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Court of cassation
Second Civil Chamber
Thursday 20 May 2010 Public Hearing
Appeal number: 09-14679
Not published in the bulletin

Appeal

Mr. Loriferne (President), President
SCP [Civil Law Partnership] Baraduc et Duhamel, SCP [Civil Law Partnership] Le Bret-Desaché, lawyer(s)

FRENCH REPUBLIC
IN THE NAME OF THE FRENCH PEOPLE

THE COURT OF CASSATION, SECOND CIVIL CHAMBER, delivered the following judgment:

On the first ground of appeal:

Considering articles D. 731-47 of the Rural Code and L. 861-2 of the Social Security Code;

Whereas it results from the first of these texts that the beneficiaries of the complementary health protection are exempted from the required payment of solidarity contributions as provided by article L. 861-1 of the Social Security Code; according to the second, the beneficiaries of the minimum insertion income (RMI)¹ are entitled to this protection;

Whereas, according to the contested judgment, rendered by a social security affairs tribunal adjudicating at last instance, the Limousin agricultural social mutual fund claimed the solidarity contribution for the years 2006 and 2007 from Mrs. X..., who operated a dog breeding company, and gave notice to her of an order; the interested party filed an objection before the court of social security;

Whereas to declare this opposition partially founded and to validate the order only up to a certain amount, the judgment notes that Mrs. X... benefited from the RMI since 1 October 2006 and holds that, according to article D. 731-47 of the Rural Code, the beneficiaries of the complementary health protection are exempted from payment of the solidarity contributions and that article L. 861-2 of the Social Security Code provides that the beneficiaries of the RMI are entitled to the complementary health protection, whereby no solidarity contribution was owed by the interested party as of 1 January 2007;

By this ruling, as Mrs. X... was not personally benefiting from the complementary universal health coverage, the tribunal breached the aforementioned texts;

¹¹ Translator's note: this is a stipend for people with no income or an income below a fixed amount.

ON THESE GROUNDS, and without needing to adjudicate on the other grievances of the appeal:

REVERSES AND ANNULS, in all its provisions, the judgment rendered on 19 February 2009, between the parties, by the Tulle Tribunal of Social Security Affairs; returns, as a consequence, the case and the parties to the state preceding said judgment and, for this to be granted, refers them to the Limoges Tribunal of Social Security Affairs;

Condemns Mrs. X... to the costs;

Considering article 700 of the Civil Procedure Code, with article 37 of the Law of 10 July 1991, rejects the respective demands of the parties;

Says that on the diligences of the attorney general upon the Court of Cassation, the present judgment will be transmitted to be entered in the margins or following the reversed judgment;

Thereby done and judged by the Court of Cassation, Second Civil Chamber, and delivered by the President during its public hearing of May twentieth two thousand ten.

MEANS ANNEXED to the present judgment.

Means produced by the SCP [Civil Law Partnership] Baraduc et Duhamel, legal counsel, for the Limousin agricultural social mutual fund.

FIRST GROUND OF APPEAL

IT IS CRITISICED of the appealed judgment that it has declared largely founded the opposition formed by Mrs. X... to the order of 4 June 2008, to only have validated it for 246.98 € and to only have required Mrs. X... to pay this amount to the Limousin agricultural social mutual fund (CMSA);

ON THE GROUNDS THAT Mrs. X... has benefited from the RMI since 1 October 2006; that as provided by article D 731-47 of the Rural Code: “the beneficiaries of the complementary health protection are exempted from the payment of the solidarity contributions provided for in article L 861-1 of the Social Security Code. The benefit of the complementary cover mentioned in the previous subparagraph is assessed 1 January of the year the contributions are due”; that article L 861-2 of the Social Security Code provides furthermore that: “The beneficiaries of the minimum insertion income are entitled to the complementary health protection”; that it results from the combination of these two texts that no solidarity contribution was owed by Mrs X... starting 1 January 2007; that the yearly principle invoked by the MSA² only applies, considering article R 731-57 of the Rural Code, to the contributions owed “by the persons mentioned in articles L 722-9, L 722-10 and L 722-15”, among which are not included the solidary contributors;³ that the contribution owed by Mrs X... for the year 2006 thus has to be calculated *pro rata temporis* and thereby amounts to $1,177 \times \frac{9}{12} = 882.75$ €; 635.77 € should be deducted from this amount;

² Translator’s note: This refers to the CMSA. The acronyms from the original text have been kept.

³ Translator’s note: those that pay the solidarity contribution.

WHEREAS the exemption from the solidarity contribution, provided by article D 731-47 of the Rural Code, is subordinated to the condition that the insured benefits from the complementary health protection (CMU-C), not from the minimum insertion income (RMI); that if the right to benefit from it is open to beneficiaries of the RMI, this complementary health protection is however only attributed to those who request it; that by failing to inquire if Mrs. X... indeed benefited from the relevant advantage, which wasn't the case as she acknowledged in her conclusions that even if she was a beneficiary of the RMI she remained under her husband's social regime and hence didn't ask to benefit from the complementary health protection, the tribunal deprived its decision of a legal basis considering articles L 731-23 and D 731-47 of the Rural Code.

3- Considering article L 731-23 of the Rural Code, the solidarity contributions are owed by the sole holders who manage a farm business or company of which the importance is included between one eighth and a half minimum settlement area (SMI), or, when the importance of the area cannot be valued with respect to the SMI, the work schedule is between 150 and 1,200 hours per year.

SECOND GROUND OF APPEAL (SUBSIDIARY)

IT IS CRITISICED of the appealed judgment that it has declared largely founded the opposition formed by Mrs. X... to the order of 4 June 2008, to only have validated it for 246.98 € and to only have required Mrs. X... to pay this amount to the Limousin agricultural social mutual fund (CMSA);

ON THE GROUNDS THAT Mrs. X... has benefited from the RMI since 1 October 2006; that as provided by article D 731-47 of the Rural Code: "The beneficiaries of the complementary health protection are exempted from the payment of the solidarity contributions provided for in article L 861-1 of the Social Security Code. The benefit of the complementary cover mentioned in the previous subparagraph is assessed 1 January of the year the contributions are due"; that article L 861-2 of the Social Security Code provides furthermore that: "The beneficiaries of the minimum insertion income are entitled to the complementary health protection"; that it results from the combination of these two texts that no solidarity contribution was owed by Mrs X... starting 1 January 2007; that the yearly principle invoked by the MSA only applies, considering article R 731-57 of the Rural Code, to the contributions owed "by the persons mentioned in articles L 722-9, L 722-10 and L 722-15", among which are not included the solidary contributors; that the contribution owed by Mrs X... for the year 2006 thus has to be calculated *pro rata temporis* and thereby amounts to $1,177 \times \frac{9}{12} = 882.75$ €; 635.77 € should be deducted from this amount;

WHEREAS according to article L 731-23 of the Rural Code, the solidarity contribution is calculated on the basis of the professional income from the year previous to the one that the contribution is due; that considering article D 731-47 of the same Code, the benefit of being exempted from the payment of this contribution due to the complementary health coverage is valued 1 January of the year at which the contributions are due; that in this case, to decide that Mrs. X... only owed a contribution for the period of 1 January to 30 September in the year 2006, the tribunal found that the interested party benefited from the RMI since 1 October 2006; that by adjudicating as such, while Mrs. X... didn't benefit from the RMI nor consequently of the complementary health cover on 1 January 2006, and finding that she did not meet the condition

allowing her to be exempted of the solidarity contribution due in the year 2006, the tribunal breached the articles D 731-47, D 731-48 and R 731-57 of the Rural Code.

THIRD GROUND OF APPEAL

IT IS CRITISICED of the appealed judgment that it has declared largely founded the opposition formed by Mrs. X... to the order of 4 June 2008, to only have validated it for 246.98 € and to only have required Mrs. X... to pay this amount to the Limousin agricultural social mutual fund (CMSA);

ON THE GROUNDS that by a request dated 27 June 2008, Mrs. X... filed an objection to the order dated 4 June 2008 notified on 18 June 2008, issued for the amount of 2,354 € by the Limousin MSA for the solidarity contribution of the years 2006 and 2007; that no solidarity contribution was owed by Mrs. X... as of January 2007; that the contribution owed for 2006 amounted to 882.75 € that moreover Mrs. X... produced an order from 11 March 2008 [sic] for 635.77 € and concerning the same period (1 January 2006 – 31 December 2007) for which the MSA does not offer any explanation; that the amount at issue must therefore be deducted from the amount fixed at 882.75 €

WHEREAS an order not contested within the period following its notification prevails over the effects of a passed judgment which has acquired the authority of a final decision; in this case, it is clear from entries of judgment that the tribunal was seized with an opposition filed by Mrs. X... against an order from 4 June 2008; that therefore, by deducting the amount of the contributions concerned by this order, the amount of the contributions for which the MSA delivered an order on 11 March 2008, against which she didn't file an objection, the tribunal has breached articles L 244-9 and R 133-3 of the Social Security Code, with article 1351 of the Civil Code.

Appealed decision: Tulle Tribunal of Social Security Affairs of 19 February 2009