

Social security coordination and non-standard forms of employment and self-employment



Pravna fakulteta
Univerza v Ljubljani
100

prof. dr. Grega Strban

Introductory remarks



- Social security coordination
 - Historical development
 - Coordination with a unification instrument
 - Paradox of a Regulation

Introductory remarks

- Non-standard employment and self-employment
 - What is standard?
 - Assumption for social security...
 - Various non-standard forms...
 - of organising work...?
 - Non-standard = precarious?

Coordination issues



- ‚Worker‘
 - In (EU) labour and social security law
 - Thresholds
 - Relevant in all social security schemes?

- ‚Self-employed person‘
 - Article 48 TFEU
 - MS definitions
 - General or special schemes

Applicable legislation

- Classification is important
 - for determining the legislation applicable
 - e.g. marginal work a 5% rule (simultaneous employment)
 - e.g. self-employed in MS A for more than 25% and residing, but marginally employed in MS B (competent?)
 - Applicable to other situations (active or non-active)?
Lex loci laboris or domicilii (where is residence?)
 - Is marginal work in more MS still marginal?
 - MSs qualify activities or only the competent MS?

Applicable legislation

- Physical concept of *lex loci laboris*
 - C-137/11 *Partena*
 - What about telework, platform work?
 - Working in one, residing in another MS (hc in both)?
 - Need for a EU social security system or a click system?
- ‚In-between‘ categories
 - Economically dependent self-employed
 - C-300/84 *Van Roosmalen*

Applicable legislation

- Limited social protection and favourability princ.?
 - C-352/06 *Bosmann*, ...
 - C-382/13 *Franzen*, C-95/18 *van den Berg and Giessen*, ...
 - Anti-Bosmann?
- Self-employed enjoy limited protection or may join voluntarily
 - Is such voluntary insurance coordinated?

Equality of treatment and aggregation

- Taking into account periods of insurance, employment and self-employment from another MS?
 - If MS A does not take into account marginal work, but MS B (competent) does?
 - If MS A provides unemployment insurance for self-employed and MS B does not?
 - Validation/recognition or ‚fixing‘ the periods?

Equality of treatment and aggregation

- Pensions
 - Periods of corresponding or general scheme
 - Condition of insurance at the time of retirement (any MS)

- Problems:
 - Recalculation to a full time equivalent
 - C-385/11 *Elbal Moreno*, C-161/18 *Villar Láziz*
 - Periods of less than one year
 - Several mini-periods – entire pension on the last MS?

Export of benefits/rights



- Unemployment benefits
 - If granted for shorter period of time, export for a shorter period of time...
- Family benefits
 - BE non-standard as professional activity

Export of benefits/rights

- Healthcare
 - In SI request for EHIC as request for urgent treatment (no withheld rights...)
- SNCB
 - D 2004/38
 - Phasing out - phasing in of social assistance?
 - Competence of two MS (again)?

Concluding remarks



- Normative adjustment to new societal reality is necessary
 - Social security systems are growing apart
- Non-standard workers are workers and should be treated as such
 - They also enjoy the right to free movement
 - It would be too lightly to say ‚no contributions - no benefits‘

Concluding remarks

- Various possibilities how to achieve it...
 - EU definition of economic activity
 - abolish thresholds
 - perceive economic activities in a more neutral way
 - minimum standard for *lex loci laboris* rule
 - fixing already recognised periods (supported by EESSI and ESSPASS)
 - abolish ‚minimum‘ one year rule
 - coordinate social assistance
 - EU social security scheme?
- However, modifications take time ...