

ORDER OF THE COURT  
29 May 2001 \*

In Case C-1/00 SA,

Cotecna Inspection SA, established in Geneva (Switzerland), represented by J.H.J. Bourgeois, Avocat, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by M. De Pauw and B. Martenczuk, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for authorisation to serve a garnishee order on the Commission of the European Communities,

\* Language of the case: French.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, C. Gulmann, A. La Pergola, M. Wathelet and V. Skouris (Presidents of Chambers), D.A.O. Edward, J.-P. Puissechet, P. Jann, L. Sevón, R. Schintgen, F. Macken, N. Colneric, S. von Bahr (Rapporteur), J.N. Cunha Rodrigues and C.W.A. Timmermans, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,  
Registrar: R. Grass,

after hearing the Advocate General,

makes the following

Order

- <sup>1</sup> By application lodged at the Court Registry on 14 December 2000, Cotecna Inspection SA ('Cotecna') applied, pursuant to the third sentence of Article 1 of the Protocol on the Privileges and Immunities of the European Communities (the 'Protocol'), for authorisation to serve a garnishee order upon the Commission in respect of certain sums owed by the European Community to the Republic of Djibouti.

## Facts of the dispute

2 The facts of the case, as they appear from the documents before the Court, may be summarised as follows.

3 On 20 January 1996, Cotecna concluded with the Republic of Djibouti a contract relating to the provision of services of inspection and investigation of imports to the country. Since the Republic of Djibouti failed to pay monthly invoices issued from 3 June 1997 to 30 November 1997, with the exception of one invoice, Cotecna resorted to an arbitration clause in the contract.

4 By arbitral award of 28 January 2000, the Republic of Djibouti was ordered to pay Cotecna, first, a sum of USD 2 265 550.63, together with interest at the legal rate in force in Djibouti from the date of the award, and, secondly, a sum of USD 66 000. When the Republic of Djibouti failed to fulfil its obligation to pay those sums, Cotecna sought an enforcement order for the arbitral award from the Tribunal de première instance de Bruxelles (Court of First Instance, Brussels) (Belgium). That court granted the enforcement order by order of 16 November 2000, under Article 1710 of the Belgian Judicial Code.

5 By letter of 1 September 2000 Cotecna requested the Commission to indicate to it whether a garnishee order served upon the Commission in respect of sums owed by the Commission to the Republic of Djibouti would prejudice the functioning and independence of the European Communities.

- 6 On 2 October 2000, the Commission responded that, should a garnishee order affect the financing of a Community policy and in particular development cooperation in the Republic of Djibouti, the Commission would invoke the immunity conferred on it by the Protocol.

### Forms of order sought

- 7 In its application, Cotecna asked the Court to authorise it to serve a garnishee order upon the Commission for the sum of USD 2 265 550.63, together with interest at the legal rate in force in Djibouti from the date of the arbitral award of 28 January 2000, and USD 66 000.
- 8 The Commission asked the Court to dismiss Cotecna's application and order Cotecna to pay the costs.

### Findings of the Court

- 9 The first point to be noted here is that Article 1 of the Protocol provides that '[t]he property and assets of the Community shall not be the subject of any administrative or legal measure of constraint without the authorisation of the Court of Justice'. The purpose of that provision is to ensure that there is no interference with the functioning and independence of the Communities (order in Case 1/88 SA *Générale de Banque v Commission* [1989] ECR 857, paragraph 2).

- 10 Consequently, as the Court held in paragraph 3 of its order in Case 1/87 SA *Universe Tankship v Commission* [1987] ECR 2807, the jurisdiction of the Court with respect to garnishee orders is confined to considering whether such measures are likely, in view of the effects which they have under the applicable national law, to interfere with the proper functioning and the independence of the European Communities.
- 11 Cotecna considers that, in the present case, a garnishee order would not interfere with the functioning of the Community. In support of that opinion, Cotecna puts forward several arguments based on the importance for the development of a country such as Djibouti of the services which Cotecna provides, on the fact that a garnishee order would have no consequences for the future actions of the Community and on the existence of practices affecting the common agricultural policy in a similar way as garnishee orders.
- 12 In that connection, it should be noted that the functioning of the Communities may be hampered by measures of constraint affecting the financing of common policies or the implementation of the action programmes established by the Communities (order in *Générale de Banque v Commission*, paragraph 13).
- 13 Under Article 177(1) EC, Community policy in the sphere of development cooperation is to foster in particular the sustainable economic and social development of the developing countries.
- 14 The Community has organised its development cooperation in African, Caribbean and Pacific countries in a series of conventions concluded in turn with those countries. The Community's financial cooperation in the development of the Republic of Djibouti belongs in that context. The specific framework of

that cooperation is set out in the national indicative programmes relating to the Sixth, Seventh and Eighth European Development Funds. Those programmes establish the total amount available for development cooperation in the Republic of Djibouti and set out the areas as well as the objectives and arrangements for Community intervention.

- 15 It follows from the observations of the parties that Cotecna's application concerns funds which the Commission decided to take from the European Development Fund and, in the context of the Community development cooperation policy, to allocate to the implementation of specific programmes for the benefit of the Republic of Djibouti.
- 16 To authorise a garnishee order in the present case would result in appropriating funds expressly intended by the Community for the development cooperation policy for individual interests, which, while legitimate, are extraneous to that policy.
- 17 In those circumstances, Cotecna's application must be dismissed.

### Costs

- 18 Under Article 69(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. Since the Commission has asked that Cotecna be ordered to pay the costs and the latter has been unsuccessful, Cotecna must be ordered to pay the costs.

On those grounds,

THE COURT

hereby orders:

1. The application is dismissed.
2. Cotecna Inspection SA is ordered to pay the costs.

Luxembourg, 29 May 2001.

R. Grass  
Registrar

G.C. Rodríguez Iglesias  
President