

ORDER OF THE COURT OF FIRST INSTANCE (Second Chamber)
25 June 1998 *

(Taxation of costs)

In Joined Cases T-177/94 (92) and T-377/94 (92),

Henk Altmann and Others and Margaret Casson and Others, represented by Rhodri Thompson, Barrister, of the Bar of England and Wales, 4 Raymond Buildings, Gray's Inn, London,

applicants,

v

Commission of the European Communities, represented by Julian Currall, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

and in Case T-99/95 (92),

Peter Edmond Stott, represented by Rhodri Thompson, Barrister, of the Bar of England and Wales, 4 Raymond Buildings, Gray's Inn, London,

applicant,

* Language of the case: English.

v

Commission of the European Communities, represented by Julian Currall, of its Legal Service, acting as Agent, 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 costs following the judgments of the Court of First Instance in Joined Cases T-177/94 and T-377/94 *Altmann and Others v Commission* [1996] ECR II-2041 and in Case T-99/95 *Stott v Commission* [1996] ECR II-2227,

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

composed of: A. Kalogeropoulos, President, C.W. Bellamy and J. Pirrung, Judges,

Registrar: H. Jung,

makes the following

Order

Facts and procedure

- 1 By application lodged at the Registry of the Court of First Instance on 22 April 1994, Dr Altmann and 56 other applicants, members of the staff of the United Kingdom Atomic Energy Authority ('the UKAEA') assigned to the Joint European Torus Joint Undertaking ('JET'), brought an action, registered as Case T-177/94,

for annulment of the Commission's decision of 14 January 1994 refusing to appoint them as members of its temporary staff.

- 2 By application lodged at the Court Registry on 24 November 1994, Ms Casson and 13 other applicants, also members of the staff of the UKAEA assigned to JET, brought an action, registered as Case T-377/94, for annulment of the Commission's decision of 16 September 1994 refusing to appoint them as members of its temporary staff.
- 3 Cases T-177/94 and T-377/94 were joined by order of the Court of First Instance of 7 April 1995.
- 4 By judgment of 12 December 1996 in Joined Cases T-177/94 and T-377/94 *Altmann and Others v Commission* [1996] ECR II-2041, the Court of First Instance (Second Chamber) annulled the contested decisions and ordered the Commission to bear its own costs and to pay those of the applicants, with the exception of those of one of the applicants who had withdrawn from the proceedings while they were pending.
- 5 By application lodged at the Court Registry on 7 April 1995, Dr Stott, a member of the staff of the UKAEA assigned to JET, brought an action for annulment of the Commission's decision of 28 December 1994 refusing to appoint him as a member of its temporary staff.
- 6 By judgment of 12 December 1996 in Case T-99/95 *Stott v Commission* [1996] ECR II-2227, the Court of First Instance (Second Chamber) annulled the contested decision and ordered the Commission to bear its own costs and to pay those of the applicant.

- 7 On 10 April 1997, the applicants in Joined Cases T-177/94 and T-377/94 and the applicant in Case T-99/95 sent the Commission the statements of their lawyers' fees, with a covering letter in which they claimed payment of a total of UKL 37 060.41 in recoverable costs.
- 8 By letter of 20 May 1997, the Commission replied to the applicants that it was willing to pay them a total of BFR 500 000 – equivalent at that date to UKL 8 621 – in respect of recoverable costs. It considered, first, that, on examination of the notes of fees sent to it, only UKL 12 701.64 could be regarded as expenses incurred for the purpose of the proceedings because, *inter alia*, certain of the costs declared related either to expenses incurred during the pre-litigation stage or to fees charged by two additional lawyers when only the services of one lawyer could be taken into account. Stressing, moreover, that only necessary expenses may be reimbursed as recoverable costs, it stated that in staff litigation a sum of BFR 250 000 per case was normally the amount awarded. In this instance, it considered, Cases T-177/94 and T-377/94 were identical and should thus be treated as one case, while Case T-99/95 was partly similar; applying those criteria, the amount to be paid should normally be BFR 375 000. Its offer was, however, greater because of the greater complexity involved in these cases than in the majority of staff cases.
- 9 The applicants then, by application lodged at the Court Registry on 13 October 1997 and registered as Cases T-177/94 (92), T-377/94 (92) and T-99/95 (92), requested the Court of First Instance to make an order fixing UKL 30 000 as the amount of their recoverable costs.
- 10 On 18 November 1997, the Commission lodged its observations on that request with the Court Registry, in accordance with Article 92 of the Rules of Procedure.

Arguments of the parties

- 11 The applicants submit, first of all, that the three cases raised complex questions both on a technical and on a legal level. They refer to the very particular management structure of JET, to the difficulties entailed by the fact that the Court of Justice had already given a ruling unfavourable to their case, to the number of applicants involved – 71 – and to the fact that eight pleadings were drafted. Citing the order in Case T-2/93 (92) *Air France v Commission* [1995] ECR II-533, the applicants conclude that the services of two lawyers were justified in this instance, particularly since the total number of hours' work – 280 – was reasonable. In addition, the rates charged by both lawyers were lower than those normally charged by English barristers for the same type of litigation.
- 12 The applicants also consider that the recoverable costs should be considered to include not only the expenses incurred as from January 1994 with a view to bringing the action in Case T-177/94 but also all those incurred as from 7 October 1993, the date of the hearing held by the Commission following the submission of their complaints. A proportion of the expenses incurred in 1993, relating to the drafting of the requests sent to each of the institutions concerned, should also be recoverable.
- 13 Finally, in support of their claim, the applicants produce the fee notes submitted by their lawyers, with a description of the work done by them, whilst stressing that their claim does not include the expenses relating to consultation of a third lawyer or any expenses incurred after the hearing before the Court of First Instance.
- 14 The Commission replies that, in principle, according to the case-law, the remuneration of a single lawyer may be regarded as constituting recoverable costs. In the present instance, although the cases were more complex than the majority of staff cases, they were in no way comparable with the *Air France* case, to which the applicants refer, which concerned competition law and required legal and economic analysis of new questions relating to mergers of undertakings. Nor is any comparison possible in terms of the economic interests at stake.

- 15 The Commission stresses, further, that recoverable costs are those of the procedure before the Court, and that expenses relating to the pre-litigation proceedings must therefore be excluded. With particular regard to Cases T-377/94 and T-99/95, the Commission points out that the complaints were not lodged until April 1994 and September 1994 respectively, and considers that a proportion of the costs incurred in 1994 is unrelated to the litigation itself. In addition, the fee notes do not identify any specific item relating to those cases.
- 16 Finally, the Commission considers that the amounts claimed are clearly in excess of the fees charged by lawyers acting for other applicants in the same type of case and maintains that the sum of BFR 500 000 or its sterling equivalent is appropriate.

Findings of the Court

- 17 Under Article 91(b) of the Rules of Procedure of the Court of First Instance, ‘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’, are regarded as recoverable costs.
- 18 Recoverable costs within the meaning of that provision are thus confined to those incurred for the purpose of the proceedings before the Court, to the exclusion of those relating to the pre-litigation procedure (orders in Case C-222/92 DEP *SFEI and Others v Commission* [1994] ECR I-5431, paragraph 12, and Case T-84/91 DEP *Meskens v Parliament* [1993] ECR II-757, paragraph 14), and those which are indispensable for such purposes (order of 9 November 1995 in Case C-89/85 DEP *Ahlström Osakeyhtiö and Others v Commission*, not published in the ECR, paragraph 14).

- 19 In addition, it has consistently been held that, in the absence of Community provisions laying down fee scales, the Community judicature must make an unfettered assessment of the facts of the case, taking into account the purpose and nature of the proceedings, their significance from the point of view of Community law, as well as the difficulties presented by the case, the amount of work generated by the dispute for the agents and advisers involved and the financial interest which the parties had in the proceedings. In so doing, it is not obliged to take account of any national scales of lawyers' fees or any agreement concluded in that regard between the party concerned and his agents or advisers (order in Case 318/82 *Leeuwarder Papierwarenfabriek v Commission* [1985] ECR 3727, paragraphs 2 and 3; order of 12 May 1997 in Case T-561/93 (92) *Tiercé Ladbroke v Commission*, not published in the ECR, paragraph 22).
- 20 Finally, the extent to which the Community judicature can assess the value of a lawyer's work depends on the degree of detail of the information provided (see *Ahlström Osaakehtiö and Others*, cited above, paragraph 20).
- 21 On that basis, it must be held, first of all, that the costs and fees incurred by the applicants during the pre-litigation stages do not form recoverable costs (orders in *SFEI and Others*, cited above, paragraph 12, and *Meskens*, cited above, paragraph 14). Thus, for the periods prior to the dates on which their respective actions were brought, the applicants may claim only the reimbursement of the costs incurred for the drafting of their applications.
- 22 Secondly, with regard to the costs incurred during the course of the litigation itself, the Court notes that these cases may have given rise to real difficulties in the light of the unusual status of the entity for which the applicants were assigned to work and to the burden of analysing the various factual considerations with a view to justifying a reexamination of the solution adopted by the Court of Justice in its judgment in Joined Cases 271/83, 15/84, 36/84, 113/84, 158/84, 203/84, and 13/85 *Ainsworth and Others v Commission and Council* [1987] ECR 167. In addition, the disputes involved issues of not inconsiderable economic importance for the Community, since they affected more than 70 applicants and the employment status of over 200 staff. The cases could therefore warrant the payment of remuneration

at a relatively higher level than that charged by lawyers or advisers to parties to other similar litigation.

- 23 Thirdly, even though, in principle, only the remuneration of a single lawyer may be regarded as falling within the concept of ‘expenses necessarily incurred’ within the meaning of Article 91(b) of the Rules of Procedure (orders in Joined Cases 20/63 and 21/63 *Maudet v Commission* [1964] ECR 621 and in Case T-78/89 *DEP PPG Industries Glass v Commission* [1993] ECR II-573, paragraph 39), the primary consideration is none the less the total number of hours of work which may appear necessary for the purpose of the proceedings before the Court, irrespective of the number of lawyers who may have provided the services in question.
- 24 However, it is also true that the cases in question here relate to Community staff litigation, and expenses incurred for the services of a second lawyer or adviser may thus only exceptionally be recoverable. In the present instance, the Court considers that the entire remuneration of a second lawyer cannot be considered to constitute ‘expenses necessarily incurred’ within the meaning of Article 91(b) of the Rules of Procedure.
- 25 Furthermore, the similarity between the cases and the fact that they were connected necessarily meant that the amount of work involved in representing the parties was considerably reduced.
- 26 It is therefore appropriate to fix the recoverable fees and expenses in Joined Cases T-177/94 and T-377/94 and in Case T-99/95 in the total sum of UKL 15 000, together with any VAT payable thereon.
- 27 In view of the fact that this sum takes into account all the circumstances of the case up to the time of making this order, there is no need for a separate ruling on the

costs incurred by the parties for the purposes of the present proceedings on the taxation of costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby orders:

The total amount of the costs to be reimbursed by the Commission to the applicants is fixed in the sum of UKL 15 000, together with any VAT payable thereon.

Luxembourg, 25 June 1998.

H. Jung
Registrar

A. Kalogeropoulos
President