

Case C-104/95

Georgios Kontogeorgas

v

Kartonpak AE

(Reference for a preliminary ruling
from the Polimeles Protodikio, Athens)

(Approximation of laws — Self-employed commercial agents —
Entitlement to commission — Commercial transactions concluded during
the period covered by the agency contract)

Opinion of Advocate General Cosmas delivered on 4 July 1996	I - 6646
Judgment of the Court (Fifth Chamber), 12 December 1996	I - 6656

Summary of the Judgment

- 1. Preliminary rulings — Jurisdiction of the Court — Limits — Manifestly irrelevant question (EC Treaty, Art. 177)*
- 2. Freedom of movement for persons — Freedom of establishment — Self-employed commercial agents — Directive 86/653 — Remuneration — Transactions concluded with customers belonging to a geographical area entrusted to an agent — Agent's entitlement to commission irrespective of his involvement in the transactions concerned (Council Directive 86/653, Art. 7(2))*

3. *Freedom of movement for persons — Freedom of establishment — Self-employed commercial agents — Directive 86/653 — Remuneration — Customer belonging to a geographical area entrusted to an agent — Criteria connecting legal persons to a geographical area (Council Directive 86/653, Art. 7(2))*

1. Under the procedure for referring questions to the Court for a preliminary ruling pursuant to Article 177 of the Treaty, it is for the national courts alone, before which the proceedings are pending and which must assume responsibility for the judgment to be given, to determine, having regard to the particular features of each case, both the need for a preliminary ruling to enable them to give judgment and the relevance of the questions which they refer to the Court. A request for a preliminary ruling from a national court may be rejected only if it is quite obvious that the interpretation of Community law sought by that court bears no relation to the actual nature of the case or the subject-matter of the main action.

in which, in the case to which it refers, namely transactions entered into with a customer belonging to a geographical area or group of customers entrusted to him, no mention is made of the need for any particular activity on the part of the agent as a condition of entitlement to payment of a commission, and by the arrangement and logic of Article 7, which seeks to make provision for two alternative cases of entitlement to commission under Article 7(1) and (2), the first where the transaction was concluded as a result of the agent's activity, the second where the transaction was concluded with a customer belonging to an area or group entrusted to the agent.

2. The first indent of Article 7(2) of Directive 86/653 on the coordination of the laws of the Member States relating to self-employed commercial agents must be interpreted as meaning that, where a commercial agent is responsible for a geographical area, he is entitled to commission on transactions concluded with customers belonging to that area, even if they were concluded without any action on his part.

3. Article 7(2) of Directive 86/653 on the coordination of the laws of the Member States relating to self-employed commercial agents, which provides that, where a commercial agent is entrusted with a specific geographical area, he is to be entitled to commission on commercial transactions concluded with a 'customer belonging to that area', must, in the light of the context and aim of the Directive, be interpreted to the effect that where the customer is a legal person, it is the place of the latter's actual commercial activities which is relevant for the purpose of determining whether or not it belongs to

That interpretation is required both by the wording of the provision in question,

the area entrusted to the agent. Where a company carries on its commercial activity in various places, or where the agent operates in several areas, other factors may be taken into account to determine the centre of gravity of the transaction effected, in particular the place where negotiations with the agent took place or

should, in the normal course of events, have taken place, the place where the goods were delivered and the place where the establishment which placed the order is located, the essential criterion being to avoid a single transaction from being regarded as attaching to the geographical areas of two or more agents.