ECLI:EU:C:2016:37

JUDGMENT OF THE COURT (Fourth Chamber)

21 January 2016 (*)

(Reference for a preliminary ruling — Regulation (EC) No 883/2004 — Article 5 — Meaning of 'equivalent benefits' — Equal treatment of old-age benefits of two Member States of the European Economic Area — National legislation taking into account old-age benefits received in other Member States for the purpose of calculating social security contributions)

In Case C-453/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgerichtshof (Administrative Court, Austria), made by decision of 10 September 2014, received at the Court on 29 September 2014, in the proceedings

Vorarlberger Gebietskrankenkasse,

Alfred Knauer

v

Landeshauptmann von Vorarlberg,

other party to the proceedings:

Rudolf Mathis,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Third Chamber, acting as President of the Fourth Chamber, J. Malenovský, M. Safjan, A. Prechal (Rapporteur) and K. Jürimäe, Judges,

Advocate General: Y. Bot,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 16 July 2015,

after considering the observations submitted on behalf of:

– the Vorarlberger Gebietskrankenkasse, by J. Lercher, Rechtsanwalt,

– A. Knauer, by J. Nagel and M. Bitriol, Rechtsanwälte,

– the Austrian Government, by G. Hesse, acting as Agent,

– the United Kingdom Government, by V. Kaye, acting as Agent, and by T. de la Mare QC,

– the European Commission, by M. Kellerbauer and D. Martin, acting as Agents,

– the EFTA Surveillance Authority, by M. Moustakali, X. Lewis and M. Schneider, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 November 2015,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 5 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) and of Article 45 TFEU.

2 The request has been made in proceedings between (i) the Vorarlberger Gebietskrankenkasse (Regional Health Insurance Fund of the Province of Vorarlberg, 'the Health Insurance Fund') and Mr Knauer and (ii) the Landeshauptmann von Vorarlberg (Head of Government of the Province of Vorarlberg), concerning Mr Knauer's obligation to pay contributions to the Austrian health insurance scheme in respect of monthly pension payments made to him by an occupational pension scheme in the Principality of Liechtenstein.

Legal context

EU law

3 Recital 9 of Regulation No 883/2004 states:

‘The Court of Justice has on several occasions given an opinion on the possibility of equal treatment of benefits, income and facts; this principle should be adopted explicitly and developed, while observing the substance and spirit of legal rulings.’

4 Article 3 of Regulation No 883/2004, entitled ‘Matters covered’, provides:

‘1. This Regulation shall apply to all legislation concerning the following branches of social security:

...

(d) old-age benefits;

...’

5 Article 5 of the regulation, entitled ‘Equal treatment of benefits, income, facts or events’, provides:

‘Unless otherwise provided for by this Regulation and in the light of the special implementing provisions laid down, the following shall apply:

(a) where, under the legislation of the competent Member State, the receipt of social security benefits and other income has certain legal effects, the relevant provisions of that legislation shall also apply to the receipt of equivalent benefits acquired under the legislation of another Member State or to income acquired in another Member State;

(b) where, under the legislation of the competent Member State, legal effects are attributed to the occurrence of certain facts or events, that Member State shall take account of like facts or events occurring in any Member State as though they had taken place in its own territory.’

6 Article 9 of Regulation No 883/2004, which is entitled ‘Declarations by the Member States on the scope of this Regulation’, provides in paragraph 1 that the Member States are to notify the European Commission in writing of, inter alia, the legislation and schemes referred to in Article 3 of the regulation.

7 Article 30 of Regulation No 883/2004, entitled ‘Contributions by pensioners’, provides:

‘1. The institution of a Member State which is responsible under the legislation it applies for making deductions in respect of contributions for sickness … may request and recover such deductions, calculated in accordance with the legislation it applies, only to the extent that the cost of the benefits … is to be borne by an institution of the said Member State.

2. Where … the acquisition of sickness, maternity and equivalent paternity benefits is subject to the payment of contributions or similar payments under the legislation of a Member State in which the pensioner concerned resides, these contributions shall not be payable by virtue of such residence.'

8 Article 53 of Regulation No 883/2004, entitled 'Rules to prevent overlapping', provides in paragraph 1:

'Any overlapping of invalidity, old-age and survivors' benefits calculated or provided on the basis of periods of insurance and/or residence completed by the same person shall be considered to be overlapping of benefits of the same kind.'

9 Under Article 30 of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation No 883/2004 (OJ 2009 L 284 p. 1), which is entitled 'Contributions by pensioners':

'If a person receives a pension from more than one Member State, the amount of contributions deducted from all the pensions paid shall under no circumstances be greater than the amount deducted in respect of a person who receives the same amount of pension from the competent Member State.'

10 Regulations No 883/2004 and No 987/2009 apply to Liechtenstein by virtue of the Decision of the [European Economic Area] Joint Committee No 76/2011 of 1 July 2011 amending Annex VI (Social security) and Protocol 37 to the EEA Agreement (OJ 2011 L 262, p. 33).

Austrian law

11 Paragraph 73a(1) of the General Law on Social Security (Allgemeines Sozialversicherungsgesetz), as amended by the Second Law of 2010 amending the Social Security Scheme (2. Sozialversicherungs-Änderungsgesetz 2010, BGBl. I, 102/2010, 'the General Social Security Law'), provides:

'If a foreign pension is received which is covered by the scope of

– Regulation No 883/2004 …

…

a health insurance contribution under Paragraph 73(1) and (1a) must be paid also from that foreign pension where the recipient of the foreign pension is entitled to health insurance benefits. That contribution shall be payable at the time the foreign pension is paid.'

12 As regards the Austrian pension scheme, established by the General Social Security Law, the referring court explains that pension insurance, which provides cover for the insured against, inter alia, age-related contingencies, is intended to enable the individual concerned to maintain a standard of living commensurate with that enjoyed prior to retirement. In order for an old-age pension to be paid, the insured must not only have reached statutory retirement age but must also have been insured under the compulsory scheme for a particular number of periods. All persons employed by an employer for more than the threshold of minor employment are, in principle, compulsorily insured. Persons subject to compulsory pension insurance who wish to supplement the pension to which they would otherwise be entitled have the option, as a matter of their free choice, of insuring themselves to a higher level by paying contributions at a level which exceeds the contribution basis applicable to them, the annual contribution being capped. As this is a pay-as-you-go scheme, the contributions made are used directly to finance the benefits. The management of pension insurance is undertaken by insurance companies.

Liechtenstein law

13 According to the order for reference, the old-age pension scheme in Liechtenstein is based on three pillars: old-age and survivors' insurance (first pillar), occupational insurance (second pillar) and private supplementary insurance (third pillar).

14 Whilst old-age and survivors' insurance is a contributory scheme financed by contributions, the occupational pension scheme, governed by the Law on Occupational Benefits (Gesetz über die betriebliche Personalvorsorge) of 20 October 1987, is a funded scheme. It is linked to the old-age and survivors' insurance schemes as well as to the employment relationship. Insurance under the occupational pension scheme is in principle compulsory and is intended, together with the old-age and survivors' insurance schemes, to enable the insured to maintain a standard of living commensurate with that enjoyed prior to retirement. Implementation of the occupational pension scheme falls, as a rule, to an entity to be set up or used by the employer, namely a pension fund. Those funds may simply provide for the statutory minimum benefits or may pay certain more generous benefits than those minimum benefits, doing so within the same legal and organisational framework. The defining aspects and organisation of the occupational pension scheme are, to a great extent, neither a matter of personal initiative nor left to be decided upon by the persons concerned by the age-related contingencies.

15 The Principality of Liechtenstein, in accordance with Article 9 of Regulation No 883/2004, notified the occupational pension scheme as falling within the material scope of that regulation.

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

16 According to the order for reference, Mr Knauer and Mr Mathis reside in Austria and, in their capacity as recipients of an Austrian pension, are insured under the health insurance scheme in accordance with the General Social Security Law. On account of

their previous employment in Switzerland and in Liechtenstein, they receive old-age pensions provided by a pension fund under the Liechtenstein occupational pension scheme ('the Liechtenstein pension fund').

17 The Health Insurance Fund has, since October 2011, required Mr Knauer and Mr Mathis to pay contributions to the health insurance scheme in respect of the monthly pension benefits paid to them by the Liechtenstein pension fund.

18 By two decisions of 10 December 2013, the Head of Government of the Province of Vorarlberg reduced the amount of the contributions payable by Mr Knauer and Mr Mathis to the health insurance scheme on the ground that only a portion of the occupational pension scheme, namely that corresponding to the minimum statutory benefits, was within the scope of Regulation No 883/2004 and was thus covered by the obligation laid down in Paragraph 73a of the General Social Security Law to pay contributions. By contrast, the supplementary portion provided for by the Law on Occupational Benefits, corresponding to the benefits paid at a higher level than the minimum payments, was considered not to be within the scope of the regulation. The same was held to be true of the portion from the Liechtenstein pension fund corresponding to the benefits paid in respect of contributions made before the entry into force of the Law on Occupational Benefits, that is to say, before 1 January 1989. It was held that that portion had to be treated in the same way as the supplementary portion.

19 The Health Insurance Fund brought an appeal before the referring court against both those decisions and Mr Knauer appealed against the decision concerning him. According to the Health Insurance Fund, the contributions payable must be calculated on the basis of the whole of the monthly pension payments made by the Liechtenstein pension fund to Mr Knauer and Mr Mathis, whilst, in Mr Knauer's submission, no contribution is due on those pension payments.

20 According to the referring court, a comparison of the statutory conditions for the provision of old-age pensions granted, on the one hand, under the General Social Security Law and, on the other, under the Law on Occupational Benefits tends to suggest that the benefits concerned are equivalent benefits within the meaning of Article 5(a) of Regulation No 883/2004. It considers that those pensions come within the scope of that regulation: the pensions are based on the legislation of the State in question which relates to the branch or system of social security for old-age benefits and, in addition, the Law on Occupational Benefits was notified by the Principality of Liechtenstein as falling in its entirety within the material scope of Regulation No 883/2004.

21 However, the referring court considers that it is possible (i) that the Liechtenstein occupational pension scheme — regardless of the fact that it falls within the category of coordinated pension schemes as is confirmed by the abovementioned notification — cannot be regarded as equivalent within the meaning of Article 5 of Regulation No 883/2004, in view of the possibility it affords persons insured under it of freely arranging their own pension scheme and (ii) that the inclusion of benefits from that scheme in their entirety in the contribution basis of the Austrian health insurance scheme

has to be regarded, from the perspective of EU law, as an unlawful measure in that it represents an obstacle to the exercise of the freedom of movement enshrined in Article 45 TFEU.

22 In those circumstances the Verwaltungsgerichtshof (Administrative Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is Article 5 of Regulation No 883/2004, in the light of Article 45 TFEU, to be interpreted as meaning that old-age pensions under an occupational pension scheme (which is initiated and guaranteed by the State, is intended to enable the previous standard of living of the individual concerned to be maintained in an appropriate way, operates according to the principle of capitalisation, is compulsory in principle but may also provide for supplementary, non-compulsory contributions that exceed the statutory minimum amount and for correspondingly higher benefits, and the implementation of which falls to a pension fund to be set up or used by the employer, such as — in the present case — the "second-pillar" pension scheme in Liechtenstein), and old-age pensions under a statutory pension scheme (which is likewise initiated and guaranteed by the State, is intended to enable the previous standard of living of the individual concerned to be maintained in an appropriate way, but operates on the basis of the pay-as-you-go principle, is compulsory and the implementation of which falls to pension insurance funds established by statute, such as — in the present case — Austria's pension scheme) are "equivalent" within the meaning of the abovementioned provision?'

The question referred for a preliminary ruling

23 As a preliminary point, the Court notes, first, that, when old-age benefits have been mentioned in a declaration under Article 9 of Regulation No 883/2004, they fall within the scope of that regulation (see, to that effect, judgments in *Mora Romero*, C-131/96, EU:C:1997:317, paragraph 25, and *Pérez García and Others*, C-225/10, EU:C:2011:678, paragraph 36).

24 It is undisputed that the occupational pension scheme at issue in the main proceedings was covered, in its entirety, by a declaration made under Article 9 of Regulation No 883/2004 by the Principality of Liechtenstein, which must be treated in the same way as a Member State for the purposes of applying that regulation. The old-age benefits under that scheme must therefore be regarded as falling within the scope of the regulation.

25 Second, although the question refers to Article 5 of Regulation No 883/2004 in general, it in fact concerns the interpretation of the concept of 'equivalent benefits' as referred to in point (a) of Article 5.

26 In those circumstances, the question raised by the referring court must be understood as asking whether Article 5(a) of Regulation No 883/2004 is to be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, old-age

benefits provided under an occupational pension scheme of one Member State and those provided under a statutory pension scheme of another Member State — both schemes being within the scope of that regulation — are equivalent benefits within the meaning of that provision.

27 According to settled case-law of the Court, in determining the scope of a provision of EU law, in this case Article 5(a) of Regulation No 883/2004, its wording, context and objectives must all be taken into account (see, inter alia, judgment in *Angerer*, C-477/13, EU:C:2015:239, paragraph 26 and the case-law cited).

28 The wording of that provision does not give any indication of the way in which the words 'equivalent benefits' should be interpreted. However, as the Advocate General has argued in point 54 of his Opinion and contrary to what is suggested by the Commission, the concept of 'equivalent benefits' within the meaning of Article 5(a) of Regulation No 883/2004 does not necessarily have the same meaning as the concept of 'benefits of the same kind', to which Article 53 of the regulation refers. If the EU legislature had intended to apply the criteria developed by the case-law for interpreting the concept of 'benefits of the same kind' in the context of the application of the rules to prevent overlapping, it would have used the same terms in connection with the application of the principle of equal treatment.

29 As regards the context of Article 5(a) of Regulation No 883/2004, it is true, as the Austrian Government asserts, that other provisions, such as Article 30 of Regulation No 883/2004 and Article 30 of Regulation No 987/2009, are to govern the conditions in which the institution of a Member State may, in circumstances such as those at issue in the main proceedings, request and recover contributions for sickness benefits. However, that fact does not, of itself, prevent Article 5(a) from also governing those conditions.

30 Moreover, it is clear from Article 30 of Regulation No 883/2004 and Article 30 of Regulation No 987/2009 that those articles place certain specific restrictions on the right of Member States to request and recover contributions for, inter alia, sickness benefits. Thus, those articles are not intended to regulate such requesting and recovery in such a way that, under the introductory sentence of Article 5 of Regulation No 883/2004, that requesting and recovery are excluded from the field of application of Article 5(a).

31 As regards the objective of Article 5(a) of Regulation No 883/2004, it is clear from recital 9 of the regulation that the EU legislature sought to include in the regulation the principle, deriving from the case-law, of equal treatment of benefits, income and facts, in order that that principle might be developed in keeping with the substance and spirit of the Court's rulings.

32 Thus, it should first be stated that two old-age benefits cannot be regarded as being equivalent within the meaning of Article 5(a) of Regulation No 883/2004 merely because they are both within the scope of that regulation. Apart from the fact that the Court's case-law does not support an interpretation to that effect, such an interpretation would render nugatory the requirement for equal treatment, laid down in Article 5(a) and

intended by the EU legislature, given that that provision is, in any event, intended to apply only to benefits falling within the scope of the regulation.

33 Next, as regards more particularly old-age benefits such as those at issue in the main proceedings and in view of the case-law of the Court to which the EU legislature refers in recital 9 of Regulation No 883/2004, the concept of 'equivalent benefits' within the meaning of Article 5(a) of that regulation must be interpreted as referring, in essence, to two old-age benefits that are comparable (see, to that effect, judgment in *Klöppel*, C-507/06, EU:C:2008:110, paragraph 19).

34 As regards the comparability of such old-age benefits, account must be taken of the aim pursued by those benefits and by the legislation which established them (see, by analogy, judgment in *O*, C-432/14, EU:C:2015:643, paragraph 33).

35 So far as the case before the referring court is concerned, it is clear from the actual wording of the question that the aim of both the old-age benefits paid under the Liechtenstein occupational pension scheme and those paid under the Austrian statutory pension scheme is to ensure that the recipients of the benefits maintain a standard of living commensurate with that which they enjoyed prior to retirement.

36 It follows that old-age benefits such as those at issue in the main proceedings must be regarded as being comparable. In that regard, as the Advocate General has observed in point 60 of his Opinion, the fact that there are differences relating, inter alia, to the way in which the rights to those benefits have been acquired, or to the fact that it is possible for the insured to obtain voluntary supplementary benefits, does not give grounds for reaching a different conclusion.

37 Finally, there does not appear to be any objective justification for applying differential treatment, in circumstances such as those at issue in the main proceedings, to the old-age benefits in question. There might in some circumstances be such justification if, as the EFTA Surveillance Authority has rightly pointed out, contributions for sickness benefits were levied in Austria on the old-age benefits provided under the Liechtenstein occupational pension scheme, even though such contributions had already been levied in Liechtenstein. However, it does not appear from the documents before the Court that that was the situation in the case before the referring court.

38 Consequently, the answer to the question referred is that Article 5(a) of Regulation No 883/2004 must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, old-age benefits provided under an occupational pension scheme of one Member State and those provided under a statutory pension scheme of another Member State — both schemes being within the scope of that regulation — are equivalent benefits within the meaning of that provision, where both categories of benefits have the same aim of ensuring that their recipients maintain a standard of living commensurate with that which they enjoyed prior to retirement.

Costs

39 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 (Fourth Chamber) hereby rules:

Article 5(a) 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 must be interpreted as meaning that, in circumstances such as those at issue in the main proceedings, old-age benefits provided under an occupational pension scheme of one Member State and those provided under a statutory pension scheme of another Member State — both schemes being within the scope of that regulation — are equivalent benefits within the meaning of that provision, where both categories of benefits have the same aim of ensuring that their recipients maintain a standard of living commensurate with that which they enjoyed prior to retirement.

[Signatures]

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* Language of the case: German.