

Case T-50/89

Jürgen Sparr

v

Commission of the European Communities

(Omission to give a decision)

Order of the Court of First Instance, 11 October 1990 ..... 539

Summary of the Order

*Procedure — Application to repair an omission to give a decision — Order for costs making no distinction between proceedings on an application for interim relief and the main proceedings — No omission to give a decision — Inadmissibility*  
(Rules of Procedure, Arts 67 and 69(2))

ORDER OF THE COURT OF FIRST INSTANCE (Fourth Chamber)  
11 October 1990 \*

In Case T-50/89,

**Jürgen Sparr**, a lawyer living in Hamburg (Federal Republic of Germany), represented by L. Schulze and G. Meyer, Rechtsanwälte, Hamburg, with an address for service in Luxembourg at the office of Gerd Recht, c/o Fulton Prebon SA, 25 rue Notre-Dame,

applicant,

\* Language of the case: German.

v

**Commission of the European Communities**, represented by Henri Étienne, a member of its Legal Department, acting as Agent, assisted by Reinhard Wagner, a German judge placed at the disposal of the Commission's Legal Department, with an address for service in Luxembourg at the office of Guido Berardis, a member of its Legal Department, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of the selection board in Open Competition COM/A/621 refusing to admit the applicant to the tests in that competition, upon which the Court of First Instance gave judgment on 22 May 1990,

THE COURT OF FIRST INSTANCE  
OF THE EUROPEAN COMMUNITIES  
(Fourth Chamber)

composed of: R. Schintgen, President of Chamber, D. A. O. Edward and R. García-Valdecasas, Judges,

Registrar: H. Jung

makes the following

**Order**

- 1 By judgment of 22 May 1990 the Fourth Chamber of the Court of First Instance annulled the decision of the selection board in Open Competition COM/A/621 refusing to admit the applicant to the tests in that competition and ordered the Commission to pay the costs.

- 2 By interim order of 13 December 1988 made between the same parties, the President of the Third Chamber of the Court of First Instance, after dismissing the application for interim measures made by Mr Sparr, ordered that the costs be reserved.
  
- 3 By application lodged at the Registry of the Court of First Instance on 10 August 1990 the Commission requested the Fourth Chamber of the Court to give a decision as to the costs relating to the proceedings on the application for interim relief. The Commission states that in the judgment of 22 May 1990 the Court of First Instance gave a decision only on the costs in the main proceedings.
  
- 4 In his observations, lodged on 14 September 1990, Mr Sparr maintained that the Court, in expressly mentioning the proceedings on the application for interim relief in its judgment of 22 May 1990, in fact decided that the defendant must bear the costs relating to the two proceedings. Even assuming that such a decision does not expressly result from the operative part of the judgment, the defendant should, according to Mr Sparr, nevertheless bear the costs in question.
  
- 5 Since the Commission has failed to provide any indication which would make it possible to classify its application in relation to the provisions determining the jurisdiction and procedure of the Court of First Instance, this Court must classify it from the procedural point of view in the framework of the system laid down by the Treaty, the Statute of the Court of Justice of the European Communities and the Rules of Procedure (see the order in Case 4/73 *Nold v Ruhrhoble AG* [1977] ECR 1).
  
- 6 The Court observes that the Commission's application falls within the scope of Article 67 of the Rules of Procedure of the Court of Justice, applicable *mutatis mutandis* to the Court of First Instance pursuant to the third paragraph of Article 11 of the Council Decision of 24 October 1988 establishing a court of first instance of the European Communities. The first paragraph of Article 67 provides that 'if the Court should omit to give a decision on a particular point at issue or on costs, any party may within a month after service of the judgment apply to the Court to supplement its judgment.'

- 7 The admissibility of an application made on the basis of the article in question depends on two conditions, namely the omission to give a decision and the lodging of an application within one month after service of the judgment.
- 8 In the present case neither of those conditions has been met.
- 9 On the one hand, it is to be observed that the Court gave a decision on the costs in question in the judgment of 22 May 1990, since the order made therein covers the whole of the costs. If the Commission had wished to object to its being ordered to bear the costs relating to the proceedings on the application for interim relief, it should have made a claim to that effect in its pleadings. Although in the proceedings which took place before the Court each party asked for an order for costs against the other party, neither of them raised the question of a division of the costs between the proceedings on the application for interim relief and the main proceedings. Accordingly the Court applied Article 69(2) of the Rules of Procedure according to which 'the unsuccessful party shall be ordered to pay the costs if they have been asked for in the successful party's pleading.'
- 10 Secondly, the condition regarding the observance of the period of one month for making the application has not been complied with either, since the judgment was served on the parties on the day on which it was delivered, namely 22 May 1990, and the application was not made until 10 August 1990.
- 11 In consequence the Commission's application must be dismissed as inadmissible.
- 12 Pursuant to Article 69(2) of the Rules of Procedure the Commission must be ordered to pay the costs occasioned by the present application.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby orders as follows:

- (1) The Commission's application is dismissed.**
- (2) The Commission is ordered to pay the costs.**

Luxembourg, 11 October 1990.

H. Jung  
Registrar

R. Schintgen  
President