Also when the competent authorities of the two Member States have brought the matter before the **Administrative Commission** for the Coordination of the Social Security Systems and it has concluded that that certificate was incorrectly issued and should be withdrawn. The Court observes, in that regard, that the role of the Administrative Commission in that context is limited to the reconciliation of the views of the competent authorities of the Member States which brought the matter before it and that the Administrative Commission's conclusions have the status of an opinion.

QUESTION 2 second part

the Court states that an A1 certificate may apply with **retroactive effect**, even though, on the date of issue of that certificate, the competent institution of the Member State in which the work is carried out (Austria) has already decided that the worker concerned is subject to the compulsory insurance of the latter Member State.

Question 3

- Does it contravene the **prohibition on replacement** set forth in Article 12(1) of Regulation No 883/2004 if the replacement occurs not in the form of a posting by the same employer but instead by another employer? Does it matter whether
- (a) the second employer has its registered office in the same Member State as the first employer, and
- (b) the first and the second posting employers share staffing and/or organisational resources?’

QUESTION 3 a

Yes it matters

The Court also held that, in a case in which a worker posted by his employer to carry out work in another Member State is **replaced by another worker** posted by a different employer, the second worker **cannot remain subject to the legislation of the Member State in which his employer usually carries on its activities.**

QUESTION 3 b

Yes this is also.

The fact that the employers of the two workers concerned have their registered office in the **same Member State** or that they may have **personal or organisational links** is **relevant** in that regard.

Conclusion and comparing

As a general rule, a worker is subject to the social security system of the Member State in which he pursues his activities, in particular, in order to guarantee the **equality of treatment of all persons** occupied in the territory of a Member State as effectively as possible.

The principle of equal treatment (of the 250 workers and the civilians of Austria)

So in this case the workers of Martimpex are subject to the social security system of Austria because of the prohibition of replacement.

Following the **Altun** judgment, the European Court of Justice ruled once again in the **Alpenrind** judgment on the binding nature of the A1 declaration. The Court confirmed its established case-law. **Except in the case of fraud or other culpable acts**, the A1 declaration shall bind the institutions of the host Member State as long as this declaration has not been **withdrawn or declared invalid**. The advice of the Administrative Commission to withdraw the A1 statement does not affect this.

Regulations and articles

Article 5 of Regulation No 987/2009

Legal value of documents and supporting documents issued in another Member State

Juridische waarde van in een andere lidstaat afgegeven documenten en bewijsstukken

Article 5(1) of that regulation provides that documents issued by the institution of a Member State and showing the position of a person for the purposes of the application of Regulations Nos 883/2004 and 987/2009, and supporting evidence on the basis of which the documents have been issued, are to be accepted by the institutions of the other Member States for as long as they have **not been withdrawn or declared to be invalid** by the Member State in which they were issued.

Article 19 (2) of Regulation No 987/2009

Provision of information to stakeholders and employers

Verstrekking van informatie aan betrokkenen en werkgevers

A statement that the person concerned of the practice of organizing the constitutional provisions of Title II of the basic Regulation applies, a statement that the agreement applies and states the date and conditions under which.

Op verzoek van de betrokkene of de werkgever verstrekt het bevoegde orgaan van de lidstaat waarvan de wetgeving op grond van een bepaling van titel II van de basisverordening van toepassing is, een verklaring dat die wetgeving van toepassing is en vermeldt het eventueel tot welke datum en onder welke voorwaarden.

Article 267 TFEU

Article 267 TFEU (ex Article 234 EC) gives the Court of Justice jurisdiction to deliver preliminary rulings on the validity and interpretation of EU law. The primary purpose of Article 267 is to ensure that EU law has the same meaning and effect in all the Member States.

Article 12 of regulation No 883/2004

Special rules

Bijzondere regels

Degene die werkzaamheden in loondienst verricht in een lidstaat voor rekening van een werkgever die daar zijn werkzaamheden normaliter verricht, en die door deze werkgever wordt gedetacheerd om voor zijn rekening werkzaamheden in een andere lidstaat te verrichten, blijft onderworpen aan de wetgeving van de eerstbedoelde lidstaat, mits de te verwachten duur van die werkzaamheden niet meer dan 24 maanden bedraagt en de betrokkene niet wordt uitgezonden om een andere gedetacheerde persoon te vervangen.

A person carrying out an activity as an employed person in a Member State on behalf of an employer who normally carries out his work there and who is seconded by that employer to carry out work in another Member State on his behalf, shall remain subject to the legislation of the first-mentioned Member State, provided that the expected duration of that work does not exceed 24 months and the person concerned is not posted to replace another posted person.