ORDER OF THE COURT OF FIRST INSTANCE (Seventh Chamber)

2 June 2009*

In Case T-47/03 DEP,

Jose Maria Sison, residing in Utrecht (Netherlands), represented by J. Fermon, A. Comte, H. Schultz and D. Gürses, lawyers,

applicant,

v

Council of the European Union, represented by M. Vitsentzatos and M. Bishop, acting as Agents,

defendant,

* Language of the case: English.

APPLICATION for taxation of the costs to be recovered from the Council by the applicant following the judgment of the Court of First Instance of 11 July 2007 in Case T-47/03 *Sison* v *Council*, not published in the ECR,

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

composed of N.J. Forwood (Rapporteur), President, D. Šváby and E. Moavero Milanesi, Judges,

Registrar: E. Coulon,

makes the following

Order

Facts, procedure and forms of order sought

1 By application lodged at the Registry of the Court of First Instance on 6 February 2003, the applicant, Mr Sison, brought an action for, first, partial annulment of Council Decision 2002/974/EC of 12 December 2002 implementing Article 2(3) of Regulation

(EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2002/848/EC (OJ 2002 L 337, p. 85) and, secondly, compensation.

2 By separate document lodged at the Registry of the Court of First Instance on 28 February 2003, the applicant brought an application for interim measures, seeking, as a primary remedy, suspension of the operation of Decision 2002/974. By order of 15 May 2003, the President of the Court of First Instance dismissed that application on the ground that the requirement of urgency was not satisfied, reserving costs.

3 By orders of 16 July and 22 October 2003, the President of the Second Chamber of the Court of First Instance granted leave to intervene to the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland, in support of the forms of order sought by the Council, and to the Negotiating Panel of the National Democratic Front of the Philippines together with Messrs L. Jalandoni and F. Agcaoili and Ms M.C. Ledesma ('the Negotiating Panel and its members'), in support of the forms of order sought by the applicant.

4 The measure which was originally challenged by that application having been repealed and replaced on several occasions during the proceedings by measures which continued in force the freezing of the applicant's funds and the applicant having been permitted to amend the forms of order sought in order for them to be directed against those measures, by judgment of 11 July 2007 in Case T-47/03 *Sison* v *Council*, not published in the ECR ('the *Sison* judgment'), the Court:

— annuled Council Decision 2006/379/EC of 29 May 2006 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against

certain persons and entities with a view to combating terrorism and repealing Decision 2005/930/EC in so far as it concerned the applicant;

— rejected the application for compensation;

— ordered the Council to bear, in addition to its own costs, the applicant's costs, including those incurred in the proceedings for interim measures.

5 By letter of 3 March 2008, the applicant gave details to the Council of the costs incurred for the purposes of the main proceedings and the proceedings for interim measures, the total amount of which was, according to the applicant, EUR 109 009.35.

6 By letter of 4 July 2008, the Council contested that amount and proposed to pay the sum of EUR 45 000 in respect of recoverable costs. It referred in that regard to the order of the Court of First Instance of 15 January 2008 in Case T-228/02 DEP *Organisation des Modjahedines du peuple d'Iran* v *Council*, not published in the ECR ('the *OMPI* order').

7 By letter of 7 July 2008, the applicant expressed his disagreement with the amount proposed by the Council and invited the latter to offer a more 'reasonable' amount.

8 By letter of 21 October 2008, the Council stated that it was prepared to pay the applicant a total amount of EUR 50 000.

9 Since the parties were unable to reach agreement on the amount of recoverable costs, by application lodged at the Registry of the Court of First Instance on 1 December 2008, the applicant brought the present application for taxation of costs pursuant to Article 92(1) of the Rules of Procedure of the Court of First Instance.

10 By document lodged at the Registry of the Court of First Instance on 26 January 2009, the Council submitted its observations on that application.

11 The applicant claims that the Court should order the Council to pay it, first, in respect of the costs incurred in relation to the main proceedings and the proceedings for interim measures, the sum of EUR 109 009.35, together with default interest at the rate of 7% per year from 3 March 2008 until payment in full and, secondly, in respect of the costs incurred in relation to the present proceedings, the sum of EUR 2 000.

12 The Council contends that the Court should fix the total amount of recoverable costs at a maximum of EUR 30 300.

Law

Arguments of the parties

13 The applicant refers, first, to his letter to the Council of 3 March 2008, which included an annex containing a detailed statement of all expenses incurred by him, including lawyers' fees and secretarial, photocopying, travel, postage, fax and telephone expenses. He argues that all of those expenses were necessary for his defence and were calculated in a very reasonable manner. Moreover, the Council did not challenge them in any way.

14 The applicant refers, secondly, to his letter to the Council of 7 July 2008, in which he noted a number of differences between the present case and the case which gave rise to the *OMPI* order ('the *OMPI* case').

15 First, the Court assessed the total amount of recoverable costs in the *OMPI* case not at EUR 40 000 but at EUR 50 000, with the Council being required, however, to bear only four-fifths of that amount. In the present case, the Council was ordered to bear the whole of the costs.

16 Secondly, in the *OMPI* case, the Court assessed the amount relating to 'incidental expenses and disbursements' at EUR 2 500 on an equitable basis, in the absence of a detailed description of those expenses. In the present case, the applicant has given a proper and detailed specification of the EUR 11 509.35claimed in this regard.

17 Thirdly, the costs relating to the proceedings for interim measures in the present case amount to EUR 7 500, and not the EUR 5 000 proposed by the Council.

18 Fourthly, it was essential in the present case to establish a working relationship with lawyers in the Philippines, particularly in order to recover the evidence that was necessary for the applicant's defence.

19 Fifthly, in the *OMPI* case, the United Kingdom of Great Britain and Northern Ireland was the only intervener, whereas in the present case not only that Member State but also the Kingdom of the Netherlands and the Negotiating Panel and its members intervened. Furthermore, the two last-mentioned interveners participated very actively in the proceedings.

20 Sixthly and lastly, in the *OMPI* case the Court stated (paragraph 66 of its order) that the application comprised only 19 pages, of which more than half consisted of points that were of no relevance. Criticisms of that kind do not apply to the present case, in which, moreover, a different line of argument was developed.

21 In any event, the applicant submits that in the absence of any specific challenge to the detailed statement of costs drawn up by him, the analogy between the present case and the *OMPI* case cannot be considered as a decisive argument.

22 In addition, he takes the view that the Court should order the Council to pay him default interest at the rate of 7% per year from 3 March 2008 until payment in full.

23 Lastly, the applicant considers that the present application is the consequence of the unreasonable position adopted by the Council which gave rise to additional costs which can fairly be assessed at EUR 2 000.

24 The Council argues that the amount of the costs claimed by the applicant is excessive having regard to the amount awarded by the Court in the *OMPI* case.

25 More particularly, it contests the alleged differences between the present case and the *OMPI* case and submits, on the contrary, that, as regards the main proceedings, the applicant's lawyers had, seen objectively, to provide the same amount of work as those of the applicant in the *OMPI* case. With respect to the proceedings for interim measures, the Council submits that those proceedings and the main proceedings gave rise to significant duplication. Consequently, the amount of costs relating to the proceedings for interim measures is relatively modest and should not exceed EUR 5 000.

26 As regards the charging rate applicable in the present case, the Council points out that the applicant's lawyers in fact applied an hourly charging rate of EUR 150. In the Council's opinion, it is that rate which should be applied in the present case and not the EUR 250 considered as reasonable in the *OMPI* case.

27 Lastly, as regards incidental expenses and disbursements, the Council submits that these should not exceed the EUR 2 500 fixed by the Court in the *OMPI* case.

28 In the light of the above, the Council takes the view that the total amount of recoverable costs in the present case should be fixed at EUR 30 300, calculated as follows:

— main proceedings: (190 hours x EUR 150 = EUR 28 500) — 1/5 = EUR 22 800;

— proceedings for interim measures: EUR 5 000;

— incidental expenses and disbursements: EUR 2 500.

Findings of the Court

29 Article 92(1) of the Rules of Procedure provides:

'If there is a dispute concerning the costs to be recovered, the Court of First Instance hearing the case shall, on application by the party concerned and after hearing the opposite party, make an order, from which no appeal shall lie.'

30 Under Article 91(b) of the Rules of Procedure '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. It follows from that provision that recoverable costs are limited, first, to those incurred for the purpose of the proceedings before the Court of First Instance and, secondly, to those which were necessary for that purpose (see order in Case T-342/99 DEP *Airtours* v *Commission* [2004] ECR II-1785, paragraph 13 and the case-law cited).

31 It is settled case-law that the Community Courts are not empowered to tax the fees payable by the parties to their own lawyers, but may determine the amount of those fees to be recovered from the party ordered to pay the costs. When ruling on an application for taxation of costs, the Court of First Instance is not obliged to take account of any national scale of lawyers' fees or any agreement in that regard between the party concerned and his agents or advisers (see order in *Airtours* v *Commission*, paragraph 17 and the case-law cited).

32 It has also consistently been held that, in the absence of Community provisions laying down fee-scales, the Court 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 proceedings for the agents and advisers involved and the financial interests which the parties had in the proceedings (see order in *Airtours* v *Commission*, paragraph 18 and the case-law cited).

33 It is by having regard to those factors that the amount of the recoverable costs in this case should be determined.

34 In that regard, it must be clearly stated at the outset that the present case presents close similarities with the *OMPI* case, in respect not only of the financial interest of the parties in each of these cases (*OMPI* order, paragraph 51), but also of the purpose and nature of those proceedings, their significance from the point of view of Community law as well as the difficulties presented by each of the cases (*OMPI* order, paragraphs 52, 53, 55 and 58). A large number of points of law decided by the Court are, moreover, common to the reasoning of the Court set out in the *Sison* judgment and the judgment of the Court of 12 December 2006 in Case T-228/02 *Organisation des Modjahedines du peuple d'Iran* v *Council* [2004] ECR II-4665, delivered in the *OMPI* case. It should be added that the applicant was unable to benefit from the precedent which the last-mentioned judgment constitutes, since it was delivered almost six months after the hearing in the present case took place.

35 It therefore appears appropriate that the *OMPI* case serve as a point of reference in assessing the amount of the recoverable costs in the present case.

36 Regarding the amount of work generated by the proceedings for the applicant's advisers, it is apparent from the detailed statement of costs annexed to the applicant's letter to the Council of 3 March 2008 that the total number of hours worked for which payment is claimed, at the uniform hourly rate of EUR 150, amounts to 650 (553 hours spent in the provision of legal advice, together with 97 hours spent in consultation with the applicant's Philippine lawyers).

37 Although those hours worked may appear to be properly justified in terms of the way in which they are accounted for, the primary consideration for the Community judicature is none the less the total number of hours of work which may appear to be objectively necessary for the purpose of the proceedings before the Court, irrespective of the number of lawyers who may have provided the services in question (see the *OMPI* order, paragraph 59 and the case-law cited).

38 It must be noted in that regard that the novelty and importance of the legal questions raised and the financial interests involved in the dispute justified the applicant's lawyers devoting a considerable amount of time to them (*OMPI* order, paragraph 60).

39 However, in the light of the explanations provided by the parties, the Court cannot consider the cost of EUR 97 500, representing the 650 hours of lawyers' work claimed for, to be objectively necessary for the purpose of the proceedings before it.

40 In the first place, although it is apparent from the considerations mentioned above that the dispute may indeed have required a substantial amount of work on the part of the applicant's lawyers, the total number of hours worked in respect of which payment is sought appears, at first sight, extremely high in the light of the number of hours taken to be appropriate in the *OMPI* case.

41 In the *OMPI* order (paragraph 70), the Court, in order to calculate the fees necessarily incurred by the applicant for the purposes of the case, considered that the dispute had objectively required, at the stage of the written procedure, 150 hours of an experienced lawyer's time, remunerated at the rate of EUR 250 per hour, and, at the stage of the oral procedure, 40 hours of the time of a similar lawyer.

42 It must also be noted that those 190 hours of work were imputed to the whole of the action, including the application for the annulment of a common position and the

application for compensation, each of which were rejected as inadmissible, as a result of which the liability of the Council as to costs was limited to four-fifths of the applicant's costs.

43 In the second place, the differences claimed by the applicant to exist between the present case and the *OMPI* case are not such as to lead the Court to assess the present case in a markedly different manner.

44 As regards, first, the additional work caused in the present case by the proceedings for interim measures, the applicant's assessment of 50 hours (which represents an extra EUR 7 500 in fees) appears excessive when account is taken of the significant degree of duplication noted by the Council and confirmed by a comparison of the respective applications, between those proceedings and the main proceedings.

45 As regards, secondly, the necessity for the applicant in the present case to call upon the services of foreign lawyers, in this case, Philippine lawyers, the Council correctly points out that the applicant in the *OMPI* case also had to have recourse to the services of English lawyers in order to take account of the proceedings to which the OMPI was a party in the United Kingdom.

46 As regards, thirdly, the greater number of interveners in the present case and their active participation in the proceedings, the Council is correct when it points out, first, that the applicant replied to the statements in intervention from the Netherlands and the United Kingdom by the same very brief written observations which relied on the same arguments and, secondly, that, in those observations, the applicant did no more than approve the statement in intervention of the Negotiating Panel and its members in support of the forms of order sought by him.

47 As regards, fourthly, the differences of a quantitative, or even of a qualitative, nature between the written pleadings of the applicant in the present case and those of the applicant in the *OMPI* case (see, in that regard, the *OMPI* order, paragraph 66), it is true that the application initiating proceedings was a weightier document in the present case than in the *OMPI* case. That said, the other written pleadings were of a comparable length and substance and each case gave rise to similar procedural issues, both at the stage of the written procedure and at the stage of the oral procedure.

48 In the third place, while it is true that the hourly rate of EUR 150 which the applicant seeks to have applied appears very reasonable in comparison with those of EUR 200, 300 and 500 requested by the applicant in the *OMPI* case (*OMPI* order, paragraph 64), it none the less remains the case that that rate can be considered to be appropriate for the purpose of remunerating the services of a competent and experienced professional who is able to work effectively and quickly. Regard will, however, be had to that difference in hourly rates in assessing the total number of hours of work that were necessary for the purposes of the procedure before the Court in this case.

49 In the light of all of the above, it must be concluded that, for the purposes of calculating the fees necessarily incurred by the applicant in connection with the main proceedings and the proceedings for interim measures, the dispute objectively required, as regards the written procedure, 160 hours of work from an experienced lawyer, whose remuneration, based on the hourly rate actually charged of EUR 150 which the Court considers to be appropriate in the present case, should be assessed at EUR 24 000 (150 multiplied by 160). In addition, it can be concluded that the dispute objectively required, as regards the oral procedure, 50 hours of work from a similar lawyer, whose remuneration should therefore be assessed at EUR 7 500.

50 There falls to be added to those amounts the incidental expenses and disbursements, which the Council submits should not exceed the figure of EUR 2 500 fixed on an equitable basis by the Court in the *OMPI* case, but which amount, according to the detailed statement annexed to the applicant's letter of 3 March 2008, to EUR 11 509.35.

51 In that regard, the Court considers that all of the secretarial, photocopying, postage, fax and telephone expenses should be treated as recoverable costs, since they appear to be properly justified by that statement and to have been assessed on a reasonable basis.

52 Conversely, the travel expenses should be reduced by the expenses relating to nine journeys made by the applicant's lawyers from Brussels to Utrecht, in an amount of EUR 1 620, those relating to two journeys made by the applicant from Utrecht to Luxembourg, in an amount of EUR 760, and those relating to a journey made by the applicant's lawyers from Brussels to Luxembourg, in an amount of EUR 218. Neither the travel expenses incurred by a lawyer in order to meet his client in person at the latter's place of residence (see, to that effect, order of 15 March 1994 in Case C-107/91 DEP *ENU* v *Commission*, not published in the ECR, paragraph 23), nor those incurred by an applicant in order to be present in person at a hearing before the Court in Luxembourg, without his presence being requested by the Court or necessary by reason of the circumstances (see, to that effect, orders in Case 24/79 DEP *Oberthür* v *Commission* [1981] ECR 2229, paragraphs 2 and 3; of 16 December 1999 in Case C-137/92 DEP *Hüls* v *Commission*, not published in the ECR, paragraphs 21 and 22; and in Cases T-85/94 DEP and T-85/94 OP-DEP *Branco* v *Commission* [1998] ECR II-2667), nor the expenses incurred by the lawyer of one of the parties subsequent to the closing of the oral procedure, including those incurred for the purpose of being present in person at the delivery of the Court's judgment in Luxembourg (see, to that effect, order in Case C-104/89 DEP *Mulder and Others* v *Council and Commission* [2004] ECR I-1, paragraphs 48 to 50), can, as a rule, be considered to be necessary for the purposes of the proceedings.

53 Consequently, the total amount of recoverable expenses and disbursements amounts to EUR 8 911.35.

54 In the light of the above, the amount of the recoverable costs must be fixed at EUR 41 000.

55 Since that amount takes account of all the circumstances relating to the case until this order is made, there is no need to rule separately on the expenses incurred for the purposes of the present proceedings (see, to that effect, order in *Mulder and Others* v *Council and Commission*, paragraph 87) nor on the application for default interest (orders in *ENU* v *Commission*, paragraph 26; of 6 November 1996 in Case C-220/91 P-DEP *Preussag Stahl* v *Commission*, not published in the ECR, paragraph 11; and of 10 February 2009 in Case T-58/05 DEP *Centeno Mediavilla and Others* v *Commission*, not published in the ECR, paragraph 43).

56 In addition, in the light of the outcome of the present proceedings, the amount of recoverable costs should not be increased by adding an amount relating to the present proceedings for taxation of costs (see, to that effect, order in *Mulder and Others* v *Council and Commission*, paragraph 88).

On those grounds,

THE COURT OF FIRST INSTANCE (Seventh Chamber)

hereby orders:

The total amount of the costs payable by the Council of the European Union to Mr Jose Maria Sison is fixed at EUR 41 000.

Luxembourg, 2 June 2009.

E. Coulon — N.J. Forwood

Registrar — President