

- in accordance with Article 6(3) and (4) of Council Directive 92/43/EEC ⁽¹⁾ of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, read in conjunction with Article 7 thereof, with respect to the separate projects for widening and/or upgrading the M-501 road corresponding to sections 1, 2 and 4 of the special protection area for birds ES 0000056 'Encinares del río Alberche y río Cofio';
 - in accordance with Directive 92/43/EEC, interpreted by the judgments of the Court of Justice of 13 January 2005 in Case C-117/03 and 14 September 2006 in Case C-244/05, and the obligations resulting from Article 12(1)(b) and (d) of the directive, with respect to separate projects for widening and/or upgrading the M-501 road corresponding to section 1 as regards the site proposed as a site of Community importance ES 3110005 'Cuenca del río Guadarrama', and sections 2 and 4 regarding the proposed site of Community interest ES 3110007 'Cuenca de los ríos Alberche y Cofio';
- order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The action brought by the Commission relates to the projects approved or, as the case may be, implemented by the Spanish authorities with respect to the widening and/or upgrading of the local M-501 road (Community of Madrid). The Commission takes the view that the Kingdom of Spain has failed, with respect to those projects, to fulfil its obligations under Directive 85/337, in its original or amended version, and Directive 92/43, as interpreted by the judgments of the Court of Justice of 13 January 2005 in Case C-117/03 and of 14 September 2006 in Case C-244/05.

⁽¹⁾ OJ 1985 L 175, p. 40.

⁽²⁾ OJ 1992 L 206, p. 7.

Action brought on 19 December 2008 — Commission of the European Communities v Italian Republic

(Case C-565/08)

(2009/C 55/19)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: E. Traversa and L. Prete, acting as Agents)

Defendant: Italian Republic

Forms of order sought

- Declare that the Italian Republic has failed to fulfil its obligations under Articles 43 EC and 49 EC by adopting provisions fixing compulsory ceilings for lawyers' fees;
- Order the Italian Republic to pay the costs.

Pleas in law and main arguments

The capping of the fees that may be charged for the court-based and out-of-court services of lawyers constitutes a restriction on the freedom of establishment within the meaning of Article 43 EC, and also a restriction on the freedom to provide services within the meaning of Article 49 EC. Indeed, a compulsory scale of fee ceilings that must be applied, irrespective of the quality of the service provided, the work required and the costs incurred, may make the Italian market in legal services unattractive for foreign professionals. Lawyers established in other Member States are therefore discouraged from establishing themselves in Italy or providing their services there on a temporary basis.

First, having to adapt to a new (and very complex) fee regime entails additional costs that may make it more difficult to exercise the fundamental freedoms recognised by the Treaty.

Secondly, fee ceilings represent a further restriction on the free movement of legal services in the internal market, since they prevent the quality of the activities carried out by lawyers established in Member States other than Italy from being correctly remunerated; this means that some lawyers, who normally ask for higher fees than those established under the Italian legislation on the basis of the Italian market, are deterred from providing their services in Italy on a temporary basis or from establishing themselves in that State.

Lastly, the rigidity of the Italian fee regime prevents lawyers (including those established abroad) from making special offers in specific situations and/or to specific clients: for example, a package of given legal services for a fixed fee, or a number of legal services provided in several Member States at a common rate. The Italian legislation may therefore lead the situation of lawyers established abroad to be less competitive since it deprives them of an effective means of penetrating the Italian legal market.

In addition, the disputed measure appears neither suitable for attaining the general interest objectives referred to by the Italian authorities, nor the least restrictive means of achieving those objectives. In particular, the disputed measure does not appear to be a suitable means of ensuring that the less affluent have access to justice, or that the recipients of legal services are protected, or for ensuring the proper administration of justice. Nor does the measure appear proportionate, since there are other measures which appear to be appreciably less restrictive for lawyers established abroad, and equally (if not more) suitable for achieving the protection objectives relied on by the Italian authorities.

Lastly, the Italian authorities have not explained what, if any, alternative measures, less restrictive of lawyers established in other Member States, have been considered; nor have they set out the reasons why the general interests pursued are not already protected by the provisions in force in the other Member States of the Community for governing the legal profession.

Reference for a preliminary ruling from the Anotato Dikastirio Kiprou (Cyprus) lodged on 22 December 2008 — Simvoulio Apokheteveon Levkosias v Anatheoretiki Arkhi Prosforon

(Case C-570/08)

(2009/C 55/20)

Language of the case: Greek

Referring court

Anotato Dikastirio Kiprou (Supreme Court of Cyprus)

Parties to the main proceedings

Applicant: Simvoulio Apokheteveon Levkosias (Nicosia Sewage Council)

Respondent: Anatheoretiki Arkhi Prosforon (Tenders Review Authority)

Question referred

Does Article 2(8) of Directive 89/665/EC recognise contracting authorities as having a right to judicial review of cancellation decisions by bodies responsible for review procedures which are not judicial bodies?

Action brought on 22 December 2008 — Commission of the European Communities v Italian Republic

(Case C-571/08)

(2009/C 55/21)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: W. Mölls and L. Pignataro, agents)

Defendant: Italian Republic

Form of order sought

- Declare that, by providing for a minimum price for cigarettes and a period of 120 days within which approval is to be obtained for a change in the price of manufactured tobacco, the Italian Republic has failed to fulfil its obligations under Article 9(1) of Directive 95/59/EC (⁽¹⁾).
- order the Italian Republic to pay the costs.

Pleas in law and main arguments

The minimum price

The Commission submits that, by fixing a minimum price for cigarettes, the Italian Republic has infringed Article 9(1) of Directive 95/59/EC (and Article 5 of Directive 72/464/EEC (⁽²⁾), which it replaces and which is essentially identical to it). That provision establishes the principle that manufacturers and importers are free to determine the maximum retail selling price for manufactured tobacco. In accordance with that principle, Member States cannot justify the exercise of any discretion to fix maximum retail selling prices by reference to 'the control of price levels', 'the observance of imposed prices' or the fixing of a scale of retail selling prices in accordance with Article 9(2) of Directive 95/59/EC.

The minimum price cannot be justified by on the grounds of protection of public health. That objective, which was taken into account by the Community legislature, can be achieved by means of increased taxation of cigarettes, in accordance with the tax parameters that are appropriate to the situation of each Member State.

The Italian Government's argument alleging that, as a result of prices that are too high or inappropriate in terms of the market, there is a risk of increasing trafficking in contraband or counterfeit goods is also unfounded. That argument is based on mere assertions made by the Italian Government which are not substantiated by any evidence in that it has failed to explain how the difference in prices as a result of an increase in taxation should lead to a greater incidence of fraud than would be the case if a minimum price policy were adopted. The Commission maintains that it is for the individual Member State to carry out the necessary controls, within the framework of Community law, to ensure that the taxes owing to it are collected. That requirement must not in any way affect the obligation incumbent upon Member States to comply with the provisions of Directive 95/59/EC, including Article 9 thereof.

The 120-day period within which approval is to be obtained for the prices of manufactured tobacco

For the purpose of marketing in Italy, the prices of manufactured tobacco products must be registered for inclusion on the official list of prices. The request for registration must be sent to the Ministero dell'Economia e delle Finanze (Finance Ministry) — Amministrazione Autonoma dei Monopoli di Stato (the autonomous body administering State monopolies) (AAMS). The AAMS does not enjoy any discretion as to whether to confirm the registration. The Commission takes the view that