Parties to the proceedings: PostCon Deutschland GmbH, Deutsche Post AG

Questions referred

1. Is Article 56(1) of the Treaty on the Functioning of the European Union in conjunction with Article 3(1) of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services ([1]) to be interpreted as precluding a national provision which makes it mandatory for a contracting authority to award contracts only to undertakings which undertake and whose subcontractors undertake in writing, at the time of submitting the tender, to pay their employees who perform the contract a minimum wage fixed by the State for public contracts only but not for private ones, where there is neither a general statutory minimum wage nor a universally binding collective agreement that binds potential contractors and possible subcontractors?

2. If the first question is answered in the negative:

   Is European Union law in the area of public procurement, in particular Article 26 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ([2]) to be interpreted as precluding a national provision such as the third sentence of Paragraph 3(1) of the [Rhineland-Palatinate Land Law on guaranteeing compliance with collective agreements and minimum wages in public contract awards (LTTG)] which provides for the mandatory exclusion of a tender if an economic operator does not, already when submitting the tender, undertake in a separate declaration to do something which he would be contractually obliged to do if awarded the contract even without making that declaration?

([1]) OJ 1996 L 18, p. 1.
([2]) OJ 2004 L 134, p. 114.

Action brought on 17 March 2014 — European Commission v Italian Republic

(Case C-124/14)

(2014/C 175/27)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: C. Cattabriga and M. van Beek, acting as Agents)

Defendant: Italian Republic

Form of order sought

The Commission claims that the Court should:

— declare that the Italian Republic, by withholding from National Health Service 'executive' staff (namely, doctors) the right to a maximum average working week of 48 hours, and from all National Health Service medical staff the right to 11 consecutive hours of rest per day without guaranteeing them an equivalent period of compensatory rest, has failed to fulfil its obligations under Articles 3, 6 and 17(2) of Directive 2003/88/EC; ([1])

— order the Italian Republic to pay the costs of the proceedings.

Pleas in law and main arguments

Articles 3 and 6 of Directive 2003/88/EC require that the Member States take the measures necessary to ensure, first, that every worker is entitled to a minimum daily rest period of 11 consecutive hours per 24-hour period and, second, that the average working time for each seven-day period, including overtime, does not exceed 48 hours. Derogations from those provisions, although not entirely excluded, are nonetheless subject to specific conditions.

When transposing Directive 2003/88, the Italian legislature breached those provisions by excluding all National Health Service 'executive' doctors from the scope of the rules relating to the maximum weekly working time and all National Health Service medical staff from the rules relating to the daily rest period.

In particular, the Commission claims that, in the first place, in Italy all doctors who work in the National Health Service are officially classified as 'executives' by legislation and by national collective agreements relating to the National Health Service, without necessarily benefitting from executive prerogatives or autonomy over their own working time. In the second place, the Italian authorities have not been able to show that National Health Service medical staff, although excluded from the right to a daily rest period of 11 consecutive hours, none the less benefit from an adequate period of uninterrupted compensatory rest immediately after their period of work has ended.

([1]) Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9)

Request for a preliminary ruling from the Fővárosi Törvényszék (Hungary) lodged on 18 March 2014 — Iron & Smith Kft. v Unilever NV

(Case C-125/14)

(2014/C 175/28)

Language of the case: Hungarian

Referring court

Fővárosi Törvényszék

Parties to the main proceedings

Applicant: Iron & Smith Kft.

Other party to the proceedings: Unilever NV

Questions referred

1. Is it sufficient, for the purposes of proving that a Community trade mark has a reputation within the meaning of Article 4(3) of Directive 2008/95/EC to approximate the laws of the Member States relating to trade marks ('the Directive'), ([1]) for that mark to have a reputation in one Member State, including where the national trade mark application which has been opposed on the basis of such a reputation has been lodged in a country other than that Member State?

2. May the principles laid down by the Court of Justice of the European Union regarding the genuine use of a Community trade mark be applied in the context of the territorial criteria used when examining the reputation of such a mark?

3. If the proprietor of an earlier Community trade mark has proved that that mark has a reputation in countries other than the Member State in which the national trade mark application has been lodged — which cover a substantial part of the territory of the European Union — may he also be required, notwithstanding that fact, to adduce conclusive proof in relation to that Member State?

4. If the answer to the previous question is no, bearing in mind the specific features of the internal market, may a mark used intensively in a substantial part of the European Union be unknown to the relevant national consumer and therefore the other condition for the ground precluding registration in accordance with Article 4(3) of the Directive not be met, since there is no likelihood of detriment to, or unfair advantage being taken of, a mark's repute or distinctive character? If so, what facts must the Community trade mark proprietor prove in order for that second condition to be met?

([1]) Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (OJ 2008 L 299, p. 25).