JUDGMENT OF THE COURT (First Chamber)

21 May 2015 (*)

(Reference for a preliminary ruling — Protocol on the Privileges and Immunities of the European Union — Article 12, second paragraph — Tax levied for the benefit of local authorities on person having the use of or having at their disposal residential premises in their area — Upper limit — Social policy measure — Taking into account salaries, wages and emoluments paid by the European Union to its officials and other servants)

In Case C‑349/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (France), made by decision of 2 July 2014, received at the Court on 21 July 2014, in the proceedings

Ministre délégué, chargé du budget

v

Marlène Pazdziej,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, A. Borg Barthet, E. Levits, M. Berger and F. Biltgen (Rapporteur), Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the French Government, by D. Colas and J.-S. Pilczer, acting as Agents,

– the Belgian Government, by S. Vanrie and J.-C. Halleux, acting as Agents,

– the European Commission, by F. Clotuche-Duvieusart, I. Martínez del Peral and W. Roels, 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 relates to the interpretation of the second paragraph of Article 12 of the Protocol on the Privileges and Immunities of the European Union, annexed to the EU, FEU and EAEC Treaties ('the Protocol').

2 The request has been made in proceedings between the ministre délégué, chargé du budget [the Minister responsible for the budget] and Ms Pazdziej on the question of whether the salary which is paid to her by the European Union should be taken into account in order to set the upper limit on her liability with respect to a tax levied for the benefit of local authorities, called the 'residence tax', imposed on persons having the exclusive use of, or having at their exclusive disposal, residential premises in France on 1 January of the taxable year.

Legal context

EU law

3 Article 12 of the Protocol provides:

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

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

French law

4 Article 1414 A of the code général des impôts français (the French General Tax Code), in the version applicable to the main proceedings, determines as follows how the upper limit of liability with respect to residence tax is to be calculated:

'I. Taxpayers other than those referred to in Article 1414, whose total income in the preceding year does not exceed the limit laid down in Article 1417, II, shall be automatically exempted from the residence tax payable on their main place of residence with regard to the fraction of their liability which exceeds 3.44% of their income within the meaning of Article 1417, IV reduced by a rebate fixed at:

a. EUR 5 038 with respect to the first unit [parental] of the "quotient familial" [family income splitting system], increased by EUR 1 456 with respect to the first four half-units [child] and EUR 2 575 with respect to the fifth and each additional half-unit, in metropolitan France;

...

II. 1. For the purposes of applying I:

a. 'Income' means the income of the tax household of the taxpayer on whom the tax is imposed;

...'

5 Article 1417 of the code states the thresholds and the manner of calculation of the qualifying taxable income:

'...

II. The provisions of Article 1414 A are applicable to taxpayers the amount of whose income in the year preceding that in which the tax is imposed does not exceed the sum of EUR 23 224, with respect to the first unit of the "quotient familiale", increased by EUR 5 426 with respect to the first

half-unit and EUR 4 270 for the second and each additional half-unit, used for the calculation of the income tax pertaining to that income ...

...

IV. 1 °For the purposes of applying this article, “amount of income” means the net amount after any application of the income splitting rules defined in Article 163-0 A for income and capital gains used for the imposition of income tax on income in the preceding year.

That amount shall be increased by:

...

(c) the amount of the income ... received by officials of international organisations ...;

...’

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

6 Ms Pazdziej, a European Union official, is the owner of a house in Lomme (France) together with her partner, with whom she has entered into a ‘pacte civil de solidarité’ [civil partnership] under French civil law.

7 Since she considered that, under the second paragraph of Article 12 of the Protocol, the remuneration which she receives from the Union should not be taken into account in the calculation of the reference taxable income relevant to the determination of the upper limit of the residence tax imposed with respect to the house which she occupies with her partner, she applied to the competent tax authority for automatic exemption from that tax for 2010.

8 By a judgment of 13 May 2013, the tribunal administratif of Lille (France) upheld that application.

9 The ministre délégué, chargé du budget, brought an appeal on a point of law against that judgment before the referring court. The referring court states that, in accordance with the Court’s case-law, the provisions of the second paragraph of Article 12 of the Protocol preclude not only direct but also indirect taxation by the Member States of remuneration paid by the Union.

10 However the ministre délégué asserts that, on the one hand, the judgment in *Vander Zwalmen and Massart* (C-229/98, EU:C:1999:501) indicates that those provisions do not preclude the refusal of a tax advantage, which applies indiscriminately to households whose income fall below a certain amount, to households in which one spouse is an official or other servant of the Union and where the salary of that spouse exceeds that amount.

11 On the other hand, in accordance with the guidance to be derived from the judgment in *Bourgès-Maunoury and Heintz* (C-558/10, EU:C:2012:418), where the issue was the manner of determining the cap on the French impôt de solidarité sur la fortune (wealth tax), Article 12 of the Protocol precludes the possibility of the remuneration of officials and other servants of the Union being taken into account for the calculation of the amount of the tax payable.

12 In those circumstances, the Conseil d’État decided to stay proceedings and to refer the following question to the Court for a preliminary ruling:

‘Do the provisions of the second paragraph of Article 12 of [the Protocol] preclude any account being taken, for the purposes of calculating a tax household’s notional income, of the remuneration

received by an official or other servant of the European Union who is a member of that tax household, where such taking into account is liable to affect the amount of taxation payable by that tax household? Alternatively, is it necessary to apply the judgment in *Vander Zwalmen and Massart* (C‑229/98, EU:C:1999:501) by analogy, when the purpose of taking such remuneration into account, with a view to the possibility of applying a social policy measure designed to (a) exempt payment of tax, (b) grant a reduction in the basis of assessment or, more generally, (c) grant a tax reduction, is only to ascertain whether or not the notional income of the tax household is less than the threshold laid down by national tax law for the grant of the benefit — possibly adjusted by reference to the notional income — of that social policy measure?'

Consideration of the question referred for a preliminary ruling

13 By its question, the referring court seeks, in essence, to ascertain whether the second paragraph of Article 12 of the Protocol must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which takes into consideration salaries, wages and emoluments paid by the Union to its officials and other servants in order to determine the upper limit of the liability established with respect to a residence tax levied for the benefit of local communities, with a view to the possible granting of relief from that tax.

14 In order to answer that question, it must be recalled that Article 12 of the Protocol ensures a uniform treatment of the said salaries, wages and emoluments for all the officials and other servants of the Union, preventing, firstly and chiefly, their effective remuneration from differing according to their nationality or fiscal domicile as a result of the assessment of different national taxes, and, secondly, preventing this remuneration from being inordinately taxed as a result of double liability (judgment in *Brouerius van Nidek*, 7/74, EU:C:1974:73, paragraph 11).

15 Consequently, there is under EU law a clear distinction between income subject to the control of the national tax authorities of the Member States, on the one hand, and the salaries of officials and other servants of the Union on the other, since those salaries are subject to EU law alone as regards any liability to tax while the other income of officials remains subject to taxation by the Member States (see, to that effect, judgment in *Humblet* v *Belgian State*, 6/60-IMM, EU:C:1960:48, p. 578).

16 It follows that the exemption provided by the second paragraph of Article 12 of the Protocol therefore only covers national taxes of a similar nature to those levied by the Union on the same sources of income (judgment in *Brouerius van Nidek*, 7/74, EU:C:1974:73, paragraph 12).

17 Further, it must be added that the Court has previously held that the second paragraph of Article 12 of the Protocol provides for an exemption from all direct and indirect national taxes on salaries, wages and emoluments paid by the Union to its officials or other servants. It precludes, therefore, any national tax, regardless of its nature and the manner in which it is levied, which is imposed directly or indirectly on officials or other servants, by reason of the fact that they are in receipt of remuneration paid by the Union, even if the tax in question is not calculated by reference to the amount of that remuneration (judgments in *Commission* v *Belgium*, 260/86, EU:C:1988:91, paragraph 10; *Tither*, C‑333/88, EU:C:1990:131, paragraph 12; *Kristoffersen*, C‑263/91, EU:C:1993:207, paragraph 14, and *Vander Zwalmen and Massart*, C‑229/98, EU:C:1999:501, paragraph 24).

18 Thus, that provision prohibits the taking into account of the salaries paid by the Union to its officials and other servants in order to determine the rate of tax due on other income which is not exempted, where the national tax law provides for a system of taxation on a rising scale. That is because an official would be taxed more heavily in respect of his private income because he

receives a salary from the Union (see, to that effect, judgment in *Humblet* v *Belgian State*, 6/60-IMM, EU:C:1960:48, p. 579).

19 On the other hand, Article 12 of the Protocol does not require Member States to grant officials and other servants of the Union the same advantages that are granted to beneficiaries determined in accordance with the relevant national provisions. Article 12 merely requires that, whenever such persons are subject to certain taxes and satisfy the conditions of the relevant national legislation, they are able to enjoy any tax advantage normally available to taxable persons, so as to prevent their being subject to a greater tax burden (judgment in *Tither*, C-333/88, EU:C:1990:131, paragraph 15), or being subject to discrimination as compared with all other taxpayers (see, to that effect, judgment in *Vander Zwalmen and Massart*, C-229/98, EU:C:1999:501, paragraph 26).

20 The foregoing considerations must guide the Court in its approach to the determination of whether the second paragraph of Article 12 of the Protocol precludes the national legislation at issue in the main proceedings.

21 As is apparent from the file submitted to the Court, what gives rise to a liability to residence tax is the fact of having at one's exclusive disposal, or having exclusive use of, residential premises in an area of France, the tax base of that tax constituting the registered net rental value and the rate of tax being determined by the local authorities.

22 In that context, the Court has previously held that the taxation of the rental value of the home of an official or other servant of the Union is charged on an objective basis and has no legal connection with the salaries, wages and emoluments paid by the Union (judgment in *Kristoffersen*, C-263/91, EU:C:1993:207, paragraph 15).

23 It follows that the residence tax at issue in the main proceedings cannot be treated as equivalent to taxation based on the salaries, wages and emoluments paid by the Union to its officials and other servants.

24 In that regard, the fact that there may, in certain cases, be a correlation between the amount of the liability with respect to that tax and the amount of the salaries, wages and emoluments paid by the Union is not decisive.

25 It must be observed that, in the main proceedings, what is at issue is not the principle of whether an official or servant of the Union should be subject to residence tax, but only whether the salaries, wages and emoluments paid to them by the Union should be taken into account for the calculation of the income of the tax household taken into consideration in order to determine whether the person liable for that tax may qualify for a cap on liability with respect to that tax.

26 First, it is clear that the national legislation at issue in the main proceedings contains no provision which prevents officials and other servants of the Union from qualifying for partial relief from residence tax on the same conditions as are applicable to any other taxpayer who may qualify for that advantage, namely that the reference taxable income should not exceed the statutorily defined threshold.

27 That is because the reason for the exclusion from partial relief from residence tax is not the status of being an official or other servant of the Union who receives a salary which exceeds the threshold of the reference taxable income, but is a consequence of the general condition relating to the amount of income which gives rise to entitlement to the advantage at issue, a condition which applies without discrimination not only to officials and other servants of the Union but to any other taxpayer in the Member State concerned.

28 Secondly, it must be observed that, as is apparent from paragraph 21 of this judgment, the tax at issue in the main proceedings depends essentially on the rental value of the residential premises and does not relate to either the taxpayer's ability to pay or the full extent of the taxpayer's assets. The taxpayer's ability to pay is taken into account only for the purposes of obtaining the tax advantage and does not constitute the actual subject of residence tax.

29 In that regard, it must be stated that the system for the granting of partial relief from residence tax was introduced in order to avoid situations of injustice and represents a social policy measure which enables low-income tax households to cope with local taxes. If it were accepted that salaries, wages and emoluments paid by the Union could be excluded on the basis of the provisions of Article 12 of the Protocol, that would consequently have the effect of altering the essential nature of the social policy measure introduced.

30 In the light of all the foregoing, the case in the main proceedings can be distinguished from that which gave rise to the judgment in *Bourgès-Maunoury and Heintz* (C-558/10, EU:C:2012:418), where the Court held, first, that the legislation on the wealth tax at issue in that case was related to the salaries, wages and emoluments paid by the Union, since those salaries, wages and emoluments are taken into account for the purposes of determining the final rate of tax and, second, that the effect of that tax was indirectly to tax the income of officials and other servants of the Union.

31 In the light of the foregoing, the answer to the question referred is that the second paragraph of Article 12 of the Protocol must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which takes into consideration salaries, wages and emoluments paid by the Union to its officials and other servants in order to determine the upper limit on liability with respect to a residence tax levied for the benefit of local communities, with a view to the possible granting of relief from it.

Costs

32 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 (First Chamber) hereby rules:

The second paragraph of Article 12 of the Protocol on the Privileges and Immunities of the European Union, annexed to the EU, FEU and EAEC Treaties, must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which takes into consideration salaries, wages and emoluments paid by the Union to its officials and other servants in order to determine the upper limit on liability with respect to a residence tax levied for the benefit of local communities, with a view to the possible granting of relief from it.

[Signatures]

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* Language of the case: French.