



## Reports of Cases

ORDER OF THE GENERAL COURT (Appeal Chamber)

28 May 2013\*

(Procedure — Taxation of costs — Lawyers' fees — Representation of an institution by a lawyer — Recoverable costs)

In Case T-278/07 P-DEP,

**Luigi Marcuccio**, residing in Tricase (Italy), represented by G. Cipressa, lawyer,

applicant,

v

**European Commission**, represented by J. Currall, C. Berardis-Kayser and G. Gattinara, acting as Agents,

defendant,

APPLICATION for taxation of the costs to be paid following the judgment of the Court of First Instance (now the General Court) of 20 October 2008 in Case T-278/07 P *Marcuccio v Commission* [2008] ECR-SC I-B-1-59 and II-B-1-407,

THE GENERAL COURT (Appeal Chamber),

composed of M. Jaeger, President, N.J. Forwood (Rapporteur), I. Pelikánová, A. Dittrich and L. Truchot, Judges,

Registrar: E. Coulon,

makes the following

### Order

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

- 1 By application lodged at the Registry of the General Court on 18 July 2007, Mr Luigi Marcuccio brought, in accordance with Article 9 of Annex I to the Statute of the Court of Justice of the European Union, an appeal seeking to have set aside the order of the European Union Civil Service Tribunal (First Chamber) of 11 May 2007 in Case F-2/06 *Marcuccio v Commission* [2007] ECR-SC I-A-1-137 and II-A-1-749, which dismissed as manifestly inadmissible Mr Marcuccio's action for annulment of

\* Language of the case: Italian.

the decision of the Commission of the European Communities to bring to a close the procedure relating to the grant of benefits under Article 73 of the Staff Regulations of Officials of the European Communities following an accident suffered by the appellant.

- 2 By judgment of 20 October 2008 in Case T-278/07 P *Marcuccio v Commission* [2008] ECR-SC I-B-1-59 and II-B-1-407 (the ‘judgment of 20 October 2008’), the General Court dismissed the appeal and ordered Mr Marcuccio to pay his own costs as well as those incurred by the Commission in those proceedings.
- 3 By letter dated 3 May 2011 addressed to Mr Marcuccio, a copy of which was sent to his lawyer, the Commission reminded him, inter alia, that it had already notified his lawyer, by letter of 8 July 2010, of a list of nine judgments and orders, including the judgment of 20 October 2008, ordering him to pay the costs, and the amount of the costs incurred by the Commission in each case. The amount claimed in the present case is EUR 4 500, paid to A. Dal Ferro pursuant to a contract for legal services of 25 September 2007. By letter of 5 May 2011 addressed to the appellant, a copy of which was sent to his lawyer, the Commission rectified a typographical error concerning only the total amount claimed from the appellant by way of costs in 24 cases, including the present one.
- 4 As no agreement was reached between the parties concerning the costs to be recovered, the Commission submitted, by document lodged at the Registry of the General Court on 20 July 2012 pursuant to Article 92(1) of the Rules of Procedure of the General Court, the present application for taxation of costs, by which it requests the Court to fix the amount of the costs to be recovered by it in the case which gave rise to the judgment of 20 October 2008 at EUR 4 500 and to order Mr Marcuccio to pay the costs of the present taxation proceedings.
- 5 In his observations lodged on 21 August 2012, Mr Marcuccio claims that the Court should order that the application submitted by the Commission be notified to him and that Annexes 7, 9 and 10 be excluded from the file, dismiss the application for taxation of costs as inadmissible or, in the alternative, fix the amount of recoverable costs at EUR 1 400 and order the Commission to pay the costs of the present proceedings as well as the costs that the Court has needlessly incurred for the purposes of those proceedings.
- 6 Pursuant to Article 14 of the Rules of Procedure and on the proposal of the Appeal Chamber, the Court decided to refer the case to a Chamber sitting in extended composition.

## Law

### *The request for notification of the application for taxation of costs*

- 7 Mr Marcuccio’s contention alleging breach of the *audi alteram partem* rule on the ground that the present application was notified to his lawyer, Mr G. Cipressa, rather than to himself, must be dismissed at the outset. In that regard, it should be noted that, in his appeal in the case which gave rise to the judgment of 20 October 2008, Mr Marcuccio gave Mr Cipressa’s address as an address for service in accordance with Article 44(2) and Article 138(1) of the Rules of Procedure, so that the notification to that lawyer of the application for taxation of costs in that case was valid under Article 100 of those rules. Mr Marcuccio having thus been given the opportunity to submit his observations in accordance with Article 92(1) of the Rules of Procedure, a right he indeed exercised, the *audi alteram partem* rule has been fully observed. Consequently, his request for notification of the Commission’s application must be rejected.

*Admissibility of the application for taxation of costs*

- 8 Mr Marcuccio's arguments calling into question the admissibility of the present application – on the ground that he did not receive the letters of 3 and 5 May 2011 (see paragraph 3 above), with the result that there was no dispute concerning the costs to be recovered within the meaning of Article 92(1) of the Rules of Procedure at the time the present application was submitted – must also be dismissed. In that regard, whilst it is true that the Commission presented proof of despatch only of the letter of 5 May 2011, Mr Marcuccio does not dispute that Mr Cipressa received the letter of 8 July 2010 or that that letter referred to the case in respect of which the present application was submitted and gave the amount of EUR 4 500 as the amount recoverable by way of costs, or indeed that he failed to reach an agreement with the Commission on the amount of recoverable costs. In addition, Mr Marcuccio does not claim either that he informed the Commission that the authority granted to Mr Cipressa, who continues to represent him today in the present case, did not cover or no longer covered the consequences of the enforcement of the judgment ordering him to pay the costs, or any taxation of costs proceedings, or that Mr Cipressa apprised the Commission of such facts. As to the argument that the letters of 3 and 5 May 2011 did not contain any documentary evidence enabling the merits of the Commission's claims to be assessed, suffice it to note that none of the provisions of the Rules of Procedure requires a party to submit documentary evidence in support of its claims at the initial contact stage preceding the submission of an application for taxation of costs. The *audi alteram partem* rule is fully observed before the Court in proceedings under Article 92(1) of those rules. Consequently, having regard to the facts in the present case, the Court finds that, first, Mr Marcuccio was given the opportunity to dispute the amount claimed by the Commission in implementation of the Court's judgment of 20 October 2008 and, secondly, that Mr Marcuccio's conduct is tantamount to a dispute within the meaning of Article 92(1) of the Rules of Procedure.
- 9 The period of less than two years that elapsed between the delivery of the judgment of 20 October 2008 and the sending of the letter of 8 July 2010 is not unreasonable, since, given that it is involved in a series of disputes with the appellant, the Commission is justified, on the basis of sound management of the situation, in notifying the appellant of its claims relating to several cases concluded up to that point. As is apparent from the letter of 3 May 2011, the veracity of which is not disputed by Mr Marcuccio, the letter of 8 July 2010 contained requests for payment of costs in nine cases, the last of which concluded on 23 March 2010. In those circumstances, Mr Marcuccio is in any event not justified in considering that the Commission has waived its right to recover the costs that it has incurred. Mr Marcuccio's arguments that the Commission's application was not submitted within a reasonable time period must therefore be rejected. Thus, in the absence of an agreement between the parties on the amount of recoverable costs, the Commission's application must be declared admissible and the amount of the Commission's recoverable costs in the case which gave rise to the judgment of 20 October 2008 be fixed.

*The merits of the application for taxation of costs*

The recoverability of the costs incurred by the Commission

- 10 Under Article 91(b) of the Rules of Procedure, the expenses necessarily incurred by the parties for the purposes of the proceedings are regarded as recoverable costs, in particular the travel and subsistence expenses and the remuneration of agents, advisers or lawyers.
- 11 It follows from that provision that the recoverable costs are limited, first, to those incurred for the purposes of the proceedings before the Court and, secondly, to those which were essential for those purposes (order of 23 March 2012 in Case T-498/09 P-DEP *Kerstens v Commission*, not published in the ECR, paragraph 13).

- 12 In addition, in the absence of any provisions of EU law relating to tariffs, the Court must freely assess the details of the case, taking account of the subject-matter and the nature of the dispute, its importance from the point of view of EU law and the difficulties presented by the case, the amount of work generated by the contentious proceedings for the agents or counsel involved and the economic interests represented by the dispute for the parties (order in *Kerstens v Commission*, paragraph 14).
- 13 In fixing the recoverable costs, the Court takes account of all the circumstances of the case up to the making of the order on taxation of costs, including the expenses necessarily incurred in relation to the taxation of costs proceedings (order in *Kerstens v Commission*, paragraph 15).
- 14 In that regard, as is apparent from the first paragraph of Article 19 of the Statute of the Court, applicable before the General Court pursuant to the first paragraph of Article 53 of that Statute, the institutions of the European Union are free to have recourse to the assistance of a lawyer. The latter's remuneration is therefore covered by the concept of expenses necessarily incurred for the purposes of the proceedings (order in *Kerstens v Commission*, paragraph 20), without the institution being required to show that such assistance is objectively warranted (see, to that effect, the order of 31 January 2012 in Case C-323/06 P-DEP *Commission v Kallianos*, not published in the ECR, paragraphs 10 and 11). Therefore, whilst the fact that the Commission instructed two agents and an external lawyer has no impact on the possible recoverability of those costs, since there is nothing to preclude such recovery in principle, it may have an impact on the determination of the amount of costs incurred for the purposes of the proceedings which may ultimately be recovered (order in *Kerstens v Commission*, paragraph 21). There is thus no question of an infringement of the principle of equal treatment between applicants in the event that the defending institution decides to have recourse to the services of a lawyer in certain cases, whereas in others it is represented by its agents.
- 15 Any other assessment which makes the right of an institution to claim all or part of the fees paid to a lawyer subject to proof of an 'objective' need to use that lawyer's services would in fact constitute an indirect restriction on the freedom conferred by the first paragraph of Article 19 of the Statute of the Court of Justice and entail for the EU judicature a duty to substitute its own assessment for that of the institutions and bodies responsible for the organisation of their departments. Such a task is compatible neither with the first paragraph of Article 19 of the Statute of the Court of Justice, nor with the power to adopt rules for their own internal organisation enjoyed by the institutions and bodies of the European Union in relation to the management of their cases before the courts of the European Union. On the other hand, whether account should be taken of the involvement of one or more agents alongside the lawyer in question is a matter for the discretion vested in the EU judicature in proceedings for the taxation of costs under Article 91(b) of the Rules of Procedure (see paragraphs 10 to 12 above).

#### The amount of recoverable costs

- 16 In order to determine, on the basis of the criteria set out at paragraph 12 above, whether the costs actually incurred for the purposes of the proceedings were necessary, precise information must be supplied by the applicant (see, to that effect, the orders of 17 February 2004 in Case C-321/99 P-DEP *DAI v ARAP and Others*, not published in the ECR, paragraph 23, and of 20 May 2010 in Cases C-12/03 P-DEP and C-13/03 P-DEP *Tetra Laval v Commission*, not published in the ECR, paragraph 65). Whilst the absence of such information does not prevent the Court from fixing, on the basis of an equitable assessment, the amount of recoverable costs, it none the less places it in a situation where its assessment of the applicant's claims must necessarily be strict (see the order of 24 October 2011 in Case T-176/04 DEP II *Marcuccio v Commission*, not published in the ECR, paragraph 27 and the case-law cited).

- 17 In the present case, in relation, first, to the amount of work which the proceedings before the Court may have generated for the Commission, account should be taken of the fact that Mr Marcuccio's appeal contained six grounds of appeal, alleging: (i) distortion and misrepresentation of the facts; (ii) absolute failure to state reasons; (iii) misapplication of the concept of an act adversely affecting an official; (iv) failure to rule on a fundamental aspect of the dispute and infringement of the obligation of *clare loqui*; (v) infringement of the axiom *ei incumbit probatio qui dicit et non qui negat*; and (vi) procedural defects in the proceedings before the Civil Service Tribunal. In the light of the foregoing, it is apparent that a workload greater than that which might have been expected, given the characteristics of the case, may have been generated.
- 18 Secondly, in relation to the subject-matter, the nature and the economic interest of the dispute, it should be noted that those grounds of appeal were directed against the order of the Civil Service Tribunal dismissing as inadmissible an application for annulment of the purported decision of the Commission to bring to a close a procedure relating to the grant of benefits provided for under Article 73 of the Staff Regulations of Officials of the European Communities. Those grounds called into question the findings of the Civil Service Tribunal in various ways with regard to which the Commission was required to take a position, which it did in its response.
- 19 Thirdly, concerning the importance of the dispute from the point of view of EU law as well as the difficulties presented by the case, it is apparent from the criteria referred to above that they were not particularly marked.
- 20 In the present case, the Commission claims an amount of EUR 4 500, namely the fixed fee negotiated with its external lawyer. As a preliminary point, it should be noted that the EU judiciary is empowered not to tax the fees due by the parties to their own lawyers, but to determine the amount up to which those fees may be recovered from the party ordered to pay the costs (see the orders of 10 September 2009 in Case C-204/07 P-DEP *C.A.S. v Commission*, not published in the ECR, paragraph 13 and the case-law cited; of 13 February 2008 in Case T-310/00 DEP *Verizon Business Global v Commission*, not published in the ECR, paragraph 29; and of 31 March 2011 in Joined Cases T-5/02 DEP and T-80/02 DEP *Tetra Laval v Commission*, not published in the ECR, paragraph 55 and the case-law cited). Similarly, the fixed nature of the remuneration has no effect on the Court's assessment of the amount recoverable by way of costs, since it bases its decisions on well-established criteria laid down by case-law and precise information which the parties must provide to it. Whilst the absence of such information does not preclude the Court fixing the amount of the recoverable costs on the basis of an equitable assessment, it nonetheless places it in a situation where its assessment of the appellant's claims must necessarily be strict, as stated in paragraph 16 above.
- 21 In that regard, the Commission states that its external lawyer assesses *ex post* the total number of hours worked at 17 hours, billed at EUR 250 per hour; those hours cover, inter alia, the analysis of the order under appeal and the appeal, case-law research and the drafting of the response as well as communication with Commission officials for the purposes of completing the file. It further states that its external lawyer assesses at EUR 250 the amount of administrative costs linked to the case in question.
- 22 In the light of the analysis of the relevant criteria for the determination of the amount of recoverable costs, it is apparent that both the number of hours spent by the Commission's external lawyer and his hourly rate are reasonable. As regards the lawyer's disbursements, it must be stated that no documentary evidence has been submitted in support of the breakdown of the administrative costs incurred by the lawyer. The difference between the information relating to the disbursements and the amount at which they are assessed in particular requires such evidence to be provided. Therefore, in accordance with the case-law set out at paragraph 20 above, the recoverable costs can be assessed on an equitable basis at a total of EUR 4 300, which takes account of all the circumstances of the case up to the date of adoption of the present order.

- 23 Since that conclusion is not based on Annexes 7, 9 and 10 to the application for taxation of costs, there is no need to grant Mr Marcuccio's request seeking their removal from the file. As the Commission's conduct in the present proceedings has not in any event caused the Court to incur any costs which could have been avoided, there is no need to give effect to Mr Marcuccio's request that the Commission be ordered to reimburse the Court in any amount whatsoever.

On those grounds,

THE GENERAL COURT (Appeal Chamber)

hereby orders:

**The total amount of the costs to be reimbursed by Mr Marcuccio to the European Commission is fixed at EUR 4 300.**

Luxembourg, 28 May 2013.

E. Coulon  
Registrar

M. Jaeger  
President