

JUDGMENT OF THE COURT

19 March 2002 \*

In Case C-13/00,

Commission of the European Communities, represented by K. Banks and  
M. Desantes, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Ireland, represented initially by M.A. Buckley and subsequently by D.J. O'Hagan,  
acting as Agents, with an address for service in Luxembourg,

defendant,

\* Language of the case: English.

supported by

United Kingdom of Great Britain and Northern Ireland, represented by G. Amodeo, acting as Agent, and M. Hoskins, Barrister, with an address for service in Luxembourg,

intervener,

APPLICATION for a declaration that, by failing to obtain its adherence before 1 January 1995 to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act of 24 July 1971), Ireland has failed to fulfil its obligations under Article 228(7) of the EC Treaty (now, after amendment, Article 300(7) EC) in conjunction with Article 5 of Protocol 28 to the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3),

#### THE COURT,

composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken, N. Colneric and S. von Bahr (Presidents of Chambers), C. Gulmann, D.A.O. Edward, J.-P. Puissochet (Rapporteur), M. Wathelet, R. Schintgen, V. Skouris, J.N. Cunha Rodrigues and C.W.A. Timmermans, Judges,

Advocate General: J. Mischo,  
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 27 November 2001,

gives the following

### Judgment

1 By application lodged at the Court Registry on 14 January 2000, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to obtain its adherence before 1 January 1995 to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act of 24 July 1971) ('the Berne Convention'), Ireland had failed to fulfil its obligations under Article 228(7) of the EC Treaty (now, after amendment, Article 300(7) EC) in conjunction with Article 5 of Protocol 28 to the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3) ('the EEA Agreement').

2 By a statement in intervention in support of the form of order sought by Ireland, the United Kingdom of Great Britain and Northern Ireland argues that the mixed character of the EEA Agreement means that the Court has jurisdiction to rule on it only in relation to matters which have been the subject of harmonisation measures at Community level, which is not the case with regard to intellectual property. Consequently, in the United Kingdom's view, the Berne Convention is a matter of international law and the competence of the Member States and its application cannot be the subject of review by the Court.

## The admissibility of the submissions of the United Kingdom as intervener

- 3 Under Article 37 of the EC Statute of the Court of Justice, an application to intervene must be limited to supporting the form of order sought by one of the parties.
- 4 The United Kingdom submits that the Court should declare that it has no jurisdiction to rule in the dispute and consequently dismiss the action brought by the Commission. Ireland accepts that it has failed to fulfil an obligation and confines itself to requesting the Court to suspend the case until its legislation has been amended accordingly.
- 5 An intervener has no standing to raise a plea of inadmissibility not set out in the forms of order sought by the defendant (see Case C-313/90 *CIRFS and Others v Commission* [1993] ECR I-1125, paragraphs 21 and 22, and Case C-225/91 *Matra v Commission* [1993] ECR I-3203, paragraphs 11 and 12).
- 6 As the United Kingdom confines itself to challenging the Court's jurisdiction to hear the dispute, it follows that its submissions as intervener are inadmissible.

## The failure to fulfil obligations

- 7 Under Article 5 of Protocol 28 to the EEA Agreement, the Contracting Parties undertook to obtain their adherence before 1 January 1995 to the Berne

Convention. As Ireland is a party to the EEA Agreement, which entered into force on 1 January 1994, it was required to meet its obligations under that Agreement, including its adherence to the Berne Convention.

- 8 As Ireland failed to adhere within the prescribed period, the Commission addressed a letter of formal notice to it on 15 April 1998.
- 9 Ireland replied in a letter of May 1998 that it was in the course of finalising a new bill which would update its copyright law and enable it to ratify the Berne Convention.
- 10 Taking the view that there was still no instrument of accession by Ireland to the Berne Convention, the Commission addressed a reasoned opinion to Ireland on 17 December 1998 requesting compliance within two months.
- 11 In its letter of reply of 15 February 1999, Ireland acknowledged its obligation to adhere to the Berne Convention. It informed the Commission that the draft legislation on intellectual property was at an advanced stage of its scrutiny by the Irish Parliament and would be enacted by the end of 1999 at the latest.
- 12 It is for this reason that Ireland, in its defence, requests the Court to grant a further period of six months to enable a vote to be taken on the draft legislation and to enable it to be submitted to the Commission in the hope that the latter might then discontinue the proceedings.

- 13 The action for failure to fulfil obligations can have as its subject only the failure to comply with obligations under Community law, so it is necessary, before deciding whether there has been a substantive failure, to examine whether the obligations devolving on Ireland and forming the subject-matter of the present action come within the scope of Community law.
- 14 The Court has ruled that mixed agreements concluded by the Community, its Member States and non-member countries have the same status in the Community legal order as purely Community agreements, as these are provisions coming within the scope of Community competence (see, to that effect, Case 12/86 *Demirel* [1987] ECR 3719, paragraph 9).
- 15 From this the Court has concluded that, in ensuring respect for commitments arising from an agreement concluded by the Community institutions, the Member States fulfil, within the Community system, an obligation in relation to the Community, which has assumed responsibility for the due performance of the agreement (*Demirel*, cited above, paragraph 11).
- 16 In the present case, there can be no doubt that the provisions of the Berne Convention cover an area which comes in large measure within the scope of Community competence.
- 17 The protection of literary and artistic works, which forms the subject-matter of the Berne Convention, is to a very great extent governed by Community legislation in matters as diverse as the legal protection of computer programs, rental and lending rights within the area of intellectual property, the protection of copyright applicable to satellite broadcasting and cable retransmission, the legal protection of databases or the terms of protection of copyright and certain related rights.

- 18 The Court has, moreover, had occasion to rule that copyright and related rights fall within the scope of application of the Treaty (Joined Cases C-92/92 and C-326/92 *Phil Collins and Others* [1993] ECR I-5145, paragraph 28).
- 19 The Berne Convention thus creates rights and obligations in areas covered by Community law. That being so, there is a Community interest in ensuring that all Contracting Parties to the EEA Agreement adhere to that Convention.
- 20 It follows that the requirement of adherence to the Berne Convention which Article 5 of Protocol 28 to the EEA Agreement imposes on the Contracting Parties comes within the Community framework, given that it features in a mixed agreement concluded by the Community and its Member States and relates to an area covered in large measure by the Treaty. The Commission is thus competent to assess compliance with that requirement, subject to review by the Court.
- 21 With regard to the substantive nature of the failure to fulfil obligations, it has consistently been held that the question whether a Member State has failed to fulfil its obligations must be determined solely by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion (see, *inter alia*, Case C-147/00 *Commission v France* [2001] ECR I-2387, paragraph 26). Further, a Member State cannot plead provisions, practices or situations within its internal legal order in order to justify its failure to fulfil obligations under Community law.
- 22 As it has thus been established that Ireland failed to adhere to the Berne Convention within the period specified by the reasoned opinion, as required under the EEA Agreement, the action for failure to fulfil obligations must be considered to be well founded.

- <sup>23</sup> Consequently, by failing to obtain its adherence before 1 January 1995 to the Berne Convention, Ireland has failed to fulfil its obligations under Article 228(7) of the EC Treaty in conjunction with Article 5 of Protocol 28 to the EEA Agreement.

## Costs

- <sup>24</sup> 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. As the Commission has applied for costs and Ireland has been unsuccessful, Ireland must be ordered to pay the costs. Pursuant to Article 69(4) of the Rules of Procedure, the United Kingdom shall bear its own costs.

On those grounds,

## THE COURT

hereby:

1. Dismisses the submissions of the United Kingdom of Great Britain and Northern Ireland as interveners;



2. Declares that, by failing to obtain its adherence before 1 January 1995 to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act of 24 July 1971), Ireland has failed to fulfil its obligations under Article 228(7) of the EC Treaty (now, after amendment, Article 300(7) EC) in conjunction with Article 5 of Protocol 28 to the Agreement on the European Economic Area of 2 May 1992;
  
3. Orders Ireland to pay the costs;
  
4. Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.

Rodríguez Iglesias	Jann	Macken
Colneric	von Bahr	Gulmann
Edward	Puissochet	Wathelet
Schintgen	Skouris	
Cunha Rodrigues	Timmermans	

Delivered in open court in Luxembourg on 19 March 2002.

R. Grass  
Registrar

G.C. Rodríguez Iglesias  
President