

JUDGMENT OF THE COURT (Fifth Chamber)

25 November 1999 \*

In Case C-212/98,

**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 Chambers of C. Gómez de la Cruz, of the same 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 within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 93/83/EEC of 27 September 1993 on the coordination of

\* Language of the case: English.

certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ 1993 L 248, p. 15) and/or by failing to inform the Commission thereof, Ireland has failed to fulfil its obligations under the EC Treaty,

THE COURT (Fifth Chamber),

composed of: D.A.O. Edward, President of the Chamber, L. Sevón, P.J.G. Kapteyn (Rapporteur), P. Jann and H. Ragnemalm, 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 7 October 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 within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ 1993 L 248, p. 15; 'the Directive') and/or by failing to inform it thereof, Ireland has failed to fulfil its obligations under the EC Treaty.

- 2 Under Article 14(1) of the Directive, Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive before 1 January 1995, and were immediately to inform the Commission thereof.
  
- 3 As the Commission had not received any communication from the Irish Government relating to the transposition of the Directive and as it had no other information from which to conclude that Ireland had complied with its obligation, the Commission, by letter of 16 May 1995, gave Ireland formal notice to submit its observations to it within a period of two months.
  
- 4 The Irish Government replied by letter of 28 July 1995, stating that the Irish authorities had undertaken a comprehensive review of the Copyright Act of 1963 and that the provisions of the Directive would be transposed in the amended legislation.
  
- 5 Since it had not received any information from the Irish Government, on 17 July 1996, the Commission sent it a reasoned opinion requesting it to adopt the

necessary measures to comply with its obligations under the Directive within a period of two months of notification of that opinion.

6 By letters of 2 and 9 August 1996, the Irish authorities replied to the reasoned opinion and informed the Commission, *inter alia*, that they intended to adopt the necessary legislative provisions as soon as possible.

7 Having received no information regarding the transposition of the Directive, the Commission decided to bring the present action.

8 The Commission claims that Ireland has not transposed the Directive within the prescribed period and has thus failed to fulfil its obligations under the Treaty.

9 The Irish Government does not deny that the Directive has not been transposed within the prescribed period. It states, however, that, as a consequence of a Supreme Court judgment, the Directive may be transposed into the Irish legal system only by way of primary legislation. Consequently, it has been necessary to review the Copyright Act of 1963. The Irish Government considers that it has endeavoured to take every step necessary to initiate in due time the procedures necessary for transposing the Directive into domestic law. In those circumstances it requests the Court to stay proceedings, so that the Commission, after examining the Irish legislation, may discontinue the action.

10 As regards the Irish Government's request to stay proceedings, the Commission states that four years have elapsed since the date on which Ireland should have legislated to implement the Directive. It did not bring these proceedings until

three and a half years after that date. If the Commission did not act within the normal time-limits laid down by the Court, it would be failing to fulfil its obligations as guardian of the Treaty.

- 11 With respect to the difficulties, encountered by the Irish Government, in implementing the Directive in due time, it is settled case-law 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, *inter alia*, Case C-401/98 *Commission v Greece* [1999] ECR I-5543, paragraph 9).
  
- 12 As regards the Irish Government's request for proceedings to be stayed, it should be observed that, if the Member State to which a reasoned opinion has been issued has not, by the end of the period which it is for the Commission to lay down pursuant to the second paragraph of Article 169 of the Treaty, put an end to the infringement with which it is charged, the Commission is at liberty to decide whether or not to bring the matter before the Court (see Case C-329/88 *Commission v Greece* [1989] ECR 4159). Since the Commission stated in its reply that it was maintaining the action, it is not appropriate to stay proceedings.
  
- 13 Therefore, since the Directive was not implemented within the prescribed period, the Commission's application must be held to be well founded.
  
- 14 It must therefore be declared 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 under that directive.

Costs

- 15 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 has applied for costs, and since Ireland has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth 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 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to

satellite broadcasting and cable retransmission, Ireland has failed to fulfil its obligations under that directive;

2. Orders Ireland to pay the costs.

Edward

Sevón

Kapteyn

Jann

Ragnemalm

Delivered in open court in Luxembourg on 25 November 1999.

R. Grass

D.A.O. Edward

Registrar

President of the Fifth Chamber