JUDGMENT OF THE COURT

(Sixth Chamber)

of 16 October 2001

in Case C-429/99: Commission of the European Communities v Portuguese Republic [1]

(Telecommunications — Directives 90/388/EEC and 96/19/EC — Voice telephony — 'Callback' services — Portugal Telecom)

(2001/C 369/04)

(Language of the case: Portuguese)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-429/99: Commission of the European Communities (Agent: A. Alves Vieira) v Portuguese Republic (Agents: L. Fernandes, P. de Pitta e Cunha and N. Ruiz) application for a declaration that, by not adopting all the measures necessary to comply with the fourth subparagraph of Article 2(2) of Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services (OJ 1990 L 192, p. 10), in the version resulting from Commission Directive 96/19/EC of 13 March 1996 amending Directive 90/388/EEC with regard to the implementation of full competition in telecommunications markets (OJ 1996 L 74, p. 13), the Portuguese Republic has failed to fulfil its obligations under that provision — the Court (Sixth Chamber), composed of: F. Macken, President of the Chamber, N. Colneric, C. Gulmann (Rapporteur), J.-P. Puissochet, and V. Skouris, Judges; P. Léger, Advocate General; R. Grass, Registrar, has given a judgment on 16 October 2001, in which it:

1. *Declares that by postponing until 1 January 2000 the abolition of the exclusive rights enjoyed by Portugal Telecom in respect of the 'call-back' system, the Portuguese Republic has failed to fulfil its obligations under the fourth subparagraph of Article 2(2) of Commission Directive 90/388/EEC of 28 June 1990 on competition in the markets for telecommunications services, in the version resulting from Commission Directive 96/19/EC of 13 March 1996 amending Directive 90/388 with regard to the implementation of full competition in telecommunications markets;*

2. *Orders the Portuguese Republic to pay the costs.*

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[1] OJ C 34 of 5.2.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 25 October 2001

in Case C-475/99 (reference for a preliminary ruling from the Oberverwaltungsgericht Rheinland-Pfalz): Firma Ambulanz Glöckner v Landkreis Südwestpfalz [1]

(Articles 85, 86 and 90 of the EC Treaty (now Articles 81 EC, 82 EC and 86 EC) — Transport of sick or injured persons by ambulance — Special or exclusive rights — Restriction of competition — Public interest task — Justification — Effect on trade between Member States)

(2001/C 369/05)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-475/99: reference to the Court under Article 177 of the EC Treaty (now Article 234 EC) from the Oberverwaltungsgericht Rheinland-Pfalz (Germany) for a preliminary ruling in the proceedings pending before that court between Firma Ambulanz Glöckner v Landkreis Sildwestpfalz, joined parties: Arbeiter-Samariter-Bund Landesverband Rheinland-Pfalz eV, Deutsches Rotes Kreuz Landesverband Rheinland-Pfalz eV, and Vertreter des öffentlichen Interesses, Mainz — on the interpretation of Articles 85, 86 and 90 of the EC Treaty (now Articles 81 EC, 82 EC and 86 EC — the Court, composed of: A. La Pergola, President of the Chamber, M. Wathelet (Rapporteur), D.A.O. Edward, S. von Bahr and C.W.A. Timmermans, Judges; F.G. Jacobs, Advocate General; H.A. Rühl, Principal Administrator, for the Registrar, has given a judgment on 25 October 2001, in which it has ruled:

— *A national provision such as Paragraph 18(3) of the Rettungsdienstgesetz, as enacted on 22 April 1991, under which the authorisation necessary for providing ambulance transport services will be refused by the competent authority if its use might prejudice the functioning and profitability of the public emergency ambulance service, the operation of which has been an entrusted to medical aid organisations like those involved in the main proceedings, is of a nature such as to confer on the latter organisations a special or exclusive right within the meaning of Article 90(1) of the Treaty (now Article 86(1) EC);*

— *where the decision to grant or refuse that authorisation is taken unilaterally by the competent authorities entirely on their own responsibility, according to the conditions laid down by law and in the absence of any agreement or concertation by those authorities with the medical aid organisations themselves, or*

between those organisations, there is no breach of Article 90(1) of the Treaty, in conjunction with Article 85(1)(c) thereof (now Article 81(1)(c) EC);

— *a national provision such as Paragraph 18(3) of the Rettungsdienstgesetz, as enacted on 22 April 1991, is contrary to Article 90(1) of the Treaty read in conjunction with Article 86 thereof (now Article 82 EC), in so far as it is established that:*

  — *the medical aid organisations such as those in question in the main proceedings occupy a dominant position on the market for emergency transport services,*

  — *that dominant position exists on a substantial part of the common market, and*

  — *there is a sufficient degree of probability, having regard to the economic characteristics of the market in question, that the provision actually prevents undertakings established in Member States other than the Member State in question from carrying out ambulance transport services there, or even from establishing themselves there;*

— *however, a provision such as Paragraph 18(3) of the Rettungsdienstgesetz 1991 is justified under Article 90(2) of the Treaty provided that it does not bar the grant of an authorisation to independent operators where it is established that the medical aid organisations entrusted with the operation of the public emergency ambulance service are manifestly unable to satisfy demand in the area of emergency ambulance and patient transport services.*

([1]) OJ C 63 of 4.3.2000.

JUDGMENT OF THE COURT

(Fifth Chamber)

of 25 October 2001

in Case C-493/99: Commission of the European Communities v Federal Republic of Germany ([1])

(Failure by a Member State to fulfil its obligations — Articles 52 and 59 of the EC Treaty (now, after amendment, Articles 43 EC and 49 EC) — National legislation on the contracting out of labour in the construction industry — Exclusion of undertakings not party to a collective agreement for that industry and not having an establishment in the Member State in which services are to be provided — Proportionality)

(2001/C 369/06)

(Language of the case: German)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-493/99: Commission of the European Communities (Agent: J. Sack) v Federal Republic of Germany (Agents: W.-D. Plessing and B. Muttelsee-Schön) — application for a declaration that, by providing in its legislation that construction undertakings established in other Member States

(a) may not provide transfrontier services on the German market as part of a consortium unless they have their seat or at least an establishment in Germany employing their own staff and have concluded a company-wide collective agreement for those staff;

(b) may not contract out workers from another country to other construction undertakings unless they have their seat or at least an establishment in Germany employing their own staff and, as members of a German employers' association, are covered by framework and social-welfare collective agreements;

(c) may not establish in Germany a branch recognised as a construction undertaking if its staff is entrusted solely with work on administration, marketing, planning, supervision and/or wages and salaries, but, in order to be so recognised, such an establishment must employ on the German labour market workers who spend more than 50 % of the firm's total working time on building sites,

the Federal Republic of Germany has failed to fulfil its obligations under Articles 52 and 59 of the EC Treaty (now, after amendment, Articles 43 EC and 49 EC) — the Court (Fifth Chamber), composed of: P. Jann, President of the Chamber, D.A.O. Edward (Rapporteur), A. La Pergola, L. Sevón and C.W.A. Timmermans, Judges; D. Ruiz-Jarabo Colomer, Advocate General; R. Grass, Registrar, has given a judgment on 25 October 2001, in which it:

1. *Declares that, by providing in its legislation that construction undertakings established in other Member States*

   (a) *may not provide transfrontier services on the German market as part of a consortium unless they have their seat or at least an establishment in Germany employing their own staff and have concluded a company-wide collective agreement for those staff;*

   (b) *may not contract out workers from another country to other construction undertakings unless they have their seat or at least an establishment in Germany employing their own staff and, as members of a German employers' association, are covered by framework and social-welfare collective agreements;*