# ORDER OF THE COURT (Sixth Chamber)

14 July 2005 *

In Case C-420/04 P,

APPEAL pursuant to Article 56 of the Statute of the Court of Justice, lodged on 29 September 2004,

**Georgios Gouvras**, an official of the Commission of the European Communities, residing at Bereldange (Luxembourg), represented by J.-N. Louis, avocat, with an address for service in Luxembourg,

appellant,

the other party to the proceedings being:

**Commission of the European Communities**, represented by J. Currall and L. Lozano Palacios, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

* Language of the case: French.

THE COURT (Sixth Chamber),

composed of A. Borg Barthet, President of the Chamber (Rapporteur), J.-P. Puissochet and S. von Bahr, Judges,

Advocate General: C. Stix-Hackl,
Registrar: R. Grass,

after hearing the Advocate General,

makes the following

## Order

1 In this appeal Mr Gouvras asks the Court to set aside the judgment of the Court of First Instance of the European Communities of 15 July 2004 in Joined Cases T-180/02 and T-113/03 *Gouvras* v *Commission* [2004] ECR-SC 1-A-225, II-987 ('the contested judgment'), whereby the Court of First Instance dismissed his applications for the annulment, first, of the decision of 14 August 2001 of the Commission of the European Communities determining, with retrospective effect from 1 November 2000 and for the duration of his secondment in the interests of the service, Athens as his place of employment and ordering the recovery of the amounts overpaid pursuant to that decision ('the decision of 14 August 2001') and, secondly, of the decision of 30 April 2002 of the same institution limiting to 35% the portion of his remuneration transferable to Luxembourg for the duration of his secondment.

## Law

2 The first paragraph of Article 37 of the Staff Regulations of the European Communities ('the Staff Regulations') defines 'secondment in the interests of the service' as follows:

'An official on secondment is an established official who, by decision of the appointing authority:

(a) has been directed in the interests of the service:

— to serve temporarily in a post outside his institution;

...'

3 Article 38 of the Staff Regulations sets out the rules applying to that type of secondment as follows:

'Secondment in the interests of the service shall be governed by the following rules:

(a) the decision on secondment shall be taken by the appointing authority after hearing the official concerned;

(b) the duration of secondment shall be determined by the appointing authority;

(c) at the end of every six months, the official concerned may request that this secondment be terminated;

(d) an official on secondment pursuant to the first indent of Article 37(a) is entitled to receive a differential payment where the total remuneration carried by the post to which he is seconded is less than that carried by his grade and step in his parent institution; he shall likewise be entitled to reimbursement of all additional expenses entailed by his secondment;

...

(f) an official on secondment shall retain his post, his right to advancement to a higher step and his eligibility for promotion;

(g) when his secondment ends an official shall at once be reinstated in the post formerly occupied by him.'

4 Article 85 of the Staff Regulations governs the recovery of overpayments in the following terms:

'Any sum overpaid shall be recovered if the recipient was aware that there was no due reason for the payment or if the fact of the overpayment was patently such that he could not have been unaware of it.'

5 The place of employment during secondment affects the applicability of Articles 4, 5 and 10 of Annex VII to the Staff Regulations, which govern the expatriation allowance, installation allowance and daily subsistence allowance.

6 Under Article 4(1) of Annex VII to the Staff Regulations:

'1. An expatriation allowance shall be paid, equal to 16% of the total amount of the basic salary plus household allowance and the dependent child allowance paid to the official:

(a) to officials:

— who are not and have never been nationals of the State in whose territory the place where they are employed is situated, and

— who during the five years ending six months before they entered the service did not habitually reside or carry on their main occupation within the European territory of that State. For the purposes of this provision, circumstances arising from work done for another State or for an international organisation shall not be taken into account;

(b) to officials who are or have been nationals of the State in whose territory the place where they are employed is situated but who during the 10 years ending at the date of their entering the service habitually resided outside the European territory of that State for reasons other than the performance of duties in the service of a State or of an international organisation'.

7 Article 5 of Annex VII to the Staff Regulations provides as follows:

'1. An installation allowance equal to two months' basic salary in the case of an official who is entitled to the household allowance, and equal to one month's basic salary in other cases shall be paid to an established official who furnishes evidence that a change in the place of residence was required in order to satisfy the requirements of Article 20 of the Staff Regulations.

...

The installation allowance shall be weighted at the rate fixed for the place where the official is employed.

2. An installation allowance of the same amount shall be paid to any official who is transferred to a new place of employment and is thereby obliged to change his place of residence in order to comply with Article 20 of the Staff Regulations.

3. ...

The installation allowance shall be paid on production of documents establishing the fact that the official, together with his family if he is entitled to the household allowance, has settled at the place where he is employed.

4. An official who is entitled to the household allowance and does not settle with his family at the place where he is employed shall receive only half the allowance to which he would otherwise be entitled; the second half shall be paid when his family settles at the place where he is employed provided that it does so within the periods laid down in Article 9(3) [of Annex VII to the Staff Regulations]. Where the official is transferred to the place where his family resides before his family has settled at the place where he is employed, he shall not thereby be entitled to an installation allowance.

...'

8 Article 10 of Annex VII to the Staff Regulations reads as follows:

'1. Where an official furnishes evidence that a change in the place of residence is required in order to comply with Article 20 of the Staff Regulations, such official shall be entitled for a period specified in paragraph 2 of this Article to a subsistence allowance per calendar day as follows ...

2. ...

In no case shall the daily subsistence allowance be granted beyond the date on which the official removes in order to satisfy the requirements of Article 20 of the Staff Regulations.

...'

9 Article 17 of Annex VII to the Staff Regulations is worded as follows:

'1. Payment shall be made to each official at the place and in the currency of the country where he carries out his duties.

2. Under the terms laid down in rules drawn up by common agreement by the institutions of the Communities, after consultation of the Staff Regulations Committee, an official may:

(a) through the institution which he serves, regularly have part of his emoluments transferred up to a maximum amount equal to his expatriation or foreign residence allowance ...;

(b) have regular transfers made in excess of the maximum stated at the beginning of paragraph (a) provided that they are intended to cover expenditure arising in particular out of commitments proved to have been regularly undertaken by the official outside the country where the institution has its seat or outside the country where he carries out his duties;

(c) be authorised, in very exceptional circumstances and for good reasons supported by evidence, to have transferred, apart from the aforementioned regular transfers, sums which he may wish to have available in the currencies referred to in paragraph (a).

3. The transfers provided for in paragraph 2 shall be made at the exchange rate specified in the second paragraph of Article 63 of the Staff Regulations; the amounts transferred shall be multiplied by a coefficient representing the relationship between the weighting for the country in the currency of which the transfer is made, and the weighting for the country in which the official is employed.

10 Article 1 of the Rules laying down the procedure for the transfer of part of an official's emoluments ('the Common Rules'), which came into force on 1 January 1980, with effect from 1 April 1979, provides as follows:

'Pursuant to Article 17(2)(a) of Annex VII to the Staff Regulations, an official may also on application regularly have part of his emoluments transferred through the institution which he serves up to a maximum amount equal to his expatriation or foreign residence allowance, weighted at the rate for his place of employment.'

11 Article 2 of the Common Rules provides as follows:

'Pursuant to Article 17(2)(b) of Annex VII to the Staff Regulations, an official may also on application regularly have part of his emoluments transferred through the

institution which he serves in excess of the maximum amount referred to in Article 1, provided that such transfers are intended to cover expenditure arising out of commitments proved to have been regularly undertaken by the official outside his country of employment.

Expenditure regarded as justifying such transfers shall be as follows:

— Upon written evidence of attendance at school or university, study expenses for children in respect of whom a dependent child allowance is payable ...

— ...

— upon presentation of the title deeds and of the mortgage agreement, mortgage repayments ...'

12 Article 3 of the Common Rules reads as follows:

'The total of the regular transfers as defined in Articles 1 and 2 may not exceed 35% of the net monthly remuneration.'

13 Under Article 5 of the Common Rules:

'Pursuant to Article 17(2)(c) of Annex VII to the Staff Regulations, the appointing authority may authorise an official, in duly substantiated and highly exceptional circumstances, to have transferred through the institution which he serves, sums which he may wish to have available in one of the currencies referred to in Article 17 (2)(a) of the aforesaid Annex. Authorization will be granted after scrutinising of the supporting evidence provided.'

14 Finally, the fourth paragraph of Article 6 of the Common Rules provides as follows:

'The institutions concerned shall keep a regular check on whether the grounds on which the transfer authorization was granted still exist. Should it find that these grounds no longer exist, it shall cease to make the transfer.'

15 The Commission's internal directive of 30 July 1993 on the provisions for implementing the Common Rules, published in *Informations administratives* 815, of 11 August 1993, provides as follows:

'1. As provided in Article 2 of the [Common Rules], an official may make regular transfers in excess of the maximum specified in Article 1.

— Such transfers must be intended to cover expenditure as referred to in Article 2 of the [Common] Rules

— ...

3. Transfers may be made through the institution only if the commitments have been undertaken and the expenditure is incurred outside the official's country of employment and in the country corresponding to the currency of the transfer ...'

**Facts giving rise to the dispute**

16 The facts giving rise to the dispute, as set out in the contested judgment, are as follows:

'15 The appellant was appointed a probationary official of the Commission of the European Communities on 1 June 1982 and was employed in Luxembourg as an administrator in grade A6.

16 He was established by decision of 25 February 1983 with effect from 1 March 1983, then promoted to grade A5 in 1987, grade A4 in 1991 and finally grade A3 on 1 March 1999, as Head of Unit.

17 Following the reorganisation of all the Commission's services, he was appointed Head of the Unit for Public Health Analysis Policy Development and Health in other Policies of the Public Health Directorate of the Directorate-General ("DG") for Health and Consumer Protection on 1 October 1999.

18 By agreement with all the parties concerned, on 6 October 2000 the appellant's DG asked the Commission's Directorate for Personnel and Administration to second the appellant in the interests of the service to the Greek Ministry of Health pursuant to the first indent of Article 37(a) and Article 38 of the Staff Regulations.

19 For that purpose he was reassigned, by decision of 27 October 2000 to the Commission's DG for Health and Consumer Protection, as Adviser ad personam to the Director of the Public Health Directorate. That decision took effect on 1 November 2000.

20 The Commission then seconded the appellant in the interests of the service by decision of 21 November 2000, which is worded as follows:

"Article 1

Pursuant to the first indent of Article 37(a) and Article 38 of the Staff Regulations, it has been decided to second, in the interests of the service, Mr Georgios Gouvras (personnel No 04295), an official in grade A3 of the Directorate-General for Health and Consumer Protection, to the [Greek] Ministry ... of Health.

Article 2

Mr Georgios Gouvras is placed on secondment in the interests of the service from 1 November 2000 to 31 October 2001."

21 In view of the temporary nature of the appellant's secondment, his family remained in Luxembourg, where his children continued their studies and his wife, also an official of the European Communities, remained employed.

22 The Commission continued to pay the appellant's remuneration in Luxembourg, including the expatriation allowance, with a weighting of 100. It is common ground that during the period of his secondment the appellant received no remuneration from the Greek administration.

23 By e-mail of 23 July 2001, the appellant requested payment of the standard annual travel expenses for himself and his children from the place were he was employed to his place of origin.

24 By note of 26 July 2001, Ms Martine Reicherts, Director of the Directorate for Administration and Management of the Luxembourg and Ispra Staff of the Commission DG for Personnel and Administration, asked Mr Adrian Barnett, Head of the Staff Regulations Unit of the Directorate for Rights and Obligations; Social Policy and Measures of the same DG, to 'inform her of the interpretation to be given as to Mr Gouvras' place of employment, if necessary after obtaining the opinion of the Legal Service, taking account ... of the case law on the subject (judgment of the Court of First Instance in Case T-15/95 *do Paço Quesado* v *Commission* [1996] ECR-SC I-A-57 and II-171, paragraphs 26 to 30)'.

25 In the note Ms Reicherts wrote as follows:

'As the secondment decision does not specify the place of employment of the person concerned, my services have encountered difficulties when making payments and reimbursements due to him, which have been the subject of correspondence between the [Luxembourg Staff Unit of the Directorate for Administration and Management of the Luxembourg and Ispra Staff of the Directorate-General for Personnel and Administration and the Unit for Management of Individual Rights of the Directorate for Rights and Obligations; Social Policy and Measures of the same Directorate-General], and which were raised at a meeting in Brussels, but without a final position being reached.'

26 Following Mr Barnett's reply, Ms Reicherts wrote the following letter ... to the appellant on 14 August 2001:

'In response to your request, the Luxembourg Staff Unit ... has once again asked for clarification [from] the Staff Regulations Unit concerning the application of the rules to your situation. I enclose copies of the relevant correspondence.

It appears from the reply given on 31 July 2001 that:

— in accordance with Article 38 of the Staff Regulations, you have a right to claim reimbursement, on production of supporting documents, for all expenses entailed by your secondment;

— any income from the [Greek] Ministry ... of Health, to which you are seconded, must be deducted from your salary;

— as you are seconded to Athens [Greece], that must be your place of employment with effect from 1 November 2000;

— consequently, there are no grounds for maintaining your right to the expatriation allowance from that date, or to the reimbursement of annual travel expenses;

— your remuneration must be weighted for Greece;

— your remuneration must be paid to you in Greece.

...

To ensure the continued payment of your remuneration, your salary for September 2001 will be paid in accordance with the rights set out above to your bank account in Luxembourg. At the beginning of September 2001 the pay office will inform you of the exact amount which must be deducted from your future remuneration and will be available to inform you of the exact arrangements for recovery. At this stage, the total amount to be recovered may be estimated at approximately EUR 31 000, not including recovery for annual travel.'

27 The appellant was informed of this letter by fax of 11 September 2001 and replied in a detailed letter of 14 September, asking for the decision to be reviewed and requesting additional information. The appellant also referred to his difficulties in obtaining exact information concerning the conditions of his secondment and mentioned the different people to whom he had spoken in that connection, namely Ms J. Lavaud, of the Unit for Personnel covered by the Staff Regulations and Seconded National Experts, of the Directorate for Staff Policy of the Commission DG for Personnel and Administration, Ms Perez-Silvan, of the Unit for Management of Individual Rights of the Directorate for Rights and Obligations; Social Policy and Measures of the same DG, and Mr D. Janssens, Head of the Unit for Staff, Budget and Other Resources of the General Affairs Directorate of the appellant's DG of employment. The appellant added that, since his departure, he had received no note from the Commission services concerning the conditions of his secondment to warn him that the secondment was at his own financial risk with the possible recovery of overpayments.

28 Ms Reicherts replied to this by note of 2 October 2001 ("the decision of 2 October 2001") inviting the appellant to challenge, if he wished, the decision concerning the new determination of his financial rights by submitting a complaint under Article 90(2) of the Staff Regulations.

29 On 10 October 2001 Mr F. Augendre, of the Luxembourg Staff Unit of the Directorate for Administration and Management of the Luxembourg and Ispra Staff of the Commission DG for Personnel and Administration, sent a note to the appellant informing him that, following the decision of 14 August 2001, the rectified calculation of his remuneration during his secondment resulted, pursuant to Article 85 of the Staff Regulations, in a deduction of EUR 1 342.30 for November 2001 and EUR 1 342.16 for every month from December 2001 to November 2003, that is to say, a total of 24 monthly deductions.

30 On 22 October 2001 the appellant submitted a complaint to the appointing authority seeking the annulment of the decisions of 14 August and 2 October 2001, and also the annulment of all payslips giving effect to the first decision.

31 By e-mail of 31 October 2001 the appellant was informed of the decision of Mr David Byrne, the Commissioner responsible for health and consumer protection, to recall him to Luxembourg that same day by reason of the challenges faced by the Commission with regard to bioterrorism.

32 By decision of 11 December 2001 which took effect on 1 November 2001, the Commission terminated the appellant's secondment in the interests of the service to the Greek Ministry of Health and "reassigned" him as adviser ad personam to the Director of the Directorate for Public Health of the DG for Health and Consumer Protection. That decision was annulled and replaced by the Commission decision of 6 February 2002, whereby the appellant was reinstated in his post as adviser ad personam to the same director.

33 The appellant's complaint was dismissed by the appointing authority by decision of 22 February 2002, of which he acknowledged receipt on 1 March 2002.

34 By application received at the Court Registry on 11 June 2002 the appellant brought an action against the decision of 14 August 2001 (Case T-180/02).

35 Following the Commission's decision to determine the place of his employment as Athens, on 28 January 2002 the appellant submitted a request for the transfer of part of his remuneration necessary to cover regular and proven commitments

which he stated he had to meet in Luxembourg, his usual place of employment and main residence.

36 On 8 March 2002 the appellant submitted a second request for the grant of the installation and daily subsistence allowances in accordance with Articles 5 and 10 of Annex VII to the Staff Regulations by reason of taking up duties on 1 November 2000 in Athens and 1 November 2001 in Luxembourg.

37 By decisions of 30 April 2002 ("the decisions of 30 April 2002") the administration, first, granted his request for the transfer, pursuant to Article 17(2)(c) of Annex VII to the Staff Regulations, of part of his net remuneration from Greece to Luxembourg for the period from November 2000 to October 2001, subject, however, to the limit of 35% of such remuneration and, secondly, informed him that his request for the installation and daily subsistence allowances had been refused.

**The actions before the Court of First Instance and the contested judgment**

17 By application received at Registry of the Court of First Instance on 11 June 2002, Mr Gouvras brought his first action against the decision of 14 August 2001 (Case T-180/02). The Commission contended that this action should be dismissed.

18 The appellant brought a second action, this time against the decisions of 30 April 2002 (Case T-113/03). The Commission contended that this action should also be dismissed.

19 The appellant relied upon three pleas in support of his action against the decision of 14 August 2001.

20 As his first plea, the appellant claimed that the Commission had acted in breach of Articles 37(a), first indent, and 38(a) of the Staff Regulations in so far as, first, it disregarded the obligation to hear him before his secondment and, second, determined Athens as the place of his employment with retrospective effect.

21 On this point the Court found, at paragraphs 70 to 86 of the contested judgment, that, first, the administration was entitled to expect the appellant, in view of his grade, to be well aware of administrative procedures and the procedures governed by the Staff Regulations and, second, that an official's place of employment is in principle the place where he carries out his duties and that, by seconding the appellant to the Greek Ministry of Health, the Commission by implication determined Athens as his place of employment.

22 The Court therefore concluded, at paragraph 87 of the judgment, that the Commission had correctly determined Athens as the place where the appellant was employed and it accordingly dismissed his first plea in support of his first action.

23 As his second plea, the appellant submitted that the Commission had acted in breach of Article 85 of the Staff Regulations and had adopted an arbitrary decision arising from disregard of the principle of the protection of legitimate expectation and the duty to have regard to the interests of officials in so far as it had not given him reliable information in good time to enable him to decide whether, in view of his financial commitments, he could agree to be seconded to Athens and to have his remuneration significantly reduced because of the weighting for Greece and the discontinuance of the expatriation allowance.

24 On this point, the Court observed, at paragraph 102 of the contested judgment, that an overpayment is to be recovered, according to Article 85 of the Staff Regulations, if the recipient was aware that there was no due reason for the payment or if the payment was so patently erroneous that he could not have been unaware of it.

25 First of all, regarding the appellant's knowledge that there was no due reason for the payment because Athens ought to have been determined as his place of employment, the Court found, at paragraph 108 of the contested judgment, that the sums received by Mr Gouvras as a result of the determination of Luxembourg as his place of employment had been overpaid.

26 However, at paragraph 109 of the contested judgment the Court adds that those sums could give rise to recovery only if the error on the administration's part was so patent that the appellant could not have been unaware of it. At paragraph 111, the Court notes that, although the Commission was unclear and took several months to give a ruling on Mr Gouvras' rights, particularly in relation to the expatriation allowance, it must be said that an official with the appellant's experience and grade exercising ordinary care could not have been unaware that payment of the allowance depended on expatriation within the meaning of Article 4 of Annex VII to the Staff Regulations.

27 Secondly, regarding the allegedly arbitrary nature of the decision of 14 August 2001, the Court found, at paragraphs 117 to 119 of the contested judgment, that, in the absence of specific allegations concerning the obligation which claimed to have been breached, that complaint should be dismissed.

28 Third, as regards the Commission's disregard of its duty to have regard to the interests of officials, the Court found, at paragraphs 120 to 125 of the judgment, that the Commission was not in breach of such duty because the appellant had admitted that he had been informed of the effect of his secondment in the interests of the service on his administrative situation.

29 Fourth, with regard to breach of the principle of the protection of legitimate expectations, the Court found, at paragraphs 126 to 133 of the judgment, that that argument had to be dismissed because the appellant was given no precise assurances by the Commission concerning the conditions of his secondment.

30 Consequently the appellant's second plea in support of his first action was dismissed as unfounded.

31 The appellant's third plea was that there was a breach of Articles 5 and 10 of Annex VII to the Staff Regulations in so far as the Commission refused to recognise his right to an installation allowance as well as the daily subsistence allowance.

32 On this point the Court found, at paragraphs 142 to 144 of the judgment, that, in the decision of 14 August 2001, the Commission did not refuse the appellant those allowances. Therefore the Court ruled that this plea had to be dismissed.

33 Consequently Mr Gouvras' action against the said decision was dismissed in its entirety,

34 With regard to his second action against the decisions of 30 April 2002, Mr Gouvras relied on two pleas to challenge their legality.

35 His first plea was that Articles 5 and 10 of Annex VII to the Staff Regulations were infringed on the ground that, during the period of his employment in Athens, he was refused an installation allowance and the daily subsistence allowance and was also refused an installation allowance when he was posted back to Luxembourg.

36 First, regarding the grant of an installation allowance to the appellant during his secondment to Athens, the Court found, at paragraphs 156 to 159 of the contested judgment, that the appellant was entitled to seek the annulment of the decision of 30 April 2002 refusing him the installation allowance.

37 Secondly, with regard to the grant of an installation allowance on the appellant's return to Luxembourg, the Court found, at paragraphs 160 and 161 of the judgment, that the Commission was justified in refusing the allowance pursuant to Article 5(4) of Annex VII to the Staff Regulations.

38 Third, so far as the daily subsistence allowance was concerned, the Court found, at paragraphs 162 to 166 of the judgment, that this was properly refused by the Commission because, if that had not been the case, payment of the allowance would have been contrary to the purpose of Article 10 of Annex VII to the Staff Regulations. Neither his residence in Athens nor his residence in Luxembourg could be regarded as temporary.

39 The Court therefore concluded that the appellant's first plea in support of his second action should be allowed in part because the Commission wrongly refused him the installation allowance during his employment in Athens.

40 The second plea raised by the appellant was that, by limiting to 35% that part of his remuneration which he was entitled to transfer outside the Member State where he carried out his duties, the Commission contravened Article 38(d) of the Staff Regulations and Article 17 of Annex VII thereto.

41 In this connection the Court found, at paragraphs 194 to 211 of the judgment, that Article 38(d) of the Staff Regulations was correctly applied by the Commission because, during his secondment in Athens, the appellant had received remuneration for the same grade and the same step as he held in his original institution. That provision did not mean that the person concerned should receive, during his secondment in Athens, the total remuneration paid to him in Luxembourg. The Court also found that the 35% limit on the transfer of the appellant's net remuneration was not disproportionate as he had not furnished proof of exceptional expenses that would enable the administration to authorise the transfer of a greater percentage.

42 Accordingly the Court dismissed Mr Gouvras' second plea in support of his second action.

43 Consequently the Court, first, annulled the decision of 30 April 2002 which refused the appellant the benefit of the installation allowance on the occasion of his secondment in Athens and, second, dismissed the second action as to the remainder.

## The appeal

*Forms of order sought by the parties*

44 In his appeal Mr Gouvras asks the Court:

— primarily, to set aside the contested judgment in so far as it dismissed his applications for:

  — first, in Case T-180/02, the annulment of the decision of 14 August 2001 and,

  — second, in Case T-113/03, the annulment of the decision of 30 April 2002 limiting to 35% the part of his remuneration transferable to Luxembourg during the period of his secondment and,

— then to give new directions granting him leave to amend his pleas in law and the forms of order sought;

— in the alternative, to annul all the provisions of the decision of 14 August 2001 and the decision of 30 April 2002, which limits to 35% the part of his remuneration transferable to Luxembourg, his usual place of employment;

— to order the Commission to pay the costs of both sets of proceedings.

45 The Commission contends that the Court should:

— dismiss the appeal as inadmissible or, at least, unfounded;

— order the appellant to pay the costs.

## The appeal

46 First of all, it must be observed that, by virtue of Article 119 of the Rules of Procedure, where the appeal is clearly inadmissible or clearly unfounded, the Court may at any time, acting on a report from the Judge-Rapporteur and after hearing the Advocate General, by reasoned order dismiss the appeal.

*The grounds of appeal concerning the decision of 14 August 2001*

The first ground

47 In his first ground of appeal, the appellant claims that the Court of First Instance erred in law by not ascertaining whether the Commission had, before deciding on his secondment in the interests of the service, actually informed him of all the effects of secondment not only on his administrative situation but also of the financial consequences, particularly with regard to the right to the expatriation allowance,

reimbursement of annual travel expenses and the fact that his remuneration would be weighted for Greece. In the circumstances he had no opportunity to assert his interests effectively and to request, at the end of six months, the termination of his secondment. He therefore considers that there has been a breach of Articles 37(a), first indent, and 38 of the Staff Regulations.

48 In this connection it must be observed that, under Article 225(1) EC and the first paragraph of Article 58 of the Statute of the Court of Justice, an appeal is limited to points of law and must be based on the grounds of lack of competence of the Court of First Instance, breach of procedure before it which adversely affects the interests of the appellant, or infringement of Community law by the Court of First Instance (see, in particular, Case C-284/98 P *Parliament* v *Bieber* [2000] ECR I-1527, paragraph 30, and the order in Case C-345/00 P *FNAB and Others* v *Council* [2001] ECR I-3811, paragraph 28).

49 Moreover it has consistently been held that the Court of First Instance has sole jurisdiction to find and appraise the facts, except in a case where the factual inaccuracy of its findings arises from evidence adduced before it. The appraisal of the facts by the Court of First Instance does not constitute, save where the clear sense of the evidence produced before it is distorted, a question of law which is subject, as such, to review by the Court of Justice (Case C-53/92 P *Hilti* v *Commission* [1994] ECR I-667, paragraph 42, and Joined Cases C-280/99 P to C-282/99 P *Moccia Irme and Others* v *Commission* [2001] ECR I-4717, paragraph 78).

50 Consequently complaints concerning the findings of fact or the appraisal of the facts by the Court of First Instance are admissible only where the appellant claims that the

factual inaccuracy of the findings of the Court of First Instance arises from the evidence or that the Court distorted the clear sense of the evidence before it.

51 In the present case it is clear that Mr Gouvras's first ground of appeal attempts to persuade the Court of Justice to review the appraisal of the facts by the Court of First Instance, namely that the appellant was heard and sufficiently informed before the secondment decision was adopted, but he does not, however, show that the evidence was distorted by the Court of First Instance.

52 Therefore this ground must be dismissed as clearly inadmissible.

The second ground

53 In his second ground of appeal, Mr Gouvras claims, first, that the Court of First Instance erred in law in finding that the administration incorrectly issued payslips, between 1 November 2000 and 14 August 2001, including the expatriation allowance and weighting for Luxembourg.

54 The appellant also submits that the Court of First Instance contravened Community law in finding that he was aware that the payments were incorrect or that the fact of the overpayments was patently such that he could not have been unaware of it. He complains that the Court of First Instance took the view that an official with the appellant's experience and grade exercising ordinary care could not have been unaware that the payments in issue were incorrect.

55 Consequently the appellant is challenging the reply given by the Court of First Instance to a question of legal characterisation of the facts and is therefore submitting a question of law for review by the Court of Justice.

56 It follows that the second ground in support of the appeal is admissible.

The merits of the two limbs of the second ground of appeal

57 First of all, with regard to the incorrect payment of remuneration, it need merely be pointed out that the Court of First Instance rightly found, at paragraphs 104 to 108 of the contested judgment, that the principle of maintaining an official's overall remuneration cannot lead to the administration granting him allowances and benefits to which he is not entitled. Therefore, as the appellant's place of employment ought to have been determined as Athens, it must be concluded that he wrongly received the sums paid by the administration by reason of the determination of as his place of employment as Luxembourg.

58 Next, with regard to the appellant's awareness of the overpayment, the Court of First Instance also correctly found, at paragraphs 109 to 116 of the contested judgment, that the Commission correctly put into effect the procedure for recovery of the overpayment.

59 As the Court of First Instance noted at paragraph 111, although the Commission was unclear and took several months to give a ruling on Mr Gouvras' rights, it must be said that an official, with the appellant's experience and grade exercising ordinary care could not have been unaware that payment of the allowance depended on expatriation within the meaning of Article 4 of Annex VII to the Staff Regulations.

60 Finally, as the Court of First Instance found at paragraph 115, contrary to the appellant's argument, the provisions of the Staff Regulations could not assist the appellant in his view that he was entitled to keep Luxembourg as his place of employment together with all the allowances he was receiving there. First, the Staff Regulations contain no express provisions as to the determination of an official's place of employment in the event of secondment and, secondly, payment of the allowances in question is expressly made subject to certain conditions.

61 Therefore the Court of First Instance was right to find that the Commission had correctly put into effect the procedure for recovery of the overpayment.

62 In those circumstances the second ground of appeal must be dismissed as clearly unfounded.

*The single ground of appeal concerning the decision of 30 April 2002*

63 In this single ground of appeal, the appellant claims that the Court of First Instance erred in law in finding that the decision of 30 April 2002 did not contravene Article 38(d) of the Staff Regulations in limiting to 35% the part of his remuneration transferable to Luxembourg during the period of his secondment.

64 In his appeal, the appellant merely observes that his claim does not seek to put him in a more advantageous financial situation that that arising from his secondment, but only to prevent his secondment from bringing about a significant financial disadvantage. However, no argument was made in support of that submission.

65 In that regard, it follows from Article 225 EC, the first paragraph of Article 58 of the Statute of the Court of Justice and Article 112(1)(c) of the Rules of Procedure of the Court of Justice that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal (see, in particular, Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraph 34; Case C-248/99 P *France* v *Monsanto and Commission* [2002] ECR I-1, paragraph 68, and the order in Case C-488/01 P *Martinez* v *Parliament* [2003] ECR I-13355, paragraph 40).

66 In the present case, it must be found that the appeal does not indicate the reason why the legal ground upon which the Court of First Instance relied at paragraph 210

of the contested judgment is erroneous and, accordingly, the single ground put forward against the decision of 30 April 2002 must be dismissed as inadmissible.

67 Even if that ground were admissible, it would be unfounded because the article upon which the appellant relies does not apply in the present case since the non-payment of allowances under the Staff Regulations does not fall within the definition of 'expenses'.

## Costs

68 Pursuant to Article 69(2) of the Rules of Procedure, which by virtue of Article 118 of the Rules applies to the procedure on appeal, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 70 of the said Rules, in proceedings between the Communities and their servants the institutions are to bear their own costs. However, under the second paragraph of Article 122 of the same Rules, Article 70 does not apply to appeals brought by officials or other servants of an institution against that institution. As the applicant has failed in his submissions, he must be ordered to pay the costs.

On those grounds, the Court (Sixth Chamber) hereby:

**1. Dismisses the appeal;**

**2. Orders Mr Gouvras to pay the costs.**

[Signatures]