

ORDER OF THE COURT (Fifth Chamber)
27 March 2003 *

In Case C-1/02 SA,

Antippas, a company incorporated under Congolese law, established in Kinshasa (Democratic Republic of the Congo), represented by M. Spandre, avocat, with an address for service in Luxembourg,

v

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

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

* Language of the case: French.

THE COURT (Fifth Chamber),

composed of: M. Wathelet, President of the Chamber, C.W.A. Timmermans, P. Jann, S. von Bahr (Rapporteur) and A. Rosas, Judges,

Advocate General: L.A. Geelhoed,
Registrar: R. Grass,

after hearing the Advocate General,

makes the following

Order

- 1 By application lodged at the Court Registry on 22 August 2002, Antippas, a company incorporated under Congolese law and established in Kinshasa (Democratic Republic of the Congo), applied, pursuant to the third sentence of Article 1 of the Protocol on the Privileges and Immunities of the European Communities (hereinafter 'the Protocol'), for authorisation to serve a garnishee order upon the Commission in respect of certain sums allegedly owed by the European Community to the Democratic Republic of the Congo and the National Bank of the Congo.

Facts

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

3 By a judgment of 18 October 1996 of the Tribunal de grande instance (Regional Court), Kinshasa, the Democratic Republic of the Congo and the National Bank of the Congo were ordered jointly and severally to pay Antippas the sum of USD 549 750, with interest thereon at the rate of 12% per year from the service of the writ until full payment. By a second judgment of the same court of 22 April 1997, the Democratic Republic of the Congo was ordered to pay Antippas the sum of USD 2 080 302, with interest thereon at the rate of 8% per year from the service of the writ until full payment.

4 The Tribunal de première instance (Court of First Instance), Brussels (Belgium), by two judgments of 8 April 1998, ordered the enforcement of those judgments.

5 On 10 June 2002, Antippas served a garnishee order on the Commission in relation to the amounts allegedly owed by the Commission to the Democratic Republic of the Congo and the National Bank of the Congo.

6 By letter of 2 July 2002, the Commission stated that it was not indebted, conditionally or unconditionally, either to the Democratic Republic of the Congo or to the National Bank of the Congo.

Forms of order sought by the parties

- 7 In its application, Antippas claims that the Court should, first, authorise it to serve a garnishee order on the Commission and, secondly, rule that the Commission was wrong in stating that it is not indebted, conditionally or unconditionally, to the Democratic Republic of the Congo or the National Bank of the Congo.
- 8 Antippas states that the application seeks to garnishee the funds allocated by the Commission to the Democratic Republic of the Congo within the framework of the Seventh and Eighth European Development Funds.
- 9 The Commission contends that the Court should order that there is no need to proceed to judgment on Antippas's application and, in the alternative, to dismiss that application. It applies, in addition, for an order that Antippas pay the costs.
- 10 The Commission submits that there is no need to proceed to judgment on Antippas's application since it is not indebted, conditionally or unconditionally, either to the Democratic Republic of the Congo or to the National Bank of the Congo. The sums committed by the Community pursuant to the financing agreements concluded within the framework of the Sixth, Seventh and Eighth European Development Funds do not give rise to any financial transfer to the Democratic Republic of the Congo since, because of the difficult circumstances in that country, the Commission itself ensures the implementation of the projects financed by the Community. In addition, the national indicative programme of the Eighth European Development Fund has not yet led to the signature of any financing agreement.

- 11 In any event, the Commission contends that seizure of the funds which have been set aside, within the framework of the Community's development cooperation policy, for carrying out specific projects and programmes benefiting the Democratic Republic of the Congo, would result in the prevention of the financing, and therefore the execution, of those Community projects and programmes. It follows therefrom that such a seizure, were it to be authorised, would obstruct the working of the Community.

Findings of the Court

- 12 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 (Case 1/88 SA *Générale de Banque v Commission* [1989] ECR 857, paragraph 2, and Case C-1/00 SA *Cotecna Inspection v Commission* [2001] ECR I-4219, paragraph 9).
- 13 On the other hand, it is neither the object nor the effect of Article 1 of the Protocol to substitute the Court's review for that exercised by the national court with jurisdiction to determine whether all the conditions for a garnishee order are actually satisfied. Thus, the determination of the question of the garnishee's indebtedness to the judgment debtor does not fall within the Court's jurisdiction but within that of the competent national court.
- 14 Consequently, 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 (*Cotecna Inspection v Commission*, cited above, paragraph 10).

- 15 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 (*Cotecna Inspection v Commission*, paragraph 12).

- 16 According to 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.

- 17 The Community has organised its development cooperation in African, Caribbean and Pacific countries in a series of agreements concluded in turn with those countries. The Community's financial cooperation in the development of the Democratic Republic of the Congo 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 Democratic Republic of the Congo and set out the areas as well as the objectives and arrangements for Community intervention (see, in relation to development cooperation in the Republic of Djibouti, *Cotecna Inspection v Commission*, paragraph 14).

- 18 It is clear that Antippas's application relates to funds which the Commission decided to take from the European Development Fund and to allocate, within the framework of the Community's development cooperation policy, to the implementation of specific programmes for the benefit of the Democratic Republic of the Congo.
- 19 To authorise a garnishee order in this case would result in appropriating funds expressly intended by the Community for the development cooperation policy, to special interests which are foreign to that policy.
- 20 In those circumstances, Antippas's application must be dismissed.

Costs

- 21 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 claimed that Antippas be ordered to pay the costs and the latter has been unsuccessful, Antippas must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby orders:

1. **The application is dismissed.**
2. **Antippas shall pay the costs.**

Luxembourg, 27 March 2003.

R. Grass

Registrar

M. Wathelet

President of the Fifth Chamber