

2. Does Article 4(2) 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 preclude a Member State from retaining international exhaustion in its legislation?

The second question is aimed at clarifying whether a Member State wishing to accord greater weight to freedom of expression and citizens' access to cultural goods than to the wish to protect national rightholders against competition may derogate from Article 4(2).

(¹) OJ L 167, 22.6.2001, p. 10.

Reference for a preliminary ruling from the Tribunale di Viterbo by order of that court of 2 November 2004, received at the Court Registry on 17 November 2004, in the criminal proceedings pending before it against Antonello D'Antonio

(Case C-480/04)

(2005/C 31/15)

(Language of the case: Italian)

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Viterbo (Italy) of 2 November 2004, received at the Court Registry on 17 November 2004, for a preliminary ruling in the criminal proceedings pending before it against Antonello D'Antonio on the following question:

'Are Articles 4(1) and 4a of Law 401/89, as subsequently amended, which at present reserve to Italian public-service agents alone, and not also to the intermediaries of foreign bookmakers, the activity in question in these proceedings, compatible with Articles 31, 86, 43 and 49 of the EC Treaty?'

Action brought on 23 November 2004 by the Commission of the European Communities against the United Kingdom

(Case C-484/04)

(2005/C 31/16)

(Language of procedure: English)

An action against the United Kingdom was brought before the Court of Justice of the European Communities on 23 November 2004 by the Commission of the European Communities, represented by Gérard Rozet and Nicola Yerrell, acting as agents, with an address for service in Luxembourg.

The Applicant claims that the Court should declare that:

- 1) in applying the derogation to workers whose working time is partially not measured or predetermined or can be determined by the worker himself; and
- 2) in failing to adopt adequate measures for the implementation of the rights to daily and weekly rest, the United Kingdom has failed to fulfil its obligations under Article 17, paragraph 1 of Council Directive 93/104/EC of 23rd November 1993 concerning certain aspects of the organisation of working time (¹) and Article 249 EC. order the United Kingdom to pay the costs.

Pleas in law and main arguments:

Application of the Derogation in Article 17(1)

Article 17(1) of the Directive provides for the possibility for Member States to derogate from certain articles of the Directive when, on account of the specific characteristics of the activity concerned, the duration of working time is not measured or predetermined or can be determined by the workers themselves.

The UK implemented the Directive into national law via the Working Time Regulations 1998 (SI 1998/1833) ('the 1998 Regulations'). These Regulations initially included in regulation 20 a derogation to the provisions relating to maximum weekly working time, length of night work, daily and weekly rest and rest breaks which broadly mirrored the terms of Article 17(1) of the Directive.