

Pleas in law and main arguments

The Commission considers that the fact that the contract at issue in this case falls within the scope of Council Directive 92/50/EEC⁽¹⁾ as amended by European Parliament and Council Directive 97/52/EC⁽²⁾ does not preclude the application of the principle enunciated in *Telaustria*⁽³⁾ deriving from the fundamental freedoms laid down in the Treaty and the application of general principles which are given specific expression in those fundamental freedoms. The obligation on Member States to comply with general principles is confirmed, within the Directive itself by Article 3(2) (see above), a general obligation on contracting authorities to avoid all discrimination between service providers. That obligation is incumbent on the Irish authorities in respect of Annex 1B services just as much as in respect of Annex 1A services.

It is submitted that the Commission's analysis is the only one which can be regarded as consistent with the internal market logic of the Treaty. The Court's case-law clearly holds that the Treaty provisions on the freedoms of establishment and service provision impose obligations on Member States in respect of the award of public contracts outside the scope of the directives. This applies to types of contracts (such as service concessions) that are not specifically covered and also to contracts of types which are covered but where the value falls below the thresholds set in the various directives.

That being so, the Commission submits that it would run directly counter to the logic of the internal market if, whereas Community law requires an appropriate level of advertising in such situations even if the contract falls outside the scope of the directives because of its structure or value, it were nevertheless open to Member States not to advertise in any way contracts (whose value is above the financial thresholds) solely on the grounds that the services to which they relate fall within the scope of Annex 1B of the Directive.

(1) Directive of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ L 209, 24.07.1992, p. 1).

(2) Directive of 13 October 1997 amending Directives 92/50/EEC, 93/36/EEC and 93/37/EEC concerning the coordination of procedures for the award of public service contracts, public supply contracts and public works contracts respectively (OJ L 328, 28.11.1997, p. 1).

(3) Case C-324/98, *Telaustria Verlags GmbH v Telekom Austria AG*, ECR[2000], p.I-10745.

Action brought on 12 December 2003 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-519/03)

(2004/C 35/08)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 12 December 2003 by the Commission of the European

Communities, represented by D. Martin, acting as Agent, with an address for service in Luxembourg.

The Commission of the European Communities claims that the Court should:

1. declare that, by adopting Article 7(2) and the fifth subparagraph of Article 19 of the Law of 12 February 1999 setting up parental leave and leave for family reasons, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Clause 2(1) of Part II of the Annex to Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC⁽¹⁾, as regards:
 - the substitution of maternity leave for parental leave, and
 - the date from which individual rights to parental leave are granted;
2. order the Grand Duchy of Luxembourg to pay the costs.

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1. Maternity leave has a completely different purpose from that of parental leave. Moreover, Clause 2(1) of the framework agreement expressly provides that parental leave is an individual right to leave of at least three months' duration. The obligatory termination of parental leave when maternity leave begins is therefore not compatible with that provision of the Annex to Directive 96/34. The woman whose maternity leave begins during her parental leave must, in the light of the individual right to parental leave of at least three months conferred on her by Clause 2(1) of the framework agreement, be able to defer the portion of her parental leave which she has not been able to take because of her maternity leave.

2. By limiting its application to children born or adopted after 31 December 1998, the Luxembourg authorities have added a condition which is not authorised by the Directive.

(1) OJ L 145 of 19.06.1996, p. 4.

Action brought on 28 January 2004 by the Commission of the European Communities against the Council of the European Union

(Case C-27/04)

(2004/C 35/09)

An action against the Council of the European Union was brought before the Court of Justice of the European Communities on 28 January 2004 by the Commission of the European Communities, represented by M. Petite, A. van Solinge and P. Aalto, acting as Agents, with an address for service in Luxembourg.