

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

In Case 43/84

Heinrich Maag, an interpreter residing at 54 Avenue du Vert Chasseur, Uccle, Brussels, represented and assisted by Marcel Slusny, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 34 B IV Rue Philippe-II,

applicant,

v

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 Manfred Beschel, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for an order requiring the Commission to pay interest, at a rate to be determined by the Court, on four arrears of daily remuneration totalling 2 996.11 Swiss francs, which were paid into the applicant's account on 13 June 1983, for services provided by the applicant between 1 July 1980 and 31 December 1982,

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 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 application lodged at the Court Registry on 16 February 1984, Heinrich Maag brought an action for an order requiring the Commission of the European Communities to pay him default interest on four arrears of daily remuneration for the services provided by him as an interpreter between 1 July 1980 and 31 December 1982, and also for a declaration that the decision whereby the Commission rejected his request for the payment of interest is void.
- 2 This application has been submitted primarily under Article 179 of the EEC Treaty and, more specifically, on the basis of Articles 46 and 73 of the Conditions of Employment of Other Servants of the European Communities (hereinafter referred to as 'the Conditions of Employment'). As regards members of the temporary or auxiliary staff, Articles 46 and 73 of the Conditions of Employment refer to the provisions of Title VII of the Staff Regulations on appeals by officials of the Community institutions to the Court of Justice. In the alternative the applicant relies on the second paragraph of Article 173 of the Treaty in challenging the Commission's decision refusing to grant him default interest on the above-mentioned instalments of remuneration.
- 3 The applicant was awarded an interpreter's diploma in 1976. Since 1977 the Commission has called upon his services in his capacity as a qualified interpreter at regular intervals, although for a very brief period on each occasion. Between 1977 and 1983 the applicant worked for the Commission for approximately 100 to 150 days per annum. It is common ground that the Commission never formally engaged him as an employee on such occasions. Instead, it treated him as subject to the *Réglementation Concernant les Interprètes de Conférence Indépendants (Freelance)* [Arrangements Regarding Freelance Conference Interpreters, hereinafter referred to as 'the Arrangements'], which it had adopted in connection with certain agreements concluded with the International Association of Conference Interpreters (hereinafter referred to as 'the Association').
- 4 The Commission has raised the objection that this action is inadmissible on the ground that the Court of Justice has no jurisdiction in the dispute. In the first place, it contends that the applicant is neither an official nor a servant of the Communities within the meaning of the Conditions of Employment and cannot

therefore rely on Article 179 of the Treaty. Secondly, the dispute is concerned with the contractual relationship between the applicant and the Commission, and should, therefore, in the absence of an arbitration clause within the meaning of Article 181 of the Treaty, be referred to a national court or tribunal pursuant to Article 183.

### Admissibility of the application under Article 179

5 In order to ascertain the difference of opinion between the parties in this regard, it is appropriate to begin by pointing out that, under Article 179, the Court has jurisdiction in any dispute between the Community and its servants 'within the limits and under the conditions laid down in the Staff Regulations or the Conditions of Employment'. In order to gauge the extent of the Court's jurisdiction in that respect, reference must be made to the Staff Regulations and to the Conditions of Employment which were adopted by the Council in the form of regulations.

6 As the applicant cannot in any sense be regarded as an official, only the Conditions of Employment need be considered; Article 1 provides that they are to apply:

'... to servants engaged under contract by the Communities. Such servants shall be:

- temporary staff,
- auxiliary staff,
- local staff,
- special advisers'

7 As regards the first two categories listed, the Conditions of Employment contain detailed provisions concerning *inter alia* the conditions on which such staff are engaged and in which they work, remuneration, reimbursement of expenses and social security. Lastly, Articles 46 and 73 of the Conditions of Employment, on which the applicant has largely based his action, refer in the case of those two categories to the remedies available to officials under the Staff Regulations, including the possibility of instituting proceedings before the Court under Article 179 of the Treaty. By contrast, the provisions of the Conditions of Employment

which deal with local staff and special advisers are extremely brief, since local staff are in principle subject to the rules prevailing at the place of work and to the jurisdiction of the national courts, while the recruitment of a special adviser constitutes a special case and the conditions on which he is engaged must be discussed with the budgetary authority.

- 8 It appears from a consideration of the relevant provisions that the admissibility of the action under Article 179 depends on whether the applicant, although never formally engaged as a servant of the Communities, must nevertheless be regarded as a member of the temporary or auxiliary staff within the meaning of the Conditions of Employment. Having regard to the four categories of staff set out in Article 1 of the Conditions of Employment, the possibility of conferring on the applicant, who is known as a self-employed interpreter, the status of a member of the local staff engaged under Article 4 'according to local practice for manual or service duties' can be dismissed at once on the ground that such duties are clearly not performed by self-employed interpreters. The same is true of the status of special adviser, who is defined in Article 5 of the Conditions of Employment as a person engaged 'by reason of his special qualifications', a criterion which covers in the main special or unusual cases and which cannot be extended to the post of interpreter in general. Moreover, the applicant has stressed that the main purpose of his action was precisely to obtain recognition that self-employed interpreters enjoy the status of temporary or auxiliary staff, together with the accompanying tax and social security advantages.
- 9 The Commission has explained that, in order to meet the permanent need for interpretation into the Community languages, it has at its disposal 384 posts, including 20 for members of the temporary staff. In spite of the large number of competitions held, it has succeeded in filling only 305 of those posts in view of the lack of a sufficient number of qualified applicants. In addition to its staff of established officials and temporary servants, the Commission meets its varying needs by calling upon more than 1 000 interpreters, whom it has approved and whom it offers to engage for periods which as a rule vary from one to five days, according to requirements. They include interpreters who do not fulfil the conditions of the Staff Regulations for becoming officials or even those of the Conditions of Employment for becoming members of the auxiliary staff, and interpreters who prefer not to enter the service of the Commission.

- 10 According to the Commission, no comparison is possible between the status of such interpreters and that of Community servants. The great majority of those interpreters work less than 100 days and more than half work even less than 50 days of the year for the Community. They are free to accept or refuse offers of work from the Commission and, outside the periods in respect of which they have accepted such offers, may work elsewhere. The fact that after being engaged such interpreters work in the same conditions as interpreters who are officials can be ascribed to the fact that interpreters work as a team.
- 11 The Commission further contends that it cannot grant supplementary assistants of that kind the status of temporary servants since there are no posts for which they would be eligible. Nor can it treat them as members of the auxiliary staff because the actual duration of contracts for such staff may not, under Article 52 of the Conditions of Employment, exceed one year.
- 12 In view of the special position of self-employed interpreters, the Commission has adopted a set of exclusively internal arrangements, in connection with the agreements concluded with the Association, which lay down the conditions on which such interpreters are engaged, in particular as regards daily remuneration (higher, per day of work, than that of auxiliary staff), daily subsistence allowances, flat-rate allowances for travel from their place of residence for business purposes, which often lies outside the territory of the Communities, and payment of contributions in respect of retirement and life assurance in addition to sickness and accident insurance.
- 13 For his part, the applicant argues that the Staff Regulations and the Conditions of Employment, constitute an exhaustive body of rules. The Commission cannot therefore conclude a contract of employment otherwise than within that framework. In his view, contracts concluded with interpreters known as self-employed interpreters are contracts of employment, not contracts for the provision of services by self-employed persons. Although the interpreter remains at liberty to accept or refuse offers of work, the conditions on which he is engaged are governed in their entirety by a body of rules which precludes any negotiation. The interpreter is in a position of subordination for the duration of the engagement and works in the same conditions as officials and other servants of the Community.
- 14 In those circumstances, the applicant considers that interpreters known as self-employed interpreters must be assimilated to which ever category of Community

servants is most appropriate having regard to their situation. In the applicant's view, the most appropriate category is that of auxiliary staff. Apart from the tax and social security advantages which members of the auxiliary staff share with officials and other servants of the Communities, the conditions on which auxiliary staff are engaged and in which they work do not differ greatly from those laid down by the internal arrangements mentioned above.

15 The applicant finds support for his contention in the fact that in 1983 the Bureau of the European Parliament adopted, pursuant to Article 78 of the Conditions of Employment its own Arrangements Regarding Freelance Conference Interpreters which, whilst referring to the Commission's internal arrangements as regards most of the conditions on which such interpreters are engaged, subject their remuneration to Community tax. Thus, according to the applicant, interpreters known as self-employed interpreters are liable to Community tax when they work for the Parliament but to national tax when they work for the other institutions, contrary to the principle of equal treatment.

16 In order to resolve this aspect of the dispute, it is necessary to take as a basis the finding of fact that the Communities' interpreting requirements consist of permanent daily needs which must be covered by officials and, where appropriate, temporary servants, and of occasional needs which vary greatly according to the frequency of Community meetings and of negotiations with non-member countries, where it is necessary to call on a large number of supplementary assistants whose qualifications enable pressing needs to be met and who may be engaged time after time for very brief periods.

17 Those supplementary assistants may not be engaged as temporary staff within the meaning of Articles 1 and 2 of the Conditions of Employment. As the Court has held on several occasions (see the judgments of 1 February 1979 in Case 17/78, *Desbormes v Commission* [1979] ECR 189, 19 November 1981 in Case 106/80, *Fournier v Commission* [1981] ECR 2759, and 23 February 1983 in Joined Cases 225 and 241/81, *Laredo and Garilli v Commission* [1983] ECR 347), the status of a member of the temporary staff, which is characterized by the fact that a temporary servant occupies a permanent post in the service of the Community administration, is, precisely as a result of the occasional and transitory nature of the services provided by freelance interpreters, irreconcilable with the tasks carried out by such persons.

- 18 According to the same body of case-law, a contract of employment as a member of the auxiliary staff for the purposes of Articles 1 and 3 of the Conditions of Employment is characterized by 'its precariousness in time, since it can be used only to effect a temporary replacement or to allow the performance of administrative duties which are of a transitory nature, which fill an urgent need, or which are not clearly defined'. Although those criteria may at first sight appear to constitute an appropriate professional framework which is capable of being applied to freelance interpreters who work specifically for the Community institutions for short periods in order to meet occasional needs, it is clear on closer examination that this possibility must also be ruled out.
- 19 Article 52 of the Conditions of Employment provides that the actual period of employment of auxiliary staff, including any period under renewal, may not exceed the period of temporary assignment for the purpose of replacing an official or member of the temporary staff who is unable for the time being to perform his duties, or one year in all other cases. In its judgment of 1 February 1979, cited above, the Court came to the conclusion that 'since the purpose of these conditions of employment is to arrange for occasional staff to perform duties which — by their nature or by virtue of the absence of a holder of the post — are precarious, it is clear that the said conditions of employment cannot be wrongfully used to assign such staff to permanent duties for long periods'. It follows that those conditions, as laid down by the Conditions of Employment, cannot apply to engagements each of which is of short duration but which — as in the applicant's case — recur frequently from year to year.
- 20 It must therefore be held that the Conditions of Employment in their present version are not sufficiently flexible to meet the Commission's needs regarding freelance interpreters. In those circumstances there can be no objection to the Commission's engagement of such interpreters under a set of internal arrangements which it has specifically adjusted to those needs and which is, moreover, in conformity with the agreements concluded with the most representative association of conference interpreters.
- 21 It should be added that interpreters who prefer the social security and tax advantages enjoyed by a servant of the Communities are free to take part in any competition, provided they fulfil the entry requirements. The Commission has firmly denied that the large number of interpreters engaged on the basis of its internal arrangements is the result of a staff policy designed to keep the number of

established staff interpreters below that which is in the interests of the service, and the applicant has not furnished any proof to the contrary.

22 As regards the arrangements adopted by the Bureau of the Parliament pursuant to Article 78 of the Conditions of Employment, it is sufficient to note that Article 78 authorizes an exemption in favour of — but limited to — staff engaged by the Parliament for the duration of its sessions, which may not be relied upon by freelance interpreters engaged by the other Community institutions.

23 It follows from all the foregoing considerations that a freelance interpreter who is engaged under the Commission's internal arrangements regarding freelance conference interpreters is not entitled either to the status of Community servant within the meaning of the Conditions of Employment or, consequently, to the remedies available under Article 179 of the Treaty. This application must therefore be dismissed as inadmissible in so far as it is based on Article 179.

### **Admissibility of the application under Article 173**

24 The Commission argues that Article 173 is applicable only if the measure in respect of which the applicant seeks a declaration of nullity falls within the jurisdiction of the Court. In its view that is not so in the case of a decision rejecting a request for the payment of default interest on sums owed under a contract which is not governed by Community law and does not contain an arbitration clause.

25 For his part, the applicant maintains that the reference to national courts or tribunals in Article 183 is applicable only in the absence of an express provision vesting the Court with jurisdiction; in this case there is such a provision, namely Article 173 which confers on the Court exclusive jurisdiction to declare void a decision of the Commission. The applicant also points out that the most recent agreement with the Association, concluded on 20 June 1984, provides for the insertion of an arbitration clause in individual contracts. In that respect there is nothing to prevent the Court from granting some measure of retroactive effect to the agreement.



26 In that connection, it is sufficient to note that the dispute originates in the alleged delay on the part of the Commission's administration in paying arrears of remuneration owed to the applicant by virtue of the fact that he was engaged outside the scope of the Staff Regulations and the Conditions of Employment under contracts not containing an arbitration clause. The Court has no jurisdiction in such a dispute and the applicant cannot unilaterally create an exception to the division of powers between the Court of Justice and the national courts and tribunals by causing the Commission to reject his request and subsequently describing that rejection as a decision within the meaning of Article 173.

27 Accordingly, since the application is inadmissible also in so far as it is based on Article 173 of the Treaty, it must be dismissed in its entirety.

### Costs

28 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. However, under Article 70 of the Rules of Procedure, institutions are to bear their own costs in proceedings commenced by servants of the Communities. As the purpose of these proceedings is to obtain recognition that the applicant is entitled to the status of a servant of the Communities, the rule in Article 70 must be applied to him.

On those grounds,

THE COURT (Second Chamber)

hereby:

**(1) Dismisses the application as inadmissible;**

**(2) Orders the parties to bear their own costs.**

Due

Pescatore

Bahlmann

Delivered in open court in Luxembourg on 11 July 1985.

P. Heim

Registrar

O. Due

President of the Second Chamber