



Reports of Cases

Case C-566/15

**Konrad Erzberger
v
TUI AG**

(Request for a preliminary ruling from the Kammergericht)

(Reference for a preliminary ruling — Free movement of workers — Principle of non-discrimination — Election of workers' representatives to the supervisory board of a company — National legislation restricting the right to vote and to stand as a candidate to employees of establishments located in the national territory)

Summary — Judgment of the Court (Grand Chamber), 18 July 2017

Freedom of movement for persons — Workers — Equal treatment — Workers employed in a subsidiary of a group located in the territory of a Member State — Right to vote and to stand as a candidate in elections of workers' representatives to the supervisory board of the parent company of that group, which is established in that Member State, and the right to act or to continue to act as representative on that board — National legislation depriving those workers of those rights where they are employed by a subsidiary belonging to the same group established in another Member State — Lawfulness

(Art. 45 TFEU)

Article 45 TFEU must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, under which the workers employed in the establishments of a group located in the territory of that Member State are deprived of the right to vote and to stand as a candidate in elections of workers' representatives to the supervisory board of the parent company of that group, which is established in that Member State, and as the case may be, of the right to act or to continue to act as representative on that board, where those workers leave their employment in such an establishment and are employed by a subsidiary belonging to the same group established in another Member State.

According to the Court's settled case-law, all the provisions of the Treaty on freedom of movement for persons are intended to facilitate the pursuit by Union nationals of occupational activities of all kinds throughout the EU, and preclude measures which might place Union nationals at a disadvantage when they wish to pursue an activity in the territory of a Member State other than their Member State of origin. In that context, nationals of the Member States have in particular the right, which they derive directly from the Treaty, to leave their Member State of origin to enter the territory of another Member State and reside there in order to pursue an activity there. As a result, Article 45 TFEU precludes any national measure which is capable of hindering or rendering less attractive the exercise by Union nationals of the fundamental freedoms guaranteed by that article (see, to that

effect, judgments of 1 April 2008, *Government of the French Community and Walloon Government*, C-212/06, EU:C:2008:178, paragraphs 44 and 45, and of 10 March 2011, *Casteels*, C-379/09, EU:C:2011:131, paragraphs 21 and 22).

However, primary EU law cannot guarantee to a worker that moving to a Member State other than his Member State of origin will be neutral in terms of social security, since, given the disparities between the Member States' social security schemes and legislation, such a move may be more or less advantageous for the person concerned in that regard (see, by analogy, judgments of 26 April 2007, *Alevizos*, C-392/05, EU:C:2007:251, paragraph 76 and the case-law cited, and of 13 July 2016, *Pöpperl*, C-187/15, EU:C:2016:550, paragraph 24).

In that regard, it should be added that, in the absence of harmonisation or coordination measures at Union level in the field concerned, the Member States remain, in principle, free to set the criteria for defining the scope of application of their legislation, to the extent that those criteria are objective and non-discriminatory.

In that context, EU law does not, in the field of representation and collective defence of the interests of workers in the management or supervisory bodies of a company established under national law, a field which, to date, has not been harmonised or even coordinated at Union level, prevent a Member State from providing that the legislation it has adopted be applicable only to workers employed by establishments located in its national territory, just as it is open to another Member State to rely on a different linking factor for the purposes of the application of its own national legislation.

(see paras 33, 34, 36, 37, 41, operative part)