

Reference for a preliminary ruling from the Simvoulío tis Epikratias (Greece) lodged on 9 April 2008 — Club Hotel Loutraki AE, Athinaiki Tekhniki AE and Evangelos Marinakis v Ethniko Simvoulío Radiotileorasis and Ipourgós Epikratias

(Case C-145/08)

(2008/C 142/30)

Language of the case: Greek

Referring court

Simvoulío tis Epikratias

Parties to the main proceedings

Claimants: Club Hotel Loutraki AE, Athinaiki Tekhniki AE and Evangelos Marinakis

Defendants: Ethniko Simvoulío Radiotileorasis and Ipourgós Epikratias

Questions referred

1. Does a contract by which the contracting authority entrusts to the contracting undertaking the management of a casino business and the execution of a development plan consisting in the upgrading of the casino premises and the commercial exploitation of the possibilities offered by the casino's licence, and which contains a term under which the contracting authority is obliged to pay the contracting undertaking compensation should another casino lawfully operate in the wider area in which the casino in question operates, constitute a concession, not governed by Directive 92/50/EEC?
2. If the first question referred for a preliminary ruling is answered in the negative: does a legal action which is brought by persons who have participated in the procedure for the award of a public contract of mixed form providing inter alia for the supply of services subject to Annex I B to Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209), and in which they plead breach of the principle of equal treatment of participants in tender procedures (a principle affirmed by Article 3(2) of that directive), fall within the field of application of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395), or is its application precluded inasmuch as, in accordance with Article 9 of Directive 92/50/EEC, only Articles 14 and 16 of the latter apply to the procedure for the award of the abovementioned contract for the supply of services?
3. If the second question referred for a preliminary ruling is answered in the affirmative: accepting that a national provision in accordance with which only all the members of a consortium without legal personality which has participated

unsuccessfully in a public procurement procedure can bring a legal action against the act awarding the contract, and not consortium members individually, is not in principle contrary to Community law and specifically to Directive 89/665, and that that still applies where the legal action has initially been brought by all the members of the consortium jointly but ultimately proves, as regards some of them, to be inadmissible, is it in addition necessary, from the viewpoint of application of that directive, to examine, in order to make a declaration of inadmissibility, whether those individual members thereafter retain the right to claim before another national court any damages which may be envisaged by a provision of national law?

4. When it has been held by settled case-law of a national court that an individual member of a consortium may also bring an admissible legal action against an act falling within a public procurement procedure, is it compatible with Directive 89/665/EEC, interpreted in the light of Article 6 of the European Convention on Human Rights as a general principle of Community law, to dismiss a legal action as inadmissible, because of a change to that settled case-law, without the person who has brought that legal action first being given either the opportunity to cure the inadmissibility or, in any event, the opportunity to set out, pursuant to the adversarial principle, his views relating to that issue?

Reference for a preliminary ruling from the Juzgado de lo Mercantil No 1 (Commercial Court No 1), Spain lodged on 9 April 2008 — Finn Mejnertsen v Betina Mandal Barsoe

(Case C-148/08)

(2008/C 142/31)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil No 1 (Commercial Court No 1), Spain

Parties to the main proceedings

Applicant: Finn Mejnertsen

Defendant: Betina Mandal Barsoe

Questions referred

1. For the purposes of Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty of European Union and the Treaty establishing the European Community, should Denmark be considered to be a Member State within the meaning of Article 16 of Regulation (EC) No 1346/2000 ⁽¹⁾ on insolvency proceedings?