COURT OF JUSTICE
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Judgment of the Court in Case C-227/23 | Kwantum Nederland and Kwantum België

# Intellectual property: Member States are required to protect works of art in the European Union, irrespective of the country of origin of those works or the nationality of their author

Vitra, a Swiss company that manufactures designer furniture, holds intellectual property rights over chairs designed by the since-deceased spouses, Charles and Ray Eames, who were nationals of the United States of America. That furniture included the Dining Sidechair Wood, which was created as part of a furniture design competition organised by the Museum of Modern Art in New York (United States) and exhibited in that museum from 1950.

The company Kwantum, which operates a chain of interior furnishing shops in the Netherlands and in Belgium, marketed a chair called the 'Paris chair', allegedly in breach of Vitra's copyright in the Dining Sidechair Wood. Vitra brought proceedings before the Netherlands courts with the aim, inter alia, of putting an end to that marketing. In that context, the Supreme Court of the Netherlands decided to refer questions to the Court of Justice for a preliminary ruling relating to the protection which, under Directive 2001/29 [1] and Article 17(2) and Article 52(1) of the Charter of Fundamental Rights of the European Union ('the Charter'), may be granted in the European Union to a work of applied art originating in a third country and the author of which is not a national of a Member State.

In international law, the Berne Convention [2] provides that authors who are nationals of the signatory countries enjoy in the other signatory countries, in principle, the same rights as national authors. However, the protection of works of applied art constitutes an exception to that principle. In that regard, the contracting parties have laid down a material reciprocity clause according to which works of applied art originating in countries in which such works are protected solely as designs and models are not entitled, in the other signatory countries, to such protection in addition to copyright protection.

In this respect, the question referred to the Court of Justice by the Supreme Court of the Netherlands seeks to ascertain whether the Member States are still free to apply the material reciprocity clause contained in the Berne Convention to works of applied art originating in third countries which protect those works solely under a special regime, even though the EU legislature has not provided for such a limitation.

**In its judgment, the Court of Justice answers in the negative: within the scope of Directive 2001/29, the Member States are no longer competent to implement the relevant stipulations of the Berne Convention.**

First of all, the Court clarifies in that regard that a situation in which a company claims copyright protection for a subject matter of applied art marketed in a Member State, provided that such subject matter may be classified as a 'work' within the meaning of Directive 2001/29, falls within the material scope of EU law.

Next, the Court finds that the EU legislature, in adopting that directive, necessarily took into account all the works for which protection is sought in the territory of the European Union; moreover, that directive does not lay down any criterion relating to the country of origin of those works or to the nationality of their author. The Court adds that the application of the material reciprocity clause contained in the Berne Convention would undermine the objective

of Directive 2001/29, which consists in the harmonisation of copyright in the internal market, since, under that clause, works of applied art originating in third countries might be treated differently in different Member States.

Lastly, the Court points out that, since the intellectual property rights in question are protected under Article 17(2) of the Charter, any limitation of those rights must, in accordance with Article 52(1) of the Charter, be provided for by law. It is for the EU legislature alone to determine whether the grant in the European Union of the rights laid down in Directive 2001/29 should be limited.

In those circumstances, a Member State cannot rely on the Berne Convention in order to exempt itself from the obligations arising from that directive.

**Therefore, a Member State may not, by way of derogation from the provisions of EU law, apply the material reciprocity clause contained in the Berne Convention in respect of a work the country of origin of which is the United States of America.**

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.



The full text and, as the case may be, the abstract of the judgment is published on the CURIA website on the day of delivery.

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[1] Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

[2] Convention signed in Berne on 9 September 1886 (Paris Act of 24 July 1971), as amended on 28 September 1979.