

Request for a preliminary ruling from the Verwaltungsgericht Darmstadt (Germany) lodged on 11 December 2019 — EP v Kreis Groß-Gerau

(Case C-905/19)

(2020/C 77/39)

Language of the case: German

Referring court

Verwaltungsgericht Darmstadt

Parties to the main proceedings

Applicant: EP

Defendant: Kreis Groß-Gerau

Questions referred

Can it be inferred from the prohibition of discrimination in Article 64 of the Euro-Mediterranean Agreement with Tunisia ⁽¹⁾ that a curtailment of the period of validity of a residence permit because the conditions for the grant of that residence permit are no longer satisfied is prohibited if

- the Tunisian national was in employment at the time when the retroactive curtailment of the period of validity of the residence permit was notified,
- the decision to curtail the period of validity is not based on grounds relating to the protection of a legitimate national interest, such as public policy, public security or public health, and
- the Tunisian national did not possess authorisation to take up employment (work permit) that was independent of the residence permit, but was entitled by law to take up employment during the period of validity of the residence permit?

Does the legal status of a foreign national arising from the prohibition of discrimination in Article 64 of the Euro-Mediterranean Agreement with Tunisia require, in addition to the residence permit, the grant of an administrative authorisation to take up employment?

What is the relevant point in time for the assessment of legal status under the law on residence and work permits? Is the relevant point in time the date of adoption of the administrative decision withdrawing the right of residence or the date of the judicial decision?

⁽¹⁾ Euro-Mediterranean Agreement of 17 July 1995 establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part (OJ 1998 L 97, p. 1).

Request for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas (Lithuania) lodged on 18 December 2019 — ‘Klaipėdos regiono atliekų tvarkymo centras’ UAB, other parties: ‘Ecoservice Klaipėda’ UAB, ‘Klaipėdos autobusų parkas’ UAB, ‘Parsekas’ UAB, ‘Klaipėdos transportas’ UAB

(Case C-927/19)

(2020/C 77/40)

Language of the case: Lithuanian

Referring court

Lietuvos Aukščiausiasis Teismas

Parties to the main proceedings

Appellant on a point of law: 'Klaipėdos regiono atliekų tvarkymo centras' UAB

Other parties: 'Ecoservice Klaipėda' UAB, 'Klaipėdos autobusų parkas' UAB, 'Parsekas' UAB, 'Klaipėdos transportas' UAB

Questions referred

1. Does a tender condition under which suppliers are required to demonstrate a certain level of average annual operating income derived from carrying out activities relating only to specific services (mixed municipal waste management) fall within the scope of Article 58(3) or (4) of Directive 2014/24? ⁽¹⁾
2. Does the method of assessment of the supplier's capacity, which is set out by the Court of Justice in its judgment of 4 May 2017, *Esaprojekt* (C-387/14), ⁽²⁾ depend on the answer to the first question?
3. Does a tender condition under which suppliers are required to demonstrate that the vehicles necessary for the provision of [refuse management] services comply with the specific technical requirements, including polluting emissions (EURO 5), installation of a GPS transmitter, appropriate capacity and so forth, fall within the scope of (a) Article 58(4), (b) Article 42 in conjunction with the provisions of Annex VII, (c) Article 70 of Directive 2014/24?
4. Are the third subparagraph of Article 1(1) of Directive 89/665, ⁽³⁾ which lays down the principle of the effectiveness of review procedures, Article 1(3) and (5) thereof, Article 21 of Directive 2014/24 and Directive 2016/943, ⁽⁴⁾ in particular recital 18 and the third subparagraph of Article 9(2) thereof (together or separately, but without limitation thereto), to be interpreted as meaning that, where a binding pre-litigation dispute settlement procedure is laid down in the national legal rules governing public procurement:
 - (a) the contracting authority has to provide to the supplier who initiated the review procedure all details of another supplier's tender (regardless of their confidential nature), if the subject matter of that procedure is specifically the lawfulness of the evaluation of the other supplier's tender and the supplier which initiated the procedure had explicitly requested the contracting authority prior thereto to provide them;
 - (b) irrespective of the answer to the previous question, the contracting authority, when rejecting the claim submitted by the supplier regarding the lawfulness of the evaluation of his competitor's tender, must in any event give a clear, comprehensive and specific reply, regardless of the risk of disclosing confidential tender information entrusted to it?
5. Are the third subparagraph of Article 1(1), Article 1(3) and (5) and Article 2(1)(b) of Directive 89/665, Article 21 of Directive 2014/24 and Directive 2016/943, in particular recital 18 thereof (together or separately, but without limitation thereto), to be interpreted as meaning that the contracting authority's decision not to grant a supplier access to the confidential details of another participant's tender is a decision which may be challenged separately before the courts?
6. If the answer to the previous question is in the affirmative, is Article 1(5) of Directive 89/665 to be interpreted as meaning that the supplier must file a claim with the contracting authority in respect of such a decision by it and, if need be, bring an action before the court?
7. If the answer to the previous question is in the affirmative, are the third subparagraph of Article 1(1) and Article 2(1)(b) of Directive 89/665 to be interpreted as meaning that, depending on the extent of the information available on the content of the other supplier's tender, the supplier may bring an action before the courts concerning exclusively the refusal to provide information to him, without separately calling the lawfulness of other decisions of the contracting authority into question?
8. Irrespective of the answers to the previous questions, is the third subparagraph of Article 9(2) of Directive 2016/943 to be interpreted as meaning that the court, having received the applicant's request that the other party to the dispute be ordered to produce evidence and that the court make it available to the applicant, must grant such a request, regardless of the actions on the part of the contracting authority during the procurement or review procedures?

9. Is the third subparagraph of Article 9(2) of Directive 2016/943 to be interpreted as meaning that, after rejecting the applicant's claim for disclosure of confidential information of the other party to the dispute, the court should of its own motion assess the significance of the data whose loss of confidentiality is requested and the data's effects on the lawfulness of the public procurement procedure?
10. May the ground for exclusion of suppliers which is laid down in Article 57(4)(h) of Directive 2014/24, regard being had to the judgment of the Court of Justice of 3 October 2019, *Delta Antrepriză de Construcții și Montaj* 93, ⁽⁵⁾ be applied in such a way that the court, when examining a dispute between a supplier and the contracting authority, may decide of its own motion, irrespective of the assessment of the contracting authority, that the tenderer concerned, acting intentionally or negligently, submitted misleading, factually inaccurate information to the contracting authority and therefore had to be excluded from public procurement procedures?
11. Is Article 57(4)(h) of Directive 2014/24, applied in conjunction with the principle of proportionality set out in Article 18(1) of that directive, to be interpreted and applied in such a way that, where national law provides for additional penalties (besides exclusion from procurement procedures) in respect of the submission of false information, those penalties may be applied only on the basis of personal responsibility, in particular where factually inaccurate information is submitted only by a proportion of the joint participants in the public procurement procedure (for example, one of several partners)?

⁽¹⁾ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).

⁽²⁾ ECLI:EU:C:2017:338.

⁽³⁾ Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33).

⁽⁴⁾ Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ 2016 L 157, p. 1).

⁽⁵⁾ C-267/18, ECLI:EU:C:2019:826.

**Request for a preliminary ruling from the Conseil du Contentieux des Étrangers (Belgium) lodged on 20 December 2019 —
X v Belgian State**

(Case C-930/19)

(2020/C 77/41)

Language of the case: French

Referring court

Conseil du Contentieux des Étrangers

Parties to the main proceedings

Applicant: X

Defendant: Belgian State

Question referred

Does Article 13(2) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States ⁽¹⁾ infringe Articles 20 and 21 of the Charter of Fundamental Rights of the European Union, in that it provides that divorce, annulment of marriage or termination of a registered partnership does not entail loss of the right of residence of a Union citizen's family members who are not nationals of a