

Parties to the main proceedings

Applicants: Alpina River Cruises GmbH, Nicko Tours GmbH

Defendant: Ministero delle infrastrutture e dei trasporti — Capitaneria di Porto di Chioggia

Question referred

Must Council Regulation (EEC) No 3577/92 of 7 December 1992⁽¹⁾ be interpreted as applying to cruises carried out between ports within a Member State without different passengers embarking and disembarking in those ports, in that those cruises start and end with the same passengers embarking and disembarking in the same port within that Member State?

⁽¹⁾ Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ 1992 L 364, p. 7).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 15 January 2013 — Ministero dell'Interno v Fastweb S.p.a.

(Case C-19/13)

(2013/C 86/18)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Ministero dell'Interno

Defendant: Fastweb S.p.a.

Questions referred

1. Must Article 2d(4) of Directive 2007/66/EC⁽¹⁾ be construed as meaning that if, before awarding the contract directly to a specific economic operator, selected without prior publication of a contract notice, an awarding authority published the notice for voluntary ex ante transparency in the *Official Journal of the European Union* and waited at least 10 days before concluding the contract, the national court is — always and in any event — precluded from declaring the contract to be ineffective, even if it is established that there has been an infringement of the provisions permitting, subject to certain conditions, the award of a contract without a competitive tendering procedure?
2. Is Article 2d(4) of Directive 2007/66/EC — if interpreted as making it impossible to declare a contract ineffective, in

accordance with national law (Article 122 of the Code of administrative procedure), even though the national court has established an infringement of the provisions permitting, subject to certain conditions, the award of a contract without a competitive tendering procedure — compatible with the principles of equality of the parties, of non-discrimination and of protecting competition, and also of guaranteeing the right to an effective remedy enshrined in Article 47 of the Charter of Fundamental Rights of the European Union?

⁽¹⁾ Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (OJ 2007 L 335, p. 31).

Request for a preliminary ruling from the Verwaltungsgericht Berlin (Germany) lodged on 15 January 2013 — Daniel Unland v Land Berlin

(Case C-20/13)

(2013/C 86/19)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: Daniel Unland

Defendant: Land Berlin

Questions referred

1. Is European primary and/or secondary law, here in particular Directive 2000/78/EC,⁽¹⁾ to be interpreted as a comprehensive prohibition of unjustified age discrimination, such that it also covers national rules on the remuneration of *Land* judges?
2. If Question 1 is answered in the affirmative: does the interpretation of this European primary and/or secondary law mean that a national provision under which the level of the basic pay of a judge on establishment of the status of judge, and the subsequent rise in that basic pay, is dependent on his age constitutes direct or indirect age discrimination?
3. If Question 2 is also answered in the affirmative: does the interpretation of this European primary and/or secondary law preclude the justification of such a national provision by the legislative aim of making payment for professional experience and/or interpersonal skills?

4. If Question 3 is also answered in the affirmative: does the interpretation of European primary and/or secondary law, where a non-discriminatory right to remuneration has not been implemented, permit a legal consequence other than retrospective remuneration of those discriminated against at the highest pay step in their pay grade?

Does the legal consequence of infringement of the prohibition of discrimination in that case follow from European primary and/or secondary law itself, here in particular Directive 2000/78/EC, or does the claim follow only from the point of view of failure to implement the rules of European law in accordance with the claim to State liability under European Union law?

5. Does the interpretation of European primary and/or secondary law preclude a national measure which makes the claim to (retrospective) payment or compensation dependent on the judges' having enforced that claim in good time?
6. If Questions 1 to 3 are answered in the affirmative: does it follow from the interpretation of European primary and/or secondary law that a transitional law — under which existing judges are placed on a step of the new system solely according to the amount of the basic pay they attained under the old (discriminatory) law on remuneration on the transition date, and according to which further progression to higher steps is thereupon calculated essentially according to the periods of experience attained since the entry into force of the transitional law, irrespective of the judge's absolute period of experience — constitutes a perpetuation of the existing age discrimination, continuing until the highest pay step is reached in each case?
7. If Question 6 is also answered in the affirmative: does the interpretation of European primary and/or secondary law conflict with a justification of this unrestricted, continuing difference in treatment by the legislative aim whereby the transitional law is to protect not (only) the acquired rights of existing judges existing on the transition date but (also) the expectation of the lifetime income in the respective pay grade that was forecast to be paid under the old law on remuneration, and new judges are to be paid better than existing judges?

Can the continuing discrimination against existing judges be justified by the fact that the regulatory alternative (individual placement also of existing judges according to periods of experience) would involve increased administrative expenditure?

8. If such justification is rejected in Question 7: does the interpretation of European primary and/or secondary law, until a non-discriminatory right to remuneration has been

implemented also for existing judges, permit a legal consequence other than retrospective and continuing remuneration of existing judges at the highest pay step in their pay grade?

9. If Questions 1 to 3 are answered in the affirmative and Question 6 is answered in the negative: does it follow from the interpretation of European primary and/or secondary law that a provision of a transitional law which secures faster pay progression from a certain pay step onwards for existing judges who had reached a certain age at the time of transition than for existing judges who were younger on the transition date constitutes direct or indirect age discrimination?
10. If Question 9 is answered in the affirmative: does the interpretation of European primary and/or secondary law conflict with a justification of this difference in treatment by the legislative aim of protecting not the acquired rights existing on the transition date but only the expectation of the lifetime income in the respective pay grade that was forecast to be paid under the old law on remuneration?
11. If such justification is rejected in Question 10: does the interpretation of European primary and/or secondary law, until a non-discriminatory right to remuneration has been implemented also for existing judges, permit a legal consequence other than that of securing — retrospectively and on a continuing basis — the same pay progression for all existing judges as the favoured judges referred to in Question 9?

⁽¹⁾ 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).

Request for a preliminary ruling from the Tribunale di Napoli (Italy) lodged on 17 January 2013 — Mascolo v Ministero dell'Istruzione, dell'Università e della Ricerca

(Case C-22/13)

(2013/C 86/20)

Language of the case: Italian

Referring court

Tribunale di Napoli

Parties to the main proceedings

Applicant: Raffaella Mascolo