

By its second complaint, the Commission complains that the Grand Duchy of Luxembourg failed fully to transpose Article 3(1)(a) of Directive 96/71/EC in as much as the national legislation restricts the concept of 'minimum rest periods' to weekly rest, excluding other rest periods such as daily rest or breaks.

By its third and fourth complaints, the Commission finally pleads infringement of Articles 49 EC and 50 EC attributable to the obligation imposed on undertakings whose workers carry on permanent or temporary activity in Luxembourg (1) to make available to the Inspection du Travail et des Mines 'before the start of the works', 'at the mere request' and 'as quickly as possible' the particulars necessary for a control, and (2) to designate an 'ad hoc' agent resident in Luxembourg responsible for keeping the documents necessary for monitoring the obligations on those undertakings.

(¹) Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18 of 21.1.1997, p. 1).

(²) Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ 1991 L 288, p. 32).

Appeal brought on 21 July 2006 by Theodoros Kallianos against the judgment delivered by the Court of First Instance (Third Chamber) on 17 May 2006 in Case T-93/04 *Kallianos v Commission*

(Case C-323/06 P)

(2006/C 224/51)

Language of the case: French

Parties

Appellant: Theodoros Kallianos (represented by: G. Archambeau, avocat)

Other party to the proceedings: Commission of the European Communities

Form of order sought

- declare the appeal admissible and well founded;
- set aside the judgment of the Court of First Instance of the European Communities of 17 May 2006 in Case T-93/04 *Kallianos v Commission of the European Communities* in all material respects and, by doing what the Court of First Instance of the E. C. ought to have done:

- (a) annul the decision of the Appointing Authority of 28 November 2003 replying to the complaint brought by Mr Kallianos under No R/335/03 of 2 July 2003;
- (b) call upon the Commission to repay to the appellant the whole of the payments and amounts it unjustifiably withheld in respect of the remuneration payable to the appellant from the date on which he was granted a divorce by judgment of the Court of First Instance, Athens, on 8 March 1999, including indexation of the amount overpaid by way of maintenance pursuant to the unilateral decision of 18 September 2002 adopted by the Commission, together with interest at the statutory rate from the date when amounts were first withheld from the appellant's monthly salary;
- (c) order the Commission to pay the costs of effecting service, including the costs of translating the Greek judgments into French, documents which were in any event made available to the Commission in good time, amounting to EUR 1 500, together with the costs incurred by the appellant as a result of being obliged to deal repeatedly with the Commission's arguments, assessed at 20 % of the sum ordered to be paid in the order for costs or other such sum as the Court deems equitable;
- (d) order the Commission of the European Communities to pay all of the costs incurred in the proceedings before the Court of Justice and the Court of First Instance.

Pleas in law and main arguments

By his appeal, the appellant maintains, firstly, that the Community institutions lack competence to act in the place of the Member States or to interpret their national law in the context of divorce proceedings.

Secondly, the appellant challenges the argument that the effect of a divorce decree is not automatically to terminate interim measures ordered by a court in interlocutory proceedings and that such a decree must be served by writ by a court officer on the Commission in order that the latter may, in particular, consider itself released from its obligation to make deductions from the salary of one spouse (an official) for the benefit of the other spouse. In that regard, the appellant submits, in essence, that the Commission is not a third party seised of the matter or an ordinary employer, given that, under the Staff Regulations, all officials are under an obligation to provide information and to be transparent with regard to their personal circumstances. He also argues that an order awarding maintenance to a spouse in the course of divorce proceedings is automatically terminated on pronouncement of decree absolute and that it is therefore sufficient that the Commission is simply aware of that decree for the maintenance obligations to cease without there being any need for such a decree to be served by writ by a court officer.