

Joined Cases C-147/06 and C-148/06

SECAP SpA and Santorso Soc. coop. arl

v

Comune di Torino

(Reference for a preliminary ruling
from the Consiglio di Stato)

(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)

Opinion of Advocate General Ruiz-Jarabo Colomer delivered on 27 November
2007 I - 3567
Judgment of the Court (Fourth Chamber), 15 May 2008 I - 3583

Summary of the Judgment

*Community law — Principles — Equal treatment — Discrimination on grounds of nationality
(Arts 12 EC, 43 EC and 49 EC)*

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 Directive 93/37, as amended by Directive 97/52, 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.

(see para. 35, operative part)