# JUDGMENT OF THE COURT (Third Chamber)
7 July 1988 *

In Case 143/87

REFERENCE to the Court under Article 177 of the EEC Treaty by the tribunal du travail, Brussels, (Thirteenth Chamber) for a preliminary ruling in the proceedings pending before that court between

**Christopher Stanton** and

**SA belge d'assurances L'Étoile 1905,** Brussels,

and

**Institut national d'assurances sociales pour travailleurs indépendants (Inasti),** Brussels,

on the interpretation of Article 7, Article 8 (1) and (7), the first paragraph of Article 52, the third paragraph of Article 60 and Article 65 of the EEC Treaty,

THE COURT (Third Chamber)

composed of: J. C. Moitinho de Almeida, President of Chamber, U. Everling and Y. Galmot, Judges,

Advocate General: G. F. Mancini
Registrar: H. A. Rühl, Principal Administrator

* Language of the Case: French.

after considering the observations submitted on behalf of:

Christopher Stanton and SA L'Étoile 1905, by Jean Bayart and François-Xavier de Dorlodot,

Inasti, by J. Lejuste and J. V. de Weirt,

the Belgian Government, by J. Buchmann,

the Commission of the European Communities, by E. Lasnet and F. Herbert,

having regard to the Report for the Hearing and further to the hearing on 8 March 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 15 June 1988,

gives the following

## Judgment

1 By a judgment of 30 April 1987, which was received at the Court Registry on 11 May 1987, the tribunal du travail (Labour Tribunal), Brussels, (Thirteenth Chamber) referred to the Court for a preliminary ruling under Article 177 of the Treaty two preliminary questions relating to the freedom of establishment and the freedom to provide services.

2 Those questions arose in the course of proceedings between the Institut national pour l'assurance des travailleurs indépendants (National Social Insurance Institution for Self-employed Persons, hereinafter referred to as 'Inasti') and Mr Stanton and the company of which he has been a director since 1979, relating to the payment of contributions to the Belgian social security scheme for self-employed persons in respect of his activities.

3 Mr Stanton is employed in the United Kingdom and in that capacity pays contributions to the British social security scheme for employees. He bases his request for exemption from payment of the contributions in question on Article 12 (2) of Royal Decree No 38 establishing the social security scheme for self-employed persons (*Moniteur belge* of 29 July 1967). Under that provision a self-employed person is not liable to pay contributions if his income earned in that capacity does not reach a certain threshold and if, in addition to that activity, he habitually pursues by way of principal occupation another occupational activity.

4 Inasti, however, claims that the 'other occupational activity' mentioned in Article 12 (2), as further defined by Article 35 of the Royal Decree of 19 December 1967 (*Moniteur belge* of 29 December 1967), amended by Royal Decree of 15 July 1970, relates solely to employment covered by a Belgian social security scheme.

5 The tribunal du travail, Brussels, considered that the arguments thus submitted by the parties to the dispute raised a question of interpretation of Community law; it therefore stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'(1) Is the refusal by a Member State to exempt wholly or in part a national of another Member State providing services in the first State from payment in the first State of social security contributions under the scheme for self-employed persons in respect of activities of a secondary nature pursued in that capacity in that State even though he is subject to the social security legislation of the second State in respect of his principal activity as an employed person, solely on the ground that his activity as an employed person pursued "habitually and by way of principal occupation" takes place outside the territory of the Member State in which the service is provided, compatible with the wording and spirit of Article 7, Article 8 (1) and (7), Article 52, the first paragraph of Article 59, the third paragraph of Article 60 and Article 65 of the Treaty of Rome of 25 March 1957 establishing the European Economic Community (approved by the Belgian Law of 2 December 1957)?

(2) If the reply to that question is in the negative, are the applicable Community provisions incompatible with paragraphs 1 and 3 of Article 35 of the Belgian Royal Decree of 19 December 1967 laying down general rules for the implementation of Royal Decree No 38 of 27 July 1967 on the social security scheme for self-employed persons, inasmuch as only an activity pursued in Belgium is regarded as an occupational activity other than that pursued as a self-employed person, even where those paragraphs do not contain an express provision to that effect?'

6 Reference is made to the Report for the Hearing for a more detailed account of the facts of the main proceedings, the provisions of national and Community law in issue and the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

7 A Community scheme for self-employed persons was introduced by Council Regulation No 1390/81 of 12 May 1981 extending to self-employed persons and members of their families Council Regulation No 1408/71 (Official Journal 1981, L 143, p. 1). According to Article 2 of that regulation, no rights are acquired thereunder in respect of a period prior to the date of its entry into force. It appears from Article 4 that the regulation entered into force only on 1 July 1982, that is to say, after the period relevant to the main proceedings (1979 to 1980). The regulation is therefore not applicable to the dispute and the question put by the national court is correct in referring only to the relevant Treaty provisions.

8 Article 7 of the Treaty forbids any discrimination on grounds of nationality within the scope of application of the Treaty.

9 It appears, however, from the documents before the Court that the national legislation which gave rise to the main proceedings is applicable without distinction to all self-employed persons working in Belgium and does not discriminate according to the nationality of those persons. Although it is true that self-employed persons whose principal occupation is employment in a Member State other than Belgium are thereby placed at a disadvantage, nothing has been submitted to the Court to

show that the persons disadvantaged are exclusively or mainly foreign nationals. Nor, therefore can the national legislation at issue be considered to result in indirect discrimination on grounds of nationality. Consequently, Article 7 of the Treaty may be dismissed from consideration.

10 The first paragraph of Article 52 of the Treaty requires the abolition of all restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State. It is settled law that that is a directly applicable rule of Community law. Member States were therefore under the obligation to observe that rule even though, in the absence of Community legislation on social security for self-employed persons, they retained legislative jurisdiction in this field.

11 As the Court has held (in particular in the judgment of 12 July 1984 in Case 107/83 *Ordre des avocats* v *Klopp* [1984] ECR 2971, and the judgment of 28 January 1986 in Case 270/83 *Commission* v *France* [1986] ECR 273), freedom of establishment is not confined to the right to create a single establishment within the Community, but entails the right to set up and maintain, subject to observance of the relevant professional rules of conduct, more than one place of work within the Community.

12 That is equally true in respect of a person who is employed in one Member State and wishes, in addition, to work in another Member State in a self-employed capacity.

13 The provisions of the Treaty relating to the free movement of persons are thus intended to facilitate the pursuit by Community citizens of occupational activities of all kinds throughout the Community, and preclude national legislation which might place Community citizens at a disadvantage when they wish to extend their activities beyond the territory of a single Member State.

14 The legislation of a Member State which exempts persons whose principal occupation is employment in that Member State from the obligation to pay contributions to the scheme for self-employed persons but withholds such exemption from persons whose principal occupation is employment in another Member State has the effect of placing at a disadvantage the pursuit of occupational activities outside the territory of that Member State. Articles 48 and 52 of the Treaty therefore preclude such legislation.

15 Finally, it should be noted that the contested national provision affords no additional social protection to the persons concerned, who are affiliated to the social security and pension scheme of the Member State in which they pursue their principal employment. It follows that the impediment to the pursuits of occupational activities in more than one Member State may not in any event be justified on that basis.

16 The reply to be given to the questions of the national court must therefore be that Articles 48 and 52 of the Treaty must be interpreted as meaning that a Member State may not refuse to exempt self-employed persons working within its territory from the contributions provided for under the national legislation on social security for self-employed persons on the ground that the employment which is capable of giving entitlement to such exemption is pursued within the territory of another Member State.

## Costs

17 The costs incurred by the Belgian Government and by the Commission of the European Communities, which submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Third Chamber),

in answer to the questions referred to it by the tribunal du travail, Brussels, (Thirteenth Chamber), by a judgment of 30 April 1987, hereby rules:

**Articles 48 and 52 of the Treaty must be interpreted as meaning that a Member State may not refuse to exempt self-employed persons working within its territory from the contributions provided for under the national legislation on social security for self-employed persons on the ground that the employment which is capable of giving entitlement to such exemption is pursued within the territory of another Member State.**

Moitinho de Almeida Everling Galmot

Delivered in open court in Luxembourg on 7 July 1988.

J.-G. Giraud
Registrar

J. C. Moitinho de Almeida
President of the Third Chamber