

Operative part of the judgment

Article 48(2) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Regulation (EC) No 631/2004 of the European Parliament and of the Council of 31 March 2004, requires the competent institution of the last Member State in which a worker who is a national of a Member State resided to take into account, in calculating the old age pension of that worker, who, when he submits his pension claim, is resident in a non-Member State, of the periods worked in another Member State under the same conditions as if that worker still resided in the European Community.

(¹) OJ C 281, 18.11.2006.

Judgment of the Court (Second Chamber) of 3 April 2008 (reference for a preliminary ruling from the Oberlandesgericht Celle (Germany)) — Dirk Ruffert, in his capacity as liquidator of the assets of Objekt und Bauregie GmbH & Co. KG v Land Niedersachsen

(Case C-346/06) (¹)

(Article 49 EC — Freedom to provide services — Restrictions — Directive 96/71/EC — Posting of workers in the context of the provision of services — Procedures for the award of public works contracts — Social protection of workers)

(2008/C 128/13)

Language of the case: German

Referring court

Oberlandesgericht Celle

Parties to the main proceedings

Applicant: Dirk Ruffert, in his capacity as liquidator of the assets of Objekt und Bauregie GmbH & Co. KG

Defendant: Land Niedersachsen

Re:

Preliminary reference — Oberlandesgericht Celle (Germany) — Interpretation of Article 49 EC — National legislation requiring undertakings involved in the tendering procedure for public-works contracts to give a commitment that they will comply

with, and ensure compliance by their subcontractors with, the provisions on minimum pay prescribed by the collective agreement in force at the place where the services in question are to be provided.

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Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, interpreted in the light of Article 49 EC, precludes an authority of a Member State, in a situation such as that at issue in the main proceedings, from adopting a measure of a legislative nature requiring the contracting authority to designate as contractors for public works contracts only those undertakings which, when submitting their tenders, agree in writing to pay their employees, in return for performance of the services concerned, at least the remuneration prescribed by the collective agreement the minimum wage in force at the place where those services are performed.

(¹) OJ C 294, 2.12.2006.

Judgment of the Court (Fourth Chamber) of 10 April 2008 (reference for a preliminary ruling from the Vergabekontrollsenat des Landes Wien, Austria) — Ing. Aigner, Wasser-Wärme-Umwelt GmbH v Fernwärme Wien GmbH

(Case C-393/06) (¹)

(Public contracts — Directives 2004/17/EC and 2004/18/EC — Contracting entity pursuing activities falling in part within the field of application of Directive 2004/17/EC and in part within that of Directive 2004/18/EC — Body governed by public law — Contracting authority)

(2008/C 128/14)

Language of the case: German

Referring court

Vergabekontrollsenat des Landes Wien

Parties to the main proceedings

Applicant: Ing. Aigner, Wasser-Wärme-Umwelt GmbH

Defendant: Fernwärme Wien GmbH

Re:

Reference for a preliminary ruling — Vergabekontrollsenat des Landes Wien — Interpretation of Article 2(1) and of Article 3 of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (OJ 2004 L 134, p. 1) and interpretation of Article 1(9) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114) — Award of contract for heating equipment — The contracting authority is an undertaking controlled by the City of Vienna providing public services (district heating) — Body governed by public law — Assessment of the condition of competition — Application of European market award procedures also to activities carried out under competitive conditions (in the present case, air conditioning systems) — Contamination theory — No cross-subsidies

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1. A contracting entity, within the meaning of Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors is required to apply the procedure laid down in that directive only for the award of contracts which relate to activities carried out by that entity in one or more of the sectors listed in Articles 3 to 7 of that directive.
2. An entity such as Fernwärme Wien GmbH is to be regarded as a body governed by public law within the meaning of the second subparagraph of Article 2(1)(a) of Directive 2004/17 and the second subparagraph of Article 1(9) of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.
3. All contracts awarded by an entity which is a body governed by public law, within the meaning of Directive 2004/17 or Directive 2004/18, which relate to activities carried out by that entity in one or more of the sectors listed in Articles 3 to 7 of Directive 2004/17 must be subject to the procedures laid down in that directive. However, all other contracts awarded by such an entity in connection with the exercise of other activities are covered by the procedures laid down in Directive 2004/18. Each of these two directives applies without distinction between the activities carried out by that entity to accomplish its task of meeting needs in the general interest and activities which it carries out under competitive conditions, and even where there is an accounting system intended to make a clear internal separation between those activities in order to avoid cross financing between those sectors.

(¹) OJ C 310, 16.12.2006.

Judgment of the Court (Seventh Chamber) of 10 April 2008 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-398/06) (¹)

(Failure of a Member State to fulfil obligations — Right of residence of nationals of Member States of the European Union and of the European Economic Area who are non-active and pensioned persons — National legislation and administrative practice requiring personal resources sufficient for a stay of at least a year in the host Member State)

(2008/C 128/15)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: M. Condou-Durande and R. Troosters, acting as Agents)

Defendant: Kingdom of the Netherlands (represented by: H.G. Sevenster and D.J.M. de Grave, Agents)

Intervener in support of the form of order sought by the defendant: United Kingdom of Great Britain and Northern Ireland (represented by: E. O'Neill, Agent, and J. Stratford, Barrister)

Re:

Failure of a Member State to fulfil obligations — Infringement of the Community rules on the residence of citizens of the Union — National legislation and administrative practice which require that, in order to obtain a residence permit, non-active and pensioned persons must have adequate personal resources

Operative part of the judgment

The Court:

1. Declares that, by maintaining in force national provisions under which, in order to obtain a residence permit, nationals of the European Union and of the European Economic Area who are non-active and retired must prove that they have sustainable resources, the Kingdom of the Netherlands has failed to fulfil its obligations under Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families, Council Directive 90/364/EEC of 28 June 1990 on the right of residence and Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity;
2. Orders the Kingdom of the Netherlands to pay the costs;
3. Orders the Kingdom of Great Britain and Northern Ireland to bear its own costs.

(¹) OJ C 294, 2.12.2006.