Case 183/83

Krupp Stahl AG
v
Commission of the European Communities

(Taxation of costs)

Order of the Court (Fourth Chamber), 20 November 1987 4611

Summary of the order

Procedure — Costs — Taxation — Recoverable costs — Concept — Expenses incurred in providing a bank guarantee so as to avoid immediate payment of a fine subsequently reduced by the Court — Not allowed
(Rules of Procedure, Art. 73)

ORDER OF THE COURT (Fourth Chamber)
20 November 1987 *

In Case 183/83

Krupp Stahl AG, whose registered office is at 165 Alleestraße, Bochum, represented by Karl Pfeiffer, Kurt Biedenkopf and Peter Ossenbach, Rechtsanwälte, 72 Friedrich-Schmidt-Straße, D-5000 Cologne 41, with an address for service in Luxembourg at the Chambers of Jean-Claude Wolter, 8 rue Zithe,

applicant,

* Language of the Case: German.

v

Commission of the European Communities, represented by its Legal Adviser, Rolf Wägenbaur, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the taxation of recoverable costs,

THE COURT (Fourth Chamber)

composed of: G. C. Rodríguez Iglesias, President of Chamber, T. Koopmans and C. Kakouris, Judges,

Advocate General: G. F. Mancini
Registrar: P. Heim

after hearing the views of the Advocate General,

makes the following

Order

1 By an application lodged at the Court Registry on 24 June 1987, Krupp Stahl AG, Bochum, requested, pursuant to Article 74 of the Rules of Procedure, that the Commission be ordered to reimburse to it, by way of recoverable costs, the additional expenses which it incurred in providing a bank guarantee in order to avoid the execution of a Commission decision of 13 July 1983.

2 By that decision, the Commission imposed a fine of DM 3 505 414 for infringement of the provisions of the ECSC Treaty concerning prices. In its covering letter of 18 July 1983, the Commission drew the applicant's attention to the fact that if an action was brought, it would take no steps to recover that

amount while the case was pending before the Court if the applicant provided a bank guarantee equal to the amount of the fine before the expiry of the period of two months prescribed for the payment thereof. The applicant then provided a bank guarantee for the amount in question. The expenses incurred in connection therewith amounted to DM 26 389.18.

3 On 26 August 1983, Krupp Stahl AG brought an action under Article 33 and the second paragraph of Article 36 of the ECSC Treaty primarily for a declaration that the abovementioned Commission decision imposing a fine on it was void and, in the alternative, for a reduction of the fine by an appropriate amount. In its judgment of 12 November 1985, the Court declared void Article 1 of the contested decision, reduced the amount of the fine to DM 1 000 000 and ordered the Commission to pay the costs.

4 Following the Court's judgment, Krupp Stahl AG called upon the Commission to pay to it, by way of recoverable costs, *inter alia* an amount of DM 18 964.38, corresponding to the difference between the expenses actually incurred in providing the bank guarantee, namely DM 26 389.18, and the expenses which the applicant would have incurred if the fine had been fixed *ab initio* at DM 1 000 000. Since the Commission refused to pay Krupp Stahl AG the amount of DM 18 964.38, the latter made this application to the Court.

5 The applicant claims that it is incompatible with the principles of the ECSC Treaty that it should have to bear expenses arising out of an unlawful decision of the Commission. It considers that the expenses in question constitute costs which the defendant is directly liable to pay pursuant to the judgment of 12 November 1985 and not harm for which redress may be obtained under Article 34 of the ECSC Treaty. In the applicant's view, the recoverable costs include both expenses incurred in connection with enforcement and expenses incurred in order to avoid enforcement.

6 In a memorandum lodged at the Court Registry on 24 July 1987, the Commission submitted its observations on the application made by Krupp Stahl AG.

7 According to the defendant, the term 'proceedings' in Article 73 of the Rules of Procedure of the Court clearly refers to the proceedings before the Court of Justice whereas the expenses to which the applicant is referring were incurred long before proceedings had commenced before the Court and have no direct connection with those proceedings.

8 In the alternative, the Commission argues that by allowing the applicant to avoid enforcement of the decision imposing a fine on it by providing a bank guarantee if it brought proceedings before the Court, it granted it a privilege which it was not obliged to grant by any legal provision. The applicant could therefore either pay within the time-limit or provide a guarantee. It chose the second alternative. Consequently, the appropriate amount of the guarantee could reasonably be based only on the situation then existing. It should thus be calculated on the basis of the fine imposed by the Commission. The subsequent reduction of the fine by the Court's judgment in no way changes that situation because the judgment cannot make retroactively unlawful a guarantee which could lawfully be required.

9 It should be pointed out that under Article 73 (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.

10 In this case, it must be held that the expenses incurred by the applicant in providing a bank guarantee under the abovementioned circumstances cannot be regarded as expenses incurred 'for the purpose of the proceedings' within the meaning of the abovementioned provision. The fact that the putting-up of the guarantee was one of the two conditions on which the Commission was willing to allow the applicant to avoid execution of the decision imposing the fine, the second being that it should bring an action before the Court of Justice, is not sufficient to render the expenses in question expenses incurred 'for the purpose of the proceedings' in that action.

11 Krupp Stahl's application must therefore be dismissed.

On those grounds,

THE COURT (Fourth Chamber)

hereby orders as follows:

The application is dismissed.

Luxembourg, 20 November 1987.

P. Heim
Registrar

G. C. Rodríguez Iglesias
President of the Fourth Chamber