# ORDER OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
24 March 1998 *

In Case T-175/94 (92),

**International Procurement Services SA**, whose registered office is in Brussels, represented by Peter De Troyer, of the Audenarde Bar, and Lydie Lorang, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 6 Rue Heine,

applicant,

v

**Commission of the European Communities**, represented by Étienne Lasnet, Legal Adviser, 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 lodged following the judgment of the Court of First Instance of 11 July 1996 in Case T-175/94 *International Procurement Services* v *Commission* [1996] ECR II-729,

* Language of the case: French.

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

composed of: J. Azizi, President, R. García-Valdecasas and M. Jaeger, Judges,

Registrar: H. Jung,

makes the following

## Order

1 By application dated 20 April 1994, registered under No T-175/94, International Procurement Services SA (hereinafter 'IPS') sought an order requiring the Commission to pay the applicant compensation for the damage allegedly suffered by it following reduction of the financial assistance granted to the other party to a contract concluded by it in relation to a project financed by the European Development Fund.

2 By judgment of 11 July 1996 in Case T-175/94 *International Procurement Services* v *Commission* [1996] ECR II-729 the Court of First Instance dismissed the application and ordered IPS to pay the costs.

3 By letter of 15 April 1997 the Commission sent to IPS a request for the reimbursement of lawyer's fees and disbursements in the sum of FF 50 000.

4 By letter of 9 September 1997 IPS replied that it refused to pay that sum because it was clear that each party should pay its own lawyer's fees. It also disputed the amount of fees and disbursements claimed.

5 By letter of 12 November 1997 the Commission lodged an application for taxation of costs in accordance with Article 92(1) of the Rules of Procedure, in which it claimed that the Court of First Instance should set the recoverable costs as FF 50 000. It stated that its lawyer had assisted it throughout the procedure and that the case could not be described as straightforward.

6 In support of its application it produced the following notes of fees and disbursements: a note of 20 July 1994 in respect of '[p]ayment on account of fees after lodgment of the defence' for FF 20 000, a note of 25 October 1994 in respect of '[l]odgment of the rejoinder' for FF 10 000 and a note of 10 May 1966 in respect of '[b]alance of agreed fees following hearing' for FF 20 000. However, no breakdown of fees or disbursements was given, nor any details of how they were calculated.

7 IPS did not lodge any observations on that application within the prescribed period.

8 The Court notes that under Article 87(2) of the Rules of Procedure of the Court of First Instance '[t]he unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party's pleadings'. Article 91(b) of those rules includes 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'. In this case, IPS was ordered to pay the costs (in paragraph 2 of the operative part of the judgment in *International Procurement Services* v *Commission*, cited above). That paragraph of the operative part means that IPS must not only bear its own costs but also pay the expenses necessarily incurred by the Commission for the purpose of the proceedings.

9 Moreover, by virtue of the first paragraph of Article 17 and the first paragraph of Article 46 of the EC Statute of the Court of Justice '[t]he States and the institutions of the Community shall be represented ... by an agent appointed for each case; the agent may be assisted by an adviser or by a lawyer'. It clearly follows that the institutions are free to have recourse to the assistance of a lawyer and that the latter's remuneration comes within the concept of expenses necessarily incurred for the purpose of the proceedings (orders of the Court of Justice in Case 126/76 — Costs *Dietz* v *Commission* [1979] ECR 2131, paragraphs 5 and 6, and of the Court of First Instance in Case T-460/93 DEP *Tête and Others* v *EIB* [1995] ECR II-229, paragraph 10).

10 According to settled case-law, the Community judicature is not empowered to tax the fees payable by the parties to their own lawyers but it may determine the amount of those fees which may be recovered from the party ordered to pay the costs. Since Community law does not contain any provisions laying down a scale of fees, the Court must freely consider 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 (orders of the Court of First Instance in Case T-2/93 (92) *Air France* v *Commission* [1996] ECR II-235, paragraph 21, and the case-law cited therein, and Case T-19/92 (92) *Leclerc* v *Commission*, not published in the Reports of Cases, paragraph 13, and the case-law cited therein).

11 Since the case concerned a contract financed by the European Development Fund, it called for a study, albeit limited, of the impact of certain aspects of the legislation and case-law concerning such contracts on questions of liability.

12 It also called for examination of matters of fact relating, in particular, to the conduct of numerous persons involved in implementation of the agreement at issue.

13 Those analyses were necessarily preceded by reading and appraisal of the application and of the 27 annexes to it, which included the general and special contract conditions and various documents produced in evidence by the applicant. The drafting of the defence also called for analysis and appraisal of the 23 documents gathered by the Commission and annexed thereto. Also, there was a second exchange of pleadings.

14 Although the supporting documents produced by the Commission are overly concise (see paragraph 6 above), the Court is of the opinion that, in the circumstances and having regard to the reasonable nature of the expenses and to the fact that the IPS has not contested the amount thereof in the course of these proceedings, the recoverable costs in Case T-175/94 must cover the sum of FF 50 000 applied for by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby orders:

**The total amount of costs to be reimbursed to the Commission by International Procurement Services SA is set at FF 50 000.**

Luxembourg, 24 March 1998.

H. Jung — J. Azizi

Registrar — President