Case 111/84

Institut national d'assurances sociales pour travailleurs indépendants
v
Nicola Cantisani

(reference for a preliminary ruling
from the Tribunal du Travail, Brussels)

'Self-employed interpreter or member of the auxiliary staff'

Summary

Officials - Conditions of Employment of Other Servants - Free-lance interpreters engaged by the Commission under its internal rules - Conditions of Employment of Other Servants not applicable
(Conditions of Employment of Other Servants, Arts 1 and 3)

Article 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.

OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 6 June 1985 *

Mr President,
Members of the Court,

1. In this reference for a preliminary ruling, the Tribunal de Travail [Labour Tribunal], Brussels, raises a question which is wholly identical to that which arises in connection with the action for annulment brought by Heinrich Maag, on which I have recently delivered an Opinion (Case 43/84).

* Translated from the French.

The question which has been referred to this Court is as follows:

'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"?'

As the Belgian court has rightly pointed out, the Court of Justice alone has jurisdiction, pursuant to Article 179 of the EEC Treaty, to determine — as the Court has stated in connection with Article 152 of the EAEC Treaty which is entirely identical to Article 179 — 'the basis of the service relationship between the Community and its officials or servants other than local staff', or between the Community and any applicant laying claim to that status (Case 65/74, *Porrini* v *EAEC and Comont*, [1975] ECR 319, paragraphs 13 and 15 of the decision).

To be precise, Mr Cantisani, who has been engaged by the Commission as a free-lance conference interpreter on a number of occasions since November 1975, has sought the benefit of the Conditions of Employment of Other Servants of the European Communities [hereinafter referred to as 'the Conditions of Employment'] in proceedings before the Belgian court, in order to rebut the presumption that under Belgian law any person pursuing a professional or trade activity capable of yielding income within the meaning of Article 20 (1), (2) (b) or (c) or Article 30 of the Code des Impôts sur les Revenues [Belgian Income Tax Code] must be regarded as a self-employed worker unless he furnishes evidence to the contrary.

2. The submissions put forward by Mr Cantisani in support of his contention are essentially the same as those which I considered myself obliged to reject when examining Mr Maag's application for annulment. Since the same rules apply in this instance as in Case 43/84 (namely the Arrangements Regarding Free-Lance Conference Interpreters of 8 October 1974, hereinafter referred to as 'the Arrangements', and the Agreement between the International Association of Conference Interpreters and the Commission of 26 April 1979), I shall confine my attention to those arguments advanced by the applicant in Case 43/84 which are relevant to this case.

The applicant relied on Articles 14 and 15 of the 1974 Arrangements which purportedly confirm the legislative nature of the general conditions imposed by the Commission on self-employed interpreters. Those provisions refer to 'the interests of the service' which impose on free-lance interpreters certain restrictions as regards travel from their business residence to their temporary place of work. The applicant also attempted to derive from the Opinion of Mr Advocate General Reischl in Case 17/78, *Deshormes* [1979] ECR 189, implicit confirmation that the Conditions of Employment are exhaustive, inasmuch as in describing the exact nature of a contract for the employment of an expert by reference to those conditions, the Advocate General did not envisage any possibilities other than those provided for therein. Lastly, the applicant sought to draw from the provisions of Article 3 in conjunction with those of Article 52 of the Conditions of

Employment the inference that the one-year limit does not apply to all contracts for the employment of auxiliary staff but solely to auxiliary staff engaged on a temporary basis (Article 3 (b)).

3. Those arguments cannot affect my perception of the nature of the contractual relationship between the Commission and self-employed interpreters, as expounded in the Opinion which I recently delivered.

The provisions relating to 'the interests of the service' should properly be seen in terms of the need to ensure that the *conditions of work* for free-lance interpreters are identical to those for the Community's established interpreters.

The argument which the applicant in Case 43/84 derives from the Opinion in the *Deshormes* case seems even less relevant when viewed in the light of the circumstances of this case; Mrs Deshormes had actually been performing 'permanent, definite, Community public service duties' (paragraph 46 of the decision) ever since she was engaged under contract as an expert. In one way or another, therefore, she necessarily fell within the scope of the Conditions of Employment.

Finally, as far as the possibility of departing from the time limit set by Article 52 of the Conditions of Employment is concerned, it must be pointed out that the application of the circumstances envisaged by Article 3 (b) of the Conditions of Employment presupposes the existence of a situation which has not arisen in this case and which creates an exceptional opportunity. Hence it cannot give rise to a general rule extending to free-lance interpreters, for longer than a maximum period of one year, the provisions of the Conditions of Employment relating to auxiliary staff.

4. In view of the foregoing considerations and of those set out in my Opinion in the *Maag* case, I propose that the Court, in reply to the question referred to it by the Tribunal du Travail, Brussels, should give the following ruling:

'The contracts under which the Commission engages free-lance conference interpreters are not based on the rules applicable to contracts for the employment of temporary or auxiliary staff laid down by the Conditions of Employment of Other Servants of the European Communities'.