JUDGMENT OF THE COURT
2 August 1993 *

In Joined Cases C-259/91, C-331/91 and C-332/91,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Pretore di Venezia in Case C-259/91 and the Pretore di Parma in Cases C-331/91 and C-332/91, for a preliminary ruling in the proceedings pending before that court between

Pilar Allué and Carmel Mary Coonan

and

Università degli Studi di Venezia

and between

Susanne Herman Barta

and

Università degli Studi di Parma

and between

Beatrice Sellinger, Rosalba Del Maestro, Gillian Mansfield

and

Università degli Studi di Parma,

* Language of the case: Italian.

on the interpretation of Article 48(2) of the EEC Treaty,

THE COURT,

composed of: O. Due, President, M. Zuleeg and J. L. Murray (Presidents of Chambers), G. F. Mancini, R. Joliet, F. A. Schockweiler, J. C. Moitinho de Almeida, F. Grévisse and D. A. O. Edward, Judges,

Advocate General: C. O. Lenz,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— the plaintiffs in the main proceedings, by Fausto Capelli, of the Milan Bar, and Maria Virgilio, of the Bologna Bar,

— the Italian Republic, by Professor Luigi Ferrari Bravo, Head of the Department for Contentious Diplomatic Affairs at the Ministry for Foreign Affairs, acting as Agent, assisted by Pier Giorgio Ferri, Avvocato dello Stato,

— the Commission of the European Communities, in Case C-259/91, by Enrico Traversa, of its Legal Service, acting as Agent and, in Cases C-331/91 and C-332/91, by Enrico Traversa and Dimitrios Goulossis, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the plaintiffs in the main proceedings, the Italian Government and the Commission at the hearing on 17 November 1992,

after hearing the Opinion of the Advocate General at the sitting on 20 January 1993,

gives the following

Judgment

1 By order of 4 October 1991, received at the Court on 11 October 1991, and two orders of 14 November 1991, received at the Court on 19 December 1991, the Pretore di Venezia (District Magistrate, Venice, Case C-259/91) and the Pretore di Parma (District Magistrate, Parma, Cases C-331 and C-332/91) each referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 48(2) of the Treaty.

2 Those questions were raised in the course of proceedings brought, first, by Pilar Allué, a Spanish national, and Carmel Mary Coonan, a British national, against the Università degli Studi di Venezia (University of Venice) and, secondly, by Susanne Herman Barta, a German national, Beatrice Sellinger, Rosalba Del Maestro and Gillian Mansfield, British nationals, against the Università degli Studi di Parma (University of Parma).

3 From 1980 to 1986 Pilar Allué, Carmel Mary Coonan, Beatrice Sellinger, Rosalba Del Maestro and Gillian Mansfield held posts as foreign-language assistants at the abovementioned universities. At the beginning of the 1986/87 academic year, they were informed by those universities that their contracts of employment could not be extended, in view of the provisions of Article 28 of Presidential Decree No 382 of 11 July 1980. Under the third paragraph of that article, 'the contracts referred to in the first paragraph [concerning the appointment of foreign-language assistants] may not be extended beyond the academic year for which they are concluded and may be renewed every year for a maximum of five years'.

4 Susanne Herman Barta held a similar post at the Università degli Studi di Parma from the academic year 1981/82 to the end of 1984/85. As a result of a letter in which she informed the university that she was pregnant, her contract was not renewed for the following year.

5 In the actions they have brought against the decisions terminating their contracts of employment, the plaintiffs ask the national courts in substance to declare that their employment relationships are governed by private law, to order the universities to pay them the difference between the remuneration received and the amount which would be payable, according to the salary scale, to an associate lecturer appointed for an indeterminate period, to recognize their right to social security and compulsory insurance benefits since the formation of the employment relationship, to declare that the contracts concluded by them with the universities are contracts of indeterminate duration, and to order the universities to pay them the salary due from the date when they terminated the said contracts.

6 In the context of the proceedings brought by Pilar Allué and Carmel Mary Coonan against the Università degli Studi di Venezia, this Court gave a preliminary ruling on 30 May 1989 (Case 33/88 [1989] ECR 1591), in which it held, in particular, that Article 48(2) of the EEC Treaty precludes the application of a provision of national law imposing a limit on the duration of the employment relationship between universities and foreign language assistants where there is, in principle, no such limit with regard to other workers.

7 The national courts observe that this judgment has been interpreted in different ways by the Italian courts required to rule on similar disputes, with regard to whether the one-year limit on the duration of the contracts of foreign-language assistants, laid down by the third paragraph of Article 28 of the Presidential Decree, is compatible with Article 48(2) of the Treaty. According to certain courts, the Court of Justice found the entire paragraph incompatible with Article 48(2) of the Treaty, whereas the Corte di Cassazione (Supreme Court of Cassation) took the view, in three judgments, that the Court of Justice had given a ruling only on the maximum limit of five years on the renewal of the contracts of foreign-language assistants.

8 Considering that the judgment in Case 33/88 therefore raised problems of interpretation, the Pretore di Venezia decided to stay the proceedings and to ask the Court:

'to give a preliminary ruling, pursuant to Article 177 of the EEC Treaty, on the interpretation of the judgment which it delivered on 30 May 1989 in Case 33/88 in which it ruled that "Article 48(2) of the EEC Treaty precludes the application of a

provision of national law imposing a limit on the duration of the employment relationship between universities and foreign language assistants where there is, in principle, no such limit with regard to other workers", and to state whether Article 48(2) of the EEC Treaty also precludes the application of the third paragraph of Article 28 of Presidential Decree No 382 when it stipulates that contracts cannot be of more than one year's duration.'

Likewise, the Pretore di Parma:

'... requests the Court of Justice of the European Communities pursuant to Article 177 of the EEC Treaty to give a ruling on the scope and the interpretation of its judgment of 30 May 1989 in Case 33/88 in which it ruled (in paragraph 2 of the operative part) that "Article 48(2) of the EEC Treaty precludes the application of a provision of national law imposing a limit on the duration of the employment relationship between universities and foreign-language assistants where there is, in principle, no such limit with regard to other workers", and to state

"whether Article 48(2) of the Treaty, as interpreted by the Court of Justice in its judgment of 30 May 1989 in Case 33/88, precludes the application of a national law of a Member State (in this case the third paragraph of Article 28 of Italian Presidential Decree No 382/1980) where it limits the duration of a contract governed by private law to one year and therefore provides for its duration to be limited in time, whilst other workers of that Member State are in general — and as a rule — guaranteed security of tenure by Law No 230 of 18 April 1962, since it is impossible to identify in the present case any specific features of the relationship which are such as to justify a derogation from the aforesaid general principle".'

9 Reference is made to the Report for the Hearing for a fuller account of the facts, the legal background of the main proceedings and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

10 By their questions, the national courts ask in substance whether it is contrary to Article 48(2) of the Treaty for the legislation of a Member State to limit the duration of the contracts of employment of foreign-language assistants at a university to one year, with the possibility of renewal, where in principle no such limit exists with regard to other teachers.

11 The Court has consistently held that the principle of equal treatment, of which Article 48(2) of the Treaty is one embodiment, prohibits not only overt discrimination based on nationality but all covert forms of discrimination which, by applying other distinguishing criteria, in fact achieve the same result (see, in particular, Case 41/84 *Pinna* v *Caisse d'Allocations Familiales de la Savoie* [1986] ECR 1).

12 In Case 33/88 the Court pointed out that, although it applies regardless of the nationality of the worker concerned, the time-limit imposed by the third paragraph of Article 28 of the Presidential Decree on working as a foreign-language assistant in a university essentially concerns workers who are nationals of other Member States. According to the statistics supplied by the Italian Government, only 25% of foreign-language assistants are Italian nationals.

13 That finding, which in Case 33/88 related to the maximum limit of six years for the contracts of foreign-language assistants, also applies with regard to the one-year rule laid down by the third paragraph of Article 28.

14 To justify that rule, the Italian Government submits that the number of foreign-language assistants engaged by the universities depends on the teaching requirements and the resources available to the universities to pay the assistants, so that universities can ensure proper management only by using one-year contracts.

15 The reply to that argument is that the provisions of the Treaty do not preclude the adoption by the Member States of measures which are applicable without distinction, which are intended to ensure the proper management of their universities and which could affect, in particular, the nationals of other Member States. However, such measures must respect the principle of proportionality, that is to say that they must be necessary and appropriate to attain the objective pursued.

16 It must at the same time be observed that Community law does not preclude a Member State from concluding contracts of employment with foreign-language assistants for a limited period if it appears, at the time of the appointment, that the teaching requirement will not exceed that period.

17 However, contracts which are intended to meet continuous needs for teaching, as where the study of a particular language is compulsory or is known to be especially in demand, must be concluded for an indeterminate period in the same way as the employment relationship of other teachers fulfilling such needs.

18 If, subsequently, the number of students applying for courses in a particular foreign language drops, or if that language is no longer given the same priority in a Member State, or again if the university does not have sufficient funds to provide teaching, surplus foreign-language assistants could be dismissed in order to adjust

staff numbers to the new conditions. Such a measure would be less restrictive of the freedom of movement of workers than the contested measure.

19 For foreign-language assistants, the one-year limit on contracts, with the possibility of renewal, is a factor of insecurity with regard to the continuation of the employment relationship and is such as to permit abuses by the national authorities, as, for example, in the practice, referred to by the Commission, of making the renewal of the contract conditional on a reduction in salary.

20 Dismissal may undoubtedly be challenged before the courts and is subject to compliance with certain formalities such as prior notice. Nevertheless, as these requirements are common to all contracts of employment, there is nothing to justify their circumvention when they relate to foreign-language assistants.

21 Therefore the reply to the national courts must be that it is contrary to Article 48(2) of the Treaty for the legislation of a Member State to limit the duration of employment contracts of foreign-language assistants in any event to one year, with the possibility of renewal, where in principle no such limit exists with regard to other teachers.

Costs

22 The costs incurred by the Italian Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, 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,

in answer to the questions referred to it by the Pretore di Venezia and the Pretore di Parma by orders of 4 October 1991 and 14 November 1991 respectively, hereby rules:

It is contrary to Article 48(2) of the EEC Treaty for the legislation of a Member State to limit the duration of employment contracts of foreign-language assistants in any event to one year, with the possibility of renewal, where in principle no such limit exists with regard to other teachers.

Due Zuleeg Murray Mancini Joliet

Schockweiler Moitinho de Almeida Grévisse Edward

Delivered in open court in Luxembourg on 2 August 1994.

J.-G. Giraud — O. Due

Registrar — President