JUDGMENT OF THE COURT (Fourth Chamber)

14 February 2008 *

In Case C-449/06,

REFERENCE for a preliminary ruling under Article 234 EC, from the Tribunal du travail de Bruxelles (Belgium), made by decision of 17 October 2006, received at the Court on 6 November 2006, in the proceedings

Sophiane Gysen

v

Groupe S-Caisse d'Assurances sociales pour indépendants,

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Chamber, G. Arestis, R. Silva de Lapuerta, E. Juhász (Rapporteur) and J. Malenovský, Judges,

* Language of the case: French.

Advocate General: P. Mengozzi,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Ms Gysen, by N. Sluse, avocate,

— the Commission of the European Communities, by J. Currall and D. Martin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 November 2007,

gives the following

Judgment

1 This reference for a preliminary ruling from the Tribunal du travail de Bruxelles (Labour Court, Brussels), concerning Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials

and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ, English Special Edition 1968 (I), p. 30), as amended by Council Regulation (EEC, Euratom, ECSC) No 2074/83 of 21 July 1983 (OJ 1983 L 203, p. 1) ('the Staff Regulations'), was made in the course of proceedings between Ms Gysen and Groupe S-Caisse d'Assurances sociales pour indépendents ('the Caisse') concerning the determination of the ranking of Ms Gysen's children for the purposes of calculating the amount of Belgian family allowances.

Legal background

Community law

2 Under the second paragraph of Article 11, the Staff Regulations are 'binding in their entirety and directly applicable in all Member States'.

3 According to Article 67(1) of the Staff Regulations, family allowances include the household allowance, the dependent child allowance and the education allowance.

4 Under Article 67(2) of the Staff Regulations, officials in receipt of the family allowances specified in that article are to declare allowances of like nature paid from other sources, which are to be deducted from those paid under Articles 1 to 3 of Annex VII to the Staff Regulations.

5 Under Article 2(7) of Annex VII to the Staff Regulations, if custody of a dependent child is entrusted by law or by an order of court or of the competent administrative authority to another person, the dependent child allowance is to be paid to that person in the name and on behalf of the official.

National law

6 Pursuant to the Royal Decree of 8 April 1976 establishing the family allowances scheme for self-employed workers (*Moniteur belge* of 6 May 1976), the amount of the allowance per child increases according to the number of children.

7 Under the first subparagraph of Article 16(1) of the Royal Decree, in the version applicable to the facts in the main proceedings, the ranking of the children is to be determined by taking account of the chronological order of the births of the children receiving benefits under that decree, the consolidated statutes on family allowances for salaried workers, the Royal Decree of 26 March 1965 on family allowances granted to certain categories of salaried State employees, the Law of 20 July 1971 establishing guaranteed family benefits, and the international social security conventions in force in Belgium.

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

8 Ms Gysen, a Belgian national, performs self-employed professional activities in Belgium. She married on 1 February 1986. A child of the marriage was born on 20 October 1989. The couple divorced in June 1993.

9 Ms Gysen remarried in December 1993. The two children of that marriage were born on 5 May 1994 and 17 September 1996. The couple divorced in 2000.

10 Ms Gysen's eldest son has lived with his mother since 17 January 2001. With respect to the two younger children, a court decision of 13 February 2001 states that parental authority and the administration of assets are to be exercised jointly, and that Ms Gysen is to receive the family allowances.

11 On 1 December 2001, the father of the child born in 1989 was recruited by the Commission of the European Communities. From that date, the Commission services have paid Ms Gysen the full allowances for her eldest son in the name of and on behalf of his father.

12 Ms Gysen informed the Caisse of that situation by letter of 22 February 2002, following which the Caisse ceased to pay family allowances for Ms Gysen's eldest son, but continued to pay them for the younger children.

13 Subsequently, taking the view that the allowances had been paid in error, the Caisse deducted EUR 2 284.84 from the monthly family allowances, with effect from March 2003. That amount corresponds to the difference between the allowances paid for the younger children, as second and third children, and those which — according to the Caisse — should have been paid, that is to say, allowances for two children, as first and second children.

14 Taking the view that the administrative decisions by the Caisse relating to the deduction were adopted on the basis of an unlawful finding as to the ranking of her three children and that they must therefore be annulled, Ms Gysen brought an action before the referring court.

15 In those circumstances, the Tribunal du travail de Bruxelles decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

'May, or must, Article 67(1) of … the Staff Regulations … and Annex VII thereto, entitled "Remuneration …", Section 1: Family allowances, … which comprise … household allowance, … dependent child allowance … [and] education allowance … be regarded as constituting what the national rules in question describe as an "… international social security convention in force in Belgium"?

…'

The question referred for a preliminary ruling

16 In order to provide the referring court with a useful answer which will enable it to resolve the dispute before it, it is appropriate to describe the nature and legal force of the Staff Regulations.

17 Under the system of judicial cooperation established by Article 234 EC, it is for the Court of Justice to interpret provisions of Community law. As far as concerns nation provisions, it must be recalled that under that system their interpretation is a matter for the national courts (see Case C-37/92 *Vanacker and Lesage* [1993] ECR I-4947, paragraph 7).

18 It is clear from the legislative background to the dispute in the main proceedings, as described by the referring court, that under Belgian law the child of a self-employed worker who is in receipt of an allowance paid on behalf of the spouse or ex-spouse by the social security bodies of another Member State in accordance with an

international convention is taken into account when determining the ranking of the children of that self-employed worker in order to calculate the amount of the Belgian family allowances to which the latter is entitled for his other children.

19 It is also clear from the order for reference that the dispute in the main proceedings arose from the refusal by the Caisse to take account of the child who receives an allowance paid wholly on the basis of the Staff Regulations in the name and on behalf of his father, a Community official, when determining the ranking of the children of the mother, a self-employed worker, for the calculation of the amount of family allowances to which the latter is entitled for her other children.

20 The documents in the case-file indicate that the difference in treatment by the Caisse of those two situations is based on the specific nature of the legal basis for the allowance under the Staff Regulations paid to the child of Ms Gysen who was born in 1989.

21 The Caisse contends before the referring court that the Staff Regulations confer on Community officials rights which they are able to rely on vis-à-vis their employer and, where necessary, the right to bring an action before the Community courts, but that those rights are not immediately and directly applicable in national legal systems.

22 It must be held that that argument runs counter to the nature and the legal force of the Staff Regulations.

23 Admittedly, Regulation No 259/68 — which established the Staff Regulations — cannot be treated as an international convention, because it was adopted, not by the Member States acting in accordance with the rules of international law, but by

the Council as a European Community institution acting independently (see, to that effect, Case 38/69 *Commission* v *Italy* [1970] ECR 47, paragraph 11, and Case 91/79 *Commission* v *Italy* [1980] ECR 1099, paragraph 7), in the same way as the EC Treaty on which that regulation is based cannot be treated as an international social security convention. However, it must be recalled that, under the second paragraph of Article 249 EC, that regulation has general application, is binding in its entirety and is directly applicable in all Member States (see Case 137/80 *Commission* v *Belgium* [1981] ECR 2393, paragraph 7, and Case 186/85 *Commission* v *Belgium* [1987] ECR 2029, paragraph 21). Furthermore, as Ms Gysen submits, the second paragraph of Article 11 of the Staff Regulations itself expressly states that the latter are binding in their entirety and directly applicable in all Member States.

24 Having regard to the direct applicability of Regulation No 259/68 in the legal systems of the Member States, the national court has an obligation to apply it in order to ensure compliance with the principle of non-discrimination. It is for the national court therefore to ensure equal treatment between persons whose child gives rise to entitlement to family allowances under the Staff Regulations and persons whose child gives rise to entitlement to family allowances under national law or an international social security convention in force in the Member State concerned.

25 In the light of the foregoing, the answer to the question referred must be, first, that the Staff Regulations have general application, are binding in their entirety and are directly applicable in all Member States and, second, that, in view of the direct applicability of Regulation No 259/68 in the legal systems of the Member States, a child giving rise to entitlement to family allowances under the Staff Regulations must be treated in the same way as a child giving rise to entitlement to family allowances under national law or an international social security convention in force in the Member State concerned.

Costs

26 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 (Fourth Chamber) hereby rules:

Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission, as amended by Council Regulation (EEC, Euratom, ECSC) No 2074/83 of 21 July 1983, has general application, is binding in its entirety and is directly applicable in all Member States. In view of the direct applicability of that regulation in the legal systems of the Member States, a child giving rise to entitlement to family allowances under the Staff Regulations of Officials of the European Communities must be treated in the same way as a child giving rise to entitlement to family allowances under national law or an international social security convention in force in the Member State concerned.

[Signatures]