JUDGMENT OF THE COURT (Third Chamber)
12 October 1999 *

In Case C-213/98,

Commission of the European Communities, represented by K. Banks, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Ireland, represented by M.A. Buckley, Chief State Solicitor, acting as Agent, with an address for service in Luxembourg at the Irish Embassy, 28 Route d'Arlon,

defendant,

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 1992

* Language of the case: English.

L 346, p. 61) and/or by failing to inform the Commission thereof, Ireland has failed to fulfil its obligations under the EC Treaty,

THE COURT (Third Chamber),

composed of: J.C. Moitinho de Almeida, President of the Chamber, C. Gulmann (Rapporteur) and J.-P. Puissochet, Judges,

Advocate General: P. Léger,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 8 July 1999,

gives the following

Judgment

1 By application lodged at the Court Registry on 9 June 1998, the Commission of the European Communities brought an action under Article 169 of the EC Treaty (now Article 226 EC) for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council

Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 1992 L 346, p. 61) (hereinafter 'the Directive') and/or by failing to inform the Commission thereof, Ireland has failed to fulfil its obligations under the EC Treaty.

2 Article 15 of the Directive provides that Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive no later than 1 July 1994 and to inform the Commission thereof forthwith.

3 On 20 January 1995, not having been informed of any implementing measure adopted by Ireland, the Commission formally called on that Member State to submit its observations within a period of two months.

4 By letter of 22 March 1995, the Irish authorities informed the Commission that a total review of the Copyright Act had been initiated in 1994 and that a comprehensive new bill was being prepared which would update all aspects of Irish copyright law and incorporate the provisions of the Directive.

5 On 1 July 1997, having received no further information, the Commission concluded that Ireland had not yet adopted the provisions needed to comply with the Directive and sent it a reasoned opinion pointing out that the period set for transposition of the Directive had expired on 1 July 1994 and that Ireland was required to inform the Commission of any implementing measures that it had adopted.

6 The Irish Government replied by letter of 26 August 1997 stating that substantial progress had been made in the drafting of a comprehensive new bill on copyright

and related rights, that Irish copyright law was out of date and that major legislation was required to remedy the situation.

7 On 8 June 1998, having received no further information from Ireland, the Commission concluded that it had not yet adopted the laws, regulations and administrative provisions necessary to comply with the Directive and decided to institute the present proceedings.

8 The Commission points out that, under the third paragraph of Article 189 of the EC Treaty (now the third paragraph of Article 249 EC), directives are binding, as to the result to be achieved, on each Member State to which they are addressed, and that under Article 5 of the EC Treaty (now Article 10 EC), Member States are required to take all appropriate measures to ensure fulfilment of the obligations arising out of the Treaty or resulting from Community action.

9 The Irish Government does not deny that it failed to transpose the Directive into national law within the prescribed period. It explains in this connection that the Irish authorities have endeavoured to take all measures necessary to transpose the Directive into national law. However, it argues that the provisions of the Directive cannot be effectively transposed until all aspects of Irish copyright law have first been revised and updated.

10 According to the Irish Government, the revision of Irish copyright law, which has been in progress since 1994, is at an advanced stage of preparation and a working draft was publicly circulated on 31 July 1998. Its provisions on rental and

lending rights fully implement the Directive, the effective transposition of which depends on completion of that legislative process. The Irish Government adds that this bill should soon be ready for publication, with a view to enactment shortly thereafter.

11 The Court has consistently held, in this regard, that a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits laid down in a directive (see, in particular, Case C-401/98 *Commission* v *Greece* [1999] ECR I-5543, paragraph 9).

12 Since the Directive was not transposed within the period laid down therein, the Commission's application must be considered to be well founded.

13 It must therefore be held that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with the Directive, Ireland has failed to fulfil its obligations thereunder.

Costs

14 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since Ireland has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber),

hereby:

1. **Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, Ireland has failed to fulfil its obligations under that directive.**

2. **Orders Ireland to pay the costs.**

Moitinho de Almeida Gulmann Puissochet

Delivered in open court in Luxembourg on 12 October 1999.

R. Grass — Registrar

J.C. Moitinho de Almeida — President of the Third Chamber