JUDGMENT OF THE COURT
14 January 1988 *

In Joined Cases 227 to 230/85,

Commission of the European Communities, represented by Jean Amphoux, Legal Adviser, 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,

applicant,

v

Kingdom of Belgium, represented by Robert Hoebaer, a director in the Ministry for Foreign Affairs, Foreign Trade and Cooperation and Development, acting as Agent, with an address for service in Luxembourg at the Belgian Embassy, 4 rue des Girondins, résidence Champagne,

defendant,

APPLICATION for a declaration that the Belgian Government has failed to fulfil its obligations under Article 171 of the EEC Treaty by not adopting the necessary measures to comply with the judgments of the Court of 2 February 1982 in Cases 68 to 71/81 *Commission* v *Kingdom of Belgium* [1982] ECR 153, 163, 169 and 175),

THE COURT

composed of: G. Bosco, President of Chamber, acting as President, G. C. Rodríguez Iglesias, President of Chamber, T. Koopmans, U. Everling, C. Kakouris, R. Joliet and F. Schockweiler, Judges,

Advocate General: G. F. Mancini
Registrar: B. Pastor, Administrator

having regard to the Report for the Hearing and further to the hearing on 24 June 1987,

* Language of the Case: French.

after hearing the Opinion of the Advocate General delivered at the sitting on 10 November 1987,

gives the following

Judgment

1 By applications lodged at the Court Registry on 23 July 1985, the Commission of the European Communities brought four actions for a declaration under Article 169 of the EEC Treaty that by not complying with the judgments of the Court of 2 February 1982 (Cases 68 to 71/81 *Commission* v *Kingdom of Belgium* [1982] ECR 153, 163, 169 and 175 respectively), the Kingdom of Belgium has failed to fulfil its obligations under Article 171 of the EEC Treaty.

2 In the aforesaid judgments the Court declared that by not adopting within the prescribed period the provisions needed to comply with:

(i) Council Directive 78/176/EEC of 20 February 1978 on waste from the titanium dioxide industry (Official Journal 1978, L 54, p. 19),

(ii) Council Directive 75/442/EEC of 15 July 1975 on waste (Official Journal 1975, L 194, p. 39),

(iii) Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils (Official Journal 1975, L 194, p. 23), and

(iv) Council Directive 76/403/EEC of 6 April 1976 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (Official Journal 1976, L 108, p. 41),

the Kingdom of Belgium had failed to fulfil its obligations under the Treaty.

3 Having received no information from the Belgian Government on the measures adopted to comply with those judgments, on 16 April 1984 the Commission sent it four letters of formal notice pursuant to Article 169 of the EEC Treaty requesting

it to submit its observations. Since those letters remained unanswered, on 21 December 1984 the Commission delivered four reasoned opinions which themselves received no response. It then brought the present actions.

4 Reference is made to the Report for the Hearing for the background to the dispute 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.

5 The Commission claims that the fact that the Belgian Government has not adopted the measures needed to implement the directives in question within the Belgian national legal system, more than three years after the judgments were delivered on 2 February 1982, constitutes an infringement of the obligation imposed upon it by Article 171 of the EEC Treaty to adopt the necessary measures to comply with those judgments.

6 The Belgian Government states that the delay is the result of special difficulties arising out of the transfer of a substantial number of powers to the new regional institutions in Belgium created by the loi spéciale de réformes institutionnelles (Special Law on Institutional Reform) of 8 August 1980.

7 In reply to questions asked by the Court, the Belgian Government stated that the national authorities had power to implement only part of Directive 78/176/EEC. At the hearing the Agent for the Belgian Government stated that a Royal decree on the discharge of waste water into surface waters had been adopted on 4 August 1986 and therefore at the level of the powers of the national authorities all the measures had been adopted to comply with the aforesaid judgments.

8 In so far as the regional level was concerned the Belgian Government informed the Court that on 2 July 1981 the Flemish region had adopted a decree on the management of waste and had issued a series of implementing decrees which covered the four directives. However, the Belgian Government admitted that the directives had still not been wholly implemented in the Walloon region and the Brussels region in spite of the efforts made by those two regions to that end. In that connection, the Agent of the Belgian Government stated at the hearing that

the Belgian legislation did not empower the State to compel the regions to implement Community legislation or to substitute itself for them and directly implement the directives in the event of persistent delay on their part.

9 As the Court stated in its judgments of 25 May 1982 (Cases 96/81 and 97/81 *Commission* v *Netherlands* [1982] ECR 1791 and 1819 respectively), each Member State is free to delegate powers to its domestic authorities as it considers fit and to implement directives by means of measures adopted by regional or local authorities. That division of powers does not however release it from the obligation to ensure that the provisions of the directive are properly implemented in national law.

10 Furthermore, the Court has consistently held that 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 its obligations under Community law.

11 In its judgments of 2 February 1982 the Court held that by not adopting within the prescribed periods the provisions needed to comply with the directives, the Kingdom of Belgium had failed to fulfil its obligations under the Treaty. The Kingdom of Belgium was required under Article 171 of the Treaty to take the necessary measures to comply with the judgments of the Court. Article 171 does not specify the period within which such measures must be adopted. However, action to comply with a judgment must be commenced immediately and must be completed as soon as possible, which was not the case here since several years have passed since the judgments in question were delivered.

12 It must therefore be held that the Kingdom of Belgium has failed to fulfil its obligations under the Treaty since it has still not adopted, despite the judgments of the Court of 2 February 1982 (Cases 68 to 71/81 *Commission* v *Belgium* [1982] ECR 153, 163, 169 and 175 respectively), the necessary measures to implement Council Directives 78/176/EEC of 20 February 1978 on waste from the titanium dioxide industry (Official Journal 1978, L 54, p. 19), 75/442/EEC of 15 July 1975 on waste (Official Journal 1975, L 194, p. 39), 75/439/EEC of 16 June 1975 on the disposal of waste oils (Official Journal 1975, L 194, p. 23) and 76/403/EEC of 6 April 1976 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (Official Journal 1976, L 108, p. 41).

Costs

13 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 been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that the Kingdom of Belgium has failed to fulfil its obligations under the Treaty since it has still not adopted, despite the judgments of the Court of 2 February 1982 (Cases 68 to 71/81 Commission v Belgium [1982] ECR 153, 163, 169 and 175, respectively), the necessary measures to implement Council Directives 78/176/EEC of 20 February 1978 on waste from the titanium dioxide industry (Official Journal 1978, L 54, p. 19), 75/442/EEC of 15 July 1975 on waste (Official Journal 1975, L 194, p. 39), 75/439/EEC of 16 June 1975 on the disposal of waste oils (Official Journal 1975, L 194, p. 23) and 76/403/EEC of 6 April 1976 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (Official Journal 1976, L 108, p. 41).

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

Bosco Rodríguez Iglesias Koopmans

Everling Kakouris Joliet Schockweiler

Delivered in open court in Luxembourg on 14 January 1988.

P. Heim
Registrar

A. J. Mackenzie Stuart
President