



C/2024/4580

29.7.2024

Action brought on 3 June 2024 – European Commission v Kingdom of Belgium

(Case C-390/24)

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Language of the case: French

Parties

Applicant: European Commission (represented by: J. Hottiaux, M. Wasmeier, I. Zaloguin, acting as Agents)

Defendant: Kingdom of Belgium

Form of order sought

The Commission claims that the Court should:

- declare that by transposing incorrectly Article 3(1) to (3), (5) and (6) of Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, the Kingdom of Belgium has failed to fulfil its obligations under that directive;
- order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

By its action, the Commission alleges that Belgium has transposed incorrectly Article 3(1) to (3), (5) and (6) of Directive 2013/48/EU. That directive lays down minimum rules concerning the rights of suspects and accused persons in criminal proceedings and of persons subject to proceedings pursuant to Framework Decision 2002/584/JHA on the European arrest warrant to have access to a lawyer, to have a third party informed of the deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

After examining the conformity of the national implementing measures communicated by Belgium in respect of the transposition of Directive 2013/48/EU into national law, the Commission has submitted that:

- first, concerning deprivation of liberty, Article 2a(2), second subparagraph, last sentence, and third subparagraph, first sentence, of the loi du 20 juillet 1990 relative à la détention préventive (Law of 20 July 1990 on remand in custody), and (as regards minors) Article 47a(3), second subparagraph, first sentence, and fifth subparagraph, first sentence, of the code d'instruction criminelle (Code of Criminal Procedure) do not reflect the obligations set out in Article 3(1) to (3) of that directive;
- second, Article 2a(2), (5) and (10) of the loi du 20 juillet 1990 relative à la détention préventive (Law of 20 July 1990 on remand in custody) fail correctly to transpose Article 3(5) of Directive 2013/48 in conjunction with Article 3(1) and Article 3(2)(c) thereof;
- lastly, Article 2a(2) and (9) of the loi du 20 juillet 1990 relative à la détention préventive (Law of 20 July 1990 on remand in custody) and Article 16(2) of that law fail correctly to transpose Article 3(6) of Directive 2013/48, read in conjunction with Article 3(1) to Article 3(3)(b) thereof.