JUDGMENT OF THE COURT (Third Chamber)
7 October 1987 *

In Case 401/85

Francesco Schina, an official of the Commission of the European Communities, residing at Strassen, Luxembourg, represented by Jean Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Nicolas Decker, of the Luxembourg Bar, 16 avenue Marie-Thérèse,

applicant,

v

Commission of the European Communities, represented by Dimitrios Gouloussis, Legal Adviser, and Marie Wolfcarius, a member of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the payment of interest on sums withheld as a result of an interlocutory attachment order on Mr Schina's remuneration,

THE COURT (Third Chamber),

composed of: J. C. Moitinho de Almeida, President of Chamber, U. Everling and Y. Galmot, Judges,

Advocate General: J. L. da Cruz Vilaça
Registrar: H. A. Rühl, Principal Administrator

having regard to the Report for the Hearing and further to the hearing on 10 December 1986,

after hearing the Opinion of the Advcate General delivered at the sitting on 18 March 1987,

* Language of the Case: French.

gives the following

Judgment

1 By an application lodged at the Court Registry on 5 December 1985, Francesco Schina, an official of the Commission of the European Communities, brought an action for the annulment of the Commission's decision of 22 March 1985 refusing to pay him interest on amounts withheld pursuant to an interlocutory attachment order on his remuneration.

2 That order was made on 12 August 1982 by the juge de paix (Cantonal Court) Luxembourg on an application by one of Mr Schina's creditors. After the Commission was informed of it by letter of 18 August 1982, Mr Schina first challenged the attachment order, without success, before the Luxembourg courts then, by letter of 6 October 1983, submitted a complaint to the Commission and, by application dated 9 July 1984, brought an action before the Court. In that action, which was the subject of Case 180/84, the applicant accepted the Commission's submissions alleging that the action was inadmissible on the ground that the procedural time-limits had been exceeded and discontinued the proceedings.

3 It is common ground that between September 1982 and April 1983, the Commisison withheld a total amount of LFR 450 000 from the applicant's monthly remuneration. After he became aware that the hearing in the main proceedings would not take place before November 1984, Mr Schina, in a memorandum dated 23 November 1983, asked the Commission 'to adopt... compensatory measures designed to make good in the short term the damage suffered. In that context, it is proposed, as a temporary measure, that the money be placed on fixed-time deposit for a period of one year, if need be in a bank account opened by the Commission'. He also asked the Commission 'to study any possibility of that kind'. Informed by the Commission of that request, the creditor's lawyer expressed his agreement in a letter dated 14 December 1983 on condition that the interest was also blocked and that the money was placed on deposit on a monthly basis. In a letter dated 28 February 1985, the creditor's lawyer informed the Commission that Mr Schina had discharged his obligations

under the judgment in the main proceedings, which had been delivered in the meantime, and gave notice of cessation of the attachment in respect of the amount withheld, which was then paid to the applicant. However, in a memorandum of 22 March 1985, the Commission refused to comply with the applicant's request to pay him interest. After submitting a complaint, Mr Schina brought this action.

4 The applicant claims first that the remuneration of officials cannot be attached and that, consequently, the Commission is required to make good the damage resulting from the unlawful withholding of part of his salary. In the second place, he claims that, either by virtue of its duty of care or pursuant to the instructions given to it by agreement between the party against whom the attachment order was made, namely the debtor, and the party to whom it was granted, namely the creditor, the Commission was required to ensure that the amounts blocked earned interest and should therefore compensate him for the consequences of a failure to fulfil that obligation. Finally, the Commission was unjustifiably enriched inasmuch as, in its capacity as a third party to whom the attachment order was directed, it used the amounts withheld to obtain a benefit for itself.

5 Reference is made to the Report for the Hearing for a fuller account of the facts, the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

Admissibility

6 The Commission contends that the application is inadmissible, so far as the first two submissions contained therein are concerned, on the ground that it is out of time.

7 With regard to the submission that officials' remuneration cannot be attached, the Commission contends that that submission is in fact directed against the letter of 18 August 1982, informing the applicant of the attachment order, and against the amounts withheld from his salary between September 1982 and April 1983, which the applicant did not contest at the proper time.

8 It should be pointed out firstly that by alleging that his salary cannot be attached the applicant is arguing essentially that the Commission's decision not to pay him certain parts of his salary pursuant to the attachment order was unlawful. However, that submission may not be raised in the course of the proceedings in the present action.

9 It is true that this action, brought against the Commission's decision of 22 March 1985 refusing to pay interest on the attached part of the applicant's salary, seeks, under the first submission, compensation for a financial loss alleged to have been suffered by reason of the reduction of a part of his salary. However, it is apparent from the case-law of the Court that where a dispute between an official and the institution by which he is or was employed concerning compensation for damage originates in the relationship of employment between that person and the institution, it falls under Article 179 of the Treaty and Articles 90 and 91 of the Staff Regulations and accordingly not under Articles 178 and 215 of the Treaty (judgment of 17 February 1977 in Case 48/76 *Reinarz* v *Commission and Council* [1977] ECR 291 and judgment of 19 November 1981 in Case 106/80 *Fournier* v *Commission* [1981] ECR 2759). An official who fails to contest in due time a decision of the appointing authority affecting him is not permitted to rely on the alleged unlawfulness of that decision in an action for damages.

10 It is apparent from the documents before the Court that, as is confirmed by his discontinuance of the proceedings in Case 180/84, the applicant failed to contest, within the time-limits laid down in Articles 90 and 91 of the Staff Regulations of Officials, the Commission's decision to withhold part of his salary in execution of the attachment order. It follows that the applicant cannot, by putting forward a submission to that effect in these proceedings, escape the consequences of the expiry of the time-limits; the first submission must therefore be rejected as inadmissible.

11 With regard to the second submission, the Commission contends that it is in reality directed against the implied decision rejecting the applicant's request of 23 November 1983 to place the amounts withheld on fixed-term deposit and that consequently the time-limits laid down in Articles 90 and 91 of the Staff Regulations of Officials again have not been observed.

12 It must be noted in that regard, in the light of the abovementioned decisions of the Court, that the damage which the applicant alleges under his second submission has its origin in the Commission's refusal, in its capacity as employer and third party to whom the attachment order was directed, to arrange for the amounts withheld from the applicant's salary to earn interest. The applicant claims essentially that the Commission failed to do so, in breach of its duty of care as an employer and contrary to the instructions given to it by agreement between the parties to the attachment proceedings. Consequently, the present proceedings

come, also as regards the second submission, within the scope of Article 179 of the Treaty and Articles 90 and 91 of the Staff Regulations and the applicant was therefore required to comply with the procedural requirements laid down in those articles.

13 As has been stated above, in a memorandum dated 23 November 1983, the applicant asked the Commission to arrange for the amounts attached to earn interest and asked it 'to place the money on fixed-term deposit for a period of one year, if need be in a bank account opened by the Commission'. The Commission did not reply to that request. In that regard it must be held that on the expiry of the period laid down in Article 90 (1) of the Staff Regulations, the absence of a reply on the part of the Commission amounted to an implied decision rejecting the request, a decision against which the applicant unquestionably failed to submit a complaint under Article 90 (2) of the Staff Regulations.

14 The second submission is therefore also inadmissible.

Substance

15 With regard to the question whether or not the action is well founded, all that remains to be considered is the third submission under which the applicant alleges that the Commission was unjustifiably enriched. In that regard, it is sufficient to note, without there being any need to consider whether the applicant may base his action on such a submission, that he has produced no evidence which would enable the Court to decide whether or not such enrichment has occurred.

16 The application must therefore be dismissed in its entirety.

Costs

17 Under the terms of Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. However, under Article 70 of those rules, institutions are to bear their own costs in proceedings commenced by officials of the Community.

On those grounds,

THE COURT (Third Chamber)

hereby:

(1) Dismisses the application;

(2) Orders the parties to bear their own costs.

Moitinho de Almeida Everling Galmot

Delivered in open court in Luxembourg on 7 October 1987.

P. Heim
Registrar

J. C. Moitinho de Almeida
President of the Third Chamber