JUDGMENT OF THE COURT
2 FEBRUARY 1982 [1]

Commission of the European Communities v Kingdom of Belgium

(Failure of a State to fulfil its obligations — Non-implementation of a directive on waste)

Case 69/81

Member States — Obligations — Implementation of directives — Failure to comply — Justification — Not possible
(EEC Treaty, Art. 169)

A Member State may not plead provisions, practices or circumstances in its internal legal system to justify failure to comply with obligations under Community directives.

In Case 69/81

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, René-Christian Béraud, acting as Agent, with an address for service in Luxembourg at the office of Oreste Montalto, a member of the Legal Department of the Commission, 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,

defendant,

1 — Language of the Case: French.

APPLICATION for a declaration that by not implementing within the prescribed period Council Directive 75/442 of 15 July 1975 on waste (Official Journal L 194, p. 39), the Kingdom of Belgium has failed to fulfil its obligations under the Treaty,

THE COURT,

composed of: J. Mertens de Wilmars, President, G. Bosco, A. Touffait and O. Due (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe, T. Koopmans, U. Everling, A. Chloros and F. Grévisse, Judges,

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure, the claims, submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

1. Council Directive 75/442 of 15 July 1975 on waste (Official Journal L 194, p. 39) is one of various Community measures which are based on Articles 100 and 235 of the EEC Treaty and come within the Community policy on the protection of the environment.

The essential objective of the directive is the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste. The Member States are to adopt the appropriate measures to encourage the prevention, recycling and processing of waste, the extraction of raw materials and energy therefrom, and any other method enabling waste to be re-used.

Article 13 of the directive provides that the Member States are to bring into

force the measures needed in order to comply with the directive within twenty-four months of its notification and are forthwith to inform the Commission thereof. Since the directive was notified to the Kingdom of Belgium on 18 July 1975, that period expired on 18 July 1977.

2. The Commission took the view that provisions adapting Belgian law were necessary but since it had not been informed that such provisions had been adopted it invited the Belgian Government by letter dated 9 January 1979, pursuant to the first paragraph of Article 169 of the Treaty, to submit its observations within a period of two months.

By a letter dated 13 July 1979 the Belgian Government informed the Commission essentially that laws or regulations already existed which made it possible to implement certain provisions of the directive but its full implementation was impeded by difficulties arising from "the continuing uncertainty as to the exact nature of the devolution of powers which will result from the institutional reforms which have been undertaken" and "the considerable arrears of work which have built up in the Parliament".

On 23 July 1979 the Commission delivered the reasoned opinion provided for in the first paragraph of Article 169 of the Treaty. That opinion, which was forwarded to the Belgian Government by letter dated 27 July 1979, invited the Kingdom of Belgium to comply therewith within a period of two months.

By letter dated 14 November 1979 the Belgian Government confirmed that the fact that the directive had not been incorporated into national law was the indirect result of the fundamental reform of the institutions which was in progress in Belgium and it requested an additional period of one year.

Since the Commission received no further communication from the Belgian authorities on the subject it brought this action which was lodged at the Court Registry on 3 April 1981.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The *Commission* claims that the Court should:

1. Declare that by failing to adopt within the prescribed period the provisions needed in order to comply with Council Directive 75/442 of 15 July 1975 on waste, the Kingdom of Belgium has failed to fulfil one of its obligations under the Treaty;

2. Order the Kingdom of Belgium to pay the costs.

The *Kingdom of Belgium* has not presented any formal conclusions.

III — Submissions and arguments of the parties

The *Commission* argues that the binding nature of directives means that the Member States must comply with the time-limits prescribed therein for bringing into force provisions adapting national law. In particular, compliance with the provisions of the Treaty or secondary Community law cannot depend on difficulties encountered in the

alteration of the distribution of powers between central government and the regional or local authorities. There is an infringement of the Treaty by a Member State whatever the institution of the State whose acts and omissions have led to the failure to perform the obligation. Those principles are confirmed by now well-established case-law of the Court.

The *Belgian Government* observes that there are already measures contained in the Règlement Général pour la Protection du Travail [General Regulation for the Protection of Employment] which partially implement the directive in question but its complete implementation is impeded by difficulties connected with the fundamental reform of the institutions in progress in Belgium. Implementation of the directive depends on the powers not only of the national institutions but also of the regional institutions and although their powers have been established by the special Law on institutional reforms of 8 August 1980 the regional authorities are not yet functioning. It is an exceptional situation which stems from the impossibility of adopting new rules before the new legislative powers of a federal nature are established and come into operation.

IV — Oral procedure

At the sitting on 12 November 1981 the Commission, represented by its legal adviser, René-Christian Béraud, and the Kingdom of Belgium, represented by its Agent, Robert Hoebaer, presented oral argument.

The Advocate General delivered his opinion at the sitting on 2 December 1981.

Decision

1 By application lodged at the Court Registry on 3 April 1981 the Commission of the European Communities brought an action for a declaration under Article 169 of the EEC Treaty that by failing to adopt within the prescribed period the provisions needed in order to comply with Council Directive 75/442 of 15 July 1975 on waste (Official Journal L 194, p. 39), the Kingdom of Belgium has failed to fulfil its obligations under the third paragraph of Article 189 of the Treaty.

2 Article 13 of the directive provides that the Member States are to bring into force the measures needed in order to comply with the directive within twenty-four months of its notification, which period expired in this case on 18 July 1977.

3 The Belgian Government has stated that the directive has already been the subject of certain measures which implement it in part. Nevertheless it does not deny that the Kingdom of Belgium has not fulfilled its obligations to implement the directive fully within the prescribed period.

4 Essentially, the Belgian Government justifies its failure by the fact that important institutional reforms concerning the redistribution of powers and responsibilities between the national and regional institutions are in progress, especially in the are covered by the directive in question. So long as the new institutions are not yet in a position to exercise their powers it will not be possible, according to the Belgian Government, to implement the directive fully.

5 Although those circumstances may explain the difficulty in implementing the directive they do not expunge the failure of the Kingdom of Belgium to fulfil its obligations. According to established case-law of the Court a Member State may not plead provisions, practices or circumstances in its internal legal system to justify failure to comply with obligations under Community directives.

6 It should also be pointed out that, in order that the exceptional situation referred to by his Government should be taken into account, the Belgian Minister for Public Health and the Environment, in answer to the reasoned opinion provided for in the first paragraph of Article 169 of the Treaty, requested the Commission on 14 November 1979 to grant to the Kingdom of Belgium an additional period of one year to adopt the measures of national law needed to implement the directive. Those measures ought to have entered into force in July 1977, and in fact it was only on 3 April 1981 that the Commission brought the matter before the Court under the second paragraph of Article 169 of the Treaty.

7 It must therefore be held that by not adopting within the prescribed period the provisions needed to comply with Council Directive 75/442 of 15 July 1975, the Kingdom of Belgium has failed to fulfil its obligations under the Treaty

Costs

8 Article 69 (2) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs if they have been asked for. Since the defendant has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that by not adopting within the prescribed period the provisions needed to comply with Council Directive 75/442 of 15 July 1975 on waste (Official Journal L 194, p. 39), the Kingdom of Belgium has failed to fulfil its obligations under the Treaty;**

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

Mertens de Wilmars Bosco Touffait

Due Pescatore Mackenzie Stuart O'Keeffe

Koopmans Everling Chloros Grévisse

Delivered in open court in Luxembourg on 2 February 1982.

A. Van Houtte
Registrar

G. Bosco
President of the First Chamber,
acting as President

OPINION OF MR ADVOCATE GENERAL CAPOTORTI

(see Case 68/81, p. 159)