

СЪД НА ЕВРОПЕЙСКИТЕ ОБЩНОСТИ
TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS
SODNÍ DVŮR EVROPSKÝCH SPOLEČENSTVÍ
DE EUROPÆISKE FÆLLESSKABERS DOMSTOL
GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN
EUROOPA ÜHENDUSTE KOHUS
ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT BHREITHIÚNAIS NA gCOMHPHOBAL EORPACH
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE
EIROPAS KOPIENU TIESA



LUXEMBOURG

EUROPOS BENDRIŲ TEISINGUMO TEISMAS
AZ EURÓPAI KÖZÖSSÉGEK BÍRÓSÁGA
IL-QORTI TAL-ĠUSTIZZJA TAL-KOMUNITAJET EWROPEJ
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS
CURTEA DE JUSTIȚIE A COMUNITĂȚILOR EUROPENE
SÚDNY DVOR EURÓPSKÝCH SPOLOČENSTEV
SODISČE EVROPSKIH SKUPNOSTI
EUROOPAN YHTEISÖJEN TUOMIOISTUIN
EUROPEISKA GEMENSKAPERNAS DOMSTOL

JUDGMENT OF THE COURT (Eighth Chamber)

18 July 2007 *

(Failure of a Member State to fulfil obligations – Directive 96/29/Euratom –
Protection of the health of workers and the general public against the dangers
from ionising radiation – Failure to transpose fully within the prescribed period)

In Case C-155/06,

ACTION under the second paragraph of Article 141 EA for failure to fulfil
obligations, brought on 23 March 2006,

Commission of the European Communities, represented by M. Patakia and
D. Lavrančević, acting as Agents, with an address for service in Luxembourg,

applicant,

v

United Kingdom of Great Britain and Northern Ireland, represented by
C. White, acting as Agent,

defendant,

THE COURT (Eighth Chamber),

composed of E. Juhász (Rapporteur), President of the Chamber, R. Silva de
Lapuerta and G. Arestis, Judges,

Advocate General: J. Mazák,

Registrar: R. Grass,

having regard to the written procedure,

* Language of the case: English.

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

gives the following

Judgment

- 1 By its application, the Commission of the European Communities requests the Court to declare that, by not adopting provisions to allow for appropriate intervention in all situations of lasting exposure to ionising radiation resulting from the after-effects of a radiological emergency or a past practice, the United Kingdom of Great Britain and Northern Ireland has failed to adopt all the final measures necessary to fulfil its obligations under Article 53 of 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 ionising radiation (OJ 1996 L 159, p. 1; 'the Directive').

Legal context

Community legislation

- 2 The Directive lays down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation.
- 3 By virtue of its Articles 2(3) and 48, the Directive and, in particular, Title IX thereof, entitled 'Intervention', apply to intervention in any cases of radiological emergencies or in cases of lasting exposure resulting from the after-effects of a radiological emergency or a past or old practice or work activity.
- 4 Article 53 of the Directive, in the said Title IX, Section II, entitled 'Intervention in cases of lasting exposure', provides:

'Where the Member States have identified a situation leading to lasting exposure resulting from the after-effects of a radiological emergency or a past practice, they shall, if necessary and to the extent of the exposure risk involved, ensure that:

- (a) the area concerned is demarcated;
- (b) arrangements for the monitoring of exposure are made;
- (c) any appropriate intervention is implemented, taking account of the real characteristics of the situation;
- (d) access to or use of land or buildings situated in the demarcated area is regulated.'

- 5 Under Article 55 of the Directive, Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive before 13 May 2000 and forthwith inform the Commission thereof.

National legislation

- 6 The Directive was transposed into United Kingdom law by the Ionising Radiations Regulations 1999. In addition, its implementation follows also from the application of the Radioactive Substances Act 1993, as amended by the Environment Act 1995, and of the Nuclear Installations Act 1965.

Pre-litigation procedure

- 7 The Commission received a complaint which drew its attention to the disparities in the United Kingdom between the Directive's requirements and its national implementing legislation.
- 8 Since it considered that the latter did not comply fully with the requirements of Article 53 of the Directive, the Commission commenced the procedure for failure to fulfil obligations, under Article 141 EA, against the United Kingdom by sending it, on 27 June 2002 a letter of formal notice. By letter of 29 August 2002, the United Kingdom authorities confirmed that they had started to develop a new regulatory regime specifically for radioactively contaminated land, in order to implement fully Article 53 of the Directive.
- 9 On 22 December 2004, the Commission sent the United Kingdom a reasoned opinion, in which it complained that the latter had not transposed Article 53 of the Directive in its entirety and requested that Member State to adopt the measures necessary to comply with the opinion within two months of receipt thereof.
- 10 On 21 February 2005, the United Kingdom authorities replied to that reasoned opinion, stating that they were fully committed to fulfilling the obligations arising from Article 53 of the Directive and annexing to their reply a timetable for transposition.
- 11 In accordance with Article 33 EA, the United Kingdom Government notified the Commission, by letters of 2 September, 18 November and 1 December 2005, of the draft legislation intended to transpose Article 53 of the Directive in England, Scotland and Wales.
- 12 Since it considered that the United Kingdom had not complied fully with the requirements of the Directive and that the failure to fulfil its obligations was, in part, continuing, the Commission brought the present action.

The action

Arguments of the parties

- 13 The Commission submits that Article 53 of the Directive imposes on the Member States an obligation to intervene in cases of lasting exposure to ionising radiation. Such intervention includes, if necessary and to the extent of the risk of exposure involved, demarcation of the area concerned; the making of arrangements for monitoring exposure; implementation of any appropriate intervention, and regulation of access to or use of land or buildings situated in the demarcated area.
- 14 It claims that the legislation in force in the United Kingdom as a whole does not fully implement the Directive, because it does not provide for the adoption of measures in all situations of lasting exposure resulting from the after-effects of a past practice.
- 15 The Commission states that the measures introduced by the national legislation implementing Article 53 of the Directive are required in cases of lasting exposure resulting from the exercise of activities regulated by licence. However, no such measures are provided for in respect of radioactively contaminated land where the contamination arises from a past practice for which no licence had been issued.
- 16 The United Kingdom Government recognises that there is a gap in the national legislation implementing the Directive and admits the validity of the Commission's claims. It adds that, although the regulations already notified to the Commission do implement, in part, Article 53 of the Directive, full transposition of that article necessitates the adoption of further legislation which is in the process of being drawn up.

Findings of the Court

- 17 Article 53 of the Directive imposes on the Member States the obligation to intervene where they have identified a situation leading to lasting exposure to ionising radiation resulting from the after-effects of a radiological emergency or a past practice.
- 18 As the Commission observed, the national legislation transposing Article 53 of the Directive into the law of the United Kingdom, as it was in force at the expiry of the period of two months laid down in the reasoned opinion, imposes such an obligation to intervene only if a situation of radioactive contamination results from a present or past activity for the exercise of which a licence was granted. By contrast, that legislation does not provide for the adoption of the measures referred to in Article 53 in circumstances in which radioactive contamination results from a past practice which was not the subject of such a licence.
- 19 It follows that, contrary to the requirements of Article 53 of the Directive, the national legislation does not require the adoption of the measures provided for in

that article in all cases where a situation has been identified as leading to lasting exposure resulting from the after-effects of a radiological emergency or a past practice.

- 20 Moreover, the United Kingdom admits that, at the expiry of the period laid down in the reasoned opinion, Article 53 of the Directive had not been fully transposed into its law.
- 21 Accordingly, the Commission's action must be held to be well founded.
- 22 Consequently, it must be declared that, by not adopting, within the prescribed period, all the laws, regulations and administrative provisions necessary to allow for appropriate intervention in all situations leading to lasting exposure to ionising radiation resulting from the after-effects of a radiological emergency or a past practice, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 53 of the Directive.

Costs

- 23 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 against the United Kingdom and the latter has been unsuccessful, it must be ordered to pay the costs.

On those grounds, the Court (Eighth Chamber) hereby:

1. **Declares that, by not adopting, within the prescribed period, all the laws, regulations and administrative provisions necessary to allow for appropriate intervention in all situations leading to lasting exposure to ionising radiation resulting from the after-effects of a radiological emergency or a past practice, the United Kingdom of Great Britain and Northern Ireland failed to fulfil its obligations under Article 53 of 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 ionising radiation;**
2. **Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.**

[signatures]