JUDGMENT OF THE COURT (Fifth Chamber)

26 May 2005 *

In Case C-249/04,

REFERENCE under Article 234 EC for a preliminary ruling, by the Cour du travail de Liège, Neufchâteau section (Belgium), by decision of 9 June 2004, received at the Court on 11 June 2004, in the proceedings

José Allard

v

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

THE COURT (Fifth Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, P. Kūris and J. Klučka (Rapporteur), Judges,

* Language of the case: French.

Advocate General: F.G. Jacobs,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Institut national d'assurances sociales pour les travailleurs indépendants (Inasti), by L. Paeme, in his capacity as director,

— the Belgian Government, by E. Dominkovits, acting as Agent,

— the Italian Government, by I.M. Braguglia, acting as Agent, and P. Gentili, avvocato dello Stato,

— the Commission of the European Communities, by D. Martin, acting as Agent,

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

gives the following

Judgment

1 The reference for a preliminary ruling concerns the interpretation of Article 13 et seq. 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 (EEC) No 2001/83 of 2 June 1983 (OJ 1983 L 230, p. 6, 'Regulation No 1408/71'), and of Articles 48 and 52 of the EC Treaty (now, after amendment, Articles 39 EC and 43 EC).

2 This reference was made in proceedings before the Cour du travail de Liège (Higher Labour Court, Liège), Neufchâteau section, between Mr Allard and the Institut national d'assurances sociales pour les travailleurs indépendants (National Social Security Institute for Self-Employed Persons, 'Inasti') concerning the payment and method of calculation of a 'moderation contribution' (*cotisation de modération*) payable under Royal Decree No 289 of 31 March 1984 (*Moniteur belge* of 7 April 1984, p. 4370, 'the Royal Decree').

Law

Community legislation

3 Article 13(1) of Regulation No 1408/71 provides:

'Subject to Article 14c, persons to whom this Regulation applies shall be subject to the legislation of a single Member State only. ...'

4 Article 14a(2) of that regulation states:

'A person normally self-employed in the territory of two or more Member States shall be subject to the legislation of the Member State in whose territory he resides if he pursues any part of his activity in the territory of that Member State. ...'

5 Article 14d(1) of that regulation provides:

'The person referred to ... in Article 14a(2), (3) and (4) ... shall be treated, for the purposes of application of the legislation laid down in accordance with [this provision], as if he pursued all his professional activity or activities in the territory of the Member State concerned.'

National legislation

6 Article 1 of the Belgian Law of 6 July 1983 (*Moniteur belge* of 8 July 1983, p. 8939) conferring certain special powers on the King authorises the latter to take all necessary measures to ensure the financial balance of all social security schemes for employed and self-employed persons.

7 Pursuant to that provision, the Royal Decree, enacting certain temporary measures relating to the moderation of the income of self-employed persons with a view to

reducing public expenditure and ensuring the financial balance of the social security scheme for self-employed persons, introduces a 'moderation contribution', which is an additional occupational charge levied from those persons where their occupational income for 1984, 1985 and 1986 is higher than for 1983.

8 Pursuant to Article 7 of the Royal Decree, Inasti was entrusted with the task of calculating and collecting that contribution.

9 In addition, Article 11 of the Loi de redressement (Law on financial stabilisation) of 22 January 1985 (*Moniteur belge* of 24 January 1985, p. 699), containing social security provisions, provides that the proceeds of the contributions collected pursuant to the Royal Decree are to be allocated to the self-employed persons' old-age and survivor's pension scheme.

The main proceedings and the questions referred for a preliminary ruling

10 Mr Allard is a Belgian national residing in Belgium and pursuing activities as a self-employed person both in Belgium and in France. Inasti claimed payment of the moderation contribution from him for 1984 and 1985.

11 When Mr Allard refused to pay that contribution, Inasti brought proceedings before the Tribunal du travail d'Arlon (Labour Court, Arlon), which, on 5 December 2000, ordered him to pay it.

12 He then appealed to the referring court. In his view, Inasti had wrongly taken account of his income in France in calculating the amount of the contribution for 1985. He therefore sought a reduction of that amount.

13 Those were the circumstances in which the Cour du travail de Liège, Neufchâteau section, decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Do Article 13 et seq. of Council Regulation (EEC) No 1408/71 ... preclude a contribution such as the moderation contribution due under [the Royal Decree] ... from being calculated in such a way as to include under the heading of occupational income the income derived by a self-employed person from the pursuit of a professional activity in the territory of a Member State other than the State of taxation if, after paying that contribution, the self-employed person cannot claim any social security or other benefit at the expense of that State?

2. Does the Treaty of Rome of 25 March 1957 establishing the European Community, and in particular Articles 39 and 43 thereof (formerly Articles 48 and 52), preclude the imposition of a contribution calculated on that basis on self-employed persons who exercise their right to freedom of movement?'

The first question

14 By its first question, the referring court is, in essence, asking the Court whether Article 13 et seq. of Regulation No 1408/71 preclude the imposition, in a Member State, of a contribution such as the 'moderation contribution' on the whole of the income of a self-employed person residing in the territory of that State but pursuing professional activities as a self-employed person both in the territory of the State of residence and in that of another Member State.

15 It is apparent both from the content of the order for reference and from the wording of the first question that the referring court is in doubt as to the applicability of Regulation No 1408/71 to a contribution the levying of which does not give rise, in return, to any entitlement to a social security or other benefit. The referring court is of the view that the moderation contribution is more like 'a form of emergency tax' than a social security contribution considered to be one of the matters covered by Regulation No 1408/71, as they are defined in Article 4 of that regulation.

16 It should first be recalled that the Court has already ruled that, for the purposes of the application of Regulation No 1408/71, the decisive criterion is that of the specific allocation of a contribution to the funding of a social security scheme of a Member State. Whether benefits are obtained or not in return is therefore irrelevant in that connection (Case C-34/98 *Commission* v *France* [2000] ECR I-995, paragraph 40, and Case C-169/98 *Commission* v *France* [2000] ECR I-1049, paragraph 38).

17 In this case, it is not disputed that the proceeds of the moderation contribution are allocated to the self-employed persons' old-age and survivor's pension scheme.

18 It follows that Regulation No 1408/71 applies to a contribution such as the moderation contribution.

19 As the Court has already ruled, it is clear from the wording of Article 13(1) of Regulation No 1408/71 that, subject to Article 14c thereof, a person to whom that regulation applies is subject to the legislation of a single Member State only. It is also clear from the wording of Article 14a(2) that, where a person is normally self-employed in the territory of two or more Member States, he is subject to the legislation of the Member State in whose territory he resides if he pursues any part of his activity in the territory of that Member State (see order in Case C-242/99 *Vogler* [2000] ECR I-9083, paragraph 19).

20 That means that, in this case, Mr Allard is, according to Regulation No 1408/71, exclusively subject to the social security scheme established by Belgian legislation (see, by analogy, order in *Vogler*, cited above, paragraph 20).

21 Furthermore, Article 14d(1) of Regulation No 1408/71 specifies that the person referred to in Article 14a(2) of that regulation is to be treated as if he pursued all his professional activity or activities in the territory of the Member State concerned (see, by analogy, Case C-71/93 *Van Pouke* [1994] ECR I-1101, paragraph 24).

22 Consequently, a person in the situation described in the order for reference who is simultaneously self-employed in Belgium and in France must be subject, as a result of the latter activity, to the appropriate Belgian legislation under the same conditions as if he was self-employed in Belgium (see by analogy, *Van Pouke*, paragraph 25).

23 It follows that a social security contribution such as the moderation contribution payable in Belgium by Mr Allard must be calculated taking into account the income received in France.

24 The answer to the first question must therefore be that Article 13 et seq. of Regulation No 1408/71 require a contribution such as the moderation contribution to be calculated in such a way as to include under the heading of occupational income the income obtained in the territory of a Member State other than the Member State whose social legislation is applicable even if, after paying that contribution, the self-employed person cannot claim any social security or other benefit at the expense of that State.

The second question

25 By its second question, the referring court asks the Court whether Articles 48 and 52 of the Treaty preclude the imposition of a social security contribution, such as the moderation contribution, on self-employed persons who exercise their right to freedom of movement.

26 As a preliminary point, it should be noted at the outset that Article 48 of the Treaty, which relates to employed persons, does not apply in this case since Mr Allard is a self-employed person. Consequently, the Court is required to rule only on the part of the question concerning Article 52 of the Treaty.

27 It follows from the answer to the first question that the relevant provisions of Regulation No 1408/71 require account to be taken of the income received in another Member State for the purpose of calculating the moderation contribution payable by self-employed persons who are in Mr Allard's situation.

28 It should first be recalled that the Court has already ruled, first, that, in regard to social security, the purpose of the principle of application of the legislation of a single Member State is to avoid the complications which might ensue from the simultaneous application of a number of national legislative systems and, second, that the attachment of a worker to the legislation of the State where he resides, in a case where he pursues one or more self-employed activities in two or more Member States, is by no means unreasonable (see order in *Vogler*, paragraphs 26 and 27).

29 Secondly, it should be noted that, under Article 52 of the Treaty, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State are prohibited and that freedom of establishment includes the right to take up and pursue activities as self-employed persons under the conditions laid down for its own nationals by the law of the country where such establishment is effected.

30 Finally, according to settled case-law, in principle, the only measures prohibited by the Treaty as being restrictions on freedom of establishment are national measures liable to hamper or to render less attractive the exercise of fundamental freedoms guaranteed by the Treaty (see, to that effect, Case C-19/92 *Kraus* [1993] ECR I-1663, paragraph 32, and Case C-55/94 *Gebhard* [1995] ECR I-4165, paragraph 37).

31 It is established that, in making self-employed persons who pursue a professional activity in that capacity in more than one Member State subject, in respect of the whole of their income, to a single system of social legislation, Regulation No 1408/71 pursues a general objective, which is to ensure free movement of employed and self-employed persons within the Community, while respecting the special character of the various national laws, and seeks to guarantee the equality of treatment of all workers occupied in the territory of a Member State as effectively as possible and not to penalise workers who exercise their right to freedom of movement (see, to that effect, Case C-68/99 *Commission* v *Germany* [2001] ECR I-1865, paragraphs 22 and 23).

32 It follows that the application of Article 13 et seq. of Regulation No 1408/71 is not, in this case, liable to hamper or to render less attractive the exercise of the fundamental freedoms guaranteed by the Treaty, but, on the contrary, contributes to facilitating the exercise of those freedoms.

33 Consequently, national measures which implement those provisions taking into account income received in another Member State for the purpose of calculating the moderation contribution payable by self-employed persons who are in the same situation as Mr Allard do not constitute restrictions on freedom of establishment.

34 The reply to the referring court must therefore be that Article 52 of the EC Treaty does not preclude the imposition of a contribution such as the moderation contribution payable in the Member State of residence and calculated taking into account the income obtained in another Member State on self-employed persons pursuing professional activities in that capacity in those two Member States.

Costs

35 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 (Fifth Chamber) hereby rules:

1. **Article 13 et seq. 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 (EEC) No 2001/83 of 2 June 1983, require a contribution such as the moderation contribution payable under Royal Decree No 289 of 31 March 1984 to be calculated in such as way as to include under the heading of occupational income the income obtained in the territory of a Member State other than**

the Member State whose social legislation is applicable even if, after paying that contribution, the self-employed person cannot claim any social security or other benefit at the expense of that State.

2. **Article 52 of the EC Treaty (now, after amendment, Article 43 EC) does not preclude the imposition of a contribution such as the moderation contribution, payable in the Member State of residence and calculated taking into account income obtained in another Member State, on self-employed persons pursuing professional activities in that capacity in those two Member States.**

[Signatures]