



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 103/12

Luxembourg, 19 July 2012

Judgment in Case C-154/11
Ahmed Mahamdia v Algeria

A foreign State cannot plead immunity in response to employment law proceedings brought by an employee of its embassy, where the employee carries out functions which do not fall within the exercise of public powers

Such an employee can therefore bring proceedings before the courts of the Member State in which the embassy is situated

Mr Mahamdia, who has Algerian and German nationality, worked for the Algerian State as a driver at its embassy in Berlin (Germany). He is contesting his dismissal before the German courts and claims compensation. Algeria argues, however, that as a foreign State it enjoys immunity from jurisdiction in Germany, recognised by international law under which a State cannot be subjected to the jurisdiction of another State. In addition, Algeria relies on the term in the contract of employment concluded with Mr Mahamdia which provides that, in the event of a dispute, only the Algerian courts are to have jurisdiction.

In this connection, the Landesarbeitsgericht Berlin-Brandenburg (Higher Labour Court, Berlin and Brandenburg) asks the Court of Justice to interpret Regulation No 44/2001¹, which lays down *inter alia* rules on jurisdiction over individual contracts of employment. Those rules are intended to ensure proper protection for the employee as the weaker of the contracting parties. Thus where the employer is domiciled outside the EU, the employee may sue him in the courts of the Member State in which the employer's 'establishment' in which the employee works is situated.

By its judgment delivered today, the Court of Justice found that an embassy of a third State in a Member State is an 'establishment' within the meaning of the regulation, in a dispute concerning a contract of employment concluded by the embassy on behalf of the sending State, where the functions carried out by the employee do not fall within the exercise of public powers.

Like any other public entity, the embassy can acquire rights and obligations of a civil nature. That is the case where it concludes contracts of employment with persons who do not perform functions which fall within the exercise of public power. In addition, an embassy may be equated with a centre of operations which has the appearance of permanency. Moreover, a dispute in the field of employment relations such as that in the present case has a sufficient link with the functioning of the embassy with respect to the management of its staff.

As to the immunity pleaded by Algeria, the Court explains that that immunity is not absolute. It is generally recognised where the dispute concerns sovereign acts. It may be excluded, by contrast, if the legal proceedings relate to acts which do not fall within the exercise of public powers.

Consequently, the principle of international law concerning the immunity of States from jurisdiction does not preclude the application of Regulation No 44/2001 in a dispute in which an employee contests the termination of the contract of employment he concluded with a State, where the court before which the case is brought finds that the functions carried out by that employee do not fall within the exercise of public powers.

¹ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

As to the term in Mr Mahamdia's contract of employment stating that, in the event of a dispute, only the Algerian courts have jurisdiction, the Court notes that Regulation No 44/2001 limits the possibility of derogating from the rules of jurisdiction it lays down. The Court states that an agreement on jurisdiction concluded before the dispute arises cannot prevent the employee from bringing proceedings before the courts which have jurisdiction under the special rules in the regulation concerning individual contracts of employment. If it were otherwise, the objective of protecting the employee as the weaker party to the contract would not be attained.

An agreement on jurisdiction concluded before the dispute arose can only, therefore, give the employee the possibility of bringing proceedings, not only before the courts ordinarily having jurisdiction under Regulation No 44/2001, but also before other courts, which may include courts outside the EU.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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