OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 20 October 1987 *

Mr President,
Members of the Court,

1. On 20 October 1981 the Court gave judgment in the action brought in Case 137/80 by the Commission of the European Communities against the Kingdom of Belgium. It held that 'by refusing to adopt the measures necessary for the transfer to the Community pension scheme of sums due to be repaid in respect of or the actuarial equivalent of retirement pension rights acquired under the Belgian pension scheme, as provided for by Article 11(2) of Annex VIII to the Staff Regulations' Belgium had failed to fulfil its obligations under the EEC Treaty (*Commission* v *Belgium* [1981] ECR 2393, paragraph 20).

In its application of 28 November 1985, the Commission seeks a declaration from the Court that Belgium has failed to comply with that judgment, thereby failing to fulfil its obligations under Article 171 of the EEC Treaty.

2. In the proceedings, the Belgian Government has not denied its failure to fulfil the obligations in question, but has justified its conduct on the ground that a legitimate interpretative doubt was raised by the national legislature. It points out, in particular, that the Belgian social security system has never made any provision for the transfer of pension rights. Accordingly, in order to confer the right to effect such transfers on Belgian citizens employed by the Communities it was necessary to lay down specific rules which would *inter alia* have to take account of the different pension schemes existing in Belgium. To that end, in June 1985 the Belgian Government submitted to Parliament a draft law, the text of which was submitted to the Commission for its comments.

In the mean time, however, a Luxembourg court had requested the Court of Justice to determine, by way of a preliminary ruling, whether Article 11 of Annex VIII to the Staff Regulations conferred upon 'European officials the right to choose freely and according to their own interests between the two methods of transfer of rights under national schemes, even if the alternative chosen by the official either is not provided for by the national law to which the national social security institution is subject or is incompatible with the system by which the Luxembourg schemes are financed' (Case 64/85 *Watgen* v *Caisse de pension des employés privés* [1988] ECR 2435). In those circumstances, the defendant contends, the Belgian Parliament decided to defer the adoption of the draft law submitted to it pending the Court's final judgment in that case.

3. Those arguments, some of which had already been put forward by the Belgian Government in Case 137/80, cannot be accepted. I would recall that, 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 a Community

* Original language: Italian.

regulation' (most recently in its judgment of 20 March 1986 in Case 72/85 *Commission* v *Netherlands* [1986] ECR 1219, at paragraph 19). It follows that interpretative doubts may not be pleaded either. In fact, as such doubts are a subjective factor, they constitute even less of an obstacle to the implementation of the provision in question than the factors listed by the Court.

Nor can a different conclusion be drawn from the fact that the point in doubt — which amongst other things relates to national legislation which is quite different from Belgian legislation — has been referred to the Court in proceedings under Article 177 of the EEC Treaty. Clearly, the fact that such proceedings are in progress cannot affect a decided case either by weakening its authority or by suspending its validity. In other words, to describe the ruling to be given by the Court of Justice in response to the question submitted by the Luxembourg court as 'final', and thereby to downgrade the judgment which the Court has already given in relation to Belgium to 'provisional', is contrary to a fundamental principle of any legal system.

Finally, I might add that in this case there was no foundation for any puzzlement concerning the scope of the contested provision. In its judgment of 20 October 1981, the Court held that Article 11 'seeks . . . to ensure that Community officials may retain the rights which they have acquired in their own State . . . and also to ensure that account may be taken of those rights by the pension scheme to which the persons concerned are affiliated at the end of their careers, in this case the Community scheme . . . For those reasons [the provision in question] is intended to confer upon officials a right . . . the exercise of [which] would be jeopardized if, as the Belgian Government maintains, the Member States were to retain the right to refrain from adopting the measures necessary in order to give effect to the provision'. Finally, the Court came to the conclusion that the Belgian State 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 . . . '.

Faced with that unequivocal statement, there was only one course of action available to the Kingdom of Belgium: it ought promptly to have taken measures of the kind indicated by the Court. Instead, it took no such measures, with the result that no Community official of Belgian nationality has yet been able to take advantage of the right conferred upon him by Annex VIII to the Staff Regulations.

4. In those circumstances it must be held that, by failing to comply with the judgment of the Court of 20 October 1981 in Case 137/80, the Kingdom of Belgium has failed to fulfil its obligations under Article 171 of the EEC Treaty. I therefore suggest that the Court uphold the application submitted by the Commission of the European Communities and, pursuant to Article 69(3) of the Rules of Procedure, order the defendant to pay the costs.