JUDGMENT OF THE COURT (Third Chamber)
15 February 1996 *

In Case C-53/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunal du Travail, Tournai, Belgium for a preliminary ruling in the proceedings pending before that court between

Institut National d'Assurances Sociales pour Travailleurs Indépendants (Inasti)

and

Hans Kemmler,

on the interpretation of Articles 48, 51, 52 and 59 of the EC Treaty,

THE COURT (Third Chamber),

composed of: J.-P. Puissochet (Rapporteur), President of the Chamber, J. C. Moitinho de Almeida and C. Gulmann, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

* Language of the case: French.

after considering the written observations submitted on behalf of the Commission of the European Communities by Maria Patakia and Berend Jan Drijber, of its Legal Service, acting as Agents

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 11 January 1996,

gives the following

Judgment

1 By judgment of 14 February 1995, received at the Court Registry on 1 March 1995, the Tribunal du Travail (Labour Tribunal), Tournai, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Articles 48, 51, 52 and 59 of that Treaty.

2 That question was raised in proceedings brought by the Institut National d'Assurances Sociales pour Travailleurs Indépendants (National Social Insurance Institution for Self-employed Persons, hereinafter 'Inasti') against Hans Kemmler regarding payment of contributions to the Belgian social security scheme for self-employed persons.

3 Mr Kemmler, a German national, worked as a self-employed lawyer in Frankfurt and Brussels. He has always had his habitual residence in Germany, where he was covered by the social security scheme for self-employed persons, but he also resided in Flobecq (within the Tournai judicial district), Belgium, for part of the period to which these proceedings relate.

4 According to Inasti, Mr Kemmler should have been regarded as subject to the Belgian social security scheme until 30 June 1982, the date of entry into force of Council Regulation (EEC) No 1390/81 of 12 May 1981 extending to self-employed persons and members of their families Council Regulation (EEC) No 1408/71 (OJ 1982 L 143, p. 1). In the absence of a bilateral social security convention between the Kingdom of Belgium and the Federal Republic of Germany, Mr Kemmler was under an obligation to pay contributions in respect of his professional activity in Belgium pursuant to Article 3(1) of Royal Decree No 38 of 27 July 1967 governing social security for self-employed persons (*Moniteur Belge* of 29 July 1967).

5 Accordingly, Inasti claimed from Mr Kemmler the unpaid contributions for 1981 and the first two quarters of 1982. However, he refused to pay them on the ground, among others, that he was already covered by the German social security scheme for self-employed persons and affiliation to the Belgian social security scheme would not have afforded him any additional social security cover.

6 Proceedings were brought before the Tribunal du Travail, Tournai, which considered that the decision to be given in the case depended on an interpretation of various provisions of the Treaty. It therefore referred the following question to the Court of Justice for a preliminary ruling:

'Is the effect of Articles 48, 51, 52 and 59 of the Treaty of Rome that before 1 July 1982 a Member State (in this case Belgium) could not require nationals of another Member State (in this case the former Federal Republic of Germany) who were pursuing the same professional activity as self-employed persons both in its territory and in the former Federal Republic of Germany, where they were habitually resident and subject to the social security scheme, to pay contributions to the Belgian social security scheme for self-employed persons, particularly since such contributions could not entitle them to any additional social security cover?'

7 According to Article 2 of Regulation No 1390/81, 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 both the periods relevant to the main proceedings. 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 (see Case 143/87 *Stanton* v *Inasti* [1988] ECR 3877, paragraph 7).

8 Furthermore, according to the order for reference, Mr Kemmler is not an employed person but a self-employed person with professional establishments in both Frankfurt and Brussels. His situation is not therefore covered by Articles 48 and 51 of the Treaty, which concern the free movement of workers, or by Article 59, which concerns the freedom to provide services. Since Mr Kemmler has a stable and permanent establishment in both the Member States concerned, only Article 52, concerning the right of establishment, is relevant to the decision in the case.

9 That article requires the abolition of restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State. It is settled case-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 competence to legislate in this field (*Stanton*, paragraph 10).

10 As the Court has held (see in particular Case 107/83 *Ordre des Avocats du Barreau de Paris* v *Klopp* [1984] ECR 2971, paragraph 19), freedom of establishment is not confined to the right to create a single establishment within the Community but includes freedom to set up and maintain, subject to observance of the professional rules of conduct, more than one place of work within the territory of the Member States.

11 The provisions of the Treaty relating to the free movement of persons are thus intended to facilitate the pursuit of occupational activities throughout the Community, and preclude national legislation which might inhibit the extension of such activities beyond the territory of a single Member State (*Stanton*, paragraph 13).

12 Legislation of a Member State which requires contributions to be made to the scheme for self-employed persons by persons already working as self-employed persons in another Member State where they have their habitual residence and are affiliated to a social security scheme inhibits the pursuit of occupational activities outside the territory of that Member State. Article 52 of the Treaty therefore precludes legislation of that kind unless is it duly justified.

13 Legislation of the kind at issue in the main proceedings affords no additional social protection to the persons concerned. Therefore, the impediment to the pursuit of occupational activities in more than one Member State may not in any event be justified on that basis (*Stanton*, paragraph 15).

14 The answer to the question submitted must therefore be that Article 52 of the Treaty precludes a Member State from requiring contributions to be paid to the social security scheme for self-employed persons by persons already working as self-employed persons in another Member State where they have their habitual residence and are affiliated to a social security scheme, that obligation affording them no additional social security cover.

Costs

15 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings 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 question referred to it by the Tribunal du Travail, Tournai, by judgment of 14 February 1995, hereby rules:

Article 52 of the Treaty precludes a Member State from requiring contributions to be made to the social security scheme for self-employed persons by persons already working as self-employed persons in another Member State where they have their habitual residence and are affiliated to a social security scheme, that obligation affording them no additional social security cover.

Puissochet Moitinho de Almeida Gulmann

Delivered in open court in Luxembourg on 15 February 1996.

R. Grass J.-P. Puissochet

Registrar President of the Third Chamber