JUDGMENT OF THE COURT (First Chamber)
18 December 1986 *

In Case 426/85

Commission of the European Communities, represented by its Principal Legal Adviser, Raymond Baeyens, acting as Agent, with an address for service in Luxembourg at the office of Georges Kremlis, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

Jan Zoubek, a journalist residing in Brussels, represented by Louis-Philippe Crochon, of the Brussels Bar, with an address for service in Luxembourg at the Discount Bank SA, 18 boulevard Royal,

defendant,

APPLICATION in a dispute concerning non-performance of a contract concluded between the parties,

THE COURT (First Chamber)

composed of: F. Schockweiler, President of Chamber, G. Bosco and R. Joliet, Judges,

Advocate General: Sir Gordon Slynn
Registrar: J. A. Pompe, Deputy Registrar

having regard to the Report for the Hearing and further to the hearing on 13 November 1986,

after hearing the Opinion of the Advocate General delivered at the sitting on 13 November 1986,

* Language of the Case: French.

gives the following

JUDGMENT

1 By application lodged at the Court Registry on 20 December 1985, the Commission of the European Communities brought an action, pursuant to an arbitration clause within the meaning of Article 42 of the ECSC Treaty, Article 181 of the EEC Treaty and Article 153 of the EAEC Treaty, in which it seeks a declaration that the study contract concluded with Mr Jan Zoubek, a journalist in Brussels, has been terminated and an order requiring him to repay the sum of BFR 33 000, which was advanced to him on 7 January 1972, together with interest at the statutory rate in force in Belgium from the date of payment.

2 Mr Zoubek submitted a counterclaim, lodged at the Court Registry on 27 January 1986, alleging that he had made an agreement with the Commission under which he delivered to it by way of consideration for the advance of BFR 33 000 publications to the value of BFR 65 000. He asks the Court to set off the Commission's claim for BFR 33 000 against his own claim and to order the Commission to pay him the balance of BFR 32 000, increased by interest from the date on which the application was lodged.

3 Reference is made to the Report for the Hearing for a more detailed exposition of the facts, the procedure, and the claims and submissions of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

The principal claim

4 As these proceedings have been instituted pursuant to an arbitration clause, the Court must resolve the dispute on the basis of the substantive rules of the national law applicable to the contract, in this case Belgian law, which governs the contract according to Article 8 (2) thereof.

5 The Commission asks the Court in the first place to declare that the contract has been terminated pursuant to Article 7 thereof, and subsequently to order the defendant to repay the sum of BFR 33 000 which was advanced to him, with interest at the statutory rate in force from the date of payment.

6 Article 7 of the contract, which stipulates that the Commission may terminate the contract for non-performance or improper performance on the part of the other contracting party, after giving notice to the latter by registered letter, constitutes an express termination clause, according to which one party may, as a means of penalizing the other party for improper performance of its obligations, terminate the contract without the intervention of the courts.

7 After duly giving the defendant, by registered letter of 27 October 1972, formal notice to perform his obligations, in accordance with Article 7 of the contract, the Commission effectively terminated the contract by registered letter of 21 December 1972.

8 In the event of the termination of a contract, the parties must be restored to the position in which they would have been if they had never entered into the contract. The meaning of the principle of *restitutio ad integrum* is that the parties are under an obligation to return whatever they have received from one another. That obligation extends not only to the asset or sum of money received but also to any yield from that asset or interest generated by the sum received since payment thereof. The defendant is therefore under an obligation to repay the Commission the sum of BFR 33 000, which was advanced to him, with the interest which has accrued to that sum since he received it and which can be assessed in accordance with the various statutory rates in force in Belgium since 7 January 1972.

The counterclaim

9 Since the Commission has objected that the defendant's counterclaim is inadmissible on the ground that it arises from a contract separate from that to which the arbitration clause relates, it is necessary to consider whether the Court has jurisdiction to hear and determine the counterclaim.

10 In that regard, it must be pointed out that although under an arbitration clause, the Court is called upon to resolve a dispute in accordance with the national law governing the contract, the question whether it has jurisdiction to hear and determine a counterclaim and to consider whether it is admissible must be assessed solely in the light of Article 42 of the ECSC Treaty, Article 181 of the EEC Treaty, Article 153 of the EAEC Treaty and the Court's Rules of Procedure.

11 The jurisdiction of the Court, which is based on an arbitration clause, derogates from the ordinary rules of law and must therefore be given a restrictive interpretation. The Court may hear and determine only claims arising from a contract which was concluded with the Community and which contains the arbitration clause or claims that are directly connected with the obligations arising from that contract. Moreover, that is how jurisdiction is defined in Article 6 (3) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, according to which the court in which the original claim is pending has jurisdiction to hear and determine a counterclaim arising from the same contract or facts on which the original claim was based.

12 In this case, under the arrangement relied upon by the defendant, he was to discharge his obligation to repay the advance of BFR 33 000 by providing substitute consideration, namely the delivery of publications. The counterclaim thus arises from the defendant's obligation to repay the advance forming the subject-matter of the original claim, with the result that the Court has jurisdiction to hear and determine the counterclaim.

13 With regard to the question whether the counterclaim is well founded, it should be noted that the Commission denies the existence of the agreement alleged by the defendant and counterclaimant and that the latter has failed to furnish any proof of the existence of such an agreement, which, in accordance with Article 1341 of the Belgian Civil Code, must be in writing.

14 The counterclaim must therefore be dismissed as unfounded and the defendant must be ordered to repay the sum of BFR 33 000, together with interest at the various statutory rates in force in Belgium since 7 January 1972.

Costs

15 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. As the defendant has been unsuccessful in his submissions, he must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber)

hereby:

(1) Orders the defendant to pay the Commission the sum of BFR 33 000, together with interest at the various statutory rates in force in Belgium since 7 January 1972;

(2) Declares that the Court has jurisdiction to hear and determine the counterclaim;

(3) Dismisses the counterclaim as unfounded;

(4) Orders the defendant to pay the costs.

Schockweiler Bosco Joliet

Delivered in open court in Luxembourg on 18 December 1986.

P. Heim
Registrar

F. Schockweiler
President of the First Chamber