EUROPEAN PARLIAMENT

2004 *2009*

Session document

FINAL
A6-0156/2007

20.4.2007

REPORT

on the public health consequences of the 1968 Thule crash (Petition 720/2002) (2006/2012(INI))

Committee on Petitions

Rapporteur: Diana Wallis

PR_INI_art192

CONTENTS

Page

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION 3

EXPLANATORY STATEMENT... 6

PROCEDURE 16

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the public health consequences of the 1968 Thule crash (Petition 720/2002) (2006/2012(INI))

The European Parliament,

– having regard to petition 720/2002 ,

– having regard to Article 21 of the EC Treaty, which confers on every citizen of the Union the right to petition the European Parliament in accordance with Article 194 thereof,

– having regard to Article 107c of the EAEC Treaty and Article 194 of the EC Treaty, which confer on any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the Communities' fields of activity and which affects him, her or it directly,

– having regard to 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[1],

– having regard to the judgments of the Court of Justice of the European Communities of 12 April 2005 and 9 March 2006 in Cases C-61/03 *Commission* v *United Kingdom* and C-65/04 *Commission* v *United Kingdom*,

– having regard to Rule 192(1) of its Rules of Procedure,

– having regard to the report of the Committee on Petitions (A6-0156/2007),

A. considering the substantial issues and serious problems raised by the petitioner and the vital importance of the objective of protecting the health of the public and the environment against the dangers related to the use of nuclear energy, as recognised by the Court of Justice,

B. whereas the petition disclosed that workers and members of the public were irradiated by extremely hazardous weapons grade plutonium following the crash of a US B-52 carrying nuclear weapons at Thule in Greenland in 1968,

C. whereas many Thule survivors have died of radiation-related illnesses due to the lack of medical monitoring and current survivors risk contracting such fatal illnesses,

D. whereas monitoring of the health of the Thule survivors would facilitate early detection of radiation illnesses and the treatment thereof,

---

[1] OJ L 159, 29.6.1996, p. 1.

E. whereas the Danish Government has indicated its intention to promote maximal openness about the "clean-up" operation following the Thule crash,

F. whereas Article 2(b) of the Treaty establishing the European Atomic Energy Community (EAEC) states that the Community shall "establish uniform safety standards to protect the health of workers and of the general public and ensure that they are applied",

G. whereas the Court of Justice has held that the EAEC Treaty Chapter on Health and Safety forms a "coherent whole conferring upon the Commission powers of some considerable scope in order to protect the population and the environment against the risks of nuclear contamination"[1] and whereas the Court has also upheld a broad interpretation of the provisions of that Chapter in order "to ensure the consistent and effective protection of the health of the general public against the dangers arising from ionising radiations, whatever their source"[2],

H. whereas the Commission and the Kingdom of Denmark have consistently refused to recognise the applicability of the EAEC Treaty and secondary legislation adopted thereunder to the after-effects of the Thule crash,

1. Notes that, according to the settled case-law of the Court of Justice, new rules of Community law apply, as a matter of principle, to the future effects of situations which arose before the new rule entered into force;

2. Concludes that the EAEC Treaty was immediately applicable and binding on the Kingdom of Denmark from the date of its accession, with the result that it applied to the future effects of situations arising prior to the Kingdom of Denmark's accession to the Communities;

3. Observes that the EAEC Treaty applied to Greenland for twelve years from Denmark's accession in 1973 to the entry into force on 1 January 1985 of the Treaty amending, with regard to Greenland, the Treaties establishing the European Communities; considers, however, that since the latter Treaty has no retroactive effect, the Kingdom of Denmark remains bound by any existing legal obligations relating to events having occurred on the territory of Greenland before 1 January 1985 and, furthermore, that the after-effects on human health of the 1968 crash are not confined to Greenland, as it is apparent that many of the workers, including European citizens, have since moved to mainland Denmark;

4. Takes note of the recent case-law to the effect that the EAEC Treaty "is not applicable to uses of nuclear energy for military purposes"[3]; however, considers that the Court of Justice clearly linked its restrictive interpretation of the scope of the EAEC Treaty with the need to protect the essential national defence interests of the Member States;

5. Insists that the aforementioned limitation on the scope of the EAEC Treaty should not be

[1] Case 187/87 *Saarland* [1988] ECR 5013, paragraph 11.
[2] Case C-70/88 *Parliament* v *Council* [1991] ECR I-4529, paragraph 14.
[3] Case C-61/03 *Commission* v *United Kingdom* [2005] ECR I-2477, *"Jason Reactor"*, paragraph 44.

invoked to avoid the application of health and safety legislation in situations where the alleged military purpose concerns a third State, where the use of nuclear energy is in breach of an international agreement and where the only feasibly present connection with a defence interest of a Member State is that the release of nuclear material occurred on its territory;

6. Notes that Article 2(3) of Directive 96/29/Euratom applies to cases of lasting exposure resulting from the after-effects of a radiological emergency;

7. Calls on the Kingdom of Denmark, in close cooperation with the Greenland authorities, and in accordance with Article 38 of the Directive, to "initiate surveillance and intervention measures" in relation to the continuing after-effects of the Thule crash, and, in accordance with Article 53 of that Directive, to make "arrangements for the monitoring of exposure" and implement "any appropriate intervention (...) taking account of the real characteristics of the situation";

8. Considering that fundamental rights form an integral part of the general principles of Community law, and having regard to the positive obligations entailed by Articles 2 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, calls on those Member States engaged in hazardous activities which might have hidden adverse consequences on the health of those involved in such activities to ensure that an effective and accessible procedure be established which enables such persons to seek all relevant and appropriate information;

9. Calls on the Member States to implement and apply Directive 96/29/Euratom without delay, and urges the Commission to pursue vigorously any failure to fulfil their obligations in that regard;

10. Doubts that the Kingdom of Denmark has fully complied with its obligations under Directive 96/29/Euratom in relation to the Thule crash and its after-effects;

11. Expresses great concern at the current existence of a gap in the protection of the health of the general public with regard to the use of nuclear energy for military purposes;

12. Calls on the Commission to come forward with a proposal addressing the vital public health and environmental implications of the use of nuclear energy for military purposes, in order to fill this lacuna;

13. Considers that the core provisions of the EAEC Treaty have not been substantially amended since its entry into force and need to be brought up to date;

14. Instructs its President to forward this resolution to the Council, the Commission and the Government and Parliament of the Kingdom of Denmark.

EXPLANATORY STATEMENT

1. Background to the petition presented by Mr J. Carswell (Petition 720/2002)

On 21 January 1968, a US B-52 bomber with several nuclear weapons on board crashed near the Thule Air Base in North-Western Greenland, releasing several kilos of weapons grade plutonium. Six of the seven crew members were able to eject safely. However, the plutonium contaminated the immediate snow and ice at the crash site and was carried by high winds and water over an extensive area. Over a thousand Danish civilian personnel were employed to provide maintenance and other non-military services at the air base.

Danish civilian personnel, local Greenlanders and US personnel raced to the crash site to attempt rescue operations. Subsequently, the US conducted radiation "clean up" operations in the area during which Danish workers volunteered to participate in the removal of contaminated material along with US personnel. None of the volunteers had any experience or training in handling radiation-contaminated materials. After the "clean-up" operations, the US military conducted regular medical monitoring of US Air Force personnel who served at Thule at the time of the crash and thereafter. No similar medical monitoring was conducted by the Danish Government of the Danish civilian workers or the Greenlanders, many of whom continued to work at the Thule base and live in the area for several years thereafter.

At the time of the crash, the petitioner was employed as a civilian worker (a shipping clerk) at the airbase of Thule, and continued to live and work there until 1971. During this period, the petitioner visited the crash site from time to time and was involved in arranging for the removal of contaminated debris in "clean-up" operations. In addition, like many of the Thule workers, he used ice from a nearby fjord in beverages. During the 1980s, the petitioner experienced a severe deterioration in his health and was later diagnosed with a cancerous condition in his oesophagus and stomach. He has had eight major operations and a large number of one day admissions to hospital. Most recently, he has been diagnosed with a thyroid condition.

The petitioner complains that the Danish authorities failed to evacuate the workers from the site at the time, to warn them or to inform them about the extensive radiation, or to make the necessary follow-up medical tests and examinations. He alleges that his condition was linked to exposure to plutonium from the nuclear weapons carried by the aircraft that crashed in 1968. Accordingly, the petitioner demands access to existing data on the accident and its implications, as well as demanding that regular medical tests be carried out.

The main allegation in the petition is that the Danish Government has not respected the provisions 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; hereinafter the Directive).

Early scientific reports released by the Danish Government, which indicated that there was no danger to human health or the environment, have been questioned in private medical reports and by a 2005 preliminary report of the *Radiation Research Department of the Danish RISO*

National Laboratory on contamination in the Thule area. Due to the increasing number of deaths and illnesses amongst the former Thule workers from cancers associated with radiation exposure, the former workers established an Association in 1986, (*Foreningen For Straaleramte Thulearbejdere*) to investigate the possible effects of the 1968 air crash on their health. Since the workers had not been individually monitored at Thule for radiation exposure, the Association requested the Danish Government to give them access to the relevant environmental radiation records. From these, they intended to estimate their probable radiation dosages and the possible consequences for their health. However, they have never received such records, despite numerous requests. The petitioner states that the Danish Government made a prior political decision not to scientifically investigate the medical complaints of Thule survivors, and instead to offer them an *ex gratia* payment of money for psychological harm suffered. Such a payment was made to all persons who were in, or travelled through the proximity of the radiation contaminated crash site during the period from 21 January 1968 to 17 September 1968, excluding Danish Government scientists and United States personnel. It is estimated that 2400 persons received this payment, which did not differentiate between participants in the "clean-up" operation and others such as local inhabitants or travellers who took no part in them. The Rapporteur has been provided with evidence in at least two cases that a patient's request for follow-up treatment in a clinic has been refused on the basis that such compensation settled the matter finally.

The Committee on Petitions declared Mr Carswell's petition admissible on 14 March 2003.

2. Temporal application of Community law to the facts contained in the petition

Can the Directive apply to the 1968 crash, which occurred before the entry into force of the Directive, and before the Kingdom of Denmark's accession to the Treaty establishing the European Atomic Energy Community (hereafter the EAEC Treaty)?

The Commission has asserted that Directive 96/29/EURATOM cannot be applied to the consequences of an accident that took place in 1968, at a time when the Kingdom of Denmark was not even a Member State. However, according to the settled case law of the Court of Justice, new rules of Community law apply, as a matter of principle, to the future effects of situations which arose before the new rule entered into force. For instance, the Court of Justice has applied this principle to the application of a discriminatory procedural rule to facts predating the accession of Austria to the EU.[1]

This interpretation is reinforced by the fact that the European Court of Human Rights (hereinafter the ECtHR) has consistently upheld its jurisdiction and the applicability of Articles 2 and 8 ECHR to the after-effects of an exposure to radiation which pre-dated a State's acceptance of the ECtHR's jurisdiction. Thus, a claim by the sick daughter of an RAF serviceman exposed to radiation in 1958 on Christmas Island was not inadmissible by reason of the fact the United Kingdom only accepted the ECtHR's jurisdiction in 1966.[2]

The EAEC Treaty was immediately applicable and binding on the Kingdom of Denmark from the date of its accession, with the result that it applied to the future effects of situations arising

[1] Case 122/96 *Saldanha* [1997] ECR I-5325, paragraph 14.
[2] Case 14/1997/798/1001 *L.C.B. v United Kingdom*, Judgment of 9 June 1998, paragraphs 30 to 41.

prior to the Kingdom of Denmark's accession to the Communities. Consequently, it is immaterial that the crash occurred before Denmark's accession to the EAEC Treaty, provided that the effects of that crash persist. Given the long-term effects on human health produced by exposure to radiation (the latent period for radiation-induced cancers and illnesses ranges from 20 to 60 years), all of the present survivors remain at risk and urgently require proper medical monitoring. It is therefore beyond doubt that the after-effects of the 1968 crash persisted until the relevant date, which is 13 May 2000.[1]

3. Territorial application of the EAEC Treaty to Greenland

The question here is whether the Directive can apply to the after-effects of a crash in Greenland, to which the EAEC Treaty has not applied since 1 January 1985.

At the time of the crash, Greenland was a part of the territory of the Kingdom of Denmark. However, as regards the territorial application of the EAEC Treaty, it is relevant to have regard to the Treaty amending, with regard to Greenland, the Treaties establishing the European Communities (OJ L 29, 01/02/1985, p 1, hereinafter the Greenland Treaty). Article 5 of this Treaty introduced the following amendment to Article 198 of the EAEC Treaty: "*This Treaty shall not apply to Greenland*". As the Greenland Treaty entered into force on 1 January 1985 (see Article 6), it follows that the EAEC Treaty has no application to Greenland after this date.

Thus the EAEC Treaty applied to Greenland for twelve years from Denmark's accession in 1973 to the entry into force of the Greenland Treaty. However, given that this Treaty has no retroactive effect, the Kingdom of Denmark remains bound by any existing legal obligations relating to events having occurred on the territory of Greenland before 1 January 1985. Furthermore, the after-effects on human health of the 1968 crash are not confined to Greenland, as it is apparent that many of the workers, including European citizens, have since moved to mainland Denmark. Thus, the Kingdom of Denmark is bound to provide medical surveillance and relevant information to those persons whose health still suffers from the long-term effects of the Thule accident, notwithstanding the exclusion of Greenland from the territorial scope of the EAEC Treaty. In this regard, it is relevant to note that the provisions of the Directive do not necessarily oblige a Member State to adopt implementing measures in the very same place as the site where a radiological emergency occurred. In fact, performance of these obligations could be ensured at another place within the territory of a Member State.

It must consequently be ascertained whether any provision of the Directive obliges the Kingdom of Denmark to take the action required by the petitioner.

4. Applicability of the EAEC Treaty to "military activities"

The Commission argued in its oral submissions to the Petitions Committee that the EAEC Treaty and secondary law adopted under it are inapplicable to the facts of the petition because "the Treaty is not applicable to uses of nuclear energy for military purposes".[2]

[1] Article 55 provides that Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the Directive before 13 May 2000.

[2] Case 61/03 *Commission v United Kingdom "Jason Reactor"*, 12 April 2005, paragraph 44.

In case C-61/03 "*Jason Reactor*", both the Advocate General and the Court of Justice concurred that in the negotiations leading up to the signing of the EAEC Treaty, its application to nuclear energy used for military purposes was envisaged, but left unresolved. The Court went on to accept the arguments of the United Kingdom and France whereby the fact that there were public security exceptions in the EC Treaty, but none in the EAEC Treaty meant that it was implicit that the EAEC Treaty did not apply *at all* to nuclear energy used for military purposes.

> *"However, it is clear that the application of such provisions to military installations, research programmes and other activities might be such as to compromise essential national defence interests of the Member States. Consequently, as the United Kingdom and the French Republic have rightly argued, the absence in the Treaty of any derogation laying down the detailed rules according to which the Member States would be authorised to rely on and protect those essential interests leads to the conclusion that activities falling within the military sphere are outside the scope of that Treaty."*[1]

This restrictive interpretation of the scope of the EAEC Treaty was confirmed in case C-65/04 "*HMS Tireless*".[2]

However, the particular set of facts relating to the petition must be distinguished from the two aforementioned judgments for several reasons.

It is clear from paragraph 36 of the "*Jason Reactor*" case that the rationale for excluding the military sphere from the scope of the EAEC Treaty is the protection of the *"essential national defence interests of the Member States"*. This is reinforced by the second sentence of that paragraph which states that the absence of an explicit EAEC Treaty exclusion would prevent Member States from adequately protecting "*those* [essential national defence] *interests*". It is therefore apparent that the Court clearly linked its restrictive interpretation to the need to protect the essential national defence interests *of the Member States*.

The "*Jason Reactor*" case concerned the application of certain EURATOM information reporting requirements to the United Kingdom's disposal of radioactive waste from a decommissioned military nuclear reactor. Similarly, the "*HMS Tireless*" case concerned the application of information reporting requirements to the United Kingdom's emergency plan for the evacuation of Gibraltar in the event of a radiological emergency during maintenance and repair work on a military submarine with a nuclear reactor. Both situations concerned the obligations imposed on a Member State concerning the use of nuclear energy for military purposes by, on this occasion, the same, *Member State*.

It seems unreasonable to conclude that the rationale for excluding nuclear energy used for military purposes was that the national defence interest of *any* State could be compromised without an additional element of connection with a Member State. It cannot therefore be that this exclusion covers use of nuclear energy by a third country where a Member State has not authorized this (ie. acquiesced, identified itself with that use thereby taking ownership of it),

[1] Para.36 of C-61/03
[2] Case 65/04 *Commission v United Kingdom*, 9 March 2006, n.y.r.

but where the health hazard is merely situated in that Member State. In such a scenario, the essential national defence interests of a Member State are in no way compromised.

Therefore the health and safety provisions of the EAEC Treaty extend to situations where the defence interest has nothing whatsoever to do with the Member State (or any other Member State), and moreover, where the use of nuclear energy is in breach of an international agreement, and where the only feasibly present connecting factor is that the release of nuclear material occurred on the territory of a Member State. Moreover, such an interpretation does not seek to impose an obligation to evaluate whether there is an essential national defence interest at play on a case-by-case basis. Such an approach, which was advocated by the Commission before the Court of Justice, was clearly rejected.

Applying this analysis to the facts of the petition, the Kingdom of Denmark has never had a domestic energy programme either for the civilian or military use of nuclear energy. As such, (unlike the United Kingdom and France), Denmark has no activities concerning the military use of nuclear power which would exempt it from the reporting requirements, or any other obligations, of the EURATOM Treaty or secondary legislation. There is no evidence linking such monitoring to any current defence activities by Denmark employing the military use of nuclear energy.

The radiation-producing accident in question was caused by the United States, a third country, not by Denmark. Although Denmark had a defence agreement with the US at the time of the B- 52 crash, the agreement prohibited the United States from storing or deploying nuclear weapons in Greenland or flying over Danish airspace with such weapons. The Danish government publicly confirmed to the Danish people that no such permission to store, deploy or over- fly with nuclear weapons had, or would be given to the United States, and no amendments to that effect were made to the defence agreement by the Danish Parliament. Therefore, reference to the bilateral agreement is in no way determinative of the case. The mere fact that there was an agreement covering certain military activities does not mean that by virtue of this, *any* military activity by a third country on a Member State's territory is *de facto* excluded from the scope of the EAEC Treaty. Such a conclusion would be arbitrary and would go against common sense.

5. Relevant primary law and its interpretation by the Court of Justice

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*".

Title II of the EAEC Treaty, entitled "*Provisions for the encouragement of progress in the field of nuclear energy*", includes a Chapter 3 entitled "*Health and safety*", which consists of Articles 30 to 39.

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*". 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".

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 EA.

The Court of Justice has held that the EAEC Chapter on Health and Safety forms a *"coherent whole conferring on the Commission powers of some considerable scope in order to protect the population and the environment against the risks of nuclear contamination"*.[1] It has also upheld a broad interpretation of those provisions in order *"to ensure consistent and effective protection of the health of the general public against the dangers arising from ionising radiations, whatever their source"*.[2] Moreover, the Court has explicitly stated that this broad interpretation applies to the particular Directive at issue in the present petition.[3]

6. Material scope of the Directive

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[4] by taking account of the development of scientific knowledge concerning radiation protection.

The scope of the Directive is set out in its Article 2 under Title II "Scope" and is arguably more extensive than the previous Directives which it replaced, and in particular Directive 80/836 EURATOM of 15 July 1980.[5]

As provided for in the first subparagraph of Article 2:

> *"This Directive shall apply to all practices which involve a risk from ionizing radiation emanating from an artificial source or from a natural radiation source in cases where natural radionuclides are or have been processed in view of their radioactive, fissile or fertile properties, namely :*
> *(a) the production, processing, handling, use, holding storage, transport, import to and export from the Community and disposal of radioactive substances;*
> *(b) the operation of any electrical equipment emitting ionizing radiation and containing components operating at a potential difference of more than 5kV;*
> *(c) any other practice specified by the Member State.*"

Furthermore, the third subparagraph of Article 2 provides as follows:

---

[1] Case 187/87 *Saarland* [1988] ECR 5013, paragraph 11.
[2] Case 70/88 *Parliament v Council* [1991] ECR I-4529, paragraph 14.
[3] Case 29/99, *Commission v Council* [2002] ECR I-11221, paragraph 81.
[4] As stated in the preamble to the Directive, the Community laid down basic standards for the first time in 1959 pursuant to Article 218 of the Treaty. These standards were subsequently revised on five further occasions (in 1962, 1966, 1976, 1979 and 1984).
[5] (OJ. L246, 17/09/1980, p 1-72). Article 2 of Directive 80/836 defines its scope simply as follows: "*This Directive shall apply to the production, processing, handling, use, holding, storage, transport and disposal of natural and artificial radioactive substances and to any other activity which involves a hazard arising from ionizing radiation.*"

"*In accordance with Title IX [the Directive] shall also apply to any intervention in 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.*" (emphasis added)

In this respect, the reference to "*cases of lasting exposure resulting from the after-effects of a radiological emergency or a past or old practice or work activity*" in the third subparagraph of Article 2 under Title II "Scope" constitutes an express widening of the scope of the Directive as compared to the previous legislation.

Chapter III "*Medical surveillance of exposed workers*" sets out detailed rules on medical surveillance, which include provisions foreseeing the possibility of continuing medical surveillance after cessation of work, if necessary to safeguard the health of the person concerned (Article 31(3)) and a requirement that medical records be retained until the individual has or would have attained the age of 75 years, but in any case not less than 30 years from the termination of the work involving exposure to ionizing radiation (Article 34).

Furthermore, Article 38, under Chapter IV "*Tasks of Member States in respect of protection of exposed workers*", provides for the following :

"*1. Each Member State shall establish a system or systems of inspection to enforce the provisions introduced in compliance with this Directive and to initiate surveillance and intervention measures wherever necessary.*

2. Each Member State shall require that workers have access at their request to the results of their individual monitoring, including the results of measurements which may have been used in estimating them, or of the assessments of their doses made as a result of workplace measurements.

(...)

5. Each Member State shall facilitate the exchange amongst competent authorities, or approved medical practitioners, or approved occupational health services, or qualified experts, or approved domestic services within the European Community of all relevant information on the doses previously received by a worker in order to perform the medical examination prior to employment or classification as a category A worker pursuant to Article 31 and to control the further exposure of workers."

As concerns the issue of intervention, Article 53, which appears under the heading Section II "*Intervention in cases of lasting exposure*" of Title IX of the Directive, provides as follows:

"*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."

7. Applicability of the Directive to the facts of the petition

As regards the term "workers" under Chapter III of the Directive, an analogy could be drawn with the broad interpretation of that term under the EC Treaty. The Court has consistently held that it is an autonomous concept with a Community meaning, irrespective of the label

attached to the activity under national law.[1] Consequently, so long as the criteria set out by the Court of Justice are respected, it would be arbitrary to exclude one category of persons (for example, the persons having participated in the "clean-up" operation) simply because they were not permanently employed at the base.

It is also relevant that the Directive contains a number of provisions that relate to the need to take action many years after the occurrence of an event in the past. For example, Article 31(3) foresees the possibility of continuing medical surveillance after cessation of work, if necessary to safeguard the health of the person concerned. Article 34 imposes a requirement that medical records be retained until the individual has or would have attained the age of 75 years, but in any case not less than 30 years from the termination of the work involving exposure to ionizing radiation.

In accordance with Article 38 of the Directive, the Kingdom of Denmark is therefore required, where necessary, to "*initiate surveillance and intervention measures"* in relation to the current effects of the Thule crash.

Furthermore, the Kingdom of Denmark is also obliged under Article 53 to "make arrangements for the monitoring of exposure" and implement "any appropriate intervention (...) taking account of the real characteristics of the situation". Although indents (a) and (d) refer respectively to an "area" and a "demarcated area", no geographical restriction is placed upon indents (b) and (c).

Indeed, all Member States are under an obligation to effectively implement and apply the Directive without delay, and the Commission, as the guardian of the Treaties is under a duty to pursue any failure to fulfil such obligations vigorously.

8. Possible obligations under the European Convention on Human Rights

As the Court of Justice has consistently held, "*fundamental rights form an integral part of the general principles of law, the observance of which it ensures. For that purpose the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories (see, in particular, the judgment in Case C-4/73 Nold v Commission [1974] ECR 491, paragraph 13). The European Convention on Human Rights has special significance in that respect (see in particular Case C-222/84 Johnston v Chief Constable of the Royal Ulster Constabulary [1986] ECR 1651, paragraph 18).*"[2]

In that regard, there is clear case-law from the ECtHR indicating that Article 2(1) ECHR enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction.[3] It is far from clear that the Kingdom of Denmark has done all that could have been required of it to prevent the petitioner's life from being unavoidably put at risk.

Furthermore, a positive obligation may also arise under Article 8 ECHR. As the ECtHR has

---

[1] Case 53/81 *Levin* [1982] ECR 1035, paragraph 11; Case 75/63 *Hoekstra* [1982] ECR 177

[2] Case C-260/89, *ERT* [1991] *ECR* I-2925, paragraph 41.

[3] See for instance, judgment of 19 February 1998, *Guerra v Italy*, Reports 1998-I, p.227, paragraph 58.

stated: "*where a Government engages in hazardous activities* [such as nuclear tests] *which might have hidden adverse consequences on the health of those involved in such activities, respect for private and family life under Article 8 requires that an effective and accessible procedure be established which enables such persons to seek all relevant and appropriate information*" (emphasis added).[1] Furthermore, irrespective of such a procedure, it is essential to uphold the petitioner's right to know what might happen to him without his having to ask. The petitioner had a right to be informed about of all the consequences that his presence in the crash area could have for him.[2] Any compensation which may have been given to the petitioner cannot justify disproportionate interferences with his fundamental rights, in particular his right to life and his right to respect for private and family life.

9. Protecting the health of the public and the environment against the dangers related to the use of nuclear energy for military purposes

In the previous sections, it is argued that the Directive applies to the after-effects of the Thule crash. As a second step, it is equally essential that attention be given to a lacuna highlighted by the "*Jason Reactor*" and "*HMS Tireless*" cases.

The blanket exclusion of the use of nuclear energy for military purposes from the scope of the EAEC Treaty could in certain circumstances constitute a disproportionate exemption in favour of national defence interests which does not in any way seek to balance such interests against health and environmental concerns. For example, in a situation where the defence interest is extremely weak and the health interest particularly strong, the security interest would nevertheless automatically prevail. A negligible Member State interest outweighs, without any possibility of further consideration, a vital health and environmental imperative. In both recent cases, Advocate General Geelhoed failed to convince the Court to follow a more nuanced approach. In his Opinion in the "*HMS Tireless*" case, he recognised that "*a gap exists in the protection of the health of the general public. It is clear from the judgment's terms that the Court has accepted this consequence.*" (emphasis added)

The Court's *obiter* statement to the effect that Member States can adopt health and safety measures covering military activities under the EC Treaty, while recognizing the importance of health and environmental considerations, puts the ball firmly in the Community legislators' court.

> The Court's limitation of the scope of the EAEC Treaty "*does not by any means reduce the vital importance of the objective of protecting the health of the public and the environment against the dangers related to the use of nuclear energy, including for military purposes. In so far as that Treaty does not provide the Community with a specific instrument in order to pursue that objective, it is possible that appropriate measures may be adopted on the basis of the relevant provisions of the EC Treaty*[3]". (emphasis added)

The precise form and content of such an act is left to the discretion of the Community legislators. Concern is expressed that, nearly two years after the Court's first judgment

---

[1] Judgment of 9 June 1998, *McGinley and Egan v United Kingdom*, 10/1997/794/995-996.
[2] Ibid, Joint Dissenting Opinion of Judges De Meyer, Valticos and Morenilla.
[3] C-61/03, paragraph 44; C-65/04, paragraph 28.

recognizing certain limits to the material scope of the EAEC Treaty, the Commission has still not come forward with a concrete initiative. It is vital that the gap identified by the Court of Justice be filled as rapidly as possible. The Parliament should therefore make use of its powers under Article 192(2) EC to call on the Commission to come forward with a proposal on the issue.

The Rapporteur refrains from proposing a specific legal basis for any action in this field. However, it may be observed that the question may be problematic in several respects. First, Chapter III EAEC could be considered a *lex specialis* for protecting people and the environment against the dangers of ionising radiation. This would however seem contrary to the assumption that the Court made, namely that the EC Treaty does provide for a sufficient legal basis. Second, Article 305(2) EC provides that "*the provisions of [the EC] Treaty shall not derogate from those of the Treaty establishing the European Atomic Energy Community*". Third, the EAEC has a legal personality distinct from that of the EC, and the Constitutional Treaty in its current form would not affect this situation. The preservation of the *status quo* is somewhat surprising, given that the underlying case for merging the EURATOM Treaty is the same as for merging the TEC.[1] Indeed, five Member States took the opportunity of noting that "*the core provisions of the EAEC Treaty have not been substantially amended since its entry into force and need to be brought up to date*" and calling for the prompt convening of a Conference of the Representatives of the Governments of the Member States on the issue.[2] The Rapporteur favours this approach, which would have the advantage of ensuring consistency of the Community legal order, and allowing remedial action to be taken concerning any existing gaps in the protection of public health or the environment.

[1] European Convention, Final report of Working Group III on Legal Personality, CONV 305/02, paragraph 15.
[2] Treaty establishing a Constitution for Europe, Declaration No.44 by Germany, Ireland, Hungary, Austria and Sweden.

PROCEDURE

Title	The public health consequences of the 1968 Thule crash (Petition 720/2002)
Procedure number	2006/2012(INI)
Petitions considered	0720/2002
Date of decision to draw up report	27.11.2006
Date authorisation announced in plenary	19.1.2006
Committee(s) asked for opinion(s) Date announced in plenary	
Not delivering opinion(s) Date of decision	
Enhanced cooperation Date announced in plenary	
Rapporteur(s) Date appointed	Diana Wallis 27.11.2006
Previous rapporteur	
Discussed in committee	27.2.2007 27.3.2007
Date adopted	27.3.2007
Result of final vote	+ 16 - 1 0 0
Members present for the final vote	Robert Atkins, Margrete Auken, Simon Busuttil, Michael Cashman, Proinsias De Rossa, Janelly Fourtou, David Hammerstein Mintz, Carlos José Iturgaiz Angulo, Marcin Libicki, Maria Matsouka, Manolis Mavrommatis, Marie Panayotopoulos-Cassiotou, Luciana Sbarbati, Kathy Sinnott, Diana Wallis
Substitute(s) present for the final vote	Thijs Berman
Substitute(s) under Rule 178(2) present for the final vote	Jens-Peter Bonde
Date tabled	20.4.2007
Comments (available in one language only)	...