Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

5 July 2012 *

(Privileges and immunities of the European Communities — Exemption from national taxes on salaries paid by the European Union — Inclusion of income paid by the European Union in the calculation of the cap for wealth tax)

In Case C-558/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Tribunal de grande instance de Chartres (France), made by decision of 24 November 2010, received at the Court on 29 November 2010, in the proceedings

**Michel Bourgès-Maunoury,**

**Marie-Louise Heintz, wife of Mr Bourgès-Maunoury,**

v

**Direction des services fiscaux d'Eure-et-Loir,**

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, R. Silva de Lapuerta, E. Juhász, T. von Danwitz and D. Šváby (Rapporteur), Judges,

Advocate General: P. Cruz Villalón,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 23 November 2011,

after considering the observations submitted on behalf of:

— Mr Bourgès-Maunoury and Ms Heintz, by T. Davidian, avocat,

— the French Government, by G. de Bergues and A. Adam, acting as Agents,

— the Belgian Government, by J.-C. Halleux and M. Jacobs, acting as Agents,

— the Netherlands Government, by C. Wissels and M. de Ree, acting as Agents,

— the European Commission, by F. Clotuche-Duvieusart, I. Martínez del Peral and R. Lyal, acting as Agents,

* Language of the case: French.

after hearing the Opinion of the Advocate General at the sitting on 16 February 2012,

gives the following

## Judgment

1 This reference for a preliminary ruling concerns the interpretation of the second paragraph of Article 13 of the Protocol on the Privileges and Immunities of the European Communities, initially annexed to the Treaty establishing a single Council and a single Commission of the European Communities (OJ 1967 152, p. 13), and subsequently, under the Amsterdam Treaty, to the EC Treaty ('the Protocol').

2 The reference was made in proceedings brought by Mr Bourgès-Maunoury and his wife, Ms Heintz, against the Direction des services fiscaux d'Eure-et-Loir (Tax Office, Eure-et-Loire), concerning the inclusion of income paid by the European Union in the calculation of the cap on the impôt de solidarité sur la fortune ('wealth tax').

### Legal context

*Union law*

3 Article 13 of the Protocol on Privileges and Immunities, in the version in force at the time of the facts at issue in the main proceedings, provides:

'Officials and other servants of the Communities shall be liable to a tax for the benefit of the Communities on salaries, wages and emoluments paid to them by the Communities, in accordance with the conditions and procedure laid down by the Council, acting on a proposal from the Commission.

They shall be exempt from national taxes on salaries, wages and emoluments paid by the Communities.'

*French law*

4 The wealth tax, which was introduced by Law No 88-1149 on Finance for 1989 of 23 December 1988 (JORF of 28 December 1988, p. 16320), was governed by the provisions of Articles 885A to 885X of the Code général des impôts (General Tax Code, 'the CGI') in the version applicable at the time of the facts of the dispute in the main proceedings.

5 Article 885A of the CGI provided:

'The following shall be liable to the annual wealth tax where the value of their assets exceeds the upper limit of the first band in the scale laid down in Article 885U:

1. Natural persons whose residence for tax purposes is in France, on their assets situated in France or outside France.

…

2. Natural persons whose residence for tax purposes is outside France, on their assets situated in France.

Except in the cases provided for in Article 6(4)(a) and (b), married couples shall be taxed jointly.

The conditions governing liability to taxation shall be assessed on 1 January of each year.

…'

6 The wealth tax uses a capping mechanism, described in Article 885Va of the CGI. That article is worded as follows:

'Wealth tax owed by a taxpayer resident for tax purposes in France shall be reduced by the difference between, on the one hand, the total amount of that tax and of the tax due in France and overseas on income and proceeds arising in the previous year, calculated before the offsetting of tax credits and deductions of tax other than by way of discharge, and, on the other hand, 85% of the total amount of income net of business expenses arising in the previous year after deduction only of the category-based tax losses which may be offset under Article 156, as well as income exempt from income tax generated in the same year in France or outside France and proceeds liable to a withholding tax in discharge of tax liability. That reduction may not exceed a sum equal to 50% of the amount of contribution resulting from the application of Article 885V or, if greater, the amount of tax corresponding to taxable assets equal to the upper limit of the third band in the scale laid down in Article 885U.

Capital gains shall be determined without taking into account the thresholds, reductions and rebates provided for in this Code.

For the purposes of applying the first paragraph, where income tax has been charged on income accruing to persons whose assets are not included in the basis of assessment of the wealth tax owed by the person liable, it shall be reduced by the value of that income accruing to those persons as a percentage of their total income.'

## The main proceedings and the question referred for a preliminary ruling

7 Mr Bourgès-Maunoury and Ms Heintz are former officials of the European Union and, in that capacity, are in receipt of an allowance on termination of service or a retirement pension.

8 Since Mr Bourgès-Maunoury and Ms Heintz are resident in France and liable to the wealth tax, they filed wealth tax declarations for the years 2002 to 2004, 2006 and 2007, without including the allowances and pensions paid to them by the Union with their other income for the calculation of the cap provided for by Article 885Va of the CGI.

9 As they had forgotten to apply for the application of the wealth tax cap for 2005, on 7 July 2006 they filed an amending declaration in order to have the cap applied without account being taken of the income paid by the Union.

10 Following the rejection of that request by the Direction des services fiscaux d'Eure-et-Loir, on 27 December 2006, Mr Bourgès-Maunoury and Ms Heintz brought an action against that rejection before the Tribunal de grande instance de Chartres (Regional Court, Chartres) (France). Under Article 24 of the Staff Regulations of Officials of the European Communities, they also requested the assistance of the Commission in this regard, which was granted to them by decision of 6 March 2007.

11 By judgment of 10 October 2007, the Tribunal de grande instance de Chartres dismissed the application of Mr Bourgès-Maunoury and Ms Heintz.

12 By judgment of 27 November 2008, the Cour d'appel de Versailles (Court of Appeal, Versailles) (France) set aside that judgment in so far as it rejected their application in respect of the year 2005.

13 By judgment of 19 January 2010, the French Cour de cassation (Court of Cassation) dismissed the appeal lodged by the French tax administration against that judgment of the Cour d'appel de Versailles.

14 In parallel, by decision of 1 September 2008, the Direction des services fiscaux d'Eure-et-Loir made an adjustment to the wealth tax owed by Mr Bourgès-Maunoury and Ms Heintz for 2002 to 2004, 2006 and 2007, on the ground that the income paid to them by the Union should have been taken into account in the calculation of the wealth tax cap.

15 On 19 January 2009, the Direction des services fiscaux d'Eure-et-Loir issued two recovery notices against Mr Bourgès-Maunoury and Ms Heintz in respect of the wealth tax contribution due for those years. The appeal which Mr Bourgès-Maunoury and Ms Heintz brought against those notices on 4 February 2009 was dismissed by decision of that tax office of 18 February 2009.

16 On 16 April 2009, Mr Bourgès-Maunoury and Ms Heintz brought an action before the Tribunal de grande instance de Chartres, citing the abovementioned judgments of the Cour d'appel de Versailles and the Cour de cassation. The Direction des services fiscaux d'Eure-et-Loir contended in response that, according to the case-law of the Court of Justice of the European Union, the tax exemption enjoyed by the officials of the Union cannot in any case cause them to be considered to be in receipt of no income.

17 The referring court takes the view that Article 885Va of the CGI can only be read as requiring account to be taken of all income of a natural person, including that received from the Union, in the calculation of the amount of the wealth tax reduction, so that that tax will be higher where account is taken of the national and Community income of a natural person in order to set the cap on that tax.

18 The referring court points out, moreover, that, in its judgment mentioned in paragraph 13 of the present judgment, the Cour de cassation held that Article 885Va of the CGI had the effect of indirectly taxing the Community income of the applicants in the main proceedings.

19 Against that background, the Tribunal de grande instance de Chartres, given the doubts it had regarding the interpretation of the second paragraph of Article 13 of the Protocol, decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Is it contrary to the second paragraph of Article 13 of Chapter V of the Protocol …, for the entirety of a taxpayer's income, including Community income, to be taken into account in calculating the cap on wealth tax ("impôt de solidarité sur la fortune")?'

## The question referred for a preliminary ruling

20 By its question, the referring court asks, in essence, whether the second paragraph of Article 13 of the Protocol must be interpreted as meaning that it precludes national legislation such as that at issue in the main proceedings which takes account of income, including pensions and allowances on termination of service, paid by the European Union to its officials and other staff or to its former officials or former staff, in calculating the cap on a tax such as the wealth tax.

21 As to the principles to be applied in order to provide an answer to the question referred, the Court pointed out, in its judgment in Case 6/60 *Humblet* v *Belgian State* [1960] ECR 559, 576, 577, that only the exemption of remuneration paid by the Community from all national tax enables the institutions of the Community to exercise effectively their right to fix the effective amount of the remuneration of their officials, and that such a right would be unavailable if the Member States retained the right to assess those salaries to tax, each according to its own fiscal system. Thus, it was held that the Treaties withdraw the remuneration paid to officials of the Union from the Member

States' sovereignty in tax matters and that the exclusive power of the Union to determine the effective amount of the salaries of its officials is indispensable not only to reinforce the independence of the administrative departments of the Union vis-à-vis the national powers but also to guarantee the equality of remuneration for officials of different nationalities.

22 The Protocol thus makes a clear distinction between income of national origin which falls within the authority of the national tax administrations of the Member States, on the one hand, and income paid by the Union to its officials and other staff, which is exclusively subject to the law of the Union as regards its taxation, on the other. This division of reciprocal fiscal jurisdiction must exclude any taxation, direct or indirect, of income which is not within the jurisdiction of the Member States (*Humblet* v *Belgian State*, 578; Case 260/86 *Commission* v *Belgium* [1988] ECR 955, paragraph 10; Case C-333/88 *Tither* [1990] ECR I-1133, paragraph 12, and Case C-229/98 *Vander Zwalmen and Massart* [1999] ECR I-7113, paragraph 21).

23 As is clear from point 2(a) of the operative part of the judgment in *Humblet* v *Belgian State*, the Court has held that Article 13 of the Protocol prohibits the Member States from imposing on an official or staff member of the Union any taxation whatsoever which is based in whole or in part on the payment of the salary to that official or staff member by the Union.

24 In the present case, the position is similar to that which gave rise to the judgment in *Humblet*, given that the income paid by the Union to its officials or other staff is also taxed indirectly (see *Humblet* v *Belgian State*, 579).

25 As regards legislation such as that at issue in the main proceedings, it must be held that the inclusion of the income paid by the Union in the calculation of the cap of 85% of total income, provided for by Article 885Va of the CGI, increases the total amount of the taxpayer's income and, consequently, the maximum amount of tax by way of wealth tax, which amounts to increasing the final rate of tax to the detriment of the official or other staff member of the Union, as the Cour d'appel de Versailles held in its judgment of 27 November 2008 mentioned in paragraph 12 of the present judgment.

26 Consequently, the application of Article 885Va of the CGI leads to the imposition on taxpayers of a tax which is indirectly charged on the income paid to them by the Union, as the Cour de cassation found in its judgment mentioned in paragraph 13 of the present judgment.

27 The fact, raised by the Direction des services fiscaux d'Eure-et-Loir in the main proceedings, that the income paid by the Union is taken into account not in relation to the basis of assessment of the tax, but only for the purposes of the wealth tax capping mechanism, is not such as to alter that analysis.

28 The collection of a national tax, such as the wealth tax, including in the calculation of the final amount income paid by the Union which is exempt from national income tax is equivalent to the indirect taxation of such income, in breach of the second paragraph of Article 13 of the Protocol.

29 Similarly, the fact that the wealth tax capping mechanism is intended to limit its confiscatory effect and reflect the real capacity to pay of the taxpayer is not such as to allow the indirect taxation, in breach of the second paragraph of Article 13 of the Protocol, of income paid by the Union to its officials or its other staff.

30 In the interest of legal certainty, it must be held that, given that the income paid by the Union and subject to the Union's own tax cannot be taxed either directly or indirectly by a Member State and given that it is withdrawn from the tax sovereignty of the Member States, a person in receipt of such income is also exempt from any obligation to declare the amount of such income to the authorities of a Member State.

31 Finally, it must be emphasised that it is legitimate for a Member State to make provision for a mechanism for capping a tax such as the wealth tax, always provided that such a mechanism respects the law of the Union and Article 13 of the Protocol in particular.

32 The answer to the question referred is therefore that the second paragraph of Article 13 of the Protocol must be interpreted as meaning that it precludes national legislation such as that at issue in the main proceedings which takes account of the income, including the pensions and allowances on termination of service, paid by the European Union to its officials and other staff, or to its former officials and former staff, in calculating the cap on a tax such as the wealth tax.

## Costs

33 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 (Third Chamber) hereby rules:

**The second paragraph of Article 13 of the Protocol on the Privileges and Immunities of the European Communities, initially annexed to the Treaty establishing a single Council and a single Commission of the European Communities, and subsequently, under the Amsterdam Treaty, to the EC Treaty must be interpreted as meaning that it precludes national legislation such as that at issue in the main proceedings which takes account of the income, including the pensions and allowances on termination of service, paid by the European Union to its officials and other staff, or to its former officials and former staff, in calculating the cap on a tax such as the wealth tax.**

[Signatures]