

2. European Union law, in particular the right to effective judicial protection, precludes a national rule, such as that at issue in the main proceedings, interpreted as meaning that the members of a temporary association, tenderer in a public procurement procedure, are deprived of the possibility of seeking, individually, compensation for the loss which they suffered individually as a result of a decision adopted by an authority, other than the contracting authority, involved in that procedure in accordance with the applicable national rules, which is such as to influence the conduct of that procedure.

⁽¹⁾ OJ C 142, 7.6.2008.

**Judgment of the Court (First Chamber) of 14 January 2010
(reference for a preliminary ruling from the
Bundesgerichtshof — Germany) — Zentrale zur
Bekämpfung unlauteren Wettbewerbs eV v Plus
Warenhandelsgesellschaft mbH**

(Case C-304/08) ⁽¹⁾

*(Directive 2005/29/EC — Unfair commercial practices —
National legislation laying down a prohibition in principle
of commercial practices which make the participation of
consumers in a lottery conditional on the purchase of goods
or the use of services)*

(2010/C 179/03)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Zentrale zur Bekämpfung unlauteren Wettbewerbs eV

Defendant: Plus Warenhandelsgesellschaft mbH

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Article 5(2) of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (OJ 2005 L 149, p. 22) — Commercial practice

coupling the sale of goods with a lottery which permits the customer to participate in the draws of a national lottery when he has accumulated a certain number of bonus points obtained when purchasing goods — National legislation under which a commercial practice whereby the participation of consumers in a prize competition or lottery is conditional on the purchase of goods or the supply of services is in principle unlawful, irrespective of whether the advertising in question affects consumers' interests

Operative part of the judgment

Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides for a prohibition in principle, without taking account of the specific circumstances of individual cases, of commercial practices under which the participation of consumers in a prize competition or lottery is made conditional on the purchase of goods or the use of services.

⁽¹⁾ OJ C 247, 27.9.2008.

**Judgment of the Court (Fourth Chamber) of 20 May 2010
— European Commission v Kingdom of Spain**

(Case C-308/08) ⁽¹⁾

*(Failure of a Member State to fulfil obligations — Directive
92/43/EEC — Conservation of natural habitats — Wild
fauna and flora — Protection arrangements before a
habitat is placed on the list of sites of Community importance
— Article 12(4) — Project for upgrading a country road)*

(2010/C 179/04)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: S. Pardo Quintillán and D. Recchia, Agents)

Defendant: Kingdom of Spain (represented by: N. Díaz Abad, Agent)

Re:

Failure of a Member State to fulfil its obligations — Infringement of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7), interpreted by the judgments of the Court of Justice on 13 January 2005 in Case C-117/03 and on 14 September 2006 in Case C-244/05, and the obligations stemming from Article 12(4) of that directive — Project for improvement of the rural path from Villamanrique de la Condesa (Seville) to El Rocio (Huelva)

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders the European Commission to pay the costs.

(¹) OJ C 223, 30.8.2008.

Judgment of the Court (Grand Chamber) of 12 January 2010 (reference for a preliminary ruling from the Sozialgericht Dortmund — Germany) — Domnica Petersen v Berufungsausschuss für Zahnärzte für den Bezirk Westfalen-Lippe

(Case C-341/08) (¹)

(Directive 2000/78/EC — Articles 2(5) and 6(1) — Prohibition of discrimination on grounds of age — Provision of national law setting a maximum age of 68 for practice as a panel dentist — Aim pursued — Measure necessary for the protection of health — Consistency — Appropriateness of the measure)

(2010/C 179/05)

Language of the case: German

Referring court

Sozialgericht Dortmund

Parties to the main proceedings

Applicant: Domnica Petersen

Defendant: Berufungsausschuss für Zahnärzte für den Bezirk Westfalen-Lippe

Joined parties: AOK Westfalen-Lippe, BKK-Landesverband Nordrhein-Westfalen, Vereinigte IKK, Deutsche Rentenversicherung Knappschaft-Bahn-See — Dezernat 0.63, Landwirtschaftliche Krankenkasse NRW, Verband der Angestellten-Krankenkassen eV, AEV — Arbeiter-Ersatzkassen-Verband eV, Kassenzahnärztliche Vereinigung Westfalen-Lippe

Re:

Reference for a preliminary ruling — Sozialgericht Dortmund (Germany) — Interpretation of Article 6 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p.16) — Prohibition of discrimination based on age — Concepts of 'legitimate aim' which may justify different treatment based on age and 'appropriate and necessary means' of achieving that aim — National provision fixing a maximum age for a panel dentist, with the aim of protecting patients' health

Operative part of the judgment

1. Article 2(5) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as precluding a national measure, such as that at issue in the main proceedings, setting a maximum age for practising as a panel dentist, in this case 68 years, where the sole aim of that measure is to protect the health of patients against the decline in performance of those dentists after that age, since that age limit does not apply to non-panel dentists.;

Article 6(1) of Directive 2000/78 must be interpreted as not precluding such a measure where its aim is to share out employment opportunities among the generations in the profession of panel dentist, if, taking into account the situation in the labour market concerned, the measure is appropriate and necessary for achieving that aim.

It is for the national court to identify the aim pursued by the measure laying down that age limit, by ascertaining the reason for maintaining the measure.

2. If legislation such as that at issue in the main proceedings, having regard to its objective, were contrary to Directive 2000/78, it would be for the national court hearing a dispute between an individual and an administrative body such as the Berufungsausschuss für Zahnärzte für den Bezirk Westfalen-Lippe to decline to apply that legislation, even if it were prior to that directive and national law made no provision for disapplying it.

(¹) OJ C 260, 11.10.2008.