

ORDER OF THE COURT OF FIRST INSTANCE (Fifth Chamber)

8 November 1996 *

In Case T-120/89 (92),

Stahlwerke Peine-Salzgitter AG (now Preussag Stahl AG), represented by Deringer, Tessin, Herrmann and Sedemund, Rechtsanwälte, 65 Charlottenstrasse, Berlin,

applicant,

v

Commission of the European Communities, represented by Götz zur Hausen, Legal Adviser, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for taxation of the costs to be reimbursed by the Commission to the applicant pursuant to the judgment of the Court of 27 June 1991 in Case T-120/89 *Stahlwerke Peine-Salzgitter v Commission* [1991] ECR II-279,

* Language of the case: German.

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fifth Chamber),

composed of: R. García-Valdecasas, President, J. Azizi and M. Jaeger, Judges,

Registrar: H. Jung,

makes the following

Order

- 1 By application lodged at the Registry of the Court of Justice on 3 July 1989, referred to the Court of First Instance by order of 15 November 1989, pursuant to Article 14 of Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1988 L 319, p. 1), Stahlwerke Peine-Salzgitter AG (now Preussag Stahl AG, hereinafter 'PSAG') brought an action under the first paragraph of Article 34 and the first paragraph of Article 40 of the ECSC Treaty to establish the non-contractual liability of the Community for a number of unlawful acts committed by the Commission under the quota system for steel.
- 2 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance decided to open the oral procedure without any preparatory inquiry. At that stage of the procedure, the President of the Court designated an Advocate General.

- 3 The parties presented oral argument and their answers to the questions of the Court at the hearing on 19 September 1990 and the Advocate General lodged his written opinion at the Court Registry on 30 January 1991.

- 4 By judgment of 27 June 1991 (Case T-120/89 *Stahlwerke Peine-Salzgitter v Commission* [1991] ECR II-279), the Court held that a series of decisions adopted by the Commission were vitiated by a defect of such a nature as to render the Community liable, and referred the case to the Commission for it to adopt appropriate measures ensuring equitable redress for the resulting harm and to pay appropriate damages as far as was necessary. The Court also ordered the Commission to bear, in addition to its own costs, 90% of those of the applicant.

- 5 By application lodged at the Registry of the Court of Justice on 3 September 1991, the Commission brought an appeal under Article 49 of the Statute of the Court of Justice of the ECSC against that judgment (Case C-220/91 P).

- 6 By judgment of 18 May 1993 ([1993] ECR I-2393), the Court of Justice dismissed the appeal and ordered the Commission to pay the costs.

- 7 On 6 June 1994, the parties reached a settlement pursuant to the judgment of 27 June 1991, fixing at DM 40 million the sum payable by the Commission to PSAG in damages for the harm suffered. Under Article 3 of the settlement, the fees of the parties' lawyers for acting in the negotiation of the settlement were to be borne by PSAG as to two-thirds and the Commission as to one-third. According to the calculation carried out by the Commission's representative, the lawyers' fees relating exclusively to the negotiation of that settlement amounted to DM 447 180.

- 8 By letter of 21 December 1995, the law firm which represented PSAG claimed from the Commission reimbursement of a total sum of DM 549 636.75 in respect of the costs incurred in the two sets of proceedings, of which DM 260 354.25 were for the proceedings at first instance. It was stated that those costs represented fees of 13/10 in accordance with Paragraph 31 of the Bundesgebührenordnung für Rechtsanwälte (Federal Order on Lawyers' Fees, 'the BRAGO').

- 9 By letter of 5 February 1996, the Commission challenged the applicability of the national fee scales and complained of the lack of any specific information on the amount of work on the basis of which the lawyers' fees were calculated.

- 10 By letter of 15 April 1996, PSAG justified the amounts claimed by referring to the financial importance of the case and the high degree of complexity of the proceedings. The proceedings at first instance had required approximately 45 days' work and those before the Court of Justice the equivalent of 35 days' work. PSAG also stated that the hourly and the daily rates, which however, it says, it did not apply in this case, were between DM 550 and DM 750 and DM 5 000 and DM 7 000 respectively.

- 11 By letter of 25 April 1996, the Commission refused to pay the sum claimed and proposed paying a single lump sum of DM 200 000 in costs for the two sets of proceedings.

- 12 In those circumstances, by application lodged at the Registry of the Court of First Instance on 11 June 1996, PSAG applied, pursuant to Article 92(1) and (2) of the Rules of Procedure, for its recoverable costs, by way of expenses and lawyers' fees relating to the proceedings at first instance, to be fixed at DM 275 000 together with appropriate interest for late payment from 27 June 1991, and for an authenticated copy of the order to that effect to be delivered to it.

- 13 On the same day, PSAG lodged at the Court of Justice an application for the costs relating to the appeal proceedings to be fixed at DM 275 000.
- 14 On 22 July 1996, the Commission lodged at the Registry of the Court of First Instance its written observations on the application for taxation of the costs.

Substance

Arguments of the parties

- 15 PSAG notes that, according to the case-law, the factors to be taken into account for the reimbursement of costs are the difficulty of the case, the amount of work and the parties' financial interest.
- 16 It points out first that the Commission has not disputed the difficulty of the case, which is indeed demonstrated by the fact that the Commission saw fit to call on a renowned professor to represent it in the court proceedings.
- 17 It then observes that the case gave rise to important issues of principle because it raised a series of fundamental questions of law relating to the interpretation of Article 34 of the ECSC Treaty and its relationship with the second paragraph of Article 215 of the EEC Treaty, upon which there was at the time no relevant case-law.

- 18 It also submits that the case required a substantial amount of work, in particular in order to consider all the case-law and legal literature on the abovementioned Articles 34 and 215, and maintains that the time spent on the proceedings before the Court of First Instance amounts to 45 days' work, at an average of ten hours per day, apportioned as follows: 24 days preparing the application, 18 days for the reply and three days preparing for the hearing and oral argument. The work was carried out by two partners of the firm and an assistant lawyer.
- 19 Finally, it states that the case was of exceptionally great financial interest to both parties and that it related to a total sum in excess of DM 100 million.
- 20 The Commission submits that, under the criteria developed in the case-law, the claim is unfounded in so far as it exceeds DM 125 000.
- 21 It takes the view that the amount of work constitutes the most important criterion and that a total of more than 200 hours' work for drawing up the application and the reply and for the oral procedure must be regarded as sufficient. It considers that in this case, having regard to the difficult legal nature of the proceedings and their financial importance, an hourly charging rate of DM 600 may appear justified.
- 22 It makes clear that, in view of the particular circumstances of the case, it makes no criticism of the fact that the work was carried out by several lawyers.

- 23 It also points out that PSAG is claiming in these proceedings for the taxation of costs the same sum as that claimed in the parallel proceedings before the Court of Justice relating to the appeal although, according to information provided by PSAG itself, the amount of work for the two sets of proceedings differed significantly. It concludes that PSAG used the total sum of approximately DM 550 000, which was claimed initially on the basis of the BRAGO for the two sets of proceedings, simply as a starting point and then split that sum into two.
- 24 Finally, the Commission notes that in its application for taxation PSAG claims for the first time interest for late payment from 27 June 1991, when the Court delivered its judgment. In that regard, the Commission is not acknowledging any delay in payment, because it is only the order of the Court fixing the costs which definitively establishes the obligation to effect reimbursement.

Findings of the Court

- 25 Pursuant to Article 91 of the Rules of Procedure, 'the following shall be regarded as recoverable costs: ... expenses necessarily incurred by the parties for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of agents, advisers or lawyers'.
- 26 The Court finds that it is clear from the letter from PSAG's adviser of 21 December 1995 (Annex 2 to the application) that the amount claimed as recoverable costs corresponds to the amount of the lawyers' fees calculated, in accordance with Paragraph 31 of the BRAGO, solely by reference to the criterion of the financial value of the case.

- 27 According to settled case-law, the Community judicature is not empowered to tax the fees payable by the parties to their own lawyers but it may determine the amount of those fees which may be recovered from the party ordered to pay the costs. It follows that the Court is not obliged to take account of any national scales of lawyers' fees or any agreement in relation to fees concluded between the party concerned and his agents or advisers (see in particular the order of the Court of 17 April 1996, Case T-2/93 (92) *Air France v Commission* [1996] ECR II-235, paragraph 21).
- 28 Since Community law does not contain provisions on fee scales, the Court must freely consider the circumstances at issue, having regard to the subject-matter and nature of the dispute and its significance from the point of view of Community law, as well as to the difficulties presented by the case, the amount of work generated by it for the agents or lawyers involved and the financial interest which the parties had in the proceedings (order of the Court of 11 July 1995 in Cases T-23/90 (92) and T-9/92 (92) *Automobiles Peugeot v Commission* [1995] ECR II-2057, paragraph 24).
- 29 The amount of costs which may be recovered must be assessed on the basis of those criteria.
- 30 As regards the significance of the case from the point of view of Community law, the action raised new and important questions of law as well as complex questions of fact. That is confirmed by the fact that the Commission saw fit to be represented by a university professor. The nature of the case therefore justifies both the high fees and — a matter not contested by the Commission — PSAG's being represented by a number of lawyers.
- 31 As regards the difficulties presented by the case and the amount of work that it generated for PSAG's lawyers, the ability of the Court to assess the value of work carried out is dependent on the accuracy of the information provided (order of the

Court of Justice of 9 November 1995 in Case C-89/85 DEP *Ahlström and Others v Commission*, not published in the ECR, paragraph 20). The information contained both in the letters sent by PSAG to the Commission and in the application for taxation of the costs is vague and general and does not enable the amount of work to be assessed accurately. In his first letter, of 21 December 1995, PSAG's adviser justified the costs claimed by reference to the BRAGO and the costs were calculated on the basis of the financial value of the case, whereas in his second letter, of 15 April 1996, he referred to the volume of work carried out for the proceedings before the Court which, he asserted, amounted to approximately 45 days' work, but he did not provide the slightest detail. The Court also notes that PSAG is claiming an identical sum in costs in the parallel taxation proceedings relating to the appeal (C-220/91 P) that are pending before the Court of Justice, although, in its letter of 15 April referred to above, it stated that the appeal proceedings required only the equivalent of 35 days' work.

- 32 As regards the financial interest which the parties had in the proceedings, the Court finds that, even though the sum finally agreed under the settlement was appreciably lower than that claimed, it was nevertheless still large.
- 33 Accordingly, the Court considers that it will represent a reasonable assessment of the recoverable costs if their total is fixed at DM 160 000.
- 34 Since the Court has taken account, in fixing the recoverable costs, of all the circumstances of the case up to the date of this order, there is no need to give a ruling on either the claim for interest for late payment or the costs incurred by the parties in relation to these proceedings for the taxation of costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby orders:

The total costs payable by the Commission to Stahlwerke Peine-Salzgitter (PSAG) are fixed at DM 160 000.

Luxembourg, 8 November 1996.

H. Jung

Registrar

R. García-Valdecasas

President