JUDGMENT OF THE COURT
3 October 1989 *

In Case 383/85

Commission of the European Communities, represented by its Legal Adviser D. Gouloussis, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Wagner Centre, Kirchberg,

applicant,

v

Kingdom of Belgium, represented by J. Devadder, Assistant Counsellor at the Ministry of Foreign Relations, Foreign 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 measures necessary to comply with the judgment of the Court of 20 October 1981 in Case 137/80 *Commission* v *Kingdom of Belgium* [1981] ECR 2393 the Kingdom of Belgium has failed to fulfil its obligations under Article 171 of the EEC Treaty,

THE COURT

composed of: T. Koopmans, President of Chamber, acting as President, R. Joliet and F. Grévisse (Presidents of Chambers), C. N. Kakouris, F. A. Schockweiler, G. C. Rodríguez Iglesias, and M. Diez de Velasco, Judges,

Advocates General: G. F. Mancini and, following the reopening of the oral procedure, G. Tesauro
Registrars: J. A. Pompe, Deputy Registrar, at the hearing on 7 July 1987, and, following the reopening of the oral procedure, B. Pastor, Administrator, at the hearing on 20 September 1989

* Language of the case: French.

having regard to the Report for the Hearing and further to the hearings on 7 July 1987 and 20 September 1989,

after hearing the Opinions of the Advocates General delivered at the sitting on 20 October 1987, and, following the reopening of the oral procedure, at the sitting on 20 September 1989,

gives the following

Judgment

1 By an application lodged at the Court Registry on 28 November 1985, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that by failing to adopt the measures necessary to comply with the judgment of the Court of 20 October 1981 in Case 137/80 *Commission* v *Kingdom of Belgium* [1981] ECR 2393 the Kingdom of Belgium has failed to fulfil its obligations under Article 171 of the EEC Treaty.

2 In that judgment, the Court declared that the Kingdom of Belgium, by refusing to adopt the measures necessary for the transfer to the Community pension scheme of sums due to be repaid under the Belgian pension scheme or the actuarial equivalent of retirement pension rights acquired thereunder, as provided for by Article 11(2) of Annex VIII to the Staff Regulations of Officials of the European Communities, has failed to fulfil its obligations under the EEC Treaty.

3 Under that provision:

'An official who enters the service of the Communities after leaving the service of a government administration or of a national or international organization or of an undertaking shall have the right, on becoming established with that Community, to pay to it either:

(i) the actuarial equivalent of retirement pension rights acquired by him in the government administration, national or international organization or undertaking; or

(ii) the sums repaid to him from the pension fund of the government administration, organization or undertaking at the date of his leaving its service.

In such case the institution in which the official serves shall, taking into account his grade on establishment, determine the number of years of pensionable service with which he shall be credited under its own pension scheme in respect of the former period of service, on the basis of the amount of the actuarial equivalent or sums repaid as aforesaid.'

4 The Commission requested the Belgian Government to give effect to that provision in the light of the judgment of the Court of 20 October 1981. Since the Belgian Government had not informed it of the measures it had taken to comply with that judgment, the Commission gave it formal notice to fulfil its obligations by letter of 31 July 1984. Since it considered the Belgian Government's reply insufficient, the Commission delivered a reasoned opinion to it on 8 May 1985.

5 Subsequently, the Commission received from the Belgian Government a 'Draft Law establishing certain relationships between Belgian pension schemes and those of bodies subject to public international law'. On 22 November 1985, the Commission submitted its observations on that text to the Belgian Government, stating that even if it was adopted, the Kingdom of Belgium would continue to be in breach of its obligations under Community law. The Commission therefore brought this action.

6 The Commission argues that by failing to adopt the measures necessary to comply with the judgment of the Court of 20 October 1981, the Kingdom of Belgium has failed to fulfil its obligations under Article 171 of the EEC Treaty.

7 Although it accepts that it has failed to fulfil its obligations in the manner stated, the Belgian Government argues that the implementation of the judgment of 20

October 1981 gives rise to considerable difficulties since the concept of transfer of pension rights does not exist in Belgian law. It is thus necessary to adopt, through legislation, new rules appropriate to the various pension schemes existing in Belgium.

8 Reference is made to the Report for the Hearing for a fuller account of the background to the case, the course of the proceedings and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

9 In its judgment of 20 October 1981, the Court decided that the Member State concerned is bound to select and put into effect specific measures which will make possible the exercise of the right granted to officials to transfer rights acquired in national employment to the Communities' pension scheme. It pointed out that the refusal of a Member State to take the measures necessary for the transfer of pension rights would have the effect of depriving officials of the Communities of the very right to exercise the option granted to them by the Staff Regulations.

10 With regard to the Belgian Government's argument that the concept of transfer of pension rights raises a number of problems in relation to the transposition of Article 11(2) of Annex VIII to the Staff Regulations, it should be pointed out that such difficulties cannot expunge Belgium's failure to fulfil its obligations. As the Court has consistently held, a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with obligations resulting from the Treaty. Moreover, a similar justification was rejected by the Court in the judgment of 20 March 1986 in Case 72/85 *Commission* v *Netherlands* [1986] ECR 1219, concerning the specific area of the transfer of officials' pension rights to the Community pension scheme.

11 For those reasons, it must be held that by failing to comply with the judgment of the Court of Justice of 20 October 1981 the Kingdom of Belgium has failed to fulfil its obligations under Article 171 of the Treaty.

Costs

12 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Kingdom of Belgium has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that by failing to comply with the judgment of the Court of Justice of 20 October 1981, the Kingdom of Belgium has failed to fulfil its obligations under Article 171 of the Treaty;

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

Koopmans Joliet Grévisse

Kakouris Schockweiler Rodríguez Iglesias Diez de Velasco

Delivered in open court in Luxembourg on 3 October 1989.

J.-G. Giraud
Registrar

T. Koopmans
President of Chamber
acting as President