

— order United Kingdom of Great Britain and Northern Ireland to pay the costs.

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 30 April 2007.

(¹) OJ L 143, p. 56.

Action brought on 22 September 2008 — Commission of the European Communities v Ireland

(Case C-418/08)

(2008/C 301/40)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: U. Wölker and A.A. Gilly, Agents)

Defendant: Ireland

The applicant claims that the Court should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 concerning environmental liability with regard to the prevention and remedying of environmental damage (¹), or in any event by failing to communicate them to the Commission, Ireland has failed to fulfil its obligations under the Directive;

— order Ireland to pay the costs.

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 30 April 2007.

(¹) OJ L 143, p. 56.

Action brought on 24 September 2008 — Commission of the European Communities v Republic of Austria

(Case C-422/08)

(2008/C 301/41)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: U. Wölker and B. Schöfer, acting as Agents)

Defendant: Republic of Austria

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to implement Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (¹), or by failing to notify the Commission thereof, the Republic of Austria has failed to fulfil its obligations under that directive.

— Order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The period prescribed for implementation of the Directive expired on 30 April 2007.

(¹) OJ 2004 L 143, p. 56.

Reference for a preliminary ruling from High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court) (United Kingdom) made on 29 September 2008 — Karen Murphy v Media Protection Services Limited

(Case C-429/08)

(2008/C 301/42)

Language of the case: English

Referring court

High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court)

Parties to the main proceedings

Applicant: Karen Murphy

Defendant: Media Protection Services Limited

Questions referred

1. In what circumstances is a conditional access device an 'illicit device' within the meaning of Article 2(e) of Directive 98/84/EC ⁽¹⁾?
2. In particular, is a conditional access device an 'illicit device' if it is acquired in circumstances where:
 - (i) the conditional access device was made by or with the consent of a service provider and originally supplied subject to limited contractual authorisation to use the device to gain access to a protected service only in a first Member State and was used to gain access to that protected service received in another Member State? and/or
 - (ii) the conditional access device was made by or with the consent of a service provider and was originally procured and/or enabled by the provision of a false name and residential address in the first Member State thereby overcoming contractual territorial restrictions imposed on the export of such devices for use outside the first Member State? and/or
 - (iii) the conditional access device was made by or with the consent of a service provider and was originally supplied subject to a contractual condition that it be used only for domestic or private use rather than commercial use (for which a higher subscription charge is payable), but was used in the United Kingdom for commercial purposes, namely showing live football broadcasts in a public house?
3. If the answer to any part of Question 2 is 'no', does Article 3(2) of that Directive preclude a Member State from invoking a national law that prevents use of such conditional access devices in the circumstances set out in Question 2 above?
4. If the answer to any part of Question 2 is 'no', is Article 3(2) of that Directive invalid:
 - (a) for the reason that it is discriminatory and/or disproportionate; and/or
 - (b) for the reason that it conflicts with free movement rights under the Treaty; and/or
 - (c) for any other reason?
5. If the answer to Question 2 is 'yes', are Articles 3(1) and 4 of that Directive invalid for the reason that they purport to require the Member States to impose restrictions on the importation from other Member States of and other dealings with 'illicit devices' in circumstances where those devices may lawfully be imported and/or used to receive cross border satellite broadcasting services by virtue of the rules on the free movement of goods under Articles 28 and 30 of the EC Treaty and/or the freedom to provide and receive services under Article 49 of the EC Treaty?

On the interpretation of Articles 12, 28, 30 and 49 of the EC Treaty

6. Do Articles 28, 30 and/or 49 EC preclude enforcement of a national law (such as section 297 of the Copyright Designs and Patents Act 1988) which makes it a criminal offence dishonestly to receive a programme included in a broadcasting service provided from a place in the United Kingdom with intent to avoid payment of any charge applicable to the reception of the programme, in any of the following circumstances:
 - (i) where the conditional access device was made by or with the consent of a service provider and originally supplied subject to limited contractual authorisation to use the device to gain access to a protected service only in a first Member State and was used to gain access to that protected service received in another Member State (in this case the UK)? and/or
 - (ii) where the conditional access device was made by or with the consent of a service provider and was originally procured and/or enabled by the provision of a false name and residential address in the first Member State thereby overcoming contractual territorial restrictions imposed on the export of such devices for use outside the first Member State? and/or

- (iii) where the conditional access device was made by or with the consent of a service provider and was originally supplied subject to a contractual condition that it be used only for domestic or private use rather than commercial use (for which a higher subscription charge is payable), but was used in the United Kingdom for commercial purposes, namely showing live football broadcasts in a public house?

7. Is enforcement of the national law in question in any event precluded on the ground of discrimination contrary to Article 12 EC or otherwise, because the national law applies to programmes included in a broadcasting service provided from a place in the United Kingdom but not from any other Member State?

On the interpretation of Article 81 of the EC Treaty

8. Where a programme content provider enters into a series of exclusive licences each for the territory of one or more Member States under which the broadcaster is licensed to broadcast the programme content only within that territory (including by satellite) and a contractual obligation is included in each licence requiring the broadcaster to prevent its satellite decoder cards which enable reception of the licensed programme content from being used outside the licensed territory, what legal test should the national court apply and what circumstances should it take into consideration in deciding whether the contractual restriction contravenes the prohibition imposed by Article 81(1)?

In particular:

- (a) must Article 81(1) be interpreted as applying to that obligation by reason only of it being deemed to have the object of preventing, restricting or distorting competition?
- (b) if so, must it also be shown that the contractual obligation appreciably prevents, restricts or distorts competition in order to come within the prohibition imposed by Article 81(1)?

⁽¹⁾ Directive 98/84/EC of the European Parliament and of the Council of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access (OJ L 320, p. 54).

Action brought on 30 September 2008 — Commission of the European Communities v Republic of Poland

(Case C-435/08)

(2008/C 301/43)

Language of the case: Polish

Parties

Applicant: Commission of the European Communities (represented by K. Simonsson and M. Owsiany-Hornung, acting as Agents)

Defendant: Republic of Poland

Form of order sought

— declare that, by excluding all recreation craft from the scope of the regulation of the Minister for Infrastructure of 13 December 2002 on detailed conditions for the safety of navigation by marine vessels, which transposed into national law certain provisions of Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC ⁽¹⁾, and by adopting the provisions in paragraph 3.3 of the regulation of the Minister for Infrastructure of 12 May 2003 on the transmission of information by the owner of a vessel carrying dangerous or polluting cargo, which transposed into national law Article 13 of Directive 2002/59/EC and enables owners of vessels sailing from Polish ports, if at the time of leaving port the name of the port of destination or the anchorage is not known, not to transmit the general information concerning the vessel and information on its cargo (specified in Annex I(3) to Directive 2002/59/EC) until the time of fixing the vessel's route, the Republic of Poland has failed to fulfil its obligations under Articles 2 and 13 of that directive;

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

The Republic of Poland has failed to fulfil its obligations under Articles 2 and 13 of Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC.

The Republic of Poland has incorrectly implemented Article 2 of Directive 2002/59/EC, which excludes from its scope 'fishing vessels, traditional ships and recreational craft with a length of less than 45 metres'.