

ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)

8 July 1998 *

In Cases T-85/94 (92) and T-85/94 (122) (92),

Eugénio Branco, Ld^a, a company incorporated under Portuguese law, having its registered office in Lisbon, represented by Bolota Belchior, of the Bar of Vila Nova de Gaia, with an address for service in Luxembourg at the Chambers of Jacques Schroeder, 6 Rue Heine,

applicant,

v

Commission of the European Communities, represented by Francisco de Sousa Fialho and Knut Simonsson, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATIONS for taxation of costs following the Court's judgments of 12 January 1995 in Case T-85/94 *Branco v Commission* [1995] ECR II-45 and of 13 December 1995 in Case T-85/94 (122) *Commission v Branco* [1995] ECR II-2993,

* Language of the case: Portuguese.

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of: V. Tiili, President, C. P. Briët and A. Potocki, Judges,

Registrar: H. Jung,

makes the following

Order

Facts of the dispute and procedure

- 1 By application lodged at the Registry of the Court of First Instance on 23 February 1994, the applicant brought an action seeking annulment of the Commission decision of 29 March 1993 reducing financial assistance which had been granted to the applicant by the European Social Fund.
- 2 Since the Commission failed to lodge a statement of defence within the prescribed period, the Court of First Instance (Third Chamber) gave judgment by default on 12 January 1995 (Case T-85/94 *Branco v Commission* [1995] ECR II-45). The Court annulled the Commission decision on the ground of failure to state reasons and ordered the Commission to pay the costs.

3 The Commission applied on 22 February 1995 to have the Court's judgment of
12 January 1995 set aside pursuant to Article 122(4) of the Rules of Procedure.

4 By judgment of 13 December 1995 (Case T-85/94 (122) *Commission v Branco*
[1995] ECR II-2993), the Court (Third Chamber) dismissed the Commission's
application to have that judgment set aside and ordered it to pay the costs.

5 Following those judgments, the applicant submitted to the Commission requests
for reimbursement of expenses and fees. With regard to Case T-85/94, the appli-
cant sought reimbursement of ESC 4 898 735. Concerning Case T-85/94 (122), the
applicant sought reimbursement of ESC 2 724 542.

6 By letter of 24 July 1996, the Commission, referring to the case-law of the Com-
munity Courts, requested the applicant to reduce the amounts claimed.

7 By letter of 5 May 1997, the Commission stated that it was prepared to transfer
ESC 2 346 435 to the applicant's bank account as reimbursement of the expenses
which the applicant had necessarily incurred in the two cases.

8 On 8 October 1997, the applicant lodged with the Registry of the Court two
applications under Article 92 of the Rules of Procedure for taxation of the costs in
Cases T-85/94 and T-85/94 (122). It requested the Court to fix the recoverable
costs in Case T-85/94 at ESC 4 845 517 and in Case T-85/94 (122) at
ESC 2 724 542.

- 9 By letters of 31 October and 3 November 1997, the Commission submitted its observations on those applications pursuant to Article 92 of the Rules of Procedure. It requested the Court to fix the amount of overall expenses to be repaid to the applicant in the two cases at ESC 2 346 435. In the alternative, it requested the Court:
 - to fix the amount of costs to be reimbursed in Case T-85/94 at ESC 1 636 435, made up as follows: ESC 1 400 000 in respect of legal fees (VAT included), ESC 106 435 in respect of costs incurred in organising the proceedings in Luxembourg, and ESC 130 000 in respect of travel and subsistence expenses;
 - to fix the amount of costs to be reimbursed in Case T-85/94 (122) at ESC 710 000, made up as follows: ESC 600 000 in respect of legal fees (VAT included), and ESC 110 000 in respect of travel and subsistence expenses.
- 10 Since the two applications are related, it is appropriate to rule by way of one single order.

Arguments of the parties

- 11 The applicant submits that, in Case T-85/94, the amount of ESC 4 845 517 which it claims is made up as follows: ESC 404 800 in respect of travel and subsistence expenses, ESC 53 217 for retaining a lawyer with an address for service in Luxembourg, ESC 2 340 000 in respect of legal fees, and ESC 2 047 500 in respect of fees for an economist whom it employed. In Case T-85/94 (122), the amount of ESC 2 724 542 is made up as follows: ESC 331 325 in respect of travel and subsistence expenses, ESC 53 217 for retaining a lawyer with an address for service in Luxembourg, and ESC 2 340 000 in respect of legal fees.

- 12 So far as the travel and subsistence expenses are concerned, the applicant states that, since the hearings in the two cases were held in the morning, its lawyer was obliged to travel the previous day and stop over in Luxembourg. It points out that the most economical journey between Oporto (Portugal) and Luxembourg was a flight from Oporto to Paris, followed by a train journey from Paris to Luxembourg. Furthermore, the return journeys made it necessary to spend a night in a hotel, since the train from Luxembourg to Paris did not arrive in Paris until 18.00 and the first plane for Oporto did not depart from Paris until 07.00 the following day.
- 13 With regard to the fees involved in retaining a lawyer with an address for service in Luxembourg, the applicant states that the lawyer in question submitted an invoice charging LFR 20 000, equivalent to ESC 106 435, and corresponding to ESC 53 217 for each case.
- 14 Concerning the legal fees (ESC 2 000 000, plus VAT at the statutory rate of 17%), the applicant states that its lawyer spent more than 75 hours on each case, not counting the time spent travelling. The amount claimed is, it argues, justified given, in particular, the time invested, the complexity of the case and the amounts of the sums in dispute.
- 15 With regard to the fees for the economist whom it employed, the applicant stresses that it was vital to have recourse to him in Case T-85/94 in order to examine the technical details of the training programme which was the subject of the dispute.
- 16 So far as the travel and subsistence expenses relating to attendance at the hearings in the two cases are concerned, the Commission claims that the applicant's lawyer was accompanied in Case T-85/94 by Mr Eugénio Branco and in Case T-85/94 (122) by Mr João Branco.
- 17 According to the order of the Court of Justice in Case 24/79 — *Costs Oberthür v Commission* [1981] ECR 2229, the travel and subsistence expenses incurred by

employees of a party to the proceedings do not constitute recoverable costs, unless the presence of the person concerned has been expressly requested by the Court of Justice or Court of First Instance or is necessary for the proper conduct of the hearing. Since the Court did not request the presence of Mr Eugénio Branco or Mr João Branco at the hearings in question, and since their presence was not necessary in that regard, the travel and subsistence expenses incurred by Mr Eugénio Branco and Mr João Branco are not, in the Commission's view, recoverable.

- 18 The Commission also doubts whether it was necessary for the applicant's lawyer to spend a night in Paris during his return journey from Luxembourg to Oporto.
- 19 In those circumstances, the Commission considers that it is appropriate to calculate the subsistence expenses of the applicant's lawyer by reference to the invoice for the hotel in Luxembourg, in accordance with the normal criteria applied in fixing the flat-rate allowance for 'missions' under its internal regulations. The Commission thus proposes that the amount in question should be limited to ESC 50 000 and that the balance should be considered as expenses which were not necessary for the purposes of the proceedings.
- 20 So far as the legal fees are concerned, the Commission points out that the judgment of 12 January 1995 in Case T-85/94 was delivered by default within the meaning of Article 122(1) of the Rules of Procedure, that is to say that the written procedure was concluded after lodging of the application and the Commission did not take part in the oral procedure. In those circumstances, the Commission considers that the lawyer could not reasonably have spent 75 hours working on that case.
- 21 Furthermore, the judgment of 13 December 1995 in Case T-85/94 (122), delivered following an application by the Commission to have the judgment of 12 January 1995 set aside, constituted no more than a development of the same dispute and had thus already been analysed by the applicant. In those circumstances, the Commission takes the view that the work load imposed by that case could not

have exceeded 25 hours, with the result that the total amount to be taken into consideration should be ESC 2 000 000 (including VAT), corresponding to 75 hours of work apportioned between the two cases.

- 22 With regard to the fees allegedly incurred by the applicant for the accountancy, financial and documentary analysis work carried out by the economist whom it had employed, the Commission considers that these cannot be regarded as necessary for the purposes of the proceedings since the services in question do not come within the framework of Article 91 of the Rules of Procedure. Those services were sought exclusively at the initiative and under the responsibility of the applicant and do not form part of the adversarial proceedings before the Court. The Commission adds, in the alternative, that the fees invoice of that economist, which does not specify how many hours were spent on the work, relates in a number of respects to tasks which clearly overlap with the functions of the applicant's lawyer.

Findings of the Court

- 23 Under Article 91(b) of the Rules of Procedure, '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 to be regarded as recoverable costs.
- 24 With regard to travel and subsistence expenses, it should be pointed out, as the Commission correctly noted, that the travel and subsistence expenses incurred by persons other than the lawyer of the applicant in question are recoverable only if the presence of those persons was necessary for the purpose of the proceedings (order in *Oberthür v Commission*, cited above, paragraph 2). Since the presence of neither Mr Eugénio Branco nor Mr João Branco was necessary at the hearings in question, their travel and subsistence expenses do not constitute 'expenses necessarily incurred' within the meaning of Article 91(b) of the Rules of Procedure.

- 25 With regard to the legal fees, the Community judicature is not empowered to tax the fees payable by the parties to their own lawyers but it may determine the amount of those fees which may be recovered from the party ordered to pay the costs (order of the Court of Justice in Case 318/82 *Leeuwarder Papierwarenfabriek v Commission* [1985] ECR 3727, paragraph 2, and order of the Court of First Instance in Joined Cases T-18/89 and T-24/89 *Tagaras v Court of Justice* [1992] ECR II-153, paragraph 13). Since Community law does not contain any provisions laying down a scale of fees, the Court must assess, in its discretion, the relevant features of the case, taking into account the purpose and nature of the proceedings, their significance from the point of view of Community law, as well as the difficulties presented by the case, the amount of work generated by the dispute for the agents or advisers involved and the financial interest which the parties had in the proceedings (order of the Court of Justice in Case C-294/90 DEP *British Aerospace v Commission* [1994] ECR I-5423, paragraph 13, and order of the Court of First Instance in Case T-2/93 (92) *Air France v Commission* [1996] ECR II-235, paragraph 21).
- 26 The Court notes that the two cases concerned assistance from the European Social Fund and could not have given rise to serious difficulties, since their importance in terms of Community law was limited. Moreover, the similarity between the two cases and the fact that they were related necessarily led to an appreciable reduction in the work load. The special nature of the two cases — default proceedings followed by proceedings to have a judgment set aside — also resulted in a significant reduction in the lawyer's involvement during the respective written procedures. Finally, while it cannot be disputed that the applicant had an interest in pursuing the cases, examination of the case files does not indicate that the financial interests at issue were so significant as to justify, on that ground, remuneration as extensive as that sought by the applicant.
- 27 So far as the fees of the economist employed by the applicant are concerned, it does not appear from the documents that his involvement was necessary. The fees

of that economist cannot for that reason be regarded as 'expenses necessarily incurred' within the meaning of Article 91(b) of the Rules of Procedure.

- 28 It follows from all of the foregoing that, under the present circumstances, a reasonable assessment of the recoverable costs in Cases T-85/94 and T-85/94 (122) would be to fix them at ESC 3 500 000, to be increased, if appropriate, by the VAT due on that amount.
- 29 In view of the fact that the Court has, in fixing the recoverable costs, taken into account all the circumstances of the cases up to the date on which it makes the present order, it is unnecessary to give a separate ruling on the expenses incurred by the parties for the purpose of the present proceedings on taxation of costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby orders:

1. Cases T-85/94 (92) and T-85/94 (122) (92) are joined for the purpose of the present order.

2. The total amount of recoverable costs in Cases T-85/94 and T-85/94 (122) is fixed at ESC 3 500 000, to be increased, if appropriate, by the VAT due on that amount.

Luxembourg, 8 July 1998.

H. Jung

Registrar

V. Tiili

President