ORDER OF THE COURT OF FIRST INSTANCE (First Chamber)
27 November 2000 *

In Case T-78/99 (92),

Sonia Marion Elder and Robert Dale Elder, residing in Dundee, United Kingdom, represented by S. Crosby, Solicitor, 42 Rue du Taciturne, Brussels (Belgium),

applicants,

v

Commission of the European Communities, represented by U. Wölker and X. Lewis, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, also of that service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: English.

APPLICATION for taxation of the costs to be reimbursed by the defendant to the applicants pursuant to the order for removal from the register made by the Court of First Instance on 13 October 1999 (Case T-78/99 *Elder* v *Commission*, not published in the ECR),

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

composed of: B. Vesterdorf, President, N.J. Forwood and M. Vilaras, Judges,

Registrar: H. Jung,

makes the following

Order

Facts, procedure and forms of order sought by the parties

1 By application lodged at the Registry of the Court of First Instance on 1 April 1999, the applicants brought an action registered under No T-78/99 for annulment of the tacit decision of the Commission refusing them access to the minutes of the Advisory Committee on Value Added Tax.

2 By letter lodged at the Registry of the Court of First Instance on 6 August 1999, the applicants requested the removal of the case from the register on the ground that, by letter of 8 June 1999, the Chairman of the Advisory Committee had expressly rejected their request, against which decision they brought an application for annulment registered under No T-178/99.

3 By order of 13 October 1999, Case T-78/99 was removed from the register of the Court of First Instance and the Commission was ordered to pay the costs.

4 By letter of 16 December 1999, the applicants requested the Commission to reimburse their costs in the amount of BEF 260 930, which included both legal fees amounting to BEF 229 730 and a litigation insurance premium of BEF 31 200.

5 By letter of 1 March 2000, the Commission agreed to pay the amount claimed by way of legal fees but refused to reimburse the litigation insurance premium.

6 By application lodged at the Court Registry on 21 March 2000, the applicants, pursuant to Article 92(1) of the Rules of Procedure of the Court of First Instance, submitted an application for taxation of costs seeking an order requiring the Commission to pay the balance of the amount claimed by way of recoverable costs, that is to say, the amount of the litigation insurance premium.

7 The Commission submitted its observations on this application on 12 April 2000, contending that the application should be dismissed.

Arguments of the parties

8 The applicants claim that the expense they incurred in paying the litigation insurance premium is a recoverable cost within the meaning of Article 91(b) of the Rules of Procedure since, as private persons of modest means, that insurance policy was essential to enable them to bring contentious proceedings. In view of the hardship involved in paying their lawyer's fees, they had to insure themselves against the risk of an order to pay the Commission's costs in the event that the Commission should instruct external counsel. They point out that they would not have brought the proceedings in the Court of First Instance if they had had to incur that risk.

9 The applicants point out, moreover, that, under the United Kingdom Access to Justice Act 1999, recoverable costs may include the cost of taking out an insurance policy against the risk of liability for costs in particular proceedings.

10 The Commission points out, first, that the insurance policy taken out by the applicants was not essential in that it covered risks against which it was not necessary to insure, that is to say, the insolvency of the Commission, deficiency of damages and the payment of a judges' indemnity.

11 As regards the risk of an order for costs against the applicants, the Commission contends that the litigation insurance premium cannot, as a matter of principle, be considered a part of the recoverable costs. Moreover, the Commission has tended not to instruct external counsel in cases involving private litigants where they are unlikely to be able to pay extra costs. It would be inclined to proceed differently if it could presume that insurance cover had been taken out.

12 In any event, the Commission contends that litigation insurance was unnecessary in the present case. When the application was lodged, it was clear that the procedure would not run its course since a letter from the Secretary-General of the Commission, served on the applicants on 3 March 1999, had put them on notice that the tacit decision refusing their request would be replaced by a formal decision.

Findings of the Court

13 It must be observed first of all that only the costs involved in paying a litigation insurance premium by the applicants, and not the other costs incurred by the applicants in the course of the proceedings, which the Commission has agreed to pay, are in issue. Accordingly, the Court of First Instance must rule only on the application for recovery of costs amounting to BEF 31 200, representing the amount of that insurance premium.

14 Under Article 92(1) of the Rules of Procedure, if there is a dispute concerning the costs to be recovered, the Court of First Instance, on application by the party concerned and after hearing the opposite party, is to make an order, from which no appeal lies.

15 Under Article 91(b) 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'.

16 It follows from that provision that recoverable costs are confined to expenses which are both incurred for the purpose of the proceedings before the Court and 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, and Joined Cases T-177/94 (92), T-377/94 (92) and T-99/95 (92) *Altmann and Others and Stott* v *Commission* [1998] ECR-SC I-A-299 and II-883, paragraph 18).

17 According to case-law, the term 'indispensable expenses' cannot cover expenses incurred by a party which are not directly connected with its defence before the Court but are simply a matter of its own choice (see, to that effect, the order of the Court of First Instance in Case T-97/95 (92) *Sinochem* v *Council* [2000] ECR II-1715, paragraph 17).

18 It follows that the expense of paying a litigation insurance premium, even if incurred for the purposes of proceedings before the Court of First Instance, cannot, as a rule, be considered to be an indispensable expense within the meaning of Article 91(b) of the Rules of Procedure. However, it might be so considered in exceptional circumstances, where the party concerned can prove, on the basis of objective evidence, that it would not have been able to bring its action without a litigation insurance policy guaranteeing, in the event of an order for costs being made against it, payment of the costs of the opposite party.

19 In the present case, the applicants have adduced no evidence of that nature, but confine themselves to stating that they would not have brought the action without that insurance. As they have thus not established, on the basis of objective evidence, that the insurance costs incurred were indispensable for the purposes of bringing the proceedings before the Court of First Instance, their application must be dismissed.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby orders:

The application for taxation of costs is dismissed.

Luxembourg, 27 November 2000.

H. Jung

Registrar

B. Vesterdorf

President