JUDGMENT OF THE COURT (Third Chamber)

23 April 2009 (*)

(Article 18 EC – Income tax legislation – Reduction of income tax by the amount of health insurance contributions paid in the Member State of taxation – Refusal of reduction by the amount of contributions paid in other Member States)

In Case C-544/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Wojewódzki Sąd Administracyjny we Wrocławiu (Poland), made by decision of 3 November 2007, received at the Court on 4 December 2007, in the proceedings

Uwe Rüffler

v

Dyrektor Izby Skarbowej we Wrocławiu Ośrodek Zamiejscowy w Wałbrzychu,

THE COURT (Third Chamber),

composed of A. Rosas (Rapporteur), President of the Chamber, J. Klučka, U. Lõhmus, P. Lindh and A. Arabadjiev, Judges,

Advocate General: P. Mengozzi,

Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– U. Rüffler, by himself,

– the Polish Government, by M. Dowgielewicz, acting as Agent,

– the Greek Government, by K. Georgiadis, S. Alexandriou and M. Tassopoulou, acting as Agents,

– the Commission of the European Communities, by R. Lyal and K. Herrmann, acting as Agents,

– the EFTA Surveillance Authority, by P. Bjørgan and L. Young, acting as Agents,

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

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 12 EC and 39 EC.

2 The reference has been made in the context of proceedings between Mr Rüffler, a German national resident in Poland, and the Dyrektor Izby Skarbowej we Wrocławiu Ośrodek Zamiejscowy w Wałbrzychu (Director of the Tax Chamber in Wrocław, Wałbrzych Office; 'the Dyrektor') concerning the refusal of the Polish tax authorities to grant him a reduction of income tax by the amount of health insurance contributions paid in another Member State, although such a reduction is granted to a taxpayer whose health insurance contributions are paid in Poland.

Legal context

Community legislation

3 Article 3(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 (OJ 1997 L 28, p. 1) ('Regulation No 1408/71'), sets out the principle of equal treatment, according to which:

'Subject to the special provisions of this Regulation, persons resident in the territory of one of the Member States to whom this Regulation applies shall be subject to the same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of that State.'

4 Article 28 of Regulation No 1408/71, headed 'Pensions payable under the legislation of one or more States, in cases where there is no right to benefits in the country of residence', provides that:

'1. A pensioner who is entitled to a pension under the legislation of one Member State or to pensions under the legislation of two or more Member States and who is not entitled to benefits under the legislation of the Member State in whose territory he resides shall nevertheless receive such benefits for himself and for members of his family, in so far as he would, taking account where appropriate of the provisions of Article 18 and Annex VI, be entitled thereto under the legislation of the Member State or of at least one of the Member States competent in respect of pensions if he were resident in the territory of such State. The benefits shall be provided under the following conditions:

(a) benefits in kind shall be provided on behalf of the institution referred to in paragraph 2 by the institution of the place of residence as though the person concerned were a pensioner under the legislation of the State in whose territory he resides and were entitled to such benefits;

(b) cash benefits shall, where appropriate, be provided by the competent institution as determined by the rules of paragraph 2, in accordance with the legislation which it administers. However, upon agreement between the competent institution and the institution of the place of residence, such benefits may be provided by the latter institution on behalf of the former, in accordance with the legislation of the competent State.

2. In the cases covered by paragraph 1, the cost of benefits in kind shall be borne by the institution as determined according to the following rules:

(a) where the pensioner is entitled to the said benefits under the legislation of a single Member

State, the cost shall be borne by the competent institution of that State;

…’

5 Article 28a of that regulation, headed, ‘Pensions payable under the legislation of one or more of the Member States other than the country of residence where there is a right to benefits in the latter country’, lays down that:

‘Where the pensioner entitled to a pension under the legislation of one Member State, or to pensions under the legislations of two or more Member States, resides in the territory of a Member State under whose legislation the right to receive benefits in kind is not subject to conditions of insurance or employment, nor is any pension payable, the cost of benefits in kind provided to him and to members of his family shall be borne by the institution of one of the Member States competent in respect of pensions, determined according to the rules laid down in Article 28(2), to the extent that the pensioner and members of his family would have been entitled to such benefits under the legislation administered by the said institution if they resided in the territory of the Member State where that institution is situated.’

6 Under Article 95(1) of Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71, as amended and updated by Regulation (EC) No 118/97:

‘The amount of the benefits in kind provided under Article 28(1) … [of Regulation No 1408/71] shall be refunded by the competent institutions to the institutions which provided the said benefits, on the basis of a lump sum which is as close as possible to the actual expenditure incurred.’

Treaty law

7 Under Article 18(1) and (2) of the Agreement of 14 May 2003 between the Republic of Poland and the Federal Republic of Germany for the avoidance of double taxation in the field of taxes on income and on capital (umowa z dnia 14 maja 2003 r. między Rzeczypospolitą Polską a Republiką Federalną Niemiec w sprawie unikania podwójnego opodatkowania w zakresie podatków od dochodu i od majątku, Dz. U., 20 January 2005, No 12, heading 90, ‘the Double Taxation Agreement’):

‘1. Retirement pensions and similar benefits or income received by a person resident in one Contracting State from the other Contracting State are to be taxable only in that first State.

2. Irrespective of the previous subparagraph, payments received by a person resident in one Contracting State from the compulsory social insurance scheme of the other Contracting State are to be taxable only in that second State.’

National legislation

8 Article 3(1) of the Law of 26 July 1991 on income tax payable by natural persons (ustawa z dnia 26 lipca 1991 r. o podatku dochodowym od osób fizycznych, Dz. U. 2000, No 14, heading 176, ‘the Law on income tax’), provides:

‘Natural persons who are resident in the territory of the Republic of Poland are liable to tax on all their income, wherever it arises …’

9 Article 21(1)(58)(b) of the Law on income tax states:

‘An exemption from income tax shall apply … to payments … made to insured persons from funds levied in the context of an occupational pension scheme.’

10 Article 27b of that Law provides that:

‘1. Income tax … is first of all to be reduced by the amount of health insurance contributions, as defined in the Law of 27 August 2004 on publicly-funded healthcare [ustawa z dnia 27 sierpnia 2004 r. o świadczeniach opieki zdrowotnej finansowanych ze środków publicznych, Dz. U. No 210, heading 2135] …:

(1) paid in the tax year directly by the taxpayer in accordance with the provisions on publicly-funded healthcare;

(2) levied in the tax year by the payer in accordance with the provisions on publicly-funded healthcare.

This reduction does not apply to contributions the basis of assessment of which is income (receipts) exempt from tax under [Article 21] … and contributions the basis of assessment of which is income on which the levying of tax has been waived under the Tax Decree provisions.

2. The amount of health insurance contributions by which the [income tax referred to in Article 27b(1)] is reduced cannot exceed 7.75% of the basis of assessment of those contributions.

3. The level of expenditure for the purposes specified in Article 27b(1) is set on the basis of documents stating how that expenditure was incurred.’

The dispute in the main proceedings and the reference for a preliminary ruling

11 After living in Germany, where he was employed, Mr Rüffler took up residence in Poland and has been permanently resident there with his wife since 2005. It does not appear from the case-file submitted to the Court that that he has worked in Poland since taking up residence there.

12 At the material time, Mr Rüffler’s only income came from two pensions paid in Germany, that is:

– an invalidity pension for 70% incapacity paid by a German employees’ insurance institution, the Landesversicherungsanstalt (Regional Insurance Office), which represents a payment from the German compulsory social insurance scheme; and

– an occupational pension paid by the Volkswagen company.

13 Those two pensions are paid in Germany into a bank account opened by Mr Rüffler there. The corresponding contributions, including health insurance contributions, are then deducted in that Member State.

14 The compulsory health insurance contribution paid on the occupational pension which Mr Rüffler receives in Germany is transferred at a rate of 14.3% to the German health insurance institution, Deutsche BKK-West in Wolfsburg. Under Article 28 of Regulation No 1408/71, Mr and Mrs Rüffler

are entitled, as the Narodowy Fundusz Zdrowia (Polish National Health Fund) confirms, to healthcare benefits in Poland. Those benefits are provided in Poland at the expense of the German health insurance institution.

15 Mr Rüffler is subject, in Poland, to unlimited liability to tax pursuant to Article 3(1) of the Law on income tax.

16 Under Article 18(2) of the Double Taxation Agreement, the invalidity pension paid to him in Germany by the Landesversicherungsanstalt is taxed in that Member State. By contrast, under to Article 18(1) of the Double Taxation Agreement, the occupational pension paid in Germany by Volkswagen is taxable only in Poland.

17 During 2006, Mr Rüffler applied to the Polish tax authorities for the income tax which he is liable to pay in Poland in respect of the occupational pension which he receives in Germany to be reduced by the amount of health insurance contributions paid in Germany.

18 By decision of 28 November 2006, the Polish tax authorities refused to grant his application on the ground that Article 27b of the Law on income tax provides for the possibility of reducing the income tax only by the amount of health insurance contributions paid pursuant to the Polish Law on publicly-financed healthcare. Mr Rüffler does not pay health insurance contributions in Poland.

19 By document dated 2 February 2007, Mr Rüffler lodged a complaint against that negative decision before the Dyrektor, in which he claimed that the tax authorities had exhibited selective treatment with regard to Polish tax law and had infringed Community law.

20 By decision of 23 February 2007, the Dyrektor refused to change the decision of the tax authorities of 28 November 2006 concerning the interpretation of the scope and manner of application of Polish tax law, with regard to the impossibility of reducing tax paid in Poland by the amount of health insurance contributions paid in another Member State. In doing so, he upheld the interpretation of Article 27b of the Law on income tax provided by the tax authorities and confirmed that it was not permissible for a tax authority required to adjudicate on the basis of statutory provisions, in particular in cases concerning income tax relief and deductions, to give a broad interpretation of the provisions of Article 27b of the Law on income tax.

21 It may be added that, in his complaint to the Dyrektor, Mr Rüffler also claimed that the occupational pension he receives should be exempted from income tax in accordance with Article 21(1)(58)(b) of the Law on income tax. That claim was also rejected, on the ground that that provision was not applicable to the present case since it concerned only persons who are members of an occupational pensions scheme pursuant to the provisions of the Polish Law an occupational pensions schemes, that is, ‘workers’ as defined by Polish law.

22 Mr Rüffler thereupon brought an action against the decision of 23 February 2007 before the Wojewódzki Sąd Administracyjny we Wrocławiu (Regional Administrative Court of Wrocław) claiming that that decision infringed Article 27b of the Law on income tax. He claimed that the court should annul both that decision and the decision of the tax authorities of 28 November 2006 inasmuch as they found that it was impossible to reduce the amount of income tax due in Poland by the amount of health insurance contributions paid in another Member State.

23 According to Mr Rüffler, such a restriction of entitlement to a reduction of income tax, which leads to

the granting of that tax advantage only to taxpayers who have paid their health insurance contributions to a Polish insurance institution, favours in a discriminatory manner, according to the place where compulsory health insurance contributions are paid, the situation of persons paying income tax in Poland.

24 Mr Rüffler also raised the incompatibility of the interpretation of the provisions of national tax law with Community law, in particular with the principle of the free movement of persons set out in Article 39 EC. In support of that argument, he relied on Case C-150/04 *Commission* v *Denmark* [2007] ECR I-1163.

25 The national court is of the view that the health insurance contributions paid by Mr Rüffler under German law are identical in nature and purpose to the contributions paid by Polish taxpayers under the Polish Law. Recipients of pensions are required to pay such a contribution under both German and Polish law. The difference lies in the level of health insurance contribution – 14.3% in Germany, 9% in Poland – and in the legal basis under national law leading to the obligation to pay.

26 The national court is uncertain whether, where a resident taxpayer is required to pay tax in Poland on income received as a pension in Germany, it is justified to refuse to reduce the amount of that tax by the health insurance contributions paid in Germany solely because those contributions were not paid on the basis of Polish national law and fall under the German insurance system.

27 The national court is uncertain whether that interpretation of Article 27b of the Law on income tax amounts to discrimination against those taxpayers who, in exercising their right to freedom of movement, are denied, in the Member State of taxation, the possibility of reducing tax by the amount of their health insurance contributions paid in another Member State, always assuming that the contributions have not already been deducted from the income arising in that other Member State.

28 It appears from the case-file submitted to the Court that, by judgment of 7 November 2007 (K 18/06, Dz. U. of 2007, No 211, position 1549), the Trybunał Konstytucyjny (Polish Constitutional Court) held that Article 27b(1) of the Law on income tax did not comply with Article 32, read in conjunction with Article 2, of the Polish Constitution, inasmuch as it ruled out the possibility for certain taxpayers of deducting health insurance contributions from the income tax due on an activity pursued outside Poland, where those contributions had not been deducted from income in the Member State in which that activity was pursued. As a result of that judgment, Article 27b(1) of the Law on income tax has not been in force since 30 November 2008.

29 In those circumstances, the Wojewódzki Sąd Administracyjny we Wrocławiu decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Must the provisions of the first paragraph of Article 12 EC and Article 39(1) and (2) EC be construed as precluding the national provision contained in Article 27b of the [Law on income tax], which restricts the right to a reduction of income tax by the amount of compulsory health insurance contributions paid to contributions paid exclusively on the basis of provisions of national law, in the case where a resident pays in another Member State compulsory health insurance contributions deducted from income taxed in Poland?’

The question referred for a preliminary ruling

Admissibility

Observations submitted to the Court

30 First, the Polish Government calls into question the admissibility of the question referred on the ground that the order for reference does not adequately describe the factual and legal background of the dispute.

31 Accordingly, it argues, the order for reference fails to provide an indication which would be none the less important in the context of a tax advantage distinct from that at issue in the main proceedings, that is, the right to an exemption from income tax pursuant to Article 21(1)(58)(b) of the Law on income tax. According to that provision, an exemption from income tax applies to 'payments … made to insured persons from funds levied in the context of an occupational pension scheme'.

32 In the present case, it continues, the order for reference does not indicate clearly whether the occupational pension paid by Volkswagen is the equivalent, in Germany, of the payments made in connection with a Polish occupational pension scheme or whether it constitutes a different type of retirement pension.

33 Second, the Polish Government is of the view that the question referred is also inadmissible because it is not necessary, within the meaning of Article 234 EC, to enable the Court to obtain a preliminary ruling in order to resolve the dispute in the main proceedings, since that dispute must be decided exclusively on the basis of national law.

34 Thus, according to the Polish Government, if the occupational pension paid by Volkswagen is the equivalent, in Germany, of payments made in connection with a Polish occupational pension scheme, it must be considered to fall within the scope of Article 21(1)(58)(b) of the Law on income tax, since that law is not restricted solely to payments made under a Polish occupational pension scheme. In such a case, the income received by Mr Rüffler under the pension must be subject, in Poland, to a tax exemption.

35 The Polish Government states next that the final subparagraph of Article 27b(1) of the Law on income tax excludes the right to a reduction of tax by the amount of health insurance contributions, a right the benefit of which Mr Rüffler claims in the main proceedings, where the health insurance contributions relate to income exempt pursuant to Article 21 of that Law. Accordingly, if the German pension were to constitute such exempt income, it would not be possible, on the basis of the final subparagraph of Article 27b(1) of the Law on income tax, to reduce the amount of the income tax by the amount of the health insurance contributions, without the State in which those contributions were paid being relevant in that regard. The dispute pending before the national court should, consequently, be decided exclusively on the basis of national law.

Findings of the Court

36 According to settled case-law, in proceedings under Article 234 EC, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of Community law, the Court is in principle bound to give a ruling (see, inter alia, Case C-379/98

PreussenElektra [2001] ECR I-2099, paragraph 38; Case C-221/07 *Zablocka-Weyhermüller* [2008] ECR I-0000, paragraph 20; and Case C-169/07 *Hartlauer* [2009] ECR I-0000, paragraph 24).

37 Nevertheless, the Court has also held that, in exceptional circumstances, it can examine the conditions in which the case was referred to it by the national court, in order to confirm its own jurisdiction (see, to that effect, Case 244/80 *Foglia* [1981] ECR 3045, paragraph 21; see, also, *PreussenElektra*, paragraph 39, and Case C-318/00 *Bacardi-Martini and Cellier des Dauphins* [2003] ECR I-905, paragraph 42).

38 The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see *PreussenElektra*, paragraph 39, and *Zablocka-Weyhermüller*, paragraph 20).

39 First, with regard to the question referred by the Wojewódzki Sąd Administracyjny we Wrocławiu, it is clear from the order for reference that the dispute in the main proceedings and the question referred for a preliminary ruling are concerned only with the question whether there is a right to a reduction of tax by the amount of health insurance contributions and not the refusal to exempt the occupational pension.

40 Mr Rüffler's claim that the occupational pension which he receives must be subject, in Poland, to an exemption from income tax, a claim made at the stage of his complaint against the decision of the tax authorities at first instance and rejected by the Dyrektor, does not appear in the action brought by Mr Rüffler before the national court. That action seeks the annulment of the Dyrektor's decision inasmuch as it confirms the impossibility, in view of the position of the applicant in the main proceedings, of obtaining a reduction of tax pursuant to Article 27b of the Law on income tax.

41 Second, the Court considers that it has sufficient information regarding Mr Rüffler's status and the nature of the contributions and the occupational pension paid in Germany to enable it to provide a useful reply to the national court.

42 The national court states in its decision that the occupational pension paid in Germany falls under 'retirement pensions and similar benefits or income received by a person resident in one Contracting State' within the meaning of Article 18(1) of the Double Taxation Agreement. It is of the view that health insurance contributions, which are deducted from the occupational pension and paid by Mr Rüffler on the basis of the provisions of German law, are identical in nature and purpose to the contributions paid by Polish taxpayers under the Polish legislation.

43 Consequently, it does not appear that the interpretation sought manifestly bears no relation to the actual facts of the main action or its purpose, that the problem is hypothetical, or that the Court does not have before it the factual or legal material necessary to give a useful answer to the question submitted to it.

44 Accordingly, the question referred is admissible.

Substance

Observations submitted to the Court

45 Mr Rüffler, the Greek Government, the Commission of the European Communities and the EFTA

Surveillance Authority are of the view that Community law precludes legislation of a Member State, or its interpretation by the tax authorities, limiting the right to a reduction of income tax by the amount of health insurance contributions solely to health insurance contributions paid to the national compulsory health insurance scheme.

46 The Greek Government and the EFTA Surveillance Authority take the view that Articles 12 EC and 39 EC preclude the Member State in which the taxpayer has his permanent residence and is subject to an unlimited liability to tax from refusing to grant to that taxpayer a reduction of tax by the amount of contributions which he has paid to the health insurance organisation of another Member State, on condition that the taxpayer has not deducted those contributions in that other Member State where he receives his taxable income. Such treatment, it is argued, discriminates against taxpayers who have exercised their right to freedom of movement and who are denied, in the Member State of taxation, the possibility of having their tax reduced by the amount of contributions paid to a compulsory health insurance organisation in another Member State.

47 As for the Commission, it infers from the indications in the order for reference, first, that Mr Rüffler was not working at the time of the dispute in the main proceedings and, second, that, since 2005, he has been permanently resident in Poland as a retired person in receipt of a pension in respect of an occupation exercised in Germany. In addition, it is of the view that, given the lack of any connection between Mr Rüffler's stay on Polish territory and the exercise of a professional activity, his situation is not to be assessed in the light of Article 39 EC. The dispute in the main proceedings should be examined in the light of the combined provisions of Articles 12 EC and 18 EC.

48 According to the Commission, it is contrary to the first paragraph of Article 12 EC and Article 18(1) EC for national rules, such as Article 27b of the Law on income tax, to provide for the right to a reduction of the amount of income tax only by the amount of health insurance contributions paid to the Polish health insurance scheme, thereby excluding the contributions paid to the compulsory health insurance scheme of another Member State in which the income taxable in Poland was received.

49 The Polish Government, considering that the question referred is inadmissible, made no observations on substance.

Findings of the Court

– The applicable provisions of the EC Treaty

50 It is apparent from the order for reference that, since 2005, Mr Rüffler has been permanently resident in Poland with his wife as a retired person receiving a pension in respect of an occupation exercised in Germany. According to the order for reference, at the time when the dispute in the main action arose, Mr Rüffler's only income consisted of a retirement pension and an invalidity pension, both received in Germany. Consequently, Mr Rüffler was not working at that time.

51 In addition, it is not apparent from the documents in the file submitted to the Court that Mr Rüffler worked previously in Poland or that he went there in search of employment.

52 The Court has already held, in Case C-520/04 *Turpeinen* [2006] ECR I-10685, paragraph 16, that persons who have carried out all their occupational activity in the Member State of which they are nationals and who have exercised the right to reside in another Member State only after their retirement, without any intention of working in that other State, cannot rely on freedom of movement as

a worker.

53 In view of the facts at issue in the main proceedings as they appear from the order for reference, this appears to be the case in regard to Mr Rüffler.

54 As the main proceedings do not fall under Article 39 EC, it is necessary to investigate which provision of the Treaty is applicable to a situation such as that of Mr Rüffler.

55 As a German national, Mr Rüffler enjoys the status of a citizen of the Union established by Article 17(1) EC and may, therefore, rely if necessary on the rights conferred on those having that status, such as the rights to move freely and to reside freely laid down in Article 18(1) EC (see, to that effect, Case C-499/06 *Nerkowska* [2008] ECR I-3993, paragraph 22, and *Zablocka-Weyhermüller*, paragraph 26).

56 A situation such as that of Mr Rüffler is covered by the right of free movement and residence in the Member States of citizens of the European Union. Persons who, after retirement, leave the Member State of which they are nationals and in which they have carried out all their occupational activity in order to set up residence in another Member State exercise the right which Article 18(1) EC confers on every citizen of the European Union to move and reside freely within the territory of the Member States (see, to that effect, *Turpeinen*, paragraphs 16 to 19).

57 It is necessary to point out that, even though the national court does not refer to Article 18 EC in the wording of its preliminary question, the Court is not thereby precluded from providing the national court with all those elements for the interpretation of Community law which may be of assistance in adjudicating on the case pending before it, whether or not that court has specifically referred to them in its question (see, to that effect, Case C-241/89 *SARPP* [1990] ECR I-4695, paragraph 8; Case C-152/03 *Ritter-Coulais* [2006] ECR I-1711, paragraph 29; and Case C-392/05 *Alevizos* [2007] ECR I-3505, paragraph 64).

58 Mr Rüffler's situation must, accordingly, be examined in the light of the principle of the right conferred by Article 18(1) EC on every citizen of the European Union to move and reside freely within the territory of the Member States.

59 Lastly, with regard to Article 12 EC, the first paragraph of that article states that, within the scope of application of the Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality is to be prohibited. In addition, it is settled case-law that the principle of non-discrimination laid down in Article 12 EC requires that comparable situations must not be treated differently unless such treatment is objectively justified (see Case C-403/03 *Schempp* [2005] ECR I-6421, paragraph 28).

– Compatibility with Article 18 EC

60 By its question, the national court asks, essentially, whether Article 18 EC precludes legislation of a Member State which makes the granting of a right to a reduction of income tax by the amount of health insurance contributions paid conditional on payment of those contributions in that Member State, on the basis of national law, and leads to such a tax advantage being refused where the contributions liable to be deducted from the amount of income tax due in that Member State were paid under the compulsory health insurance scheme of another Member State.

61 In relation to that question, it should be noted first of all that the national court proceeds on the assumption that the health insurance contributions which the main action seeks to have taken into account for the purposes of a reduction of tax have not already been taken into account for tax purposes in the Member State in which they were paid.

62 According to settled case-law, the status of citizen of the European Union is destined to be the fundamental status of nationals of the Member States, enabling those among such nationals who find themselves in the same situation to receive the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for in that regard (see, in particular, Case C-224/02 *Pusa* [2004] ECR I-5763, paragraph 16; Case C-76/05 *Schwarz and Gootjes-Schwarz* [2007] ECR I-6849, paragraph 86; and Case C-524/06 *Huber* [2008] ECR I-0000, paragraph 69).

63 Situations falling within the scope of Community law include those involving the exercise of the fundamental freedoms guaranteed by the Treaty, in particular those involving the freedom to move and reside within the territory of the Member States, as conferred by Article 18 EC (*Pusa*, paragraph 17, and *Schwarz and Gootjes-Schwarz*, paragraph 87).

64 Inasmuch as a citizen of the Union must be granted, in all Member States, the same treatment in law as that accorded to nationals of those Member States who find themselves in the same situation, it would be incompatible with the right to freedom of movement were a citizen to receive, in the host Member State, treatment less favourable than that which he would enjoy if he had not availed himself of the opportunities offered by the Treaty in relation to freedom of movement (see, by analogy, on treatment in the Member State of which the citizen of the Union is a national, *Pusa*, paragraph 18; *Schwarz and Gootjes-Schwarz*, paragraph 88; and Case C-318/05 *Commission* v *Germany* [2007] ECR I-6957, paragraph 127).

65 Those opportunities could not be fully effective if a national of a Member State could be deterred from availing himself of them by obstacles placed in the way of his stay in the host Member State by national legislation penalising the fact that he has used them (see, to that effect, *Pusa*, paragraph 19; see also Case C-192/05 *Tas-Hagen and Tas* [2006] ECR I-10451, paragraph 30, and *Zablocka-Weyhermüller*, paragraph 34).

66 It is therefore necessary to establish whether legislation such as that at issue in the main proceedings introduces, as between Community nationals in the same situation, a difference of treatment unfavourable to those who have exercised their right to move freely and whether, if established, such a difference of treatment can in certain circumstances be justified.

67 Legislation such as that at issue in the main proceedings introduces a difference in the treatment of resident taxpayers according to whether health insurance contributions capable of being deducted from the amount of income tax due in Poland have or have not been paid under a national compulsory health insurance scheme. Pursuant to such legislation, only taxpayers whose health insurance contributions are paid in the Member State of taxation benefit from the right to a reduction of the tax at issue in the main proceedings.

68 With regard to the taxation of their income in Poland, it should be borne in mind that resident taxpayers paying contributions to the Polish health insurance scheme and those falling within a compulsory health insurance scheme of another Member State are not in objectively different situations capable of justifying such a difference in treatment according to the place where the contributions are

paid.

69 The situation of a retired taxpayer, such as Mr Rüffler, resident in Poland and receiving pension benefits paid under the compulsory health insurance scheme of another Member State, and that of a Polish retired person also resident in Poland but receiving his pension under a Polish health insurance scheme, are comparable as regards taxation principles since, in Poland, both are subject to an unlimited liability to tax.

70 Thus, the taxation of their income in that Member State should be carried out in accordance with the same principles and, consequently, on the basis of the same tax advantages, that is, in the context of the case in the main proceedings, the right to a reduction of income tax.

71 It must, moreover, be stated that, in Mr Rüffler's situation, the contributions which he pays in Germany fall under compulsory health insurance in Germany. Those contributions are levied directly on the income which he receives, that is, the occupational pension and the invalidity pension, and transferred to the German health insurance institution. After the transfer of his residence to Poland, Mr Rüffler continued to receive his occupational pension and his invalidity pension from Germany and, pursuant to Articles 28 and 28a of Regulation No 1408/71, he has the right in Poland to benefit from healthcare the costs of which are subsequently assumed by his German health insurance.

72 To the extent to which it makes the granting of a tax advantage in connection with health insurance contributions conditional on those contributions having been paid to a Polish health insurance body and leads to that advantage being refused to taxpayers who have paid contributions to the body of another Member State, the national legislation at issue in the main proceedings disadvantages taxpayers who, like Mr Rüffler, have exercised their freedom of movement by leaving the Member State in which they have carried out all their occupational activity in order to take up residence in Poland.

73 Such national legislation, which disadvantages some nationals of a Member State simply because they have exercised their freedom to move and to reside in another Member State, amounts to a restriction on the freedoms conferred by Article 18(1) EC on every citizen of the Union.

74 Such a restriction can be justified, under Community law, only if it is based on objective considerations independent of the nationality of the persons concerned and is proportionate to the legitimate objective of the national provisions (Case C-406/04 *De Cuyper* [2006] ECR I-6947, paragraph 40; *Tas-Hagen and Tas*, paragraph 33; and *Zablocka-Weyhermüller*, paragraph 37).

75 It thus remains to be established whether objective considerations exist which justify a difference in tax treatment such as that at issue in the main proceedings.

76 The Polish Government has not put forward any submissions in that regard.

77 The national court seeks, however, to determine whether the fact that taxpayers who pay their obligatory health insurance contributions to foreign institutions do not contribute to the financing of the Polish health insurance scheme, since the foreign institution reimburses, that is, transfers to the Republic of Poland's National Health Fund only the costs of the healthcare benefits actually provided to those taxpayers on Polish territory, could constitute sufficient objective justification of the difference in tax treatment resulting from Article 27b of the Law on income tax.

78 Such evidence of justification cannot be accepted. A restriction such as that at issue in the main

proceedings cannot be justified by the fact, on the one hand, that the German compulsory insurance institution covers only costs of benefits actually provided to Mr Rüffler and, on the other hand, that only when Mr Rüffler is in receipt of healthcare benefits do his contributions contribute to the Polish health insurance scheme.

79 As the national court, along with the Commission and the EFTA Surveillance Authority, rightly states, the fact that the costs of the healthcare benefits provided to German nationals resident in Poland are reimbursed to the Polish National Health Fund by the competent German insurance institution results from the combined application of the Community rules relating to the coordination of social security schemes, and particularly Articles 28 and 28a of Regulation No 1408/71, as well as Article 95 of Regulation No 574/72, as amended and updated by Regulation No 118/97.

80 In the case in the main proceedings, the consequence in particular is that, although the health insurance contributions of a German national such as Mr Rüffler are not paid directly to the Polish National Health Fund, the medical costs incurred by that national do not constitute a burden for the Polish health care system.

81 The purpose of the rules of secondary legislation coordinating the social security systems of the Member States is to protect the social rights of persons moving within the European Union and to ensure that their right to receive social security benefits is not affected by their actual exercise of their right to free movement. The exercise of that freedom would be discouraged were Member States to be free, with regard to the tax treatment of those benefits, to place at a disadvantage persons who receive social security benefits in the context of the health care scheme of another Member State.

82 In that regard, in Case C-107/94 *Asscher* [1996] ECR I-3089, at paragraph 64, the Court took the view that the application of disadvantageous tax treatment, namely a higher rate of income tax, to non-resident taxpayers who were not contributing to the social security scheme of the Netherlands was contrary to Article 52 of the Treaty and could not be justified by whether or not the taxpayer was insured under the particular national social security scheme. It stressed in that regard that the determination of the Member State in which the social contributions are paid merely results from the application of the system put in place by Regulation No 1408/71. The fact that certain taxpayers are not insured with a particular social security scheme and that the contributions to that scheme are consequently not levied on their income in the Member State in question can only derive, if it is justified, from the application, when determining the legislation applicable, of the binding general system set up by Regulation No 1408/71 (see, to that effect, *Asscher*, paragraph 60).

83 The Court has ruled that the fact that Member States are not entitled to determine the extent to which their own legislation or that of another Member State is applicable, since they are under an obligation to comply with the provisions of Community law in force, precludes a Member State from using tax measures in reality to make up for the fact that a taxpayer is not insured with, and does not pay contributions to, its social security scheme (*Asscher*, paragraph 61).

84 As the Commission and the EFTA Surveillance Authority have contended, the same reasoning applies, by analogy, to the restriction of entitlement to a reduction of income tax for the non-contributing taxpayers at issue in the main proceedings.

85 Consequently, to the extent to which the rules concerning both insurance under a particular social insurance scheme of citizens entitled to freedom of residence and the payment of social insurance contributions relating to that scheme are directly established by the provisions of Regulation

No 1408/71, it must be held that a Member State cannot treat less favourably the residence and the taxation of resident taxpayers who, in reliance on the provisions of that regulation, pay contributions to the social insurance scheme of another Member State.

86 As legislation such as that at issue in the main proceedings constitutes a restriction of Article 18 EC which is not objectively justified, it is not necessary to decide whether it is compatible with Article 12 EC.

87 In those circumstances, the answer to the question referred is that Article 18(1) EC precludes legislation of a Member State which makes the granting of a right to a reduction of income tax by the amount of health insurance contributions paid conditional on payment of those contributions in that Member State on the basis of national law and results in the refusal to grant such a tax advantage where the contributions liable to be deducted from the amount of income tax due in that Member State have been paid under the compulsory health insurance scheme of another Member State.

Costs

88 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 (Third Chamber) hereby rules:

Article 18(1) EC precludes legislation of a Member State which makes the granting of a right to a reduction of income tax by the amount of health insurance contributions paid conditional on payment of those contributions in that Member State on the basis of national law and results in the refusal to grant such a tax advantage where the contributions liable to be deducted from the amount of income tax due in that Member State have been paid under the compulsory health insurance scheme of another Member State.

[Signatures]

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* Language of the case: Polish.