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DETERMINATION OF THE LEGISLATION APPLICABLE AND THE PRINCIPLE OF BEING SUBJECT TO THE LEGISLATION OF A SINGLE MEMBER STATE – SELECTED ISSUES

1. General issues

The general principle resulting from the regulations on the coordination of social security systems is that a person can be subject to the legislation of a single Member State. It is expressed in Article 11 par. 1 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.[1] This principle results in other norms being in conflict with regard to the determination of the legislature applicable, in particular those included in Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 on the implementation of Regulation (EC) No 883/2004 with regard to the coordination of social security systems[2].

The principle of being subject to the legislation of a single Member State also results in a very important directive for the designated institutions of the given Member States and their organs of appeal. The decision of the competent institution and then the appellate organ can neither lead to excluding a person from any legislation on social security, nor to being subject to more than one legislation. The same assumption is the basis for the executive regulations that create norms for establishing legislation applicable. The experience of the Polish competent institution ZUS (Social Insurance Institution) as well as appellate organs then (courts adjudicating on appeals against the decisions issued by ZUS) prove that compliance with the principle of being subject to the legislation of a single Member State creates many problems in practice, the resolution of

[1] Official Journal of the EU: L. 2004.166.1. – hereinafter referred to as Regulation 883/2004 or basic regulation.

[2] Official journal of the EU: L. 2009.284.1. – hereinafter referred to as Regulation 987/2009 or implementing regulation.

which requires first of all the maintenance of a given procedure of coordinating the work of institutions of the particular Member States, which in practice may lead to competence disputes between them.

2. Procedural aspects of determining the legislation applicable

2.l. General rules of determining the legislation applicable

Regardless of the category of case that is dealt with on account of the EU coordination, the basic issue requiring resolution is first of all the determination of the legislation a given person is subject to. Articles 11–13 of Regulation 883/2004 cover this issue.

Article 11 of Regulation 833/2004 defines general principles of determining the legislation applicable. In accordance with Regulation 883/2004 par. 2: (a) a person pursuing an activity as an employed or self-employed person in a Member State should be subject to the legislation of that Member State; (b) a civil servant shall be subject to the legislation of the Member State to which the administration employing him/her is subject; (c) a person receiving unemployment benefit in accordance with Article 65 under the legislation of the Member State of residence shall be subject to the legislation of that Member State; (d) a person called up or recalled for service in the armed forces or for civilian service in a Member State shall be subject to the legislation of that Member State; and (e) any other person to whom sub-paragraphs (a) to (d) do not apply shall be subject to the legislation of the Member State of residence, without prejudice to other provisions of this Regulation guaranteeing him/her benefits under the legislation of one or more other Member States.

Article 12 of Regulation 883/2004 specifies special rules with regard to persons posted to another Member State to perform work there. A person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Member State to perform work on that employer's behalf shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such work does not exceed 24 months and that he/she is not sent to replace another person (par. 1). A similar situation is in the case of a person who normally peruses an activity as a self-employed person in a Member State who goes to pursue a similar activity in another Member State (par. 2).

Article 13 of Regulation 883/2004 defines an exception to the general rules with regard to persons who are employed on the territory of more than one Member State. A person who normally pursues an activity as an employed person in two or more Member States shall be subject to: (a) the legislation of the Member State of residence if he/she pursues a substantial part of his/her activity in that Member State; or (b) if he/she does not pursue a substantial part of his/her

activities in the Member State of residence: (i) he/she shall be subject to the legislation of the Member State in which the registered office or place of business of the undertaking or employer is situated if he/she is employed by one undertaking or one employer; or (ii) he/she shall be subject to the legislation of the Member State in which the registered offices or places of business of the undertakings or employers are situated if he/she is employed by at least two undertakings or at least two employers whose registered offices or places of business are situated in a single Member State; or (iii) he/she shall be subject to the legislation of the Member State in which the registered office or place of business undertaking or employer is situated, other than the Member State of residence, if he/she is employed by two or more undertakings or two or more employers, whose registered offices or places of business are in two Member States, one of which is a Member State of residence; or (iv) he/she shall be subject to the legislation of the Member State of residence if he/she is employed by two or more undertakings or two or more employers and at least two of these undertakings or at least two of these employers have a registered office or a place of business in various Member States other than the Member State of residence.

On the other hand, a person who normally pursues an activity as a self-employed person in two or more Member States shall be subject to: (a) the legislation of the Member State of residence if he/she pursues a substantial part of his/her activity in that Member State; or (b) the legislation of the Member State in which the centre of interest of his/her activities is situated if he /she does not reside in one of the Member States in which he/she pursues a substantial part of his/her activity.

2.2. Being posted and performing work as an employed person in more than one Member State

From the point of view of the regulations and their practical application, doubts are raised by the difference between being posted and performing work on the territory of more than one Member State. In practice, it applies to a situation in which an applicant demands the determination of the legislation applicable in accordance with Article 13 of Regulation 883/2004, but in fact the provision is not applicable because the person was a posted employee (Article 12 of Regulation 883/2004) or should be subject to legislation in the Member State where he/she performs work (Article 11 par. 2 of Regulation 883/2004). Unlike in the case of being posted, performing work in more than one Member State at the same time occurs when pursuing an activity as an employed person or as a self-employed person takes place parallel to one another (at the same time) in a given period[3]. Thus, it is not applicable to pursuing activity as an employed

[3] E. Eichenhofer, *Sozialrecht der Europaischen Union*, Berlin 2006, pp. 110–112.

person or a self-employed person in subsequent periods (even very short ones). The issue is well illustrated by the Supreme Court ruling of 13 September 2011[4] in the case in which the insured demanded administration of the legislation applicable with regard to performing work in more than one Member State while he worked in Germany, Finland, France and Finland again in subsequent (a few months') periods.

Thus, recognising a case, first of all it is necessary to determine whether a person was or was not posted to perform work in a Member State. If not, it is necessary to consider if the requirement of Article 13 of Regulation 883/2004 is met. It is necessary to remember that the basic rule for determining the legislation applicable is specified in Article 11 par. 1 of Regulation 883/2004 that stipulates that the legislation applicable is the legislation of the Member State where a person pursues activity as an employed person or a self-employed person, and exceptions to that rule are regulated in the subsequent provisions, which either state that it is justifiable to desist from it (posting a person to perform work in another Member State – Article 12 of Regulation 883/2004) or determining the legislation applicable in accordance with Article 11 is not possible or very difficult (pursuing activities at the same time in at least two Member States – Article 13 of Regulation 833/2004).

2.3. Preliminary determination of the legislation applicable

Determining the preliminary legislation applicable and the consequences of that determination for the competent institutions, a person concerned and appellate organs pose other problems. Although the EU legislator regulated the rules of proceeding between the competent institutions in order to determine the legislation applicable, it raises a series of doubts.

First of all, it is necessary to notice that the scope of competence of a given institution consists in the ability to determine or refusal to determine that the legislation of the institution's Member State is the legislation applicable. This results from the territorial power of legislation of a given Member State and the competence of the organs of the given Member State within its borders[5]. The competent institution is not entitled to determine whether a person is subject to the legislation of another Member State because then the decision would result in legal consequences in another Member State and would bind the institution of another Member State. Thus, an institution competent in a Member State is entitled to issue a decision determining the legislation applicable of that Member State or refuse to determine it. Here, due to the above-mentioned principle of being subject to the legislation of a single Member State, a question is raised

[4] I UK 417/10, OSNP 2012/19-20/244.
[5] Pennings, *European Social Security Law*, 2010, pp. 4–6.

how it should act if it has doubts if a person is subject to the legislation of its or another Member State. Both positive and negative decisions may lead to non-compliance with Article 11 par. 1 of Regulation 883/2004. It is possible that the decision issued may result in exclusion of a person from the insurance system of any Member State or in making a person subject to legislation in more than one Member State. In order to avoid such situations there are implementing regulations on proceeding specifying the rules of determining the provisional legislation and explaining conflicting or doubt-raising circumstances by the institutions involved.

Depending on whether the case involves being posted or performing work on the territory of more than one Member State, the procedure of determining the applicable legislation was regulated in a different way. In case of employed persons being posted (or other situations that are not covered by work performance on the territory of more than one Member State), Article 6 of Regulation 987/2009 is applicable. On the other hand, in a situation when a person performs work in at least two Member States at the same time – Article 16 of the Regulation is applicable. The difference between the two provisions is essential. Although both deal with the determination of provisional legislation applicable, Article 16 par. 2 of regulation 987/2009 stipulates that the provisional determination shall become definitive within two months of its issue. Article 6 of the Regulation lacks such an executive directive.

2.3.1. Determination of provisional legislation based on Article 16 of Regulation 987/2009

In accordance with Article 16 of Regulation 987/2009, in the case of a person who pursues activities in two or more Member States, a competent institution of the Member State of his/her residence determines the provisional legislation applicable to them. The institution shall inform the designated institutions of each Member State in which activity is pursued of its provisional determination (par. 2). The provisional determination of the applicable legislation shall become definitive within two months of the institutions designated by the competent authorities of the Member States concerned being informed of it (par. 3), unless the legislation has already been definitively determined by agreement of the institutions concerned (par. 4) or one of the concerned institutions informs others before the two months deadline expires that it cannot approve of the determination of the applicable legislation or about its different view on the issue (par. 2).

First of all, a question is raised when determination of provisional legislation is admissible. The linguistic wording of Article 16 par. 2 of Regulation 987/2009 suggests that it is possible when the institution of the person's residence determines the legislation applicable in accordance with Article 13 par. 1 of

Regulation 883/2004 (supposedly, in accordance with the norms specified in the provision). Yet, proceeding in accordance with the directive of Article 13 par. 1 of Regulation 987/2009 may in practice also lead to a situation in which the institution of residence decides that the applicable legislation is the legislation of another Member State. But it cannot do that because of the above-mentioned principle of territorial competence of authorised institutions and consequences that might result from their decisions. This means the institution of residence may issue a decision determining the legislation of its Member State as applicable or issues a decision that the legislation of its Member State is not applicable. In both cases it informs institutions of other Member States of its resolution. In the former case, the consequences of the transformation of a preliminary decision into a definitive one are not negative for the person concerned because he/she becomes subject to the legislation of the given Member State. However, the institution of the other Member State can express doubts if the resolution is right. Then, the preliminary decision is not changed into a definitive one and legislation shall be determined by agreement. But when the institution of residence determines that a person is not subject to the legislation of its Member State, and institutions of other Member States do not report reservations, the person's situation is severe (it is unquestionable that the person was professionally active on the territory of more than one Member State). The assumption that the preliminary determination of legislation transforms into a definitive one would deprive a person of protection and would not comply with Article 11 of Regulation 883/2004. It would be necessary to assume that the institutions of the Member States cannot lead to such a situation; thus, the institution informed about the preliminary determination excluding a person from the legislation of the given Member State should also report reservations so that the preliminary determination of legislation would not be changed into a definitive one. In the case such a situation occurs, there is a possibility of appealing against the decision of the competent institution, however, in such a case, there is a question about verification competence of the appellate organs of the given Member State (this is discussed later).

The linguistic wording of Article 16 par. 2 of Regulation 987/2009 suggests that the designated institution of the place of residence shall provisionally determine the legislation applicable. Even if it is uncertain about the determination of its legislation as applicable, it is obliged to issue an adequate decision in which it determines the legislation applicable. Thus, there is no possibility of starting common agreement procedure without the prior issue of a decision in accordance with Article 16 of Regulation 987/2009.

There is another problem connected with the procedure based on Article 16 of Regulation 987/2009: its provisional character and in particular that, after two months from its issue, it transforms into a definitive one. Both preliminary and definitive character of the decision should be understood in the context of

consequences for the institution of another Member State, which means that by the time the decision has become a definitive one, there is a possibility that the informed institution reports reservations. However, after the two months' period (probably from the date when the decision is delivered to the other institution because it is not stipulated in the Regulation) there is no such possibility. However, this is a "horizontal" aspect of the definitive character of the decision (between the institutions) because with regard to the insured, the definitive decision is not one in the discussed interpretation. A person concerned can appeal against the decision based on the national regulations. In the light of this, there are interesting questions: (1) can the appellate organ verify a provisional decision that transformed into a definitive one? If yes, (2) what are the consequences of such verification for the institution of another Member State, the designated institution and the insured? Another issue is connected with the possibility of appealing against the decision determining the preliminary legislation.

As far as the first signalled issue is concerned, depriving the insured of the possibility of verifying the decision (in practice, the possibility of appealing against the decision) would be in conflict with the national regulations of the given Member State (e.g. in Poland Article 45 of the Constitution of the Republic of Poland stipulating the right to hearing before a court) and Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantees the right to trial on the European law level. Taking into account the current guarantees of court standards, in my opinion, there is no legal possibility of interpreting Article 16 par. 3 of Regulation 987/2009 that would make the verification of the definitive decision as defined in the provision impossible. Thus, it should be assumed that the definitive decision has consequences only for the institution of another Member State and only under the condition that the decision has not been appealed against based on the national law regulations of the institution of residence.

Regardless of that, another question is asked: What does the phrase in Article 19 par. 3 "…the provisional determination of applicable legislation (…) shall become definitive…" mean from the legal point of view? Practically speaking, should the institution of residence issue a provisional decision first and inform another Member State and then issue the same but definitive decision and deliver it to the addressee or is it enough to issue a provisional decision and deliver it to the institution of another Member State and the applicant who should be informed that the time allowed for his/her appeal in accordance with the national law will depend on the decision of the institution of another Member State (which can report reservations within two months) and will start flowing after that date.

As far as the possibility of filing an appeal against the provisional decision is concerned, it seems that an appeal should be deemed to be premature, although, in my opinion, at that stage, the person concerned should have the right to par-

ticipate in the explanatory proceeding between the institutions of the Member States in order to guard his/her interests.

2.3.2. Determination of provisional legislation based on Article 6 of Regulation 987/2009

Another procedure of reaching agreement is based on Article 6 of Regulation 987/2009. From the point of view of the system, it must be assumed that it refers to any other proceeding of determining legislation applicable rather than the one determined based on Article 13 of Regulation 883/2004 in which this determination can raise doubts and dispute between the institutions of Member States. According to the former provision, unless otherwise provided for in the implementing Regulation, where there is a difference in views between the institutions or authorities of two or more Member States concerning the determination of the applicable legislation, the person concerned shall be made provisionally subject to the legislation of one of those Member States, the order of priority being determined as follows: (a) the legislation of the Member State where the person actually pursues his/her employment or self-employment, if the employment of self-employment is pursued in only one Member State; (b) the legislation of the Member State of residence where the person concerned performs his/her employment or self-employment in two or more Member States and part of this activity/activities in the Member State of residence or the person is not employed or self-employed; (c) in any other cases, the legislation of the Member State the application of which was first requested where the person pursues an activity or activities in two or more Member States (par. 1). Where there is a difference in views between the institutions or authorities of two or more Member States about which institution should provide the benefits in cash or in kind, the person concerned who could claim benefits if there was no dispute shall be entitled, on a provisional basis, to the benefits provided for by the legislation applied by the institution of his/her place of residence or – if that person does not reside on the territory of one of the Member States concerned – to the benefits provided for by the legislation applied by the institution to which the request was first submitted (par. 2). Where no agreement is reached between the institutions or authorities concerned, the matter may be brought before the Administrative Commission by the competent authorities no earlier than a month after the date on which the difference of views, as referred to in par. 1 or 2 arose. The Administrative Commission[6] shall seek to reconcile the points of view within six months of the date on which the matter was brought before it (par. 3).

[6] For the role and legal status of the Administrative Commission see: D. Dzienisiuk, *Charakter prawny decyzji Komisji Administracyjnej do Spraw Koordynacji Systemów Zabezpieczenia Społecznego* [Legal character of the decisions of the Administrative Commission for Coordination of Social Security Systems], Ubezpieczenia Społeczne 2011, No. 1–2, pp. 17–23.

What is interesting, where the institutions of the given Member States do not reach agreement about the applicable legislation, neither Article 6 nor Article 16 of Regulation 987/2009 specifies how this situation should be resolved. Only the context of the system could suggest that after the procedure of Article 16 of Regulation 987/2009 has been exhausted, the procedure of Article 6 of the Regulation should start.

Taking the above-mentioned into account, a general conclusion can be made that based on the European Union regulations on coordination, it is not possible to exclude a person from the social insurance system of any Member State, and – on the other hand – make the person subject to the legislation of more than one Member State. It is worth mentioning that the provisionally determined legislation based on Article 6 of Regulation 883/2004, where there is no agreement between the Member States concerned, shall be in fact a definitive legislation but it is not certain whether such provisional determination requires the issue of a decision that can also be appealed against. Although the European Union law does not solve this issue, the national law of individual Member States can require the issue of a decision in each individual matter, which means that also in the case of provisional determination of the legislation the issue of such a decision is obligatory.

3. Verification of decisions on the determination of legislation applicable

3.1. Procedure before the competent institution and appellate proceeding

The possibility of verifying decisions on the determination of legislation applicable issued by a competent institution is another matter. The current legal state is rather complicated. It is worth mentioning that the proceeding before a competent institution is pending in accordance with the regulations of the given Member State and as far as the European Union coordination is concerned, the implementing provisions of the two regulations are additionally applicable. On the other hand, in the case of appellate proceeding, the provisions of the given Member State are applicable. What is most important, however, is that, in the case of the European Union coordination, the provisions of both regulations concern, first of all, the procedure between the institutions of the given Member States. This means that in the case of its violation, the appellate organ dealing with a complaint cannot (e.g. within its own procedure of evidence examination) follow a procedure agreed upon with the institution of another Member State and, in its appellate proceeding in particular, demand that the institutions of the other Member States undertake adequate steps. This would mean that the major instrument in the appellate proceeding, which would allow for forcing the competent institution of the given Member State to start

the procedure of reaching agreement, should be the repealing of the decision of the competent institution and referring it for re-examination. In this context, in order to ensure the implementation of the European Union Regulations' provisions on coordination, it would be necessary to adjust the provisions regulating appellate proceeding against the decisions issued by the competent institutions.

3.2. Assessment of the validity of an employment contract being the title to social insurance

The possibility of the assessment of the title to the social insurance system of a given Member State being the basis for determination of the legislation applicable (including e.g. the examination of the validity of an employment contract), especially in the context of the scope of competence of the designated institution, is another subject matter. The issue is well illustrated by the case that was adjudicated by the Polish Supreme Court (II UK 333/12), in which ZUS, as well as the courts of two instances, examined the validity of an employment contract with a foreign employer[7], which influenced the determination of the applicable legislation. Both the competent institution and the appellate courts, against the insured person's standpoint, decided that the employment contract concluded with the foreign employer was invalid (the contract had been concluded only in order to avoid paying the insurance premium in Poland) and due to that the person was not subject to the insurance system of the Member State where the person pursuits employment in accordance with Article 11 par. 2 of Regulation 883/2004. The Supreme Court did not agree with that standpoint.

The legislation applicable to employment contracts (being the title to social insurance) can be determined in various ways. Here, Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) is applicable. In accordance with Article 8 of the Regulation, an individual employment contract shall be governed by the law chosen by the parties in accordance with Article 3. To the extent that the law applicable to the individual employment contract has not been chosen by the parties, the contract shall be governed by the law of the country where the place of business which the employee was engaged is situated. This means that the assessment of employment could be made in accordance with the place where the contract is performed unless the parties decided otherwise.

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[7] On the same subject matter: K. Ślebzak, *Podleganie ubezpieczeniu społecznemu w przypadku jednoczesnego wykonywania pracy i prowadzenia działalności gospodarczej na terytorium dwóch państw członkowskich Unii Europejskiej* [Being subject to social insurance in the case of pursuing activities as an employed person and a self-employed person on the territory of two Member States of the European Union at the same time], PIZS 11/2013.

With respect to the coordination of social security systems, the legal relationship being the title to social insurance and the social insurance relationship are two independent legal relations that may be subject to the legislation of the different Member States. The difference is also visible in the context of definitions at the level of the European Union legal acts and the rulings of the Court of Justice of the EU on such concepts as an employee or contractual employment. This means that if the competent institution acting within the process of determination of the legislation applicable has doubts about the validity of a legal relation being the title to social insurance, it cannot decide on the matter on its own. First of all, it is obliged to determine if the person concerned – due to the existing contract – is subject to social insurance in another Member State. In the case such a fact is confirmed, it can challenge the grounds for providing the person with the social insurance system of the Member State concerned. This is the idea behind the resolution of problems arising in the case of disputes concerning the determination of legislation applicable as a basis for the provisions on the European Union coordination. In the cases concerning the determination of applicable legislation based on the coordination regulations, the institution of a given Member State is not authorised to assess the legal relation being the title to social insurance (here an employment relationship) in another Member State. The competence of courts in appellate proceedings concerning the validity of employment contracts should be viewed in a similar way.

By the way, it is worth mentioning that the provisions of Article 5 of the implementing regulation determine the matter of legal validity of documents and supporting evidence that have been issued in another Member State. Both the designated institution and courts are bound to comply with them. However, where there is doubt about the validity of a document or accuracy of the facts on which the particulars contained therein are based, the institution of the Member State that receives the document shall ask the issuing institution for the necessary clarification and, where appropriate, the withdrawal of the document. The issuing institution shall reconsider the grounds for issuing the documents and, if necessary, withdraws it (Article 5 par. 2 of Regulation 987/2009). Where there is doubt about the information provided by the persons concerned, the validity of a document or supporting evidence or accuracy of the facts of which the particulars contained therein are based, the institution of the place of stay or residence shall, in so far as this is possible, at the request of the competent institution, proceed to verification of the information or document (Article 5 par. 3 of Regulation 987/2009).

Summing up this part of the considerations, it can be stated that while at the stage of proceeding before a designated institution the rules in the context of competence to verify documents and supportive evidence are clear (this can be directly drawn from both Regulations of the European Union), it is not absolutely clear how the appellate organs should act where they have doubts about the provided

documents and supportive evidence. Moreover, having in mind the principle of being subject to single legislation, the appellate organ verifying the documents on its own cannot adjudicate in conflict with the rule. It would mean that the major form of adjudicating used by an appellate organ should be the repealing of the decision made by the competent institution and referring it for re-examination in order to carry out a procedure of reaching agreement based on the provisions of both Regulations. However, it would also be possible – based on the definition of the concept of "institution" as defined in Article 1 letter p of Regulation 883/2004 – to assume that appellate organs as institutions applying the European Union legislation on coordination are entitled (and even obliged) to undertake adequate actions based on Article 5 of Regulation 987/2009.

4. Conclusions

Having taken all the above-mentioned aspects into account, it is necessary to state that the determination of the applicable legislation in the context of a proceeding before a designated institution and then appellate organs is rather complicated. The lack of possibility of determination that is not in compliance with the provisions on the European Union coordination is a strict directive on acting. It applies to both the designated institutions and appellate organs. Thus, it is necessary to adjust the proceeding provisions regulating the appellate proceeding in the Member States so that those appellate organs had appropriate juridical rights (including those to adjudicate) that will not allow for the exclusion of a person form any social security system of a Member State or a resolution that would lead to being subject to the legislation of more than one Member State.

DETERMINATION OF THE LEGISLATION APPLICABLE AND THE PRINCIPLE OF BEING SUBJECT TO THE LEGISLATION OF A SINGLE MEMBER STATE – SELECTED ISSUES

Summary

The coordination of social security systems is regulated in the primary law of the European Union (Regulations No 883/2004 and 987/2009), which causes that the provisions are directly applied in the Member States. The general principle is the right to be subject to the legislation of a single Member State, which means that the designated institution of the Member State and other entities cannot make

a person excluded from a social security system or make him/her subject to the social security system of more than one Member State. In this light, the procedural aspects of determining the applicable legislation, especially the determination of the provisional legislation, seem to be particularly interesting. The article aims to present the issues connected with the determination of the legislation applicable, including the provisional one, and to consider the relations between the institutions of the Member States and between the institutions and the persons concerned as well as appellate organs.

USTALANIE USTAWODAWSTWA WŁAŚCIWEGO A ZASADA PODLEGANIA USTAWODAWSTWU JEDNEGO PAŃSTWA CZŁONKOWSKIEGO – WYBRANE ZAGADNIENIA

Streszczenie

Koordynacja systemów zabezpieczenia społecznego regulowana jest w prawie pierwotnym Unii Europejskiej (rozporządzenia: 883/2004 i 987/2009), co sprawia, że przepisy te są w państwach członkowskich stosowane bezpośrednio. Generalną zasadą jest podleganie ustawodawstwu jednego państwa członkowskiego, co sprawia, że zarówno instytucja właściwa państwa członkowskiego, jak i inne podmioty nie mogą doprowadzić ani do wyłączenia zainteresowanego z jakiegokolwiek systemu zabezpieczenia społecznego, jak i do objęcia go systemem zabezpieczenia społecznego więcej aniżeli jednego państwa członkowskiego. W tym świetle szczególnie interesująco przedstawiają się proceduralne aspekty ustalania ustawodawstwa właściwego, w szczególności wobec możliwości ustalenia ustawodawstwa mającego zastosowanie w sposób tymczasowy. Celem artykułu jest przedstawienie zagadnień związanych z określaniem ustawodawstwa właściwego, w tym również w sposób tymczasowy, uwzględniające relacje zachodzące zarówno pomiędzy instytucjami państw członkowskich, jak i relacje pomiędzy tymi instytucjami a zainteresowanym oraz organami odwoławczymi.

L'ÉTABLISSEMENT DE LA LÉGISLATION CONVENABLE ET LE PRINCIPE DE DÉPENDANCE À LA LÉGISLATION D'UN PAYS MEMBRE – QUELQUES QUESTIONS CHOISIES

Résumé

La coordination des systèmes de sécurité sociale est régularisée dans le droit primordial de l'Union européenne (règlements: 883/2004 et 987/2009) ce qui cause que ces règlements sont appliqués dans les pays membres d'une façon tout à fait directe. Le principe général parle de la dépendance d'un pays membre ce qui cause qu'également l'institution convenable d'un pays membre que les autres

sujets ne peuvent ni exclure cet intéressé du système de sécurité sociale ni le dépendre du système de sécurité sociale de plus d'un seul pays membre. Dans ce cadre les aspects procéduraux de l'établissement de la législation convenable se présentent extrêmement intéressants, et en particulier auprès de la possibilité de l'établissement de la législation qui peut être appliquée dans la manière provisoire. Le but de l'article est la présentation des questions sur la définition de la législation convenable, y compris la manière provisoire qui prennent en considération toutes les relations entre les institutions parmi les pays membres ainsi que les relations entre ces institutions et l'intéressé ainsi que les organes d'appel.

ОПРЕДЕЛЕНИЕ СООТВЕТСТВУЮЩЕГО ДЕЙСТВУЮЩЕГО ЗАКОНОДАТЕЛЬСТВА И ПРИНЦИП ПОДЧИНЕНИЯ ЗАКОНОДАТЕЛЬСТВА ОДНОГО ГОСУДАРСТВА-ЧЛЕНА – ОТДЕЛЬНЫЕ ВОПРОСЫ

Резюме

Координация систем социального обеспечения регулируется первоначальным законом Европейского союза (распоряжения: 883/2004 i 987/2009), в результате чего эти положения в государствах-членах ЕС применяются непосредственно. Основным принципом является подчинение законодательству отдельного государства-члена, что приводит к ситуации, когда как соответствующее учреждение государства-члена, так и другие субъекты не могут ни допустить исключения заинтересованного лица из какой бы то ни было системы социального обеспечения, ни обеспечить его системой соцобеспечения больше, нежели одного государства-члена. В свете этого достаточно интересно представлены процедурные аспекты определения соответствующего действующего законодательства, в особенности касательно возможности определения законодательства, предполагающего его временное применение. Целью статьи является освещение вопросов, связанных с определением соответствующего действующего законодательства, в том числе также на основе временного применения, с учётом отношений, возникающих как между учреждениями государств-членов, так и так и между этими учреждениями и заинтересованным лицом, а также апелляционными органами.