

JUDGMENT OF THE COURT OF FIRST INSTANCE
(Third Chamber, Extended Composition)

16 July 1998 *

In Case T-109/96,

Gilberte Gebhard, conference interpreter, residing in Heidelberg (Germany), represented by **Thierry Schmitt** and **Pierre Soler-Couteaux**, of the Strasbourg Bar,

applicant,

v

European Parliament, represented by **Manfred Peter**, Head of Division, **Didier Petersheim** and **João Sant'Anna**, of its Legal Service, acting as Agents, with an address for service at the General Secretariat of the European Parliament, Kirchberg,

defendant,

APPLICATION for reimbursement of Community tax levied on two payments of remuneration to the applicant,

* Language of the case: French.

THE COURT OF FIRST INSTANCE OF THE EUROPEAN
COMMUNITIES (Third Chamber, Extended Composition),

composed of: V. Tiili, President, C. P. Briët, K. Lenaerts, A. Potocki and
J. D. Cooke, Judges,

Registrar: A. Mair, Administrator,

having regard to the written procedure and further to the hearing on 5 May 1998,

gives the following

Judgment

Legislative background

- 1 Under the second subparagraph of Article 24(1) of the Treaty of 8 April 1965 establishing a Single Council and a Single Commission of the European Communities (hereinafter 'the Merger Treaty'), the Council, acting by a qualified majority on a proposal from the Commission and after consulting the other institutions concerned, is to lay down the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities (hereinafter 'the Conditions of Employment').

2 Under Article 13 of the Protocol on the Privileges and Immunities of the European Communities of 8 April 1965 (hereinafter 'the Protocol'):

'Officials and other servants of the Communities shall be liable to a tax for the benefit of the Communities on salaries, wages and emoluments paid to them by the Communities, in accordance with the conditions and procedure laid down by the Council, acting on a proposal from the Commission.

They shall be exempt from national taxes on salaries, wages and emoluments paid by the Communities.'

3 Under the first paragraph of Article 1 of the Conditions of Employment, which came into force on 5 March 1968, as laid down by Article 3 of Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 (OJ English Special Edition 1968 (I), p. 30), these Conditions are to apply to servants engaged under contract by the Communities. Under Article 3, 'auxiliary staff' means staff engaged, within the limits set in Article 52, for the performance of full-time or part-time duties in an institution.

4 Article 52(b), contained in Title III of the Conditions of Employment, concerning auxiliary staff, limits the actual period of employment of auxiliary staff, including any period under renewal, to one year.

5 Finally, Article 78 of the Conditions of Employment provides:

'By way of derogation from the provisions of this Title, auxiliary staff engaged by the European Parliament for the duration of the work of its sessions shall be subject to the conditions of recruitment and remuneration laid down in the agreement between the Parliament, the Council of Europe and the Assembly of [the] Western European Union in respect of engagement of such staff.

The provisions of that agreement and any subsequent amendment thereto shall be notified to the competent budgetary authorities one month before their entry into force.'

- 6 Auxiliary staff are liable to Community tax under the first indent of Article 2 of Regulation (EEC, Euratom, ECSC) No 260/68 of the Council of 29 February 1968 laying down the conditions and procedure for applying the tax for the benefit of the European Communities (OJ, English Special Edition 1968 (I), p. 37), as subsequently amended (hereinafter 'Regulation No 260/68').
- 7 By decision of 16 February 1983, the Bureau of the Parliament adopted, pursuant to Article 78 of the Conditions of Employment, a set of internal rules relating to freelance conference interpreters (hereinafter 'the internal rules'), which entered into force on 1 March 1983.
- 8 In 1984 the Parliament became a party to the five-year framework agreements concluded since 1970 by the Commission with the International Association of Conference Interpreters (hereinafter 'IACI') for the purpose of laying down the working conditions and rules on remuneration for freelance conference interpreters engaged by the Commission on behalf of the Community institutions.
- 9 The framework agreements, under the first paragraph of Article 1 thereof, are to apply to freelance conference interpreters engaged by the Commission under the conditions laid down in the provisions concerning conference interpreters which may be applied by the institution where they work. In practice, such interpreters are engaged at short notice, by telephone or fax, usually for a period of a few days only. The contract is subsequently formalised by written confirmation.

- 10 That confirmation includes a statement that the engagement is governed by the rules applicable in the institution for which the person concerned provides his services and that interpreters engaged for work at the Parliament are entitled to the legal remedies provided for by Title VII of the Staff Regulations in the event of any dispute relating to their engagement.
- 11 Article 33 provides that every institution is to adapt its rules concerning freelance conference interpreters, in accordance with the framework agreement in force.
- 12 The internal rules of the Parliament were therefore adapted to the five-year framework agreement concluded on 15 September 1994, for the period from 1 January 1994 to 31 December 1998. With a view to securing the agreement required by Article 78 of the Conditions of Employment, the Secretary-General of the European Parliament sent a draft of the internal rules to the Council of Europe and the Assembly of the Western European Union (hereinafter 'the WEU'), by letters of 31 March 1995, pointing out that the new provisions would enter into force on 17 April 1995 in the absence of any objections from the two recipients. The document containing the new internal rules, entitled 'Rules applicable to auxiliary session interpreters', was signed by the Secretary-General of the Parliament on 17 April 1995.
- 13 Those rules, under Article 1 thereof, apply pursuant to Article 78 of the Conditions of Employment, for the duration of his engagement, to any interpreter engaged to provide his services to the European Parliament on a part-time basis during its plenary sessions, committee meetings or meetings of other parliamentary bodies.
- 14 Article 2 provides that such auxiliary session interpreters are to be engaged by the European Parliament, pursuant to Article 78 of the Conditions of Employment, and by the Commission, acting on behalf of the European Communities, under the terms of Article 1 of the framework agreement in force.

- 15 Article 3 provides *inter alia* that, subject to the provisions laid down by the ensuing articles, auxiliary session interpreters are to enjoy the grading, remuneration, flat-rate travel allowance and index links laid down by the framework agreement.
- 16 Article 4.1 provides that, pursuant to Article 78 of the Conditions of Employment, the remuneration and flat-rate travel allowance provided for in Articles 5 and 7 of the framework agreement are subject, in the case of staff covered by the internal rules, to the Community tax introduced by Council Regulation No 260/68 under Article 13 of the Protocol.
- 17 Finally, Article 8 refers to the Conditions of Employment and other rules applicable to all staff for resolving any question not covered by the internal rules or the framework agreement.

Background to the dispute

- 18 Since 1976, Mrs Gebhard has been employed by the Parliament as a conference interpreter on the basis of a succession of short-term contracts.
- 19 Two such periods of employment, from 6 to 9 November 1995, and from 11 to 14 December 1995, were confirmed by letters from the Parliament, dated 10 November and 8 December 1995 respectively.
- 20 By letter of 29 February 1996 to the Parliament, Mrs Gebhard contested the levying of Community tax, amounting to ECU 477.61, on her remuneration in respect of those two periods, arguing that, under Article 2 of Regulation No 260/68, freelance interpreters are not liable to the tax.

- 21 The Parliament replied to Mrs Gebhard by letter of 10 June 1996, pointing out that Article 78 of the Conditions of Employment enabled it to recruit staff for short periods in order to meet specific requirements for additional staff arising from parliamentary activity. As Article 78 of the Conditions of Employment falls within Title III, which deals with auxiliary staff, any staff recruited under that provision are liable to Community tax on the same basis as other auxiliary staff, by virtue of Article 2 of Regulation No 260/68.

Procedure

- 22 By application lodged on 17 July 1996, Mrs Gebhard brought this action against the refusal to repay Community tax.
- 23 The case, which was originally assigned to the Third Chamber, was referred to the Third Chamber in its extended composition by decision of the Court of First Instance of 4 February 1998, adopted pursuant to Articles 14 and 51 of the Rules of Procedure.
- 24 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Third Chamber, Extended Composition) decided to open the oral procedure. As a measure of organisation of procedure, it asked the Parliament to provide certain information.
- 25 The parties presented oral argument and replied to oral questions from the Court at the hearing on 5 May 1998.

Forms of order sought

26 The applicant claims that the Court should:

— declare the application admissible;

— annul the decision rejecting the complaint;

— order the abatement of Community tax and its reimbursement to the applicant, together with interest at the statutory rate;

— order the Parliament to pay the costs.

27 The Parliament contends that the Court should:

— declare the application inadmissible;

— declare that Community tax was properly levied on the applicant's remuneration;

— make an order as to costs in accordance with its Rules of Procedure.

Admissibility

- 28 The Parliament disputes, first, Mrs Gebhard's interest in bringing an action, in that she confines herself to referring to a conflict of jurisdiction in tax matters between the German administration and the Parliament without establishing that national tax was also levied on her remuneration.
- 29 The applicant counters that the reason behind her action is the uncertain nature of her tax status, given that the authorities of the Federal Republic of Germany, her country of residence, have long disputed that interpreters engaged by the Parliament are liable to Community tax.
- 30 It is sufficient for the Court to point out that, as the subject-matter of the application is the reimbursement of Community tax levied, the applicant clearly has an interest in bringing an action.
- 31 Second, the Parliament refers to the applicant's delay in bringing proceedings in that she did not contest the levying of tax at the outset in respect of previous periods of employment and, third, it points out that she can hardly dispute her status as a member of the auxiliary staff while relying on the legal remedies available under Title III of the Conditions of Employment.
- 32 It is appropriate to consider the substance of the application before a ruling can be given on those two objections of inadmissibility, since the assessment of their merits depends on the answer to the initial substantive question whether Mrs Gebhard was legally engaged as a member of the auxiliary staff within the meaning of Title III of the Conditions of Employment.

Substance

- 33 By her three pleas seeking annulment, Mrs Gebhard disputes the legality of the Parliament's internal rules, on the basis of which the Parliament levied the Community tax in issue.

The first plea, alleging breach of Article 78 of the Conditions of Employment and Article 2 of Regulation No 260/68

Arguments of the parties

- 34 Mrs Gebhard claims that legally she could not be liable to Community tax as she is not covered either by the Conditions of Employment or, because of her specific employment situation, by the special provisions derived from the application of Article 78 of those Conditions.
- 35 Although all the periods for which she was engaged were of short duration, they had recurred frequently year after year since 1976, whereas the actual duration of the employment of a member of the auxiliary staff may not exceed one year in any circumstances.
- 36 The general provisions of the Conditions of Employment, set out in Articles 1 to 7, the purpose of which is to define the scope *ratione personae* of those Conditions, do not contain any exceptions to the definition of auxiliary staff which are specific to Article 78 and involve derogating from Article 52. In authorising a derogation from Title III of the Conditions of Employment only on the basis of conditions, laid down by the agreement referred to therein, regarding the recruitment and remuneration of auxiliary staff engaged by the Parliament during part-sessions, Article 78 only makes it possible to derogate from Chapter 3, 'Conditions

of Engagement', and Chapter 5, 'Remuneration and Expenses', of Title III of the Conditions of Employment.

37 The Parliament counters that, because of the derogation provided for by Article 78 of the Conditions of Employment, Article 52 of those Conditions is not applicable to auxiliary session staff either. The time-limit laid down by that article is immaterial because its application to auxiliary session staff would amount to abolishing the derogation referred to in Article 78, which is precisely what provides the Parliament with the legal and practical means to arrange for the additional staff necessary for its parliamentary activities.

Findings of the Court

38 As the facts of the case show, Mrs Gebhard was engaged as a conference interpreter for successive periods of employment, each limited to a few days, following informal contact and subsequent written confirmation.

39 Although the Court has held that additional interpreters engaged by the Commission on the basis of short-term contracts which are frequently renewed from year to year, as in the applicant's case, are not entitled to the status of Community servant within the meaning of the Conditions of Employment, it expressly reserved judgment on the question of the application of the internal rules adopted by the Parliament under Article 78 of those Conditions (Case 43/84 *Maag v Commission* [1985] ECR 2581, paragraphs 22 and 23).

40 That article effectively allows the Parliament, by way of derogation from Title III of the Conditions of Employment, to limit to the duration of the work of its sessions the period for which the auxiliary staff required for their organisation are

engaged. To that end, the provision in question refers to the conditions of recruitment of the additional staff necessary for parliamentary activities, agreed on previously between three European institutions or organisations with a specific interest in that respect.

41 Thus, the purpose of Article 78 of the Conditions of Employment is to enable the parliamentary institution of the European Communities to meet its specific needs for large numbers of additional staff to ensure that the meetings of its various decision-making bodies are conducted properly.

42 Accordingly, the time-limit on the length of employment of auxiliary staff set by Article 52(b) of the Conditions of Employment has, by definition, no relevance to such additional staff because the repetitive nature and limited duration of their successive contracts are in fact features of the concept of engagement within the meaning of Article 78 of those Conditions.

43 The Parliament does not, therefore, appear to have exceeded the limits of the derogation granted to it by the Council in Article 78 of the Conditions of Employment, in adopting, pursuant to that provision, the internal rules applicable to session interpreters, since, under Article 1 of those rules, the only staff who come under them are freelance interpreters engaged to provide their services to the Parliament on a part-time basis during its plenary sessions, committee meetings and meetings of other parliamentary bodies.

44 Accordingly, the engagement of the applicant as a member of staff within the meaning of Article 78 of the Conditions of Employment necessarily gave her the status of a member of the auxiliary staff within the meaning of Title III of those Conditions.

45 Since, under Article 2 of Regulation No 260/68, auxiliary staff are liable to Community tax, the Parliament was not contravening that provision in withholding the Community tax in issue in accordance with its internal rules.

46 The applicant's first plea must therefore be rejected as unfounded.

The second plea, alleging breach of the second subparagraph of Article 24(1) of the Merger Treaty

Arguments of the parties

47 The applicant considers that, as Article 78 of the Conditions of Employment refers to the agreement reached between the Parliament, the Council of Europe and the Assembly of the WEU before the publication of the Conditions of Employment, the specific conditions laid down by that agreement on recruitment and remuneration of auxiliary session staff, to the exclusion of all other matters, are incorporated in Title III of the Conditions of Employment.

48 Any amendment to those specific conditions, therefore, automatically entails a change to Title III of the Conditions of Employment. In drawing up on the basis of Article 78 of those Conditions an independent set of internal rules for auxiliary session interpreters, the Parliament has, she alleges, inevitably encroached upon the exclusive authority which the second subparagraph of Article 24(1) of the Merger Treaty confers on the Council to determine the Conditions of Employment.

- 49 Moreover, she maintains, the Parliament has not established that it submitted its internal rules to the other two parties concerned for approval before implementation.
- 50 In any event, the internal rules cannot be regarded as an agreement within the meaning of Article 78 of the Conditions of Employment since Article 3.1 of those rules, concerning the remuneration of auxiliary session interpreters, refers to a framework agreement which does not apply to the Council of Europe or the Assembly of the WEU.
- 51 Finally, since neither of the latter two parties to the agreement referred to in Article 78 of the Conditions of Employment makes its interpreters liable to income tax deducted at source, the liability to Community tax provided for by the internal rules does not fall within the scope of that agreement.
- 52 The Parliament counters that it confined itself to adopting, in accordance with Article 78 of the Conditions of Employment, a set of internal rules applicable to interpreters engaged as auxiliary session staff, which were submitted, before their implementation, to the two other parties concerned for approval.

Findings of the Court

- 53 It is apparent from the examination of the first plea that the applicant has no grounds for maintaining that any change in the specific conditions applicable to auxiliary session staff automatically entails an amendment to Title III of the Conditions of Employment. In fact, the second paragraph of Article 78 of those Conditions expressly authorises the parties to the agreement in question to amend its provisions.

54 On the question of the arrangements for the adoption of the internal rules in force, the file before the Court contains no evidence that the Council of Europe or the Assembly of the WEU raised any objections to the draft internal rules which the Secretary-General of the Parliament sent to them by letters of 31 March 1995 in order to obtain their approval pursuant to Article 78 of the Conditions of Employment.

55 As regards the internal rules of a substantive nature which thus entered into force, they have not been shown to exceed the limits set to the conditions of recruitment and remuneration outlined by the agreement under Article 78 of the Conditions of Employment.

56 In particular, as the Parliament has argued, the purpose of that agreement may have been not so much to achieve exact equivalence in the remuneration paid by the three parties thereto, as merely to agree on scales of remuneration in accordance with the particular requirements of each party.

57 Finally, in providing that the remuneration of auxiliary session interpreters is subject to Community tax, pursuant to Article 78 of the Conditions of Employment, Article 4.1 of the internal rules merely implements, in relation to those concerned, the first indent of Article 2 of Regulation No 260/68.

58 Accordingly, the applicant's argument that the liability to Community tax provided for by the internal rules does not fall within the scope of the agreement under Article 78 of the Conditions of Employment is of no relevance.

59 It follows that the second plea must be rejected.

Breach of Article 13 of the Protocol

- 60 The applicant argues that, as freelance conference interpreters are not covered by the Conditions of Employment, the Parliament may not make them liable to Community tax without encroaching upon the authority conferred on the Council by Article 13 of the Protocol.
- 61 The Court considers that, since the conference interpreters recruited by the Parliament as auxiliary session interpreters are to be regarded as auxiliary staff within the meaning of Title III of the Conditions of Employment, the plea must be rejected since it is based on a false premiss.
- 62 It follows from the foregoing that the application must be dismissed as unfounded, without there being any need to consider the second and third objections of inadmissibility raised by the Parliament.

Costs

- 63 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. However, Article 88 of those Rules provides that in proceedings between the Communities and their servants the institutions are to bear their own costs.
- 64 In view of the complexity of the legal background to these proceedings, the application made by the Parliament under the second subparagraph of Article 87(3) of the Rules of Procedure for an order requiring the applicant to pay the costs which she has vexatiously caused it to incur must be dismissed. The parties must therefore be ordered, pursuant to Article 88 of the Rules of Procedure, to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber, Extended Composition),

hereby:

- 1) Dismisses the application.
- 2) Orders the parties to bear their own costs.

Tiili

Briët

Lenaerts

Potocki

Cooke

Delivered in open court in Luxembourg on 16 July 1998.

H. Jung

V. Tiili

Registrar

President