JUDGMENT OF THE COURT
OF 3 JULY 1974 [1]

Reiniera Charlotte Brouerius van Nidek v Inspecteur der Registratie en Successie (preliminary ruling requested by the Gerechtshof 's-Gravenhage)

Case 7/74

Summary

1. *European Communities — Privileges and Immunities — Officials — Survivors' pensions — National taxes — Exemption*
   (Protocol on the Privileges and Immunities of the European Communities, second paragraph of Article 13)
2. *European Communities — Privileges and immunities — Officials — Survivors' pensions — National taxes — Exemption — Death duties — Exclusion*
   (Protocol on the Privileges and Immunities of the European Communities, second paragraph of Article 13)

1. The second paragraph of Article 13 of the Protocol on the Privileges and Immunities of the European Communities applies to the survivors' pension granted under the Staff Regulations of officials and other servants of the Communities to the widow of an official or other servant.

2. Since death duties are levied once only on an estate at the time of transmission, in so far as no discrimination is made between persons entitled under officials or servants of the Communities, and other taxpayers, they do not constitute 'national taxes on salaries, wages and emoluments paid by the Communities' mentioned in the second paragraph of Article 13 of the Protocol on the Privileges and Immunities.

Case 7/74

Reference to the Court under Article 177 of the EEC Treaty by the Belastingkamer (taxation chamber) of the Gerechtshof te 's-Gravenhage (Court of Appeal of The Hague) for a preliminary ruling in the action pending before that court between

1 — Language of the Case: Italian.

REINIERA CHARLOTTE BROUERIUS VAN NIDEK, widow of Eduard Rudolph von Geldern, Charles Melottestraat 14, Hoeilaart (Belgium)

and

THE INSPECTEUR DER REGISTRATIE EN SUCCESSIE (Inspector of Registration and Succession) at Rijswijk (Netherlands)

on the interpretation of the second paragraph of Article 13 of the Protocol on the Privileges and Immunities of the European Communities annexed to the Treaty establishing a Single Council and a Single Commission of the European Communities,

THE COURT

composed of R. Lecourt, President, A. M. Donner, M. Sørensen, Presidents of Chambers, R. Monaco, J. Mertens de Wilmars (Rapporteur), P. Pescatore, H. Kutscher, C. Ó Dálaigh, A. J. Mackenzie Stuart, Judges,

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The judgment making the reference and the written observations submitted under Article 20 of the EEC Statute of the Court may be summarized as follows:

I — Facts and procedure

Reiniera Charlotte Brouerius Van Nidek, widow of E. Van Nidek — appellant in the main action — since the death of her husband enjoys a survivor's pension which has been granted to her by the Commission of the European Communities and is subject to the Community tax under Regulation No 260/68 of the Council dated 29 February 1968 (OJ L 56 of 4 March 1968, p. 8). Her husband's estate is being administered in the Netherlands and is also subject to the law of that State in so far as

concerns death duties. Under the Netherlands Succession Law ('Successiewet' of 28 June 1956, Stb. 362) private pensions arising out of contract are included at their capital value in the aggregate amount subject to succession duty [1], whereas pensions of a public law nature and private pensions under a pension scheme are not.

The same law, however, creates, as between spouses (in particular), an exemption from succession duty on acquisitions up to a total of Fl. 250 000. However, in order to prevent two exemptions from being enjoyed cumulatively, the law provides that the capital value of public law pensions and private pensions under a pension scheme, although exempted from succession duty, shall nevertheless be taken into account in calculating acquisitions on death for the purpose of applying the exemption of Fl. 250 000.

The Inspector of Registration and Succession has applied this latter rule to the estate of the late Mr Von Geldern by including the capital value of the Community survivor's pension in the acquisitions on death in order to calculate the exemption of Fl. 250 000.

In the belief that this course of action constitutes an infringement of the second paragraph of Article 13 of the Protocol on the Privileges and Immunities, under which officials and other servants of the Communities 'shall be exempt from national taxes on salaries, wages and emoluments paid by the Communities', the appellant in the main action appealed to the Gerechtshof at The Hague against the rejection of her complaint. That Court, finding that the case raised problems as to the interpretation of the said Article 13, referred the following questions to the Court of Justice:

(a) Is the second paragraph of Article 13 of the Protocol on the Privileges and Immunities of the European Communities applicable to a pension granted by the European Communities to the vidow of one of their officials?

(b) If so, do the national taxes from which this pension is exempt include, in principle, death duties?

(c) If this question also must be answered in the affirmative, does the exemption also preclude the capital value of the pension right (purchase price of an annuity) [1] from being taken into account in the assessment, or does the exemption not affect such an indirect incidence on the pension?

(d) If taxation of the capital value of a pension is not permitted, does the second paragraph of Article 13 of the Protocol extend to precluding the capital value of the pension from nevertheless being taken into account in determining the exemption to which the widow is entitled in respect of her acquisitions in so far as they do not consist of tax-free pension, in the manner prescribed in Article 32 (2) of the Netherlands Succession Law?

The judgment making the reference was registered at the Court on 31 January 1974.

Under Article 20 of the Statute of the Court of Justice of the European Economic Community, the Inspector of Registration and Succession at Rijswijk, the Netherlands Government, the Commission and the Council submitted written observations.

After hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court decided to open the oral procedure without any preliminary inquiry.

1 — Translator's note: Where the specific Dutch duty is referred to, the specific phrase 'succession duty' has been adopted in preference to the general phrase 'death duties', although the two phrases are normally represented in the other languages by a single expression.

1 — Translator's note: The phrase in parentheses is a paraphrase of the untranslatable Dutch word 'stamrecht'.

II — Observations submitted under Article 20 of the Statute of the Court of Justice of the European Economic Community

A — Observations of the Inspector of Registration and Succession at Rijswijk

The *Inspector of Registration and Succession* is of the opinion that the exemption provided for by the second paragraph of Article 13 of the Protocol on the Privileges and Immunities covers salaries, wages and various emoluments in so far as they are elements of taxable (earned) income but does not cover death duties.

The purpose of Article 13 is to avoid the discrimination which might arise from imposing national taxes on the incomes of officials and other servants of the European Communities and to make them liable to a Community tax. No such reason exists in the case of death duties.

The context of the second paragraph of Article 13 is conducive to this same interpretation. It appears from Article 14 that in the absence of express provision, officials remain subject to all the national fiscal provisions mentioned. An exception is expressly made in Article 13, in so far as concerns income paid by the Communities. Moreover, the second paragraph of Article 13 exempts the officials' incomes only from national taxes which correspond to the Community tax provided for in the first paragraph. But there is no Community tax on acquisitions on death, and death duties cannot, in the ordinary use of language, be considered as a tax on salaries, wages and emoluments.

The conclusion to be drawn is that Netherlands succession duty must be applied to Community survivors' pensions, since the Protocol on the Privileges and Immunities does not exclude it. It would not be right to take account of the statement by the Salaries, Pensions and Emoluments Department of the Communities confirming that the disputed survivor's pensions is subject to the Community tax. Dutch pensions are also subject to income tax, but it is not this tax which is in dispute, but rather the set-off of pensions in calculating succession duty.

The Inspector of Registration and Succession at Rijswijk therefore proposes that the second, third and fourth questions be answered in the negative.

B — Observations of the Netherlands Government

The *Netherlands Government* supports the position taken by the Inspector of Registration and Succession. It considers that the first question calls for an affirmative answer, having regard to Article 2 (b) of Regulation No 549/69 of the Council dated 25 March 1969 (OJ L 74 of 27 March 1969, p. 1), which specifies that 'the provisions of the second paragraph of Article 13 of the Protocol on the Privileges and Immunities of the Communities shall apply to ... persons receiving disability, retirement or survivors' pensions paid by the Communities'.

Death duties, however, are not covered by the exemption in the second paragraph of Article 13. The Netherlands Government too relies on the arguments based on the double relationship between the second paragraph of Article 13, on the one hand, and the first paragraph of Article 13, and Article 14, on the other. It also emphasizes the difference in terminology employed in the English and French texts of the second paragraph of Article 13 ('taxes', 'impôts') and the first paragraph of Article 14 ('death duties', 'droits de succession').

The answer to the third question is accordingly negative, the capital value of the pension being, in any case, exempt from succession duty or not falling within its field of application.

The fourth question also calls for a negative answer. The exemption from succession duty up to a total of Fl. 250 000 is intended to ensure a reasonable income for those who do not enjoy the benefit of a pension or whose pension is insufficient. Its sole utility is therefore to be found in the field of succession duty charged on acquisitions other than pensions. Even if it be admitted that the second paragraph of Article 13 exempts pensions from succession duty, the setting-off of pensions against the exemption of Fl. 250 000 falls within the fiscal domain reserved for the national legislature under the terms of Article 14 of the Protocol on the Privileges and Immunities.

C — Observations of the Commission

The Commission proposes an affirmative answer to the first question. It relies upon the provisions of Article 2 of Regulation No 549/69 and of Article 2 of Regulation No 260/68 of the Council dated 29 February 1968 (OJ L 56 of 4 March 1968, p. 8) laying down the conditions and procedure for applying the tax for the benefit of the European Communities, under which persons receiving disability, retirement or survivors' pensions paid by the Communities are subject to the Community tax.

The Commission holds that the exemption granted under the second paragraph of Article 13 applies equally to death duties. This appears firstly from the general term 'national taxes' used in the said Article, where there is nothing to justify a restrictive interpretation. The Commission then refers to the Court's judgment of 16 December 1960 (Case 6/60 *Humblet v Belgian State,* Rec. 1960, p. 1153) where it was held that the expression 'shall be exempt from all taxes on salaries' employed in Article 11 (b) of the Protocol on the Privileges and Immunities of the ECSC indicated 'plainly and clearly exemption from any fiscal charge based directly or indirectly on the exempted remuneration'. Since Article 13 of the present Protocol corresponds substantially to Article 11 of the Protocol relating to the ECSC immunities which the *Humblet* judgment interpreted, the rule then formulated by the Court should apply equally in the present case.

The Commission goes on to cite the Court's judgments of 8 February 1968 (Case 32/67 *Van Leeuwen v City of Rotterdam,* Rec. 1968, p. 70) and 25 February 1969 (Case 23/68 *Klomp v Inspektie der Belastingen,* Rec. 1969, p. 49), where it was said that the expression 'national taxes on salaries, wages and emoluments paid by the Communites' covered national taxes on salary 'in whatever form and under whatever description they are levied'. In conformity with these judgments, death duties, being a charge intended to provide for the general expenses of the public authorities, form part of the national taxes from payment of which the survivor's pension is exempted.

The Commission accordingly proposes an affirmative answer to the second question.

Taking the third and fourth questions together, the Commission believes that they form one whole, raising the question whether the capital value of the Community survivor's pension should be taken into account either for inclusion in the total taxable estate, or for deduction from the surviving spouse's exemption from succession duty.

The Commission believes that the present dispute is comparable to Case 6/60, in which the Court ruled that 'the Protocol on the Privileges and Immunities of the European Coal and Steel Community precludes the Member States from making any tax assessment on a Community official either wholly or partly based on the receipt of salary paid by the Community to that official'. The Court goes on to specify that 'taking the said salary into account in

establishing the rate of tax applicable to an official's other income is similarly forbidden by the Protocol'. In the Commission's view, the exemption provided for by the second paragraph of Article 13, accorded, like the other privileges and immunities, under the terms of Article 18 of the Protocol, solely in the interests of the Communities, rests on two principles. Firstly, the Communities have an interest in the exemption because otherwise they could not fix the effective salary of the officials, a right deriving from Article 24 of the Treaty establishing a Single Council and a Single Commission. Secondly, the exemption from national taxes is needed to ensure equality between the salaries of officials of different nationalities.

In order to answer the third and fourth questions, therefore, it is necessary to examine whether the inclusion of the capital value of the survivor's pension in the assessment of national succession duty can be reconciled with these two principles. Regarding the first, to take into account the Community survivor's pension would result in an indirect tax on this pension. The pension thus cannot be aggregated with the estate, because it would increase the rate of succession duty. A set-off against the Fl. 250 000 exemption would similarly result in increasing the taxable portion of the estate which would then be subject to a higher rate of duty.

As regards the second principle, the inclusion of the Community survivor's pension for the assessment of national succession duty clearly entails disparity of treatment for officials of different nationalities, because of the existence of different systems of levying succession duty. The exclusive competence of the Communities to fix the effective amount of the pension would be rendered illusory and the equality of official's pensions would be destroyed if the various national legislations could take account of the capital value of survivors' pensions, in different ways, in order to assess the duty payable on the other elements in the estate.

The Commission accordingly proposes an affirmative answer to the third and fourth questions.

D — Observations of the Council

The Council, which examined the first question only, proposes that it be answered in the affirmative.

In this connexion, it refers firstly to the above-cited Article 2 (b) of Regulation No 549/69 of the Council of 25 March 1969. The thesis that pensions are similarly covered by the exemption in the second paragraph of Article 13 corresponds to the provisions of Chapter 3 of Title V of the Staff Regulations, from which it appears that a pension is merely a prolongation of the salary on the basis of which it is calculated, irrespective of the amount of contributions paid.

The Council goes on to note that the exemption provided for by the second paragraph of Article 13 of the Protocol is the corollary of the liability to Community tax provided for by the first paragraph of Article 13. In this respect, the assimilation, from the fiscal point of view, of the survivor's pension to the other Community emoluments such as retirement and invalidity pensions is clearly formulated in Article 2 of Regulation No 260/68 of the Council of 29 February 1968 (OJ L 56 of 4 March 1968, p. 8).

A negative answer by the Court to the first question would not only entail the partial annulment of Regulation No 549/69 but would also run counter to the system of imposing liability to the Community tax established by Regulation No 260/68.

The principle of equality between officials, irrespective of their nationality or country of origin, extends, it is claimed, not only to the income of the

official himself, but equally to the various social security benefits stemming from his position. This principle is only valid for benefits and emoluments stemming from the official position, which explains why Article 14 makes other income subject to the legislation of the last domicile for tax purposes. The survivor's pension, since it derives from the official position, enjoys exemption under the second paragraph of Article 13.

In the course of the oral procedure, on 8 May 1974, Reiniera Charlotte Brouerius van Nidek, represented by S. van den Bergh of the Amsterdam Bar, the Inspecteur der Registratie en Successie, represented by A. W. B. M. Hendriks, the Commission, represented by its agent Jürgen Utermann and the Council, represented by its agent Gijs Peeters, made oral observations.

The Advocate-General delivered his opinion on 11 June 1974.

Law

1 By judgment dated 30 January 1974 the Gerechtshof te 's-Gravenhage referred to the Court four questions relating to the interpretation of the second paragraph of Article 13 of the Protocol on the Privileges and Immunities of the European Communities annexed to the Treaty establishing a Single Council and a Single Commission of the European Communities (hereinafter called 'the Protocol').

2 Under this provision, officials and other servants of the Communities 'shall be exempt from national taxes on salaries, wages and emoluments paid by the Communities'.

3 The questions have been referred in order to ascertain whether, and if so to what extent, that provision must be considered in applying the Netherlands law on succession duty (Successiewet) to the survivor's pension enjoyed by the widow of an official of the European Communities.

4 The first question asks whether the second paragraph of Article 13 of the Protocol applies to a survivor's pension granted by the European Communities to the widow of one of their officials.

5 Such a pension constitutes an emolument paid by the Communities and directly derived from the statutory scheme for the remuneration of officials and other agents, of which it forms an inseparable element.

6 Regulation (Euratom, ECSC, EEC) No 549/69 of the Council, dated 25 March 1969 (OJ L 74 of 27 March 1969), issued in implementation of the above-cited second paragraph of Article 13, is accordingly quite in order in providing that the recipients of survivors' pensions should enjoy the exemption accorded by the latter provision.

7 Further, these pensions are liable to a tax on salaries, wages and emoluments for the benefit of the Communities.

8 It is therefore right to answer the first question in the affirmative.

9 The second question asks whether death duties are in principle included among the national taxes from which the survivor's pension is exempt under the second paragraph of Article 13.

10 This second paragraph cannot be read in isolation from the first, which provides that, in accordance with the conditions and procedure laid down by the Council, 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.

11 It is as a result of this liability that the second paragraph exempts salaries, wages and emoluments from national taxes, so that the Article taken as a whole ensures a uniform treatment of the said salaries, wages and emoluments for all the officials and servants of the Communities, preventing, firstly and chiefly, their effective remuneration from differing according to their nationality or fiscal domicile as a result of the assessment of different national taxes, and secondly preventing this remuneration from being inordinately taxed as a result of double liability.

12 The exemption provided by the second paragraph of Article 13 therefore only covers national taxes of a similar nature to those levied by the Community on the same sources of income.

13 The Community tax is a periodic tax on income whereas death duties are levied once only on an estate at the time of transmission.

14 In these circumstances, death duties, in so far as no discrimination is made between persons entitled under officials or servants of the Communities and other taxpayers, do not constitute 'national taxes on salaries, wages and emoluments paid by the Communities' mentioned in the second paragraph of Article 13 of the Protocol on the Privileges and Immunities.

15 In view of the answer to the second question, the third and fourth questions are purposeless.

Costs

16 The costs incurred by the Netherlands Government, the Council and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

17 As these proceedings are, in so far as the parties to the main action are concerned, a step in the action before the national court, costs are a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Gerechtshof te 's-Gravenhage by judgment of that court dated 30 January 1974 hereby rules:

1. **The second paragraph of Article 13 of the Protocol on the Privileges and Immunities of the European Communities applies to the survivor's pension granted to the widow of an official or other servant under the Staff Regulations of Officials and Other Servants of the Communities.**

2. **Death duties, in so far as no discrimination is made between persons entitled under officials or servants of the Communities and other taxpayers, do not constitute 'national taxes on salaries, wages and emoluments paid by the Communities' mentioned in the second paragraph of Article 13 of the Protocol on the Privileges and Immunities.**

Lecourt Donner Sørensen Monaco Mertens de Wilmars
Pescatore Kutscher Ó Dálaigh Mackenzie Stuart

Delivered in open court in Luxembourg on 3 July 1974.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL REISCHL DELIVERED ON 11 JUNE 1974 [1]

Mr President,
Members of the Court,

By an order dated 30 January 1974 the Gerechtshof of The Hague has referred a series of questions on the interpretation of Article 13 of the Protocol on the Privileges and Immunities of the European Communities dated 8 April 1965.

These questions relate to the following facts.

Mr Eduard Rudolph von Geldern, Director-General in the General Secretariat of the Council of Ministers, died in December 1971, resident in Belgium. He left a widow and three children. Under his will his estate was divided equally between his three children, subject to the widow's life interest in the net estate. Besides this the widow was entitled to a life assurance, a pension resulting from a pension scheme of a former private employer of the

1 — Translated from the German.