

ORDER OF THE COURT (First Chamber)
14 December 1995 *

In Case C-173/95 P,

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

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 29 March 1995 in Case T-497/93 *Hogan v Court of Justice* [1995] ECR-SC II-251, seeking to have that judgment set aside,

the other party to the proceedings being:

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

THE COURT (First Chamber),

composed of: D. A. O. Edward, President of the Chamber, P. Jann (Rapporteur) and M. Wathelet, Judges,

* Language of the case: Italian.

Advocate General: A. La Pergola,
Registrar: R. Grass,

after hearing the Opinion of the Advocate General,

makes the following

Order

- 1 By application lodged at the Court Registry on 3 June 1995, Ms Hogan brought an appeal under Article 49 of the Protocol on the Statute of the Court of Justice of the EC ('the Statute') and the corresponding provisions of the ECSC and Euratom Statutes against the judgment of the Court of First Instance of 29 March 1995 in Case T-497/93 *Hogan v Court of Justice* [1995] ECR-SC II-215 ('the contested judgment'), in which that Court dismissed her action for the annulment of the decisions of the Court of Justice concerning a sum deducted from part of her remuneration pursuant to an attachment order, for the reimbursement of that sum, for compensation in respect of the material and non-material damage which she claimed to have suffered and, in the alternative, for a declaration that the national proceedings giving rise to the attachment order were unlawful.
- 2 The findings of fact made by the Court of First Instance in the contested judgment are as follows:
 - 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 above-mentioned "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 declared 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.'
- 3 On 29 March 1995, in the contested judgment, the Court of First Instance dismissed her action.
- 4 In this appeal, the appellant claims that the Court should:

‘— Declare the appeal admissible and well founded;

- Allow the claims submitted in this case, especially those contained in the original action brought on 6 August 1993 (Reference ahrítce 5.893), and in the various measures preparatory or subsequent thereto, or connected therewith, and in particular those expressly set out in the summary of essential facts at the beginning of this application;

- Hold that the action is directed against the appointing authority of the Court, and not against the Court of Justice of the European Communities in its capacity as the body judging this appeal;

- Hold that the plea of nullity is in itself sufficient to subsume all the other pleas;

- Expressly declare that the orders made against the appellant under Luxembourg law have no legal existence in Community law, because the Court and the other Community institutions cannot be made party to proceedings concerning interim orders;

- Declare that the Community institutions and/or their personnel divisions are not employers subject to Luxembourg law;

- Find that the appellant is an official of the European Parliament and not of the Court of Justice, and that the Court of First Instance was wrong to state that the appellant's employer was the Court, having stated in paragraph 1 of its judgment that she was "an official in Grade C 1 in *the European Parliament*";

- Declare that the Head of Personnel does not have the power to represent the Court of Justice in proceedings before national courts, and that only servants of the institution with express ad hoc powers may do so, in compliance with the relevant rules, for example the Luxembourg Law of 10 August 1991 on the legal profession and admission to the Luxembourg Bar;

- Hold that Article 24 of the Staff Regulations obliges the Communities to assist officials and not to act to their detriment, that the Court's departments have infringed that obligation, and that the decisions to withhold and pay over the sum of FL 43 811 were therefore unlawful;

- Set aside the contested judgment and all the measures preparatory or subsequent thereto, or connected therewith;

- Refer the case back to the Court of First Instance in plenary session, or in the alternative to a Chamber of at least five members, and in any event excluding the judge to whom objection is made;

- If appropriate, determine the dispute itself;

- In the alternative, hold that measures of foreign courts, including orders, are not directly enforceable under Community law without a prior decision by the Court of Justice and prior verification that the principles of international and Community public policy have been complied with;

— Make such further order as may be appropriate;

— Order the defendant to pay the costs.’

5 In a further document, lodged on 15 September 1995, the appellant claims that the Court should:

‘ — formally take a preliminary decision, stating its agreement or otherwise to a hearing enabling the parties to argue their case;

— in the affirmative, take a decision indicating clearly who its representatives in the present proceedings are, pursuant to Article 17 of the Statute of the Court of Justice and Article 6 of the Strasbourg Convention;

— by reason of the general aspects of the questions raised, authorize the submission of a reply to the defence of 21 August 1995 and formally take a preliminary decision finding such reply admissible;

— take formal note that, even before disputing the “facts”, the appellant disputed, and continues to dispute, “the verification of the facts”, which is undoubtedly a question of law, and that she also disputes that the Head of Personnel may, without express authorization, represent the Court of Justice of the EC in proceedings before the Luxembourg court’.

6 The Court has not, however, authorized the submission of a reply.

- 7 In its pleadings, the Court contends that the appeal should be dismissed as being clearly inadmissible, pursuant to Article 119 of the Rules of Procedure, and as being clearly unfounded in any event.
- 8 Under Article 119 of its Rules of Procedure, the Court may dismiss an appeal at any time if it is clearly inadmissible or clearly unfounded, without opening the oral procedure.
- 9 In support of her appeal against the judgment, the appellant takes two pleas in law.

The first plea in law

- 10 In support of her first plea in law, the appellant alleges a series of procedural irregularities. She argues first that the Court of First Instance changed the name of the defendant, which was the appointing authority of the Court of Justice and not the Court of Justice itself.
- 11 She then accuses the Court of First Instance of failing to comply with the rules concerning the deferral of cases (Rules of Procedure of the Court of First Instance, Article 55), the modification of measures of organization of procedure (Articles 49 and 64(4)), the designation of an Advocate General (Article 18 in particular), the joinder of proceedings (Article 50), the possibility of referring a case at any time to the Court of First Instance sitting in plenary session (Articles 11, 14 and 51, last sentence), the wrongful transmission of procedural documents (Article 25(1)), and the adoption of appropriate measures of enquiry (Article 65(c)), and of transferring

the case to the Fourth Chamber of the Court of First Instance, which includes the Luxembourg judge, Mr R. Schintgen, to whose presence she had repeatedly objected but who was not removed from the case despite her request.

- 12 Under Article 51 of the Statute of the Court of Justice, an appeal may be based on irregularities in procedure before the Court of First Instance adversely affecting the interests of the appellant. Under Article 112(1)(c) of the Rules of Procedure of the Court of Justice, the appeal must state the pleas in law and legal arguments relied on.
- 13 As regards alteration of the name of the defendant, the Court of First Instance pointed out, at paragraph 31 of its judgment, that the mere fact of bringing an action against the appointing authority of an institution and not against the institution would in itself constitute sufficient grounds for dismissing the application as inadmissible. In so far as, instead of dismissing the action accordingly, the Court of First Instance took the defendant to be the institution to which the contested measure should have been imputed, it thereby enabled the substance of the case to be examined.
- 14 The Court of First Instance has not therefore adversely affected the appellant's interests, and this part of the first plea in law is therefore clearly unfounded.
- 15 As for the other procedural objections, the appellant has failed to base them on any legal argument, as required by Article 112(1)(c) of the Rules of Procedure. She gives no indication of precisely what constitutes the failure in this case to comply with the rules in question, or of how the alleged irregularities adversely affected her interests. Quite apart from the fact that those rules concern measures of internal organization of the Court of First Instance, which cannot be reviewed by the Court of Justice, the appellant does not indicate what effects those alleged irregularities are said to have had on the judgment of the Court of First Instance.

- 16 In those circumstances, the conditions in Article 51 of the Statute of the Court of Justice and Article 112(1)(c) of the Rules of Procedure are not satisfied. The other parts of the first plea in law are clearly inadmissible, so that the plea must be rejected in its entirety.

The second plea in law

- 17 In support of her second plea, the appellant draws up a catalogue of various breaches of Community law and of the European Convention on Human Rights and Fundamental Freedoms. She thus considers that, in the contested judgment, the Court of First Instance:

‘— infringed the rights of the defence;

— took no account of the fact that the Court of Justice may not be made party to proceedings before a national court;

— wrongly declared a number of conditional preliminary orders, existing only in foreign law, to be valid under Community law;

— wrongly upheld the flagrant breaches of Article 24 of the Staff Regulations of Officials by the Personnel Division of the Court, which failed to provide its own officials, in this case the appellant, with the assistance it was expressly obliged to provide by the Staff Regulations, and in particular:

— supplying confidential personal information about the appellant, which was covered by data confidentiality;

- not attending the hearings of the Luxembourg courts and thereby failing to put forward arguments in favour of the appellant, namely:

- the fact that the Juge de Paix had no power to issue directions to the Court of Justice of the Communities;

- the fact that the Court of Justice was not the appellant's employer;

- the fact that the Community institutions as employers cannot be treated in the same way as Luxembourg employers;

- the non-existence of the debt in any event;

- the discriminatory nature of the treatment meted out to the appellant as an indirect political reprisal against her husband;

- denial of justice in relation to the request to the Court of First Instance to state its views on the following matters:

- the fact that the Court of Justice may not be made party to proceedings before the Luxembourg Juge de Paix;

- the capacity of the appointing authority of the Court of Justice to appear in legal proceedings before the Court of First Instance rather than before the Court of Justice, which is the court of appeal from the Court of First Instance;

- the lack of competence on the part of the Personnel Division to assess the legality of foreign legal measures;

- the lack of competence on the part of the same division to enforce those measures directly;

- the impossibility of enforcing, at least under Community law, provisional measures of foreign courts taken without a proper hearing and in breach of the rights of the defence;

- failure to hold that the certificate that no appeal had been lodged was issued in breach of the rights of the defence, and thus in a manner contrary to Community public policy’.

18 This list is not accompanied by any argument concerning infringement of the rights of the appellant. Moreover, she has not indicated the specific points of the judgment of the Court of First Instance which she challenges.

19 Furthermore, all these allegations have already been put forward at first instance, so that the aforesaid list constitutes mere repetition in an attempt to obtain a re-examination of the facts submitted to the Court of First Instance.

20 The combined effect of Article 51 of the Statute of the Court of Justice and Article 112(1)(c) of the Rules of Procedure is that an appeal must indicate precisely the contested elements of the judgment of the Court of First Instance which the appellant seeks to have set aside, and also the legal arguments specifically advanced in support of the appeal. That requirement is not satisfied by an appeal which merely repeats or reproduces word for word the pleas in law and arguments already submitted to the Court of First Instance, including those based on facts expressly

rejected by that court. In reality, such an appeal amounts to no more than a request for a re-examination of the application submitted to the Court of First Instance, which the Court of Justice has no jurisdiction to undertake (see, in particular, the order in Case C-26/94 P *X v Commission* [1994] ECR I-4379, paragraphs 12 and 13 and the case-law referred to therein).

- 21 The second plea must therefore be rejected as clearly inadmissible.

The claims submitted in the document of 15 September 1995

- 22 As for the claims submitted by the appellant in her document of 15 September 1995, it suffices to note that the Court has not authorized the submission of a reply, and that the allegations of the appellant are therefore inadmissible.

Since the pleas submitted by the appellant are, therefore, in part clearly inadmissible and in part clearly unfounded, the action must be dismissed in its entirety.

Costs

- 23 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Under Article 70 of those rules, in proceedings between the Communities and their servants the institutions are to bear their own costs. Nevertheless, it follows from the second paragraph of Article 122 of the Rules of Procedure that Article 70 does not apply in the case of an appeal brought by an

official or other servant of an institution against the latter. Since Ms Hogan has been unsuccessful in her action, she must be ordered to pay the costs of these proceedings.

On those grounds,

THE COURT (First Chamber)

hereby:

- 1. Dismisses the appeal;**
- 2. Orders the appellant to pay the costs.**

Luxembourg, 14 December 1995.

R. Grass

Registrar

D. A. O. Edward

President of the First Chamber