OPINION OF MR ADVOCATE GENERAL DA CRUZ VILAÇA
delivered on 18 March 1987 *

Mr President,
Members of the Court,

1. I — The applicant, Francesco Schina, is an official of the Commission working in the Publications Office in Luxembourg.

2. In the course of proceedings between the applicant and a construction company, the *juge de paix* (Cantonal Court) Luxembourg on 12 August 1982 ordered the attachment of the applicant's remuneration in respect of an amount of LFR 450 000.

3. Pursuant to that attachment order, the Commission determined that the attachable proportion of the applicant's salary under the relevant Luxembourg legislation was LFR 63 520 per month and deducted a total of LFR 450 000 from his monthly remuneration between September 1982 and April 1983.

4. By a memorandum dated 23 November 1983, the applicant requested the Commission to adopt compensatory measures to make good in the short term the damage suffered by him and to place the amounts withheld from his remuneration on fixed-term deposit for the period of one year, if need be in a bank account opened by the Commission.

5. Although the sum of LFR 450 000 was insufficient to cover the debt, the creditor undertaking's legal representative wrote to the Commission on 14 December 1983 to inform it of his agreement to the request on condition that the interest earned should not go to Mr Schina but should remain blocked and that the amounts should be placed on monthly and not one-year deposit.

6. On 21 November 1984 the Luxembourg tribunal d'arrondissement (District Court) gave judgment on the substance of the dispute between Mr Schina and the construction company and ordered the former to pay LFR 625 147 together with interest and costs. Mr Schina paid the sums due under that judgment.

7. He therefore asked the Commission to reimburse the amount attached together with interest. The Commission returned to him the sum of LFR 450 000 which it had withheld from his salary but, in a memorandum dated 22 March 1985, refused to pay him interest on that amount.

That was the decision against which Mr Schina brought this action on 5 December 1985 after the Commission failed to reply to the complaint which he had submitted within the prescribed period (only on 9 December 1985 did the Commission expressly reject his complaint).

8. II — The applicant bases his application on two submissions:

9. (i) In the first place he claims that the remuneration of officials is not liable to be attached and that the Commission is consequently under a duty to make good the damage resulting from the unlawful attachment of his salary.

* Translated from the Portuguese.

10. (ii) In the second place, the applicant claims that the Commission was bound, under its duty of care towards him, to ensure that the amounts withheld earned interest and that it must therefore compensate him for the consequences of its failure to discharge that duty.

11. III — The Commission first contends in its defence that the application is inadmissible whatever its substantive merits.

12. I will now analyse its arguments.

A — *The objection that the application is inadmissible in regard to the first submission*

13. In my view the Commission is right when it contends in its defence that the application is inadmissible as regards the submission that the remuneration of officials of Community institutions is not liable to be attached.

14. The applicant's assertion that it was unlawful for the Commission to withhold amounts from his salary is made in support of his claim for the payment of interest.

15. In simple terms, the applicant means thereby to challenge the legality of the Commission's letter of 18 August 1982 informing him of the attachment as well as the retention from his remuneration to be effected for the first time in September 1982. It is therefore evident that that head of claim must be held inadmissible since it is out of time.

16. Moreover, in view of the fact that the applicant discontinued an earlier action (Case 180/84) in which he challenged those very measures, and that that action was itself time-barred, he cannot be allowed to bring these matters before the Court afresh, relying on the same arguments.

B — *The objection that the application is inadmissible as regards the second submission*

17. The Commission also raises the issue of the admissibility of the application as regards the second submission set out above.

18. In its contention the application seeks in effect the annulment of the implied decision refusing the applicant's request for the sums withheld pursuant to the attachment order to be placed on fixed-term deposit. Since that claim was first formulated in a request submitted by the applicant on 23 November 1983, the time-limits laid down by Articles 90 and 91 of the Staff Regulations of Officials were to be computed from that date. Accordingly, in the Commission's view, the action brought on 5 December 1985 must be held to be inadmissible as being out of time even if it was preceded by a complaint in the form of a letter to the Commission dated 30 March 1984 in which the applicant quantified the extent of the damage for which he was claiming.

19. It does not seem to me that the Commission is correct on this point.

20. It is my view that, whatever may be the status in law of the memorandum submitted by the applicant on 23 November 1983 for the purposes of an action for the payment of interest on the attached portion of his remuneration, the question whether his application complied with the relevant time-limits arose only after the cessation of the attachment and after the sums withheld had been repaid to him and he had been refused payment of interest.

21. The applicant submitted on 21 June 1985 a complaint under Article 90 (2) against the Commission's refusal, on 22 March 1985, to pay him interest. On 25 October 1985, when the applicant wrote a letter to the Commission informing it of his intention to bring an action before the Court, the period allowed for the implied

rejection of his complaint had just expired. When the applicant brought his action on 5 December 1985, he was therefore within the three-month time-limit laid down by Article 90 (2) of the Staff Regulations.

22. I therefore propose that the Court hold the application admissible as regards the second submission.

23. IV — I shall now examine the merits of the application in regard to both of the submissions described above.

A — *Whether the remuneration of officials of Community institutions can be subject to attachment*

24. The applicant maintains that Article 62 of the Staff Regulations and Article 16 (1) of Annex VII thereto establish the principle that an official's remuneration is protected and that the Staff Regulations make no provision for the attachment of remuneration. In his view it must be inferred from the affirmation of that principle and the silence of the Community legislature on the subject that the totality of an official's remuneration enjoys immunity from attachment.

25. According to the applicant, the protection of remuneration is also a principle recognized by the International Labour Organization and is enshrined in the legislation of most of the Member States, where its breach constitutes a minor infringement of social law.

26. Moreover, the applicant argues, the relationship between an official and his administration are exclusively governed by the Staff Regulations and cannot be made subject to national legislative provisions on the attachment of earnings. The application of national legislation to the determination of the attachable amount of an official's remuneration would, amongst other things, produce unequal treatment between officials according to their place of employment in view of the disparity of national provisions on this subject, and that would be contrary to the fundamental principle of non-discrimination.

27. The applicant therefore concludes that the Commission is obliged to pay default interest simply because of the delays in the payment of his salary and also interest to compensate him for the damage suffered as a result of the fall in the value of money over the same period. The applicant stresses the fact that, as a result of the attachment of his earnings, he was forced to obtain a mortgage loan repayable with interest at 13% per year.

28. In my view the applicant's proposition that there is a principle protecting his remuneration from attachment has no foundation whatever.

29. The Commission is correct in maintaining that the principle of the protection of remuneration enshrined in the Staff Regulations relates to the legal relationship between an official and his institution. In relation to third parties, that principle does not detract from the general principle of law according to which the debtor's assets constitute the common security of all his creditors.

30. Furthermore, the first paragraph of Article 23 of the Staff Regulations is quite clear in stating that 'the privileges and immunities enjoyed by officials are accorded solely in the interests of the Communities. Subject to the Protocol on Privileges and Immunities, officials shall not be exempt from fulfilling their private obligations or from complying with the laws and police regulations in force'.

31. Since there is no question in this case of any obstacle to the functioning of the European Communities — nor did the Commission claim that there was — there are no grounds for applying Article 1 of the abovementioned Protocol on Privileges and

Immunities, and, that being the case, it would be pointless for a Community institution not to comply with a judicial attachment order and thereby to deprive an official's creditors of a guarantee of the recovery of the sums owing to them.

32. In regard to legal relationships in private law — and without prejudice to the provisions of the Staff Regulations and the Protocol on Privileges and Immunities — 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.

33. As regards the attachment of earnings, the applicability of the national law of the Member States was expressly recognized by judgments of the Court in 1963 and 1971.[1]

34. Moreover, if national legal systems are relevant for the purpose of pleading the principle of the protection of remuneration, then it must also be relevant to note that nearly all of them, notwithstanding their acknowledgment of that principle, recognize the lawfulness of the attachment of earnings by judicial decision.

35. In the case of Luxembourg law, the attachment of a worker's earnings in favour of another person is expressly provided for by Article 1 of the Law of 11 November 1970.

36. Under the terms of the Grand-Ducal Regulation of 27 November 1970, which is applicable to proceedings for attachment, the third party to whom the attachment order is directed is prohibited from paying the attached amount to the debtor whose earnings are to be attached from the time when the order is notified to him until it is lifted. During that period the earnings to which the order relates are subject to an attachment which is partial and relative in the sense that only a proportion of remuneration may be attached, within the limits of the amount to which the creditor is entitled.

37. It is true that, as the applicant emphasizes, national legislation on the attachment of earnings differs from one country to another as regards the conditions for the application of that measure, the way in which the proportion of earnings which may be attached is calculated, and so on. For that reason, the rules to which Community officials are subject will differ in that regard according to their place of employment.

38. In itself that fact is not in any way surprising.

39. On 31 May 1979, the Commission submitted to the Council a proposal for an amendment to the Staff Regulations intended to lay down uniform rules for the determination of the attachable proportion of officials' earnings.

40. The proposal has not been adopted because, as Community law stands, the rules governing the attachment of salaries to which officials were subject have not been harmonized. That is to say, they have no more been harmonized than, for example, the national rules governing value-added tax to which officials are subject as consumers.

41. It must therefore be considered that since the Commission correctly gave effect to the decision of the Luxembourg Court pursuant to the relevant national law it did not commit any wrongful or unlawful act capable of making it liable to compensate the applicant, as indeed it might have done if it had been slow in repaying the sum after the cessation of the attachment order.

42. Accordingly, should the Court not find this submission put forward by the applicant

1 — Orders of the Court of 25 September 1983 in Case 85/63 [1963] ECR 195, and of 11 May 1971 in Case 1/71 [1971] ECR 363.

inadmissible, as I propose, I am of the view that the submission should, in the alternative, be held to be unfounded.

B — *The Commission's obligation to ensure, pursuant to its duty to have regard to the interests of officials, that the sums withheld earned interest*

43. The applicant argues that even if the attachment of his earnings is considered lawful the Commission was required, as a result of its duty of care or its duty to have regard to the interests of officials, to devote to the management of his money the same degree of care as it devotes to the management of its own funds. The fact that the institution failed to take any steps to ensure that that money earned interest constituted wrongful conduct, made the more serious by the fact that the applicant had requested a fixed-term deposit and the creditor's legal representative had agreed to a deposit at one month's notice on 14 December 1983.

44. In regard to that submission it is necessary to distinguish those aspects which are governed by the relevant national law and those which come under the Staff Regulations of Officials.

45. Under Luxembourg law, and having regard to the attachment order made by the Luxembourg Court, the third party to whom the attachment order is directed is required to retain the attached amounts and have them available at any moment.

46. The Commission is under no obligation, either under the mandatory rules of Luxembourg law or the order of the Luxembourg court, to ensure that the amounts attached earn interest.

47. On the other hand, unlike the situation under the legislation of certain Member States, there is no legislative provision precluding or expressly prohibiting the earning of interest either on the employer's initiative and on his responsibility or as a result of an order by the court itself (although this does not seem to be current practice).

48. Although, according to the relevant national legislation and the order of the Luxembourg court, the applicant's request does not impose a legal obligation on the Commission, nevertheless the question arises whether, within the context of the Staff Regulations and more specifically as a result of its duty to have regard to the interests of officials, the Commission was required to act differently.

49. The Court has already acknowledged the importance of that concept, which belongs originally to German administrative law, which, the Court has stated, reflects 'the balance of the reciprocal rights and obligations established by the Staff Regulations in the relationship between the official authority and the civil servants'. [2]

50. According to the Court, [2] 'a particular consequence of this balance is that when the official authority takes a decision concerning the situation of an official, . . . it should take into consideration all the factors which may affect its decision and that when doing so it should take into account not only the interests of the service but also those of the individual concerned'.

51. Nevertheless, the Court has not found in any of the cases in which that duty was relied upon before it that the conditions for a finding that there had been a breach of the duty were met. [3]

2 — Judgment of 28 May 1980 in Joined Cases 33 and 75/79 *Kuhner* v *Commission* [1980] ECR 1677, at p. 1697.

3 — Besides the judgment last cited, see the judgment of 29 October 1981 in Case 125/80 *Arning* v *Commission* [1981] ECR 2539, at p. 2555; Judgment of 9 December 1982 in Case 191/81 *Plug* v *Commission* [1982] ECR 4229, at p. 4247; judgment of 23 October 1986 in Case 142/85 *Schwiering* v *Court of Auditors* [1986] ECR 3177.

52. In addition, since this is a general concept, it is not always easy to define its limits, in particular when, as in this instance, what is at issue is not the conduct of the institution within the sphere of the essential core of rights and obligations constituting the employment relationship (remuneration, grading, posting, promotion, etc.), but its attitude to the interests of the official in regard to his legal relationships in private law.

53. In any event, the concept of a duty to have regard to the interests of the official is sometimes associated with other concepts to which it is akin, and this enabled Advocate General Mayras to state that 'in truth the concepts of good administration, of justice and fairness and the duty to look after the well-being of officials seem to me to be simply different ways, evolved from various legal traditions, of expressing the same concern without which there could be no harmonious relations within an administration'. [4]

54. However that may be, what appears to be decisive in the last resort is whether the institution's conduct is such that it may be charged with what the Court has described as a 'wrongful act or omission' such as to render it liable for any damage which might be caused to one of its officials.

55. It was on that basis that the Court held in *Elz* v *Commission* [5] (without, however, finding that damage had been proven) that the Commission had not acted with sufficient diligence to discharge itself of its duty to ensure the transmission of a legal notice to an official who was absent from work without authorization or at least return it to the national authorities in sufficient time to allow them to use other methods of delivery.

56. In his Opinion in the same case, Mr Advocate General Reischl also took the view that the Commission had failed in its duties of *care* and *responsibility*, [6] although the Court did not formally uphold that last principle in its judgment.

57. In the case now under consideration, I do in fact believe that the Commission's conduct towards its official was at fault and not in accordance with what proper consideration for his interests would have required.

58. The applicant had expressly requested the Commission to place the attached sums on interest-bearing deposit for a year and had obtained his creditor's partial agreement to his request, which was forwarded to the Commission.

59. The Commission, however, failed to make the slightest effort to satisfy the applicant's request.

60. As we have seen, it is not possible to regard the Commission as being under an obligation simply to do what the applicant had requested it to do and place the attached sums on deposit, particularly since such a practice, as became clear in the course of the proceedings, would make more difficult and possibly even perturb the organization and efficiency of departmental matters for which the institutions are responsible.

61. Apart from that, however, what may be said with certainty is that the Commission

4 — Opinion cited above in *Kuhner* [1980] ECR 1708.

5 — Judgment of 24 June 1976 in Case 56/75 *Elz* v *Commission* [1976] ECR 1097, at p. 1111.

6 — [1976] ECR 1117. See also the Opinion in Case 164/78 *Woehrling* v *Commission* [1979] ECR 1961, at p. 1974.

failed to give the applicant any reply or any indication enabling him to act to secure his own interests.

62. Elementary consideration for the applicant's interests required that the Commission should reply to his request of 23 November 1983 and expressly inform him that it was not able to satisfy his request and that he would have to obtain an order from the national court for that purpose, as the Inter-institutional Committee later decided should be done.

63. It does not appear to me, however, that in this case the Commission's omissions meet all the conditions required for it to be made liable to compensate the applicant, as he claims.

64. In coming to this conclusion I take into account the fact that there is no firm causal connection between the Commission's attitude and the applicant's alleged loss of the interest which the attached amounts might have earned.

65. It is far from being evident that — even if he had been advised by the Commission to do so — the applicant would have succeeded in obtaining a court order expressly authorizing the deposit at interest of the attached amounts. Accordingly it is not possible to say with certainty that, had the Commission discharged its duties in regard to the interests of the applicant by informing him of the steps to be taken, he would have obtained satisfaction, and that the Commission's omission to do so therefore caused him damage.

66. On the other hand, I do not think that this case may be said to meet all the conditions required under the law of most of the Member States for applying the concept of unjust enrichment, a point which was argued at the hearing but not raised by the applicant in the course of the written procedure (see Article 42 (2) of the Rules of Procedure).

67. Specifically, just as it is uncertain that the Commission's omission caused the 'impoverishment' of the applicant, it does not seem to me that, in view of the opaqueness of the accounting practices applied in such a case, it has been shown that the Commission has been enriched as a result of the delay in its payment of the applicant's salary, which, moreover, was due to the order of the Luxembourg court.

68. None the less I think that there is a clear causal connection between the Commission's failure to do what was required by virtue of its duty to have regard to the applicant's interests and the fact that he found himself compelled to bring this action.

69. If the Commission had replied to him and given him the proper information, the situation might have been clarified in such a way as to make it unnecessary to bring this action.

70. V — I therefore take the view that it is appropriate, pursuant to the second paragraph of Article 69 (3) of the Rules of Procedure,[7] to compensate the applicant in full for the costs incurred as a result of this action.

7 — In circumstances similar to those which prompted the Court to decide in its judgment cited above in *Aming* [1981] ECR 2555.

71. I therefore propose that the Court dismiss this application on the grounds that the first submission is out of time and the second unfounded and order the Commission to pay the costs in their entirety, including those of the applicant.