

**Judgment of the Court of 17 December 1980. - Commission of the European Communities v Kingdom of Belgium. - - Case 149/79.**

*IN CASE 149/79*

COMMISSION OF THE EUROPEAN COMMUNITIES , REPRESENTED BY ITS LEGAL ADVISER , JEAN AMPHOUX , ACTING AS AGENT , ASSISTED BY LOUIS DUBOUIS , A PROFESSOR AT THE FACULTY OF LAW AND POLITICAL SCIENCE OF THE UNIVERSITY OF AIX-MARSEILLE III , WITH AN ADDRESS FOR SERVICE IN LUXEMBOURG AT THE OFFICE OF ITS LEGAL ADVISER , MARIO CERVINO , JEAN MONNET BUILDING , KIRCHBERG ,

APPLICANT ,

V

KINGDOM OF BELGIUM , REPRESENTED BY THE MINISTER FOR FOREIGN AFFAIRS , WHOSE AGENT IS ROBERT HOEBAER , DIRECTOR AT THE MINISTRY OF FOREIGN AFFAIRS , FOREIGN TRADE AND CO-OPERATION WITH THE DEVELOPING COUNTRIES , WITH AN ADDRESS FOR SERVICE IN LUXEMBOURG AT THE BELGIAN EMBASSY , RESIDENCE CHAMPAGNE , 4 RUE DES GIRONDINS ,

DEFENDANT ,

SUPPORTED BY

THE FEDERAL REPUBLIC OF GERMANY , REPRESENTED BY MARTIN SEIDEL AND EBERHARDT GRABITZ , ACTING AS AGENTS , WITH AN ADDRESS FOR SERVICE IN LUXEMBOURG AT THE CHANCELLERY OF THE EMBASSY OF THE FEDERAL REPUBLIC OF GERMANY , 20-22 AVENUE EMILE REUTER ,

THE FRENCH REPUBLIC , REPRESENTED BY G . GUILLAUME , ACTING AS AGENT , AND P . MOREAU DEFARGES , ACTING AS DEPUTY AGENT , WITH AN ADDRESS FOR SERVICE IN LUXEMBOURG AT THE FRENCH EMBASSY , 2 RUE BERTHOLET ,

THE UNITED KINGDOM , REPRESENTED BY W.H . GODWIN , ASSISTANT TREASURY SOLICITOR , ACTING AS AGENT , WITH AN ADDRESS FOR SERVICE IN LUXEMBOURG AT THE BRITISH EMBASSY , 28 BOULEVARD ROYAL ,

INTERVENERS ,

**Subject of the case**

APPLICATION FOR A DECLARATION THAT THE KINGDOM OF BELGIUM HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER ARTICLE 48 OF THE EEC TREATY AS WELL AS UNDER REGULATION ( EEC ) NO 1612/68 OF THE COUNCIL OF 15 OCTOBER 1968 ON FREEDOM OF MOVEMENT FOR WORKERS WITHIN THE COMMUNITY , BY MAKING BELGIAN NATIONALITY A CONDITION OF ENTRY FOR POSTS WHICH DO NOT COME UNDER ARTICLE 48 ( 4 ) OF THE EEC TREATY ,

## **Grounds**

1 BY APPLICATION LODGED AT THE COURT REGISTRY ON 28 SEPTEMBER 1979 THE COMMISSION BROUGHT AN ACTION UNDER ARTICLE 169 OF THE EEC TREATY FOR A DECLARATION THAT BY REQUIRING OR PERMITTING TO BE REQUIRED THE POSSESSION OF BELGIAN NATIONALITY AS A CONDITION OF RECRUITMENT TO POSTS NOT COVERED BY ARTICLE 48 ( 4 ) OF THE TREATY , THE KINGDOM OF BELGIUM HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER ARTICLE 48 OF THE TREATY AND REGULATION ( EEC ) NO 1612/68 ON FREEDOM OF MOVEMENT FOR WORKERS WITHIN THE COMMUNITY ( OFFICIAL JOURNAL , ENGLISH SPECIAL EDITION 1968 ( II ), P . 475 ).

2 IN ITS REASONED OPINION AND APPLICATION TO THE COURT THE COMMISSION REFERRED GENERALLY TO " VARIOUS VACANCIES " ADVERTISED BY THE SOCIETE NATIONALE DES CHEMINS DE FER BELGES ( BELGIAN NATIONAL RAILWAY COMPANY ) AND THE SOCIETE NATIONALE DES CHEMINS DE FER VICINAUX ( NATIONAL LOCAL RAILWAY COMPANY ) CONCERNING POSTS FOR UNSKILLED WORKERS , AND TO VACANCIES ADVERTISED " DURING RECENT YEARS " BY THE CITY OF BRUSSELS AND THE COMMUNE OF AUDERGHEM AND THE COMMISSION GAVE ONLY A BRIEF INDICATION OF THE POSTS INVOLVED . THROUGH INFORMATION REQUESTED BY THE COURT DURING THE WRITTEN AND ORAL PROCEDURES AND PRODUCED BY THE GOVERNMENT OF THE KINGDOM OF BELGIUM AND AFTER THE COMMISSION HAD SPECIFIED THE POSTS DURING THE ORAL PROCEDURE WITHOUT CHALLENGE FROM THE BELGIAN GOVERNMENT , IT BECAME POSSIBLE TO ESTABLISH AN EXACT LIST OF THE POSTS IN ISSUE .

3 FROM THAT INFORMATION AND THAT LIST IT EMERGES THAT THE VACANCIES REFERRED TO CONCERN POSTS FOR TRAINEE LOCOMOTIVE DRIVERS , LOADERS , PLATE-LAYERS , SHUNTERS AND SIGNALLERS WITH THE NATIONAL RAILWAYS AND UNSKILLED WORKERS WITH THE LOCAL RAILWAYS AS WELL AS POSTS FOR

HOSPITAL NURSES , CHILDREN ' S NURSES , NIGHT-WATCHMEN , PLUMBERS , CARPENTERS , ELECTRICIANS , GARDEN HANDS , ARCHITECTS , AND SUPERVISORS WITH THE CITY OF BRUSSELS AND THE COMMUNE OF AUDERGHEM .

NEVERTHELESS THE INFORMATION OBTAINED DURING THE INQUIRY HAS NOT ENABLED THE COURT TO GAIN A PRECISE IDEA OF THE NATURE OF THE DUTIES INVOLVED IN THE POSTS FOR WHICH IT HAS BEEN POSSIBLE TO DRAW UP A PRECISE LIST .

4 THOSE POSTS WERE IN ACTUAL FACT OFFERED BETWEEN 1973 AND 1977 THROUGH PUBLIC NOTICES OR NEWSPAPER ADVERTISEMENTS BY THE PUBLIC UNDERTAKINGS AND LOCAL AUTHORITIES REFERRED TO ABOVE , AND AMONG THE CONDITIONS REQUIRED FOR RECRUITMENT THE ADVERTISEMENTS STIPULATED THE POSSESSION OF BELGIAN NATIONALITY .

5 BY A LETTER OF 21 NOVEMBER 1978 THE COMMISSION NOTIFIED THE GOVERNMENT OF THE KINGDOM OF BELGIUM THAT IT ' ' CONSIDERED THAT POLICY TO BE INCOMPATIBLE WITH ARTICLE 48 OF THE EEC TREATY AND WITH THE PROVISIONS OF REGULATION ( EEC ) NO 1612/68 ON FREEDOM OF MOVEMENT FOR WORKERS WITHIN THE COMMUNITY ' ' AND THUS INITIATED THE PROCEDURE OF ARTICLE 169 OF THE EEC TREATY AGAINST THAT MEMBER STATE .

6 BY A LETTER OF 17 JANUARY 1979 THE PERMANENT REPRESENTATION OF THE KINGDOM OF BELGIUM REPLIED INTER ALIA :

- THAT THE NATIONALITY REQUIREMENT IN QUESTION MEETS THE REQUIREMENTS OF THE SECOND PARAGRAPH OF ARTICLE 6 OF THE BELGIAN CONSTITUTION BY WHICH ' ' BELGIANS . . . ONLY SHALL BE ADMITTED TO CIVIL AND MILITARY POSTS SAVE IN SPECIAL CASES FOR WHICH EXCEPTION MAY BE MADE BY LAW ' ' ;

- THAT IN ANY EVENT THE INTERPRETATION PLACED BY THE COMMISSION ON ARTICLE 48 ( 4 ) OF THE TREATY MAKES IT NECESSARY TO DISTINGUISH WITHIN EACH ADMINISTRATIVE ENTITY BETWEEN POSTS WHICH ARE CONNECTED WITH THE EXERCISE OF OFFICIAL AUTHORITY AND THOSE WHICH ARE NOT SO CONNECTED AND THUS RAISES A PROBLEM THE SOLUTION OF WHICH FOR ALL THE MEMBER STATES IS TO BE FOUND AT COMMUNITY LEVEL .

7 THE COMMISSION CONSIDERED THAT IT COULD NOT ACCEPT THE ARGUMENT PUT FORWARD BY THE BELGIAN GOVERNMENT . ON 2 APRIL 1979 IT ISSUED A REASONED OPINION IN ACCORDANCE WITH ARTICLE 169 OF THE TREATY

STRESSING INTER ALIA :

- THAT THE KINGDOM OF BELGIUM COULD NOT RELY ON THE SECOND PARAGRAPH OF ARTICLE 6 OF ITS CONSTITUTION TO JUSTIFY THE DISPUTED PRACTICES IN THE MATTER OF ACCESS TO EMPLOYMENT ;

- THAT THE EXCEPTION CLAUSE CONTAINED IN ARTICLE 48 ( 4 ) OF THE TREATY COVERS ONLY POSTS WHOSE PERFORMANCE INVOLVES ACTUAL PARTICIPATION IN OFFICIAL AUTHORITY , THAT IS TO SAY , INVOLVING A POWER OF DECISION OVER INDIVIDUALS OR PUTTING IN QUESTION NATIONAL INTERESTS , ESPECIALLY THOSE WHICH TOUCH UPON THE INTERNAL AND EXTERNAL SECURITY OF THE STATE ;

- THAT THE CONDITIONS FOR APPLYING THE EXCEPTION CLAUSE ARE NOT FULFILLED IN THE CASE OF POSTS OF THE KIND COVERED BY THE VACANCY NOTICES IN QUESTION .

8 THE KINGDOM OF BELGIUM DID NOT COMPLY WITH THAT REASONED OPINION WITHIN THE PERIOD PRESCRIBED BY THE COMMISSION AND SO ON 27 SEPTEMBER 1979 THE COMMISSION BROUGHT THIS ACTION .

9 ARTICLE 48 ( 4 ) OF THE TREATY PROVIDES THAT '' THE PROVISIONS OF THIS ARTICLE SHALL NOT APPLY TO EMPLOYMENT IN THE PUBLIC SERVICE '' .

10 THAT PROVISION REMOVES FROM THE AMBIT OF ARTICLE 48 ( 1 ) TO ( 3 ) A SERIES OF POSTS WHICH INVOLVE DIRECT OR INDIRECT PARTICIPATION IN THE EXERCISE OF POWERS CONFERRED BY PUBLIC LAW AND DUTIES DESIGNED TO SAFEGUARD THE GENERAL INTERESTS OF THE STATE OR OF OTHER PUBLIC AUTHORITIES . SUCH POSTS IN FACT PRESUME ON THE PART OF THOSE OCCUPYING THEM THE EXISTENCE OF A SPECIAL RELATIONSHIP OF ALLEGIANCE TO THE STATE AND RECIPROCITY OF RIGHTS AND DUTIES WHICH FORM THE FOUNDATION OF THE BOND OF NATIONALITY .

11 THE SCOPE OF THE DEROGATION MADE BY ARTICLE 48 ( 4 ) TO THE PRINCIPLES OF FREEDOM OF MOVEMENT AND EQUALITY OF TREATMENT LAID DOWN IN THE FIRST THREE PARAGRAPHS OF THE ARTICLE SHOULD THEREFORE BE DETERMINED ON THE BASIS OF THE AIM PURSUED BY THAT ARTICLE . HOWEVER , DETERMINING THE SPHERE OF APPLICATION OF ARTICLE 48 ( 4 ) RAISES SPECIAL DIFFICULTIES SINCE IN THE VARIOUS MEMBER STATES AUTHORITIES ACTING UNDER POWERS CONFERRED BY PUBLIC LAW HAVE ASSUMED RESPONSIBILITIES OF AN ECONOMIC AND SOCIAL NATURE OR ARE INVOLVED IN ACTIVITIES WHICH ARE NOT

IDENTIFIABLE WITH THE FUNCTIONS WHICH ARE TYPICAL OF THE PUBLIC SERVICE YET WHICH BY THEIR NATURE STILL COME UNDER THE SPHERE OF APPLICATION OF THE TREATY . IN THESE CIRCUMSTANCES THE EFFECT OF EXTENDING THE EXCEPTION CONTAINED IN ARTICLE 48 ( 4 ) TO POSTS WHICH , WHILST COMING UNDER THE STATE OR OTHER ORGANIZATIONS GOVERNED BY PUBLIC LAW , STILL DO NOT INVOLVE ANY ASSOCIATION WITH TASKS BELONGING TO THE PUBLIC SERVICE PROPERLY SO CALLED , WOULD BE TO REMOVE A CONSIDERABLE NUMBER OF POSTS FROM THE AMBIT OF THE PRINCIPLES SET OUT IN THE TREATY AND TO CREATE INEQUALITIES BETWEEN MEMBER STATES ACCORDING TO THE DIFFERENT WAYS IN WHICH THE STATE AND CERTAIN SECTORS OF ECONOMIC LIFE ARE ORGANIZED .

12 CONSEQUENTLY IT IS APPROPRIATE TO EXAMINE WHETHER THE POSTS COVERED BY THE ACTION MAY BE ASSOCIATED WITH THE CONCEPT OF PUBLIC SERVICE WITHIN THE MEANING OF ARTICLE 48 ( 4 ), WHICH REQUIRES UNIFORM INTERPRETATION AND APPLICATION THROUGHOUT THE COMMUNITY . IT MUST BE ACKNOWLEDGED THAT THE APPLICATION OF THE DISTINGUISHING CRITERIA INDICATED ABOVE GIVES RISE TO PROBLEMS OF APPRAISAL AND DEMARCATION IN SPECIFIC CASES . IT FOLLOWS FROM THE FOREGOING THAT SUCH A CLASSIFICATION DEPENDS ON WHETHER OR NOT THE POSTS IN QUESTION ARE TYPICAL OF THE SPECIFIC ACTIVITIES OF THE PUBLIC SERVICE IN SO FAR AS THE EXERCISE OF POWERS CONFERRED BY PUBLIC LAW AND RESPONSIBILITY FOR SAFEGUARDING THE GENERAL INTERESTS OF THE STATE ARE VESTED IN IT .

13 WHERE , IN THE CASE OF POSTS WHICH , ALTHOUGH OFFERED BY PUBLIC AUTHORITIES , ARE NOT WITHIN THE SPHERE TO WHICH ARTICLE 48 ( 4 ) APPLIES , A WORKER FROM ANOTHER MEMBER STATE IS , LIKE A NATIONAL WORKER , REQUIRED TO SATISFY ALL OTHER CONDITIONS OF RECRUITMENT , IN PARTICULAR CONCERNING THE COMPETENCE AND VOCATIONAL TRAINING REQUIRED , THE PROVISIONS OF THE FIRST THREE PARAGRAPHS OF ARTICLE 48 AND REGULATION NO 1612/68 DO NOT ALLOW HIM TO BE DEBARRED FROM THOSE POSTS SIMPLY ON THE GROUNDS OF HIS NATIONALITY .

14 IN SUPPORT OF THE ARGUMENT PUT FORWARD BY THE BELGIAN GOVERNMENT AND SUPPORTED BY THE INTERVENERS TO THE EFFECT THAT THE EXCEPTION CLAUSE IN ARTICLE 48 ( 4 ) OF THE TREATY HAS GENERAL SCOPE COVERING ALL THE POSTS IN THE ADMINISTRATION OF A MEMBER STATE , THAT GOVERNMENT HAS INVOKED THE SPECIAL PROVISIONS OF ARTICLE 8 OF REGULATION NO 1612/68

BY WHICH A WORKER FROM ANOTHER MEMBER STATE ' ' MAY BE EXCLUDED FROM TAKING PART IN THE MANAGEMENT OF BODIES GOVERNED BY PUBLIC LAW AND FROM HOLDING AN OFFICE GOVERNED BY PUBLIC LAW ' ' .

15 FAR FROM SUPPORTING THE CASE OF THE BELGIAN GOVERNMENT THAT PROVISION CONFIRMS ON THE CONTRARY THE INTERPRETATION OF ARTICLE 48 ( 4 ) GIVEN ABOVE . INDEED , AS THE BELGIAN GOVERNMENT ITSELF ADMITS , ARTICLE 8 OF REGULATION NO 1612/68 IS NOT INTENDED TO DEBAR WORKERS FROM OTHER MEMBER STATES FROM CERTAIN POSTS , BUT SIMPLY PERMITS THEM TO BE DEBARRED IN SOME CIRCUMSTANCES FROM CERTAIN ACTIVITIES WHICH INVOLVE THEIR PARTICIPATION IN THE EXERCISE OF POWERS CONFERRED BY PUBLIC LAW , SUCH AS - TO USE THE EXAMPLES GIVEN BY THE BELGIAN GOVERNMENT ITSELF - THOSE INVOLVING ' ' THE PRESENCE OF TRADE-UNION REPRESENTATIVES ON THE BOARDS OF ADMINISTRATION OF MANY BODIES GOVERNED BY PUBLIC LAW WITH POWERS IN THE ECONOMIC SPHERE ' ' .

16 THE BELGIAN GOVERNMENT FURTHER MENTIONS THAT THE CONSTITUTIONAL LAWS OF CERTAIN MEMBER STATES REFER EXPRESSLY TO THE PROBLEM OF EMPLOYMENT IN THE PUBLIC SERVICE , THE PRINCIPLE BEING THE EXCLUSION OF NON-NATIONALS , SAVE FOR ANY POSSIBLE DEROGATIONS . SUCH IS ALSO , IT CLAIMS , THE EFFECT OF ARTICLE 6 OF THE BELGIAN CONSTITUTION BY WHICH ' ' BELGIANS . . . ONLY SHALL BE ADMITTED TO CIVIL AND MILITARY POSTS SAVE IN SPECIAL CASES FOR WHICH EXCEPTION MAY BE MADE ' ' . THE BELGIAN GOVERNMENT HAS ITSELF STATED THAT IT DOES NOT DENY THAT ' ' COMMUNITY RULES OVERRIDE NATIONAL RULES ' ' BUT IT BELIEVES THAT THE SIMILARITY BETWEEN THE CONSTITUTIONAL LAWS OF THOSE MEMBER STATES SHOULD BE USED AS AN AID TO INTERPRETATION TO CAST LIGHT ON THE MEANING OF ARTICLE 48 ( 4 ) AND TO REJECT THE INTERPRETATION GIVEN TO THAT PROVISION BY THE COMMISSION , WHICH WOULD HAVE THE EFFECT OF CREATING CONFLICT WITH THE CONSTITUTIONAL PROVISIONS REFERRED TO .

17 THE FRENCH GOVERNMENT HAS PROPOUNDED AN ARGUMENT OF SIMILAR TENOR , DRAWING ATTENTION TO THE PRINCIPLES APPLIED IN FRENCH LAW ON THE PUBLIC SERVICE , WHICH IS FOUNDED ON A COMPREHENSIVE IDEA BASED ON THE REQUIREMENT OF FRENCH NATIONALITY AS A CONDITION OF ENTRY TO ANY POST IN THE PUBLIC SERVICE APPERTAINING TO THE STATE , MUNICIPALITIES OR OTHER PUBLIC ESTABLISHMENTS , WITHOUT ANY POSSIBILITY OF MAKING A DISTINCTION ON THE BASIS OF THE NATURE AND THE CHARACTERISTICS OF THE

POST IN QUESTION .

18 IT IS CORRECT THAT ARTICLE 48 ( 4 ) IS INDEED INTENDED TO OPERATE , IN THE SCHEME OF THE PROVISIONS ON FREEDOM OF MOVEMENT FOR WORKERS , TO TAKE ACCOUNT OF THE EXISTENCE OF PROVISIONS OF THE KIND MENTIONED . BUT AT THE SAME TIME , AS IS ADMITTED IN THE OBSERVATIONS OF THE FRENCH GOVERNMENT , THE DEMARCATION OF THE CONCEPT OF ' ' PUBLIC SERVICE ' ' WITHIN THE MEANING OF ARTICLE 48 ( 4 ) CANNOT BE LEFT TO THE TOTAL DISCRETION OF THE MEMBER STATES .

19 IRRESPECTIVE OF THE FACT THAT THE WORDING OF THE BELGIAN CONSTITUTION DOES NOT RULE OUT THE POSSIBILITY OF EXCEPTIONS BEING MADE TO THE GENERAL REQUIREMENT OF THE POSSESSION OF BELGIAN NATIONALITY , IT SHOULD BE RECALLED , AS THE COURT HAS CONSTANTLY EMPHASIZED IN ITS CASE-LAW , THAT RECOURSE TO PROVISIONS OF THE DOMESTIC LEGAL SYSTEMS TO RESTRICT THE SCOPE OF THE PROVISIONS OF COMMUNITY LAW WOULD HAVE THE EFFECT OF IMPAIRING THE UNITY AND EFFICACY OF THAT LAW AND CONSEQUENTLY CANNOT BE ACCEPTED . THAT RULE , WHICH IS FUNDAMENTAL TO THE EXISTENCE OF THE COMMUNITY , MUST ALSO APPLY IN DETERMINING THE SCOPE AND BOUNDS OF ARTICLE 48 ( 4 ) OF THE TREATY . WHILST IT IS TRUE THAT THAT PROVISION TAKES ACCOUNT OF THE LEGITIMATE INTEREST WHICH THE MEMBER STATES HAVE IN RESERVING TO THEIR OWN NATIONALS A RANGE OF POSTS CONNECTED WITH THE EXERCISE OF POWERS CONFERRED BY PUBLIC LAW AND WITH THE PROTECTION OF GENERAL INTERESTS , AT THE SAME TIME IT IS NECESSARY TO ENSURE THAT THE EFFECTIVENESS AND SCOPE OF THE PROVISIONS OF THE TREATY ON FREEDOM OF MOVEMENT OF WORKERS AND EQUALITY OF TREATMENT OF NATIONALS OF ALL MEMBER STATES SHALL NOT BE RESTRICTED BY INTERPRETATIONS OF THE CONCEPT OF PUBLIC SERVICE WHICH ARE BASED ON DOMESTIC LAW ALONE AND WHICH WOULD OBSTRUCT THE APPLICATION OF COMMUNITY RULES .

20 FINALLY , THE BELGIAN AND FRENCH GOVERNMENTS ARGUE THAT THE EXCLUSION OF FOREIGN WORKERS FROM POSTS WHICH DO NOT AT THE OUTSET INVOLVE ANY PARTICIPATION IN THE EXERCISE OF POWERS CONFERRED BY PUBLIC LAW BECOMES NECESSARY , FOR INSTANCE , IF RECRUITMENT TAKES PLACE ON THE BASIS OF SERVICE REGULATIONS AND THE HOLDERS OF THE POSTS ARE ELIGIBLE FOR A CAREER WHICH IN THE HIGHER GRADES INVOLVES DUTIES AND RESPONSIBILITIES INVOLVING THE EXERCISE OF POWERS CONFERRED BY PUBLIC

LAW . THE GERMAN AND BRITISH GOVERNMENTS ADD THAT SUCH AN EXCLUSION IS ALSO NECESSITATED BY THE FACT THAT FLEXIBILITY IN ASSIGNMENT TO POSTS IS A CHARACTERISTIC OF THE PUBLIC SERVICE AND THE DUTIES AND RESPONSIBILITIES OF AN EMPLOYEE MAY CONSEQUENTLY CHANGE , NOT ONLY ON PROMOTION , BUT ALSO AFTER A TRANSFER WITHIN THE SAME BRANCH , OR TO A DIFFERENT BRANCH AT THE SAME LEVEL .

21 THOSE OBJECTIONS DO NOT HOWEVER TAKE ACCOUNT OF THE FACT THAT , IN REFERRING TO POSTS INVOLVING THE EXERCISE OF POWERS CONFERRED BY PUBLIC LAW AND THE CONFERMENT OF RESPONSIBILITIES FOR THE SAFEGUARDING OF THE GENERAL INTERESTS OF THE STATE , ARTICLE 48 ( 4 ) ALLOWS MEMBER STATES TO RESERVE TO THEIR NATIONALS BY APPROPRIATE RULES ENTRY TO POSTS INVOLVING THE EXERCISE OF SUCH POWERS AND SUCH RESPONSIBILITIES WITHIN THE SAME GRADE , THE SAME BRANCH OR THE SAME CLASS .

22 THE ARGUMENT OF THE GERMAN GOVERNMENT ON THAT LAST POINT , TO THE EFFECT THAT ANY EXCLUSION OF NATIONALS OF OTHER MEMBER STATES FROM PROMOTION OR TRANSFER TO CERTAIN POSTS IN THE PUBLIC SERVICE WOULD HAVE THE EFFECT OF CREATING DISCRIMINATION WITHIN SUCH SERVICE , DOES NOT TAKE INTO CONSIDERATION THE FACT THAT THE INTERPRETATION WHICH THAT GOVERNMENT PUTS ON ARTICLE 48 ( 4 ), AND WHICH HAS THE EFFECT OF DEBARRING THOSE NATIONALS FROM THE TOTALITY OF POSTS IN THE PUBLIC SERVICE , INVOLVES A RESTRICTION ON THE RIGHTS OF SUCH NATIONALS WHICH GOES FURTHER THAN IS NECESSARY TO ENSURE OBSERVANCE OF THE OBJECTIVES OF THE PROVISION AS CONSTRUED IN THE LIGHT OF THE FOREGOING CONSIDERATIONS .

23 THE COURT TAKES THE VIEW THAT , IN GENERAL , SO FAR AS THE POSTS IN DISPUTE ARE CONCERNED , INFORMATION AVAILABLE IN THIS CASE , WHICH HAS BEEN PROVIDED BY THE PARTIES DURING THE WRITTEN AND ORAL PROCEDURES , DOES NOT ENABLE A SUFFICIENTLY ACCURATE APPRAISAL TO BE MADE OF THE ACTUAL NATURE OF THE DUTIES INVOLVED SO AS TO MAKE IT POSSIBLE TO IDENTIFY , IN THE LIGHT OF THE FOREGOING CONSIDERATIONS , THOSE OF THE POSTS WHICH DO NOT COME WITHIN THE CONCEPT OF PUBLIC SERVICE WITHIN THE MEANING OF ARTICLE 48 ( 4 ) OF THE TREATY .

24 IN THESE CIRCUMSTANCES THE COURT DOES NOT CONSIDER ITSELF TO BE IN A POSITION AT THIS STAGE TO GIVE A DECISION ON THE ALLEGATION THAT THE



BELGIAN GOVERNMENT HAS FAILED TO FULFIL ITS OBLIGATIONS .  
CONSEQUENTLY IT INVITES THE COMMISSION AND THE KINGDOM OF BELGIUM  
TO RE-EXAMINE THE ISSUE BETWEEN THEM IN THE LIGHT OF THE FOREGOING  
CONSIDERATIONS AND TO REPORT TO THE COURT , EITHER JOINTLY OR  
SEPARATELY , WITHIN A SPECIFIED PERIOD , EITHER ANY SOLUTION TO THE  
DISPUTE WHICH THEY SUCCEED IN REACHING TOGETHER OR THEIR RESPECTIVE  
VIEWPOINTS , HAVING REGARD TO THE MATTERS OF LAW ARISING FROM THIS  
JUDGMENT . AN OPPORTUNITY WILL BE PROVIDED FOR THE INTERVENERS TO  
SUBMIT THEIR OBSERVATIONS TO THE COURT ON ANY SUCH REPORT OR REPORTS  
AT THE APPROPRIATE TIME .

### **Operative part**

ON THOSE GROUNDS ,

THE COURT ,

BY WAY OF INTERIM JUDGMENT AND BEFORE RULING ON THE APPLICATION  
BROUGHT BY THE COMMISSION FOR A DECLARATION OF FAILURE TO FULFIL  
OBLIGATIONS , HEREBY :

- 1 . ORDERS THE COMMISSION AND THE KINGDOM OF BELGIUM TO RE-EXAMINE  
THE ISSUE BETWEEN THEM IN THE LIGHT OF THE LEGAL CONSIDERATIONS  
CONTAINED IN THIS JUDGMENT AND TO REPORT TO THE COURT ON THE RESULT  
OF THAT EXAMINATION BEFORE 1 JULY 1981 , AFTER WHICH DATE THE COURT WILL  
GIVE A FINAL DECISION ;
- 2 . RESERVES THE COSTS .