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Provisional text

JUDGMENT OF THE COURT (Seventh Chamber)

14 March 2019 (*)

(Reference for a preliminary ruling — Social security — Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons — Regulation (EC) No 883/2004 — Article 3 — Matters covered — Levies on income from assets charged to a French resident insured under the Swiss social security scheme — Levies apportioned for the funding of two benefits administered by the French National Solidarity Fund for Independent Living — Direct and sufficiently relevant link with certain branches of social security — Definition of ‘social security benefit’ — Individual assessment of an applicant’s personal needs — Taking into account the applicant’s resources in calculating the amount of the benefits)

In Case C-372/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour administrative d’appel de Nancy (Administrative Court of Appeal, Nancy, France), made by decision of 31 May 2018, received at the Court on 7 June 2018, in the proceedings

Ministre de l’Action et des Comptes publics

v

Mr and Mrs Raymond Dreyer,

THE COURT (Seventh Chamber),

composed of T. von Danwitz, President of the Chamber, E. Levits and C. Vajda (Rapporteur),
Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Mr and Mrs Dreyer, by J. Schaeffer, avocat,
- the French Government, by D. Colas and R. Coesme, acting as Agents,
- the European Commission, by D. Martin and M. Van Hoof, 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 3 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).

2 The request has been made in proceedings between the *Ministre de l'Action et des Comptes publics* (Minister for the Public Sector and Public Accounts, France) and Mr and Mrs Raymond Dreyer, French tax residents insured under the Swiss social security scheme ('Mr and Mrs Dreyer') concerning the payment of contributions and levies imposed on Mr and Mrs Dreyer for the 2015 tax year in respect of their income from choses in action.

Legal context

European Union law

The Agreement on the free movement of persons

3 On 21 June 1999, the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, signed seven agreements, including the Agreement on the free movement of persons (OJ 2002 L 114, p. 6, 'the Agreement on the free movement of persons'). By Decision 2002/309/EC, Euratom, of the Council and of the Commission as regards the Agreement on Scientific and Technological Cooperation, of 4 April 2002 on the conclusion of seven Agreements with the Swiss Confederation (OJ 2002 L 114, p. 1), those seven agreements were approved on behalf of the Community and entered into force on 1 June 2002.

4 According to the preamble to the Agreement on the free movement of persons, the contracting parties 'resolved to bring about the free movement of persons between them on the basis of the rules applying in the European Community'.

5 Under the heading 'Coordination of social security systems', Article 8 of that agreement provides:

'The Contracting Parties shall make provision, in accordance with Annex II, for the coordination of social security systems with the aim in particular of:

- (a) securing equality of treatment;

- (b) determining the legislation applicable;
- (c) aggregation, for the purpose of acquiring and retaining the right to benefits, and of calculating such benefits, all periods taken into consideration by the national legislation of the countries concerned;
- (d) paying benefits to persons residing in the territory of the Contracting Parties;
- (e) fostering mutual administrative assistance and cooperation between authorities and institutions.’

6 Article 1 of Annex II of that agreement, as amended by Decision No 1/2012 of the Joint Committee established under the Agreement on the free movement of persons of 31 March 2012 (OJ 2012 L 103, p. 51), reads as follows:

‘1. The contracting parties agree, with regard to the coordination of social security schemes, to apply among themselves the legal acts of the European Union to which reference is made in, and as amended by, section A of this Annex, or rules equivalent to such acts.

2. The term “Member State(s)” contained in the legal acts referred to in section A of this Annex shall be understood to include Switzerland in addition to the States covered by the relevant legal acts of the European Union.’

7 Section A of that annex refers, inter alia, to Regulation No 883/2004.

Regulation No 883/2004

8 Article 3(1) and (3) of Regulation No 883/2004 states:

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

- (a) sickness benefits;
- (b) maternity and equivalent paternity benefits;
- (c) invalidity benefits;
- (d) old-age benefits;
- (e) survivors’ benefits;
- (f) benefits in respect of accidents at work and occupational diseases;
- (g) death grants;
- (h) unemployment benefits;
- (i) pre-retirement benefits;
- (j) family benefits.

...

3. This Regulation shall also apply to the special non-contributory cash benefits covered by Article 70.’

9 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.’

French Law

10 Article 1600-0 Fa of the Code général des impôts (General Tax Code), in the version applicable to the main proceedings, provided:

‘I. – A social levy on income from assets shall be introduced in accordance with the prescriptions of Article L. 245-14 of the Code de la sécurité sociale [(Social Security Code)].

...’

11 Article L. 245-16 of the Code de la sécurité sociale (Social Security Code), in the version applicable to the main proceedings, provided:

‘I. – The rate of the social levy referred to in Articles L. 245-14 and L. 245-15 shall be fixed at 4.5%.

II. – The revenue from the levies referred to in Part I shall be apportioned as follows:

– one share corresponding to a rate of 1.15% to the Caisse nationale de solidarité pour l’autonomie [(National Solidarity Fund for Independent Living)];

...’

12 Under Article L. 14-10-1 of the Code de l’action sociale et des familles (Social Assistance and Family Rights Code, ‘the Social Assistance Code’):

‘I. – The National Solidarity Fund for Independent Living shall have the following tasks:

1° It shall contribute to the funding of the prevention of and the provision of support in respect of the loss of independence of the elderly and disabled, at home and in an institution, and also to the funding of the maintenance of family carers, having due regard to the equal treatment of the persons concerned throughout the territory;

...

10° It shall contribute to the funding of investments intended to ensure conformity with technical and safety standards, to modernise premises in current use and to increase the capacity of health and social assistance centres and services;

...’

13 Article L. 14-10-4 of the Social Assistance Code reads as follows:

‘The revenue apportioned to the National Solidarity Fund for Independent Living shall be comprised of:

...

2° An additional contribution to the social levy referred to in Article L. 245-14 of the Social Security Code and an additional contribution to the social levy referred to in Article L. 245-15 of that code. Those additional contributions shall be established, reviewed, collected and payable in accordance with the same conditions and subject to the same penalties as apply to the social levy. Their rate shall be fixed at 0.3%;

...’

14 Article L. 232-1 of the Social Assistance Code provides:

‘Every elderly person residing in France who is unable to assume the consequences of the lack or loss of independence linked with his physical or mental state shall be entitled to a personal independence allowance enabling him to receive care appropriate to his needs.

This allowance, granted on the same conditions throughout the national territory, is intended for persons who, notwithstanding the care which they might receive, require assistance in carrying out the essential acts of life or whose condition requires regular supervision.’

15 Article L. 232-2 of the Social Assistance Code provides:

‘The personal independence allowance, which is in the nature of a benefit in kind, shall be granted, on application, within the limits of tariffs fixed by regulation, to any person providing evidence of a stable and lawful residence who satisfies the conditions, also established by regulation, relating to age and loss of independence, assessed against a national scale.’

16 Article L. 232-4 of the Social Assistance Code states:

‘The personal independence allowance shall be calculated as the proportion of the assistance plan that the recipient is using, minus a contribution to the costs thereof.

That contribution shall be calculated and updated on a yearly basis on 1 January, according to the recipient’s income as determined in accordance with the conditions laid down in Articles L. 132-1 and L. 132-2 and with the amount of the assistance plan, according to a national scale updated on a yearly basis on 1 January under Article L 232-3-1.

...’

17 Article L. 245-1 of the Social Assistance Code reads as follows:

‘I. – Every disabled stable and lawful resident of mainland France, of the areas referred to in Article L. 751-1 of the Social Security Code or of Saint Pierre and Miquelon, ... whose age is below a limit fixed by decree and whose disability meets criteria established by decree taking into account, in particular, the nature and degree of the needs for compensation having regard to his life

plan, shall be entitled to a compensation allowance in the nature of a benefit in kind which may be paid, according to the choice of the recipient, in kind or in cash.

If a person satisfies the minimum age requirements to be eligible for the allowance laid down in Article L. 541-1 of the Social Security Code, entitlement to the compensation allowance shall be governed by the conditions laid down in Part III of this article.

If the recipient of a compensation allowance has an entitlement of the same nature under a social security scheme, payments received thereunder shall be deducted from the amount of the compensation allowance in accordance with conditions laid down by decree.

...’

18 Article L. 245-6 of the Social Assistance Code provides:

‘The compensation allowance shall be granted on the basis of tariffs and amounts fixed according to the nature of the expenditure, within the limit of rates of reimbursable care which may vary according to the recipient’s resources. The maximum thresholds, limits or rates of reimbursable care shall be fixed by an order of the Minister for disabled persons. The form and duration of that payment shall be laid down by decree.

The following shall be excluded from the resources taken into account when determining the rate of reimbursable care referred to in the preceding subparagraph:

- A person’s employment income;
- Temporary allowances, benefits and life annuities for persons suffering from occupational injuries or their survivors as listed in Article 81(8) of the General Tax Code;
- Substitute income which shall be listed by way of regulation;
- The employment income of the person’s spouse, partner or civil partner, or of his family carer who, whilst living in the person’s house, takes care of his parents even if that person’s place of residence is with his parents;
- Life annuities referred to in Article 199f(I)(2) of the General Tax Code which were created by a disabled person for himself or, for his benefit, by his parents or legal representative, his grandparents, his brothers and sisters or his children;
- Certain specific-purpose social benefits listed by way of regulation.’

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

19 Mr and Mrs Dreyer are French nationals, living in France and tax residents of that Member State. Mr Dreyer, who is now retired, spent his entire career working in Switzerland. He and his wife are insured under the Swiss social security scheme.

20 By tax adjustment notice of 31 October 2016, confirmed by decision of 6 December 2016, the French tax authorities declared Mr and Mrs Dreyer subject to the general welfare contribution, the social debt repayment contribution, the social levy and additional contribution, and the solidarity levy (together ‘the contributions and levies at issue’) in respect of income from assets received in

France in 2015 in the form of income from choses in action. The contributions and levies at issue fund three French bodies, namely the Fonds de solidarité vieillesse (Old-Age Solidarity Fund, ‘the FSV’), the Caisse d’amortissement de la dette sociale (Social Security Debt Redemption Fund, ‘the CADES’) and the Caisse nationale de solidarité pour l’autonomie (National Solidarity Fund for Independent Living, ‘the CNSA’).

21 On the basis that the allowances funded by the contributions and levies at issue administered by the FSV, the CADES and the CNSA were social security contributions, Mr and Mrs Dreyer disputed their liability to those contributions and levies before the Tribunal administratif de Strasbourg (Administrative Court, Strasbourg, France) on the ground that they were already insured under the Swiss social security scheme and cannot be required to contribute to the funding of the French social security scheme on account of the principle of single applicable social legislation resulting from Regulation No 883/2004. In a decision of 11 July 2017, the Tribunal administratif de Strasbourg (Administrative Court, Strasbourg) upheld Mr and Mrs Dreyer’s action and declared that they were not liable to pay the contributions and levies at issue.

22 The Ministre de l’Action et des Comptes publics (Minister for the Public Sector and Public Accounts) then appealed against that decision before the referring court, the Cour administrative d’appel de Nancy (Administrative Court of Appeal, Nancy, France).

23 First of all, the referring court decided, as did the Tribunal administratif de Strasbourg (Administrative Court, Strasbourg), that Mr and Mrs Dreyer were not liable to pay the share of the contributions and levies at issue apportioned to the FSV and to the CADES, namely the general welfare contribution, the social debt repayment contribution, solidarity levy and part of the social levy. According to the referring court, that share of the contributions and levies at issue has a direct and sufficiently relevant link with certain branches of social security and is therefore governed by the principle of single applicable legislation laid down in Article 11(1) of Regulation No 883/2004. Accordingly, in accordance with the rule in the judgment of 26 February 2015, *de Ruyter* (C-623/13, EU:C:2015:123), since Mr and Mrs Dreyer are insured under the Swiss social security scheme, they cannot be liable in France to the social contributions and levies intended to fund the French social security scheme.

24 However, the referring court harbours doubts as to whether the share of the contributions and levies at issue apportioned to the CNSA, namely part of the social levy and the additional contribution, may also be regarded as funding social security contributions, within the meaning of Regulation No 883/2004, and having a direct and sufficiently relevant link with certain branches of social security.

25 In that regard, citing paragraph 37 of the judgment of 21 February 2006, *Hosse* (C-286/03, EU:C:2006:125), the referring court notes that, according to the Court’s settled case-law, a benefit may be regarded as a ‘social security benefit’ in so far as, first, it is granted to the recipients, without any individual and discretionary assessment of personal needs, on the basis of a legally defined position and, second, relates to one of the risks expressly listed in Article 3(1) of Regulation No 883/2004.

26 As regards both CNSA benefits funded in part by the contributions and levies at issue, namely the allocation personnalisée d’autonomie (personal independence allowance, ‘the APA’) and the prestation compensatoire du handicap (disability compensation allowance, ‘the PCH’), the referring court considers that the second condition referred to in the previous paragraph is satisfied. However, it asks whether the first condition may be regarded as entirely satisfied. Although it has found that the APA and the PCH are allocated without any discretionary assessment of an

applicant's personal needs on the basis of a legally defined position, the referring court notes, as submitted by the *Ministre de l'Action et des Comptes publics* (Minister for the Public Sector and Public Accounts), that it is possible for the APA and the PCH not to be regarded as being granted without any individual assessment of recipients' personal needs on account of the fact that their amount depends on the recipients' level of resources or varies according to their resources.

27 In those circumstances, the *Cour administrative d'appel de Nancy* (Administrative Court of Appeal, Nancy) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Do the contributions allocated to the [CNSA], which contribute to the funding of [the APA and the PCH], have a direct and sufficiently relevant link with certain branches of social security listed in Article 3 of Regulation No 883/2004 and do they therefore come within the scope of that regulation solely on the ground that those benefits relate to one of the risks set out in that Article 3 and are granted without any discretionary assessment on the basis of a legally defined position?'

Consideration of the question referred

28 By its question, the referring court wishes to know, in essence, whether Article 3 of Regulation No 883/2004 must be interpreted as meaning that benefits, such as the APA and the PCH, may, for the purposes of their classification as 'social security contributions' within the meaning of that provision, be regarded as granted without any individual assessment of a recipient's personal needs despite the fact that the calculation of their amount depends on the recipients' level of resources or varies according to their resources.

29 As a preliminary matter, it is to be noted that, under Article 8 of the Agreement on the free movement of persons, the contracting parties are to make provision, in accordance with Annex II to the agreement, for the coordination of social security systems with the aim in particular of determining the legislation applicable and paying benefits to persons residing in the territory of the contracting parties. Section A(1) of Annex II to the Agreement on the free movement of persons provides for the application, between the parties, of Regulation No 883/2004. Thus, and since, according to Article 1(2) of Annex II to that agreement, 'the term "Member State(s)" contained in the legal acts referred to in section A of this Annex shall be understood to include Switzerland in addition to the States covered by the relevant legal acts of the European Union', the provisions of that regulation also cover the Swiss Confederation (judgment of 21 March 2018, *Klein Schiphorst*, C-551/16, EU:C:2018:200, paragraph 28).

30 In those circumstances, the situation of the applicants in the main proceedings, nationals of a Member State and insured under the Swiss social security scheme, falls within the scope of Regulation No 883/2004 (see, by analogy, judgment of 21 March 2018, *Klein Schiphorst*, C-551/16, EU:C:2018:200, paragraph 29).

31 As regards the substance of the question referred, it should be noted that the distinction between benefits falling within the scope of Regulation No 883/2004 and those which are outside it is based essentially on the constituent elements of each benefit, in particular its purpose and the conditions for its grant, and not on whether it is classified as a social security benefit by national legislation (see, to that effect, *inter alia* judgments of 5 March 1998, *Molenaar*, C-160/96, EU:C:1998:84, paragraph 19; of 16 September 2015, *Commission v Slovakia*, C-433/13, EU:C:2015:602, paragraph 70, and of 25 July 2018, *A (Aide pour une personne handicapée)*, C-679/16, EU:C:2018:601, paragraph 31).

32 The Court has consistently held that a benefit may be regarded as a ‘social security benefit’ in so far as it is granted to recipients without any individual and discretionary assessment of personal needs on the basis of a legally defined position and provided that it relates to one of the risks expressly listed in Article 3(1) of Regulation No 883/2004 (see, to that effect, inter alia judgments of 27 March 1985, *Hoeckx*, 249/83, EU:C:1985:139, paragraphs 12 to 14; of 16 September 2015, *Commission v Slovakia*, C-433/13, EU:C:2015:602, paragraph 71, and of 25 July 2018, *A (Aide pour une personne handicapée)*, C-679/16, EU:C:2018:601, paragraph 32).

33 It must be borne in mind that the first condition referred to in the previous paragraph is satisfied if a benefit is granted in the light of objective criteria which, if they are met, confer entitlement to the benefit, the competent authority having no power to take account of other personal circumstances (see, to that effect, inter alia, judgments of 16 July 1992, *Hughes*, C-78/91, EU:C:1992:331, paragraph 17; of 16 September 2015, *Commission v Slovakia*, C-433/13, EU:C:2015:602, paragraph 73, and of 25 July 2018, *A (Aide pour une personne handicapée)*, C-679/16, EU:C:2018:601, paragraph 34).

34 In that regard, the Court has previously held, in relation to benefits which are granted, refused or the amount of which is calculated by taking into account the recipient’s resources, that the grant of such benefits does not depend on an individual assessment of the applicant’s personal needs, provided that an objective, legally defined criterion gives entitlement to the benefit without the competent authority being able to take other personal circumstances into consideration (see, to that effect, judgments of 2 August 1993, *Acciardi*, C-66/92, EU:C:1993:341, paragraph 15; of 18 July 2006, *De Cuyper*, C-406/04, EU:C:2006:491, paragraph 23, and of 16 September 2015, *Commission v Slovakia*, C-361/13, EU:C:2015:601, paragraph 52).

35 In addition, the Court stated, in paragraph 38 of the judgment of 25 July 2018, *A (Aide pour une personne handicapée)* (C-679/16, EU:C:2018:601), that, in order for it to be considered that the first condition referred to in paragraph 32 above has not been satisfied, the discretionary nature of the assessment, by the competent authority, of the personal needs of a recipient of a benefit must, above all, relate to eligibility for that benefit. Those considerations apply, *mutatis mutandis*, in respect of the individual character of the assessment by the competent authority of the personal needs of a recipient of a benefit.

36 As regards the benefits at issue in the main proceedings, according to the documents in the case file submitted to the Court, any person over 60 years old who is deemed to have lost his independence in respect of predefined criteria and is a stable and lawful resident of France is entitled to the APA. As for the PCH, that benefit may be claimed by any disabled person, in principle, less than 60 years old, who is a stable and lawful resident of France and whose disability satisfies certain predefined criteria. It is common ground that eligibility to both benefits is independent of an applicant’s resources. Although a recipient’s resources are taken into account in determining the actual amount which will be paid to him, it follows from Articles L. 232-4 and L. 245-6 of the Social Assistance Code that that amount is, in essence, calculated on the basis of objective criteria applied without distinction to all recipients according to their level of resources.

37 It is therefore clear from those provisions of the Social Assistance Code that a recipient’s resources are not taken into account in conferring entitlement to the APA and PCH, but for the method of calculating those benefits, since the benefits must be granted if the applicant satisfies the conditions for their eligibility, irrespective of his resources.

38 It follows from the foregoing considerations that taking into account a recipient’s resources for the sole purpose of calculating the actual amount of APA or PCH on the basis of legally defined,

objective criteria does not involve an individual assessment by the competent authority of the recipient's personal needs.

39 Contrary to what the French Government submits in its written observations, the need to assess, for the purposes of the APA and of the PCH, the degree of the applicant's loss of independence or disability also does not involve an individual assessment of that applicant's personal needs. As is clear from the case file submitted to the Court, the assessments of 'loss of independence' (for the APA) and of the 'disability' (for the PCH) are made by a doctor or an expert from a socio-medical team or a multidisciplinary team as regards predefined scales, lists and guidelines, that is to say, in accordance with the case-law set out in paragraph 34 above, on the basis of legally defined, objective criteria which, if satisfied, confer entitlement to the corresponding benefit. In those circumstances, it cannot be maintained that the grant of the APA and the PCH depends on an individual assessment of the applicant's personal needs within the meaning of the case-law cited in paragraph 32 above.

40 Furthermore, and also contrary to what the French Government submits in its written observations, the APA and the PCH cannot be regarded as 'special non-contributory cash benefits' within the meaning of Article 3(3) of Regulation No 883/2004. Since it follows both from the previous considerations and the findings of the referring court set out in paragraph 26 above that both cumulative conditions referred to in paragraph 32 of that judgment are satisfied and that the APA and the PCH must therefore be regarded as 'social security contributions', there is no need to ascertain whether each of the benefits may also be regarded as 'special non-contributory cash benefits', since the Court has previously held that both classifications are mutually exclusive (see, to that effect, judgments of 21 February 2006, *Hosse*, C-286/03, EU:C:2006:125, paragraph 36, and of 16 September 2015, *Commission v Slovakia*, C-433/13, EU:C:2015:602, paragraph 45).

41 In the light of all of the foregoing considerations, the answer to the question referred is that Article 3 of Regulation No 883/2004 must be interpreted as meaning that benefits, such as the APA and the PCH, must, for the purposes of their classification as 'social security contributions' within the meaning of that provision, be regarded as granted without any individual assessment of a recipient's personal needs, since the recipient's resources are taken into account for the sole purpose of calculating the actual amount of those benefits on the basis of legally defined, objective criteria.

Costs

42 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 3 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 benefits, such as the personal independence allowance and the disability compensation allowance, must, for the purposes of their classification as 'social security contributions' within the meaning of that provision, be regarded as granted without any individual assessment of a recipient's personal needs, since the recipient's resources are taken into account for the sole purpose of calculating the actual amount of those benefits on the basis of legally defined, objective criteria.

[Signatures]

* Language of the case: French.
