JUDGMENT OF THE COURT
28 March 1985 *

In Case 275/83

Commission of the European Communities, represented by its Legal Adviser, Joseph Griesmar, acting as Agent, assisted by Francis Herbert of the Brussels Bar, with an address for service in Luxembourg at the office of Manfred Beschel, a member of its Legal Service, Jean Monnet Building, Kirchberg,

applicant,

v

Kingdom of Belgium, represented by the Minister for External Affairs, with Robert Hoebaer, Director at the Ministry of Foreign Affairs, External Trade and Cooperation with Developing Countries, acting as Agent and with an address for service in Luxembourg at the Belgian Embassy, 4 Rue des Girondins,

defendant,

APPLICATION for a declaration that, by deducting contributions from statutory old-age, retirement, service-related and survivors' pensions in respect of Community nationals residing in a Member State other than Belgium, the Kingdom of Belgium has failed to fulfil its obligations under Article 33 of Regulation No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal, English Special Edition 1971 (II), p. 416) and under Article 5 of the EEC Treaty,

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco and K. Kakouris (Presidents of Chambers), T. Koopmans, U. Everling, Y. Galmot and R. Joliet, Judges,

Advocate General: M. Darmon
Registar: P. Heim

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gives the following

* Language of the Case: French.
** after hearing the Opinion of the Advocate General delivered at the sitting on 6 February 1985,

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an application lodged at the Court Registry on 16 December 1983, the Commission of the European Communities brought an action pursuant to Article 169 of the EEC Treaty for a declaration that the Kingdom of Belgium has failed to fulfil its obligations under Article 33 of Regulation No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal, English Special Edition 1971 (II), p. 416) and under Article 5 of the EEC Treaty.

2 Article 33 of Regulation No 1408/71, as amended by Regulation No 2864/72 of the Council of 19 December 1972 (Official Journal, English Special Edition 1972 (31 December) L 306, p.15) provides that,

'The institution responsible for payment of a pension, and belonging to a Member State whose legislation provides for deductions from pensions in respect of contributions for sickness and maternity shall be authorized to make such deductions from the pension payable by such institution, calculated in accordance with the legislation concerned to the extent that the cost of the benefits under Articles 27, 28, 28 a, 29, 31 and 32 are to be borne by an institution of the said Member State'.

3 It appears from that provision that such deductions from pensions may be made by the institution of a Member State only in respect of those insured persons who in return receive sickness and maternity benefits from the institution of that Member State responsible for such benefits. But such deductions may not be made where the benefits in question are not borne by an institution of that Member State. That is the case in relation to insured persons who reside in the territory of another Member State and who are in receipt, by virtue of that residence, of benefits from the competent institution of that Member State under Articles 27 to 32 of Regulation No 1408/71.

4 In this action the Commission seeks a declaration that the Belgian legislation, by providing that deductions in respect of contributions within the meaning of Article 33 of Regulation No 1408/71 are also to be made where the insured persons concerned reside in a Member State other than Belgium and are in receipt, by virtue of that fact, of benefits from the institutions of that Member State, is contrary to the aforementioned Article 33.

5 With effect from 1 October 1980, the Belgian legislation in question, namely Article 121 (10) of the Law of 9 August 1963 establishing and organizing a compulsory sickness and invalidity insurance scheme (Moniteur Belge [Belgian Official Gazette] of 1-2 November 1963, p. 10555), as amended by the Law of 8 August concerning the budget proposals for 1979/80 (Moniteur Belge of 15 August 1980, p. 9463) provides for

'a deduction . . . from statutory old-age, retirement, service-related and survivors' pensions or any other advantage replacing such a pension and from any benefit supplementing the aforementioned pensions . . . . The deduction shall be made from every payment of the pension or the advantage by the institution responsible in civil law for payment. That institution shall pay the sum of the deductions to the Institut National d'Assurance Maladie-Invalidité [National Sickness and Invalidity Insurance Institution] during the month following the date on which the deduction was made'.

6 The Belgian Government does not deny that the aforementioned provisions also apply to insured persons residing in a Member State other than Belgium and that they are to that extent contrary to Article 33 of Regulation No 1408/71. Without making a formal submission it has indicated that it intends to adopt measures in order to conform to Community law.

7 More particularly the Belgian Government states that originally it had intended to amend the legislation in question by regulations under the Law of 6 July 1983 which vests certain special powers in the Crown. However, it abandoned that

procedure when it became apparent that the necessary amendments fell outside the scope of that Law. The Government then decided to bring the national legislation into conformity with Community law by two measures. First it intended to give the institutions responsible for the payment of pensions instructions that they were no longer to make the said deductions in relation to insured persons residing in another Member State. Secondly draft legislation would be introduced as a matter of urgency to enable the persons concerned to claim repayment of the sums deducted in breach of Article 33 of Regulation No 1408/71 since 1 October 1980, the date on which the provisions in question came into force, by way of a derogation from the principle of a three-year limitation period in respect of social security matters.

8 It is clear from those observations submitted by the Belgian Government themselves that the legislation in question in its present form does not comply with the requirements of Community law.

9 The Belgian Government explains that its delay in conforming to the requirements of Article 33 of Regulation No 1408/71 is due to difficulties encountered both in the choice and the drawing up of the appropriate measures.

10 That argument cannot be accepted. The Court has consistently held that a Member State cannot plead the provisions, practices or circumstances existing in its internal legal order to justify a failure to comply with obligations resulting from Community regulations.

11 It must therefore be declared that, by deducting contributions from statutory old-age, retirement, service-related and survivors' pensions in respect of Community nationals residing in another Member State, the Kingdom of Belgium has failed to fulfil its obligations under the EEC Treaty.

Costs

12 Article 69 (2) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs; as the defendant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that, by deducting contributions from statutory old-age, retirement, service-related and survivors' pensions in respect of Community nationals residing in another Member State, the Kingdom of Belgium has failed to fulfil its obligations under the EEC Treaty.

(2) Orders the Kingdom of Belgium to pay the costs.

Mackenzie Stuart Bosco Kakouris

Koopmans Everling Galmot Joliet

Delivered in open court in Luxembourg on 28 March 1985.

P. Heim
Registrar

A. J. Mackenzie Stuart
President