JUDGMENT OF THE COURT (Third Chamber)
19 February 2004 *

In Case C-310/03,

Commission of the European Communities, represented by D. Martin, acting as Agent,

applicant,

v

Grand Duchy of Luxembourg, represented by S. Schreiner, acting as Agent,

defendant,

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ 1999 L 171, p. 12), the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive,

* Language of the case: French.

THE COURT (Third Chamber),

composed of: A. Rosas (Rapporteur), President of the Chamber, R. Schintgen and N. Colneric, Judges,

Advocate General: F.G. Jacobs,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By application lodged at the Court Registry on 23 July 2003 the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees (OJ 1999 L 171, p. 12), the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive.

2 Directive 1999/44 provides in Article 11(1) that Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with the directive not later than 1 January 2002 and that they are forthwith to inform the Commission thereof.

3 Since the Commission was not informed of the measures adopted to implement Directive 1999/44 in Luxembourg law within the period prescribed in that directive, it initiated the procedure for failure to fulfil obligations as provided for in Article 226 EC. After having given notice to the Grand Duchy of Luxembourg to submit its observations, the Commission issued a reasoned opinion on 19 December 2002 requesting that Member State to take the measures necessary to comply therewith within two months of receipt of the opinion. As the Grand Duchy of Luxembourg did not respond to the opinion, the Commission brought the present action.

4 The Commission submits that, by failing to adopt the measures necessary to comply with Directive 1999/44, the Grand Duchy of Luxembourg has failed to fulfil its obligations under the relevant provisions thereof.

5 The Grand Duchy of Luxembourg does not deny its failure to implement the directive. However, it indicates that a draft law was adopted by the Government in council on 27 June 2003. That draft law was lodged at the Chamber of Deputies on 8 August 2003 and submitted to the Council of State for its opinion.

6 The Grand Duchy of Luxembourg does not deny that, on expiry of the period prescribed in the reasoned opinion, the measures needed to implement Directive 1999/44 had not yet been adopted, and merely sets out the stage reached in the procedure for its implementation.

7 However, it is settled case-law that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion and that the Court cannot take account of any subsequent changes (see, inter alia, Case C-63/02 *Commission* v *United Kingdom* [2003] ECR I-821, paragraph 11).

8 In the present case, it is not in dispute that no measure intended to implement Directive 1999/44 in Luxembourg law had been adopted on expiry of the period prescribed in the reasoned opinion.

9 Accordingly, the Commission's action must be considered well founded.

10 Consequently, it should be held that, by failing to adopt, within the period prescribed in the reasoned opinion, the laws, regulations and administrative provisions necessary to comply with Directive 1999/44, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive.

Costs

11 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission asked for the Grand Duchy of Luxembourg to be ordered to pay the costs and the latter 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 period prescribed in the reasoned opinion, the laws, regulations and administrative provisions necessary to comply with Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;**

2. **Orders the Grand Duchy of Luxembourg to pay the costs.**

Rosas Schintgen Colneric

Delivered in open court in Luxembourg on 19 February 2004.

R. Grass — Registrar

A. Rosas — President of the Third Chamber