

ORDER OF THE GENERAL COURT (Third Chamber)

21 December 2010 \*

In Case T-34/02 DEP,

**Le Levant 015 EURL**, established in Paris (France),

**Le Levant 271 EURL**, established in Paris,

**A**, established in Paris,

**B**, residing in Versailles (France), and the 255 other applicants whose names are listed in the annex hereto,

represented by P. Kirch, lawyer,

applicants,

v

**European Commission**, represented by B. Stromsky, acting as Agent,

defendant,

\* Language of the case: French.

APPLICATION for taxation of the costs to be paid following the judgment of the Court of First Instance (now the General Court) (First Chamber, Extended Composition) of 22 February 2006 in Case T-34/02 *Le Levant 001 and Others v Commission* [2006] ECR II-267,

THE GENERAL COURT (Third Chamber),

composed of M. Jaeger, President, O. Czucz and I. Labucka (Rapporteur), Judges,

Registrar: E. Coulon,

makes the following

## **Order**

### **Facts, procedure and forms of order sought**

- <sup>1</sup> On 9 December 1996, A set up the co-ownership of the cruise vessel *Le Levant*, divided into 740 co-ownership shares, or 'quirats'. In the course of the year 1997, natural persons each set up one-person limited liability undertakings (EURLs) to which the 'quirats' were sold by A by means of a public offer.

- 2 The investors' interest in joining that operation lay in the opportunity they were given to deduct from their taxable income the cost of their investment, the expenses related to its purchase (financial interest) and to its possession (depreciation), and also any losses incurred in operating the vessel.
  
- 3 On 25 July 2001, the Commission of the European Communities adopted Decision 2001/882/EC on the State aid implemented by France in the form of development assistance for the cruise vessel *Le Levant*, built by Alstom Leroux Naval for operation in Saint-Pierre-et-Miquelon ('the contested decision'). That decision was published in the *Official Journal of the European Communities* on 12 December 2001 (OJ 2001 L 327, p. 37).
  
- 4 In the contested decision, the Commission affirmed that it had examined the aid in question in the light of Article 4(7) of Council Directive 90/684/EEC of 21 December 1990 on aid to shipbuilding (OJ 1990 L 380, p. 27), 'given that it concerns aid for shipbuilding granted as development assistance in 1996 under an aid scheme [French Law of 11 July 1986 (rectifying Finance Law No 86-824 for 1986, published in the *Journal officiel de la République Française* (*Official Journal of the French Republic*) of 12 July 1986, p. 8688) known as the "Loi Pons"] approved in 1992' (recital 16).
  
- 5 The Commission also stated in the contested decision that when carrying out the examination, it had taken the view that the *Le Levant* operation did not have a genuine development component as contemplated in the judgment of the Court of Justice of 5 October 1994 in Case C-400/92 *Germany v Commission* [1994] ECR I-4701, given the insufficient economic and social benefits for Saint-Pierre-et-Miquelon (France) (recitals 20 and 22 to 33).

- 6 In Article 1 of the contested decision, the Commission finally declared the development assistance for the cruise vessel *Le Levant* to be incompatible with the common market.
  
- 7 On 20 February 2002, the EURL, *Le Levant* 001, along with other EURLs and natural persons, brought an action before the General Court seeking the annulment of the contested decision.
  
- 8 At the request of the Commission, the main proceedings were suspended pending final judgment of the Court of Justice in Case C-394/01 *France v Commission*. That judgment was given on 3 October 2002. Following the hearing of 27 September 2005, the contested decision was annulled by judgment of the General Court in Case T-34/02 *Le Levant 001 and Others v Commission* [2006] ECR II-267. In that judgment, the Court also ordered the Commission to bear its own costs and to pay the costs incurred by the applicants, including those relating to the interim proceedings.
  
- 9 Following an exchange of letters between the Commission and A and between the Commission and counsel for the applicants, the Commission, by letter of 29 November 2007, informed counsel for the applicants of its refusal to pay the sum of EUR 509 561.71 claimed for costs and fees incurred in defending the interests of those involved in the main proceedings on account of the fact that A, which paid all the costs, was not party to the main proceedings.
  
- 10 By document lodged at the Registry of the General Court on 31 July 2008, the applicants submitted the present application for taxation of costs pursuant to Article 92(1) of the Rules of Procedure of the Court. The applicants call on the Court to fix, pursuant to that provision, the amount of recoverable costs at EUR 509 561.71 together with interest.

- 11 By document lodged at the Registry of the General Court on 11 November 2008, the Commission submitted its observations on that application. The Commission claims that the Court should dismiss the application for taxation of costs as inadmissible as regards A and fix the total amount of costs to be reimbursed to the applicants in the main proceedings at EUR 0.

## **Law**

### *Arguments of the parties*

- 12 The applicants submit that the objection of inadmissibility raised by the Commission, according to which A, not being party to the main proceedings, may not claim the payment of costs, must be dismissed.
- 13 The applicants also maintain that the sum of EUR 509 561.71 together with interest, of which they are seeking payment, corresponds to the period from 1 August 2001, the date on which they were informed of the contested decision and commenced preparations to bring an action for annulment, to 27 September 2005, the date of the final hearing before the General Court. That sum includes the costs relating to the interim proceedings and non-recoverable value added tax.
- 14 The applicants specify that ‘in accordance with the case-law of the Court [of Justice], the costs and legal fees are limited to those of the firm M, the firm instructed by the applicants to bring proceedings before the [General] Court, to the exclusion of all other counsel, including Ms C.-N., of the firm AO’.

- 15 As its main argument, the Commission submits that the application for taxation of costs put forward by A is inadmissible. The issue of costs is incidental to the main proceedings, and it is clear from the actual wording of Article 91(b) of the Rules of Procedure that only the parties to the main proceedings may claim the payment of costs and that the costs incurred by the parties may be paid only to parties to the main proceedings.
- 16 As regards A's argument that it was an applicant in the main proceedings as a result of its status as sole member of the EURL, Le Levant 132, the Commission points out that an EURL is a special form of limited liability company established by Law No 85-697 of 11 July 1985 to limit the risks incurred by a person acting alone. Furthermore, an EURL is a legal person with complete legal autonomy.
- 17 The Commission observes that the 259 natural persons who were applicants in the main proceedings applied in their own name. It maintains that the status of applicant does not result from the fact that those persons were sole members of an EURL who acquired a 'quirat' of the cruise vessel *Le Levant*, which was also an applicant, but results from the expression of express intent by each of those persons. On the other hand, A in no way manifested its intention to assume, in its own name, the status of applicant in the case, until the question of costs was discussed. The autonomy of the legal persons at issue means that the status of the applicant in the main proceedings cannot be extended to A just because of its status as sole member of the EURL, Le Levant 132.
- 18 As regards the applicants' argument that A was the sole member of the 'community of interested parties' against the contested decision that had the ability to carry proceedings through successfully, the Commission contends that, even if a class action and the choice of the same legal counsel considerably facilitated the task, all the difficulties claimed by the applicants could have been resolved by A itself. Indeed, A

could have confined itself to marshalling the private investors while preserving their anonymity. It could have also communicated to them the necessary information concerning the operation in question and advanced them the funds necessary for their defence.

- 19 Furthermore, the Commission maintains that the EURLs having acquired a 'quirat' in the cruise vessel *Le Levant* had legal personality, and could, on that basis, be parties to legal proceedings, which they, in fact, were. Similarly, those of their shareholders who were natural persons could bring an action against the contested decision as was, in fact, done by a number of such shareholders.
- 20 The Commission claims that A was fully aware from the outset of the risks that the operation in question presented with regard to the rules applicable to State aid, but that it nevertheless called on 'private investors' to become co-owners and operators of the ship. In the context of the main proceedings, A therefore had specific interests, distinct from those of the applicant investors, connected to its commitments to these 'private investors' (in particular the obligation to repurchase, at a fixed price, from the EURLs that had acquired a 'quirat' of the cruise vessel *Le Levant*, at the end of the operation in question).
- 21 The Commission also contends that A, which apparently wishes to derive support from the structure of the operation in question, had itself conceived the legal and financial schedule of that operation and made a tactical choice concerning the manner in which it intended to participate in the main proceedings.
- 22 Finally, according to the Commission, the applicants in the main proceedings have not incurred any costs which were not covered by A. It is apparent from the file in

the main proceedings that all the fee statements presented to the Commission and, in the context of this application, to the Court were addressed to A. The costs and fees were definitively borne by A, and the applicants in the main proceedings are not indebted to A for their judicial action. They did not, in any way, owe those costs and fees. Consequently, the applicants in the main proceedings may not claim reimbursement from the Commission.

- <sup>23</sup> In the alternative, the Commission submits that the sum of EUR 509561.71 manifestly exceeds what is justified in order to assert the applicants' rights in the main proceedings, taking account of, and in accordance with the case-law of the Court, the subject-matter and the nature of the dispute, its importance from the point of view of European Union law and the difficulties presented by the case. That sum includes, in particular, costs that are not recoverable under Article 91 of the Rules of Procedure.

### *Findings of the Court*

- <sup>24</sup> Under Article 92(1) of the Rules of Procedure, if there is a dispute concerning the costs to be recovered, the Court is, on application by the party concerned and after hearing the other party's comments, to make an order, from which no appeal may lie.



## Admissibility

- 25 Under Article 91 of the Rules of Procedure, ‘the 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 regarded as recoverable costs. It follows from that provision that recoverable costs are limited, firstly, to those incurred for the purpose of the proceedings before the General Court and, secondly, to those which are necessary for that purpose (see order in Case T-342/99 DEP *Airtours v Commission* [2004] ECR II-1785, paragraph 13, and the case-law cited).
- 26 Furthermore, the Court has held that the expression ‘expenses incurred by the parties’ refers to the expenses arising from the proceedings in which the parties have participated. That expression does not therefore refer only to the expenses which have actually been borne by the parties. Thus, expenses incurred for the purpose of the proceedings before the Court and necessary for that purpose, even if they have, in fact, been paid by a person not party to the proceedings, such as A in the present case, are recoverable (see, to that effect, order of 2 March 2009 in Case T-373/04 DEP *Fries Guggenheim v Cedefop*, not published in the ECR, paragraph 24).
- 27 In the present case, the Commission has not demonstrated to the requisite legal standard that the interests pursued by A were, to that extent, distinct from those of the natural and legal persons party to the main proceedings, and, consequently, that the present situation could be different from that in *Fries Guggenheim v Cedefop*.
- 28 Consequently, the Commission’s arguments regarding the admissibility of the application for taxation of costs must be rejected inasmuch as that application emanates from applicants who were also party to the main proceedings.
- 29 By contrast, the arguments raised by A in order to demonstrate its status as a party to the main proceedings must be rejected. The status of sole member of an EURL which

was an applicant in the main proceedings should be considered in light of the particular features of company law governing that legal person. As it is, the legal autonomy of that EURL precludes treating the sole member in the same way as the legal person which, in the present case, brought the main action. The fact that, according to A, the latter was the only member of the ‘community of interested persons’ against the contested decision that had the ability to ‘marshal the private investors against that decision’, does not in any way exclude the possibility of that legal person participating, in its own name, in the main proceedings, and is a matter of practical methods for financing the legal proceedings which do not, in the present case, have any influence on the status of party in the main proceedings.

## Substance

- <sup>30</sup> It is important to note that only the costs necessarily incurred for the purpose of the proceedings may be recovered (see paragraph 25 above).
- <sup>31</sup> Furthermore, according to the case-law, even though substantial legal work is generally carried out in the course of the proceedings preceding the judicial phase, it must be pointed out that, by ‘proceedings’, Article 91 of the Rules of Procedure refers only to proceedings before the General Court, to the exclusion of any prior stage. That follows, in particular, from Article 90 of the Rules of Procedure, which refers to ‘proceedings before the General Court’ (order in Case T-38/95 DEP *Groupe Origny v Commission* [2002] ECR II-217, paragraph 29).
- <sup>32</sup> Consequently, the applicants’ request should be rejected in so far as it seeks the reimbursement of costs relating to the period preceding the judicial phase, and, in particular, to the intervention of lawyers with the Commission.

- 33 Similarly, the applicants' request must be rejected in so far as it seeks the recovery of costs from the Commission which relate to the period during which no procedural step was taken. Indeed, during that period, the costs sought do not appear to be directly connected to the intervention of their lawyer before the Court and cannot, therefore, be regarded as costs necessary for the purpose of the proceedings, within the meaning of Article 91 of the Rules of Procedure (see, to that effect, orders in Case T-78/99 DEP *Elder v Commission* [2000] ECR II-3717, paragraph 17, and *Groupe Origny v Commission*, paragraph 31).
- 34 In this respect, no procedural step was taken between 30 April 2002, the date of the order of the President of the Fifth Chamber suspending the main proceedings pending final judgment of the Court of Justice in Case C-394/01, and 3 October 2002, the date on which the Court delivered its judgment in Case C-394/01, or after the hearing of the main proceedings which took place on 27 September 2005. The costs connected to the interim proceedings, which took place before the General Court between 23 April and 13 June 2002 while the main proceedings were suspended, must, nevertheless, be included.
- 35 Furthermore, the applicants' request should be rejected in so far as it seeks the reimbursement from the Commission of costs relating to the preparation of an action before a national court.
- 36 The applicants' request should also be rejected in so far as it concerns the costs mentioned in the statement of expenses in Annex 8 to the application which are not connected to any procedural step in the main proceedings. Indeed, those costs cannot be considered necessary for the purpose of the main proceedings.
- 37 Finally, with regard to the other costs for which the applicants seek reimbursement, it is settled case-law that the Courts of the European Union are not empowered to

tax the fees payable by the parties to their own lawyers, but may determine the extent to which those fees may be recovered from the party ordered to pay the costs. When ruling on an application for taxation of costs, the General Court is not obliged to take account of any national scale of lawyers' fees or any agreement in that regard between the party concerned and his agents or advisers (see order in *Airtours v Commission*, paragraph 17, and the case-law cited).

<sup>38</sup> It is also settled case-law that, in the absence of provisions of European Union law laying down fee scales, the General Court must make an unfettered assessment of the facts of the case, taking into account the purpose and nature of the proceedings, their significance from the point of view of European Union law, the difficulties presented by the case, the amount of work generated by the case for the agents or advisers involved and the financial interest which the parties had in the proceedings (see order in *Airtours v Commission*, paragraph 18, and the case-law cited).

<sup>39</sup> The amount of the costs recoverable in the present case must be determined according to those criteria. In that regard, the following points must be taken into account.

The purpose and nature of the proceedings, their significance from the point of view of European Union law and the difficulties presented by the case

<sup>40</sup> It should be noted that the purpose of the main proceedings was an action for the annulment of a Commission decision on State aid. It did not raise any novel questions of law and the questions raised were not so complex as to merit a detailed examination of the legislation or specific research. Consequently, with regard to those criteria, it

must be held that the main proceedings did not warrant the representatives of the applicants devoting a considerable amount of time to it.

The economic interest that the proceedings represented for the parties

- <sup>41</sup> It should be noted that, though it appears that the main proceedings had a specific economic interest for the applicants benefiting from the tax advantage in question, that economic interest cannot be regarded as being of great importance. Indeed, that aid, of EUR 11.9 million, was distributed between a large number of investors, which reduces the respective economic interests of the applicants. The case in question did not, therefore, involve any major economic interest for the parties.

The extent of work carried out

- <sup>42</sup> In assessing the extent of the work generated by the judicial proceedings, it is for the Courts of the European Union to take into account the amount of work objectively required for the whole of the judicial proceedings (order in *Airtours v Commission*, paragraph 30, and the case-law cited).
- <sup>43</sup> However, where a party's lawyers have already assisted that party during proceedings or procedures prior to the relevant action, it is also necessary to have regard to the fact that those lawyers are aware of matters relevant to the action, which is likely to

have facilitated their work and reduced the preparation time required for the judicial proceedings (order in Case T-331/94 DEP *IPK-München v Commission* [2006] ECR II-51, paragraph 59).

- 44 That finding is, in principle, still the same where the number of applicants is significant, because all the actions to be accomplished in that situation are formal and standardised, and do not affect the legal content of the case.
- 45 Furthermore, since A, which initiated the operation in question, was able to send any relevant information to the lawyers involved in the main proceedings, the latter were able to provide their services with increased efficiency and speed. This consideration was such as to facilitate, at least partly, their work and reduce the time devoted to the preparation of the observations on the application (orders in Joined Cases T-226/00 DEP and T-227/00 DEP *Nan Ya Plastics and Far Eastern Textiles v Council* [2003] ECR II-685, paragraph 42, and *Airtours v Commission*, paragraph 29).
- 46 It should be noted that while, in this instance, it was permissible to entrust the defence of the applicants' interests in the main proceedings to several advisers at the same time, so as to secure the services of more experienced lawyers, the primary consideration must be the total number of hours of work which appear to be objectively necessary for the purpose of the proceedings before the Court, irrespective of the number of lawyers between whom the services rendered could be distributed (order in Case T-290/94 DEP *Kaysersberg v Commission* [1998] ECR II-4105, paragraph 20).
- 47 According to the detailed statement of costs in the present application for taxation of costs, the total number of hours of work of which reimbursement is claimed, at the weighted average overall hourly rate of EUR 240, is approximately 1 889 hours.

- 48 Though these hours of work seem to be duly justified from an accounting viewpoint, it is, nevertheless, the task of the Court to take account of the criteria mentioned in paragraph 25 above, namely the hours of work objectively necessary.
- 49 Firstly, as stated in paragraph 34 above, the reimbursement of costs that do not correspond to a stage in the proceedings before the Court must be excluded, that is to say, the fees relating to the period from 13 June to 4 October 2002. The fees relating to the period from 20 March 2003 to 22 October 2004 which, according to the file, do not correspond to any stage of the proceedings before the Court must also be excluded.
- 50 Secondly, it should be observed that according to the detailed account of the hours of work, certain tasks do not appear to be directly connected to the preparation of the main proceedings before the Court, in particular those hours dedicated to the preparation of proceedings before a national court (see paragraph 35 above).
- 51 Thirdly, the division of the work in preparing pleadings between many lawyers necessarily involves a certain duplication of efforts (see, to that effect, order of 8 October 2008 in Case T-324/00 DEP *CDA Datenträger Albrechts v Commission*, not published in the ECR, paragraph 91). Accordingly, the Court cannot accept the totality of the hours of work claimed.
- 52 Furthermore, it is apparent from the statement of fees that four successive draft applications as well as replies were drawn up in the main proceedings. However, the fees relating to the drawing-up of several successive draft applications cannot be considered to be strictly necessary for the proceedings before the Court and their reimbursement cannot, therefore, be justified.

- 53 Similarly, both the time dedicated to the drawing-up of the application for annulment and the application for interim relief, which exceeds 1 000 hours, and the time dedicated to the drawing-up of the reply, which exceeds 450 hours, considerably exceed what could be considered necessary for that purpose.
- 54 Fourthly, the Court considers that the hourly rate claimed for the services of Mr K., partner (avocat associé), namely from EUR 380 to EUR 400, greatly exceeds what could be considered to be appropriate remuneration for the services of a particularly experienced professional, capable of working very quickly and efficiently (see, to that effect, order of 13 February 2008 in Case T-310/00 DEP *Verizon Business Global v Commission*, not published in the ECR, paragraph 44). Moreover, the taking into account of such a level of remuneration is counterbalanced by a necessarily strict evaluation of the total number of hours of work necessary for the purposes of the proceedings (see order of 17 October 2008 in Case T-33/01 DEP *Infront WM v Commission*, not published in the ECR, paragraph 31, and the case-law cited).
- 55 In view of the foregoing considerations, the total working hours of the applicants' lawyers in the main proceedings objectively necessary for the representation of the applicants during the judicial phase should be fixed at 600 hours.
- 56 On the basis of the above considerations, the sum of EUR 509 561.71, as referred to in the present application for taxation of costs, cannot be considered to be objectively necessary for the purposes of the main proceedings.
- 57 In those circumstances, it is appropriate to fix the amount of recoverable fees at EUR 144 000 as necessary costs incurred by the applicants for the purposes of the main proceedings.



- 58 Furthermore, the costs corresponding to miscellaneous expenditure for the purposes of the proceedings before the Court, such as travel expenses and photocopying, should be fixed at EUR 2 000.
- 59 In the light of the foregoing considerations, the Court will make an equitable assessment of the costs recoverable by the applicants in the main proceedings for the reimbursement to A of the costs incurred for their defence in Case T-34/02 by fixing them at EUR 146 000.

On those grounds,

THE GENERAL COURT (Third Chamber)

hereby orders:

**The total amount of costs to be reimbursed by the European Commission to the applicants, in so far as they were parties in the main proceedings, is fixed at EUR 146 000.**

Luxembourg, 21 December 2010.

E. Coulon  
Registrar

M. Jaeger  
President