particular circumstances of each case, are such as to establish whether the absence of the interim measures sought is likely to expose the applicant to the risk of damage which cannot be repaired even if the contested measures are subsequently annulled in the main proceedings.

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
29 September 1993 *

In Case T-497/93 R II,

Anne Hogan, an official of the Court of Justice of the European Communities, resident in Senningerberg (Luxembourg), represented by Carlo Giovanni Lattanzi, of the Massa-Carrara Bar, with an address for service in Luxembourg at 5 Rue des Bains,

applicant,

v

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, Court of Justice, Kirchberg,

defendant,

APPLICATION for the adoption of interim measures requiring reimbursement of the sum of BFR 43 811 deducted from her remuneration for July 1993,

* Language of the case: Italian.

THE PRESIDENT OF THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES

makes the following

Order

Facts

1 By application lodged at the Registry of the Court of First Instance on 6 August 1993, the applicant brought an action under Article 91 of the Staff Regulations of Officials of the European Communities for, *inter alia*, the annulment of the decision of the President of the Court of Justice of the European Communities of 15 July 1993 rejecting her request of 1 June 1993 and her complaint of 3 June 1993 concerning reimbursement of the sum deducted from her remuneration for July 1993.

2 By a separate document lodged at the Registry of the Court of First Instance on the same day, the applicant submitted an application for the adoption of interim measures requiring immediate reimbursement of that sum, pending the judgment on the substance of the case and subject to the possible initiation of proceedings for recovery. As the applicant notified the Court by letter of 12 August 1993 that she intended to discontinue her application for interim measures, on 16 August 1993 the President of the Court ordered that Case T-497/93 R be removed from the register.

3 By a separate document lodged at the Registry of the Court of First Instance on 24 August 1993, the applicant submitted a further application for interim measures concerning the same subject-matter as the preceding application, which was registered as Case T-497/93 R II.

4 On 7 September 1993 the defendant lodged its written observations concerning this application for interim measures.

5 Before examining whether the application for interim measures is well founded, it is appropriate to recall the background to this case and, in particular, the basic facts giving rise to this dispute as they appear from the pleadings lodged by the parties.

6 By application of 18 May 1993, Alain Gross, of the Luxembourg Bar, applied to the Luxembourg Juge de Paix (Magistrate's Court) for authorization to serve an attachment order in respect of the applicant's salary held by her employer, the Court of Justice, in the amount of BFR 43 811, corresponding to the fees and expenses taxed on 3 February 1993. By order of 21 May 1993 the Luxembourg Juge de Paix authorized the attachment order applied for and ordered that the Court of Justice be notified as a 'tiers saisi' (garnishee). By letter of 27 May 1993, the Head of the Personnel Division of the Court of Justice notified the Registrar of the Luxembourg Tribunal de Paix that the deductions which were the subject of the attachment order would be paid into a special account held by the Court as from 15 July 1993.

7 By letter of 1 June 1993 the applicant submitted a request under Article 90(1) of the Staff Regulations to the effect, primarily, that the appointing authority should instruct the Personnel Division not to deduct any sums from her remuneration. By letter of 3 June 1993 the applicant submitted a complaint under Article 90(2) of the Staff Regulations against the decision of the Head of the Personnel Division of '27-28 May 1993'.

8 By letter of 15 July 1993, the President of the Court informed the applicant that the Administrative Committee had decided to reject her complaint on the ground, in particular, that 'every Community institution is entitled to waive the privileges and immunities which are conferred on it, where it considers that such waiver is not contrary to the interests of the Community. In particular, it is for the institution to give effect to an attachment order made by a national court where it

considers that it has no grounds for opposing a requirement to pay into the hands of a creditor of one of its officials all or part of the sums which it owes or will owe to the latter'.

9 A deduction of BFR 43 811 was made in respect of the attachment order from the applicant's salary for July 1993.

Law

10 Pursuant to Article 185 in conjunction with Article 186 of the EEC Treaty and Article 4 of the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities, the Court may, if it considers that the circumstances so require, order that application of the contested act be suspended or prescribe any necessary interim measures.

11 Article 104(2) of the Rules of Procedure of the Court of First Instance provides that applications concerning the interim measures referred to in Articles 185 and 186 of the Treaty must state the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measures applied for. The measures requested must be of an interim nature in that they must not prejudge the decision as to the substance of the case (see, most recently, the order of the President of the Court of First Instance in Case T-12/93 R *CCE Vittel and CE Pierval* v *Commission* [1993] ECR II-785).

Arguments of the parties

12 In her application for interim measures, the applicant claims in substance that the remuneration she receives as an official of the Court cannot be attached by enforcement orders governed by national law, in this case Luxembourg law. Furthermore, although it is true that the institution has the power to waive its own privileges, it does not have the power to waive the rights of third parties and, in particular, to

compel her, without good reason and without the requisite procedural safeguards, to waive approximately 50% of her remuneration.

13 As to the risk of serious and irreparable damage, the applicant considers that the deduction made from her salary constitutes an act which adversely affects to an intolerable extent her right to be fully paid for her work, especially as the alleged debt is neither certain, nor obvious, nor payable. Furthermore, she argues that the attachment order made in respect of her salary, which is 'protected property under employment and social security law', constitutes an obstacle to the financial commitments that she entered into on the understanding that the whole of her salary would be paid to her on a regular basis.

14 The defendant contends that the attachment of earnings of officials of the European Communities held by their institution is settled practice and its validity has already implicitly been accepted by the Court of Justice which recognized the applicability of national law in this area in its order in Case SA 1/71 [1971] ECR 363.

15 As regards the risk of serious and irreparable damage, the defendant considers that it is difficult to see how being temporarily deprived of the sum of BFR 43 811 could seriously jeopardize the financial position of an official receiving a Grade C1 remuneration on a monthly basis. In any event, moreover, the damage is not irreparable since, if the applicant is successful before the Luxembourg court or the Court of First Instance upholds her application in the main proceedings, the sum deducted under the attachment order would be paid to her.

Findings of the judge hearing the application for interim measures

16 First of all, the urgent nature of an application for interim measures, as set out in Article 104(2) of the Rules of Procedure, must be assessed by reference to the need

to give an interim ruling in order to avoid serious and irreparable damage to the party seeking the interim measure.

17 In this connection it has been consistently held (see, most recently, the order of the President of the Court of First Instance in Case T-115/92 R *Hogan* v *European Parliament* [1993] ECR II-339) that, in principle, purely pecuniary damage cannot be regarded as irreparable or even as difficult to repair since *ex hypothesi* it may be the subject of subsequent financial compensation. However, it is for the judge hearing the application for interim measures to assess the factors which, in the particular circumstances of each case, are such as to establish whether the absence of the interim measures sought is likely to expose the applicant to the risk of damage which cannot be repaired even if the contested measures are subsequently annulled in the main proceedings.

18 The first point to note is that the damage pleaded by the applicant stems from the single deduction of the sum of BFR 43 811 from her remuneration for July 1993. Secondly, it is apparent from the documents before the Court that the applicant's net monthly salary amounted to BFR 120 424 at the time when the attachment order in question was authorized. Finally, it must be emphasized that the damage alleged by the applicant may be the subject of subsequent financial compensation, if the applicant is successful before the Luxembourg courts or the Court of First Instance upholds her application in the main proceedings.

19 It follows from the foregoing that, in the absence of any other information furnished by the applicant to establish urgency, the financial loss which she will have to bear until the Court gives judgment in the main action, as a result of the rejection of her request for reimbursement, cannot cause her serious and irreparable damage of any kind.

20 It must therefore be held, without its being necessary to examine the prima facie merits of the application in the main proceedings, that the conditions in law for granting the interim measures sought are not fulfilled and that the present application must consequently be dismissed.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. The application for interim measures is dismissed.

2. The costs are reserved.

Luxembourg, 29 September 1993.

H. Jung — Registrar

J. L. Cruz Vilaça — President