JUDGMENT OF THE COURT (Sixth Chamber)
17 June 1993 *

In Case C-88/92,

REFERENCE to the Court under Article 177 of the EC Treaty by the Hoge Raad der Nederlanden for a preliminary ruling in the proceedings pending before that court between

X

and

Staatssecretaris van Financiën,

on the interpretation of Article 14 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965,

THE COURT (Sixth Chamber),

composed of: C. N. Kakouris, President of the Chamber, G. F. Mancini, F. A. Schockweiler, M. Diez de Velasco and P. J. G. Kapteyn, Judges,

Advocate General: M. Darmon,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— X, by J. J. M. Hertoghs, of the Breda Bar,

— the Netherlands Government, by T. Heukels, Assistant Legal Adviser in the Ministry of Foreign Affairs, acting as Agent,

* Language of the case: Dutch.

— the Commission of the European Communities, by D. Gilmour, Legal Adviser, and B. Smulders, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of X, the Netherlands Government and the Commission at the hearing on 21 January 1993,

after hearing the Opinion of the Advocate General at the sitting on 31 March 1993,

gives the following

Judgment

1 By judgment of 11 March 1992, received at the Court on 18 March 1992, the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty several questions on the interpretation of Article 14 of the Protocol on the Privileges and Immunities of the European Communities ('the Protocol'). Those questions arose in proceedings between X and the Netherlands tax authorities.

2 X is a Netherlands national who resided and worked in the Netherlands until February 1982. On 1 March 1982 he was appointed as an official by the Commission of the European Communities and moved his residence from the Netherlands to Luxembourg.

3 On 30 November 1988 the Inspector of Taxes for Leyden sent X an income tax reassessment for 1982. X brought an action against this decision. On 2 July 1990 the Gerechtshof (Regional Court of Appeal), The Hague, gave judgment determining the amount of additional income tax for 1982.

4 On appeal to the Hoge Raad der Nederlanden, the issue between the parties concerned particularly the interpretation of Article 14 of the Protocol. X claimed that he had already formed the intention of leaving the Netherlands before accepting the post which was offered to him with the Communities. Therefore, in his submission, it cannot be said that he moved to another Member State 'solely' by reason of the performance of his duties in the service of the Communities, within the meaning of Article 14 of the Protocol.

5 The Hoge Raad has therefore referred the following questions to the Court for a preliminary ruling:

'1. May it be said that it is solely by reason of the performance of his duties in the service of the Communities that a Community official establishes his residence in the territory of a Member State other than that in which he had his domicile for tax purposes at the time of entering the service of the Communities if, even before accepting that post, it was his intention to settle in that other Member State?

Is it relevant to the answer to that question:

(a) whether the fulfilment of that intention was dependent for the official on finding suitable employment there, and/or

(b) whether, when he accepted his post with the Communities, he established his residence in that Member State in order to be able to take up that post?

2. Does Article 14 of the Protocol on the Privileges and Immunities of the European Communities, in the light of the purpose and tenor of that Protocol as indicated in the preamble thereto and Article 18 thereof, permit the official concerned — should he so wish — to be domiciled for tax purposes in that other Member State? Is it relevant for that purpose whether he has settled in the territory of the other Member State?'

6 Reference is made to the Report for the Hearing for a fuller account of the facts of the main proceedings, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

7 In essence the questions from the national court seek to ascertain whether Article 14 of the Protocol gives an official of the Communities a choice as to his domicile for tax purposes and whether the fact that an official intended, before entering the service of the Communities, to move to the Member State where he was to work must be taken into consideration for the purpose of applying that provision of the Protocol.

8 In order to answer those questions, it must be observed that pursuant to Article 13 of the Protocol, officials and servants of the Communities are liable to a tax for the benefit of the Communities on salaries, wages and emoluments paid to them by the Communities and that they are exempt from national taxes on salaries, wages and emoluments paid by the Communities.

9 Article 14 of the Protocol provides that in the application of, *inter alia*, income tax, officials and other servants of the Communities who, solely by reason of the performance of their duties in the service of the Communities, establish their residence in the territory of a Member State other than their country of domicile for tax purposes at the time of entering the service of the Communities, are considered both in the country of their actual residence and in the country of domicile for tax purposes as having maintained their domicile in the latter country provided that it is a member of the Communities.

10 It is clear from Article 18 of the Protocol that the rules of the Protocol are laid down solely in the interests of the Communities.

11 Articles 13 and 14 of the Protocol establish a division of taxation powers between the Communities, the Member State where the official had his domicile for tax

purposes before entering the service of the Communities and the Member State where he performs his duties in the service of the Communities.

12 It follows that the division of powers established by Article 14 of the Protocol would be compromised if an official had the free choice to move his domicile for tax purposes to a State other than that of his original domicile for tax purposes.

13 Consequently Article 14 must be interpreted as meaning that the domicile for tax purposes of a Community official cannot depend on the volition of the person concerned.

14 Moreover, the need for uniform application of the Protocol as regards the tax regime of Community officials means that no account can be taken of the mere intentions of an official in order to determine whether he established his residence solely by reason of his duties.

15 However, he may adduce proof that he had already taken steps to transfer his domicile irrespective of entering the service of the Communities.

16 Therefore the reply to the questions referred by the national court must be that Article 14 of the Protocol does not give an official of the Communities a choice as to the establishment of his domicile for tax purposes and that an official's intention, formed before entering the service of the Communities, to transfer his domicile to the Member State of the place of performance of his duties cannot be taken into account for the purpose of considering whether he has established his residence solely by reason of the performance of his duties, unless he adduces proof that he had already taken steps to transfer his domicile irrespective of entering the service of the Communities.

Costs

17 The costs incurred by the Netherlands Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber)

in answer to the questions referred to it by the Hoge Raad der Nederlanden, by judgment of 11 March 1992, hereby rules:

Article 14 of the Protocol on the Privileges and Immunities of the European Communities must be interpreted as meaning that it does not give an official of the Communities a choice as to the establishment of his domicile for tax purposes and that an official's intention, formed before entering the service of the Communities, to transfer his domicile to the Member State of the place of performance of his duties cannot be taken into account for the purpose of considering whether he has established his residence solely by reason of the performance of his duties, unless he adduces proof that he had already taken steps to transfer his domicile irrespective of entering the service of the Communities.

Kakouris Mancini

Schockweiler Diez de Velasco Kapteyn

Delivered in open court in Luxembourg on 17 June 1993.

J.-G. Giraud C. N. Kakouris

Registrar President of the Sixth Chamber