

## V

(Announcements)

## COURT PROCEEDINGS

## COURT OF JUSTICE

**Judgment of the Court (Second Chamber) of 15 May 2008  
— Kingdom of Spain v Council of the European Union**(Case C-442/04) <sup>(1)</sup>

*(Fisheries — Regulation (EC) No 1954/2003 — Regulation (EC) No 1415/2004 — Management of the fishing effort — Fixing of the maximum annual fishing effort — Reference period — Community fishing areas and resources — Biologically sensitive areas — Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties — Plea of illegality — Admissibility — Principle of non-discrimination — Misuse of powers)*

(2008/C 171/02)

*Language of the case: Spanish***Parties**

*Applicant:* Kingdom of Spain (represented by: E. Braquehais Conesa and A. Sampol Pucurull, Agents)

*Defendant:* Council of the European Union (represented by: J. Monteiro and F. Florindo Gijón, Agents)

*Intervener:* Commission of the European Communities (represented by T. van Rijn and F. Jimeno Fernández, Agents)

**Re:**

Annulment of Articles 1 to 6 of Council Regulation (EC) No 1415/2004 of 19 July 2004 fixing the maximum annual fishing effort for certain fishing areas and fisheries (OJ 2004 L 258, p. 1) — Infringement of the principle of non-discrimination — Misuse of powers

**Operative part of the judgment***The Court:*

1. Dismisses the action;
2. Orders the Kingdom of Spain to pay the costs;

3. Orders the Commission of the European Communities to bear its own costs.

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<sup>(1)</sup> OJ C 300, 4.12.2004.

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**Judgment of the Court (Grand Chamber) of 20 May 2008  
— Commission of the European Communities v Council of the European Union**(Case C-91/05) <sup>(1)</sup>

*(Action for annulment — Article 47 EU — Common foreign and security policy — Decision 2004/833/CFSP — Implementation of Joint Action 2002/589/CFSP — Combating the proliferation of small arms and light weapons — Community competence — Development cooperation policy)*

(2008/C 171/03)

*Language of the case: English***Parties**

*Applicant:* Commission of the European Communities (represented by: P.J. Kuijper, J. Enegren and M. Petite, Agents)

*Intervener in support of the applicant:* European Parliament (represented by: R. Passos, K. Lindahl and D. Gauci, Agents)

*Defendant:* Council of the European Union, (represented by: J.-C. Piris, R. Gosalbo Bono, S Marquardt and E. Finnegan, Agents)

*Interveners in support of the defendant:* Kingdom of Denmark (represented by: A. Jacobsen, C. Thorning and L. Lander Madsen, Agents), Kingdom of Spain (represented by N. Díaz Abad, Agent), French Republic (represented by G. de Bergues, E. Belliard and C. Jurgensen, Agents), Kingdom of the Netherlands (represented by M. de Grave, C. Wissels and H.G. Sevenster, Agents), Kingdom of Sweden (represented by A. Falk, Agent), United Kingdom of Great Britain and Northern Ireland (represented by R. Cudwell and E. Jenkinson, Agents, assisted by A. Dashwood, Barrister)

**Re:**

Annulment of Council Decision 2004/833/CFSP of 2 December 2004 implementing Joint Action 2002/589/CFSP with a view to a European Union contribution to ECOWAS in the framework of the Moratorium on Small Arms and Light Weapons (OJ 2004 L 359, p. 65) and a declaration of the unlawfulness of Council Joint Action 2002/589/CFSP of 12 July 2002 on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons and repealing Joint Action 1999/34/CFSP (OJ 2002 L 191, p. 1)

**Operative part of the judgment**

1. Annuls Council Decision 2004/833/CFSP of 2 December 2004 implementing Joint Action 2002/589/CFSP with a view to a European Union contribution to ECOWAS in the framework of the Moratorium on Small Arms and Light Weapons.
2. Orders the Commission of the European Communities and the Council of the European Union to bear their own costs.
3. Orders the Kingdom of Denmark, the Kingdom of Spain, the French Republic, the Kingdom of the Netherlands, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland and the European Parliament to bear their own costs.

(<sup>1</sup>) OJ C 82, 14.4.2007.

**Judgment of the Court (Fourth Chamber) of 15 May 2008 (reference for a preliminary ruling from the Consiglio di Stato (Italy)) — SECAP SpA (C-147/06) v Comune di Torino, intervening parties: Tecnoimprese Srl, Gambarana Impianti Snc, ICA Srl, Cosmat Srl, Consorzio Ravennate, ARCAS SpA, Regione Piemonte, and Santorso Soc. coop. arl (C-148/06) v Comune di Torino, intervening parties: Bresciani Bruno Srl, Azienda Agricola Tekno Green Srl, Borio Giacomo Srl, Costrade Srl**

(Joined Cases C-147/06 and C-148/06) (<sup>1</sup>)

**(Public works contracts — Award of contracts — Abnormally low tenders — Exclusion rules — Works contracts not reaching the thresholds laid down in Directives 93/37/EEC and 2004/18/EC — Obligations upon the contracting authorities deriving from the fundamental principles of Community law)**

(2008/C 171/04)

Language of the case: Italian

**Referring court**

Consiglio di Stato

**Parties to the main proceedings**

*Applicant:* SECAP SpA (C-147/06), Santorso Soc. coop. arl (C-148/06)

*Defendant:* Comune di Torino

*Intervening parties:* Tecnoimprese Srl, Gambarana Impianti Snc, ICA Srl, Cosmat Srl, Consorzio Ravennate, ARCAS SpA, Regione Piemonte (C-147/06), Bresciano Bruno Srl, Azienda Agricola Tekno Green Srl, Borio Giacomo Srl, Costrade Srl (C-148/06)

**Re:**

Reference for a preliminary ruling — Consiglio di Stato — Interpretation of Article 30(4) of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts (OJ 1993 L 199, p. 54) and of Article 55(1) and (2) 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) — Abnormally low tenders — Extent of the obligation to set in motion an examination procedure

**Operative part of the judgment**

*The fundamental rules of the EC Treaty on freedom of establishment and freedom to provide services and the general principle of non-discrimination preclude national legislation which, with regard to contracts with a value below the threshold set by Article 6(1)(a) of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts, as amended by European Parliament and Council Directive 97/52/EC of 13 October 1997, which are of certain cross-border interest, imposes an absolute duty on the contracting authorities, where the number of valid tenders is greater than five, automatically to exclude tenders considered to be abnormally low in relation to the goods, works or services according to a mathematical criterion laid down by that legislation without allowing those contracting authorities any possibility of verifying the constituent elements of those tenders by requesting the tenderers concerned to provide details of those elements. That would not be the case if national or local legislation or even the contracting authorities concerned were to set a reasonable threshold above which abnormally low tenders were automatically excluded on account of there being an unduly large number of tenders, which might oblige the contracting authorities to examine on an inter partes basis such a high number of bids that it would exceed their administrative capacity or might, due to the delay which such an examination would entail, jeopardise the implementation of the project.*

(<sup>1</sup>) OJ C 143, 17.6.2006.  
OJ C 154, 1.7.2006.