Case 43/83

Hilda De Naeyer
v
Commission of the European Communities

(No need to give a decision — Taxation of recoverable costs)

Order of the Court (Second Chamber), 23 September 1987 3569

Summary of the Order

Procedure — No need to give a decision — Costs — Taxation — Factors to be taken into consideration
(Rules of Procedure, Arts 69 (5), 73 (b) and 76 (5))

ORDER OF THE COURT (Second Chamber)
23 September 1987 *

In Case 43/83

Hilda De Naeyer, former executive secretary at the Commission of the European Communities, residing in Brussels, represented by Jean-Noël Louis, of the Brussels Bar, with an address for service at the Chambers of Blanche Moutrier, of the Luxembourg Bar, 16 avenue de la Porte-Neuve,

applicant,

* Language of the Case: French.

V

Commission of the European Communities, represented by John Forman, a member of its Legal Department, acting as Agent, with an address for service at the office of G. Kremlis, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg, Luxembourg,

defendant,

APPLICATION for the annulment of the acceptance of the resignation allegedly tendered by the applicant,

THE COURT (Second Chamber)

composed of: T. F. O'Higgins, President of the Chamber, O. Due and K. Bahlmann, Judges,

Advocate General: G. F. Mancini
Registrar: P. Heim

after hearing the views of the Advocate General,

makes the following

Order

1 By application lodged at the Court Registry on 17 March 1983, the applicant brought an action for the annulment of the acceptance of the resignation which she had tendered on 29 November 1972.

2 By orders of 15 March 1984 and 20 May 1985, the Court granted the applicant legal aid in the sums of BFR 20 000 in respect of lawyer's fees for the purposes of the written procedure, BFR 10 000 for the purpose of consulting a doctor in the context of a measure of inquiry decided upon by the Court and BFR 20 000 in respect of lawyer's fees for the purposes of the oral procedure.

3 At the hearing on 10 October 1985, the Court, having heard the parties in the retiring room, suspended the oral procedure in order to enable the parties to reach an agreed solution to the proceedings.

4 By letters of 19 and 23 January 1987, the parties informed the Court that they had concluded an agreement on 18 June 1986, the terms of which may be summarized as follows:

'The Commission undertakes to pay the applicant a sum equivalent to the arrears of invalidity pension (BFR 2 656 832) which would have been paid to her had she been granted that pension with effect from 1 February 1982 (Article 1);

The Commission undertakes to grant the applicant an invalidity pension with effect from 1 February 1986 (Article 2);

The Commission will be responsible for paying the costs and legal expenses in Case 43/83, these to be calculated with an appropriate reduction having regard to the settlement of the proceedings by agreement (Article 3);

The applicant will discontinue her claim to be reinstated in the service of the Commission (Article 4);

The present agreement is expressly made subject to the condition that, upon examination by the doctors nominated by each party, the applicant is found to be sound in mind and body and fully conscious of the nature of her acts (Article 5).'

5 It is established that, having paid the sum provided for in Article 1 and having granted an invalidity pension as provided by Article 2, the Commission has fulfilled the substance of its contractual undertakings. The applicant, on the other hand, has not yet withdrawn her action on the ground that the Commission is not prepared to pay in full the sums claimed in respect of the fees of her lawyer and that it declines, in principle, to pay the fees of the doctor designated by her for the medical examination provided for by Article 5 of the abovementioned agreement; moreover the applicant claims that the Commission has not provided her with supporting documents and statements of account relating to all sums paid to her pursuant to the aforementioned agreement.

6 By letter of 31 March 1987, the Registrar of the Court, having regard to the developments which had in the meantime occurred in the case, indicated to the parties that, subject to their agreement, it would be possible to make an order declaring that there was no need to give a decision and, with a view to settling the costs pursuant to Article 69 (5) of the Rules of Procedure, invited them to notify the amounts which they deemed appropriate in respect of the fees of the applicant's lawyer and medical fees.

7 In their replies dated 3 and 30 April 1987 respectively, the parties did not dispute that, following their out-of-court agreement of 18 June 1986 and the implementation of the essential terms thereof, the application in Case 43/83 had become devoid of substance.

8 It should therefore be held that it is not necessary to give a decision.

Costs

9 Under the terms of Article 69 (5), where a case does not proceed to judgment the costs shall be in the discretion of the Court.

10 In that regard it should be borne in mind that, in Article 3 of the agreement made by the parties on 18 June 1986, the Commission expressly undertook to pay the costs and legal expenses in Case 43/83. Having regard to the circumstances of the case and to the course of the proceedings, it is therefore appropriate to order the Commission to pay the costs.

11 With regard to the fees of the doctor designated by the applicant for her medical examination with a view to reaching the agreement of 18 June 1986, it should be pointed out that that medical examination was regarded by the parties as indispensable to the conclusion of their agreement which ultimately enabled the procedure to be closed in the present case. Those fees, the amount of which is not in dispute, may therefore be regarded as costs of the proceedings to be borne by the Commission.

Taxation of recoverable costs

12 Under Article 73 (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 to be regarded as recoverable costs.

13 It should be noted that, in the present case, the only dispute in respect of the amount of recoverable costs relates to the amount of the fees of the applicant's lawyer. The applicant asks for the recoverable amount to be fixed at BFR 240 950 arguing, in substance, that her lawyer had devoted a total of 65 hours to the present case and that he had provided the following services: submission of the application initiating the proceedings, lodging of a reply, lodging of supplementary written observations, attending the oral procedure and drawing up the agreement of 18 June 1986 as well as verifying the implementation by the Commission of its obligations under that agreement. The Commission replies that the amount claimed far exceeds the fees which it pays in equivalent cases; it proposes a maximum amount of BFR 150 000 less any sums received by way of legal aid granted to the applicant.

14 In that regard it should be borne in mind that, with regard to the taxation of recoverable costs, the Court must undertake a free appreciation of the circumstances of the case, having regard to the subject-matter and nature of the dispute, the difficulty of the case, the amount of work which the litigation may have caused the lawyer and the financial implications for the parties. In the present case regard must also be had to the fact that, on the one hand, the parties themselves provided in their agreement of 18 June 1986 that the costs and legal expenses to be met by the Commission were to be 'calculated with an appropriate reduction having regard to the settlement of the proceedings by agreement' and that, on the other hand, by way of legal aid granted to her by the order of 15 March 1984, the applicant had already received a fixed sum of BFR 20 000 in respect of lawyer's fees; however, it appears from the file that the applicant has not claimed the sum granted to her on the same basis by the aforementioned order of 20 May 1985.

15 In the light of those considerations it is appropriate to fix the recoverable costs in respect of lawyer's fees at BFR 220 000.

16 Since the applicant had been granted legal aid amounting to BFR 30 000 it is appropriate to order the defendant to repay that sum to the Court pursuant to Article 76 (5) of the Rules of Procedure.

On those grounds,

THE COURT (Second Chamber)

hereby orders as follows:

(1) There is no need to give a decision.

(2) The defendant is ordered to pay the costs, including the fees of the doctor designated by the applicant for her medical examination with a view to reaching the agreement which was concluded between the parties on 18 June 1986.

(3) The costs to be refunded by the defendant to the applicant in respect of lawyer's remuneration are fixed at BFR 220 000.

(4) The defendant shall repay to the Court the sum of BFR 30 000 granted to the applicant by way of legal aid.

Luxembourg, 23 September 1987.

P. Heim
Registrar

T. F. O'Higgins
President of the Second Chamber