# Case C-119/24 [Chefquet] [i]

## Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

**Date lodged:**

14 February 2024

**Referring court:**

Cour d'appel de Liège (Belgium)

**Date of the decision to refer:**

5 February 2024

**Appellants:**

DK

JO

**Respondent:**

État belge, represented by the Minister for Finance

---

**The facts, procedure and subject matter of the dispute in the main proceedings**

1 The dispute in the main proceedings concerns non-resident tax contributions and, more specifically, the additional tax provided for in Article 245 of the code des impôts sur les revenus 1992 (Belgian Income Tax Code 1992, 'the CIR 92') to which non-residents are subject, and its compatibility with Article 45 TFEU.

2 The appellants, DK and JO, were French residents during the tax periods and tax years at issue in the present case. DK worked as a professor at several Belgian universities and as a research director at the National Centre for Scientific Research in Paris. His wife, JO, had been in salaried employment in France but has not been employed since 2000.

[i] The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

3 They were taxed by the Kingdom of Belgium as non-residents. They challenged the non-resident tax contributions for the tax years from 1992 to 1998, from 2001 to 2003 and from 2007 to 2009, by lodging several objections against those contributions. All the non-resident tax contributions at issue included additional State surcharges, pursuant to Article 245 of the CIR 92.

4 The objections in question were rejected or declared admissible but unfounded (or partially well founded as regards the claim relating to the contribution for the 2008 tax year) by a number of administrative decisions.

5 The appellants then challenged those contributions before the tribunal de première instance de Namur (Court of First Instance, Namur, Belgium), bringing four separate applications.

6 By judgment of 20 January 2016, the Court of First Instance, Namur joined the four applications. In essence, it held that the applications for annulment of the contributions at issue were unfounded. It also referred questions for a preliminary ruling to the Cour constitutionnelle (Constitutional Court, Belgium), which answered them in a judgment of 6 June 2019.

7 On 3 February 2020, the appellants brought an appeal against the judgment of the Court of First Instance, Namur before the Cour d'appel de Liège (Court of Appeal, Liège, Belgium, 'the referring court').

## Legal framework

### *EU law*

8 The provision of EU law at issue in the present case is Article 45 of the Treaty on the Functioning of the European Union (TFEU), which concerns the freedom of movement of workers and the prohibition of discrimination based on nationality between workers of the Member States.

### *National law*

9 Article 245 of the CIR 92 provides that the taxation of non-residents, established in accordance with Articles 243 and 244 of CIR 92, is subject to a tax supplement, namely surcharges, for the benefit of the State. Those surcharges are calculated in accordance with the detailed rules laid down in Article 466 of the CIR 92 for the calculation of the municipal surcharges established by the Belgian agglomerations and municipalities borne by the inhabitants of the Kingdom who have their principal residence in those agglomerations and municipalities.

10 The amount of the surcharges referred to in Article 245 of the CIR 92 varied from 6 to 7% for the tax years 1992 to 2009.

**Arguments of the parties**

11 The appellants (DK and JO) have requested that two questions be referred to the Court of Justice of the European Union ('the Court of Justice') for a preliminary ruling.

12 The first question they propose to refer concerns the compatibility of the measure provided for in Article 245 of the CIR 92 with Article 45 TFEU, in that Article 245 of the CIR 92 subjects non-resident taxpayers to an additional tax, for the benefit of the State, which they would not pay if they were resident in the Kingdom of Belgium, and which is established, by analogy, with the local tax provided for in Article 466 of the CIR 92 paid by residents of the Kingdom of Belgium.

13 The appellants further propose that the referring court refer a second question to the Court of Justice for a preliminary ruling concerning the compatibility of Article 25-2 of the Convention between Belgium and France for the avoidance of double taxation with Article 45 TFEU. That provision reduces, for non-residents, the proportion of income exempt from tax (defined in Articles 130 and 131 of the CIR 92) in proportion to the share of their earned income of Belgian origin in relation to their total earned income worldwide.

14 The Belgian State asks the referring court to declare unfounded the appellants' claim that it should refer two questions to the Court of Justice for a preliminary ruling.

**Assessment of the referring court**

15 As regards the question of the compatibility of the measure provided for in Article 245 of the CIR 92 with Article 45 TFEU, the referring court endorses the findings of the Constitutional Court, which was asked about the compatibility of Article 245 of the CIR 92 with Articles 10 and 11 of the Belgian Constitution by the Court of First Instance, Namur, owing to the alleged unjustified discrimination between non-residents and residents which that provision establishes.

16 In its ruling of 6 June 2019, the Constitutional Court considered that, by subjecting non-residents to a tax established for the benefit of the State, calculated on the basis of Article 466 of the CIR 92 relating to municipal surcharges, the provision of Article 245 of the CIR 92 seeks, as the travaux préparatoires indicate, to avoid any discrimination between non-residents and residents of the Kingdom of Belgium subject to the municipal surcharges provided for in Article 466 of the CIR 92. Non-residents in fact generally benefit from the facilities and services provided by the Belgian public authorities, in so far as those facilities and services enable them to acquire the income of Belgian origin on which the non-resident tax due to the Belgian State is calculated. The increase in the tax payable to the State, which results from the surcharges provided for in Article 245 of the CIR 92, thus enables the amount of that tax to be allocated to the performance of tasks in the

public interest for which the Belgian State is responsible. Moreover, the measure in question does not produce manifestly disproportionate effects. The surcharges provided for in Article 245 of the CIR 92 are calculated in proportion to the tax due on income generated or received in Belgium. That measure, which is applicable irrespective of the nationality of the non-resident, is thus intended to ensure that non-residents contribute proportionally to funding tasks in the public interest. As to the remainder, the fact that a non-resident may, depending on the circumstances, be subject to a second residence tax in Belgium or to a residence tax in France is unrelated to the provision in question, since those taxes do not have the same purpose or function and are therefore not comparable to the surcharges provided for by Article 245 of the CIR 92. [ii]

17 The Constitutional Court clarified that it is a tax levied on non-residents, calculated according to the same rules as the municipal supplements on the personal income tax payable by residents of the Kingdom, but which is levied for the benefit of the State and, having regard to that allocation, the measure provided for in Article 245 CIR 92 has neither the same character nor the same aim as the municipal surcharges. [iii]

18 As the Court of Justice points out, 'it is settled case-law that all of the [FEU] Treaty provisions relating to the freedom of movement for persons are intended to facilitate the pursuit by [EU] nationals of occupational activities of all kinds throughout the [EU], and preclude measures which might place [EU] nationals at a disadvantage when they wish to pursue an economic activity in the territory of another Member State' (judgments of 12 December 2002, *de Groot*, C-385/00, EU:C:2002:750, paragraph 77 and the case-law cited, and of 22 June 2017, *Bechtel*, C--20/16, EU:C:2017:488, paragraph 37 and the case-law cited). As a result, Article 45 TFEU precludes any national measure which is capable of hindering or rendering less attractive the exercise by EU nationals of the fundamental freedoms guaranteed by that article (judgment of 10 October 2019, *Krah*, C-703/17, EU:C:2019:850, paragraph 41 and the case-law cited). [iv]

19 Moreover, the Court of Justice has already held that detrimental tax treatment contrary to a fundamental freedom cannot be justified by the existence of other tax advantages, even if those advantages exist. [v]

20 Against that background, the referring court considers that it is appropriate to refer the first question proposed by the appellants, concerning the compatibility of

[ii] Constitutional Court, 6 June 2019, paragraph B.5.2.

[iii] Constitutional Court, 6 June 2019, paragraph B.5.1.

[iv] See also judgment of 15 July 2021, *Belgian State (Loss of tax advantages in the Member State of residence)*, C- 241/20, EU:C:2021:605.

[v] Judgment of 12 December 2002, *de Groot*, C-385/00, EU:C:2002:750, paragraph 97 and the case-law cited.

Article 245 of the CIR 92 with Article 45 TFEU, to the Court of Justice for a preliminary ruling.

21 However, the referring court considers that there is no need to refer the second question proposed by the appellants in the main proceedings to the Court for a preliminary ruling. It considers that it is evident that, according to the Court's clear case-law, Article 25-2 of the double taxation convention concluded between France and Belgium does not infringe Article 45 TFEU.

**Question referred for a preliminary ruling**

'Does Article 45 TFEU preclude the application of Article 245 of the Income Tax [Code], in so far as that article subjects non-resident taxpayers to a State tax supplement of 6-7%, as compared to that which they would pay if they were residents of the Kingdom, that supplement being imposed by analogy with the local tax imposed by Belgian agglomerations and municipalities on residents of the Kingdom who have their principal residence in those agglomerations and municipalities?'