"for the purpose of the proceedings". The position is different with regard to the costs relating to the agent's participation in the oral procedure, namely his travelling expenses and the daily subsistence allowance.

In Case 126/76 — Costs

FIRMA GEBRÜDER DIETZ

v

COMMISSION OF THE EUROPEAN COMMUNITIES,

THE COURT (First Chamber)

composed of: J. Mertens de Wilmars, President, A. O'Keeffe and G. Bosco, Judges,

Advocate General: J.-P. Warner
Registrar: A. Van Houtte

makes the following

ORDER

Facts

By a judgment of 15 December 1977 in Case 126/76 (Firma Gebrüder Dietz v Commission [1977] ECR 2431), the Court dismissed the application of the Dietz undertaking (hereinafter referred to as "the applicant in the main action") and ordered it to pay the costs.

By an application received at the Court Registry on 22 December 1978, the Commission of the European Communities (hereinafter referred to as "the defendant in the main action"), in pursuance of Articles 73 and 74 of the Rules of Procedure, applied to the Court to fix at FB 78 137 the amount of the recoverable costs, broken down as follows:

— Payment to the Agent of the Commission for his work in connexion with the proceedings	FB 75 000
— Expenses connected with the participation of the Agent of the Commission in the oral procedure on 13 October 1977:	
— Travelling expenses, Brussels to Luxembourg (return)	FB 1 342
— Daily subsistence allowance	FB 1 795
Total	FB 78 137

By a statement received at the Court Registry on 12 February 1979 the applicant in the main action claimed that the application should be dismissed or alternatively that the costs should be reduced, in so far as they are recoverable, to the actual amount.

The Advocate General delivered his opinion in the Deliberation Room on 5 April 1979.

Decision

1 The applicant in the main action claims in the first place that the Commission has lost its right to recover the costs incurred by it since it has allowed six months to pass before claiming them. That argument must be rejected. The judgment ordering the applicant to pay the costs was dated 15 December 1977 and it was by letter of 14 March 1978 that the Commission sent its detailed account of the costs whose recovery it was claiming.

In doing so the Commission acted within a reasonable period which can by no means be taken to imply that it had waived its rights.

2 Secondly the applicant in the main action claims that the amount of FB 75 000 claimed as "Payment to the Agent of the Commission for his work in connexion with the proceedings" cannot be regarded as recoverable expenses within the meaning of Articles 69 and 73 of the Rules of Procedure.

3 For its part the defendant in the main action remarks that although "the practice followed by the Commission hitherto was not to claim costs other than travelling expenses and subsistence allowances for the official representing it before the Court of Justice", it is important "to modify the practice on this point and to claim in addition the expenses relating to work of an official who represents it exclusively". According to the defendant in the main action, this point of view is justified first by the wording of Article

73 (b) of the Rules of Procedure according to which expenses necessarily incurred by the parties for the purpose of the proceedings include "in particular the travel and subsistence expenses and remuneration of agents, advisers or lawyers". It is justified furthermore by considerations of judicial policy since the growing number of cases does not make it desirable "to encourage actions against the Community by ensuring that they are so far as possible free of costs". It is moreover illogical that the legal costs to be borne by the party which fails in its action should differ very considerably according to whether the Commission felt that it should be assisted or represented by an advocate or has appointed one of its officials as an Agent. The defendant in the main action also refers to practice in several Member States where court costs include remuneration or allowances for the work of officials when they are defending the interests of public bodies before the courts.

4 In the words of Article 73 of the Rules of Procedure of the Court the following "shall be regarded as recoverable costs:

...

(b) 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".

5 According to Article 17 of the Statute of the Court of Justice of the EEC, whereas private parties must be represented before the Court by a lawyer entitled to practise before a court of a Member State, the States and the institutions of the Community are to be represented by an agent, who may moreover be assisted by an adviser or by a lawyer. As regards the manner in which the institutions intend to be represented or assisted before the Court the institutions are therefore free to decide whether they will have recourse to the assistance of a lawyer or to appoint as an agent either one of their officials or a person who is not a member of their staff.

6 When, availing themselves of that option, they arrange to be represented by a lawyer or appoint as agent a person who is not a member of their staff and who must be paid, it is clear that such remuneration comes within the concept of expenses necessarily incurred for the purpose of the proceedings.

When, on the other hand, they think that their interests will be better served by their being represented in an action before the Court by one of their officials, the situation is different. Such an official, being subject to staff regulations which govern his pecuniary status, is required to assist and tender advice to his institution and to be responsible for the performance of the duties assigned to him within the scope of his employment, which includes, in connexion with representation before the Court, the defence of the interests of the institution which he represents.

The performance of his duties as a whole finds its counterpart in the remuneration allotted to him under the staff regulations, so that expenses in connexion with the work of the official cannot be considered as expenses incurred for the purpose of the proceedings and therefore as recoverable.

7 In these circumstances the claim of the defendant in the main action for recoverable costs to be determined so as to include payment for the work of the official who represented it must be dismissed.

8 The application relating to so much of the costs as relates to the agent's participation in the oral procedure, namely his travelling expenses and a daily subsistence allowance, amounting together to FB 3 137, is justified.

On those grounds,

THE COURT (First Chamber)

hereby orders as follows:

1. **The application for recoverable costs to be determined so as to include payment for the work of the official who represented the Commission is dismissed.**

2. The costs relating to the participation of the Commission's agent in the oral procedure, amounting to FB 3 137, are to be regarded as recoverable.

Luxembourg, 21 June 1979.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President of the First Chamber