

The Commission claims that the Court should:

- declare that, by having failed to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2002/11/EC <sup>(1)</sup> of 14 February 2002 amending Directive 68/193/EEC <sup>(2)</sup> on the marketing of material for the vegetative propagation of the vine and repealing Directive 74/649/EEC or, in any case, by having failed to communicate them to the Commission, the Italian Republic has failed to fulfil its obligations under Article 3 of that directive;
- order the Italian Republic to pay the costs.

*Pleas in law and main arguments*

The period prescribed for the transposition of the directive into national law expired on 3 February 2003.

<sup>(1)</sup> OJ L 53 of 23 February 2002, p. 20.

<sup>(2)</sup> OJ, English Special Edition: 1968(I), p. 93

**Action brought on 16 November 2004 by the Commission of the European Communities against the Italian Republic**

**(Case C-478/04)**

(2005/C 31/13)

*(Language of the case: Italian)*

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 16 November 2004 by the Commission of the European Communities, represented by Minas Konstantinidis and Giuseppe Bambara, acting as Agents.

— The applicant claims that the Court should declare that:

- a) by not adopting the necessary measures to ensure that dangerous waste deposited in the dump of Ca di Capri (Verona) are recovered or disposed of without endangering human health and without using procedures or methods which might be prejudicial to the environment; and
- b) by not adopting the necessary measures to ensure that the owner of dangerous waste deposited in that dump consigns such waste to a private or public disposal contractor, or to an undertaking carrying out the operations referred to in Annexes IIA or IIB to the directive,

or himself carries out its recovery or disposal in compliance with Community provisions; and

- c) by not adopting the necessary measures to ensure, in relation to such dumping, that, at the place where dangerous waste is deposited, it is catalogued and identified, that various categories of dangerous waste are not mixed together, and that dangerous waste is not mixed with non-dangerous waste,

the Italian Republic has failed to fulfil its obligations under Articles 4 and 8 of Directive 75/442/EEC <sup>(1)</sup> on waste, as amended by Council Directive 91/156/EEC <sup>(2)</sup> and under Article 2(1) and (2) of Council Directive 91/689/EEC <sup>(3)</sup> on hazardous waste.

— order the Italian Republic to pay the costs

*Pleas in law and main arguments*

The Commission maintains that, on the grounds set out in its application, the Italian Republic has, in relation to the dump of Ca di Capri (Verona) failed to fulfil its obligations under Directive 75/442/EEC as amended by Directive 91/156/EC, and under Directive 91/689/EEC.

<sup>(1)</sup> OJ 1975 L 194, p. 39

<sup>(2)</sup> OJ 1991 L 78, p. 32

<sup>(3)</sup> OJ 1991 L 377, p. 20

**Reference for a preliminary ruling by the Østre Landsret by decision of that court of 16 November 2004 in the case of Laserdisken ApS against Kulturministeriet**

**(Case C-479/04)**

(2005/C 31/14)

*(Language of the case: Danish)*

By order of 16 November 2004 of the Østre Landsret (Eastern Regional Court), Denmark, received at the Court Registry on 19 November 2004, reference has been made to the Court of Justice of the European Communities for a preliminary ruling in the case of Laserdisken ApS against Kulturministeriet on the following questions:

1. Is 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 <sup>(1)</sup> invalid?

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).

(<sup>1</sup>) 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 23<sup>rd</sup> November 1993 concerning certain aspects of the organisation of working time (<sup>1</sup>) 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.