OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 6 July 1988 *

Mr President,
Members of the Court,

1. Richard Hamill, a British national, is an official of the Commission of the European Communities in Grade A 6 and at the material time he was an inspector in the Competition Directorate. He asks the Court to order the Commission to compensate him for the material and non-material damage suffered as a result of his arrest in Great Britain on 9 October 1984.

In the course of an investigation into an international fraud involving the circulation of forged cheques the police in London, suspecting that the applicant was directly involved in the crime, telephoned the Commission's Security Office on 20 September 1984 in order to obtain information concerning the applicant. Eleven days later the Security Office in the Berlaymont building replied informing the police of Mr Hamill's status and his address in Brussels, and giving details concerning his motor car, the periods of holiday he had applied for, the periods to which he was still entitled and his movements during the time in which the criminal acts took place. On 9 October an employee of the Security Office informed Scotland Yard that Mr Hamill would that morning be flying from Brussels in order to carry out a mission at various steel undertakings in the United Kingdom.

Mr Hamill arrived at Luton airport on time, was questioned and then arrested. On the following day an official of the Commission called at the prison where he was being detained in order to collect the documents relating to his mission. On that occasion he met Mr Hamill. The latter requested the official to find him a solicitor, saying that the police had until then refused him any sort of legal assistance. The official took no steps to comply with that request and Mr Hamill was assigned a solicitor only on the following day — 12 October — when he was formally charged with conspiracy to steal and conspiracy to use a false instrument. After a court appearance on 13 October he was released from custody on 23 October but his passport was retained. On 22 March 1985 his passport was returned to him upon payment of a security.

In the mean time (on 24 October 1984) the Commission had suspended the applicant but he continued to be entitled to his salary. On 3 April 1986 his suspension was terminated after he was acquitted of both charges at the Old Bailey, London, by verdict delivered on 14 February.

On 3 June 1986 Mr Hamill submitted a request for compensation under Article 90 (1) of the Staff Regulations of Officials. As he received no reply to that request, on 11 November 1986 he lodged a complaint which was rejected by the Commission by decision of 15 June 1987. However, Mr Hamill had already lodged this application (on 10 June 1987) claiming that the Court should order the Commission to pay him BFR 5 million together with interest from

* Translated from the Italian.

3 June 1986. For its part, the Commission contested that claim on the basis that it was unfounded and raised an objection of partial inadmissibility of the action.

2. Let me say at once that I do not propose to dwell on the objection of inadmissibility. Far from referring to the first paragraph of Article 215 of the EEC Treaty, as is alleged by the Commission, the action was properly brought on the basis of Articles 90 and 91 of the Staff Regulations of Officials; and, as the time-limits for lodging it were complied with, the application must be declared admissible.

Let us therefore turn to the substance of the case. The applicant complains that the Commission (a) organized his arrest in concert with the United Kingdom authorities and (b) failed to comply with the duty to afford assistance laid down in Article 24 of the Staff Regulations, inasmuch as it failed to look for a lawyer to defend him and did not notify his family.

In support of the first complaint Mr Hamill states that the Commission's Security Office did not limit the details given to the London police to certain personal information. They deliberately brought forward the date of his mission, which was originally due to take place at the end of October, for the sole purpose of delivering him into the hands of Scotland Yard, thereby sparing the police the judicial problems and the lengthy time involved in questioning him in the place where he resided and in arresting him. In other words, without the plot hatched by the Commission, Mr Hamill would not have been taken into custody at Luton and would not have been detained unjustly; in order for him to have been at their disposal the British authorities would have had to have sent letters rogatory to the Belgian authorities and to have applied for his extradition, that is to say would have had to employ procedures which provide for guarantees of which he would have availed himself.

The arguments submitted in support of the second complaint are more concise. Mr Hamill states that there is no doubt that the intervention of a lawyer would have prevented the serious infringement by the British police of his right to defend himself and consequently his detention in prison from being prolonged for more than a week.

The damage suffered by the applicant is both material and non-material. The material damage relates above all to Mr Hamill's health and his career, both of which have been seriously jeopardized; in addition, it includes his legal costs and the cost of his enforced stay in Great Britain. The non-material damage consists of the personal disgrace arising from his arrest and administrative suspension and of the failure to inform his family which learnt of his arrest from the newspapers.

3. In essence the Commission defends itself against those allegations by taking refuge behind the principle that it is under an obligation to cooperate with the courts and police forces of the Member States whenever the privileges and immunities of its employees are not brought into question.

What view should be taken of the argument which I have so summarized? In my opinion it must be both qualified and corrected. Articles 18 and 19 of the Protocol of 8 April 1965 provide that the privileges and immunities enjoyed by Community officials are accorded to them solely in the interests of the Communities; consequently, those special benefits cannot be invoked in cases where those interests are not jeopardized and where the fundamental rights of the individual do not appear to be prejudiced (for similar statements relating to interna-

tional officials in general see Plantey: *The international civil service*, New York, 1984, pp. 105, 371 *et seq.*; Duffar: *Contributions à l'étude des privilèges et immunités des organisations internationales*, Paris, 1982, p. 71 *et seq.*).

On the other hand, neither the laws of the Member States nor the *jus gentium* provide any criteria for determining with certainty whether and to what extent an international administrative body is obliged to cooperate with the authorities of a State which is undertaking investigations involving one of its employees suspected of having committed a criminal offence. Such an obligation is generally recognized with regard to the judicial authorities of the State but does not seem to be accepted in relation to the police. It is, however, true that there is no rule which forbids the necessary assistance being given to the latter.

If the foregoing observations are correct, it seems to me reasonable to conclude that the Community institutions are under no obligation (and, *a fortiori*, have no power) to press on in their cooperation with the authorities of a Member State conducting an investigation to the point where they take an active part therein. However, they cannot keep silent with regard to information in their possession where ignorance thereof would hinder the conduct of the inquiries.

4. That said, let me now turn to the applicant's first complaint. As the Court will recall, the applicant states that his arrest resulted from a scheme hatched between the Commission and the British authorities; Scotland Yard would not have been able to arrest him if the Commission had not first changed the dates of Mr Hamill's missions, and in particular the date on which he would travel to the United Kingdom and had not at the same time informed the police of the new date.

The facts as set out by the parties do not appear to support such a reconstruction of the events. In particular, it has not been proved that the changes in the programme of missions were decided upon on grounds contrary or extraneous to the interests of the service. The only fact before the Court about which there is no uncertainty — because it has been acknowledged by the Commission — is the telephone call of 9 October 1984. That is to say that there is no doubt that on the morning of 9 October a zealous Commission official informed the British police of the time of Mr Hamill's arrival and other details of his mission.

In examining the case it is therefore necessary to concentrate on that communication. Is it possible to consider that the Commission was entitled to make that communication by virtue of its general obligation to cooperate with the police of a Member State? I do not think so. In the light of what I have said under section 3 above, it is one thing to give detailed replies to questions put in order to establish the facts which are the subject-matter of the investigation (for example, the information given to Scotland Yard by the Commission on 1 October 1984 concerning Mr Hamill's movements at the time of the offence) but quite another for the Commission to offer information on its own initiative which not only is strictly related to the interests of the service but is not in any way designed to shed light on the suspicions raised against the official and is in fact capable of putting the police in a position to question and arrest him.

By acting in that manner the Commission (a) has created a direct causal link between its own conduct and the subsequent events which caused the applicant damage, and (b) has deprived the applicant of the guar-

antees to which he was entitled by reason of his residence on Belgian territory. The reason is clear. In the first place, to state that Mr Hamill would in any event have been arrested on a subsequent trip to the United Kingdom and that that would have been so even if the Commission had not notified the police, is pure conjecture and irrelevant. In the second place Mr Hamill was deprived of what may certainly be described as a legitimate expectation. He had every reason to suppose that since the investigations relating to him would have to be conducted through the procedures laid down by Belgian legislation he would benefit from the rights connected with those procedures (for example, the right to be heard by a court in Brussels in the context of proceedings to establish whether the charges were well founded).

In short, the telephone call of 9 October went far beyond the bounds of the Commission's duty and, even if it was not part of a plot, enabled the British authorities to circumvent specific rules laying down guarantees for the official. It is, therefore, proper to conclude that its conduct amounted to serious negligence and, without doubt, gave rise to liability on the part of the institution.

5. Let us turn now to the second complaint. Mr Hamill, as we have seen, maintains that the Commission did nothing to afford him assistance as required by Article 24 of the Staff Regulations. The fact is, however, that that provision is intended to protect the official from attack '*by reason* of his position or duties' (emphasis added); it is clear that the investigations and the applicant's arrest and detention do not satisfy that requirement. It appears, on the contrary, that the applicant became involved in the matter of the fraud as a result of imprudent or excessively casual conduct and that during his interrogation in Luton he was at the very least unforthcoming.

In such circumstances, namely in the case of measures restricting the applicant's personal freedom which did not affect him in his capacity as an official and could appear to be justified, the Commission was not under an obligation to provide Mr Hamill with a solicitor or, strictly speaking, to notify his family. Moreover, Mr Hamill has not shown that he made an explicit request to that effect to the employee of the Commission who visited him.

6. Finally, a few words on the relief sought by the applicant. Clearly, the compensation to which he is entitled must be limited to the damage which has a direct causal link with the negligence attributable to the Commission: consequently, it must be limited, in view of what I have said, solely to the damage resulting from the fact that he was unable to benefit from the guarantees of which he would have availed himself if his interrogation and arrest had taken place in the State where he resided.

On the basis of various precedents (see, in particular, the Court's judgments of 15 December 1982 in Case 158/79 *Roumengous* v *Council* [1982] ECR 4379, and of 7 November 1985 in Case 145/83 *Adams* v *Commission* [1985] ECR 3539) I consider it appropriate that the parties should agree the amount of damages.

7. On the basis of the foregoing considerations I propose that the Court should:

(a) order the Commission to pay compensation to Mr Hamill for the damage suffered by him by virtue of the fact that he was arrested in Great Britain on 9 October 1984 following information given by the Commission to the British police and was thereby deprived of the possibility of being questioned in the State where he resided according to the procedures laid down by the laws of that State;

(b) dismiss the remainder of the application;

(c) request the parties to inform the Court, within a specific period, of the amount of damages arrived at by agreement or, failing such agreement, of their respective submissions together with all relevant information in support;

(d) reserve the costs.