JUDGMENT OF THE COURT (Fourth Chamber)
29 January 2004 *

In Case C-218/02,

Commission of the European Communities, represented initially by T.F. Cusack, and, subsequently, X. Lewis, acting as Agents, with an address for service in Luxembourg,

applicant,

v

United Kingdom of Great Britain and Northern Ireland, represented by K. Manji, acting as Agent,

defendant,

* Language of the case: English.

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 96/29/Euratom laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation (OJ 1996 L 159, p. 1) in its whole territory, or in any event by failing to communicate them to the Commission, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive,

THE COURT (Fourth Chamber),

composed of: C.W.A. Timmermans (Rapporteur), acting for the President of the Fourth Chamber, A. La Pergola and S. von Bahr, Judges,

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

having regard to the report of the Judge-Rapporteur,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By application lodged at the Court Registry on 12 June 2002, the Commission of the European Communities brought an action under the second paragraph of Article 141 EA for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation (OJ 1996 L 159, p. 1; 'the Directive') in its whole territory, or in any event by failing to communicate those provisions to the Commission, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive.

Relevant provisions

The EAEC Treaty

2 Article 2(b) EA states that the Community must, as provided in the EAEC Treaty, 'establish uniform safety standards to protect the health of workers and of the general public and ensure that they are applied'.

3 In this context, the first paragraph of Article 30 EA requires in particular the establishment in the Community of 'basic standards for the protection of the health of workers and the general public against the dangers arising from ionising radiations'.

4 As provided in the second paragraph of that article, the expression 'basic standards' means:

'(a) maximum permissible doses compatible with adequate safety;

(b) maximum permissible levels of exposure and contamination;

(c) the fundamental principles governing the health surveillance of workers'.

5 Article 31 EA lays down the procedure for working out and adopting those basic standards, whilst the first paragraph of Article 32 EA enables them to be revised or updated, at the request of the Commission or of a Member State, in accordance with the procedure laid down in Article 31 thereof.

6 Finally, Article 33 EA provides:

'Each Member State shall lay down the appropriate provisions, whether by legislation, regulation or administrative action, to ensure compliance with the basic standards which have been established and shall take the necessary measures with regard to teaching, education and vocational training.

The Commission shall make appropriate recommendations for harmonising the provisions applicable in this field in the Member States.

To this end, the Member States shall communicate to the Commission the provisions applicable at the date of entry into force of this Treaty and any subsequent draft provisions of the same kind.

Any recommendations the Commission may wish to issue with regard to such draft provisions shall be made within three months of the date on which such draft provisions are communicated.'

The Directive

7 The Directive, which was adopted on the basis of Articles 31 and 32 of the EAEC Treaty, has the objective of revising the existing basic standards by taking account of the development of scientific knowledge concerning radiation protection. As stated in the ninth recital in its preamble, the Directive provides in particular that the Member States are required to submit certain practices involving a hazard from ionising radiation to a system of reporting and prior authorisation or to prohibit such practices. As set out in the 14th recital to the Directive, the Member States are also called on to strengthen their ties of cooperation with other Member States and those with third countries in order to prepare for the likelihood of potential radiological emergencies and to facilitate the management of such situations should they arise.

8 As regards implementation of the Directive in national law, Article 55 thereof provides:

'1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 13 May 2000. They shall forthwith inform the Commission thereof.

...

2. Member States shall communicate to the Commission the text of the main laws, regulations or administrative provisions which they adopt in the field governed by this Directive.'

Pre-litigation procedure

9 By letters dated 20 December 1999 and 17 May 2000 respectively, the United Kingdom authorities communicated to the Commission three instruments intended to transpose the Directive into national law, namely the Ionising Radiations Regulations 1999, the Radioactive Substances (Basic Safety Standards) (Scotland) Regulations 2000 and the Radioactive Substances (Basic Safety Standards) (Scotland) Direction 2000.

10 Taking the view, on examining those instruments, that the Directive had not been fully transposed within the prescribed period since not only did the implementing measures communicated not cover all the provisions of the Directive, in particular Article 38 relating *inter alia* to the approved dosimetric services, Article 42 relating to the protection of air crew, and Articles 48 to 53 concerning intervention in cases of radiological emergency or of lasting exposure, but also those measures did not apply to Northern Ireland or Gibraltar, the Commission initiated the procedure provided for in Article 141 EA. After having given the United Kingdom formal notice to submit its observations, on 9 February 2001 the Commission issued a reasoned opinion calling on it to take the measures necessary to comply with it within a period of two months from its notification.

11 In the course of the pre-litigation procedure, the United Kingdom authorities notified the Commission of several further provisions to implement the Directive which included, in particular, measures relating to the protection of air crew and to cases of radiological emergency and those concerning the implementation of the Directive in Northern Ireland, but none of these covered the implementation of the Directive in Gibraltar. In June 2002 the Commission had only two pieces of draft legislation in that connection, notified by the United Kingdom authorities on 30 April 2001: drafts of the Ionizing Radiation Regulations (2001) and of the Radiation (Emergency Preparedness and Public Information) Regulations (2001).

12 In those circumstances, considering that those provisions achieved only a partial implementation of the Directive since they did not apply to the whole of the United Kingdom, the Commission decided to bring the present action.

The failure to fulfil obligations

13 The United Kingdom does not dispute that on expiry of the period laid down in the reasoned opinion it had not yet taken the measures necessary to transpose the Directive in Gibraltar.

14 Since it is settled case-law that that time-limit is decisive when establishing whether a Member State has failed to fulfil its obligations (see, in particular, Case C-173/01 *Commission* v *Greece* [2002] ECR I-6129, paragraph 7, and Case C-483/01 *Commission* v *France* [2003] ECR I-4961, paragraph 22) the action brought by the Commission must be considered well founded.

15 It must therefore be held that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with the Directive in its whole territory, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive.

Costs

16 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 United Kingdom has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Fourth 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 96/29/Euratom laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation in its whole territory, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive;**

2. **Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.**

Timmermans La Pergola von Bahr

Delivered in open court in Luxembourg on 29 January 2004.

R. Grass

Registrar

V. Skouris

President