

Action brought on 15 September 2005 by the Commission of the European Communities against the Italian Republic

(Case C-337/05)

(2005/C 281/16)

(Language of the case: Italian)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 15 September 2005 by the Commission of the European Communities, represented by D. Recchia and X. Lewis, acting as Agents.

The Commission claims that the Court should:

— Declare that, since the Italian Government and, in particular, the Ministries of Home Affairs, Defence, Economics and Finance, for Agricultural and Forestry Policy, and for Infrastructure and Transport, and the Department of Civil Protection of the Presidency of the Council of Ministers, have adopted a procedure, which has been in existence for a long time and is still followed, of directly awarding to the firm 'Agusta' contracts for the purchase of helicopters manufactured by 'Agusta' and 'Agusta Bell' to meet the requirements of the military corps of the fire brigade, the Carabinieri, the State Forestry Corps, the Coastguard, the Revenue Guard Corps, the State Police and the Department of Civil Protection, without any tendering procedure, in particular without complying with the procedures provided for by Directive 93/36/EEC ⁽¹⁾ and, earlier, by Directive 77/62/EEC, ⁽²⁾ Directive 80/767/EEC ⁽³⁾ and 88/295/EEC, ⁽⁴⁾ the Italian Republic has failed to fulfil its obligations under the abovementioned directives;

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

The Government of the Italian Republic and, in particular, the Ministries of Home Affairs, Defence, Economics and Finance, for Agricultural and Forestry Policy, and for Infrastructure and Transport, and the Department of Civil Protection of the Presidency of the Council of Ministers, have adopted a procedure, which has been in existence for a long time and is still followed, of directly awarding to the firm 'Agusta' contracts for the purchase of helicopters manufactured by 'Agusta' and 'Agusta Bell' to meet the requirements of the military corps of the fire brigade, the Carabinieri, the State Forestry Corps, the Coastguard, the Revenue Guard Corps, the State Police and the Department of Civil Protection, without any tendering procedure, in particular without complying with the procedures provided for by Directive 93/36/EEC and, earlier, by Directive

77/62/EEC, Directive 80/767/EEC and 88/295/EEC, and has thereby failed to fulfil its obligations under the abovementioned directives.

Following receipt of a complaint, the Commission acquired information from which it appears that the Italian Government has operated that procedure for a long time.

The Commission takes the view that that practice is incompatible with the directives on public supply contracts referred to above in so far as none of the conditions to which recourse to the negotiated procedure without publication of a contract notice is subject appears to have been satisfied.

The Commission considers, moreover, that Italy has not shown that the practice in question is justified on the basis of Article 2 of Directive 93/36/EEC, according to which the directive is not to apply to supply contracts which are declared secret or the execution of which must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member States concerned or when the protection of the basic interests of the Member State's security so requires.

⁽¹⁾ OJ L 199 of 09.08.1993, p. 1.

⁽²⁾ OJ L 13 of 15.01.1977, p. 1.

⁽³⁾ OJ L 215 of 18.08.1980, p. 1.

⁽⁴⁾ OJ L 127 of 20.05.1988, p. 1.

Reference for a preliminary ruling from the Landesgericht Innsbruck by order of that court of 22 June 2005 in Zentralbetriebsrat der Landeskrankenhäuser Tirols v Land Tirol

(Case C-339/05)

(2005/C 281/17)

(Language of the case: German)

Reference has been made to the Court of Justice of the European Communities by order of the Landesgericht Innsbruck (Austria) of 22 June 2005, received at the Court Registry on 19 September 2005, for a preliminary ruling in the proceedings between Zentralbetriebsrat der Landeskrankenhäuser Tirols and Land Tirol on the following question:

Must a Member State or one of a Member State's regional or local authorities take account, when calculating the remuneration of contractual public servants, of periods of employment in certain institutions in Switzerland, which are comparable to institutions listed in Paragraph 41(2) of the *Tiroler Landesvertragsbedienstetengesetz* (Law of the Province of Tyrol on Contractual Public Servants) (or, in the alternative, of Paragraph 26(2) of the *Vertragsbedienstetengesetz 1948* (Federal Law on Contractual Public Servants of 1948)) *without temporal limitation*, or is the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons (OJ 2002 L 114), in particular Article 9(1) of Annex I thereto, rather to be interpreted as meaning that it is permissible *to take account only* of periods of employment by contractual public servants in Switzerland *after the entry into force* of that agreement on 1 June 2002?

Reference for a preliminary ruling from the Arbetsdomstolen by order of that court of 15 September 2005 in *Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet, Avdelning 1 of the Svenska Byggnadsarbetareförbundet, Svenska Elektrikerförbundet*

(Case C-341/05)

(2005/C 281/18)

(Language of the case: Swedish)

Reference has been made to the Court of Justice of the European Communities by order of the Arbetsdomstolen of 15 September 2005, received at the Court Registry on 19 September 2005, for a preliminary ruling in the proceedings between *Laval un Partneri Ltd* and *Svenska Byggnadsarbetareförbundet, Avdelning 1 of the Svenska Byggnadsarbetareförbundet, Svenska Elektrikerförbundet* on the following questions:

1. Is it compatible with rules of the EC Treaty on the freedom to provide services and the prohibition of discrimination on the grounds of nationality and with the provisions 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 for trade unions to attempt, by means of industrial action in the form of a blockade, to force a foreign temporary provider of services in the host country to sign a collective agreement in respect of terms and conditions of employment such as that set out in the above-mentioned decision of the Arbetsdomstolen, if the situation in the host country is such that the legislation intended to implement Directive 96/71 has

no express provisions concerning the application of terms and conditions of employment in collective agreements?

2. The Swedish *Medbestämmandelagen* (Law on workers' participation in decisions) prohibits industrial action taken with the intention of circumventing a collective agreement concluded by other parties. That prohibition applies, however, pursuant to a special provision contained in part of the law known as the '*lex Britannia*', only where a trade union takes measures in respect of industrial relations to which the *Medbestämmandelagen* is directly applicable, which means in practice that the prohibition is not applicable to industrial action against a foreign undertaking which is temporarily active in Sweden and which brings its own workforce. Do the rules of the EC Treaty on the freedom to provide services and the prohibition on discrimination on grounds of nationality and the provisions of Directive 96/71 constitute an obstacle to an application of the latter rule — which, together with other parts of the *lex Britannia* also mean in practice that Swedish collective agreements become applicable and take precedence over foreign collective agreements already concluded — to industrial action in the form of a blockade taken by Swedish trade unions against a foreign temporary provider of services in Sweden?

Action brought on 19 September 2005 by the Commission of the European Communities against the Republic of Finland

(Case C-342/05)

(2005/C 281/19)

(Language of the case: Finnish)

An action against the Republic of Finland was brought before the Court of Justice of the European Communities on 19 September 2005 by the Commission of the European Communities, represented by M. van Beek and I. Koskinen, acting as Agent, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that, by regularly permitting the hunting of wolves contrary to the principles for derogations laid down in Article 16(1) of Council Directive 92/43/EEC (1) of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, the Republic of Finland has failed to fulfil its obligations under Articles 12(1) and 16(1) of the directive;
2. order the Republic of Finland to pay the costs.