JUDGMENT OF THE COURT (Sixth Chamber)

3 May 2001 *

In Case C-347/98,

Commission of the European Communities, represented by D. Gouloussis and P. Hillenkamp, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Kingdom of Belgium, represented by A. Snoecx, acting as Agent, assisted by E. Gillet and G. Vandersanden, avocats, with an address for service in Luxembourg,

defendant,

* Language of the case: French.

supported by

Kingdom of the Netherlands, represented by M.A. Fierstra and I. van der Steen, acting as Agents,

intervener,

APPLICATION for a declaration that, by levying personal contributions of 13.07% on Belgian occupational disease pensions payable to persons who do not reside in Belgium and are no longer subject to the Belgian social security scheme, the Kingdom of Belgium has failed to fulfil its obligations under Article 13(2)(f) of Council Regulation (EEC) No 1408/71 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 (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1),

THE COURT (Sixth Chamber),

composed of: C. Gulmann, President of the Chamber, V. Skouris, J.-P. Puissochet, R. Schintgen (Rapporteur) and N. Colneric, Judges,

Advocate General: S. Alber,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 23 January 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 22 September 1998, the Commission of the European Communities brought an action, pursuant to Article 169 of the EC Treaty (now Article 226 EC), for a declaration that, by levying personal contributions of 13.07% on Belgian occupational disease pensions payable to persons who do not reside in Belgium and are no longer subject to the Belgian social security scheme, the Kingdom of Belgium has failed to fulfil its obligations under Article 13(2)(f) of Council Regulation (EEC) No 1408/71 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 (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1; 'Regulation No 1408/71').

Relevant legislation

Community legislation

2 Article 13 of Regulation No 1408/71, entitled 'General rules', provides:

'1. Subject to Article 14c, persons to whom this regulation applies shall be subject to the legislation of a single Member State only. That legislation shall be determined in accordance with the provisions of this title.

2. Subject to Articles 14 to 17:

(a) a person employed in the territory of one Member State shall be subject to the legislation of that State even if he resides in the territory of another Member State or if the registered office or place of business of the undertaking or individual employing him is situated in the territory of another Member State;

...

(f) a person to whom the legislation of a Member State ceases to be applicable, without the legislation of another Member State becoming applicable to him in accordance with one of the rules laid down in the aforegoing subparagraphs or in accordance with one of the exceptions or special provisions laid

down in Articles 14 to 17, shall be subject to the legislation of the Member State in whose territory he resides in accordance with the provisions of that legislation alone.'

3 It is clear from the third recital in the preamble to Council Regulation (EEC) No 2195/91 of 25 June 1991 amending Regulation No 1408/71 and Regulation (EEC) No 574/72 laying down the procedure for implementing Regulation No 1408/71 (OJ 1991 L 206, p. 2) that Article 13(2)(f) was inserted in Regulation No 1408/71 following the judgment in Case 302/84 *Ten Holder* [1986] ECR 1821, in which the Court ruled that Article 13(2)(a) of Regulation No 1408/71 must be interpreted as meaning that a worker who ceases to carry on an activity in the territory of a Member State and has not gone to work in the territory of another Member State continues to be subject to the legislation of the Member State in which he was last employed, regardless of the length of time which has elapsed since the termination of the activity in question and the end of the employment relationship.

4 Articles 14 to 17a of Regulation No 1408/71 contain various special rules and exceptions to the general rules laid down in Article 13. Articles 13 to 17a of that regulation constitute Title II thereof, entitled 'Determination of the legislation applicable'.

5 Title III of Regulation No 1408/71 contains special provisions relating to the various categories of benefits to which the regulation applies under Article 4(1) thereof. As regards sickness and maternity benefits, which are the subject-matter of Chapter 1 of Title III of that regulation, Article 27, entitled 'Pensions payable under the legislation of several States where there is a right to benefits in the country of residence', provides:

'A pensioner who is entitled to draw pensions under the legislation of two or more Member States, of which one is that of the Member State in whose territory he resides, and who is entitled to benefits under the legislation of the latter Member State, taking account where appropriate of the provisions of Article 18

and Annex VI, shall, with the members of his family, receive such benefits from the institution of the place of residence and at the expense of that institution as though the person concerned were a pensioner whose pension was payable solely under the legislation of the latter Member State.'

6 Article 28 of Regulation No 1408/71, entitled 'Pensions payable under the legislation of one or more States, in cases where there is no right to benefits in the country of residence', states:

'1. A pensioner who is entitled to a pension under the legislation of one Member State or to pensions under the legislation of two or more Member States and who is not entitled to benefits under the legislation of the Member State in whose territory he resides shall nevertheless receive such benefits for himself and for members of his family, in so far as he would, taking account where appropriate of the provisions of Article 18 and Annex VI, be entitled thereto under the legislation of the Member State or of at least one of the Member States competent in respect of pensions if he were resident in the territory of such State. ...

2. In the cases covered by paragraph 1, the cost of benefits in kind shall be borne by the institution as determined according to the following rules:

(a) where the pensioner is entitled to the said benefits under the legislation of a single Member State, the cost shall be borne by the competent institution of that State;

(b) where the pensioner is entitled to the said benefits under the legislation of two or more Member States, the cost thereof shall be borne by the competent institution of the Member State to whose legislation the pensioner has been subject for the longest period of time; should the application of this rule

result in several institutions being responsible for the cost of benefits the cost shall be borne by the institution administering the legislation to which the pensioner was last subject.'

7 Paragraph 1 of Article 33 of Regulation No 1408/71, which forms part of the same chapter in Title III thereof and is entitled 'Contributions payable by pensioners', provides:

'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 shall be authorised 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.'

8 Regulation No 1408/71 devotes Chapter 4 of Title III to benefits in respect of accidents at work and occupational diseases. Article 52 thereof, entitled 'Residence in a Member State other than the competent State — General rules', states as follows:

'An employed or self-employed person who sustains an accident at work or contracts an occupational disease, and who is residing in the territory of a Member State other than the competent State, shall receive in the State in which he is residing:

(a) benefits in kind, provided on behalf of the competent institution by the institution[s] of his place of residence in accordance with the provisions of the legislation which it administers as if he were insured with it;

(b) cash benefits provided by the competent institution in accordance with the provisions of the legislation which it administers. However, by agreement between the competent institution and the institution of the place of residence, these benefits may be provided by the latter institution on behalf of the former in accordance with the legislation of the competent State.'

9 The rules applicable to benefits for dependent children of pensioners and for orphans are found in Title III, Chapter 8, of Regulation No 1408/71. Under Article 77 thereof, entitled 'Dependent children of pensioners':

'1. The term "benefits", for the purposes of this article, shall mean family allowances for persons receiving pensions for old age, invalidity or an accident at work or occupational disease, and increases or supplements to such pensions in respect of the children of such pensioners, with the exception of supplements granted under insurance schemes for accidents at work and occupational diseases.

2. Benefits shall be granted in accordance with the following rules, irrespective of the Member State in whose territory the pensioner or the children are residing:

(a) to a pensioner who draws a pension under the legislation of one Member State only, in accordance with the legislation of the Member State responsible for the pension;

(b) to a pensioner who draws pensions under the legislation of more than one Member State:

(i) in accordance with the legislation of whichever of these States he resides in provided that, taking into account, where appropriate, the provisions of Article 79(1)(a), a right to one of the benefits referred to in paragraph 1 is acquired under the legislation of that State;

or

(ii) in other cases in accordance with the legislation of the Member State to which he has been subject for the longest period of time, provided that, taking into account, where appropriate, the provisions of Article 79(1)(a), a right to one of the benefits referred to in paragraph 1 is acquired under such legislation; if no right to benefit is acquired under that legislation, the conditions for the acquisition of such right under the legislations of the other Member States concerned shall be examined in decreasing order of the length of periods of insurance or residence completed under the legislation of those Member States.'

10 Article 10b of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation No 1408/71 (OJ, English Special Edition 1972 (I), p. 159), as also amended by Regulation No 118/97 ('Regulation No 574/72'), which is entitled 'Formalities pursuant to Article 13(2)(f) of the Regulation', provides:

'The date and conditions on which the legislation of a Member State ceases to be applicable to a person referred to in Article 13(2)(f) of the Regulation shall be

determined in accordance with that legislation. The institution designated by the competent authority of the Member State whose legislation becomes applicable to the person shall apply to the institution designated by the competent authority of the former Member State with a request to specify this date.'

National legislation

11 Article 46 of the Lois coordonnées du 3 juin 1970 relatives à la réparation des dommages résultant des maladies professionnelles (Consolidated Laws of 3 June 1970 on compensation for damage resulting from occupational diseases) (*Moniteur Belge* of 27 August 1970) states:

'A person who contracts an occupational disease and who is in receipt of a benefit or an allowance under these laws shall still be required to pay the contributions payable under the social security legislation.

The King shall determine the arrangements for levying and distributing those contributions and the procedure for implementing the provisions of the first subparagraph.

...'

The pre-litigation procedure

12 The Commission took the view that the levying of those contributions, at a level of 13.07%, on pensions paid in Belgium in respect of an occupational disease was contrary to Community law where the persons receiving such pensions resided in a Member State other than the Kingdom of Belgium and there received a pension payable by that State, and accordingly gave the Belgian Government formal notice by letter of 24 September 1996 to submit to it its observations on the matter within two months.

13 Since it received no reply from the Belgian Government, the Commission reiterated its view in the reasoned opinion which it sent to the Kingdom of Belgium by letter of 6 November 1997. In that reasoned opinion, the Commission concluded that, by levying a personal contribution of 13.07% on pensions paid in Belgium in respect of an occupational disease to persons who were not in receipt of social security benefits other than the pensions in question and who resided in another Member State, the Kingdom of Belgium had failed to fulfil its obligations under, in particular, Article 13(2)(f) of Regulation No 1408/71. It requested the Belgian Government to take the measures necessary to comply with its reasoned opinion within two months of the notification of that opinion.

14 By letter of 8 May 1998, the Belgian Government replied to that reasoned opinion, claiming, in particular, that Article 13(2)(f) of Regulation No 1408/71 was not applicable to persons receiving benefits paid in Belgium in respect of an occupational disease inasmuch as, even if they resided outside Belgium, such persons remained subject to the Belgian social security scheme, and because not only did they receive an occupational disease benefit provided by the Kingdom of Belgium, but they were also entitled to the health care and family allowances provided for under the legislation of that Member State.

15 The Commission was not satisfied by the Belgian Government's reply to the reasoned opinion, and therefore made the present application.

16 By order of the President of the Court of Justice of 1 March 1999, the Kingdom of the Netherlands was granted leave to intervene in the case in support of the form of order sought by the Kingdom of Belgium.

Substance

Arguments of the parties

17 The Commission claims that, where the social security legislation of a Member State ceases to be applicable to a person, Article 13(2)(f) of Regulation No 1408/71, which implements the principle that the legislation of only one Member State is to apply, states that the legislation of the Member State in which the person concerned resides is to be the only legislation applicable. Consequently, persons to whom the Belgian social security legislation ceases to be applicable and who reside in the territory of another Member State cannot have social security contributions deducted by the Kingdom of Belgium.

18 The Commission submits that it is not possible to accept the arguments contrary to that interpretation which are relied on by the Belgian Government in its reply

to the reasoned opinion and are based on the premiss that Article 13(2)(f) of Regulation No 1408/71 is not applicable to persons receiving benefits paid in Belgium in respect of an occupational disease on the ground that those persons remain subject to the Belgian social security scheme. In that regard, the Commission submits, in particular, that, under the relevant provisions of Title III of Regulation No 1408/71, entitled 'Special provisions relating to the various categories of benefits', it is for the Member State of residence to provide the health care (Article 27) and family benefits (Article 77) of persons who draw a pension payable by that State, no longer carry on an occupational activity in Belgian territory and do not reside there. It follows that, in accordance with Article 33 of Regulation No 1408/71, only the Member State of residence can make deductions from pensions payable in respect of contributions for the sickness and maternity benefits which it is required to pay.

19 The Commission adds that the benefits referred to in Article 52 of Regulation No 1408/71 are not sickness benefits within the meaning of Title III, Chapter 1, of that regulation, but constitute benefits in kind which are designed specifically to meet needs arising from an accident at work or an occupational disease and which would, for that reason, always be borne by the institution of the competent State even if the beneficiary resided in another Member State. However, Chapter 4 of Title III of Regulation No 1408/71, on benefits for accidents at work and occupational diseases, does not contain any provision which, like Article 33 of that regulation, authorises the competent Member State to deduct contributions in order to finance those benefits.

20 The Belgian Government contends that Article 13(2)(f) of Regulation No 1408/71 is not applicable to the deductions of contributions at issue, since the persons concerned remain subject to the Belgian legislation which, therefore, does not cease to be applicable to them. In the present case, the fact that the Belgian legislation is applicable means that benefits are payable under the Belgian occupational disease scheme and that other measures provided for under the Belgian social security scheme apply in respect, in particular, of family benefits,

health care and the periods taken into account for the calculation of retirement pensions.

21 The Belgian Government further submits that the question whether legislation ceases to be applicable is a matter of national law, as expressly stated in Article 10b of Regulation No 574/72, which thus supplements Article 13(2)(f) of Regulation No 1408/71, to the extent that the latter regulation does not specify the date or conditions on which national social security legislation 'ceases to be applicable'. The Government contends that when the Court held, in Case C-275/96 *Kuusijärvi* [1998] ECR I-3419, that a Member State may legislate to the effect that it is obliged to continue providing the benefits payable only if the person concerned continues to reside in its territory, it recognised that it is for the legislation of the Member State responsible for payment to determine the condition — in this case that of change of residence — which, if fulfilled, renders that legislation inapplicable.

22 The Belgian Government adds that, apart from Article 13(2)(f), Regulation No 1408/71 does not contain any provision which expressly makes the legislation of another Member State applicable. On the contrary, Article 52 of that regulation clearly shows that, although certain benefits may be provided by the institutions of the place of residence, the competent institution remains that of the Member State responsible for payment which reimburses the expenses and services of the institutions of that place of residence.

23 The Netherlands Government submits that *Kuusijärvi*, when read in the light of its context, must be interpreted as meaning that a person who has ceased all activity remains none the less subject to the legislation of the last Member State in which he was employed where that legislation so provides. It follows from that judgment that, where the worker has ceased all activity in the territory of a Member State and has transferred his residence to the territory of another Member State without commencing any new activity there, the conditions of

residence laid down by the legislation of the first State may operate against him: if such conditions exist, the worker is no longer subject to the legislation of the first State and, since he has ceased his activities, it is the legislation of his State of residence which, under Article 13(2)(f) of Regulation No 1408/71, is applicable.

24 On the other hand, according to the Netherlands Government, where the legislation of the first State does not include any conditions of residence for affiliation to the social security scheme, that legislation continues to apply to the former employed person even if he resides in the territory of another Member State. It is only if, at a later stage, he no longer satisfies the conditions for affiliation under the legislation of the first State that the legislation of the Member State of residence becomes applicable.

Findings of the Court

25 In its application, the Commission merely claims that, under Article 13(2)(f) of Regulation No 1408/71, the legislation of the Member State of residence is the only legislation which is applicable to persons who receive pensions paid in Belgium in respect of an occupational disease and who reside in the territory of a Member State other than the Kingdom of Belgium and that, accordingly, the latter is not authorised to deduct contributions from such pensions.

26 It is only in response to the arguments which the Belgian Government had put forward in its reply to the reasoned opinion that the Commission further relied on Articles 27, 33, 52 and 77 of Regulation No 1408/71 in order to substantiate its argument that only the legislation of the Member State of residence is applicable

to persons who receive pensions paid in Belgium in respect of an occupational disease and who do not reside in Belgium.

27 In order to determine whether, in those circumstances, the Commission's application is well founded, it must be borne in mind that the provisions of Title II of Regulation No 1408/71, of which Article 13 forms part, constitute a complete and uniform system of conflict rules. Those provisions are intended not only to prevent the concurrent application of a number of national legislative systems and the complications which might ensue, but also to ensure that persons covered by Regulation No 1408/71 are not left without social security cover because there is no legislation which is applicable to them (see, in particular, *Kuusijärvi*, paragraph 28).

28 As is clear from paragraphs 32 to 34 of *Kuusijärvi*, the purpose of Article 13(2)(f) of Regulation No 1408/71 is precisely to ensure that a person covered by that regulation is always subject to the social security legislation of a Member State.

29 It should be observed, however, that that provision provides for the application of the legislation of the Member State in the territory of which the person concerned is residing only if no other legislation is applicable and, in particular, only if that to which the person concerned had previously been subject ceases to be applicable to him.

30 The Commission has not shown that that is necessarily true of the legislation applicable to persons receiving pensions paid in Belgium in respect of an occupational disease where they have their residence in the territory of a Member State other than the Kingdom of Belgium.

31 To that end a simple reference to Article 13(2)(f) of Regulation No 1408/71 is not sufficient, since the fact that the legislation of a Member State ceases to be applicable constitutes a condition for the application of that provision, and that provision does not itself define the conditions in which the legislation of a Member State ceases to be applicable.

32 Furthermore, none of the arguments which the Commission has based on Articles 27, 33, 52 or 77 of Regulation No 1408/71, in order to show that only the legislation of the Member State of residence is applicable to persons who receive pensions paid in Belgium in respect of an occupational disease and who do not reside in Belgium, is decisive in that regard.

33 As regards, first of all, Article 27, it should be observed, first, that in providing that a pensioner who is entitled to draw pensions under the legislation of two or more Member States, of which one is that of the Member Sate in the territory of which he resides, is to receive sickness and maternity benefits from the latter Member Sate where he is entitled to them under the legislation of that State, that provision does not of itself confer a right to those benefits.

34 It should be noted, second, that where the pensioner who is entitled to draw a pension under the legislation of one Member State is not entitled to sickness or maternity benefits under the legislation of the Member State in the territory of which he resides, Article 28 of Regulation No 1408/71 expressly designates the competent institution of a Member State other than that of residence to provide such benefits.

35 In those circumstances, it is likewise not possible to rely on Article 33 of Regulation No 1408/71, which authorises the institution of a Member State which is responsible for payment of a pension to make deductions from that pension in respect of contributions for the sickness and maternity benefits which that institution might be required to bear.

36 As regards, next, Article 52 of Regulation No 1408/71, it must be noted that it expressly provides that, even where the worker is residing in the territory of a Member State other than the competent State, the benefits payable in respect of an accident at work or an occupational disease to which he is entitled are provided to him either directly by the institution of the competent State or on behalf of that institution by the institution of the place of residence.

37 As regards, finally, Article 77 of Regulation No 1408/71, in respect of the grant to those receiving pensions for an accident at work or an occupational disease of the benefits referred to in that provision it provides, like Articles 27 and 28 of that regulation, that the legislation of the Member State in the territory of which that pensioner resides is to be applicable only if the right to those benefits is acquired under that legislation itself and, in other cases, expressly designates the competent institution of a Member State other than that of residence to provide such benefits.

38 In those circumstances, it is clear that, by merely claiming, in its application, that the Kingdom of Belgium failed to fulfil its obligations under Article 13(2)(f) of Regulation No 1408/71 by levying contributions on pensions paid in Belgium in respect of an occupational disease where the persons receiving such pensions do not reside in that Member State and are no longer subject to the Belgian social security scheme, the Commission infers from that provision legal consequences which do not necessarily flow from it. It considers it to be established that the

conditions for applying that provision are fulfilled, although, in order to establish the merits of that proposition, it was required to prove that those conditions are in fact fulfilled in the present case, by specifying the concrete situations in which persons receiving pensions paid in Belgium in respect of an accident at work or an occupational disease are in fact no longer subject to Belgian social security legislation where they have their residence in the territory of a Member State other than the Kingdom of Belgium.

39 In proceedings under Article 169 of the Treaty for failure to fulfil an obligation, it is incumbent upon the Commission to prove the allegation that the obligation has not been fulfilled and to place before the Court the information needed to enable it to determine whether the obligation has not been fulfilled (see, in particular, Case C-159/94 *Commission* v *France* [1997] ECR I-5815, paragraph 102).

40 Therefore, the Commission's application must be dismissed as unfounded.

Costs

41 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been asked for in the other party's pleadings. Since the Kingdom of Belgium has asked for the Commission to be ordered to pay the costs and the Commission has been unsuccessful, it must be ordered to pay the costs. Under Article 69(4) of those Rules, which provides that Member States and institutions which have intervened in the proceedings are to bear their own costs, the Kingdom of the Netherlands must bear its own costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Dismisses the application;

2. Orders the Commission of the European Communities to pay the costs;

3. Orders the Kingdom of the Netherlands to bear its own costs.

Gulmann Skouris

Puissochet Schintgen Colneric

Delivered in open court in Luxembourg on 3 May 2001.

R. Grass

Registrar

C. Gulmann

President of the Sixth Chamber