ORDER OF THE COURT (SECOND CHAMBER)
21 OCTOBER 1970

Ernst Hake & Co.
v Commission of the European Communities

Case 75/69

In Case 75/69

ERNST HAKE & Co., Düsseldorf, represented by Jochen Hake, its partner having the sole right to represent the company, assisted by Peter Schambach, Constance, Advocate of the Constance Bar, with an address for service in Luxembourg at the office of Félicien Jansen, Huissier, 21 rue Aldringer,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Erich Zimmermann, Doctor of Law, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser, Emile Reuter, 4 boulevard Royal,

defendant,

THE COURT (Second Chamber)

composed of: A. Trabucchi, President, W. Strauß, (Rapporteur) and P. Pescatore, Judges,

Advocate-General: A. Dutheillet de Lamothe
Registrar: A. Van Houtte

makes the following

1 — Language of the Case: German.

ORDER

Facts

On 8 July 1970 the Court gave judgment in the present case and ordered the defendant to pay the costs.

By application lodged at the Court Registry on 14 September 1970 under Article 74 of the Rules of Procedure the applicant asked the Court to fix the amount of the costs to be recovered at DM ... and to provide the applicant with an authenticated copy of the order to this effect.

The applicant states that this sum is made up of two amounts, one relating to the costs of the procedure prior to the application to the Court and the other to the costs of the proceedings before the Court.

This latter sum is made up of DM ... by way of lawyer's remuneration, and of DM ... by way of expenses.

The defendant maintains that the expenses and fees relating to the stage prior to the application to the Court do not fall within the concept of 'recoverable costs' referred to in Article 73 of the Rules of Procedure.

As regards the fees concerning the proceedings before the Court, the defendant puts forward various reasons to support its contention that the sums claimed are excessive and that they should be reduced to a sum of approximately DM ... .

It declares that it raises no objections to the amount of DM ... claimed by the applicant by way of expenses.

Law

1 Under the terms of Article 73 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'.

The word 'proceedings' used in that article only refers to proceedings before the Court and does not include any prior stage.

This follows in particular from the reference made by that article to Article 72 of the same Rules, which refers to 'Proceedings before the Court'.

The applicant's request must therefore be dismissed to the extent to which it seeks the award, by way of recoverable costs, of the expenses and fees relating to the stage prior to the application to the Court.

2 As regards the remuneration for the activities of lawyers before the Court of Justice, Community law contains no provisions as to scale fees on which to base a calculation of the amount up to which such remuneration must always be regarded as recoverable costs within the meannig of Article 73 of the Rules of procedure.

Therefore, in order to settle this question in each instance, the Court must be free to consider the facts of the case, taking particularly into account the importance of the action from the point of view of Community law and the volume of work involved for the lawyer in the proceedings before the Court.

Such an assessment in this instance results in a reduction of the sum sought by way of fees and the fixing of the recoverable costs at the amount which will be set out below.

3 As regards the expenses other than fees incurred by the applicant in the proceedings before the Court, the defendant has not disputed the amount claimed by the applicant.

However, this amount includes value added tax payable in Germany, which has been calculated on the basis of the fees claimed but subject to a reduction as set out above.

4 Having regard to all these circumstances the sum of all the recoverable costs, including fees, expenses and taxes, must be fixed at DM... .

5 In accordance with his application made under Article 74 (2) of the Rules of Procedure the applicant shall receive an authenticated copy of this order.

On those grounds,

Having regard to the judgment of the Court of 8 July 1970 on the substance of the case;
Having regard to the applicant's request submitted on 14 September 1970 concerning the determination of the recoverable costs;
Having regard to the observations of the defendant submitted on 7 October 1970;
Having regard to Articles 73 and 74 of the Rules of Procedure;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the opinion of the Advocate-General;

THE COURT (Second Chamber)

hereby orders:

1. **The costs to be paid by the defendant to the applicant are fixed at the sum of DM ....**

2. **The applicant shall receive an authenticated copy of this order.**

Luxembourg, 21 October 1970.

A. Van Houtte
Registrar

A. Trabucchi
President of the Second Chamber