JUDGMENT OF THE COURT
28 March 1985 *

In Case 215/83

Commission of the European Communities, represented by its Legal Adviser, J. Griesmar, acting as Agent, with an address for service in Luxembourg at the office of Manfred Beschel, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

Kingdom of Belgium, in the person of the Minister for Foreign Relations, represented by Robert Hoebaer, Director 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 within the prescribed period all the measures necessary to comply fully with Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies (Official Journal 1975, L 48, p. 29), the Kingdom of Belgium has failed to fulfil its obligations under the EEC Treaty,

THE COURT

composed of: G. Bosco, President of Chamber, Acting as President, C. Kakouris (President of Chamber), T. Koopmans, U. Everling, Y. Galmot, R. Joliet and T. F. O'Higgins, Judges,

Advocate General: Sir Gordon Slynn
Registrar: D. Louterman, Administrator

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gives the following

* Language of the Case: French.
** after hearing the Opinion of the Advocate General delivered at the sitting on 6 March 1985,

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By application lodged at the Court Registry on 27 September 1983, the Commission of the European Communities has brought an action under Article 169 of the EEC Treaty for a declaration that by failing to adopt within the prescribed period all the measures necessary to comply fully with Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies, the Kingdom of Belgium has failed to fulfil its obligations under the EEC Treaty.

2 That directive, which was adopted pursuant to Article 100 of the EEC Treaty, has as its purpose, according to the preamble, to ensure 'that greater protection should be afforded to workers in the event of collective redundancies while taking into account the need for balanced economic and social development within the Community' and to promote 'approximation . . . while the improvement is being maintained within the meaning of Article 117 of the Treaty'.

3 The scope of the directive is defined in Article 1 as follows:

'(1) For the purposes of this directive:

(a) "collective redundancies" means dismissals effected by an employer for one or more reasons not related to the individual workers concerned where, according to the choice of the Member States, the number of redundancies is:

either, over a period of 30 days:

(i) at least 10 days in establishments normally employing more than 20 and less than 100 workers;

(ii) at least 10% of the number of workers in establishments normally employing at least 100 but less than 300 workers;

(iii) at least 30 in establishments normally employing 300 workers or more;

or, over a period of 90 days, at least 20, whatever the number of workers normally employed in the establishments in question;

(2) This directive shall not apply to:

(a) collective redundancies effected under contracts of employment concluded for limited periods of time or for specific tasks except where such redundancies take place prior to the date of expiry or the completion of such contracts;

(b) workers employed by public administrative bodies or by establishments governed by public law (or, in Member States where this concept is unknown, by equivalent bodies);

(c) the crews of sea-going vessels;

(d) workers affected by the termination of an establishment's activities where that is the result of a judicial decision.'

4 The directive provides in substance that: 'Where an employer is contemplating collective redundancies, he shall begin consultations with the workers' representatives with a view to reaching an agreement (Article 2 (1)) . . . Employers shall notify the competent public authority in writing of any projected collective redundancies' (Article 3 (1)). It further states that projected redundancies so notified are to 'take effect not earlier than 30 days after the notification . . . ' (Article 4 (1)).

5 Under Article 6 (1), the Member States are required to bring into force the laws, regulations and administrative provisions needed in order to comply with the directive within two years following its notification. Since the directive was notified to the Kingdom of Belgium on 19 February 1975, that period expired on 19 February 1977.

6 The Kingdom of Belgium incorporated Directive 75/129 into national law first by Collective Labour Agreement No 24, concluded on 20 October 1975 within the Conseil National du Travail [National Labour Council] concerning the procedure for informing and consulting workers' representatives in the matter of collective redundancies and given the force of law by the Royal Decree of 21 January 1976 (Moniteur belge of 17 February 1976, p. 1716) and, secondly, by the Royal Decree of 24 May 1976 on collective redundancies (Moniteur belge of 17 September 1976, p. 11663) concerning the notification of projected collective redundancies to the Office National de l'Emploi [National Employment Office].

7 Those measures were amended by Collective Labour Agreement No 24a of 6 December 1983, which was given the force of law by the Royal Decree of 7 February 1984 (Moniteur belge of 22 February 1984, p. 2395), and by the Royal Decree of 26 March 1984 (Moniteur belge of 18 April 1984, p. 5036), respectively.

8 The scope of Collective Labour Agreement No 24, as amended by Collective Labour Agreement No 24a, is defined as follows:

'Article 2. A collective redundancy for the purpose of this collective labour agreement means any dismissal for one or more reasons not related to the individual workers concerned which affects over a period of 60 days:

at least 10 workers in undertakings employing more than 20 and less than 100 workers during the calendar year preceding the dismissal;

at least 10% of the number of workers in undertakings employing on average at least 100 but less than 300 workers during the calendar year preceding the dismissal;

at least 30 workers in undertakings employing on average 300 workers or more during the calendar year preceding the dismissal.'

'Article 3. This agreement shall apply to undertakings which employed on average more than 20 workers during the calendar year preceding the collective redundancy.

...

Article 5. The obligations arising from this collective labour agreement shall not apply to the following categories of workers:

(1) workers employed by undertakings under contracts of employment concluded for limited periods of time or for specific tasks except where such collective redundancies take place prior to the date of expiry or the completion of such contracts;

(2) workers employed by undertakings as port workers, ship repairers, sea fishermen or sailors in the merchant navy;

(3) manual workers employed by undertakings in the building industry.'

9 The scope of the Royal Decree of 24 May 1976, as amended by the Royal Decree of 26 March 1984, is defined by similar provisions:

Article 1. For the purposes of this decree:

...

(3) ' "Collective redundancy" means any dismissal for one or more reasons not related to the individual workers concerned which affects over a period of 60 days:

at least 10 workers in undertakings employing more than 20 and less than 100 workers;

at least 10% of the number of workers in undertakings employing on average at least 100 but less than 300 workers;

at least 30 workers in undertakings employing on average 300 workers or more.'

'Article 2. This decree shall apply to undertakings employing more than 20 workers.'

'Article 3. The following categories of workers shall be excluded from the scope of this decree:

(1) workers employed by undertakings under contracts of employment concluded for limited periods of time or for a clearly-defined piece of work except where such collective redundancies take place prior to the date of expiry of the contract or the completion of the work;

(2) workers employed by undertakings as port workers, ship repairers, sea fishermen or sailors in the merchant navy;

(3) manual workers employed by undertakings in the building industry.'

10 Taking the view that the Belgian provisions did not satisfy all the requirements of Directive 75/129 and following an exchange of letters with the Belgian Government, on 5 July 1982 the Commission delivered a reasoned opinion under the first paragraph of Article 169 of the EEC Treaty. By letter of 13 October 1982, the Belgian Government informed the Commission that 'the Minister for Labour and Employment has decided that legislative action is necessary in that respect and a draft law on collective redundancies is at present being drafted'.

11 Since no further information was forthcoming, the Commission has brought this action against Belgium for failure to fulfil its obligations under the Treaty, seeking essentially a declaration that the aforesaid Belgian rules, which were adopted in order to give effect to Directive 75/129, are narrower in scope than that directive.

12 Since the contested rules were amended during these proceedings in the manner set out above, the Commission has restricted the scope of its action to two complaints, first that Belgian law does not meet the requirements of the directive as regards the protection of workers in the event of collective redundancies arising from the closure of undertakings where such closure did not come about as the result of a judicial decision, and secondly, that certain categories of workers, namely ship repairers, port workers, and manual workers in the building industry are excluded from the benefit of the directive.

Collective redundancies arising from the closure of an undertaking

13 The Commission contends in the first place that Belgian law traditionally draws a distinction between the concepts of closure of an undertaking and collective redundancy. The effect of that distinction is that redundancies arising from the closure of undertakings, whether or not such closure comes about as a result of a judicial decision, are governed not by the legislation adopted in order to give effect to Directive 75/129 but by the special provisions of the Law of 28 June 1966 concerning compensation for workers dismissed as a result of the closure of undertakings (Moniteur belge of 2 July 1966, p. 6879) and of the Royal Decree of 20 September 1967 implementing that law (Moniteur belge of 5 October 1967, p. 10463).

14 The Commission points out that although those provisions, where appropriate in conjunction with those of Collective Labour Agreement No 9 of 9 March 1972, require the employer, in the event of the closure of an undertaking, to provide certain information to the workers' representatives and to the public authorities, the scope of that obligation does not satisfy all the requirements of the directive, particularly those embodied in Articles 3 and 4 concerning what information is to be provided and within what periods.

15 The Belgian Government points out that the distinction drawn in Belgium between the closure of undertakings and collective redundancies has historical origins. In Belgium the position of workers dismissed as a result of the closure of an undertaking has been regulated by legislation since 1960, whilst collective redundancies were regulated for the first time by Collective Labour Agreement No 10 of 8 May 1973 which sought to mitigate the consequences of collective redundancies by the grant of a special allowance, the cost of which was to be borne by the employer.

16 The Belgian Government maintains that the vast majority of closures of undertakings which are likely to lead to collective redundancies come about as a result of a judicial decision, within the meaning of the exception in Article 1 (2) (c) of the directive, and are consequently excluded from the scope of the directive. It also states that Belgian law does not rule out the interpretation that the rules adopted to give effect to the directive also apply in the event of collective redundancies arising from the closure of undertakings. It acknowledges, however, that this point has not yet been decided by the courts.

17 It must be noted that even if the defendant's contention is accepted that in Belgium only a relatively small number of closures of undertakings do not come about as a result of a judicial decision within the meaning of Article 1 (2) (d) of Directive 75/129, that does not relieve the Kingdom of Belgium of its duty to provide workers with the protection envisaged by the directive in the event of collective redundancies arising from such closures.

18 That duty is not fully discharged by the Law of 28 June 1966 concerning compensation for workers dismissed as a result of the closure of undertakings and by the Royal Decree of 20 September 1967 implementing that law. Contrary to the requirements of Articles 3 and 4 of the directive, the above-mentioned provisions do not require the employer to provide information relating to the reasons for the collective redundancies, the number of workers to be dismissed and the period over which the redundancies are to be effected, nor do they stipulate that the collective redundancies envisaged are not to take effect before the expiry of a period of 30 days from the date of notification of the projected redundancy to the competent public authority.

19 As the Belgian Government has itself conceded, Belgian law may be interpreted as meaning that in the event of collective redundancies arising from the closure of an undertaking, only the specific legislation adopted in 1966 and 1967 is applicable, to the exclusion of the subsequent, though general, rules adopted in order to give effect to the directive. It follows that Belgian law does not offer a sufficient degree of legal certainty as regards the protection of workers envisaged by the directive.

20 This complaint must therefore be upheld.

System applicable to certain categories of workers

21 Secondly, the Commission contends that the exclusion of ship repairers, port workers and manual workers in the building industry from the benefit of Directive 75/129, as decided by the Kingdom of Belgium, is contrary to Article 1 which defines the directive's scope. Under Article 1 (2), only collective redundancies affecting certain categories of workers, which are listed exhaustively and which do not include the categories excluded by the Belgian legislation, are not covered by the directive.

22 The Commission acknowledges that the workers falling within the categories at issue can be excluded from the benefit of the directive, pursuant to Article 1 (2) (a) thereof, in so far as they are engaged on a day-to-day basis or their contract of employment is concluded for a limited period or for a clearly-defined piece of work, on condition that, however, the benefit of the directive is extended to them where the collective redundancies take place prior to the date of expiry or the completion of their contract of employment. The Belgian rules therefore wrongly exclude workers in those categories who are engaged for an indefinite period or are affected by collective redundancies arising during the performance of their task. The Commission adds that workers in the 'hard core' of undertakings in the building industry are by definition engaged for an indefinite period and are therefore capable of coming within the scope of the directive.

23 Ship repairers and port workers are, according to the Belgian Government, normally engaged for a specific task or for a clearly-defined piece of work, as provided for by Article 1 (2) (a) of Directive 75/129. However, there is nothing to prevent such workers from entering into contracts of employment for an indefinite period. In its view, their exclusion from the benefit of the directive is justified on two grounds. First of all, they are covered by specific conditions of employment based on their own system for securing their livelihood. Secondly, in view of the small number of such workers engaged under contracts of employment for an indefinite period, the concept of collective redundancy does not apply to them in practice. The exclusion of workers in the building industry is justified, in the Belgian Government's view, by their natural mobility and also by the fact that they are covered by a special social security scheme which is characterized by the grant of various allowances designed to offset the disadvantages resulting from periods of temporary unemployment.

24 It must be noted that, even assuming that the majority of workers belonging to the categories at issue are engaged for a limited period, as the Belgian Government maintains, there is none the less a core of workers who enter into contracts of employment for an indefinite period and to whom the rules of the directive must therefore be applied. Furthermore, the exemption provided for by Article 1 (2) (a) of Directive 75/129 in the case of workers engaged for limited periods of time or for specific tasks cannot be relied upon 'except where such redundancies take place prior to the date of expiry or the completion of such contracts'. The Belgian Government does not deny that Belgian law does not contain any rule corresponding to the directive in that respect.

25 The Court has consistently held that the Member States must fulfil their obligations under Community directives in every respect and may not plead provisions, practices or circumstances existing in their internal legal system in order to justify a failure to comply with those obligations. The Kingdom of Belgium cannot, therefore, plead in its defence that the circumstances at issue are of little practical significance. Nor is its failure to comply fully with Directive 75/129 justified by the fact that Belgian law provides the workers in question with other forms of social security.

26 Consequently this complaint must also be upheld.

27 It must therefore be held that by failing to adopt within the prescribed period all the measures necessary to comply fully with Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies (Official Journal 1975, L 48, p. 29), the Kingdom of Belgium has failed to fulfil its obligations under the EEC Treaty.

Costs

28 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the defendant has been unsuccessful in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that by failing to adopt within the prescribed period all the measures necessary to comply fully with Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies (Official Journal 1975, L 48, p. 29), the Kingdom of Belgium has failed to fulfil its obligations under the EEC Treaty.

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

Bosco Kakouris Koopmans

Everling Galmot Joliet O'Higgins

Delivered in open court in Luxembourg on 28 March 1985.

P. Heim
Registrar

G. Bosco
President of Chamber Acting as President