# JUDGMENT OF THE COURT
25 November 1992 *

In Case C-376/90,

**Commission of the European Communities**, represented by Xavier Lewis and Jürgen Grunwald, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Roberto Hayder, also of the Commission's Legal Service, Wagner Centre, Kirchberg,

applicant,

v

**Kingdom of Belgium**, represented initially by Robert Hoebaer, then by Jan Devadder, Directeur d'Administration, Ministry of Foreign Affairs, External Trade and Cooperation with Developing Countries, assisted by G. Ponnet, Conseiller Adjoint, Ministry of Employment and Labour, with an address for service in Luxembourg at the Belgian Embassy, 4 Rue des Girondins,

defendant,

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions needed to comply with Articles 10(2), 44 and 45 of Council Directive 80/836/Euratom of 15 July 1980 laying down basic safety standards for the health protection of the general public and workers against the

* Language of the case: French.

dangers of ionizing radiation (OJ 1980 L 246, p. 1), the Kingdom of Belgium has failed to fulfil its obligations under that directive,

THE COURT,

composed of: O. Due, President, C. N. Kakouris, G. C. Rodríguez Iglesias and J. L. Murray (Presidents of Chambers), G. F. Mancini, R. Joliet, M. Diez de Velasco, P. J. G. Kapteyn and D. A. O. Edward, Judges,

Advocate General: F. G. Jacobs,
Registrar: H. A. Rühl, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 13 May 1992,

after hearing the Opinion of the Advocate General at the sitting on 30 June 1992,

gives the following

## Judgment

1 By application lodged at the Court Registry on 18 December 1990, the Commission of the European Communities brought an action under Article 141 of the EAEC Treaty for a declaration that, by failing to adopt the laws, regulations and administrative provisions needed to comply with Article 10(2) and Articles 44 and 45 of Council Directive 80/836/Euratom of 15 July 1980 laying down basic safety standards for the health protection of the general public and workers against the dangers of ionizing radiation (OJ 1980 L 246, p. 1), the Kingdom of Belgium had failed to fulfil its obligations under that directive.

2 Directive 80/836 (hereinafter 'the Directive') is intended, as stated in its preamble, to protect the health of workers by providing for measures to prevent exposure and procedures to measure exposure to radiation and to ensure medical surveillance; it also seeks to protect the health of the general public by setting up a system of surveillance, inspection and, in the case of accident, intervention.

3 Article 6 of the Directive lays down the principles on which the limitation of doses is to be based in the case of controllable exposures. Articles 8 and 9 lay down the dose limits for workers who have been exposed.

4 Article 10(2) lays down the dose limits for apprentices and students aged 16 to 18. It provides as follows:

'The dose limits for apprentices and students aged between 16 and 18 years who are training for employment involving exposure to ionizing radiation or who, in the course of their studies, are obliged to use sources, shall be equal to three-tenths of the annual dose limits for exposed workers laid down in Articles 8 and 9'.

5 Article 44 of the Directive is concerned with health surveillance of the general public and determines how the doses received by the general public are to be assessed in the Member States.

6 Finally, Article 45 of the Directive requires the Member States to take measures to ensure the health surveillance of the population and to take action in the event of accident.

7 By letters of 21 May and 10 August 1987, the Belgian Government informed the Commission of the national measures which in its opinion ensured the implementation of the Directive in national law.

8 With respect to Article 10(2) of the Directive, the Belgian Government referred to Article 20.6.2 of the Royal Decree of 28 February 1963 laying down general rules for the protection of the public and of workers against the danger of ionizing radiation (*Moniteur Belge* No 98, p. 5206), as amended by Article 9 of the Royal Decree of 16 January 1987 (*Moniteur Belge* No 50, p. 3714). Pursuant to that provision, the dose limits for apprentices and students aged between 16 and 18 intending to pursue an occupation in the course of which they will be exposed to ionizing radiation or who, by reason of their studies, are obliged to use sources, are one-tenth, rather than three-tenths, of the annual dose limits fixed for persons exposed in the course of their occupations. The limits laid down by the Belgian rules are thus stricter than those envisaged by the Directive.

9 As regards Articles 44 and 45 of the Directive, the Belgian Government referred to several provisions of its national legislation which, in its opinion, generally satisfied the requirements of those articles.

10 Considering that the national measures communicated to it did not correctly transpose Article 10(2) or completely transpose Articles 44 and 45 of the Directive, the Commission initiated against Belgium the procedure under Article 141 of the EAEC Treaty, culminating in the present action.

11 Since, after the application had been lodged, Belgium took the measures necessary to implement in national law Articles 44 and 45 of the Directive, the Commission, by a statement made at the hearing and by a letter of 4 September 1992, withdrew its claims concerning those two provisions and requested that Belgium be ordered to pay the costs, in accordance with Article 69(5) of the Rules of Procedure. The Belgian Government did not make any objection to that request.

12 Reference is made to the Report for the Hearing for a fuller account of the facts, the procedure and the pleas in law and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

13 The Commission submits that Article 10(2) of the Directive does not empower the Member States to fix dose limits which differ from those laid down in that provision, even if they are stricter.

14 The Belgian Government contends that the dose limits laid down by that provision represent the minimum level of protection that the Member States are required to guarantee and that the Member States remain free to fix stricter limits if they see fit.

15 The dispute thus concerns the interpretation of the expression 'dose limits' contained in Article 10(2) of the Directive.

16 The wording of Article 10(2) does not militate in favour of either of the views put forward by the parties.

17 The same applies to the definition of the expression 'dose limits' given in Article 1(b) of the Directive. That provision does no more than indicate that the 'dose limits' are 'the limits laid down in this Directive for the doses resulting from the exposure of exposed workers, apprentices and students and members of the public, excluding the doses resulting from natural background radiation and exposure of individuals as a result of medical examination and treatment undergone by them. The dose limits apply to the sum of the doses received from external exposure during the period considered and the committed doses resulting from the intake of radionuclides during the same period'.

18 The Commission contests the interpretation according to which the dose limits constitute the minimum level of protection, and relies on Article 2(b) of the EAEC Treaty, which entrusts to the Community the task of 'establish [ing] uniform safety standards to protect the health of workers and of the general public'.

19 That argument must be rejected. The uniformity of safety rules does not mean that more stringent protection may not be allowed.

20 It must also be observed that certain background information indicates that the term 'dose limits' used in Article 10(2) of the Directive must be understood as imposing a minimum level of protection.

21 It is apparent from the Communication from the Commission concerning the implementation of Council Directives 80/836 and 84/467/Euratom of 3 September 1984 amending Directive 80/836 (OJ 1984 C 347, p. 9) that the standards laid down in the Directive are based on the recommendations of the International Commission on Radiological Protection ('ICRP').

22 As the Advocate General points out in paragraphs 21 to 28 of his Opinion, it is apparent in particular from ICRP Publication 60 that all ionizing radiation, in excess of natural background radiation, involves dangers for human health and that, whilst it is accepted for economic and social reasons, such acceptance merely represents a balance between its advantages and disadvantages.

23 In those circumstances, the general principles underlying the system of radiological protection recommended by the ICRP are: (a) the justification of any practice involving exposures to ionizing radiation by the benefits which it produces for society, (b) the optimization of protection by keeping the number of people exposed and where there is no certainty in this respect, the likelihood of exposures, as low as reasonably achievable, economic and social factors being taken into account, and (c) the fixing of dose limits.

24 It is apparent from the same ICRP publication that the dose limits represent the value of dose which gives rise to consequences for the health of people exposed to ionizing radiation which is just tolerable and that the choice of dose limits necessarily involves judgments which may be different in different societies (see paragraphs 153 and 169 and 170 of Publication 60).

25 It follows that the dose limits fixed by the ICRP are not absolute values but are published merely for guidance and that the principle underlying them is that of the optimization of protection.

26 There is nothing in the Directive to indicate that the Community legislature departed from the position adopted by the ICRP regarding dose limits or that it left the Member States no discretion to provide for a higher level of protection than that prescribed by the Directive.

27 It must therefore be concluded, having regard to the aim of the Directive and to the principle of optimization of protection, that if the Community legislature had intended to prohibit the introduction by the Member States of a higher level of protection than that provided for by the Directive it would have included an express provision to that effect in the Directive.

28 The interpretation of Article 10(2) of the Directive thus arrived at, according to which 'dose limits' represent a minimum level of protection, is corroborated by the fact that the Directive itself provides for higher levels of protection. It is apparent from Article 7(1), read in conjunction with Article 1(c) of the Directive, that workers under 18 years of age must not be exposed to doses exceeding one-tenth of the annual dose limits laid down for workers.

29 Although under Article 10(2) the level of protection for apprentices and students aged between 16 and 18 years is not so high and that may be justified if there are valid grounds, the fact nevertheless remains that, in the absence of an express provision to the contrary, the Directive cannot be regarded as precluding a Member State from deciding, having regard to all the economic and social factors, not to avail itself of that possibility and to ensure that such students and apprentices enjoy the higher level of protection which the Directive guarantees for workers of the same age.

30 It follows from all the foregoing considerations that the application must be dismissed.

## Costs

31 The Commission withdrew its claims concerning the failure to transpose Articles 44 and 45 of the Directive. Under Article 69(5) of the Rules of Procedure, a party who discontinues or withdraws is to be ordered to pay the costs if they have been applied for in the other party's pleadings. However, at the request of the party who has withdrawn, the costs are to be borne by the other party if that appears justified by the conduct of that party. In the present case, the two heads of claim contained in the application and the subsequent withdrawal of them by the Commission were the result of the conduct of the Kingdom of Belgium (see paragraph 11 above). Consequently, the costs in respect of those heads of claim should be borne by the Kingdom of Belgium.

32 As regards the head of claim which the Commission maintained, Article 69(2) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs. Since the Commission has been unsuccessful, it must be ordered to pay the costs.

33 In view of the foregoing, it is appropriate to order the parties to bear their own costs.

On those grounds,

THE COURT

hereby:

**1. Dismisses the application;**

**2. Order the parties to bear their own costs.**

Due Kakouris Rodríguez Iglesias Murray

Mancini Joliet Diez de Velasco Kapteyn Edward

Delivered in open court in Luxembourg on 25 November 1992.

J.-G. Giraud — O. Due

Registrar — President