Case 242/86

Ireland
v
Commission of the European Communities

(No need to give a decision)

Order of the Court, 8 June 1988 2895

Summary of the Order

Procedure — Costs — No need to give a decision
(Rules of Procedure, Art. 69 (5))

ORDER OF THE COURT
8 June 1988 *

In Case 242/86

Ireland, represented by L. J. Dockery, Chief State Solicitor, acting as Agent, assisted by Eoghan P. Fitzsimons, SC, with an address for service in Luxembourg at the Irish Embassy, 28, route d'Arlon,

applicant,

* Language of the Case: English.

V

Commission of the European Communities, represented by D. Grant Lawrence, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of Commission Decision 86/445/EEC on the clearance of the accounts presented by Ireland in respect of the EAGGF, Guarantee Section, expenditure for 1982,

THE COURT,

composed of: Lord Mackenzie Stuart, President, G. Bosco, O. Due and G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, C. Kakouris, R. Joliet and F. Schockweiler, Judges,

Advocate General: J. L. da Cruz Vilaça
Registrar: J.-G. Giraud

after hearing the views of the Advocate General,

makes the following

Order

1 By an application lodged at the Court Registry on 11 September 1986, Ireland brought an application pursuant to the first paragraph of Article 173 of the EEC Treaty for the annulment of Commission Decision 86/445/EEC of 1 July 1986 on the clearance of the accounts presented by Ireland in respect of expenditure financed by the European Agricultural Guidance and Guarantee Fund, Guarantee Section, for 1982 (Official Journal 1986, L 256, p. 34, hereinafter referred to as 'the decision'), in so far as the Commission failed to charge to the Fund the sum of IRL 729 037.71 relating to refunds on exports to non-member countries.

2 By a decision of the President of the Court of 4 November 1986, on application by Ireland, the proceedings were suspended pending the delivery of judgment in Case 337/85, since the issue raised in Case 242/86 was the same as that raised in Case 337/85, which also concerned an application brought by Ireland against the Commission for the annulment of a decision on the clearance of EAGGF accounts for the previous financial year.

3 In its judgment of 22 October 1987 (Case 337/85 *Ireland* v *Commission* [1987] ECR 4237), the Court declared that decision void to the extent claimed by Ireland.

4 The proceedings were then continued by the parties. In a written submission of 4 May 1988 Ireland stated that in view of the fact that the Commission had given formal assurance that it would apply the judgment in Case 337/85 to similar decisions made for subsequent years it would consent to an order to the effect that there was no need for Case 242/86 to proceed to judgment. In a written submission of 25 May 1988 the Commission made no objection to such an order.

5 There is therefore no need for the case to proceed to judgment.

Costs

6 The Commission claims that the Court should order Ireland to pay the costs. It submits that there was no need whatsoever for Ireland to bring these proceedings, since the Commission had clearly stated in its summary report of 15 January 1986 on the clearance of EAGGF accounts for 1982 that it would re-examine the correction for the export refunds at issue in the light of the decision to be taken by the Court in Case 337/85. That summary report was circulated to all the Member

States, including Ireland, early in 1986 and was the basis of the discussions of the EAGGF Committee in March 1986. Ireland was therefore informed of the Commission's intentions as early as March 1986. Those intentions were, moreover, reaffirmed in general terms in the last recital in the preamble to the decision challenged in these proceedings.

7 Ireland, on the other hand, claims that the Court should order the Commission to pay the costs. Although it is true that the attention of the Irish authorities was drawn to an extract from the summary report referred to above, that extract was received by the responsible department only in September 1986, when it was no longer practical to cancel the transmission to the Court of this application. As for the last recital in the preamble to the contested decision, it must be admitted that it is far from clear. It was only by a telex message of 10 October 1986 that the Commission gave formal assurance in a way wholly satisfactory to the Irish authorities that it would apply the judgment delivered in Case 337/85 to the decision challenged in these proceeedings.

8 In the light of those arguments it must be pointed out that under Article 69 (5) of the Rules of Procedure, where a case does not proceed to judgment the costs are at the discretion of the Court.

9 Having regard to the circumstances of the case, the Court considers, particularly in view of the imminent expiry of the period for bringing proceedings laid down in the third paragraph of Article 173 of the EEC Treaty and the conditional nature of the Commission's statements, prior to the bringing of the proceedings, intended to reassure the Irish Government on the point at issue, that Ireland cannot reasonably be reproached for bringing these proceedings by way of precaution.

10 Consequently, the Commission must be ordered to pay the costs.

On those grounds,

THE COURT

hereby orders as follows:

(1) There is no need to give a decision on the application;

(2) The defendant is ordered to pay the costs.

Luxembourg, 8 June 1988.

J.-G. Giraud
Registrar

A. J. Mackenzie Stuart
President