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Press and Information

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Judgment of the Court of Justice in Case C-127/05

Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

**THE COURT DISMISSES THE COMMISSION'S ACTION AGAINST THE
'REASONABLY PRACTICABLE' QUALIFICATION CONTAINED IN THE UNITED
KINGDOM LEGISLATION ON THE HEALTH AND SAFETY OF WORKERS**

The Commission has not established to the requisite legal standard that the qualification limits, contrary to the provisions of the Health and Safety Directive, employers' liability and their duty to ensure the health and safety of workers

A Community Directive on the health and safety of workers¹ provides that the employer has a duty to ensure the safety and health of workers in every aspect related to work. As a derogation from that rule, Member States may provide for the exclusion or the limitation of employers' responsibility where 'occurrences are due to unusual and unforeseeable circumstances, beyond the employers' control, or to exceptional events, the consequences of which could not have been avoided despite the exercise of all due care'.

In the United Kingdom, the health and safety of workers is regulated by the Health and Safety at Work Act 1974. Under that legislation, every employer must ensure, 'so far as is reasonably practicable', the health, safety and welfare at work of all his employees. Failure to discharge that duty gives rise to criminal sanctions.

As it took the view that that provision does not comply with the Directive, the European Commission brought an action for failure to fulfil obligations against the United Kingdom. It maintains that the United Kingdom legislation allows an employer to escape his responsibility if he can prove that the adoption of measures which make it possible to ensure the safety and health of workers would have been grossly disproportionate in terms of money, time or trouble when balanced against the relevant risk. According to the Commission, the only derogation possible from such a responsibility is in the circumstances expressly laid down in Article 5(4) of the Directive, a provision which, as an exception to the general principle that the employer is responsible, must be interpreted strictly.

The Court has dismissed the action brought by the Commission

¹ Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p. 1).

The Court notes, as a preliminary point, that the Commission criticises the disputed clause not only on account of its capacity to introduce a limit on the employer's liability, but also on account of its capacity to affect the scope of the general duty of safety incumbent on the employer.

As regards the employer's liability, the Court points out that the Commission bases its argument on an interpretation of the Directive whereby the employer is subject to no-fault liability, whether civil or criminal. However, the Court states that such a reading of the Directive cannot be based on the wording, the legislative history or the scheme of the Directive. The Court further observes that the Commission has not shown in what respect the objective of the Directive cannot be attained by means other than the setting up of a no-fault liability regime for employers. It concludes that the Commission has not established that, in excluding a form of no-fault liability, the disputed clause limits, in disregard of the provisions of the Directive, employers' responsibility.

As regards the effect of the clause on the extent of the employer's duty to ensure safety, the Court finds that the Commission has not sufficiently clarified its interpretation of the content of that duty. The Court concludes that the Commission has not established in what way the disputed clause, considered in the light of the national case-law cited, infringes the provisions of the Directive.

Consequently, **the Court holds that the Commission has not established to the requisite legal standard that**, in qualifying the duty on employers to ensure the safety and health of workers in every aspect related to work by limiting that duty to what is reasonably practicable, **the United Kingdom has failed to fulfil its obligations under the Directive.**

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Languages available: BG CS DE EN ES EL FR HU IT RO PT SK

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-127/05>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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