

the executing Member State in order to serve there the custodial sentence or detention order that may have been imposed on him in the issuing Member State — Particular situation of a person already sentenced in the issuing Member State but under a decision made *in absentia* against which that person still has a remedy — Possible effect on the decision to be taken by the judicial authorities of the executing Member State, arising from a risk of infringement of the fundamental rights of the person concerned and, in particular, of his right to a private and family life

Operative part of the judgment

Articles 4(6) and 5(3) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States must be interpreted as meaning that, where the executing Member State has implemented Articles 5(1) and Article 5(3) of that framework decision in its domestic legal system, the execution of a European arrest warrant issued for the purposes of execution of a sentence imposed *in absentia* within the meaning of Article 5(1) of the framework decision, may be subject to the condition that the person concerned, a national or resident of the executing Member State, should be returned to the executing State in order, as the case may be, to serve there the sentence passed against him, following a new trial organised in his presence in the issuing Member State.

(¹) OJ C 233, 26.9.2009, p. 11.

Judgment of the Court (Second Chamber) of 14 October 2010 (reference for a preliminary ruling from the Centrale Raad van Beroep (Netherlands)) — J.A. van Delft, J.C. Ramaer, J.M. van Willigen, J.F. van der Nat, C.M. Janssen, O. Fokkens v College voor zorgverzekeringen

(Case C-345/09) (¹)

(Social security — Regulation (EEC) No 1408/71 — Title III, Chapter 1 — Articles 28, 28a and 33 — Regulation (EEC) No 574/72 — Article 29 — Freedom of movement for persons — Articles 21 TFEU and 45 TFEU — Sickness insurance benefits — Recipients of old-age pensions or pensions for incapacity for work — Residence in a Member State other than the State responsible for payment of the pension — Provision of benefits in kind in the State of residence with the cost borne by the State responsible for payment of the pension — No registration in the State of residence — Obligation to pay contributions in the State responsible for payment of the pension — Amendment to the national legislation of the State responsible for payment of the pension — Continuity of sickness insurance — Different treatment of residents and non-residents)

(2010/C 346/28)

Language of the case: Dutch

Referring court

Centrale Raad van Beroep

Parties to the main proceedings

Applicants: J.A. van Delft, J.C. Ramaer, J.M. van Willigen, J.F. van der Nat, C.M. Janssen, O. Fokkens

Defendant: College voor zorgverzekeringen

Re:

Reference for a preliminary ruling — Centrale Raad van Beroep — Interpretation of the EC Treaty, Articles 28, 28a, 33, and Annex VI, R, (1)(a) and (b), 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 (OJ, English Special Edition 1971 (II), p. 416), and Article 29 of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 (OJ, English Special Edition 1972 (I), p. 159) — Recipients of pensions — Obligation to register with the healthcare insurance board in the Netherlands — Obligation to pay a contribution

Operative part of the judgment

- Articles 28, 28a and 33 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 by Regulation (EC) No 1992/2006 of the European Parliament and of the Council of 18 December 2006, in conjunction with Article 29 of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 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 by Commission Regulation (EC) No 311/2007 of 19 March 2007, must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, under which recipients of pensions payable under the legislation of that State who reside in another Member State in which they are entitled under Articles 28 and 28a of Regulation No 1408/71 to the sickness benefits in kind provided by the competent institution of the latter Member State must pay, in the form of a deduction from their pension, a contribution in respect of those benefits even if they are not registered with the competent institution of their Member State of residence.
- Article 21 TFEU must be interpreted as not precluding legislation of a Member State, such as that at issue in the main proceedings, under which recipients of pensions payable under the legislation of that State who reside in another Member State in which they are entitled under Articles 28 and 28a of Regulation No 1408/71, as amended by Regulation No 1992/2006, to the sickness benefits in kind provided by the competent institution of the latter Member State must pay, in the form of a deduction from their pension, a contribution in respect of those benefits even if they are not registered with the competent institution of their Member State of residence.

On the other hand, Article 21 TFEU must be interpreted as precluding such national legislation in so far as it induces or provides for — this being for the national court to ascertain — an unjustified difference of treatment between residents and non-residents as regards ensuring the continuity of the overall protection against the risk of sickness enjoyed by them under insurance contracts concluded before the entry into force of that legislation.

(¹) OJ C 11, 16.1.2010.

Judgment of the Court (Fourth Chamber) of 28 October 2010 (reference for a preliminary ruling from the Hof van beroep te Antwerpen — Belgium) — Belgisch Interventien Restitutiebureau v SGS Belgium NV, Firme Derwa NV, Centraal Beheer Achmea NV

(Case C-367/09) (¹)

(Preliminary ruling — Act detrimental to the financial interests of the European Union — Regulation (EC, Euratom) No 2988/95 — Article 1, Article 3(1), third subparagraph, and Articles 5 and 7 — Regulation (EEC) No 3665/87 — Articles 11 and 18(2)(c) — Meaning of ‘economic operator’ — Persons who have taken part in the irregularity — Persons under a duty to take responsibility for the irregularity or to ensure that it is not committed — Administrative penalty — Direct effect — Limitation period for proceedings — Interruption)

(2010/C 346/29)

Language of the case: Dutch

Referring court

Hof van beroep te Antwerpen

Parties to the main proceedings

Applicant: Belgisch Interventien Restitutiebureau

Defendants: SGS Belgium NV, Firme Derwa NV, Centraal Beheer Achmea NV

Re:

Reference for a preliminary ruling — Hof van beroep te Antwerpen — Interpretation of Article 1, Article 3(1), third subparagraph, and Articles 5 and 7 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ 1995 L 312, p. 1; corrigendum in OJ 1998 L 36, p. 16) and of Article 18(1)(c) of Commission Regulation (EEC) No 3665/87 of 27 November 1987 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1987 L 351, p. 1) — Meaning of ‘economic operator’ — Persons who have taken

part in the irregularity and persons who are under a duty to take responsibility for the irregularity or to ensure that it is not committed — Limitation period for legal proceedings — Interruption

Operative part of the judgment

- Articles 5 and 7 of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests do not apply in such a way that an administrative penalty may be imposed on the basis of those provisions alone since, if, in connection with the protection of the European Union's financial interests, an administrative penalty is to be applied to a category of persons, a necessary precondition is that, prior to commission of the irregularity in question, either the European Union legislature has adopted sectoral rules laying down such a penalty and the conditions for its application to that category of persons or, where such rules have not yet been adopted at European Union level, the law of the Member State where the irregularity was committed has provided for the imposition of an administrative penalty on that category of persons.
- In circumstances such as those in issue in the main proceedings, in which European Union sectoral rules did not yet require Member States to provide for effective penalties in cases in which an international control and supervisory agency approved by a Member State has issued false certificates, Article 7 of Regulation No 2988/95 does not prevent Member States from applying a penalty to that agency in its capacity as a person who has ‘taken part in the irregularity’ or as a person who is ‘under a duty to take responsibility’ for the irregularity within the meaning of Article 7, provided, however, that the application of such a penalty rests on a clear and unambiguous legal basis, a matter which falls to be determined by the referring court.
- In circumstances such as those in issue in the main proceedings, the communication, to an international control and supervisory agency which has issued a certificate for release for consumption in respect of a specific export operation, of an investigative report drawing attention to an irregularity in connection with that operation, the presentation to that agency of a request to produce additional documents for the purpose of checking whether the release for consumption actually took place and the sending of a registered letter imposing a penalty on that agency for having taken part in an irregularity within the meaning of Article 1(2) of Regulation No 2988/95 constitute acts, notified to the person in question and relating to investigation or legal proceedings concerning the irregularity, which are sufficiently specific to interrupt the limitation period for proceedings within the meaning of the third subparagraph of Article 3(1) of Regulation No 2988/95.

(¹) OJ C 297, 5.12.2009.