Reference for a preliminary ruling from the Korkein hallinto-oikeus by order of that court of 20 December 2004, received at the Court Registry on 22 December 2004, in the case of Pirkko Marjatta Turpeinen

(Case C-520/04)

(2005/C 57/32)

(Language of the case: Finnish)

Reference has been made to the Court of Justice of the European Communities by order of the Korkein hallinto-oikeus (Supreme Administrative Court, Finland) of 20 December 2004, received at the Court Registry on 22 December 2004, for a preliminary ruling in the case of Pirkko Marjatta Turpeinen on the following questions:

1. Is Article 18 of the Treaty establishing the European Community on the right of a citizen of the Union to move and reside freely in the territory of the Member States, or Article 39 on ensuring the freedom of movement of workers within the Community, to be interpreted as meaning that one or both of them preclude national legislation under which, in the case of a person who resides abroad and is a limited taxpayer in the Member State, the withholding tax charged on the taxpayer's pension based on a public-law service relationship paid from that Member State exceeds in certain cases the tax which the taxpayer would be charged as a person resident and hence a general taxpayer in the Member State?

2. Is Council Directive 90/365/EEC on the right of residence for employees and self-employed persons who have ceased their occupational activity [1] to be interpreted as precluding national legislation such as that described in Question 1 above?

[1] OJ L 180 of 13.7.1990, p. 28.

Action brought on 23 December 2004 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-522/04)

(2005/C 57/33)

(Language of the case: English)

An action was brought before the Court of Justice of the European Communities on 23 December 2004 against the Kingdom of Belgium by the Commission of the European Communities, represented by Richard Lyal and Dimitris Triantafyllou, acting as Agents, with an address for service in Luxembourg.

The Commission of the European Communities claims that the Court of Justice should declare that:

— by making the deductibility of employers' contributions for supplementary old age and premature death insurance subject to the condition, laid down in Article 59 of the CIR'92 (Income Tax Code), that the contributions must be paid to an insurance undertaking or welfare fund established in Belgium;

— by making the reduction of tax for long-term savings, granted by virtue of Articles 145/1 and 145/3 of the CIR'92 for personal contributions for supplementary old age and premature death insurance in the form of deductions made by the employer from the employee's remuneration, subject to the condition that the contributions must be paid to an insurance undertaking or welfare fund established in Belgium;

— by providing in Article 364 bis of the CIR'92 that, where capital, surrender values and savings referred to in Article 34 if the CIR'92 are paid or allocated to a taxpayer who has previously transferred his residence or the primary location of his assets abroad, the payment or allocation is deemed to have taken place on the day preceding that transfer, and by, under paragraph 2 of the same article, assimilating to an allocation all transfers referred to in Article 34(2)(3), so that every insurer is under an obligation to withhold amounts in respect of income tax, in accordance with Article 270 of the CIR'92, from capital and redemption values paid to a non-resident who has been, at one time or another, a resident for tax purposes in Belgium, provided that those sums have, totally or partially, been constituted during the period in which the person concerned was a Belgian resident for tax purposes, even though bilateral tax agreements concluded by Belgium grant the right to tax such income to another Contracting State;

— by levying tax, under Article 364 ter of the CIR'92, on transfers of capital or redemption values constituted by means of employers' contributions or personal contributions for supplementary retirement benefits, effected by the pension fund or insurance institution with which they have been established, for the benefit of the beneficiary or persons claiming through him, to another pension fund or insurance institution established outside Belgium, whereas such a transfer does not constitute a taxable transaction if the capital or redemption values are transferred to another pension fund or insurance institution established in Belgium; and