ORDER OF THE COURT
OF 1 JULY 1981 [1]

Ireks-Arkady GmbH
v European Economic Community

Case 238/78

In Case 238/78,

IREKS-ARKADY GMBH,

applicant,

v

EUROPEAN ECONOMIC COMMUNITY,

represented by its institutions:

1. Council of the European Communities,

2. Commission of the European Communities,

defendant,

APPLICATION under Article 178 and the second paragraph of Article 215 of the EEC Treaty,

1 — Language of the Case: French.

THE COURT,

composed of: J. Mertens de Wilmars, President, P. Pescatore, Lord Mackenzie Stuart and T. Koopmans (Presidents of Chambers), A. O'Keeffe, G. Bosco, A. Touffait, O. Due, U. Everling, A. Chloros and F. Grévisse, Judges,

Advocate General: F. Capotorti
Registrar: A. Van Houtte

makes the following

ORDER

Facts and procedure

1. By application lodged at the Court Registry on 30 October 1978 the applicant brought an action under Article 178 and the second paragraph of Article 215 of the EEC Treaty seeking an order that the defendant should pay it the sum of

DM 1 306 968.01

together with interest at 6% as from 1 December 1977, such sum being, according to the applicant, equivalent to the production refunds on quellmehl which that undertaking would have been entitled to receive if, during the period from 1 August 1974 to 19 October 1977, the use of maize for the production of quellmehl had conferred entitlement to the same refunds as the use of maize for the manufacture of starch.

2. By an interlocutory judgment of 4 October 1979 ([1979] ECR 2955) the Court ordered the Community to pay to the applicant, in respect of the production of quellmehl for bread-making, the amount equivalent to the refunds referred to above accompanied by interest at 6% from the date of the interlocutory judgment. The Court also ordered the parties to inform it within twelve months of the delivery of the interlocutory judgment of the amount of compensation arrived at by agreement.

3. The period fixed by the Court has been extended on several occasions, finally until 4 January 1981.

4. By letter of 5 January 1981 the parties informed the Court that they had by agreement determined the amount of compensation at DM 1 159 058.86, increased by interest at 6% as from 4 October 1979, but that they had not been able to agree as to the costs. They therefore requested the Court to adjudicate on the sharing and taxation of costs.

Decision

1 In view of the fact that the parties have established the amount of compensation by agreement, Case 238/78 must be removed from the Court Register.

2 In pursuance of Article 69 (1) of the Rules of Procedure the Court is to give a decision as to costs in its final judgment or in the order which closes the proceedings.

3 In its interlocutory judgment of 4 October 1979 ([1979] ECR 2955) in this case the Court reserved the costs.

4 By letter of 5 January 1981 the applicant asked the Court to adjudicate on the costs recoverable.

5 The Court must therefore adjudicate on the sharing of costs in order to allow the Second Chamber to tax the recoverable costs.

6 Under Article 69 (2) of the Rules of procedure the unsuccessful party is to be ordered to pay the costs.

7 Under Article 69 (3) the Court may, where each party succeeds on some and fails on other heads or where the circumstances are exceptional, order the parties to bear their own costs in whole or in part.

8 It may be seen from the interlocutory judgment that the Council and the Commission were unsuccessful as regards all their legal submissions. The reduction in the amount claimed, which was made following negotiations between the parties, is not so great as to have any effect on the sharing of costs.

9 The European Economic Community must therefore be ordered to bear the whole of the costs.

On those grounds,

THE COURT

hereby orders as follows:

1. **Case 238/78 is removed from the Court Register.**

2. **The European Economic Community shall bear the costs.**

Luxembourg, 1 July 1981.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President