Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

18 April 2024*

(Reference for a preliminary ruling – Social security – Officials of the European Union – Protocol (No 7) on the privileges and immunities of the European Union – Compulsory affiliation to the social security scheme of the EU institutions – Official of the European Union pursuing a complementary professional activity as a self-employed person – Liability for social security contributions under the scheme of a Member State in which that activity is carried out)

In Case C-195/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the tribunal du travail francophone de Bruxelles (Brussels Labour Court (French-speaking), Belgium), made by decision of 13 March 2023, received at the Court on 27 March 2023, in the proceedings

GI

v

Partena, Assurances sociales pour travailleurs indépendants ASBL,

THE COURT (Seventh Chamber),

composed of F. Biltgen (Rapporteur), President of the Chamber, J. Passer and M.L. Arastey Sahún, Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– GI, by J.-F. Neven, avocat,

– the Belgian Government, by S. Baeyens, C. Pochet and A. Van Baelen, acting as Agents, and by S. Rodrigues and A. Tymen, avocats,

– the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,

* Language of the case: French.

– the European Commission, by T.S. Bohr and B.-R. Killmann, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 14 of Protocol (No 7) on the privileges and immunities of the European Union ('the Protocol') and of Article 4(3) TEU.

2 The request has been made in proceedings between GI, an official of the European Commission, and Partena, Assurances sociales pour travailleurs indépendants ASBL ('Partena'), a not-for-profit association, concerning GI's liability to the Belgian social security scheme for self-employed persons in respect of an ancillary occupational activity.

Legal context

European Union law

The Protocol

3 Article 12 of the Protocol is worded as follows:

'Officials and other servants of the [European] Union shall be liable to a tax for the benefit of the Union on salaries, wages and emoluments paid to them by the Union, in accordance with the conditions and procedure laid down by the European Parliament and the Council [of the European Union], acting by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned.

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

4 Article 14 of the Protocol provides:

'The … Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned, shall lay down the scheme of social security benefits for officials and other servants of the Union.'

The Staff Regulations

5 Article 12b(1) of the Staff Regulations of Officials of the European Union, in the version applicable to the dispute in the main proceedings ('the Staff Regulations'), provides:

'Subject to Article 15, an official wishing to engage in an outside activity, whether paid or unpaid, or to carry out any assignment outside the Union, shall first obtain the permission of the Appointing Authority. Permission shall be refused only if the activity or assignment in question is such as to interfere with the performance of the official's duties or is incompatible with the interests of the institution.'

6 Article 72 of the Staff Regulations provides:

‘1. An official … [is] insured against sickness up to 80% of the expenditure incurred subject to rules drawn up by agreement between the appointing authorities of the institutions of the Union after consulting the Staff Regulations Committee. …

…

One-third of the contribution required to meet such insurance cover shall be charged to the official but so that the amount charged to him shall not exceed 2% of his basic salary.

…’

7 Article 73(1) of the Staff Regulations is worded as follows:

‘An official is, from the date of his entry into the service, insured against the risk of occupational disease or accidents in the manner provided for in rules drawn up by common agreement of the … institutions of the Union after consulting the Staff Regulations Committee. He shall contribute to the cost of insuring against non-occupational risks up to 0·1% of his basic salary.

…’

The Joint Rules

8 For the purposes of defining the conditions for applying Article 72 of the Staff Regulations, the EU institutions adopted Joint Rules on sickness insurance for officials of the European Union (‘the Joint Rules’).

9 Article 1 of those rules provides that, under Article 72 of the Staff Regulations, a Sickness Insurance Scheme common to the EU institutions (JSIS) is thereby set up.

10 Article 2 of those rules provides:

‘1. The following shall also be members of this Scheme:

– permanent officials,

– temporary agents,

…’

11 Article 4 of the Joint Rules reads as follows:

‘Where permanent officials, temporary staff or contract agents are employed in a country in which they are required by the law of that country to join a compulsory scheme of sickness insurance, the contributions due under that scheme shall be paid in full from the budget of the institution to which the persons concerned belong. In this event, Article 22 shall apply.’

12 Under Article 22 of the Joint Rules:

‘1. Where a member or a person covered by his insurance may claim reimbursement of expenses incurred under any other legal or statutory sickness insurance, the member shall:

(a) notify the office responsible for settling claims;

(b) in the first instance apply, or have the person concerned apply, for reimbursement under the other scheme;

However, if obliged to pay into two schemes, members of this Scheme may choose the scheme to which they apply for reimbursement of the benefits they have received in the knowledge that the Community Scheme will be available as a top-up scheme in cases where it does not act as the primary scheme;

(c) attach to any application for reimbursement made under this Scheme a detailed original statement, together with supporting documents, of reimbursements which the member or the person covered by his insurance has obtained under the other scheme.

2. The Community Scheme shall act as a top-up scheme for reimbursement of benefits provided the other scheme has previously reimbursed the benefits covered by it.

If a benefit is not covered by the primary scheme but is covered by the Community Scheme the latter shall act as the primary scheme.

…’

Regulation No 883/2004

13 Article 2(1) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1, and corrigendum OJ 2004 L 200, p. 1) provides:

‘This Regulation shall apply to nationals of a Member State, stateless persons and refugees residing in a Member State who are or have been subject to the legislation of one or more Member States, as well as to the members of their families and to their survivors.’

14 Article 11(1) of that regulation provides:

‘Persons to whom this Regulation applies shall be subject to the legislation of a single Member State only. Such legislation shall be determined in accordance with this Title.’

Belgian law

15 Article 2 of Royal Decree No 38 on the application of the social security scheme for self-employed persons of 27 July 1967 (*Moniteur belge* of 29 July 1967, p. 8071), in the version applicable to the dispute in the main proceedings, provides:

‘The following are subject to the present decree and must therefore comply with the obligations imposed by it: self-employed persons and assistants.’

16 Article 3(1) of that decree provides that:

‘Under the present decree, a self-employed person is any natural person who pursues in Belgium an occupational activity in respect of which he is not bound by a contract of employment or by a set of standard terms and conditions.

Until proven otherwise, any person who pursues in Belgium an occupational activity liable to produce income … shall be presumed to fall within the qualifying conditions referred to in the preceding paragraph’.

17 Article 10(1) of that decree provides that:

‘… any person subject to this decree shall be required, before the commencement of his self-employed occupational activity, to become affiliated to one of the social insurance funds for self-employed persons …’

The dispute in the main proceedings and the question referred for a preliminary ruling

18 The applicant in the main proceedings, an official of the European Union since 1 September 2007, entered the service of the Commission in August 2010.

19 Since October 2015, he has pursued a paid additional activity as a teacher, up to a maximum of 20 teaching hours per year, for which, in accordance with the Staff Regulations, he obtained the requisite authorisation from the Commission.

20 By letter of 4 July 2018, the Institut national d’assurances sociales pour travailleurs indépendants (National Institute for the Social Security of the Self-employed, Belgium), which is responsible for verifying whether self-employed persons are affiliated to a social insurance fund, informed the applicant in the main proceedings that he had to become affiliated to a social insurance fund, in so far as he had pursued a self-employed occupational activity since 1 October 2015 as a teacher.

21 Consequently, the applicant in the main proceedings became affiliated to Partena and paid the social security contributions claimed in the amount of EUR 3 242.09.

22 Taking the view, however, that his subjection to the Belgian social security scheme for the self-employed is contrary to the principle of a single social security scheme applicable to officials of the EU institutions, the applicant in the main proceedings brought an action against Partena before the tribunal du travail francophone de Bruxelles (Brussels Labour Court (French-speaking), Belgium), the referring court, with a view to putting an end to his subjection and to being reimbursed for the social security contributions paid.

23 It is in those circumstances that the tribunal du travail francophone de Bruxelles (Brussels Labour Court (French-speaking)) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Do [the Protocol], in particular Article 14 thereof, the principle of a single social security scheme applicable to workers, whether employed or self-employed, active or retired, and the principle of sincere cooperation as set out in Article 4(3) [TEU] preclude a Member State from imposing a national social security scheme on, and requiring the payment of social security contributions

from, an official who, in addition to his employment within [an EU] institution, also carries out additional teaching activities with the latter's authorisation, when that official is, by virtue of the [Staff Regulations], already subject to the … social security scheme of the EU institutions?'

Consideration of the question referred

24 By its question, the referring court asks, in essence, whether Article 14 of the Protocol, the principle of a single social security scheme as referred to in Regulation No 883/2004 and the principle of sincere cooperation as enshrined in Article 4(3) TEU must be interpreted as precluding legislation of a Member State which requires an EU official who pursues an ancillary occupational activity of teaching in the territory of that Member State to be subject to the social security scheme of that Member State.

25 It should be recalled that, with regard to the principle of a single social security scheme applicable, as referred to in Article 11 of Regulation No 883/2004, that regulation has established a system of coordination concerning, inter alia, the determination of the legislation applicable to employed and self-employed workers who make use, under various circumstances, of their right to freedom of movement. The completeness of that system of conflict rules has the effect of divesting the legislature of each Member State of the power to determine at its discretion the ambit and the conditions for the application of its national legislation in so far as the persons who are subject thereto and the territory within which the provisions of national law take effect are concerned. Thus, Article 11(1) of Regulation No 883/2004 expressly provides that the persons to whom that regulation applies are subject only to the legislation of a single Member State (see, to that effect, judgment of 16 November 2023, *Acerta and Others*, C-415/22, EU:C:2023:881, paragraphs 29 and 30).

26 That principle of a single social security scheme applicable is aimed at avoiding the complications which may ensue from the simultaneous application of a number of national legislative systems and at eliminating the unequal treatment which, for persons moving within the European Union, would be the consequence of a partial or total overlapping of the applicable legislation (judgment of 26 February 2015, *de Ruyter*, C-623/13, EU:C:2015:123, paragraph 37).

27 That principle does not however apply to EU officials, in so far as EU officials are not subject to national legislation in the field of social security, as referred to in Article 2(1) of Regulation No 883/2004, which defines the persons covered by that regulation (see, to that effect, judgment of 16 November 2023, *Acerta and Others*, C-415/22, EU:C:2023:881, paragraph 31 and the case-law cited).

28 The European Union alone, and not the Member States, has competence to establish the rules applicable to EU officials in respect of their social security obligations. The social security scheme of the EU institutions was laid down, pursuant to Article 14 of the Protocol, by the Parliament and the Council acting by means of regulations laying down the Staff Regulations (judgment of 16 November 2023, *Acerta and Others*, C-415/22, EU:C:2023:881, paragraphs 32 and 33 and the case-law cited).

29 First, Article 14 of the Protocol must be regarded as meaning that the compulsory affiliation of EU officials to a national social security scheme and the requirement for those officials to contribute to the funding of such a scheme are outside the jurisdiction of the Member States (see, to that effect, judgment of 16 November 2023, *Acerta and Others*, C-415/22, EU:C:2023:881, paragraph 34 and the case-law cited).

30 The Court has also held that Article 14 of the Protocol and the provisions of the Staff Regulations on social security for EU officials fulfil, in respect of those officials, a function that is similar to that which Article 11 of Regulation No 883/2004 fulfils, consisting of prohibiting the obligation for those officials to contribute to several schemes in this field (see, to that effect, judgment of 10 May 2017, *de Lobkowicz*, C-690/15, EU:C:2017:355, paragraph 45).

31 It follows that the EU legislature alone has competence to determine at its discretion the ambit and the conditions for applying the social security provisions so far as the effects which they produce and the persons who are subject to them.

32 Second, the Staff Regulations, which have all the characteristics set out in Article 288 TFEU, are binding in their entirety and directly applicable in all Member States. It follows that all Member States are also bound by the Staff Regulations (judgment of 16 November 2023, *Acerta and Others*, C-415/22, EU:C:2023:881, paragraph 35 and the case-law cited).

33 In that context, it is apparent from Article 72(1) and Article 73 of the Staff Regulations that any official or member of the temporary staff in the service of an EU institution is insured against the risk of sickness from the date of his or her entering the service.

34 In the present case, it is common ground that the applicant in the main proceedings has been an EU official since 1 September 2007 and that he has been in the service of the Commission since August 2010. On account of his employment relationship with the latter, he is therefore covered by the social security scheme of the EU institutions by virtue of Article 72(1) of the Staff Regulations even if he pursues an ancillary occupational activity authorised by the Commission under Article 12b(1) of the Staff Regulations in a Member State.

35 Thus, legislation of a Member State which subjects an EU official who pursues an ancillary occupational activity in that Member State to the social security scheme of that Member State infringes the exclusive competence conferred on the European Union, both by Article 14 of the Protocol and by the relevant provisions of the Staff Regulations, to determine the rules applicable to EU officials as regards their social security obligations.

36 Although Member States retain the power to organise their social security schemes, they must nonetheless, when exercising that power, observe EU law, including the provisions of the Protocol and the Staff Regulations which relate to the social security rules governing the legal position of EU officials (see, to that effect, judgment of 16 November 2023, *Acerta and Others*, C-415/22, EU:C:2023:881, paragraph 43 and the case-law cited).

37 In addition, national legislation such as that referred to in paragraph 35 above would be contrary to the principle of sincere cooperation, laid down in Article 4(3) TEU, by virtue of which the European Union and the Member States are, in full mutual respect, to assist each other in carrying out tasks which flow from the Treaties.

38 Such legislation might interfere with the equal treatment of EU officials and, therefore, discourage employment within an EU institution, since some officials would be required to contribute to a national social security scheme in addition to the social security scheme of the EU institutions (see, to that effect, judgment of 10 May 2017, *de Lobkowicz*, C-690/15, EU:C:2017:355, paragraph 47).

39 Finally, it should be considered that that interpretation is not called into question by any of the arguments put forward by the Kingdom of Belgium and the Czech Republic in their written observations.

40 As regards, first, the argument that remuneration which is not paid by the European Union is extraneous to it and must therefore be taxed by the Member State competent in tax matters and, consequently, be subject to the social security contributions of that Member State, it must be borne in mind that there is a clear distinction between the social security obligations of EU officials and the tax obligations of those officials, who, under Article 12 of the Protocol, are only exempt from national taxes on their salaries, wages and emoluments paid by the European Union. Thus, while those salaries, wages and emoluments are subject to EU law alone as regards any liability to tax, the other income of those officials remains subject to taxation by the Member States. By contrast, as regards social security obligations, EU officials are exclusively subject to the social security scheme of the EU institutions (see, to that effect, judgment of 16 November 2023, *Acerta and Others*, C-415/22, EU:C:2023:881, paragraph 48).

41 The exclusive competence conferred on the EU legislature to establish the scheme of social security contributions for EU officials applies to the social security contributions that a Member State levies on any kind of income and, therefore, also on income remunerating an ancillary activity authorised by the employer (see, to that effect, judgment of 10 May 2017, *de Lobkowicz*, C-690/15, EU:C:2017:355, paragraph 48 and the case-law cited).

42 As regards, second, the argument that the social security schemes of all the Member States are based on solidarity, since the contributions are never proportionate to the benefits, nor are they dependent on actual use of the benefits, it must be borne in mind that the Court has held that whether benefits are obtained or not in return is irrelevant for the question of whether the levy in question is covered by the social security scheme (see, to that effect, judgment of 16 November 2023, *Acerta and Others*, C-415/22, EU:C:2023:881, paragraph 47 and the case-law cited).

43 In the light of the foregoing considerations, the answer to the question referred is that Article 14 of the Protocol, the principle of a single social security scheme as referred to in Regulation No 883/2004 and the principle of sincere cooperation as enshrined in Article 4(3) TEU must be interpreted as precluding legislation of a Member State which requires an EU official who pursues an ancillary occupational activity of teaching in the territory of that Member State to be subject to the social security scheme of that Member State.

Costs

44 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 (Seventh Chamber) hereby rules:

Article 14 of Protocol (No 7) on the privileges and immunities of the European Union, the principle of a single social security scheme applicable as referred to in Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, and the principle of sincere cooperation as enshrined in Article 4(3) TEU,

must be interpreted as precluding legislation of a Member State which requires an official of the European Union who pursues an ancillary occupational activity of teaching in the territory of that Member State to be subject to the social security scheme of that Member State.

[Signatures]