JUDGMENT OF THE COURT (Sixth Chamber)
15 October 1998 *

In Case C-283/97,

Commission of the European Communities, represented by Fernando Castillo de la Torre, of its Legal Service, and Olivier Couvert-Castéra, a national civil servant on secondment to that service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Kingdom of Belgium, represented by Jan Devadder, General Adviser in the Ministry of Foreign Affairs, External Trade and Cooperation with Developing Countries, acting as Agent, 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 necessary to comply with Council Directive 92/73/EEC of 22 September 1992 widening the scope of Directives 65/65/EEC and 75/319/EEC on the approximation of provisions laid down by law, regulation or administrative action relating to medicinal products and laying down additional provisions on homeopathic medicinal products (OJ 1992 L 297, p. 8), the Kingdom of Belgium has failed to fulfil its obligations under the EC Treaty and that directive,

* Language of the case: French.

THE COURT (Sixth Chamber),

composed of: P. J. G. Kapteyn, President of the Chamber, G. Hirsch, G. F. Mancini, H. Ragnemalm and R. Schintgen (Rapporteur), Judges,

Advocate General: A. Saggio,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 25 June 1998,

gives the following

Judgment

1 By application lodged at the Court Registry on 1 August 1997, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 92/73/EEC of 22 September 1992 widening the scope of Directives 65/65/EEC and 75/319/EEC on the approximation of provisions laid down by law, regulation or administrative action relating to medicinal products and laying down additional provisions on homeopathic medicinal products (OJ 1992 L 297, p. 8, hereinafter 'the Directive'), the Kingdom of Belgium has failed to fulfil its obligations under the EC Treaty and the Directive.

2 Under the first subparagraph of Article 10(1) of the Directive, Member States were to take the measures necessary to comply with the Directive by 31 December 1993 and forthwith to inform the Commission thereof.

3 Since it had not received any communication relating to the transposition of the Directive into Belgian law and had no information to show that the Kingdom of Belgium had fulfilled that obligation, the Commission gave formal notice to that State by letter of 10 February 1994, calling on it to submit its observations within a period of two months.

4 On 12 June 1995 the Kingdom of Belgium informed the Commission that measures to transpose the Directive were being prepared.

5 However, as it had received no information on the adoption of such measures, the Commission, on 4 March 1997, sent a reasoned opinion to the Kingdom of Belgium, calling on it to comply with its obligations under the Directive within two months of its notification.

6 As the Kingdom of Belgium did no more than send it a draft royal decree intended to transpose the Directive, the Commission brought the present proceedings.

7 The Kingdom of Belgium does not dispute that the Directive was not transposed within the prescribed period.

8 As the Directive was not transposed within the period prescribed therein, the Commission's action must be considered well founded.

9 Accordingly, it must be held that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with the Directive, the Kingdom of Belgium has failed to fulfil its obligations under the Directive.

Costs

10 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Kingdom of Belgium has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1) **Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 92/73/EEC of 22 September 1992 widening the scope of Directives**

65/65/EEC and 75/319/EEC on the approximation of provisions laid down by law, regulation or administrative action relating to medicinal products and laying down additional provisions on homeopathic medicinal products, the Kingdom of Belgium has failed to fulfil its obligations under that directive;

2) Orders the Kingdom of Belgium to pay the costs.

Kapteyn Hirsch Mancini

Ragnemalm Schintgen

Delivered in open court in Luxembourg on 15 October 1998.

R. Grass

Registrar

P. J. G. Kapteyn

President of the Sixth Chamber