62015CJ0269
JUDGMENT OF THE COURT (Tenth Chamber)

26 October 2016 (*1)

?Reference for a preliminary ruling — Social security — Regulation (EEC) No 1408/71 — Article 4 — Material scope — Deductions from statutory old-age pensions and all other supplementary benefits — Article 13 — Determination of the applicable legislation — Residence in another Member State’

In Case C?269/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hof van Cassatie (Court of cassation, Belgium), made by decision of 18 May 2015, received at the Court on 8 June 2015, in the proceedings

Rijksdienst voor Pensioenen

v

Willem Hoogstad

Intervener:

Rijksinstituut voor ziekte- en invaliditeitsverzekering,

THE COURT (Tenth Chamber),

composed of A. Borg Barthet, acting as President of the Chamber, E. Levits, and F. Biltgen (Rapporteur), Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

—

the Belgian Government, by M. Jacobs and L. Van den Broeck, acting as Agents, and by N. Bonbled and A. Percy, advocaten,

—

the European Commission, by G. Wils and D. Martin, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1

This request for a preliminary ruling concerns the interpretation of Article 13 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 Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1), as amended by Council Regulation (EC) No 1606/98 of 29 June 1998 (OJ 1998 L 209, p. 1) (‘Regulation No 1408/71’).

2

The request has been made in proceedings between Rijksdienst voor Pensioenen (the Belgian National Pensions Office, ‘NPO’) and Willem Hoogstad concerning the deductions made to lump sums from supplementary pensions paid to him in February 2008.

Legal context

EU law

3

Under Article 1 of Regulation No 1408/71:

‘…

(j)

“legislation” means all the laws, regulations and other provisions and all other present or future implementing measures, of each Member State, relating to the branches and schemes of social security covered by Article 4(1) and (2) or those special non-contributory benefits covered by Article 4(2a).

This term excludes provisions of existing or future industrial agreements, whether or not they have been the subject of a decision by the authorities rendering them compulsory or extending their scope. However, in so far as such provisions:

(i)

serve to put into effect compulsory insurance imposed by the laws and regulations referred to in the preceding subparagraph;

or

(ii)

set up a scheme administered by the same institution as that which administers the schemes set up by the laws and regulations referred to in the preceding subparagraph,

the limitation on the term may at any time be lifted by a declaration of the Member State concerned specifying the schemes of such a kind to which this Regulation applies. Such a declaration shall be notified and published in accordance with the provisions of Article 97.

…’

4

Article 4(1) of Regulation No 1408/71 provides as follows:

‘This Regulation shall apply to all legislation concerning the following branches of social security:

(a)

sickness and maternity benefits;

(b)

invalidity benefits, including those intended for the maintenance or improvement of earning capacity;

(c)

old-age benefits;

(d)

survivor’s benefits;

(e)

benefits in respect of accidents at work and occupational diseases;

(f)

death grants;

(g)

unemployment benefits;

(h)

family benefits’.

5

Article 13 of that regulation is worded as follows:

‘1. Subject to Articles 14c and 14f, persons to whom this Regulation applies shall be subject to the legislation of a single Member State only. That legislation shall be determined in accordance with the provisions of this Title.

2. Subject to Articles 14 to 17:

…

(f)

a person to whom the legislation of a Member State ceases to be applicable, without the legislation of another Member State becoming applicable to him in accordance with one of the rules laid down in the foregoing subparagraphs or in accordance with one of the exceptions or special provisions laid down in Articles 14 to 17 shall be subject to the legislation of the Member State in whose territory he resides in accordance with the provisions of that legislation alone.'

6

Article 33(1) of the regulation provides:

1. The institution of a Member State which is responsible for payment of a pension and which administers legislation providing for deductions from pensions in respect of contributions for sickness and maternity shall be authorised to make such deductions, calculated in accordance with the legislation concerned, from the pension payable by such institution, to the extent that the cost of the benefits under Article 27, 28, 28a, 29, 31 and 32 is to be borne by an institution of the said Member State.'

Belgian law

7

Article 191(1)(7) of the wet betreffende de verplichte verzekering voor geneeskundige verzorging en uitkeringen gecoördineerd op 14 juli 1994 (Coordinated Law of 14 July 1994 on compulsory insurance for medical care and benefits), Belgisch Staatsblad, of 27 August 1994, p. 21524, 'the Coordinated Law of 14 July 1994'), in the version applicable at the date of the facts in the main proceedings, provides:

'[A deduction of 3.55% is] made from statutory old-age retirement, service-related and survivors' pensions or any other equivalent benefit, and from any benefit intended to supplement a pension, even if the latter has not been acquired and awarded, either by the application of legal, regulatory or statutory provisions, or by the application of provisions stemming from an employment contract, a company regulation or a collective company or sectoral agreement. That deduction is also made to a benefit replacing or supplementing a pension, granted to an independent worker pursuant to a collective agreement to or an individual promise of a pension, agreed by the company.'

8

Article 3(a) of koninklijk besluit tot uitvoering van artikel 191, eerste lid 1, 7°, van de wet betreffende de verpflichte verzekering voor geneeskundige verzorging en uitkeringen, gecoördineerd op 14 juli 1994 (Royal Decree on the implementation of Article 191(1)(7) of the Coordinated Law of 14 July 1994 on compulsory insurance for medical care and benefits), of 15 September 1980 (Belgisch Staatsblad, 23 September 1980, p. 10869), in the version applicable at the time of the facts in the main proceedings, provides:

'The calculation in monthly amounts, referred to in Article 2(1), is made at the end of the calendar year in which the pensions and supplementary benefits were paid at the earliest. However, the calculation in monthly amounts of the one-off benefits granted to persons who are not yet pensioners, also applies in the subsequent years remaining up until the normal retirement age of the beneficiaries of those benefits. Any balance that may fall due cannot be reimbursed until the NPO finds that the gross accumulated amount of the pensions and benefits remains below the threshold.'

9

Article 68(1) of the wet houdende sociale bepalingen (Law on welfare provisions), of 30 March 1994 (Belgisch Staatsblad of 31 March 1994, p. 8866, ‘the Law of 30 March 1994’), in the version applicable to the facts in the main proceedings, lays down the following definitions:

‘…

(c)

“supplementary benefit”, means all benefits intended to supplement a pension referred to in (a) or (b), even if the latter has not been acquired and awarded, either under legal, administrative or statutory provisions, or provisions stemming from an employment contract, a company regulation, or a collective or sectoral agreement, irrespective of whether that benefit is paid periodically or in the form of a lump sum.

Also regarded as supplementary benefits within the meaning of (c) are:

– pensions defined in (a), 1, paid in the form of a lump sum;

– any benefit paid to a person, irrespective of its status, pursuant to an individual promise of a pension …’.

10

The second and fifth subparagraphs of Article 68(5) of the Law of 30 March 1994 provide:

‘A Belgian institution that pays a supplementary benefit after 31 December 1996 in the form of a lump sum, the amount of which exceeds EUR 2478.94, must, of its own motion, levy a deduction of 2% of the gross amount of the lump sum, when paying out the lump sum.

…

If, when making the first payment of the definitive amount of a legal pension following the payment of a lump sum, the percentage of the deduction to be made under subparagraph (2) is less than the percentage of the deduction that was made on the lump sum, the [NPO] shall reimburse to the beneficiary a sum equal to the difference between, on the one hand, the amount of the deduction that was made on the lump sum and, on the other hand, the amount obtained by multiplying that lump sum by the percentage of the deduction to be made pursuant to subparagraph (2). If the reimbursement is made more than six months after the date of the first payment of the definitive amount of a legal pension, the [NPO] is automatically required to pay interest for late payment to the beneficiary on the amount reimbursed. That interest, the rate of which is 4.75% per annum, begins to run from the first day of the month which follows the expiry of the six months’ delay. The King may adapt the rate of interest for late payment.’

The dispute in the main proceedings and the question referred for a preliminary ruling

11

Mr Hoogstad, who has Netherlands nationality, worked, in the period from 1 November 1996 to 31 December 2004, for a Belgian employer that built up two supplementary pension funds for him. After completing his professional career, Mr Hoogstad settled, in 2007, in Ireland with his wife who is a national of that Member State.

12

When Mr Hoogstad reached the age of 60, in February 2008, the lump sum payments were paid to him from the two supplementary pensions.

13

In Belgium, the lump sum payments concerned were the object of two deductions. A first deduction of 3.55% was made pursuant to Article 191(1)(7) of the Coordinated Law of 14 July 1994, in favour of the Institut national d'assurance maladie invalidité (National Institute for Health and Disability Insurance), which is required to distribute the proceeds amongst the bodies responsible for the healthcare insurance regime. A second deduction of 2% was made in favour of the NPO, pursuant to Article 68 of the Law of 30 March 1994, in order to strengthen the mutual solidarity between the various categories of pensioners (solidarity contribution) and, ultimately, to make selective adjustments to the benefit of the lowest pensions.

14

By document instituting proceedings on 31 December 2009, Mr Hoogstad sought the repayment of the sums that had been withheld from him on the ground that he was not, at the time of the payment of those lump sums, subject to the Belgian social security legislation.

15

By judgment of the arbeidsrechtbank Brussel (Labour Tribunal, Brussels, Belgium) of 28 October 2011, the National Institute for Health and Disability Insurance and NPO were ordered to repay the amounts withheld. After its appeal was also unsuccessful before the arbeidshof Brussel (Labour Court, Brussels, Belgium), the NPO lodged an appeal in cassation.

16

The NPO submits that the lump sum payments of the supplementary pension to Mr Hoogstad were made pursuant to schemes that are not to be regarded as 'legislation' within the meaning of the first subparagraph of Article 1(j) of Regulation No 1408/71 and that those lump sums are not therefore within the material scope of application of that regulation. Consequently, the deductions made to the supplementary pensions are not incompatible with Article 13(1) of that regulation.

17

It was in those circumstances that the Hof van Cassatie (Court of cassation, Belgium) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Must Article 13(1) of Regulation No 1408/71 be interpreted as precluding the levying of a contribution — such as the deduction made pursuant to Article 191(1)(7) of the Coordinated Law of 14 July 1994 and the solidarity contribution payable pursuant to Article 68 of the Law of 30 March 1994 concerning welfare provisions — on benefits derived from Belgian supplementary pension schemes which are not legislation within the meaning of the first subparagraph of Article 1(j) of that regulation, in cases where those benefits are owed to an entitled recipient who does not

reside in Belgium and who, in accordance with Article 13(2)(f) of that regulation, is subject to the social security legislation of the Member State in which he resides?'

The question referred for a preliminary ruling

Admissibility

18

As a preliminary argument, the Belgian Government submits that the request for a preliminary ruling is inadmissible on the ground that the referring court starts from the incorrect premiss that the deductions from payments under Belgian supplementary pension schemes are definitive and do not give rise to a reimbursement. However, since the amounts initially deducted have been fully reimbursed, the interpretation requested no longer has any real usefulness for the resolution of the dispute at issue in the main proceedings.

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It is settled case-law that it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of EU law, the Court of Justice is, in principle, bound to give a ruling (see, inter alia, judgments of 15 June 2000, Sehrer, C?302/98, EU:C:2000:322, paragraph 20, and 25 October 2012, Folien Fischer and Fofitec, C?133/11, EU:C:2012:664, paragraph 25).

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The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted (see, inter alia, judgments of 22 June 2010, Melki and Abdeli, C?188/10 and C?189/10, EU:C:2010:363, paragraph 27, and 28 February 2012, Inter-Environnement Wallonie and Terre wallonne, C?41/11, EU:C:2012:103, paragraph 35).

21

However, that is not the position in the circumstances, as the referring court has clearly set out the reasons for which it has referred the question for a preliminary ruling and for which a response to that question is necessary in order to enable it to give judgment in the case before it.

22

In those circumstances, the request for a preliminary ruling must be held to be admissible.

Substance

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By its question, the referring court asks, in essence, whether Article 13(1) of Regulation No 1408/71 must be interpreted as precluding a national law, such as that at issue in the main proceedings, which levies a social contribution on payments made from supplementary pension

schemes even though the beneficiary of those supplementary pension schemes does not reside in that Member State and is subject, in accordance with Article 13(2)(f) of that regulation, to the social security legislation of the Member State in which he resides.

24

In order to provide an answer that is helpful to the referring court, it must be recalled at the outset that, according to the first paragraph of Article 1(j) of Regulation No 1408/71, the term ‘legislation’ means, in respect of each Member State, statutes, regulations and other provisions and all other implementing measures, present or future, relating to the branches and schemes of social security covered by Article 4(1) and (2).

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However, in accordance with the second subparagraph of Article 1(j), the term ‘legislation’ excludes provisions of existing or future industrial agreements, whether or not they have been the subject of a decision by the authorities rendering them compulsory or extending their scope.

26

While it is clear from the very formulation of the question referred that the payments from supplementary pension schemes which Mr Hoogstad had benefitted from in the main proceedings ‘are not legislation within the meaning of the first subparagraph of Article 1(j) of Regulation No 1408/71’, it remains the case that the contribution levied on those supplementary pension schemes is capable of falling within the scope of that regulation.

27

The Court has already held that the concept of ‘legislation’ is broad, including all the types of legislative, regulatory and administrative measures adopted by the Member States, and must be taken to cover all the national measures applicable in the matter (judgment of 26 February 2015, de Ruyter, C?623/13, EU:C:2015:123, paragraph 32).

28

In that context, the Court has stated that the decisive factor for the purposes of the application of Regulation No 1408/71 is that there must be a direct and sufficiently relevant link between the provision in question and the legislation governing the branches of social security listed in Article 4 of Regulation No 1408/71 (judgments of 18 May 1995, Rheinhold & Mahla, C?327/92, EU:C:1995:144, paragraph 23; 15 February 2000, Commission v France, C?34/98, EU:C:2000:84, paragraph 35; 15 February 2000, Commission v France, C?169/98, EU:C:2000:85, paragraph 33; and 26 February 2015, de Ruyter, C?623/13, EU:C:2015:123, paragraph 23).

29

Thus, the fact that a levy is categorised as a ‘tax’ under national legislation does not mean that, in respect of Regulation No 1408/71, that same levy cannot be regarded as falling within the scope of that regulation (judgment of 26 February 2015, de Ruyter, C?623/13, EU:C:2015:123, paragraph 24 and the case-law cited).

30

Furthermore, the Court has held that levies which are not imposed on employment income and substitute income of workers but which are imposed on income from assets, are liable to fall within

the scope of the regulation where it is found that the proceeds of those levies are allocated specifically and directly to the financing of certain branches of social security in the Member State in question (judgment of 26 February 2015, de Ruyter, C?623/13, EU:C:2015:123, paragraph 28).

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The same conclusion must follow with regard to levies, such as those at issue in the main proceedings, that are imposed on supplementary pension schemes, since the proceeds of those contributions are allocated specifically and directly to the financing of certain branches of social security in the Member State in question.

32

That interpretation is also borne out by the objective pursued by Regulation No 1408/71 and by the principles on which that regulation is based.

33

In order to ensure free movement of employed and self-employed persons within the European Union, while upholding the principle of equal treatment of those persons under the various measures of national legislation, Title II of Regulation No 1408/71 has established a system of coordination concerning, inter alia, the determination of the legislation applicable to employed and self-employed persons who make use, under various circumstances, of their right to freedom of movement (see, to that effect, judgments of 3 April 2008, Derouin, C?103/06, EU:C:2008:185, paragraph 20, 3 March 2011, Tomaszewska, C?440/09, EU:C:2011:114, paragraphs 25 and 28, and 26 February 2015, de Ruyter, C?623/13, EU:C:2015:123, paragraph 34).

34

The completeness of that system of conflict rules has the effect of divesting the legislature of each Member State of the power to determine at its discretion the ambit and the conditions for the application of its national legislation so far as the persons who are subject thereto and the territory within which the provisions of national law take effect are concerned (judgments of 10 July 1986, Luijten, 60/85, EU:C:1986:307, paragraph 14, 5 November 2014, Somova, C?103/13, EU:C:2014:2334, paragraph 54, and 26 February 2015, de Ruyter, C?623/13, EU:C:2015:123, paragraph 35).

35

In that regard, Article 13(1) of Regulation No 1408/71 provides that the persons to whom that regulation applies are to be subject to the legislation of a single Member State only, which therefore excludes — subject to the cases provided for in Articles 14c and 14f — any possibility of the overlapping of the national legislation of several Member States in respect of one and the same period (see, to that effect, the judgments of 5 May 1977, Perenboom, 102/76, EU:C:1977:71, paragraph 11, and 26 February 2015, de Ruyter, C?623/13, EU:C:2015:123, paragraph 36).

36

That principle that the legislation of a single Member State applies in matters of social security aims to avoid the complications which may ensue from the simultaneous application of a number of national legislative systems and to eliminate the unequal treatment which, for persons moving within the European Union, would be the consequence of a partial or total overlapping of the applicable legislation (see, to that effect, judgments of 15 February 2000, Commission v France,

C?34/98, EU:C:2000:84, paragraph 46; 15 February 2000Commission v France, C?169/98, EU:C:2000:85, paragraph 43; and 26 February 2015, de Ruyter, C?623/13, EU:C:2015:123, paragraph 37).

37

The principle that only one legislation is to apply governs, however, only the situations referred to in Article 13(2) and Articles 14 to 17 of the regulation, which determine the conflict rules which are to apply in each situation.

38

Hence, since Council Regulation (EEC) No 2195/91 of 25 June 1991 (OJ 1991 L 206, p. 2), amending Regulation No 1408/71, introduced point (f) into Article 13(2) of Regulation No 1408/71, the principle that only one legislation is to apply is also applicable to workers who have definitively ceased their professional activities.

39

In the present case, it must be noted that, in accordance with the provisions of Article 13(2)(f) of Regulation No 1408/71, Mr Hoogstad, as a retired person residing in Ireland, is subject to the social security legislation of that Member State and cannot therefore be made subject by another Member State, as regards, in particular, supplementary pension benefits, to the legal provisions imposing contributions which have a direct and sufficiently relevant link with the legislation governing the branches of social security listed in Article 4 of Regulation No 1408/71.

40

That finding is not undermined by the provisions of Article 33 of Regulation No 1408/71, pursuant to which a Member State is entitled to receive from a pensioner contributions for sickness insurance if the cost of that benefit is to be borne by it.

41

Article 33 of Regulation No 1408/71 must be read with reference to Articles 27, 28 and 28a of Section 5 of Chapter 1 of Title III of the regulation applicable to the rights of pensioners and members of their families, which cover either situations where the pensioner draws pensions under the legislation of two or more Member States or situations where he draws a pension under the legislation of a single Member State but is not entitled to benefits in his country of residence (see, to that effect, the judgment of 15 June 2000, Sehrer, C?302/98, EU:C:2000:322, paragraph 26).

42

Accordingly, it cannot be inferred from the existence of substantive rules on the rights of pensioners, which are not in any way applicable to retirement or supplementary pensions that are based on agreements (see, to that effect, judgment of 16 January 1992, Commission v France, C?57/90, EU:C:1992:10, paragraph 20), that the levy of social contributions on such supplementary pensions is compatible with the principle, laid down in Article 13(1) of Regulation No 1408/71, that only one legislation is applicable.

43

Having regard to all the foregoing considerations, the answer to the question referred is that Article

13(1) of Regulation No 1408/71 precludes a national law, such as that at issue in the main proceedings, which imposes levies of contributions that have a direct and sufficiently relevant link with the legislation governing the branches of social security listed in Article 4 of that regulation on payments made under supplementary pension schemes even though the beneficiary of that supplementary pension scheme does not reside in that Member State and is subject, in accordance with Article 13(2)(f) of that regulation, to the social security legislation of the Member State in which he resides.

Costs

44

Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Tenth Chamber) hereby rules:

Article 13(1) 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 Regulation (EC) No 118/97 of 2 December 1996, as amended by Council Regulation (EC) No 1606/98 of 29 June 1998, precludes a national law, such as that at issue in the main proceedings, which imposes levies of contributions that have a direct and sufficiently relevant link with the legislation governing the branches of social security listed in Article 4 of that regulation on payments made under supplementary pension schemes even though the beneficiary of that supplementary pension scheme does not reside in that Member State and is subject, in accordance with Article 13(2)(f) of that regulation, to the social security legislation of the Member State in which he resides.

[Signatures]

(*1) Language of the case: Dutch.