JUDGMENT OF THE COURT (Second Chamber)
11 July 1985 *

In Case 111/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal du Travail [Labour Tribunal], Brussels, for a preliminary ruling in the proceedings pending before that court between

Institut national d'assurances sociales pour travailleurs indépendants [National Social Insurance Institution for Self-Employed Workers], Brussels,

and

Nicola Cantisani,

on the interpretation of Articles 1 and 3 of the Conditions of Employment of Other Servants of the European Communities, laid down by Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 (Official Journal, English Special Edition 1968 (I), p. 30),

THE COURT (Second Chamber)

composed of: O. Due, President of Chamber, P. Pescatore and K. Bahlmann, Judges,

Advocate General: M. Darmon
Registrar: D. Louterman, Administrator

after considering the observations submitted on behalf of:

Mr Cantisani, the defendant in the main proceedings, by G. Roberti and F. de Patoul, of the Brussels Bar, and

the Commission of the European Communities, by its Principal Legal Adviser, Raymond Baeyens, acting as Agent,

after the hearing the Opinion of the Advocate General delivered at the sitting on 6 June 1985,

gives the following

* Language of the Case: French.

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By judgment of 13 April 1984, received at the Court Registry on 24 April 1984, the Tribunal du Travail [Labour Tribunal], Brussels, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question concerning the interpretation of Articles 1 and 3 of the Conditions of Employment of Other Servants of the European Communities (hereinafter referred to as 'the Conditions of Employment'), laid down by Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 (Official Journal, English Special Edition, 1968 (I), p. 30).

2 It appears from the documents before the Court that since 1975 the Commission of the European Communities has frequently, for very brief periods, called upon the services of the defendant in the main proceedings, Mr Nicola Cantisani, in his capacity as an interpreter. It is common ground that the Commission never formally recruited Mr Cantisani on those occasions as an employee. Instead, it treated him as subject to the Réglementation concernant les interprètes de conférence indépendants (Free-lance) [Arrangements Regarding Free-lance Conference Interpreters, hereinafter referred to as 'the Arrangements'], in the version of 8 October 1974 which was in force at the material time and which the Commission adopted in conjunction with certain agreements entered into with the International Association of Conference Interpreters (hereinafter referred to as 'the Association').

3 The Arrangements lay down the conditions on which such interpreters are engaged, especially with regard to daily remuneration, daily subsistence allowances, flat-rate travelling allowances, and social security payments. As regards social security, the Arrangements provide that, for every engagement, a payment is to be made by the Commission and by the interpreter to the retirement and life-assurance scheme of an institution approved by the Commission. In accordance with those provisions, Mr Cantisani opted to join a provident fund in Switzerland. In addition, for his daily services he received statements showing the remuneration, allowances and expenses payable to free-lance conference interpreters.

4 In 1982 the plaintiff in the main proceedings, the Institut national d'assurances sociales pour travailleurs indépendants [National Social Insurance Institution for

Self-Employed Workers] in Brussels brought an action before the Tribunal du Travail, Brussels, seeking an order requiring Mr Cantisani to pay contributions which it alleged were due by virtue of Royal Decree No 38 of 27 July 1967 on the social status of self-employed workers, on account of the services which the defendant had rendered in Belgium during 1977 as a professional interpreter for the Commission.

5 In the proceedings before the Tribunal du Travail the plaintiff argued that since Mr Cantisani had stated in his income tax return for 1977 that he worked as a free-lance interpreter he was required, as a self-employed worker, to pay the contributions in question.

6 For his part, Mr Cantisani contended that in 1977 he had been working for the Commission in a situation in which he was virtually covered by the Communities' conditions of employment under various fixed-term contracts of employment and that by virtue of Article 1 of the Conditions of Employment, which provides that such conditions are to apply to 'servants engaged under contract by the Communities', each contract concluded with the Communities for one or more days of interpreting made him a member of the auxiliary staff for the duration of the contract. He claimed that, in working for the Commission, he was not in the position of a self-employed worker but one of subordination to the Communities. In that connection he stressed that it was the Commission, as 'employer', which had determined the exact duties to be performed, had 'summoned' him for a given period in return for a fixed daily remuneration determined and offered by it, had employed him during that time on the same terms as interpreters who are Community officials, and had required him to pay contributions in respect of retirement and life assurance in addition to sickness and accident insurance.

7 The Tribunal du Travail, taking the view that only the Court of Justice was competent to determine the nature of the legal relationship between the European Communities and Mr Cantisani in 1977, stayed the proceedings and referred the following question to the Court:

'Do Articles 1 and 3 of the Conditions of Employment of Other Servants of the European Communities apply, for the duration of their employment, to interpreters engaged by the Commission of the European Communities, where such employment, covering one or more days, is governed by the Commission's Réglementation concernant les interprètes de conférence indépendants (Free-

lance) [Arrangements Regarding Free-lance Conference Interpreters] of 8 October 1974, and where the amounts paid to such interpreters are described as 'remuneration, allowances and expenses payable to free-lance conference interpreters"?'

8 In substance, that question seeks to establish whether the relationship between the Commission and interpreters known as self-employed interpreters, who are engaged according to requirements under contracts of very short duration and who are subjected to the Commission's internal rules, is governed by the Conditions of Employment by virtue of Article 1 and of Article 3 which defines the status of 'auxiliary staff'.

9 In the proceedings before the Court of Justice, Mr Cantisani has contended *inter alia* that the Staff Regulations of Officials, together with the Conditions of Employment, must be regarded as a complete and exhaustive body of rules which regulate the position of any person employed by the Community institutions. Consequently, the Commission cannot engage staff otherwise than under those rules. Since they are not officials, free-lance interpreters must, in the defendant's view, necessarily fall within Article 1 of the Conditions of Employment. Moreover, he maintains that in the Réglementation concernant les interprètes de conférence indépendants (Free lance), adopted by the Bureau of the European Parliament in September 1983, there is an implied acknowledgement that interpreters fall within the scope of the Conditions of Employment.

10 Without ruling out the possibility of a different status being applied to him, Mr Cantisani takes the view that the status of member of the auxiliary staff is particularly appropriate with regard to his own situation. In that respect he points out that whenever he has worked for the Commission he has been engaged under a contract which does not refer to the status of free-lance interpreter or specify the task to be carried out. Only the pay-slips, which on each occasion were delivered several days after performance of the contract, referred expressly to the Commission's internal rules, namely the Arrangements of 8 October 1974.

11 For its part, the Commission denies that a self-employed interpreter may be regarded as a servant within the meaning of the Conditions of Employment. Such interpreters are engaged at irregular intervals for a necessarily limited period under an informal contract that is subsequently formalized by written acceptance which

confirms the engagement. As regards the conditions in which such interpreters work, the Commission emphasizes that interpreters work in teams. Consequently, all interpreters must necessarily be subject to the same conditions in their work. Furthermore, the contributions to retirement and life-assurance schemes, paid in part by the free-lance interpreter and in part by the Commission, in no way constitute a social security or pension scheme for the purposes of the Conditions of Employment, but are fixed solely in pursuance of the provisions in the agreements concluded with the Association. Lastly, as far as the sickness and accident insurance policy for self-employed interpreters is concerned, it is a private policy taken out by the Commission in favour of all such interpreters.

12 As regards the arrangements adopted by the Bureau of the European Parliament in September 1983, the Commission points out that they were laid down pursuant to Article 78 of the Conditions of Employment, which provides for the possibility of a derogation in favour of - but limited to - staff engaged by the Parliament for the duration of its sessions.

13 For the purpose of replying to the question submitted for a preliminary ruling, it is sufficient to state that in its judgment of today's date in Case 43/84 *(Maag* v *Commission,* [1985] ECR 2581), a copy of which is attached to this judgment, the Court held that a supplementary interpreter who is engaged under the Commission's internal rules regarding free-lance conference interpreters cannot claim to be entitled to the status of servant of the Communities within the meaning of the Conditions of Employment.

14 The answer to the question submitted by the Tribunal du Travail, Brussels, must therefore be that Articles 1 and 3 of the Conditions of Employment do not apply to interpreters in respect of periods during which they are engaged by the Commission of the European Communities under its internal rules, namely the Arrangements of 8 October 1974.

Costs

15 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber)

in answer to the question referred to it by the Tribunal du Travail, Brussels, by judgment of 13 April 1984 hereby rules as follows:

Articles 1 and 3 of the Conditions of Employment of Other Servants of the European Communities do not apply to interpreters in respect of periods during which they are engaged by the Commission of the European Communities under its internal rules, namely the Arrangements Regarding Free-lance Conference Interpreters of 8 October 1974.

Due Pescatore Bahlmann

Delivered in open court in Luxembourg on 11 July 1985.

P. Heim
Register

O. Due
President of the Second Chamber