JUDGMENT OF THE COURT (Second Chamber)
13 December 1989 *

In Case C-322/88

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

Salvatore Grimaldi, residing in Brussels,

and

Fonds des maladies professionnelles (Occupational Diseases Fund), **Brussels,**

on the interpretation, in the light of the fifth paragraph of Article 189 of the EEC Treaty, of the Commission Recommendation to the Member States of 23 July 1962 concerning the adoption of a European schedule of occupational diseases (*Journal officiel* 1962, 80, p. 2188) and of Commission Recommendation 66/462 of 20 July 1966 on the conditions for granting compensation to persons suffering from occupational diseases (*Journal officiel* 1966, 147, p. 2696),

THE COURT (Second Chamber)

composed of: F. A. Schockweiler, President of Chamber, G. F. Mancini and T. F. O'Higgins, Judges,

Advocate General: J. Mischo
Registrar: D. Louterman, Principal Administrator

after considering the observations submitted on behalf of the Commission of the European Communities, represented by its Legal Adviser Jean-Claude Seché, acting as Agent,

* Language of the case: French.

having regard to the Report for the Hearing and further to the hearing on 10 October 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 10 October 1989,

gives the following

Judgment

1 By judgment of 28 October 1988, which was received at the Court on 7 November 1988, the tribunal du travail, Brussels, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of the fifth paragraph of Article 189 of the EEC Treaty and of the Commission Recommendation to the Member States of 23 July 1962 concerning the adoption of a European schedule of occupational diseases (*Journal officiel* 1962, 80, p. 2188).

2 The question was raised in proceedings between Salvatore Grimaldi, a migrant worker of Italian nationality, and the Fonds des maladies professionnelles (Occupational Diseases Fund), Brussels (hereinafter referred to as 'the Fund'), following the latter's refusal to recognize that Dupuytren's contracture, from which Mr Grimaldi suffers, was an occupational disease.

3 Mr Grimaldi worked in Belgium from 1953 to 1980. On 17 May 1983 he requested the Fund to recognize that the abovementioned disease, which is an osteo-articular or angio-neurotic disease of the hands caused by mechanical vibrations from the use of a pneumatic drill, was an occupational disease. The Fund took the contested decision on the ground that the disease in question did not appear in the Belgian schedule of occupational diseases.

4 In the action brought by Mr Grimaldi contesting that decision the tribunal du travail, Brussels, ordered an expert opinion which concluded that the plaintiff was suffering from Dupuytren's contracture, which was not contained in the Belgian

schedule of occupational diseases but could be deemed to be a 'disease caused by the over-straining . . . of peritendinous tissue'. This disease appears in point F. 6(b) of the European schedule of occupational diseases which the Recommendation of 23 July 1962 recommended should be introduced into national law. In addition, the question arose whether Mr Grimaldi could be permitted to prove that a disease not included in the national list was occupational in origin in order to receive compensation under the 'mixed' system of compensation provided for by Commission Recommendation 66/462 of 20 July 1966 on the conditions for granting compensation to persons suffering from occupational diseases (*Journal officiel* 1966, 147, p. 2696).

5 The tribunal du travail, Brussels, therefore decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Does a measure such as the "European schedule" of occupational diseases not have direct effect in a Member State on the basis of an interpretation of the fifth paragraph of Article 189 in the light of the spirit of the first paragraph thereof and the teleological approach of the Court's case-law, in so far as the schedule is clear, unconditional, sufficiently certain and unequivocal and does not confer any discretion as to the result to be achieved and in so far as it is annexed to a Commission recommendation which has not been formally implemented in a national legal system *after more than 25 years*?'

6 Reference is made to the Report for the Hearing for a fuller account of the facts in the main proceedings, the Community provisions at issue, the course of the procedure 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.

7 In so far as the preliminary question concerns the interpretation of recommendations, which, according to the fifth paragraph of Article 189 of the EEC Treaty, have no binding force, it is necessary to consider whether, under Article 177 of the Treaty, the Court has jurisdiction to give a ruling.

8 It is sufficient to state in that respect that, unlike Article 173 of the EEC Treaty, which excludes review by the Court of acts in the nature of recommendations, Article 177 confers on the Court jurisdiction to give a preliminary ruling on the validity and interpretation of all acts of the institutions of the Community without exception.

9 Moreover, in proceedings under Article 177 the Court has already ruled on several occasions on the interpretation of recommendations adopted on the basis of the EEC Treaty (see judgments of 15 June 1976 in Case 113/75 *Frecassetti* v *Amministrazione delle finanze dello Stato* [1976] ECR 983, and of 9 June 1977 in Case 90/76 *Van Ameyde* v *UCI* [1977] ECR 1091). It is therefore necessary to consider the question submitted to the Court.

10 It appears from the documents before the Court that although the question refers only to the recommendation of 23 July 1962, it also seeks to ascertain the effects under national law of Recommendation 66/462 of 20 July 1966. The question must therefore be understood as asking whether, in the absence of any national measure to implement them, those recommendations confer on individuals rights upon which they may rely before national courts.

11 In the first place, the Court has consistently decided that whilst under Article 189 regulations are directly applicable and, consequently, by their nature capable of producing direct effects, that does not mean that other categories of measures covered by that article can never produce similar effects (see, in particular, judgment of 19 January 1982 in Case 8/81 *Becker* v *Finanzamt Münster-Innenstadt* [1982] ECR 53).

12 In order to establish whether the two recommendations may confer rights on individuals, however, it is necessary first to ascertain whether they can produce binding effects.

13 Recommendations, which according to the fifth paragraph of Article 189 of the Treaty are not binding, are generally adopted by the institutions of the Community when they do not have the power under the Treaty to adopt binding measures or when they consider that it is not appropriate to adopt more mandatory rules.

14 Since it follows from the settled case-law of the Court (see, in particular, judgment of 29 January 1985 in Case 147/83 *Binderer* v *Commission* [1985] ECR 257) that the choice of form cannot alter the nature of a measure, it must nevertheless be ascertained whether the content of a measure is wholly consistent with the form attributed to it.

15 As regards the two recommendations at issue in these proceedings, it must be stated that in the statement of the reasons on which they are based reference is made to Article 155 of the EEC Treaty, which confers on the Commission a general power to formulate recommendations, and to Articles 117 and 118 of the Treaty. As the Court held in its judgment of 9 July 1987 in Joined Cases 281, 283, 284, 285 and 287/85 *Federal Republic of Germany, France, the Netherlands, Denmark and the United Kingdom* v *Commission* [1987] ECR 3203, Article 118 does not encroach upon the Member States' powers in the social field in so far as the latter is not covered by other provisions of the Treaty and provided that those powers are exercised in the framework of cooperation between Member States, which is to be organized by the Commission.

16 In these circumstances there is no reason to doubt that the measures in question are true recommendations, that is to say measures which, even as regards the persons to whom they are addressed, are not intended to produce binding effects. Consequently, they cannot create rights upon which individuals may rely before a national court.

17 In this regard, the fact that more than 25 years have elapsed since the first of the recommendations in question was adopted, without its having been implemented by all the Member States, cannot alter its legal effect.

18 However, in order to give a comprehensive reply to the question asked by the national court, it must be stressed that the measures in question cannot therefore be regarded as having no legal effect. The national courts are bound to take recommendations into consideration in order to decide disputes submitted to them, in particular where they cast light on the interpretation of national measures adopted in order to implement them or where they are designed to supplement binding Community provisions.

19 The reply to the question asked by the tribunal du travail, Brussels, must therefore be that in the light of the fifth paragraph of Article 189 of the EEC Treaty, the Commission Recommendation of 23 July 1962 concerning the adoption of a European schedule of occupational diseases and Commission Recommendation 66/462 of 20 July 1966 on the conditions for granting compensation to persons suffering from occupational diseases cannot in themselves confer rights on individuals upon which the latter may rely before national courts. However, national courts are bound to take those recommendations into consideration in order to decide disputes submitted to them, in particular where they are capable of casting light on the interpretation of other provisions of national or Community law.

Costs

20 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since 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 28 October 1988, hereby rules:

In the light of the fifth paragraph of Article 189 of the EEC Treaty, the Commission Recommendation of 23 July 1962 concerning the adoption of the

European schedule of industrial diseases and Commission Recommendation 66/462 of 20 July 1966 on the conditions for granting compensation to persons suffering from occupational diseases cannot in themselves confer rights on individuals upon which the latter may rely before national courts. However, national courts are bound to take those recommendations into consideration in order to decide disputes submitted to them, in particular where they are capable of casting light on the interpretation of other provisions of national or Community law.

Schockweiler Mancini O'Higgins

Delivered in open court in Luxembourg on 13 December 1989.

J.-G. Giraud
Registrar

F. A. Schockweiler
President of the Second Chamber