

1. Article 15 of Eighth Council Directive 84/253/EEC of 10 April 1984 based on Article 54(3)(g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents permits all the Member States to approve persons who satisfy the conditions laid down in that article, namely, persons who have the qualifications in the Member State concerned to carry out the statutory auditing of the documents referred to in Article 1(1) and who did so until the date fixed in Article 15, without their being required first to have passed an examination of professional competence.

Nevertheless, it is contrary to Article 15 for a Member State to exercise the power provided for therein after the expiry of a period of a year starting to run from the date of application of the national provisions transposing the directive, which date may in no circumstances fall after 1 January 1990.

2. Article 11 of the Eighth Directive enables a host Member State to approve, for the purpose of carrying out the statutory auditing of accounting documents, professional persons already approved in another Member State, without requiring them to pass an examination of professional competence, if the competent authorities of the host Member State consider their qualifications to be equivalent to those required under the national legislation of the host Member State, in accordance with the directive.

(¹) OJ C 289 of 13.10.2001.

JUDGMENT OF THE COURT

(Grand Chamber)

of 5 October 2004

in Joined Cases C-397/01 to C-403/01 (reference for a preliminary ruling from the Arbeitsgericht Lörrach): Bernhard Pfeiffer (C-397/01), Wilhelm Roith (C-398/01), Albert Süß (C-399/01), Michael Winter (C-400/01), Klaus Nestvogel (C-401/01), Roswitha Zeller (C-402/01), Matthias Döbele (C-403/01) v Deutsches Rotes Kreuz, Kreisverband Waldshut eV (¹)

(Social policy — Protection of the health and safety of workers — Directive 93/104/EC — Scope — Emergency workers in attendance in ambulances in the framework of an emergency service run by the German Red Cross — Definition of ‘road transport’ — Maximum weekly working time — Principle — Direct effect — Derogation — Conditions)

(2004/C 300/03)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Joined Cases C-397/01 to C-403/01: reference for a preliminary ruling under Article 234 EC from the Arbeitsgericht

Lörrach (Germany), made by orders of 26 September 2001, received at the Court on 12 October 2001, in the proceedings between Bernhard Pfeiffer (C-397/01), Wilhelm Roith (C-398/01), Albert Süß (C-399/01), Michael Winter (C-400/01), Klaus Nestvogel (C-401/01), Roswitha Zeller (C-402/01), Matthias Döbele (C-403/01) and Deutsches Rotes Kreuz, Kreisverband Waldshut eV — the Court (Grand Chamber), composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, C. Gulmann, J.-P. Puissechet and J.N. Cunha Rodrigues, Presidents of Chambers, R. Schintgen (Rapporteur), F. Macken, N. Colneric, S. von Bahr and K. Lenaerts, Judges; D. Ruiz-Jarabo Colomer, Advocate General; H. von Holstein, Deputy Registrar, for the Registrar, has given a judgment on 5 October 2004, in which it has ruled:

1. (a) Article 2 of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work and Article 1(3) of Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time must be construed as meaning that the activity of emergency workers, carried out in the framework of an emergency medical service, such as that at issue before the national court, falls within the scope of the directives.

(b) On a proper construction, the concept of ‘road transport’ in Article 1(3) of Directive 93/104 does not encompass the activity of an emergency medical service, even though the latter includes using a vehicle and accompanying a patient on the journey to hospital.

2. The first indent of Article 18(1)(b)(i) of Directive 93/104 is to be construed as requiring consent to be expressly and freely given by each worker individually if the 48-hour maximum period of weekly working time, as laid down in Article 6 of the directive, is to be validly extended. In that connection, it is not sufficient that the relevant worker’s employment contract refers to a collective agreement which permits such an extension.

3. Article 6, point 2, of Directive 93/104 must be interpreted, in circumstances such as those in the main proceedings, as precluding legislation in a Member State the effect of which, as regards periods of duty time (‘Arbeitsbereitschaft’) completed by emergency workers in the framework of the emergency medical service of a body such as the Deutsches Rotes Kreuz, is to permit, including by means of a collective agreement or works agreement based on such an agreement, the 48-hour maximum period of weekly working time laid down by that provision to be exceeded;

— Article 6(2) of Directive 93/104 fulfils all the conditions necessary for it to have direct effect;

— when hearing a case between individuals the national court is required, when applying the provisions of domestic law adopted for the purpose of transposing obligations laid down by a directive, to consider the whole body of rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of the directive in order to achieve an outcome consistent with the objective pursued by the directive. In the main proceedings, the national court must thus do whatever lies within its jurisdiction to ensure that the maximum period of weekly working time, which is set at 48 hours by Article 6(2) of Directive 93/104, is not exceeded.

(¹) OJ C 3 of 5.1.2002.

JUDGMENT OF THE COURT

(sitting as a full Court)

of 5 October 2004

in Case C-475/01: Commission of the European Communities v Hellenic Republic (¹)

(Failure of a Member State to fulfil obligations — Infringement of the first paragraph of Article 90 EC — Excise duty on alcohol and alcoholic beverages — Application to ouzo of a rate lower than that applied to other alcoholic beverages — Compliance of that rate with a directive which was not challenged within the time-limit laid down in Article 230 EC)

(2004/C 300/04)

(Language of the case: Greek)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-475/01: Action under Article 226 EC for failure to fulfil obligations, brought on 6 December 2001, Commission of the European Communities (Agents: E. Traversa and M. Kondou Durande), supported by United Kingdom of Great Britain and Northern Ireland (Agent: K. Manji) v Hellenic Republic (Agents: A. Samoni-Rantou and P. Milonopoulos) — the Court (sitting as a full Court), composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, C. Gulmann, J.-P. Puissochet and J.N. Cunha Rodrigues, Presidents of Chambers, R. Schintgen, F. Macken, N. Colneric and S. von Bahr (Rapporteur), Judges; A. Tizzano, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 5 October 2004, in which it:

1. Dismisses the action;

2. Orders the Commission of the European Communities to pay the costs;
3. Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.

(¹) OJ C 68 of 16.3.2002.

JUDGMENT OF THE COURT

(First Chamber)

of 14 October 2004

in Case C36/02 (reference for a preliminary ruling from the Bundesverwaltungsgericht): Omega Spielhallen- und Automatenaufstellungs-GmbH v Oberbürgermeisterin der Bundesstadt Bonn (¹)

(Freedom to provide services — Free movement of goods — Restrictions — Public policy — Human dignity — Protection of fundamental values laid down in the national constitution — ‘Playing at killing’)

(2004/C 300/05)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-36/02: reference for a preliminary ruling under Article 234 EC from the Bundesverwaltungsgericht (Germany), made by decision of 24 October 2001, received at the Court on 12 February 2002, in the proceedings between Omega Spielhallen- und Automatenaufstellungs-GmbH and Oberbürgermeisterin der Bundesstadt Bonn — the Court (First Chamber), composed of: P. Jann, President of the Chamber, A. Rosas (Rapporteur), R. Silva de Lapuerta, K. Lenaerts and S. von Bahr, Judges; C. Stix-Hackl, Advocate General; M.-F. Contet, Principal Administrator, for the Registrar, has given a judgment on 14 October 2004, in which it has ruled:

Community law does not preclude an economic activity consisting of the commercial exploitation of games simulating acts of homicide from being made subject to a national prohibition measure adopted on grounds of protecting public policy by reason of the fact that that activity is an affront to human dignity.

(¹) OJ C 109 of 4.5.2002.