

pension based on the duration of contribution periods — Method of calculating benefits — Aggregation of contribution periods completed in another Member State and those completed in the Member State concerned prior to or after the addition of the additional periods provided for under national law and amounting to one third of the contribution periods

Operative part of the judgment

Article 45(1) 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, as amended by Regulation (EC) No 1992/2006 of the European Parliament and of the Council of 18 December 2006, must be interpreted as meaning that, in the determination of the minimum insurance period required by national law for the purpose of the acquisition by a migrant worker of entitlement to a retirement pension, the competent institution of the Member State concerned must take into consideration, for the purposes of determining the limit which non-contribution periods may not exceed in relation to contribution periods, as provided for by the legislation of that Member State, all insurance periods completed in the course of the migrant worker's career, including those completed in other Member States.

⁽¹⁾ OJ C 37, 13.2.2010.

Judgment of the Court (Third Chamber) of 10 March 2011 (references for a preliminary ruling from the Bundesfinanzhof (Germany)) — Finanzamt Burgdorf (C-497/09), CinemaxX Entertainment GmbH & Co. KG, formerly Hans-Joachim Flebbe Filmtheater GmbH & Co. KG (C-499/09), Lothar Lohmeyer (C-501/09), Fleischerei Nier GmbH & Co. KG (C-502/09) v Manfred Bog (C-497/09), Finanzamt Hamburg-Barmbek-Uhlenhorst (C-499/09), Finanzamt Minden (C-501/09), Finanzamt Detmold (C-502/09)

(Joined Cases C-497/09, C-499/09, C-501/09 and C-502/09) ⁽¹⁾

(Taxation — VAT — Sixth Directive 77/388/EEC — Articles 5 and 6 — Classification of a commercial activity as a 'supply of goods' or a 'supply of services' — Supply of food or meals for immediate consumption from snack stalls or mobile snack bars — Supply in a cinema of popcorn and tortilla chips (nachos) for immediate consumption — Party catering service — Annex H, category 1 — Interpretation of the term 'foodstuffs')

(2011/C 130/10)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicants: Finanzamt Burgdorf (C-497/09), CinemaxX Entertainment GmbH & Co. KG, formerly Hans-Joachim Flebbe Filmtheater GmbH & Co. KG (C-499/09), Lothar Lohmeyer (C-501/09), Fleischerei Nier GmbH & Co. KG (C-502/09)

Defendants: Manfred Bog (C-497/09), Finanzamt Hamburg-Barmbek-Uhlenhorst (C-499/09), Finanzamt Minden (C-501/09), Finanzamt Detmold (C-502/09)

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 5 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) and the term 'foodstuffs' in Annex H to that directive — Whether a particular commercial activity is to be regarded as a 'supply of goods' or a 'supply of services' — Sale of food (sausages, chips etc.) from a van for immediate consumption

Operative part of the judgment

1. Articles 5 and 6 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 92/111/EEC of 14 December 1992, must be interpreted as meaning that:

— the supply of food or meals freshly prepared for immediate consumption from snack stalls or mobile snack bars or in cinema foyers is a supply of goods within the meaning of Article 5 if a qualitative examination of the entire transaction shows that the elements of supply of services preceding and accompanying the supply of the food are not predominant;

— except in cases in which a party catering service does no more than deliver standard meals without any additional elements of supply of services, or in which other special circumstances show that the supply of the food represents the predominant element of a transaction, the activities of a party catering service are supplies of services within the meaning of Article 6.

2. In cases of the supply of goods, the term 'foodstuffs' in category 1 of Annex H to the Sixth Directive 77/388, as amended by Directive 92/111, must be interpreted as also covering food and meals which have been prepared for immediate consumption by boiling, grilling, roasting, baking or other means.

⁽¹⁾ OJ C 63, 13.3.2010.