

## **EU labor law in offshore gas-drilling operations**

EU labor law in offshore gas-drilling operations has been recently challenged in the case of *Salemink v. Raad van bestuur van het Uitvoeringsinstituut werknemersverzekeringen*, in the judgment of the Court's Grand Chamber in January, 17, 2012. The issue arose in the specific case in regard to the social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community based on the Regulation (EEC) No 1408/71, as amended and updated by Council Regulations (EC) No 118/97 of 2 December 1996 and No 1606/98 of 29 June 1998. An allusion also has been made, on the interpretation of Articles 39 EC and 299 EC.

The proceedings involved a Netherlands national, Mr. Salemink, who had worked on gas-drilling platform on the continental shelf adjacent to the Netherlands and resident in Spain, and the Raad, Management Board of the Employee Insurance Agency, van bestuur van het Uitvoeringsinstituut werknemersverzekeringen, concerning its refusal to grant Mr. Salemink invalidity benefit.

The case, has been the subject of both International and EU law, furthering and resolving disputes arising from national law.

Starting from the International law involvement in the proceedings, the United Nations Convention on the Law of the Sea, which was signed at Montego Bay, Jamaica, on 10 December 1982, entered later into force on 16 November 1994, was of immense importance, as was also ratified by the Kingdom of the Netherlands on 28 June 1996 and was approved on behalf of the European Community by Council Decision 98/392/EC of 23 March 1998. The case was well based both on Article 60 and Article 77 of the specific Convention.

Article 60 thereof, entitled 'Artificial islands, installations and structures in the Exclusive Economic Zone' (E.E.Z) triggered the importance of this Convention. According to Article 60(1), 'in the EEZ, the coastal State shall have the exclusive right to construct and to authorise and regulate the construction, operation and use of: (a) artificial islands; (b) installations and structures for the purposes provided for in article 56 and other economic purposes; (c) installations and structures which may interfere with the exercise of the rights of the coastal State in the zone'. In paragraph two, the article stipulates that 'the coastal State shall have exclusive jurisdiction over such artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations'.

Further, article 77(1), entitled 'Rights of the coastal State over the continental shelf,' also states that 'The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources. With the same token, paragraph 2 reads that 'The rights referred to in paragraph 1 are exclusive, in the sense that, if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State. The rights of the coastal State over the continental shelf do not depend on occupation, effective or national, or on any express proclamation'.

On the other hand, regarding EU legislation safeguards the rights of free movement, ensuring a worker on his abilities to find redress in the application of EU legislation. This means that a Member State which takes advantage of the economic rights to prospect and/or exploit natural

resources on that part of the continental shelf which is adjacent to it cannot avoid the application of the EU law provisions designed to ensure the freedom of movement of persons working on such installations..

Based on Article 13 of Regulation No 1408/71, it is provided that ‘persons, to whom this Regulation applies shall be subject to the legislation of a single Member State only. Further, a person employed in the territory of one Member State shall be subject to the legislation of that State even if he resides in the territory of another Member State or if the registered office or place of business of the undertaking or individual employing him is situated in the territory of another Member State’.

The most important case law referred in the judgement is the so-called North Sea Continental Shelf cases, Reports of 1969, p. 3, paragraph 19, where the International Court of Justice had to rule on the rights of the coastal State in respect of the area of the continental shelf constituting a natural prolongation of its land territory under the sea. According to the Court’s interpretation that such rights exist ipso facto and ab initio by virtue of the State’s sovereignty over the land and by extension of that sovereignty in the form of the exercise of sovereign rights for the purposes of the exploration of the seabed and the exploitation of its natural resources.

In conclusion, based on the above considerations, the Court’s ruling stipulates that Article 13(2)(a) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulations (EC) No 118/97 of 2 December 1996, and No 1606/98 of 29 June 1998, and Article 39 EC must be interpreted as precluding an employee, working on a fixed installation on the continental shelf adjacent to a Member State, from being in a position, in which he is not compulsorily insured under national statutory employee insurance in that Member State solely on the ground that he is not resident there but in another Member State.

The specific court ruling expresses once again the conclusion that EU legislation is rightly considered as the bedrock of workers’ rights, enforcing the free movement of labour workers and the relevant rights deriving from offshore gas-drilling operations.

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