



Reports of Cases

Case C-50/14.

Consorzio Artigiano Servizio Taxi e Autonoleggio (CASTA) and Others
v
Azienda Sanitaria Locale di Ciriè, Chivasso e Ivrea (ASL TO4), Regione Piemonte

(Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Piemonte)

(Reference for a preliminary ruling — Public contracts — Articles 49 TFEU and 56 TFEU — Directive 2004/18/CE — Medical transport services — National legislation authorising regional health authorities to entrust medical transport activities to registered voluntary associations fulfilling the legal requirements, directly and without advertising, by means of reimbursement of the expenditure incurred — Lawfulness)

Summary — Judgment of the Court (Fifth Chamber), 28 January 2016

- 1. Approximation of laws — Procedures for the award of public works contracts, public supply contracts and public service contracts — Directive 2004/18 — Award of contracts — Publicity requirements — Contracts with a value less than the threshold fixed by the directive or relating to services referred to in Annex II B — Contracts of certain cross-border interest — Obligations of the contracting entities*
(Arts 49 TFEU and 56 TFEU; European Parliament and Council Directive 2004/18, Arts 7, 22, 23 and 35(4) and Annexes II A and II B)
- 2. Questions referred for a preliminary ruling — Admissibility — Need to provide the Court with sufficient information on the factual and legislative context — Scope of the obligation in the field of public procurement*
(Arts 49 TFEU, 56 TFEU and 267 TFEU; Rules of Procedure of the Court of Justice, Art. 94)
- 3. Freedom of establishment — Freedom to provide services — Restrictions — National legislation reserving on a preferential basis the provision of ambulance services to voluntary organisations — Unlawful — Justification — Need to maintain, for reasons of public health, financial equilibrium with regard to the provision of ambulance services — Lawfulness — Conditions*
(Arts 49 TFEU and 56 TFEU)
- 4. Freedom of establishment — Freedom to provide services — Restrictions — National legislation allowing public authorities to have direct recourse to voluntary associations to carry out certain tasks — Obligation to compare, in advance, the proposals of various associations in order to avoid any unnecessary costs — None*

5. *Freedom of establishment — Freedom to provide services — Restrictions — National legislation allowing public authorities to have direct recourse to voluntary associations to carry out certain tasks — Setting limits on the performance of commercial activities by those associations — Competence of the Member State — Limits*

1. See the text of the decision.

(see paragraphs 37-39, 41, 42)

2. See the text of the decision.

(see paragraphs 47, 48)

3. Articles 49 TFEU and 56 TFEU must be interpreted as meaning that they do not preclude national legislation which allows local authorities to entrust the provision of medical transport services by direct award, without any form of advertising, to voluntary associations, provided that the legal and contractual framework in which the activity of those associations is carried out actually contributes to the social purpose and the pursuit of the objectives of the good of the community and budgetary efficiency.

The award, in the absence of any transparency, of a contract to an undertaking located in the same Member State as the contracting authority amounts to a difference in treatment to the detriment of undertakings which might be interested in that contract but are established in another Member State. Unless it is justified by objective circumstances, such a difference in treatment, which, by excluding all undertakings established in another Member State, would operate mainly to the detriment of the latter undertakings, would amount to indirect discrimination on the basis of nationality, prohibited under Articles 49 TFEU and 56 TFEU.

However, the Member States have the power to organise their public health and social security systems. Furthermore, not only the risk of seriously undermining the financial balance of a social security system may constitute, per se, an overriding reason in the general interest capable of justifying an obstacle to the freedom to provide services, but also the objective of maintaining, on grounds of public health, a balanced medical and hospital service open to all may also fall within one of the derogations on grounds of public health, in so far as it contributes to the attainment of a high level of health protection. Thus, measures which aim, first, to meet the objective of guaranteeing in the territory of the Member State concerned sufficient and permanent access to a balanced range of high-quality medical treatment and, secondly, assist in ensuring the desired control of costs and prevention, as far as possible, of any wastage of financial, technical and human resources are also covered.

In that regard, a Member State, in the context of its discretion to decide the level of protection of public health and to organise its social security system, may take the view that recourse to voluntary associations is consistent with the social purpose of the ambulance services and may help to control costs relating to those services. It is essential that, where they act in that context, the voluntary associations do not pursue objectives other than those cited above, do not make any profit as a result of their services, apart from the reimbursement of the variable, fixed and on-going expenditure necessary to provide them, and do not procure any profit for their members.

It is for the national court to carry out all the assessments required in order to verify whether the contract and, where relevant, the framework agreement, as regulated by the applicable legislation, actually contribute to the social purpose and the pursuit of the objectives of the good of the community and budgetary efficiency.

(see paras 56, 61, 62, 64, 66, 67, operative part 1)

4. Where a Member State allows public authorities to make direct use of voluntary associations to carry out certain tasks, a public authority which intends to conclude contracts with such associations is not required, under EU law, to compare the proposals of various associations beforehand.

The absence of any advertising requirement means that public authorities that make use of voluntary associations, under those conditions, are not required under EU law to organise a comparison between voluntary bodies.

Nevertheless, the lawfulness of the use of voluntary associations is subject, in particular, to the condition that such use actually contributes to the objective of budgetary efficiency. Therefore, the arrangements for implementing that use, such as those laid down in the contracts concluded with those associations and in any framework agreement, must also contribute to the achievement of that objective. Furthermore, the general principle of the prohibition of abuse of rights applies with regard to the reimbursement of expenses incurred by voluntary associations.

(see paras 70-72, operative part 2)

5. Where a Member State, which allows public authorities to make direct use of voluntary associations to carry out certain tasks, authorises those associations to engage in certain commercial activities, that Member State must establish the limits within which those activities may be carried out. Those limits must nevertheless ensure that those commercial activities are marginal, having regard to all the activities of such associations, and must support the pursuit of their voluntary activity.

It is for the national legislature which opted to allow those associations to pursue a commercial activity on the market to decide whether it is preferable to regulate that activity by establishing a numerical limit or by otherwise defining that activity.

(see paras 76, 79, operative part 3)