Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

19 March 2026*

(Reference for a preliminary ruling – Approximation of laws – Directive 2001/29/EC – Harmonisation of certain aspects of copyright and related rights in the information society – Reproduction right – Article 2(a) – Concept of a 'work' – Protection of works by copyright – Conditions – Directive 2006/116/EC – Article 5 – Berne Convention for the Protection of Literary and Artistic Works – Article 2 – Critical edition of a pre-existing work the purpose of which is to restore a Latin manuscript – Intellectual creation reflecting the personality of its author, by expressing the latter's free and creative choices – Subject matter identifiable with sufficient precision and objectivity)

In Case C-649/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania), made by decision of 6 December 2022, received at the Court on 31 October 2023, in the proceedings

Institutul de Istorie și Teorie Literară „G. Călinescu",

Fundația Națională pentru Știință și Artă

v

HK, as heir of TB,

VP,

GR,

THE COURT (First Chamber),

composed of F. Biltgen, President of the Chamber, T. von Danwitz, Vice-President of the Court, acting as Judge of the First Chamber, I. Ziemele (Rapporteur), A. Kumin and S. Gervasoni, Judges,

Advocate General: D. Spielmann,

Registrar: R. Șereș, Administrator,

having regard to the written procedure and further to the hearing on 19 March 2025,

* Language of the case: Romanian.

after considering the observations submitted on behalf of:

– the Institutul de Istorie şi Teorie Literară „G. Călinescu”, by P. Buta, avocat,

– the Romanian Government, by E. Gane, L. Ghiță and A. Rotăreanu, acting as Agents,

– the French Government, by T. Lechevallier and B. Travard, acting as Agents,

– the Italian Government, by S. Fiorentino and G. Palmieri, acting as Agents, and by D.G. Pintus, avvocato dello Stato,

– the European Commission, by A. Biolan and J. Samnadda, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 June 2025,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 2(a) of 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 (OJ 2001 L 167, p. 10).

2 The request has been made in proceedings between the Institutul de Istorie și Teorie Literară „G. Călinescu” (G. Călinescu Institute of History and Literary Theory; ‘the Călinescu Institute’) and the Fundația Națională pentru Știință și Artă (National Foundation for Science and Art; ‘the NFSA’), on the one hand, and HK, as heir of TB, VP and GR, on the other, concerning the copyright status of the critical edition of a work in the public domain.

Legal context

International law

The Berne Convention

3 Article 1 of the Berne Convention for the Protection of Literary and Artistic Works, signed in Berne on 9 September 1886 (Paris Act of 24 July 1971), in the version arising from the amendment of 28 September 1979 (‘the Berne Convention’), provides that:

‘The countries to which this Convention applies constitute a Union for the protection of the rights of authors in their literary and artistic works.’

4 Article 2 of that convention provides:

‘(1) The expression “literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

(2) It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form.

(3) Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work.’

5 Article 9(1) of the Berne Convention is worded as follows:

‘Authors of literary and artistic works protected by this Convention shall have the exclusive right of authorising the reproduction of these works, in any manner or form.’

6 Article 12 of that convention provides:

‘Authors of literary or artistic works shall enjoy the exclusive right of authorising adaptations, arrangements and other alterations of their works.’

The WIPO Copyright Treaty

7 The World Intellectual Property Organization (WIPO) Copyright Treaty, signed in Geneva on 20 December 1996, was approved on behalf of the European Community by Council Decision 2000/278/EC of 16 March 2000 (OJ 2000 L 89, p. 6).

8 Article 1 of the WIPO Copyright Treaty, entitled ‘Relation to the Berne Convention’, provides in paragraph 4 thereof:

‘Contracting Parties shall comply with Articles 1 to 21 and the Appendix of the Berne Convention.’

The TRIPS Agreement

9 The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of 15 April 1994 (OJ 1994 L 336, p. 214; ‘the TRIPS Agreement’) constitutes Annex 1C to the Agreement Establishing the World Trade Organization (WTO), which was signed in Marrakesh on 15 April 1994 and approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence,

of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1). The members of the WTO, including all EU Member States and the European Union itself, are parties to the TRIPS Agreement.

10 Article 9 of the TRIPS Agreement provides:

'1. Members shall comply with Articles 1 through 21 of the Berne Convention … and the Appendix thereto. …

2. Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.'

European Union law

Directive 93/98/EEC

11 Article 1(1) of Council Directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights (OJ 1993 L 290, p. 9) provided that protection of the rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention is to run for the life of the author and for 70 years after his death.

12 Article 5 of that directive, headed 'Critical and scientific publications', provided:

'Member States may protect critical and scientific publications of works which have come into the public domain. The maximum term of protection of such rights shall be 30 years from the time when the publication was first lawfully published.'

13 Directive 93/98 was repealed by Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (OJ 2006 L 372, p. 12), which codified it and contains, in essence, the same provisions. Directive 2006/116 entered into force on 16 January 2007.

Directive 2001/29

14 Article 2 of Directive 2001/29, entitled 'Reproduction right', provides:

'Member States shall provide for the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part:

(a) for authors, of their works;

…'

Directive 2006/116

15 Recital 19 of Directive 2006/116 states:

'The Member States should remain free to maintain or introduce other rights related to copyright in particular in relation to the protection of critical and scientific publications. In order to ensure transparency at Community level, it is however necessary for Member States which introduce new related rights to notify the [European] Commission.'

16 Article 5 of that directive, headed 'Critical and scientific publications', provides:

'Member States may protect critical and scientific publications of works which have come into the public domain. The maximum term of protection of such rights shall be 30 years from the time when the publication was first lawfully published.'

Romanian law

17 Article 16 of Legea nr. 8/1996 privind dreptul de autor și drepturile conexe (Law No 8/1996 on copyright and related rights) of 14 March 1996 (*Monitorul Oficial al României*, Part I, No 60, of 26 March 1996), in the version in force 2001, provided:

'The author of a work has the exclusive economic right to authorise the translation, publication in collections, adaptation and any other alteration of his work resulting in a derivative work.'

18 Article 8 of Law No 8/1996 on copyright and related rights, in the version in force in 2015 and in the version currently in force (*Monitorul Oficial al României*, Part I, No 489, of 14 June 2018), provides:

'Without prejudice to the rights of the authors of the original work, copyright shall likewise subsist in derivative works created on the basis of one or more pre-existing works, namely:

(a) translations, adaptations, annotations, documentary works, arrangements of music and any other transformation of a literary, artistic or scientific work that entail creative intellectual work;

(b) collections of literary, artistic or scientific works, such as encyclopaedias, anthologies and collections and compilations of protected or unprotected material or data, including databases, which, by reason of the selection or arrangement of their subject matter, constitute intellectual creations.'

19 Under Article 23 of Law No 8/1996 on copyright and related rights, in the version in force in 2015 and in the version currently in force:

'The creation of derivative works, for the purposes of this Law, means the translation, publication in collections, adaptation and any other transformation of a pre-existing work, if that transformation constitutes an intellectual creation.'

The dispute in the main proceedings and the question referred for a preliminary ruling

20 Professor Dan Slușanschi is the author of the critical edition of a book drafted in Latin by Prince Dimitrie Cantemir at the beginning of the 18th century, entitled '*Incrementorum et decrementorum Aulae Othman[n]icae siue Aliothma[n]icae historiae a prima gentis origine ad nostra usque tempora deductae libri tres*' (History of the rise and fall of the Ottoman Empire from the origins of the lineage to the present day, in three volumes), now in the public domain ('the Slușanschi critical edition'). That critical edition was published for the first time in 2001 by the Amarcord publishing house established in Timișoara (Romania). A second critical edition, reviewed and corrected by Professor Slușanschi, was published in 2008 by the Paideia publishing house established in Bucharest (Romania) and republished in 2010 and 2012.

21 The Slușanschi critical edition was based on Dimitrie Cantemir's Latin manuscript, discovered in 1984 at the University of Harvard (United States), which has been the owner of that manuscript since 1901.

22 In particular, Professor Slușanschi used, for the first edition of the Slușanschi critical edition, the facsimile of that manuscript, published in Romania in 1999, and, for the second edition thereof, the photographic copies of that manuscript, made available to him by the owner of the works of Dimitrie Cantemir.

23 In 2013, following the death of Professor Slușanschi, TB and VP, as his heirs, concluded an agreement with the Călinescu Institute granting it the right to use Professor Slușanschi's transcripts and translations relating to several texts of Dimitrie Cantemir's works, including the Slușanschi critical edition, with a view to publishing an edition of the complete works of Dimitrie Cantemir. That institute made Professor Slușanschi's works available to the NFSA.

24 In 2015, the NFSA published, in a bilingual two-volume Latin and Romanian version, the work entitled '*Dimitrie Cantemir – Istoria măririi și decăderii Curții othomane*' (Dimitrie Cantemir – History of the rise and fall of the Ottoman court), which reproduced the Latin text together with critical notes by the researchers of the NFSA ('the NFSA edition'). That book contained the text of the Slușanschi critical edition, as published in 2001.

25 On 8 December 2015, TB and VP brought an action before the Tribunalul București (Regional Court, Bucharest, Romania) for infringement of copyright in respect of the Slușanschi critical edition.

26 By judgment of 21 December 2017, the Tribunalul București (Regional Court, Bucharest) held that the NFSA edition reproduced the Slușanschi critical edition in its entirety and that the NFSA edition had also used additions or corrections, unpublished at that time, which Professor Slușanschi had made to his own edition and which he intended to use in the future. However, Professor Slușanschi was only referred to in footnotes in the NFSA edition. In those circumstances, that court found that the Călinescu Institute and the NFSA had infringed Professor Slușanschi's moral right to be recognised as the author of the Slușanschi critical edition and the author's economic rights belonging to his heirs, TB and VP, and ordered the defendants to pay damages in compensation for that non-material and material damage.

27 The Călinescu Institute and the NFSA brought an appeal against that judgment before the Curtea de Apel București (Court of Appeal, Bucharest, Romania).

28 By judgment of 7 April 2021, the Curtea de Apel București (Court of Appeal, Bucharest) held, inter alia, that the Slușanschi critical edition constituted a derivative work, within the meaning of Law No 8/1996, since it had required creative effort and was the result of its author's intellectual activity. That appeal court thus upheld the infringement of copyright found by the court of first instance, while reducing the amount of the compensation for non-material damage payable jointly and severally by the Călinescu Institute and the NFSA.

29 The Călinescu Institute and the NFSA brought an appeal against that judgment before the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania), which is the referring court.

30 They dispute, in essence, the finding of the Curtea de Apel București (Court of Appeal, Bucharest) relating to the classification of a critical edition such as the Slușanschi critical edition, criticising that court for not having applied the criteria established by the case-law of the Court of Justice in order to assess the copyright protection of such a critical edition.

31 According to the Călinescu Institute and the NFSA, the degree of freedom of the author of a critical edition is extremely limited, if not non-existent, in the case of a work of a scientific nature written in an old language, such as Latin, whose rules on syntax and the construction of sentences are precise.

32 They maintain in that regard that, in the case of a critical edition, the author does not have any free creative choices, as the sole purpose of the author is to use his or her professional skills to identify, where the intention of the author of the original work is not clear from the manuscripts used, the versions of text which are closest to the intention of the author of the original work, but never to replace it with that of the author of the critical edition.

33 The fact that it is possible to choose between different options concerning the words or formulations used does not mean that the author of the critical edition has made a creative and original contribution, with the result that it cannot be argued, in the present case, that the Slușanschi critical edition reflects the personality of its author.

34 In that context, the referring court asks whether the critical edition of a work may be classified as a 'work' protected by copyright under Article 2(a) of Directive 2001/29.

35 That court recalls that, according to the case-law of the Court, that concept of a 'work' requires two cumulative criteria to be met, namely, first, the existence of an original subject matter, in the sense that it is both necessary and sufficient that that subject matter reflects the personality of its author, by expressing the latter's free and creative choices, and, second, the existence of a subject matter that is identifiable with sufficient precision and objectivity.

36 As regards the first criterion, the referring court asks whether there is in fact a free and creative choice on the part of the author of a critical edition who restores the content of a pre-existing text in an intelligible form and who makes it as close as possible to the original author's intention, while respecting his style and linguistic expression, by accompanying the text with critical notes, comments and explanations for any corrections, replacements of words or additions necessary in order for the manuscript text to be comprehensible.

37 As regards the second criterion, the referring court also asks whether that criterion is satisfied, since the question remains open whether a critical edition must be regarded as a separate work from the original work or whether, on the contrary, it is indissociable from it, given that its purpose is precisely to restore the text of the pre-existing work.

38 The referring court states that, in the case of a critical edition, the aim pursued by its author is in fact to restore the original work in a form that is as close as possible to that drawn up by the author of that original work. The author of a critical edition consults the manuscript of the original work and, where appropriate, makes corrections or additions to it in order to ensure that it retains its meaning, accompanied by comments and explanations intended to justify the choice of the appropriate terms. Similarly, the critical apparatus contained therein involves an intellectual effort which reflects research work which is often extremely laborious and lengthy.

39 Thus, from that point of view, the creation of the author of a critical edition cannot be equated with the reproduction or facsimile transcription of the manuscript of the original work concerned. At the very least, only the critical notes, comments and explanations attached to the text could constitute an identifiable subject matter in a precise and objective manner, with the result that, in that case, the classification of a work which can be protected by copyright would be granted only in respect of those parts of the critical edition, the subject matter of which is identifiable.

40 Furthermore, that court notes that, under Article 2(3) of the Berne Convention, 'translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work'.

41 In that regard, that court observes that, in the case in the main proceedings, the original work in Latin is unquestionably a 'literary work' within the meaning of the Berne Convention, since that convention includes, in the examples of 'literary and artistic works' which it gives in Article 2(1) thereof, productions in the scientific domain.

42 By contrast, in order for a critical edition such as the Sluşanschi critical edition to be protected as an original work, it must, under Article 2(3) of that convention, be an 'alteration' of a literary work.

43 According to the referring court, although the European Union is not a contracting party to the Berne Convention, it is nevertheless obliged, under Article 1(4) of the WIPO Copyright Treaty, to which it is a party and which Directive 2001/29 is intended to implement, to comply with Articles 1 to 21 of that convention.

44 Lastly, the referring court observes that the Court of Justice has not yet ruled on whether and on what condition the critical edition of an original work may itself be classified as a 'work' within the meaning of Article 2(a) of Directive 2001/29 or, as the case may be, another provision of an act of EU law, which would justify a request for a preliminary ruling under Article 267 TFEU.

45 In those circumstances, the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 2(a) of [Directive 2001/29] be interpreted as meaning that a critical edition of a work, the purpose of which is to restore the text of an original work, by consulting the manuscript, accompanying it with comments and the requisite critical apparatus, may be regarded as a work protected by copyright?'

Consideration of the question referred

46 By its single question, the referring court asks, in essence, whether Article 2(a) of Directive 2001/29 is to be interpreted as meaning that the critical edition of a work which has come into the public domain, the purpose of which is to restore the text of that work, accompanying it with comments and the requisite critical apparatus, may be regarded as a work protected by copyright within the meaning of that provision.

47 It should be borne in mind that Articles 2 to 4 of Directive 2001/29 state that the Member States are to provide for a set of exclusive rights relating, in the case of authors, to their 'works', while Article 5 thereof sets out a series of exceptions and limitations to those rights. That directive makes no express reference to the laws of the Member States for the purpose of determining the meaning and scope of the concept of a 'work'. Accordingly, in view of the need for a uniform application of EU law and the principle of equality, that concept must normally be given an autonomous and uniform interpretation throughout the European Union (judgment of 13 November 2018, *Levola Hengelo*, C-310/17, EU:C:2018:899, paragraph 33 and the case-law cited).

48 It follows that the critical edition of a pre-existing work, such as the Slușanschi critical edition, can be protected by copyright under Directive 2001/29 only if such an edition can be classified as a 'work' within the meaning of that directive.

49 In that regard, it must be borne in mind that the concept of a 'work' requires two cumulative conditions to be satisfied. First, that concept entails that there exist an original subject matter, in the sense of being the author's own intellectual creation. Second, classification as a work is reserved to the elements that are the expression of such creation (judgment of 12 September 2019, *Cofemel*, C-683/17, EU:C:2019:721, paragraph 29 and the case-law cited).

50 As regards, in the first place, the criterion of originality, it is apparent from the Court's case-law that, in order for a subject matter to be regarded as original, it is both necessary and sufficient that it reflects the personality of its author, as an expression of his or her free and creative choices. On the other hand, when the realisation of a subject matter has been dictated by technical considerations, rules or other constraints, which have left no room for creative freedom, that subject matter cannot be regarded as possessing the originality required for it to constitute a work (judgment of 12 September 2019, *Cofemel*, C-683/17, EU:C:2019:721, paragraphs 30 and 31 and the case-law cited).

51 Thus, the fact that the subject matter in question reflects the personality of its author, by expressing his or her free and creative choices, constitutes a decisive factor of the concept of 'originality' and, consequently, of the protection of that subject matter by copyright in EU law.

52 In that regard, the Court has already held that press articles may constitute 'works' protected by copyright, for which the author's own intellectual creation results from the way in which the subject is presented, as well as from the linguistic expression of that author (see, to that effect, judgment of 16 July 2009, *Infopaq International*, C-5/08, EU:C:2009:465, paragraph 44).

53 On the other hand, the Court has held that words as such cannot constitute 'works' (see, to that effect, judgment of 16 July 2009, *Infopaq International*, C-5/08, EU:C:2009:465, paragraph 46) nor can military reports, the content of which is essentially determined by the information which they contain, so that such information and the expression of those reports become indissociable and that those reports are thus entirely characterised by their technical function, precluding all originality (see, to that effect, judgment of 29 July 2019, *Funke Medien NRW*, C-469/17, EU:C:2019:623, paragraph 24 and the case-law cited).

54 In order to determine whether a literary object such as the Slușanschi critical edition is original, it is necessary to ascertain, as the Advocate General observed in point 56 of his Opinion, whether, when drafting it, its author was able to make free and creative choices capable of conveying to the reader the originality of that subject matter, the originality of which arises not from the words themselves considered in isolation, but from the choice, sequence and combination of the words by which the author expressed his creativity in an original manner and achieved a result which is an intellectual creation, whereas the skill in creating that subject matter is not relevant in that regard (see, to that effect, judgments of 16 July 2009, *Infopaq International*, C-5/08, EU:C:2009:465, paragraphs 45 and 46, and of 29 July 2019, *Funke Medien NRW*, C-469/17, EU:C:2019:623, paragraph 23).

55 In that context, as the Advocate General observed in point 63 of his Opinion, the grammatical, lexical, literary and stylistic choices made by the author of a critical edition may probably be dictated, or at the very least influenced, by his or her years of experience, philological expertise, knowledge and understanding of the period in which the original work concerned was drawn up and of the historical period covered by that original work, his or her knowledge of the author of that original work, style and linguistic expression, and by his or her interpretation of what he or she perceives as being that author's intention.

56 Lastly, as the Advocate General also observed in point 65 of his Opinion, the condition of originality may also be assessed in the light of the composition of the critical edition in question, the structuring of the edition concerned, the form given to it and the arrangement of the original text in relation to the comments and critical apparatus.

57 In the present case, it is apparent from the request for a preliminary ruling that the Slușanschi critical edition is not a mere transcription of the Latin manuscript of Dimitrie Cantemir's work, nor is it a facsimile of that manuscript. The objective of the Slușanschi critical edition was to restore, by making corrections and additions, the text of the original work in a complete, comprehensible form that was as close as possible to the intention of its author, Dimitrie Cantemir.

58 In addition, it is apparent from the order for reference that the comments and critical apparatus in the Slușanschi critical edition, relating to corrections, word replacements and additions which may be necessary to understand the manuscript of Dimitrie Cantemir's work, and to the various language versions or variants of words or expressions which have been discarded, are also the intellectual creation of Professor Slușanschi.

59 Consequently, unless the drafting of the Slușanschi critical edition was dictated by purely technical considerations, rules or constraints with no creative freedom, it seems that that critical edition satisfies the criterion of originality, which it is, however, for the referring court to assess.

60 As regards, in the second place, the criterion relating to the identifiable nature of the subject matter at issue, the Court has stated that the concept of a 'work' necessarily entails the existence of a subject matter that is identifiable with sufficient precision and objectivity. That is because, first, the authorities responsible for ensuring that the exclusive rights inherent in copyright are protected must be able to identify, clearly and precisely, the subject matter so protected. So also must third parties against whom the protection claimed by the author of that subject matter may be asserted. Second, the need to ensure that there is no element of subjectivity, which is detrimental to legal certainty, in the process of identifying that subject matter means that the latter must have been expressed in an objective manner (see, to that effect, judgment of 12 September 2019, *Cofemel*, C-683/17, EU:C:2019:721, paragraphs 32 and 33 and the case-law cited).

61 In the present case, the referring court does not rule out the possibility that the Slușanschi critical edition may be regarded as being indissociable from the manuscript of Dimitrie Cantemir's work, in so far as its purpose was to restore the text of that pre-existing work. Nevertheless, that court acknowledges that the author of a critical edition may make adaptations or additions to a work in order to restore the original meaning of the manuscript of that work, with the result that that critical edition could satisfy the second criterion.

62 In that regard, as has been recalled in paragraph 60 of the present judgment, the concept of a 'work' referred to in Directive 2001/29 necessarily implies the existence of an expression which makes it identifiable with sufficient precision and objectivity (see, to that effect, judgment of 13 November 2018, *Levola Hengelo*, C-310/17, EU:C:2018:899, paragraph 40), in relation to the parts corresponding to the original work.

63 As the Advocate General observed in point 70 of his Opinion, the critical edition of an original work may, as a whole, appear to be subject matter identifiable with sufficient precision and objectivity.

64 It is not necessary to draw a distinction between the parts corresponding to the original work, which may have been the subject of textual amendments, and the comments, critical notes or explanations accompanying them in order, where appropriate, to identify those parts which are capable of falling within the scope of copyright protection. Such an approach would run the risk of breaking up a work which is only meaningful as a whole, in particular where such comments, notes or explanations supplement or relate to a specific part of the text of the original work which they are commenting on or restoring.

65 Accordingly, in the present case, subject to the checks to be carried out by the referring court, taking into account the specific nature of the Slușanschi critical edition, the purpose of which is to restore the partially lost text of the original work with comments and the requisite critical apparatus, that critical edition may be regarded as a 'work', within the meaning of Article 2(a) of Directive 2001/29, provided that it is an intellectual creation reflecting the personality of its author, as an expression of his or her free and creative choices, and that it can be identified with sufficient precision and objectivity.

66 As regards, in the third place, the scope of the protection of the work, it should be borne in mind that, where a critical edition has the characteristics set out in paragraph 49 of the present judgment and therefore constitutes a work, it must, as such, qualify for copyright protection, in accordance with Directive 2001/29, and it must be added that the extent of that protection does not depend on the degree of creative freedom exercised by its author, and that that protection is therefore not inferior to that to which any work falling within the scope of that directive is entitled (judgment of 12 September 2019, *Cofemel*, C-683/17, EU:C:2019:721, paragraph 35 and the case-law cited).

67 It should be added, as the Advocate General observed in point 73 of his Opinion, that the infringement of copyright need not consist in the complete reproduction of the work, but may consist in a partial reproduction. The various parts of a work also enjoy protection under Article 2(a) of Directive 2001/29, provided that they contain elements which are the expression of the intellectual creation of the author of the work (see, to that effect, judgment of 16 July 2009, *Infopaq International*, C-5/08, EU:C:2009:465, paragraph 39), which could be the case where an author seeks to restore a partially lost literary work in the form which he or she considers to be as close as possible to that drawn up by the author of the original work.

68 Finally, and irrespective of the foregoing considerations, the recognition of copyright in the critical edition of a literary work in the public domain does not bring that work into the private domain and cannot confer on the author of that critical edition an exclusive right over that pre-existing work.

69 In the light of all the foregoing considerations, the answer to the question referred is that Article 2(a) of Directive 2001/29 must be interpreted as meaning that the critical edition of a work which is in the public domain, the purpose of which is to restore the text of that work with comments and the requisite critical apparatus, may be regarded as a work protected by copyright, within the meaning of that provision, provided that it is an intellectual creation reflecting the author's personality, as an expression of his or her free and creative choices, and that it can be identified with sufficient precision and objectivity.

Costs

70 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Article 2(a) of 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

must be interpreted as meaning that the critical edition of a work which is in the public domain, the purpose of which is to restore the text of that work with comments and the requisite critical apparatus, may be regarded as a work protected by copyright, within the meaning of that provision, provided that it is an intellectual creation reflecting the author's personality, as an expression of his or her free and creative choices, and that it can be identified with sufficient precision and objectivity.

[Signatures]