ORDER OF THE COURT (SECOND CHAMBER) OF 24 SEPTEMBER 1975 [1]

J. Nold, Kohlen- und Baustoffgroßhandlung v Commission of the European Communities

Case 4/73

In Case 4/73

J. NOLD, KOHLEN- UND BAUSTOFFGROSSHANDLUNG, a limited partnership governed by German law, having its registered office in Darmstadt, represented in the main action by Manfred Lütkehaus of the Essen Bar and, for the purposes of the present proceedings, by A. W. Heinzerling of the Darmstadt Bar, with an address for service in Luxembourg at the chambers of Andre Elvinger, 84 Grand-Rue,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Dieter Oldekop, acting as Agent, with an address for service in Luxembourg at the offices of its Legal Adviser, Pierre Lamoureux, 4 Boulevard Royal,

defendant,

supported by

RUHRKOHLE AKTIENGESELLSCHAFT, a limited company having its registered office in Essen

and

RUHRKOHLE VERKAUFS-GESELLSCHAFT MBH, a limited company having its registered office in Essen, represented by Otfried Lieberknecht, of the Düsseldorf Bar, with an address for service in Luxembourg at the chambers of Alex Bonn, 22 Cote d'Eich,

interveners,

1 — Language of the Case: German.

COURT (Second Chamber)

composed of: A. J. Mackenzie Stuart, President of Chamber, P. Pescatore (Rapporteur) and H. Kutscher, Judges,

Advocate-General: A. Trabucchi
Registrar: A. Van Houtte

makes the following

ORDER

Facts

By judgment of 14 May 1974, [1973] ECR, p. 491, the applicant was ordered to bear all the costs of the action.

By application lodged at the Court Registry on 14 July 1975, the interveners, pursuant to Article 74 of the Rules of Procedure, requested the Court to set the total costs to be recovered in respect of the remuneration and costs of the lawyers who represented them before the Court at DM.....

They state that, in the absence of any provision of Community Law, this amount has been the subject of an agreement on fees with their lawyers in accordance with the relevant national law.

According to the interveners, this agreement was based on an assessment of the sum at issue in the action, which, in the case of the interlocutory proceedings, was estimated at DM... and, in the case of the main action, at DM.....

This sum was arrived at by the interveners on the basis of their financial interest in the maintenance of the Commission's decision of 21 December 1972 authorizing new terms of business of Ruhrkohle AG, certain provisions of which were challenged in the course of the main action.

In addition, the interveners state that they paid regard to the peculiar difficulty and complication of the subject-matter.

The claim is disputed by the applicant, who offers to pay the sum of DM.... as recoverable costs, plus expenses.

In justification of the offer the applicant contends that the sum at issue in the action should be assessed not on the basis of the interveners' interest but of the interest which the applicant itself had in the main action and which it assesses at DM.....

The Commission has expressed the view that, in view of the subject-matter and character of the action, the interveners' claim should be appreciably reduced.

Law

1 The Court is not called upon to tax the fees which are owed by the parties to their own lawyers and advisers but to determine the extent to which the sum representing such remuneration is recoverable against the party ordered to pay the costs.

The Court cannot, in consequence, take account of the agreement reached between the interveners and their lawyers.

2 Under 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 remuneration of agents, advisers or lawyers'.

3 Since nothing in the nature of a scale of fees is provided for under Community law, the Court has discretion to make its own assessment of the features of the case, paying regard to the subject-matter and nature of the action, its importance from the standpoint of Community law, and the difficulties of the case.

In the light of these considerations, the interveners' claim appears to be greatly exaggerated.

In the first place, in order to assess the sum at issue in the case, regard must be paid to the subject-matter of the application in the main action which, in fact, sought not to invalidate the whole body of regulations concerning the sale of Ruhr coal in the sector concerned but merely to ensure that, in one form or another, the Nold Company should continue to enjoy the advantages of being a 'first-hand' wholesaler.

In the second place, it is impossible to accept the argument with regard to the special degree of complexity and difficulty involved in the case in view of the fact that the action was concerned with trade regulations submitted for the Commission's approval by the Ruhrkohle AG itself and that the interveners were, therefore, fully aware of all its details.

Moreover, as they supported the conclusions of the Commission in the main action, the interveners were joined with the Commission and to a large extent relied on the arguments which it put forward.

4 In the light of all these considerations, the recoverable costs must be fixed in the sum of DM...

On those grounds,

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

hereby orders:

The costs recoverable by the interveners from the applicant are fixed in the sum of DM...

Luxembourg, 24 September 1975.

A. Van Houtte
Registrar

A. J. Mackenzie Stuart
President of the Second Chamber