Court of Justice of the European Union
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Press and Information

Judgment in Case C-168/19
HB v Istituto Nazionale della Previdenza Sociale (INPS)
and C-169/19, IC v INPS

The Italian tax regime resulting from the Italian-Portuguese double taxation convention does not infringe the principles of freedom of movement and non-discrimination

Pensioners in the private and public sectors may be subject to different national tax regulations

HB and IC, of Italian nationality, are former Italian public sector employees receiving a retirement pension from the Istituto Nazionale della Previdenza Sociale (National Social Security Institute, Italy) ('the INPS') After transferring their residence to Portugal, they requested the INPS, in 2015, that they receive, pursuant to the Italian-Portuguese double taxation convention[1], **the gross amount of their pension without deduction of tax at source by Italy, so as to be able to benefit from the tax advantages offered by Portugal.**

The INPS rejected those requests, taking the view that those rules apply **only** to **Italian private-sector pensioners** who have transferred their residence to Portugal and to Italian public-sector pensioners who, in addition to having transferred their residence to Portugal, have acquired Portuguese nationality (a condition which HB and IC do not meet).

HB and IC then brought actions before the Corte dei conti – Sezione Giurisdizionale per la Regione Puglia (Court of Auditors - Judicial Chamber for the Region of Puglia, Italy). That court asks the Court of Justice **whether the Italian tax system as it results from the convention constitutes an obstacle to the freedom of movement[2] of Italian public sector pensioners and discrimination on grounds of nationality**[3].

By today's judgment, **the Court answers both questions in the negative**.

The Court recalls its case-law[4] according to which Member States are free, within the framework of double taxation conventions, to lay down the criteria for the allocation of tax jurisdiction between them, and such conventions are not intended to ensure that taxation in one State is not higher than taxation in another State. In this context, Member States may in particular allocate tax jurisdiction on the basis of criteria such as paying State or nationality.

The difference in treatment which HB and IC claim to have suffered arises from the allocation of the power to impose taxes between Italy and Portugal and from the disparities existing between the tax systems of those Member States. In these circumstances, there can be no question of prohibited discrimination.

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[1] Convenzione tra la Repubblica italiana e la Repubblica portoghese per evitare le doppie imposizioni e prevenire l'evasione fiscale in materia di imposte sul reddito (Convention between the Italian Republic and the Portuguese Republic for the avoidance of double taxation and the prevention of tax evasion with regard to income tax), signed in Rome on 14 May 1980, ratified by the Italian Republic by legge n. 562 (Law No. 562), of 10 July 1982.
[2] Article 21 of the Treaty on the Functioning of the European Union (TFEU).
[3] Article 18 TFEU.
[4] Case C-241/14, Bukovansky; and Case C-336/96, Gilly see Press Release No. 33/98
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NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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