

Pleas in law and main arguments

Medico-technical laboratory, radiology and orthoptic services may not be exercised on an independent basis in Austria. For the exercise of those three professions, an employment relationship is necessary. A member of those professional categories from another Member State, where the exercise of those professions on an independent basis is entirely normal, therefore has no opportunity to carry on his or her profession in Austria as an independent. That national measure therefore undoubtedly constitutes an obstacle to the freedom of establishment and the freedom to provide services.

The Commission finds the Republic of Austria's argument to justify that measure unconvincing. It has not been sufficiently demonstrated that salaried employment relationships in the paramedical sector concerned are in themselves sufficient to ensure, or at least better able to ensure, a higher level of health. The prohibition under Austrian law of the exercise of those three professions on an independent basis constitutes an unjustified restriction and therefore an infringement of the freedom of establishment and the freedom to provide services laid down by Articles 43 and 49 EC.

Action brought on 25 February 2003 by the Commission of the European Communities against the Italian Republic

(Case C-82/03)

(2003/C 101/41)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 25 February 2003 by the Commission of the European Communities, represented by Antonio Aresu, acting as Agent.

The applicant claims that the Court should:

- a) find that the Italian Republic, by failing to offer the Commission any genuine cooperation in a case concerning the health and safety of workers, has failed to fulfil its obligations under Article 10 EC, and
- b) order the Italian Republic to pay the costs.

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In 2000 the Commission received a complaint from an economic operator alleging wrongful implementation in Italian law of Council Directive 89/655/EEC⁽¹⁾ of 30 November 1989 concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC).

Despite being contacted by the Commission on numerous occasions, the Italian authorities have failed to provide any information on the complainant's allegations. That failure to communicate information repeatedly requested by the Commission constitutes a failure to fulfil the obligation, imposed on Member States by Article 10 EC, to offer genuine cooperation to the Community institutions.

⁽¹⁾ OJ L 393 of 30.12.1989, p. 13.

Action brought on 26 February 2003 by the Commission of the European Communities against the Kingdom of Spain

(Case C-84/03)

(2003/C 101/42)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 26 February 2003 by the Commission of the European Communities, represented by G. Valero Jordana and K. Wiedner, with an address for service in Luxembourg.

The applicant claims that the Court of Justice should:

1. declare that, by failing correctly to incorporate into national law Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts⁽¹⁾ and Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts⁽²⁾ and, in particular:
 - by excluding from the scope of Royal Legislative Decree 2/2000 of 16 June approving the revised and codified Public Contracts Law by, specifically,

Article 1(3) thereof private-law undertakings fulfilling the criteria referred to in the three indents of the second subparagraph of Article 1(b) of each of the abovementioned directives;

- by providing an absolute exclusion from the scope of the Public Contracts Law by Article 3(1)(c) thereof for cooperation agreements between public authorities and other public undertakings including, therefore, agreements which are public contracts for the purposes of the directives; and
- by permitting, in Article 141(a) and Article 182(a) and (g) of the Public Contracts Law, the negotiated procedure to be used in two cases which are not provided for in the directives;

the Kingdom of Spain has failed to fulfil its obligations under Community law;

2. order the Kingdom of Spain to pay the costs.

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These are apparent from the form of order sought.

⁽¹⁾ OJ L 199 of 9.8.1993, p. 1.

⁽²⁾ OJ L 199 of 9.8.1993, p. 54.

Action brought on 27 February 2003 by the Commission of the European Communities against the Grand-Duchy of Luxembourg

(Case C-89/03)

(2003/C 101/43)

An action against the Grand-Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 27 February 2003 by the Commission of the European Communities, represented by L. Ström and B. Stromsky, acting as Agents, with an address for service in Luxembourg.

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

- declare that, by failing to bring into force the laws, regulations and administrative provisions necessary to comply with Council Directive 93/15/EEC of 5 April 1993 on the harmonisation of the provisions relating to the placing on the market and supervision of explosives

for civil uses ⁽¹⁾, or in any event by failing to inform the Commission of those provisions, the Grand-Duchy of Luxembourg has failed to fulfil its obligations under that directive;

- order the Grand-Duchy of Luxembourg to pay the costs.

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The period within which the directive had to be transposed expired on 30 June 1994.

⁽¹⁾ OJ L 121 of 15.5.1993, p. 20.

Action brought on 28 February 2003 by Commission of the European Communities against Portuguese Republic

(Case C-93/03)

(2003/C 101/44)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 28 February 2003 by the Commission of the European Communities, represented by Karen Banks and Miguel França, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

- declare that, by failing to adopt and bring into force the laws, regulations and administrative provisions necessary to comply with Directive 98/71/EC ⁽¹⁾ of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs or, in any event, by failing to communicate those provisions to the Commission, the Portuguese Republic has failed to fulfil its obligations under Article 19 of that directive;
- order the Portuguese Republic to pay the costs.

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The period prescribed for implementation of the directive expired on 28 October 2001.

⁽¹⁾ OJ L 289 of 28 October 1998, p. 28.