JUDGMENT OF THE COURT
6 February 1992 *

In Case C-253/90,

Commission of the European Communities, represented by Jean-Claude Séché, its Legal Adviser, and Maria Patakia, a member of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Roberto Hayder, a representative of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Kingdom of Belgium, represented by Robert Hoebaer, Director of Administration at the Ministry of Foreign Affairs, External Trade and Cooperation with Developing Countries, assisted by M. Loix, Deputy Adviser at the Ministry of Social Welfare, acting as Agents, with an address for service in Luxembourg at the Belgian Embassy, 4 Rue des Girondins,

defendant,

APPLICATION for a declaration that, by deducting contributions for sickness insurance from supplementary pensions or any other benefit replacing statutory old-age, retirement, service-related and survivors' pensions in respect of Community nationals residing in another Member State under whose legislation they are entitled to sickness benefits, the Kingdom of Belgium has failed to fulfil its obligations under the EEC Treaty and in particular has infringed Article 13(1) in conjunction with Article 33 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, in the version as amended by Council Regulation (EEC) No 2001/83 of 2 June 1983 (Official Journal 1983 L 230, p. 6),

* Language of the case: French.

THE COURT,

composed of: O. Due, President, R. Joliet, F. Grévisse and P. J. G. Kapteyn (Presidents of Chambers), C. N. Kakouris, G. C. Rodríguez Iglesias and M. Díez de Velasco, Judges,

Advocate General: C. O. Lenz,
Registrar: D. Louterman-Hubeau, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 2 July 1991, during the course of which the Kingdom of Belgium was represented by Jan Devadder, Legal Adviser at the Ministry of Foreign Affairs, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 19 September 1991,

gives the following

Judgment

1 By application lodged at the Court Registry on 20 August 1990, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by deducting contributions for sickness insurance from supplementary pensions or any other benefit replacing statutory old-age, retirement, service-related and survivors' pensions in respect of Community nationals residing in another Member State under whose legislation they are entitled to sickness benefits, the Kingdom of Belgium has failed to fulfil its obligations under the EEC Treaty and in particular has infringed Article 13(1) in conjunction with Article 33 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, in the version as amended by Council Regulation (EEC) No 2001/83 of 2 June 1983 (Official Journal 1983 L 230, p. 6).

2 Article 13(1) of Regulation (EEC) No 1408/71 provides that persons to whom the regulation applies are to be subject to the legislation of a single Member State only. Under Article 33 of the regulation, 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 is to be authorized 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 Articles 27, 28, 28a, 29, 31 and 32 is to be borne by an institution of the said Member State.

3 The Law of 9 August 1963 establishing and organizing a compulsory sickness and invalidity insurance scheme (Moniteur belge, 1 and 2 November 1963, p. 10555), provides in Article 121(10), as amended by Article 161 of the Law of 8 August 1980 concerning the budget proposals for 1979/80 (Moniteur belge, 15 August 1980, p. 9514), for a deduction from statutory old-age, retirement, service-related and survivors' pensions or any other advantage replacing such a pension and from any benefit supplementing a pension. The proceeds of that deduction are to be paid to the Institut National d'Assurance Maladie (National Sickness Insurance Institution). Following the judgment in Case 275/83 *Commission* v *Belgium* ([1985] ECR 1097), those provisions no longer apply to the statutory pensions of Community nationals residing in a Member State other than Belgium. However, they continue to apply to the supplementary pensions of those nationals.

4 Reference is made to the Report for the Hearing for a fuller account of the legal framework, the background to the dispute and the pleas in law and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

5 The Commission claims that the levy by the Belgian authorities, under the sickness and maternity scheme, of a contribution deducted from the supplementary pensions paid to persons residing in another Member State who receive sickness benefits under the legislation of that State is incompatible with the combined provisions of Article 13(1) and Article 33 of Regulation No 1408/71.

6 The Commission considers that Article 13(1) lays down the fundamental principle that a single system of legislation is to be applicable and that Article 33 puts this in concrete form with regard to sickness insurance contributions deducted from old-age benefits covered by Regulation No 1408/71. The principle may be relied on as a general principle predating Regulation No 1408/71 and applicable in this case even though the matters covered by the regulation do not specifically include supplementary pension schemes.

7 The Commission claims in this respect that, in judgments concerning situations existing prior to the date on which Regulation No 1408/71 entered into force, the Court has interpreted Articles 48 and 51 of the Treaty in accordance with such a principle, whose aim is to avoid plurality of legislation or purposeless confusion of contributions and liabilities which would result from the application of several legislative systems. According to the Commission, the Court has drawn a parallel between the rules applicable to contributions and those applicable to entitlement to benefits.

8 The Kingdom of Belgium denies the existence of a general principle that a single system of legislation should apply. It contends that that principle is not based on any provision of Community law or on the existence of a general principle in the national laws of the Member States.

9 It must be stated, first of all, that recipients of a supplementary pension are employed persons within the meaning of Article 1(a) of Regulation No 1408/71 and that they fall within the class of persons covered by that regulation, as described in Article 2.

10 It must also be stated that, according to the established case-law of the Court (see in particular Case 60/85 *Luijten* v *Raad van Arbeid* [1986] ECR 2365, paragraphs 12 and 13), the principle that a single system of legislation should apply to workers moving within the Community, which had been applied under Regulation No 3 of the Council concerning social security for migrant workers, is expressed in Title II, 'Determination of the Legislation Applicable', of Regulation No 1408/71, Article 13(1) of which provides that the persons concerned are to be subject to the legislation of a single Member State only and that such legislation 'shall be determined in accordance with the provisions of this Title'.

11 However, that principle governs only the situations referred to in Articles 13(2) and 14 to 17 of the regulation, which determine the conflict rules which are to apply in each situation. It follows from the judgment in Case C-140/88 *Noij* v *Staatssecretaris van Financiën* [1991] ECR I-387, paragraphs 9 and 10, that persons such as workers who have definitely ceased to work and who are not in one of the situations referred to in those articles may be subject simultaneously to the legislation of more than one Member State.

12 Since the recipients of a supplementary pension are not in one of the situations referred to in Articles 13(2) and 14 to 17 of Regulation No 1408/71, it follows that the principle that a single system of legislation should apply cannot be invoked for their benefit.

13 As regards Article 33 of Regulation No 1408/71, it should be noted that it was established in the case of *Commission* v *Belgium* cited above that the deductions provided for in Article 121(10) of the Law of 9 August from statutory old-age, retirement, service-related and survivors' pensions, even in the absence of a direct link between the contribution and the risk covered, may not be made where the sickness and maternity benefits received in return are not borne by an institution of that Member State.

14 However, Section 5 of Chapter 1 in Title III of Regulation No 1408/71, of which Article 33 forms part and which is entitled 'Pensioners and Members of their Families', refers only to those entitled to pensions payable under the legislation of one or more Member States. Any Member State which is responsible for payment of a pension under its legislation must therefore be considered responsible for payment of a pension for the purposes of Article 33.

15 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).

16 The second paragraph of that article provides that 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, in so far as this limitation is not lifted in the cases mentioned in that paragraph by a declaration of the Member State concerned.

17 Since, as the Commission acknowledged in its application, the Belgian schemes in question do not constitute legislation within the meaning of the first paragraph of Article 1(j) of Regulation No 1408/71, Article 33 does not apply to them.

18 In the light of all the foregoing considerations, and without its being necessary to rule on the other pleas which it puts forward in its defence, it should be held that the Kingdom of Belgium has not failed to fulfil its obligations under the EEC Treaty and, in particular, has not infringed Articles 13(1) and 33 of Regulation No 1408/71.

Costs

19 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. As the Commission has been unsuccessful in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. Dismisses the application;

2. Orders the Commission to pay the costs.

Due Joliet Grévisse

Kapteyn Kakouris Rodríguez Iglesias Díez de Velasco

Delivered in open court in Luxembourg on 6 February 1992.

J.-G. Giraud
Registrar

O. Due
President