JUDGMENT OF THE COURT OF FIRST INSTANCE
(Fourth Chamber)
29 March 1995 *

In Case T-497/93,

Anne Hogan, an official of the European Parliament, residing in Luxembourg, represented by Giancarlo Lattanzi, of the Massa-Carrare Bar, with an address for service in Luxembourg at 33 Rue Godchaux,

applicant,

v

Court of Justice of the European Communities, represented by Luigia Maggioni and Niels Lierow, acting as Agents, assisted by Piero Ferrari, of the Rome Bar, with an address for service in Luxembourg at the office of Luigia Maggioni, Court of Justice, Kirchberg,

defendant,

APPLICATION for the annulment of the decisions of the Court of Justice concerning a sum deducted from the applicant's remuneration pursuant to an attachment order, for the reimbursement of that sum, for compensation in respect of the

* Language of the case: Italian.

material and non-material damage which the applicant claims to have suffered and, in the alternative, for a declaration that the national proceedings giving rise to the attachment order were unlawful,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fourth Chamber),

composed of: K. Lenaerts, President, R. Schintgen and R. García-Valdecasas, Judges,

Registrar: B. Pastor, Administrator,

having regard to the written procedure and further to the hearing on 14 December 1994,

gives the following

Judgment

Facts

1 The applicant, Anne Hogan, is an official in grade C 1 in the European Parliament. At the period in issue in the present case, she was on secondment to the Court of Justice. On 1 November 1993, she returned to work at the European Parliament.

2 Following an application lodged on 18 May 1993 by a Luxembourg lawyer claiming payment of 'fees and expenses taxed on 3 February 1993', the Tribunal de Paix (Magistrate's Court), Luxembourg, by order of 21 May 1993, notified to and registered at the Court of Justice on 25 May 1993, authorized the attachment of the attachable portion of Ms Hogan's remuneration in the hands of her employer, the Court of Justice, in respect of LFR 43 811, the amount of the claim as provisionally assessed by the Juge de Paix (Magistrate).

3 On 27 May 1993, the Court of Justice made an 'affirmative declaration', signed by the Head of its Personnel Division, informing the Principal Registrar of the Tribunal de Paix of the amount of the applicant's remuneration and indicating that the sum attached would be paid into a special account. Subsequently, as appears from Ms Hogan's salary statement for July 1993, the sum of LFR 43 811 was actually deducted pursuant to that declaration and paid into a special account at the Court of Justice.

4 On 26 May 1993 the attachment creditor lodged an application for confirmation of the attachment and, on 1 June 1993, the Juge de Paix summoned the parties concerned to a hearing on 28 July 1993. The Court of Justice did not attend that hearing. Ms Hogan, as the attachment debtor, raised objections to both the form and the substance of the claim and lodged a counterclaim for damages against her creditor.

5 On 1 June 1993 Ms Hogan also submitted to the appointing authority of the Court of Justice a request, under Article 90(1) of the Staff Regulations of Officials of the European Communities, that the Personnel Division be instructed not to deduct any sums from her remuneration. On 3 June 1993, she submitted a complaint under

Article 90(2) of the Staff Regulations, contesting the abovementioned 'affirmative declaration'. On 15 July 1993, the President of the Court of Justice informed Ms Hogan that the Administrative Committee of the Court had examined both her request and her complaint and had decided to reject them.

6 By judgment of 30 September 1993, the Tribunal de Paix found the application for an order against Ms Hogan to pay the sum of LFR 43 811 well-founded and confirmed the attachment authorized on 21 May 1993. That judgment was served on the Court of Justice on 26 November 1993.

7 A certificate that no appeal had been lodged against that judgment was issued to the attachment creditor on 23 February 1994 by the Principal Registrar of the Tribunal de Paix and a copy thereof was sent to the Court of Justice by the creditor on 24 February 1994. In the light of that certificate, the Personnel Division of the Court of Justice paid the sum of LFR 43 811 to the attachment creditor in March 1994 and informed Ms Hogan of that fact by letter of 23 March 1994.

8 An application for leave to appeal out of time against the judgment of 30 September 1993, lodged by Ms Hogan with the Tribunal d'Arrondissement (District Court), Luxembourg, was declared inadmissible by judgment of 5 May 1994, received by the Personnel Division of the Court of Justice on 20 May 1994.

Procedure before the Court of First Instance and forms of order sought

9 On 6 August 1993, Ms Hogan lodged the application in the present case, citing as defendant 'the appointing authority of the Court of Justice'.

10 By a separate document registered at the Court of First Instance on the same date, the applicant sought an interim order for the immediate reimbursement of the sum at issue, pending the judgment in the main action and subject to the possibility of subsequent recovery. By letter of 12 August 1993, she informed the Court of First Instance of her intention to withdraw her application for interim measures and, on 16 August 1993, the President of the Court of First Instance ordered that Case T-497/93 R be removed from the register.

11 By a further separate document registered at the Court of First Instance on 24 August 1993, the applicant reapplied for the same interim measures. That application was dismissed by order of the President of the Court of First Instance of 29 September 1993 (Case T-497/93 R II *Hogan* v *Court of Justice* [1993] ECR II-1005).

12 By application lodged at the Registry on 1 October 1993, the applicant asked the Court of First Instance to declare the order of 29 September 1993 unlawful and void and to amend it, and reiterated the requests made during the previous interim proceedings. That application was dismissed as manifestly inadmissible by order of the President of the Court of First Instance of 26 October 1993 (Case T-497/93 R II *Hogan* v *Court of Justice*, not published in the ECR).

13 By letter of 30 September 1993, in response to a request by the Court of First Instance for further particulars regarding the designation of the defendant, the applicant stated that she had nothing to add to what was specified in her main application.

14 The written procedure came to an end with the lodging of the defence, since the applicant failed to lodge a reply within the prescribed period.

15 By letter of 21 June 1994, the defendant provided the Court of First Instance with further details of the course of the attachment proceedings which gave rise to the case.

16 By letter of 18 July 1994, the defendant submitted observations on those details.

17 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fourth Chamber) decided to open the oral procedure without any preparatory inquiry.

18 The applicant claims that the Court of First Instance should:

Primarily:

— declare that the amount of LFR 43 811 deducted by the Personnel Division from the applicant's remuneration for July has no proper legal basis;

— order the immediate restitution of that amount, which was unduly deducted by the Personnel Division, and of the additional amounts connected therewith, in particular bank interest and currency depreciation for the period from 15 July 1993 until payment is made;

— declare that the applicant has a right to appropriate compensation for material and non-material damage, to be quantified and agreed separately;

In the alternative:

— declare that the order made by the Juge de Paix, Luxembourg, is unlawful;

In the further alternative:

— declare that proceedings such as the Luxembourg proceedings in issue may easily be of a vexatious nature.

19 The defendant contends that the Court of First Instance should:

Primarily:

— dismiss the application as inadmissible in so far as it is brought against the appointing authority of the Court of Justice;

In the alternative:

— dismiss as inadmissible all the claims other than those for annulment and compensation;

— in any event, dismiss the application as unfounded;

— make an order on costs in accordance with Articles 87(2) and 88 of the Rules of Procedure.

20 By document dated 10 December 1994, the applicant submitted a number of requests concerning the conduct of the proceedings before the Court of First Instance, seeking:

— the referral of the case to the Court of First Instance sitting in plenary session;

— the withdrawal of the judge holding Luxembourg nationality;

— the designation of an Advocate General;

— the application of Article 65 of the Rules of Procedure for the purpose, *inter alia*, of ordering the personal appearance of the parties, of the applicant's husband and of a representative of the Luxembourg Government;

— the joinder of the present case with Cases T-479/93 and T-559/93.

21 In the same document, the applicant also requested, without citing any reason, the postponement of the hearing fixed for 14 December 1994 and reiterated that her action was brought against the appointing authority of the Court of Justice, not against the Court of Justice itself, and that the Agents of the Court of Justice were appearing unlawfully in the name of its appointing authority. The request for the postponement of the hearing was rejected by the Court of First Instance on 13 December 1994.

22 At the hearing, which took place on 14 December 1994, the applicant was not represented by her lawyer.

23 In a document lodged on 20 December 1994, the applicant reiterated the requests mentioned above in paragraph 20 and reasserted the need to reopen the oral

procedure. In that document, she further stressed that the action was brought against the appointing authority of the Court of Justice and not against the Court of Justice itself.

24 Those requests must be rejected for the reasons set out below.

25 As regards the request for the case to be referred to the Court of First Instance sitting in plenary session, Article 12(1) of the Rules of Procedure provides that disputes between the Communities and their servants are to be assigned to Chambers of three judges; it is only when the legal difficulty or the importance of a case or special circumstances so justify that a case may be referred to the Court sitting in plenary session or to a Chamber composed of a different number of judges, in accordance with the first paragraph of Article 14 of those Rules. In the present case, the Fourth Chamber has considered that the criteria for such a referral were not met.

26 As regards the request for the withdrawal of the judge holding Luxembourg nationality, the final paragraph of Article 16 of the (EEC) Statute of the Court of Justice, applicable to the Court of First Instance by virtue of Article 44 thereof, precludes any party from impugning the nationality of a judge for the purpose of requesting a modification of the composition of the Court of First Instance or of any of its Chambers, as this Court pointed out in its order of 29 November 1994 in Cases T-479/93 and T-559/93 *Bernardi* v *Commission* [1994] ECR II-1115, paragraph 19.

27 With regard to the request for the designation of an Advocate General, Article 18 of the Rules of Procedure provides that a Chamber of the Court may be assisted by an Advocate General if it is considered that the legal difficulty or the factual complexity of the case so requires. In the present case, this Court has considered that those criteria were not met.

28 With regard to the requests for the personal appearance of certain persons, it must be pointed out that this Court has considered that there was no need to adopt any measures of inquiry.

29 As regards the request for this case to be joined to Joined Cases T-479/93 and T-559/93, the applications in those cases were dismissed by order of this Court of 29 November 1994 and they therefore cannot be joined to the present case.

30 Finally, this Court considers that the applicant has not adduced any circumstances justifying the reopening of the oral procedure.

Substance

31 Not only does the application cite as defendant the appointing authority but the applicant has further repeatedly stressed that her action was brought against 'the appointing authority of the Court of Justice' and not against 'the Court of Justice' as an institution. That fact alone would constitute sufficient grounds for dismissing the application as inadmissible since, as has consistently been held (see, *inter alia*, Case 18/63 *Wollast (née Schmitz)* v *EEC* [1964] ECR 85, Case 307/85 *Gavanas* v *Economic and Social Committee and Council* [1987] ECR 2435 and Case T-162/89 *Mommer* v *Parliament* [1990] ECR II-679, paragraphs 18 and 19), it follows from Article 2 of the Staff Regulations both that the appointing authority acts in the name of the institution which designated it, so that acts which concern the legal position of officials and may adversely affect them must be attributed to the institution to which they are attached, and that any appeal must be brought against the institution from which the act having an adverse effect emanated. None the less, in view of the circumstances and in order to ensure judicial protection, it is appropriate to examine the substance of this case in all its aspects.

The claims for annulment

32 The applicant puts forward, essentially, four pleas in law in support of her claim for the annulment of the contested decision. The first plea alleges lack of competence, the second misuse of powers, the third infringement of essential procedural requirements and the fourth infringement of the Treaty rules or rules in implementation thereof.

Lack of competence

— Arguments of the parties

33 The applicant considers that the Personnel Division of the Court of Justice was not empowered directly to give effect in the Community sphere to the attachment order in issue. Nor was it competent to interpret the true legal tenor of such an order or to recognize the validity of a document issued by a court outside the Community judicature.

34 The applicant considers that the Luxembourg order has no legal existence in Community law because a national court has no power to authorize the Court of Justice to take any steps whatever.

35 The defendant argues that it is clear from Article 183 of the EEC Treaty that national courts may, where appropriate, issue judgments against Community institutions and that such judgments may in principle be enforced, subject only to the

authorization of the Court of Justice required by Article 1 of the Protocol on the Privileges and Immunities of the European Communities ('the Protocol'). Moreover, the attachment order in issue does not in any way concern the relationship between the Luxembourg courts and the Court of Justice but only the applicant's private obligations.

36 The defendant stresses that an official's remuneration may be attached pursuant to a decision of a national court. Article 1 of the Protocol applies only to cases where a Community institution against which a third party wishes to serve an attachment order objects that the order might interfere with the functioning and independence of the Communities. In the present case, the institution concerned considered that there was no reason to object to the attachment, which constituted no threat to its functioning or independence. The Personnel Division of the Court of Justice was therefore empowered to accede to the national court's request.

— Findings of the Court of First Instance

37 All Community institutions must, by virtue of their duty to cooperate in good faith with the national courts, respond to requests such as that underlying the present dispute.

38 The attachment order in issue arises, moreover, out of a private legal relationship between the applicant and another private individual. In such relationships, particularly as regards compliance with their private obligations, Community officials are, in accordance with the first paragraph of Article 23 of the Staff Regulations, fully subject to the applicable national law, notwithstanding certain privileges and immunities under the Protocol.

39 In attachment proceedings, the Community institution is involved only as a third party, in its capacity as employer, and not as a party to a dispute between one of its officials and another individual.

40 The defendant, represented by the Head of its Personnel Division, was thus competent to respond to the national court's request. Its response was embodied in the 'affirmative declaration' made by the Head of the Personnel Division of the Court of Justice on 27 May 1993 and took the concrete form of the contested deduction.

41 In view of the independence of the Court of Justice, as an institution and under the Staff Regulations, with regard to decisions relating to complaints submitted by officials, the Administrative Committee set up by the Court of Justice for that purpose was competent to reach a decision in the name of the Court of Justice on the complaint submitted by the applicant against the abovementioned decision.

42 The plea alleging lack of competence must therefore be dismissed.

Misuse of powers

— Arguments of the parties

43 In the applicant's view, the Personnel Division disregarded the independence and primacy of the Community legal order and misused its powers by submitting to the authority of a court outside the Community judicature and giving effect to its decisions.

44 The applicant further considers that the letter of the President of the Court of Justice of 15 July 1993 is also vitiated by a misuse of powers in that it gives only an informal and incomplete account of an adverse decision of the appointing authority which should have been communicated to her formally and in full. Furthermore, the appointing authority's decision under Article 90 of the Staff Regulations, that is to say the Administrative Committee's decision of 12 July 1993, is vitiated by the fact that it constitutes a decision of an administrative nature taken by a body which is presided over by and made up of members of the judiciary who are at the same time members of the court referred to in Article 91 of the Staff Regulations.

45 The defendant asserts that, as regards the details of the administrative pre-litigation procedure, the internal organization of each institution is a matter falling within its own discretion and that there is nothing to prevent the Court of Justice from forming from amongst its own members an Administrative Committee as appointing authority for the purposes of taking decisions on complaints.

46 The defendant cannot, therefore, see in what way the competent authorities within the Court of Justice could have misused their powers when taking their decisions in the present case.

— Findings of the Court of First Instance

47 This plea concerns, essentially, whether the contested decision was justified in the light of the provisions of the Protocol.

48 The prerogatives established by the Protocol are accorded to officials and other servants of the Communities solely in the interests of the Communities. As the Court of Justice has held, the privileges and immunities which the Protocol grants to the Communities 'have a purely functional character, inasmuch as they are

intended to avoid any interference with the functioning and independence of the Communities' (see the order in Case 1/88 SA *SA Générale de Banque* v *Commission* [1989] ECR 857, paragraph 9, the order in Case C-2/88 Imm. *Zwartfeld and Others* [1990] ECR I-3365, paragraphs 19 and 20, and the judgment in Case T-80/91 *Campogrande* v *Commission* [1992] ECR II-2459, paragraph 42).

49 It is further clear from consistent case-law (see, for example, the orders in Case SA 1/71 [1971] ECR 363, paragraph 7, and in Case 1/87 SA *Universe Tankship* v *Commission* [1987] ECR 2807, paragraph 5) that, in view of the purpose of the Protocol, which is to safeguard the Communities, it is only where a Community institution on which a third party intends to serve an attachment order objects that the order would interfere with the functioning and independence of the Communities that the creditor is entitled to apply to the Court of Justice for authorization to serve that attachment order.

50 As regards the position to be adopted by a Community institution in the context of attachment proceedings, it must, first, determine whether the privileges and immunities provided for by the Protocol are applicable to the proceedings in question and, if so, then decide to what extent it considers it appropriate to avail itself of them.

51 In the present case, it is clear from the explanations provided in the letter of 15 July 1993, mentioned above, that the defendant considered that it would not be contrary to the interests of the Community if it did not avail itself of its privileges and immunities. By virtue of its duty to cooperate in good faith with the national authorities, therefore, it was bound to give effect to the attachment order issued by the national court.

52 With regard to the applicant's argument concerning the composition of the Administrative Committee of the Court of Justice, suffice it to point out that the first paragraph of Article 2 of the Staff Regulations provides that each institution is to determine who within it is to exercise the powers conferred by the Staff Regulations on the appointing authority. There is thus nothing to prevent the Court of Justice from forming from amongst its own members an Administrative Committee to act as appointing authority deciding on complaints.

53 The plea alleging a misuse of powers must therefore be dismissed.

Breach of essential procedural requirements

— Arguments of the parties

54 The applicant claims that the contested deduction is a provisional, protective measure, carried out without her knowledge and not provided for in the Staff Regulations. It is thus a procedure with no legal basis, applying extraneous procedures by analogy in a special field where analogy is not permissible.

55 Nor, the applicant submits, does the deduction comply with the safeguards laid down in the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters. The national court's order, made without hearing the defendant, cannot be directly enforced in the Community legal order.

56 The applicant further considers that the deduction is unlawful by reference to the rights of the defence upheld by the Treaty and by international human rights con-

ventions; the administration of the Court of Justice was not empowered to disclose to third parties confidential computer data of an individual and restricted nature.

57 The defendant submits that under the relevant Luxembourg legislation an employer in whose hands remuneration is attached must make an 'affirmative declaration' or be himself declared a debtor with regard to any deductions not made. It is not for the addressee of an attachment order to decide whether that order is justified and he is prohibited from paying out to the attachment debtor until such time as the attachment is lifted. In making the affirmative declaration and the contested deduction, then paying the amount concerned into a special account, the administration of the Court of Justice took the only course compatible with its status as an employer.

58 The reference to the Brussels Convention is, in the defendant's view, irrelevant. This case does not concern the enforcement of a judgment delivered by a court in another Member State but the enforcement in Luxembourg of the decision of a Luxembourg court.

59 The defendant considers that there has been no breach of the confidentiality of computer data relating to the amount of the applicant's remuneration, since such data is protected only to the extent laid down in the national legislation, with which the administration of the Court of Justice must comply. The 'affirmative declaration' provided for by the Luxembourg legislation must indicate the amount of the official's remuneration, since it is from that amount that the attachable portion is calculated. Nor has there been any infringement of the applicant's rights of defence, since the question arises not in the relationship between her and the administration of the Court of Justice but in the context of the national proceedings before the Luxembourg court between the applicant and her creditor.

— Findings of the Court of First Instance

60 The proceedings in issue are a matter of private law governed not by the Staff Regulations but by the relevant provisions of Luxembourg law. With regard to legal relationships in private law — and without prejudice to the provisions of the Staff Regulations and the Protocol — officials of the European Communities continue to be fully subject to the national provisions applicable to the legal relationships into which they have entered, just like any other citizens (Opinion of Advocate General Cruz Vilaça in Case 401/85 *Schina* v *Commission* [1987] ECR 3911, point 32).

61 In the present case, the attachment procedure was lawfully carried out under Community law, as explained in paragraphs 48 to 53 above.

62 With regard to the applicant's argument relating to the Brussels Convention, the defendant has rightly pointed out that the convention does not apply to attachment proceedings such as those in issue here.

63 Nor has any personal information concerning the applicant been communicated to the Luxembourg court by the administration of the Court of Justice. In its 'affirmative declaration', the administration merely indicated the amount of the attachment debtor's remuneration, as prescribed by Luxembourg law, since it is from that amount that the attachable portion is calculated.

64 As regards the argument concerning the rights of the defence, it is clear that the applicant was informed by the Personnel Division both of the national court's request and of the intention of the administration of the Court of Justice to comply with that request.

65 The plea alleging an infringement of essential procedural requirements must therefore be dismissed.

Breach of the Treaty rules or rules in implementation thereof

— Arguments of the parties

66 The applicant states that the deduction is contrary to the budgetary principles of the Community under which both the allocation and use of amounts in the budget, including officials' salaries, and the deduction of sums therefrom must be based strictly on Community rules and not on extraneous laws or judicial measures.

67 She submits that the deduction was made in breach of the Community provisions applicable in budgetary matters, infringing her right to be paid in full for her work in a Community institution. Remuneration is paid in the context of the legal procedure governing the implementation of the Community budget, which does not make any provision for its reduction by national judicial procedures.

68 In the defendant's view, the right to remuneration which is embodied in the Staff Regulations, in relations between officials and the institution to which they are

attached, may not preclude the application, in relations with third parties, of the principle that a debtor's possessions form the joint security of his creditors.

69 As regards the alleged breach of budgetary rules, the defendant points out that the Community budget is not affected by the deduction in question, even if part of the amount was paid into a special account opened for the purpose of giving effect to the attachment order.

— Findings of the Court of First Instance

70 As regards the legality of the contested deduction in the light of the provisions governing the Community budget, compliance with an attachment order in no way interferes with the implementation of the budget of the Court of Justice, nor does it affect either the movements of money governed by those provisions or the various budgetary prerogatives of the institutions thereunder. The amount by which the appropriations at the disposal of the Court of Justice were debited was exactly equivalent to that of the applicant's remuneration.

71 The plea alleging infringement of the Treaty rules or rules in implementation thereof must therefore be dismissed.

72 In view of all the foregoing, the claims for the annulment of the decisions of the Court of Justice relating to the deduction made from the applicant's remuneration must be dismissed as unfounded.

The claim for the reimbursement of the sum at issue

73 The applicant asks this Court to order the Court of Justice to reimburse the sum deducted. Since this Court has dismissed the applicant's primary claim for annulment as unfounded, the claim for reimbursement is also unfounded.

The claim for damages

— Arguments of the parties

74 The applicant claims to have suffered material and non-material damage related to the conduct of the administration of the Court of Justice and the attachment order in question.

75 The defendant argues that an institution cannot incur liability of any kind by reason of a decision which is in no way unlawful.

— Findings of the Court of First Instance

76 Since, as has been held above, the sum in question was deducted from the applicant's remuneration in compliance with the applicable rules of law, the defendant cannot have incurred liability.

77 The claim for damages must therefore be dismissed as unfounded.

The alternative claims seeking certain declarations by the Court of First Instance

78 The applicant asks this Court, in the alternative, to declare that the order made by the Juge de Paix, Luxembourg, is unlawful and, in the further alternative, to declare that proceedings such as the Luxembourg proceedings in issue may easily be of a vexatious nature.

79 The Treaty does not make any provision for a legal remedy enabling natural or legal persons to bring proceedings before the Community judicature on an issue regarding the compatibility of the conduct of the authorities of a Member State with Community law (see the order in *Bernardi* v *Commission*, cited above, paragraph 35). The applicant's claims are accordingly inadmissible.

Costs

80 Under Article 87(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. However, under Article 88 of those Rules, in proceedings between the Communities and their servants the institutions are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. **Rejects the requests made by the applicant in the documents dated 10 and 20 December 1994;**

2. **Dismisses the application;**

3. **Orders each party to bear its own costs, including those relating to the application for interim measures.**

Lenaerts Schintgen García-Valdecasas

Delivered in open court in Luxembourg on 29 March 1995.

H. Jung
Registrar

K. Lenaerts
President