

Re:

Reference for a preliminary ruling — *Krajský súd v Prešove* — Interpretation of Article 6 EU and Article 1 of the Protocol to the Convention on the Protection of Human Rights and Fundamental Freedoms, signed in Paris on 20 March 1952 — Property law — National legislation under which electrical installations may be placed on private land without the owners being entitled to compensation

Operative part of the order

The Court of Justice of the European Communities clearly has no jurisdiction to answer the questions referred by the Krajský súd v Prešove V by decisions of 2 May and 21 July 2006.

(¹) OJ C 249 of 14.10.2006.

Action brought on 13 December 2006 — Commission of the European Communities v Italian Republic

(Case C-503/06)

(2007/C 82/23)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: D. Recchia, Agent)

Defendant: Italian Republic

Form of order sought

— Declare that, since the Regione Liguria has adopted and applies rules concerning authorisation to derogate from the system of protection for wild birds which fail to satisfy the conditions laid down in Article 9 of Directive 79/409/EEC (¹), the Italian Republic has failed to fulfil its obligations under Article 9 of that directive.

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

Following receipt of a complaint, the Commission was apprised of the fact that the Regione Liguria had approved Law No 34 of October 2001 for the purpose of regulating procedures for the adoption of derogations from the system of protection for wild birds provided for under Article 9 of the abovementioned directive. That regional law was amended by Regional Law No 31 of 13 August 2002.

In the Commission's opinion, Regional Law No 34/2001, as amended, authorises the lawful hunting of bird species protected under that directive in so far it:

- identifies generally and in the abstract and without any time limitation the species which are subject to the derogation, whereas the derogation constitutes an exceptional regulatory measure to be adopted upon verification that certain conditions of a scientific nature are met;
- does not lay down an obligation, as regards individual derogation measures, to state one of the abstract reasons why it is possible to grant a derogation under Article 9 of the directive and does not lay down an obligation to explain the practical reason why a particular measure is dictated by the need relied upon as an abstract reason.
- it fails to provide that checks are to be made to ensure that no other satisfactory solutions are available or to provide any indication of the authority empowered to declare that the conditions under Article 9 of the directive are satisfied.

The fact that Regional Law No 34/2001, as amended, is incompatible with the directive is reflected in the specific measures authorising hunting, which fail to establish that no other satisfactory solutions are available and fail to mention either the abstract reason for which or the specific grounds on which the derogation is necessary.

On 31 October 2006, after the expiry of the period prescribed in the reasoned opinion, the Regione Liguria repealed Regional Law No 34/2001, as amended, by Regional Law No 35/2006 of 31 October 2006 and adopted Regional Law No 36/2006, which authorises hunting derogations that disclose the same incompatibilities with Article 9 of the abovementioned directive as those complained of above relating to the earlier regional legal framework.

(¹) Council Directive 79/409/EEC of 2 April 1979 concerning the conservation of wild birds, OJ 1979 L 103, p. 1.

Reference for a preliminary ruling from the Tribunale di Genova (Italy) lodged on 18 January 2007 — Autostrada dei Fiori SpA, AISCAT, Associazione Nazionale dei Gestori delle Autostrade v Government of the Italian Republic, Ministry of Infrastructure and Transport, Ministry of the Economy and Finance and Azienda Nazionale Autonoma delle Strade (ANAS)

(Case C-12/07)

(2007/C 82/24)

Language of the case: Italian

Referring court

Tribunale di Genova

Parties to the main proceedings

Applicants: Autostrada dei Fiori SpA AISCAT, Associazione Nazionale dei Gestori delle Autostrade

Defendants: The Government of the Italian Republic, Ministry of Infrastructure and Transport, Ministry of the Economy and Finance, Azienda Nazionale Autonoma delle Strade (ANAS)

Questions referred

1. Does the Court of Justice consider that a body, which takes the form of a joint-stock company and has the objects, functions and powers of intervention on the market which the Italian legislature has assigned to ANAS spa (as emerge — in particular — from the instrument setting up the new body, the company constitution approved by the Interministerial Decree of 18 December 2002 and the new legislation contained in subparagraphs 82 to 90 of Article 2 of the Decree-Law of 3 October 2006, converted into law with the amendments introduced by the Government's 'maxi-amendment' to subparagraph 1034 of Article 1 of the 2007 Financial Law), may be regarded as an undertaking, albeit a public undertaking, for the purposes of Community law, and as such subject to the rules on competition (Article 86 of the EC Treaty)?
2. Is legislation such as that at issue here, even as converted by Law No 286 of 2006, which — in contrast to the substantial power of expropriation accorded to a competing public undertaking such as ANAS spa — provides for a 'possible right to compensation', compatible with the fundamental right to property, which is protected by Community law?
3. Having regard to the legislation at issue, and in the light of the amendments introduced on its conversion into law and by the so-called 'maxi-amendment' to the 2007 Financial Law, does Community law and, in particular, the rules on competition and the internal market (Article 43 *et seq* and 81 *et seq* of the EC Treaty) preclude assigning to an undertaking, under full public ownership and having characteristics similar to those of ANAS spa, the administration — on a temporary basis but without stipulating an absolute time-limit — of public services or public infrastructure, without holding a competitive tendering procedure?
4. In relation to public procurement procedures, does Community law preclude a Member State from extending the regime provided for by the public procurement directives to 'vertical' transactions set in place by private-law undertakings which have been awarded concessions, with the Member State further reserving for itself the right to appoint the committees evaluating the tenders submitted by the concessionaires?
5. In so far as they accord advantages which are not accorded to private-law competitors, and in so far as they are not subject to separate accounting, do financial measures like those implemented in favour of ANAS under subparagraph 12 of Article 7 of Decree-Law No 138 of 2002 and subparagraph 1-quarter of Article 7 of Decree-Law No

138 of 2002, as well as subparagraph 453 of Article 1 of the 2005 Financial Law (Law No 311 of 30 December 2004), which enable ANAS to receive loans on preferential terms from the *Cassa Depositi e Prestiti spa*, as well as measures similar to those contained in subparagraph 299(c) and subparagraph 453 of Article 1 of Law No 311 of 2004 (the 2005 Financial Law), and/or contained in subparagraph 2 of Article 76 of Law No 289 of 2003, under which ANAS receives substantial public contributions which are declared to be intended for infrastructure projects but stipulate no separate accounting requirement, constitute State aid which is prohibited by Article 87 *et seq* of the EC Treaty? In addition, does a measure such as that extending the concession period awarded to ANAS spa, enabling it to avoid the competitive tendering procedure, as well as a provision of the kind contained in subparagraphs 87 and 88 of Article 2 of Law No 286 of 2006 (converting Decree-Law No 262 of 2006), according to which ANAS spa automatically succeeds — albeit on a temporary basis but with no absolute time-limit — to private-law sub-concessions which have expired, constitute State aid?

Appeal brought on 22 January 2007 by Marguerite Chetcuti against the judgment of the Court of First Instance (Fourth Chamber) delivered on 8 November 2006 in Case T-357/04: Chetcuti v Commission

(Case C-16/07 P)

(2007/C 82/25)

Language of the case: French

Parties

Appellant: Marguerite Chetcuti (represented by: M.-A. Lucas, avocat)

Other party to the proceedings: Commission of the European Communities

Form of order sought

- set aside the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 8 November 2006 in Case T-357/04 Chetcuti v Commission;
- grant the form of order sought by the appellant before the Court of First Instance and therefore:
 - annul the decision of the competition selection board of 22 June 2004 rejecting, on the basis of point III of competition notice COM/PA/04 of 6 April 2004, the appellant's candidature;