

EUROPEAN PARLIAMENT

2004



2009

Committee on Petitions

25.01.2007

NOTICE TO MEMBERS

Petition 720/2002 by Jeffrey Carswell, born of Danish nationality, now Australian nationality, on environmental protection from radiation in the European Union

1. Summary of petition

The petitioner submits a very comprehensive dossier on a crash of a US military aeroplane with four plutonium, therm-nuclear weapons on board in 1968 near Thule, Greenland, Denmark, two days before national elections. The petitioner says that this event and the disastrous consequences for humans and nature have been kept secret by the Danish authorities, which makes it impossible for him to obtain compensation for the illnesses he got, and for which he makes this incident responsible. The US and Denmark had signed a military defence agreement pursuant to the NATO obligations in both countries in 1957, which was the base for a/o. unrestricted overflying of Greenland by US military aircrafts. The petitioner himself was employed by the Danish Construction Company and worked between 1966 and 1971 as a shipping clerk with approx. 1200 other civilians on the US military base in Thule. They experienced a shock on 21 January, they were informed of the crash, and of the fact that nuclear weapons had been on board of the plane. The petitioner continued to live and work at this base and continued to obtain ice for beverages from icebergs in the Wolstenholme Fjord. In 1984 the petitioner was diagnosed with cancer of the stomach and another pre-cancerous situation, which he leads back to the exposure to plutonium after the aeroplane crash in 1968. He became aware that his condition was linked to this incident when he was informed in the 1980's that many of his former Danish co-workers at Thule had developed similar radiogenic cancers and conditions. He says that the Danish Government has not publicised any information about the incident, although he has proof that the Government was aware of the radiation contamination at Thule. The petitioner encloses correspondence between the US and the Danish authorities after the incident showing that Denmark wished to treat the matter themselves. The petitioner complains that Denmark failed to evacuate the workers from the site at the time, to warn them or inform them about the extensive radiation, or to make the necessary follow-up medical tests and examinations of persons exposed to radiation. He points out that Denmark does not comply with Art 53 of the Council Directive 96/29, Euratom of 13 May 1996, which requires subsequent monitoring of exposed persons and the compilation and implementation of an appropriate intervention plan where there has been a past radiation incident. The petitioner also says that Denmark's refusal to allow public access

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to the 1968 scientific records of radiation contamination in Thule violates the principles of the European Union of radiation safety for both workers and the general public. The petitioner wishes that Denmark grants access to the 1968 scientific records to former Thule workers and the public, and that they carry out proper follow-up examinations and tests on the surviving civilian workers. Denmark should make adequate provisions for the creation and implementation of a claims system modelled on the procedures employed by the Marshall Islands Nuclear Claims Tribunal.

2. Admissibility

Declared admissible on 14 March 2003. Information requested from the Commission under Rule 192(4).

3. Commission reply, received on 16 June 2003

The petitioner alleges that the health problems he is suffering from are consequences of the fact that he has worked at a US military site at Thule (Greenland) between 1966 and 1971, period during which a military plane bearing four thermonuclear weapons crashed near the military base.

Shortly after this plane crash which occurred in January 1968, the Danish Government arranged to send a Danish team of radiation experts in order that possible radioactive contamination of the Thule area be monitored and reported. Arrangements were made for the removal of debris from the plane. The civilian workers of the Thule base were involved in these operations, the petitioner being one of them. The petitioner claims that no information about the risks involved and the protective measures against radiological exposures was provided to the civilian workers involved in the cleaning up of the site.

In a statement made by the Chairman of the Danish Atomic Energy Commission later on, the conclusion was that “no danger to man or animal and plant life was created by the Thule accident”.

An organisation gathering the former civilian workers of the Thule base has been set up. In 1993, this organisation brought a legal action against the Danish Government, seeking recognition of its responsibilities towards the workers. The petitioner claims that the action failed due to the Government denial of access to scientific data on radiological contamination found at Thule after the crash.

Consequently, the petitioner considers that Denmark’s denial of access to such data violates the relevant provisions of the Euratom Treaty and its secondary legislation concerning the protection of workers and the public against ionising radiation. By doing so, the petitioner further considers that Denmark fails to implement several provisions of Directive 96/29/Euratom¹, including Article 53. Consequently, the petitioner requests that proper medical examinations of the workers involved as well as the indigenous population be done and that a claim system be set up by the Danish Government.

¹ 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 (Official Journal L 159, 29.6.1996)

The Commission is able to give the following information:

Denmark acceded to the Treaty establishing the European Atomic Energy Community in 1973. Under Article 198 of this Treaty, the only exception concerning Denmark relates to the Faeroe Islands.

This legal situation leads to the following conclusions:

- When the accident occurred, Denmark was not a Member State and could not therefore be considered as being bound by the Community legislation applicable at that time. The obligations of Denmark towards the workers and the population likely to be affected by the accident could only flow from national legislation.

- As from 1973, Denmark became bound by the obligations deriving from the Euratom Treaty and its secondary legislation and, in particular, provisions of Chapter 3 of Title II of the Euratom Treaty and the previous Directive laying down the basic safety standards (80/836/Euratom). However, the obligations of Denmark deriving from this Community legislation require account be taken of the fact that the accident occurred before Denmark became a Member State. Denmark is therefore not compelled to provide the Commission with the details of how it implemented this legislation for the protection of exposed workers and the environment.

- The provisions of Article 53 of Directive 96/29/Euratom are designed to determine the current effects of a past radiological accident but it does not apply to the health consequences for the workers and the public at the time the accident occurred. When considering the petitioner's requests in this matter, Article 53 cannot therefore be used as a means to obtain information related to the possible radiological contamination of the workers and the public in 1968.

- As far as the possibility to request from the Danish authorities that a claim system be set up, it is the responsibility of the Member States to set up an appropriate system of recognition and compensation of occupational diseases.

4. Commission reply, received on 23 March 2004

At the meeting of the Petition Committee which took place on 26 November 2003, it was decided that the Commission would address a request to the Danish authorities to provide environmental data concerning the territory of Greenland. This information would allow the Commission services to determine the consequences of the accident in 1968 from a radiological viewpoint and decide whether any remedial measure would be required under Article 53 of Directive 96/29/Euratom, which lays down the Basis Safety Standards for Radiation Protection (concerning so-called "lasting exposures").

The Commission services were contacted informally by the Danish Environment Ministry end of January 2004. The Ministry communicated that the omission of Greenland from the list of territories to which the Euratom treaty applies had resulted from a material error in the compilation of the Maastricht revision of the Treaties. Consequently, the Kingdom of Denmark asked in 1996 for a rectification of the Treaty. Notwithstanding the formal

accomplishment of the rectification procedure, a corrigendum was never published in the Official Journal.

This lack of publication led the Commission's services to ask for an opinion of the Commission's Legal Service, in order to ascertain the legal value of a rectification of the Treaty that was not followed by the publication in the Official Journal.

The Committee for Petitions will be kept informed on the further developments in this case.

5. Commission reply, received on 03 February 2006

At the meeting of the Petition Committee that took place on 26 November 2003, it was agreed that the Commission would address a request to the Danish authorities to provide environmental data concerning the territory of Greenland.

This information would allow the Commission services to determine the consequences of the accident in 1968 from a radiological viewpoint and decide whether any remedial measure would be required under Article 53 of Directive 96/29/Euratom, which lays down the Basis Safety Standards for Radiation Protection (concerning so-called "lasting exposures").

This request was made by letter no D(2003) 22884 of 6 January 2004 from Director General Lamoureux to the Danish Permanent Representation. The request was based on the assumption that the relevant Euratom provisions were applicable in this case, as Greenland was not expressly mentioned in Article 198 Euratom, which enumerates the territories to which the Treaty shall not apply.

In the meantime, it was clarified that the omission of Greenland from the list of territories to which the Euratom Treaty does not apply resulted from a material error in the compilation of the Maastricht revision of the Treaties. This mistake had later on been rectified, but a corrigendum was never published in the Official Journal.

The provisions of the Euratom Treaty and its secondary legislation are therefore not applicable to the territory of Greenland.

On this basis, a second letter (D 2004 8777) was sent from Director General Lamoureux to the Danish Permanent Representation in June 2004. This letter asked for provision to the Commission of information concerning environmental radioactivity levels in Greenland, as did the letter of January 2004, only, on a voluntary basis. The Danish authorities declined to provide the requested information.

At the meeting of the Petitions Committee on 30th September 2004, the Commission services expressed their view that no provision of the Euratom *acquis* on protection of health of the public and of workers could be usefully applied to the case of the petitioners.

Since then, Mr. Anderson, Petitioners' lawyer, has addressed several communications:

- to the Commission: Request for access to the correspondence with the Danish authorities (in October 2004), which was refused based on Regulation n° 1049/2001). The same request was made in June 2005 by Mr Jens-Peter Bonde, MEP.

- to Mr. Piebalgs, Commissioner for Energy, asking him to review the Commission’s position on this case (e-mail in March 2005, replied by Mr. Piebalgs in May, and Fax in July, replied by Mr. Waeterloos, Director for Nuclear Energy, in October).
- Mr Anderson refers to this correspondence in his latest letter to the Committee on Petitions on 5th October 2005, but he makes his own interpretation of the statements made by Commissioner Piebalgs, who expressed a position that does not differ from the position expressed by his predecessor, Commissioner De Palacio. As for the Riso Report, annexed to his letter, this information does not offer relevant new information: the recent campaign gives indication of possible higher doses to the local population, but the local area is Greenland territory, to which the Euratom provisions do not apply; in any case, there is no link between this finding and possible doses to Thule workers who are now Danish citizens. Information relevant for environmental monitoring may also not be relevant for health monitoring: at the expected levels there should be no observable health detriment, so health monitoring / medical surveillance, would be of no use.

Mr. Anderson latest communication, sent by fax on 25.05.2005 (A/27267) contains a number of offensive statements on the Commission, as an institution, and on the Commission’s services motivations in this case.

The Commission’s services confirm their view that the relevant Euratom provisions are not applicable to the case of the petitioners. They further consider that this interpretation is not incompatible with the interpretation given by the EP Legal Service in its opinion of 13 February 2004, to which partial access was given to the Commission. This opinion was drafted in general terms and referred to Court case-law in principle, but did not enter into the details of the case posed by the petitioner.

6. Further Commission reply, received on 25 January 2007.

At the meeting of the Petitions Committee that took place on 14 November 2006, the Commission's analysis of this case, as expressed at previous meetings, was confirmed as follows.

- Preliminary remark: Denmark acceded to the Treaty establishing the European Atomic Energy Community in 1973. By the Treaty of Withdrawal of March 1984, which came into force on 1 January 1985,¹ Greenland became an Overseas Country and Territory. Article 198 of the Euratom Treaty was then amended and a new sentence was added in paragraph 3 (a) saying that : “This Treaty shall not apply to Greenland”.²
- When the accident occurred, Denmark was not a Member State and could therefore not be considered as being bound by the Community legislation applicable at that time. The obligations of Denmark towards the workers and the population likely to be affected by the accident at that time could only flow from national legislation.

¹ OJ n° L029 of 01/02/1985, p. 3

² Note that the lack of reference to Greenland in Article 198 is an editorial mistake resulting from the post Maastricht compilation of texts, as explained in previous information notes.

- As from 1973, Denmark became bound by the obligations deriving from the Euratom Treaty and its secondary legislation and, in particular, the provisions of Chapter 3 of Title II of the Euratom Treaty and the 1959 basic safety standards adopted on the basis of Article 31 Euratom (Official Journal L 11, 20/02/1959 p. 221, as amended).
- These basic safety standards have been subsequently modified and replaced. Since May 2000, the text applicable is Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the health protection of the general public and workers against the dangers of ionizing radiation (OJ L 159 of 29/06/96, p.1).
- Directive 96/29/Euratom contains different kind of provisions: some of a preventive nature (intended to prevent accidents from happening and to minimise the exposures of workers and population – Titles VI, VII and VIII) and other of a remedial nature (intended to organise the intervention in case of an emergency or of lasting exposures resulting e.g. from a past accident – Title IX).
- Only remedial measures, and in particular Article 53 of Directive 96/29/Euratom, designed to determine the current effects of a past radiological accident, could thus be applicable to the situation originating the petition. However: (1) Article 53 does not deal with monitoring the health consequences of the workers and the public as a result of a past accident; (2) Article 53, which requires action that is closely related to the geographical location of the source of exposure, can only be applied to the territories to which the Euratom Treaty is applicable.

As a matter of consequence, the Commission takes the view that there is no indication of an infringement of Euratom provisions by the Danish authorities in this case.

Additionally to these considerations, the Commission would like to refer to the recent case law of the Court of Justice of the European Communities stating that the use of nuclear energy for military purposes falls outside the scope of all the provisions of the Euratom Treaty and its secondary legislation (Judgment of the Court of 12 April 2005, Commission v United Kingdom, Case C-61/03, ECR 2005 p. I-2477, as confirmed by the Court on 9 March 2006, Commission v United Kingdom, Case C-65/04, ECR 2006 p. I-2239). This case-law excludes the applicability of the provisions of the Euratom Treaty and secondary legislation to the effects of an accident originating in a military facility, as in the present case.