

## Parties to the main proceedings

Applicants: Combinatie Spijker Infrabouw-De Jonge Konstruktie, Van Spijker Infrabouw BV, De Jonge Konstruktie BV

Defendant: Provincie Drenthe

## Re:

Reference for a preliminary ruling — Rechtbank Assen — Interpretation of Article 1(1) and (3) and Article 2(1) and (6) of 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), as amended by Directive 2007/66/EC — National legislation providing for parallel jurisdiction of civil courts and administrative courts which may result in conflicting decisions — Jurisdiction of the administrative courts limited to an appraisal of the tendering decision — Jurisdiction excluded in the case where a decision has been taken to award the contract to one of the tenderers — Award of damages

## Operative part of the judgment

- Article 1(1) and (3) and Article 2(1) and (6) of 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, as amended by Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, do not preclude a system in which, in order to obtain a rapid decision, the only procedure available is characterised by the fact that it is geared to a rapid mandatory measure, that lawyers have no right to exchange views, that no evidence is, as a rule, presented other than in written form, that statutory rules on evidence are not applicable, and that the judgment does not lead to the final determination of the legal situation and does not form part of a decision-making process leading to such a final decision.
- Directive 89/665, as amended by Directive 92/50, must be interpreted as not precluding a court hearing an application for interim measures, for the purposes of adopting a provisional measure, from carrying out an interpretation 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 which is, subsequently, classified as erroneous by the court hearing the substance of the case.
- As regards State liability for damage caused to individuals by infringements of European Union (EU) law for which the State may be held responsible, the individuals harmed have a right to redress where the rule of EU law which has been infringed is

intended to confer rights on them, the breach of that rule is sufficiently serious, and there is a direct causal link between the breach and the loss or damage sustained by the individuals. In the absence of any provisions of EU law in that area, it is for the internal legal order of each Member State, once those conditions have been complied with, to determine the criteria on the basis of which the damage arising from an infringement of EU law on the award of public contracts must be determined and estimated, provided the principles of equivalence and effectiveness are complied with.

<sup>(1)</sup> OJ C 69, 21.3.2009.

**Judgment of the Court (Grand Chamber) of 7 December 2010 (references for a preliminary ruling from the Oberster Gerichtshof (Austria)) — Peter Pammer v Reederei Karl Schlüter GmbH & Co KG (C-585/08) and Hotel Alpenhof GesmbH v Oliver Heller (C-144/09)**

(Joined Cases C-585/08 and C-144/09) <sup>(1)</sup>

*(Jurisdiction in civil and commercial matters — Regulation (EC) No 44/2001 — Article 15(1)(c) and (3) — Jurisdiction over consumer contracts — Contract for a voyage by freighter — Concept of ‘package travel’ — Contract for a hotel stay — Presentation of the voyage and the hotel on a website — Concept of activity ‘directed to’ the Member State of the consumer’s domicile — Criteria — Accessibility of the website)*

(2011/C 55/06)

Language of the case: German

## Referring court

Oberster Gerichtshof

## Parties to the main proceedings

Applicants: Peter Pammer (C-585/08), Hotel Alpenhof GesmbH (C-144/09)

Defendants: Reederei Karl Schlüter GmbH & Co KG (C-585/08), Oliver Heller (C-144/09)

## Re:

Reference for a preliminary ruling — Oberster Gerichtshof (Austria) — Interpretation of Article 15(1)(c) and (3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) — Jurisdiction over consumer contracts — Minimum characteristics required of an internet site in order for the activities advertised on that site to be capable of being regarded as activities ‘directed’ to the Member State of the consumer’s domicile

## Operative part of the judgment

1. A contract concerning a voyage by freighter, such as that at issue in the main proceedings in Case C-585/08, is a contract of transport which, for an inclusive price, provides for a combination of travel and accommodation within the meaning of Article 15(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
2. In order to determine whether a trader whose activity is presented on its website or on that of an intermediary can be considered to be 'directing' its activity to the Member State of the consumer's domicile, within the meaning of Article 15(1)(c) of Regulation No 44/2001, it should be ascertained whether, before the conclusion of any contract with the consumer, it is apparent from those websites and the trader's overall activity that the trader was envisaging doing business with consumers domiciled in one or more Member States, including the Member State of that consumer's domicile, in the sense that it was minded to conclude a contract with them.

The following matters, the list of which is not exhaustive, are capable of constituting evidence from which it may be concluded that the trader's activity is directed to the Member State of the consumer's domicile, namely the international nature of the activity, mention of itineraries from other Member States for going to the place where the trader is established, use of a language or a currency other than the language or currency generally used in the Member State in which the trader is established with the possibility of making and confirming the reservation in that other language, mention of telephone numbers with an international code, outlay of expenditure on an internet referencing service in order to facilitate access to the trader's site or that of its intermediary by consumers domiciled in other Member States, use of a top-level domain name other than that of the Member State in which the trader is established, and mention of an international clientele composed of customers domiciled in various Member States. It is for the national courts to ascertain whether such evidence exists.

On the other hand, the mere accessibility of the trader's or the intermediary's website in the Member State in which the consumer is domiciled is insufficient. The same is true of mention of an email address and of other contact details, or of use of a language or a currency which are the language and/or currency generally used in the Member State in which the trader is established.

<sup>(1)</sup> OJ C 44, 21.2.2009  
OJ C 153, 4.7.2009

## Judgment of the Court (Second Chamber) of 16 December 2010 — European Commission v French Republic

(Case C-89/09) <sup>(1)</sup>

**(Failure of a Member State to fulfil obligations — Freedom of establishment — Article 43 EC — Public health — Operation of bio-medical analysis laboratories — National legislation under which no more than 25 % of own capital may be held by shareholders who are not professional biologists — Prohibition on holding shares in more than two companies operating jointly one or more biomedical analysis laboratories — Objective of ensuring the professional independence of biologists — Objective of maintaining diversity of supply in the biomedical field — Consistency — Proportionality)**

(2011/C 55/07)

Language of the case: French

### Parties

Applicant: European Commission (represented by: G. Rozet and E. Traversa, Agents)

Defendant: French Republic (represented by: G. de Bergues and B. Messmer, Agents)

### Re:

Failure of a Member State to fulfil obligations — Infringement of Article 43 EC — Rules concerning the operation of bio-medical analysis laboratories — National legislation under which no more than 25 % of a company's capital may be held by shareholders not engaged in the relevant professional activity — Prohibition on holding shares in more than two companies operating jointly one or more biomedical analysis laboratories — Restrictions on freedom of establishment which may be justified by the objective of protection of public health and are proportionate

## Operative part of the judgment

The Court:

1. Declares that, by prohibiting biologists from holding shares in more than two companies formed in order to operate jointly one or more biomedical analysis laboratories, the French Republic has failed to fulfil its obligations under Article 43 EC;
2. Dismisses the action as to the remainder.
3. Orders the French Republic and the European Commission to bear their own costs.

<sup>(1)</sup> OJ C 113, 16.05.2009.