

A garnishee order relating to sums which the Communities are obliged to pay to a Member State, as owner of buildings which they occupy, in respect of rent laid down in a lease governed by private law may be authorized since, unlike measures of constraint affecting the financing of common policies or programmes of action established by the Communities, it is not likely to interfere with the functioning of the Communities.

ORDER OF THE COURT

11 April 1989*

In Case 1/88 SA

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

THE COURT

composed of: O. Due, President, T. Koopmans and R. Joliet (Presidents of Chambers), Sir Gordon Slynn, G. F. Mancini, C. N. Kakouris, F. A. Schockweiler, G. C. Rodríguez Iglesias and M. Díez de Velasco, Judges,

Advocate General: C. O. Lenz
Registrar: J.-G. Giraud

* Language of the case: French.

makes the following

Order

1 By application lodged at the Court Registry on 2 June 1988, SA Générale de Banque, a company governed by Belgian law, having its registered office in Brussels, represented by J. M. Raxhon, of the Verviers Bar, with an address for service in Luxembourg at the Chambers of C. Turk, 4, rue Nicolas-Welter, requested that the Court:

- (i) declare that Article 1 of the Protocol on the Privileges and Immunities of the European Communities ('the Protocol') in no way affects the garnishee proceedings instituted by the applicant and that those proceedings may therefore be continued;
- (ii) in the alternative, permit the garnishee proceedings to take their normal course and authorize payment of the amounts owed by the Commission to the Belgian State.

2 Article 1 of the Protocol provides that: 'The property and assets of the Community shall not be the subject of any administrative or legal measure of constraint without the authorization 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.

3 The applicant obtained a judgment by default from the tribunal de première instance (Court of First Instance), Brussels, requiring the Belgian State to pay it BFR 123 781 944, plus interest and costs. After that judgment and an order to pay had been served upon the Belgian State, it served a garnishee order on the Commission of the European Communities on 13 January 1988; the garnishee order was stated to cover all sums, funds, assets or objects which the European Communities owed or might subsequently owe to the Belgian State for any reason and on any grounds whatsoever.

- 4 By letter of 5 April 1988 the Commission indicated that it could not accept service of a garnishee order without the authorization of the Court of Justice and that accordingly it would disregard the order served on it by the applicant. Following that letter, the applicant brought the present action.
- 5 In the observations that it submitted to the Court the Commission stated in particular that the garnishee order, as set out in the official notice of service, covered all sums owed by the Communities to the Belgian State and was therefore liable to interfere with the functioning of the Communities. The Communities owe substantial sums to the Belgian State, in particular for the financing of the common agricultural policy, European Social Fund expenditure, contributions to the European Regional Development Fund and the Framework Programme for Community activities in the field of research and technological development.
- 6 When the parties were heard, on 18 October 1988, by the Chamber of the Court to which the matter had been assigned for preliminary examination, the applicant declared that thenceforth it expressly and irrevocably limited the scope of the garnishee order in question to the sums owed by the Communities to the Belgian State in respect of rent. After the hearing it officially informed the Commission of that limitation and amended its application to the Court, seeking a declaration either that it was unnecessary for authorization to be granted or that authorization would be granted to it only in respect of rent. However, the Commission informed the Court that it maintained its objections.
- 7 Reference is made to the Report for the Hearing for a fuller account of the background to the case and the submissions and arguments of the parties, which are mentioned or discussed only in so far as is necessary for the reasoning of the Court.
- 8 In the first place it is necessary to consider the applicant's principal claim, which is that the Court should declare that its authorization is not required in a case such as this on the ground that, by its very nature, the garnishee order could not in any way interfere with the functioning of the European Communities. Since the order relates solely to sums which the Communities would in any event have to pay to

the Belgian State and which already form part of the assets of the Belgian State, it could not have any adverse effect on the functioning of the Communities.

- 9 That argument cannot be accepted. Even if, under the applicable national law, the garnishee order were to be regarded as the seizure of an asset belonging to the debtor, it is nevertheless liable to constitute a measure of constraint within the meaning of Article 1 of the Protocol. The Court has consistently held that every garnishee order served on the Communities may, in certain circumstances, interfere with the functioning and independence of the Communities.
- 10 Accordingly, the applicant's principal claim must be dismissed.
- 11 It is therefore necessary to examine the alternative claim, as amended by the applicant at the hearing, which is that the Court should grant authorization for the garnishee order in question to be served in respect of the sums owed by the Communities to the Belgian State in respect of rent.
- 12 The Commission considers that, even if limited to the sums due in respect of rent, such authorization cannot be granted in view of the fact that it might interfere with the functioning of the Communities.
- 13 That argument cannot be upheld. Whilst it is true 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, such an effect is unlikely to arise where a garnishee order relates to sums which the Communities are obliged to pay to the Belgian State as owner of the buildings in respect of rent laid down in a lease governed by private law.
- 14 In the alternative the Commission contends that the fact that the garnishee order is limited to the sums owed by the Communities to the Belgian State for rent will

remain unknown to third parties. For so long as the notice of the garnishee order is kept at the registry of the tribunal de première instance, Brussels, the Commission will remain exposed to the risk of having to give proof to the other creditors of the Belgian State of the use made by it of all the sums covered by the garnishee order, as defined in the initial notice of the order of 13 January 1988.

- 15 Those objections do not constitute a valid ground for withholding the requested authorization from the applicant. As the Court held in its order of 17 June 1987 in Case 1/87 SA *Universe Tankship Company Inc. v Commission* [1987] ECR 2807, the jurisdiction of the Court is confined to considering whether such a measure is likely, in view of the effects which it has under the applicable national law, to interfere with the proper functioning and the independence of the European Communities. However, if the Commission or third-party creditors felt that their financial interests might be harmed by a garnishee order or by the partial lifting of such an order they would be able to have recourse to the remedies open to them under the applicable national law.
- 16 Consequently, it is appropriate for the applicant to be authorized to serve a garnishee order on the Commission of the European Communities in respect of the amount found due to it from the Belgian State by the judgment of the tribunal de première instance, Brussels, which was notified to the Commission, provided that the said order is limited to the sums owed by the European Communities to the Belgian State in respect of rent.
- 17 For the rest, the application is dismissed.

Costs

- 18 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. In the present case each of the parties has partially failed in its submissions. In those circumstances, it is appropriate to order the parties to bear their own costs.

On those grounds,

THE COURT

hereby orders as follows:

- (1) The applicant is authorized to serve a garnishee order on the Commission of the European Communities in respect of the amount found due to it from the Belgian State by the judgment of the tribunal de première instance, Brussels, which was notified to the Commission, provided that the said order is limited to the sums owed by the European Communities to the Belgian State in respect of rent.
- (2) For the rest, the application is dismissed.
- (3) The parties are ordered to bear their own costs.

Delivered in open court in Luxembourg on 11 April 1989.

J.-G. Giraud

Registrar

O. Due

President