

1. In respect of temporary officials of the EEC who, after the end of their period of service with the EEC reside in Belgium and in respect of whom no contributions were deducted in favour of the social security system and who are entitled to unemployment benefits paid by the EEC, do the provisions of Regulation No 1408/71⁽¹⁾ preclude national legislation from being fully applied to them, including the national rule against the overlapping of benefits under which, in accordance with the conditions governing the award of unemployment benefit the employee must be without work and without salary, the latter terms being deemed to include in particular: remuneration in respect of termination of employment or any compensation payable to the employee in respect of termination of an employment relationship, with the exception of compensation for non-material damage?
2. Does it run counter to Regulation of the Council No 1612/68⁽²⁾ (Article 7(4) of Title II) which provides that uniformity in social-security matters must be pursued and that there may be no discrimination that (in the applicant's view) there is inequality in the social-security status of post-doctoral assistants within the EEA, that in various Member States of the EEA a post-doctoral assistant is deemed to carry on an occupational activity, albeit not subject to social security, and in Belgium a post-doctoral assistant (in the applicant's view unjustly) is deemed to be a trainee (stagiaire) and a post-doctoral fellow must arrange for his own social-security cover under the Belgian national system although that is not possible on a voluntary basis (at any rate in regard to unemployment assurance)?

⁽¹⁾ OJ 1971, L 149, p. 2.

⁽²⁾ OJ 1968, L 257, p. 2.

Action brought on 15 March 2002 by the Commission of the European Communities against the Italian Republic

(Case C-99/02)

(2002/C 118/31)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 15 March 2002 by the Commission of the European Communities, represented by Vittorio Di Bucci, acting as Agent.

The applicant claims that the Court should:

- declare that, by not adopting within the time-limit prescribed all measures necessary for the recovery from the recipients of aid granted unlawfully which is incompatible with the common market pursuant to Commission Decision 2000/128/EC⁽¹⁾ of 11 May 1999 concerning aid granted by Italy to promote employment (notified on 4 June 1999 under document number C(1999) 1364), and therefore by not notifying the Commission of such measures, the Italian Republic has failed to fulfil its obligations under Articles 3 and 4 of that decision and under the EC Treaty;
- order the defendant to pay the costs.

Pleas in law and main arguments

The Commission decision requires Italy to adopt 'all necessary measures to recover from the recipients the aid which does not satisfy the conditions of Articles 1 and 2 and has already been unlawfully paid.' It must also notify the Commission, within two months of the date of notification of that decision, 'of the measures it has taken to comply herewith.'

It must be concluded that upon the expiry of that time-limit the Italian Republic had not yet informed the Commission of the measures taken to recover the aid unlawfully paid.

The only defence a Member State may plead to an action for failure to comply with a decision imposing an obligation to recover aid is that implementation is absolutely impossible. That condition is not satisfied so long as the defendant government confines itself to informing the Commission of legal, political or practical obstacles to the implementation of the decision without taking any steps to ensure that the undertakings concerned pay back the aid, and without suggesting alternative means of implementing the decision so as to overcome those obstacles.

The Italian authorities have never claimed that implementation was absolutely impossible, nor have they ever officially requested an extension of time for the recovery or a suspension of execution of the decision, and nor have they suggested alternative ways of applying the decision which would have enabled them to overcome the obstacles they faced.

⁽¹⁾ OJ L 42 of 15.2.2000, p. 1.