



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

6 October 2015 *

(Reference for a preliminary ruling — Directive 89/665/EEC — Public procurement — National legislation — Fees for access to administrative proceedings in the field of public procurement — Right to an effective remedy — Dissuasive fees — Judicial review of administrative decisions — Principles of effectiveness and equivalence — Effectiveness)

In Case C-61/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale regionale di giustizia amministrativa di Trento (Italy), made by decision of 21 November 2013, received at the Court on 7 February 2014, in the proceedings

Orizzonte Salute — Studio Infermieristico Associato

v

Azienda Pubblica di Servizi alla persona San Valentino — Città di Levico Terme,

Ministero della Giustizia,

Ministero dell'Economia e delle Finanze,

Presidenza del Consiglio dei Ministri,

Segretario Generale del Tribunale regionale di giustizia amministrativa di Trento,

intervening parties:

Associazione Infermieristica D & F Care,

Camera degli Avvocati Amministrativisti,

Camera Amministrativa Romana,

Associazione dei Consumatori Cittadini Europei,

Coordinamento delle associazioni e dei comitati di tutela dell'ambiente e dei diritti degli utenti e dei consumatori (Codacons),

Associazione dei giovani amministrativisti (AGAm),

Ordine degli Avvocati di Roma,

* Language of the case: Italian.

Società italiana degli avvocati amministrativisti (SIAA),

Ordine degli Avvocati di Trento,

Consiglio dell'ordine degli Avvocati di Firenze,

Medical Systems SpA,

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Chamber, C. Vajda, A. Rosas, E. Juhász (Rapporteur) and D. Šváby, Judges,

Advocate General: N. Jääskinen,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 11 February 2015,

after considering the observations submitted on behalf of:

- Orizzonte Salute — Studio Infermieristico Associato, by M. Carlin, M. Napoli, M. Zoppolato and M. Boifava, avvocati,
- the Azienda Pubblica di Servizi alla persona San Valentino — Città di Levico Terme, by R. De Pretis, avvocatà,
- the Camera degli Avvocati Amministrativisti, by A. Grappelli, M. Ida Leonardo, M. Rossi Tafuri, F. Marascio, M. Martinelli, E. Papponetti and M. Togna, avvocati,
- the Camera Amministrativa Romana, by F. Tedeschini, C. Malinconico, P. Leozappa, F. Lattanzi and A.M. Valorzi, avvocati,
- the Associazione dei Consumatori Cittadini europei, by C. Giurdanella, P. Menchetti, S. Raimondi and E. Barbarossa, avvocati,
- the Coordinamento delle associazioni per la tutela dell'ambiente e dei diritti degli utenti e consumatori (Codacons), by C. Rienzi, G. Giuliano, V. Graziussi and G. Ursini, avvocati,
- the Associazione dei Giovani Amministrativisti (AGAm), by G. Leccisi and J. D'Auria, avvocati,
- the Ordine degli Avvocati di Roma, by S. Orestano, S. Dore and P. Ziotti, avvocati,
- the Società Italiana degli Avvocati Amministrativisti (SIAA), by F. Lubrano, E. Lubrano, P. De Caterini, A. Guerino, A. Lorang, B. Nascimbene, E. Picozza, F.G. Scocca and F. Sorrentino, avvocati,
- Medical Systems SpA, by R. Damonte, M. Carlin and E. Boglione, avvocati,
- the Italian Government, by G. Palmieri, acting as Agent, and by P. Gentili, avvocato dello Stato,
- the Greek Government, by K. Paraskevopoulou and V. Stroumpouli, acting as Agents,
- the Austrian Government, by M. Fruhmann, acting as Agent,

— the Polish Government, by B. Majczyna, acting as Agent,
— the European Commission, by F. Moro and A. Tokár, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 7 May 2015,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 1 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, p. 33), as amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 (OJ 2007 L 335, p. 31) ('Directive 89/665').
- 2 This request has been made in proceedings between, on the one hand, Orizzonte Salute — Studio Infermieristico Associato ('Orizzonte Salute') and, on the other, the Azienda Pubblica di Servizi alla persona San Valentino — Città di Levico Terme (the San Valentino public personal assistance agency of the city of Levico Terme; the 'Azienda'), the Ministero della Giustizia (Ministry of Justice), the Ministero dell'Economia e delle Finanze (Ministry of Economic and Financial Affairs), the Presidenza del Consiglio dei Ministri (Presidency of the Council of Ministers) and the Segretario Generale del Tribunale regionale di giustizia amministrativa di Trento (Secretary General of the Regional Administrative Court of Trento), concerning (i) the extension of a contract for the provision of nursing services and a call for tenders issued at a later stage and (ii) court fees for bringing administrative judicial challenges relating to public procurement.

Legal context

EU Law

- 3 Pursuant to recital 3 in the preamble to Directive 89/665, the opening-up of public procurement to EU competition necessitates a substantial increase in the guarantees of transparency and non-discrimination and, for that to have tangible effects, effective and rapid remedies must be available in the case of infringements of EU law in the field of public procurement or national rules implementing that law.
- 4 Article 1 of that directive, entitled 'Scope and availability of review procedures', provides:

'1. This Directive applies to contracts referred to in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts [OJ 2004 L 134, p. 114], unless such contracts are excluded in accordance with Articles 10 to 18 of that Directive.

Contracts within the meaning of this Directive include public contracts, framework agreements, public works concessions and dynamic purchasing systems.

Member States shall take the measures necessary to ensure that, as regards contracts falling within the scope of Directive 2004/18/EC, decisions taken by the contracting authorities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in Articles 2 to 2f of this Directive, on the grounds that such decisions have infringed [EU] law in the field of public procurement or national rules transposing that law.

2. Member States shall ensure that there is no discrimination between undertakings claiming harm in the context of a procedure for the award of a contract as a result of the distinction made by this Directive between national rules implementing [EU] law and other national rules.

3. Member States shall ensure that the review procedures are available, under detailed rules which the Member States may establish, at least to any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement.

...'

- 5 Article 7 of Directive 2004/18, entitled 'Threshold amounts for public contracts', establishes the thresholds for the estimated values beyond which the award of a contract must be made in accordance with the rules in that directive.
- 6 Those thresholds are changed at regular intervals by European Commission regulations and are adapted to the economic circumstances. At the date of the facts in the main proceedings, the threshold concerning service contracts awarded by awarding authorities other than central governmental authorities was set at EUR 193 000 by Commission Regulation (EC) No 1177/2009 of 30 November 2009 amending Directives 2004/17/EC, 2004/18/EC and 2009/81/EC of the European Parliament and of the Council in respect of their application thresholds for the procedures for the award of contracts (OJ 2009 L 314, p. 64).

Italian law

- 7 Article 13(1) of Decree of the President of the Republic No 115, of 30 May 2002, as amended by Law No 228 of 24 December 2012 ('the decree'), established a fee regime for judicial acts, made up of a standard fee, determined in proportion to the sum involved in the dispute.
- 8 In contrast with the provisions regarding civil proceedings, Article 13(6a) of the decree fixes the standard fee for administrative proceedings irrespective of the sum involved in the dispute.
- 9 Pursuant to that article, where an action is brought before a regional administrative court or the Consiglio di Stato (Council of State), the standard fee generally amounts to EUR 650. None the less, in relation to particular subject-matters that article sets the standard fee at different amounts which can be increased or reduced.
- 10 Article 13(6a)(d) of the decree provides that the standard fee in relation to public procurement litigation amounts to:
- EUR 2 000 where the value of the contract is EUR 200 000 or less;
 - EUR 4 000 in cases where the value of the contract is between EUR 200 000 and EUR 1 000 000;
 - and EUR 6 000 in cases where it is over EUR 1 000 000.
- 11 Under Article 13(1a) of the decree, those amounts must be increased by 50% in appeal proceedings relating to the award of public contracts.
- 12 Pursuant to Article 13(1c) of the decree, where the appeal, even a cross-appeal, is dismissed in its entirety, declared inadmissible or cannot be taken into consideration, the appellant is obliged to pay, in respect of the standard fee, an additional sum of the same amount as that initially paid for the same appeal, whether it be a main appeal or cross-appeal.

- 13 The order for reference indicates that, under the applicable legislation, the standard fee is payable for the lodging, not only of the application instituting proceedings, but also of a cross-claim or of supplementary pleas introducing new claims.
- 14 Article 14(3) of the decree provides that the sum involved in the dispute does not correspond to the profit margin which may result from performance of the contract, as determined by the contracting authorities, but rather to the basic value of the contract.

The dispute in the main proceedings and the question referred for a preliminary ruling

- 15 Orizzonte Salute is an association providing public and private bodies with nursing services. By its action, supplemented by additional pleas on a number of occasions, Orizzonte Salute is challenging, before the referring court, the Azienda's successive awards of the management of nursing services to the Associazione infermieristica D & F Care as well as other decisions taken by the Azienda.
- 16 The management of those services was awarded, first, by extension of the contract entered into with the Associazione infermieristica D & F Care for an earlier period and, subsequently, following a call for tenders inviting applications from only certain associations accredited by the Infermieri Professionali Assistenti Sanitari Vigilatrici d'Infanzia (IPASVI) (Professional Association of Nurses Specialising in the Care of Infants), with which Orizzonte Salute was not registered.
- 17 In respect of court fees, Orizzonte Salute paid a standard court fee of EUR 650, the cost of instituting ordinary administrative proceedings.
- 18 By decision of 5 June 2013, the Segretario Generale del Tribunale regionale di giustizia amministrativa di Trento asked Orizzonte Salute to make an additional payment since, on account of its supplementary pleas, the dispute now related to public procurement and it was therefore necessary to meet the standard fee for such cases, which amounted to EUR 2 000.
- 19 By a new action introduced on 2 July 2013, Orizzonte Salute challenged that decision claiming infringement of Article 13(6a) of the decree and the unconstitutionality of that provision.
- 20 With regard to that action, the State authorities brought an action on the ground that the Tribunale regionale di giustizia amministrativa di Trento (Regional Administrative Court of Trento) lacked jurisdiction, since, in their view, the standard fee constitutes tax revenue and a dispute about tax revenue falls within the competence of the tax court. They also disputed the merits of that application.
- 21 While accepting that the standard fee is a tax, the referring court states that, in the case pending before it, at issue is a measure adopted by its Segretario Generale, which is an administrative decision. Thus, in its view, the decision of 5 June 2013 must be subject to review by the administrative court. In addition, the referring court takes the view that Orizzonte Salute has an interest in the annulment of the application for payment of the increased court fees.
- 22 That court notes that, contrary to what is laid down for civil proceedings, in administrative proceedings the amount of the standard fee is not linked to the sum involved in the dispute and, for particular areas of administrative law, specific amounts are set.
- 23 The referring court observes that, in procedures for the award of public contracts, the standard fee to be paid is considerably larger than the amounts to be paid for administrative disputes in ordinary proceedings.

- 24 The referring court considers that the taxation of actions before the administrative court, especially so far as concerns the award of public contracts, may dissuade undertakings from pursuing their legal action and therefore poses problems of compliance with the criteria and principles of the EU legal order. The referring court presumes that the undertaking's profit margin amounts, in general, to approximately 10% of the value of the contract and considers that the advance payment of a standard fee exceeding the amount of such a profit may lead individuals to abandon certain procedural mechanisms.
- 25 Thus, according to the referring court, the national legislation at issue in the main proceedings limits the right to bring legal proceedings, restricts the effectiveness of judicial review, discriminates against operators with weak financial capacity as opposed to operators with significant financial capacity and treats them unfavourably by comparison with operators who, within the context of their activities, bring actions before the civil and commercial courts. The referring court takes the view that the cost borne by the State for the operation of administrative justice so far as concerns public procurement is not significantly different, separate or higher than the cost of proceedings linked to other types of disputes.
- 26 The referring court makes reference to the theory that the national legislature certainly intended to reduce the weight of the backlog of court cases and facilitate both the carrying out of public works and the public acquisition of goods and services. In that regard, the referring court notes that public procurement litigation significantly decreased as from 2012.
- 27 The referring court states that the value of the public contract, calculated overall, is higher than the threshold laid down in Directive 2004/18. That court therefore considers that the principles of effectiveness, expediency, non-discrimination and availability set out in Article 1 of Directive 89/665 are applicable to the main proceedings. In its view, the national legislation at issue infringes those principles and the right to an effective remedy, reaffirmed by Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 28 In those circumstances, the Tribunale regionale di giustizia amministrativa di Trento decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:
- 'Do the principles laid down in ... Directive 89/665 ... preclude a provision of national law ... which lays down high amounts for the standard fee for access to administrative proceedings relating to public contracts?'

Admissibility of the written observations submitted to the Court by the interveners in the main proceedings

- 29 The Coordinamento delle associazioni e dei comitati di tutela dell'ambiente e dei diritti degli utenti e dei consumatori (Codacons) (Coordination of the Associations and Committees for the Protection of the Environment and the Rights of Users and Consumers), the Camera Amministrativa Roma (Administrative Chamber of Rome), the Associazione dei Consumatori Cittadini Europei (Association of European Consumers), the Ordine degli Avvocati di Roma (Rome Bar Association), the Associazione dei giovani amministrativisti (Administrative Youth Association) and the Società italiana degli avvocati amministrativisti (Italian Society of Administrative Law Lawyers) (collectively, 'the interveners in the main proceedings') intervened in the main proceedings in order to support Orizzonte Salute and submitted written observations to the Court.
- 30 The Italian Government contends that the written observations submitted by the interveners after the delivery of the order for reference and the suspension of the main proceedings are inadmissible. According to the Italian Government, that inadmissibility follows from Article 23 of the Statute of the Court of Justice of the European Union and the national court does not have the power, after stay of

the proceedings, to assess the admissibility of an intervention made subsequent to the reference. That Government takes the view that the written observations submitted by natural and legal persons other than those in issue on the date when the request for a preliminary ruling was made must be removed from the file in order to prevent the proceedings turning into an *actio popularis*.

- 31 In that regard, it should be observed that, so far as concerns participation in preliminary ruling proceedings, in accordance with Article 96(1) of the Rules of Procedure read in conjunction with Article 23 of the Statute of the Court, the parties to the main proceedings, the Member States, the Commission and, where relevant, the institution, body, office or agency of the European Union which adopted the act the validity or interpretation of which is in dispute, the States, other than the Member States, which are parties to the Agreement on the European Economic Area, and the EFTA Surveillance Authority and the non-Member States concerned are authorised to submit observations to the Court. Since the list contained in those provisions is exhaustive, that right cannot be extended to natural or legal persons not expressly provided for.
- 32 According to Article 97(1) of the Rules of Procedure, the ‘parties to the main proceedings’ are determined as such by the referring court or tribunal in accordance with national rules of procedure. Consequently, it is for the referring court to determine, in accordance with national rules of procedure, the parties to the main proceedings pending before it.
- 33 It is not for the Court to determine whether a decision of the referring court accepting an intervention before it has been taken in accordance with those rules. The Court must abide by such a decision in so far as it has not been overturned in any appeal procedures provided for by national law (see, by analogy, judgments in *Radlberger Getränkegesellschaft and S. Spitz*, C-309/02, EU:C:2004:799, paragraph 26, and *Burtscher*, C-213/04, EU:C:2005:731, paragraph 32).
- 34 It is not claimed in the present case that the decision relating to the admission of the interveners in the main proceedings was not consistent with the rules governing the proceedings pending before the referring court or that an appeal has been lodged against that decision.
- 35 The capacity of ‘party to the main proceedings’ within the meaning of Article 96(1) of the Rules of Procedure read in conjunction with Article 23 of the Statute of the Court of Justice cannot be accorded to a person and that person cannot be admitted in proceedings before the Court referred to in Article 267 TFEU where that person submits to a national court an application to intervene not in order to play an active role in the continuation of the proceedings before the national authority, but for the sole purpose of participating in the proceedings before the Court (see, to that effect, order in *Football Association Premier League and Others*, C-403/08 and C-429/08, EU:C:2009:789, paragraph 9).
- 36 However, there is nothing in the file to demonstrate that the interveners in the main proceedings do not intend to play an active role in the proceedings before the referring court and seek to express their views exclusively within the context of the proceedings before the Court.
- 37 Lastly, it would be incompatible with the principle of the sound administration of justice and the requirement that requests for a preliminary ruling be dealt with within a reasonable period of time if, on account of the successive admission of interveners and the period of two months laid down in the second paragraph of Article 23 of the Statute of the Court of Justice for the submission of the written observations of those interveners, the written procedure before the Court could not be closed or the procedure had to be reopened.
- 38 In those circumstances, Article 97(2) of the Rules of Procedure of the Court provides that, where a referring court or tribunal informs the Court that a new party has been admitted to the main proceedings, when the proceedings before the Court are already pending, that party must accept the case as he finds it at the time when the Court was so informed.

- 39 Accordingly, the Court may find it necessary to allow an intervenor admitted to the main proceedings to submit written observations only within the time-limit applicable to the interested parties, for the purpose of Article 23 of the Statute of the Court, to which the request for a preliminary ruling was initially notified.
- 40 It must be stated that, within the context of the present proceedings, the submission of the written observations of the interveners admitted to the main proceedings by the referring court did not amount to a risk to the sound administration of justice or to dealing with the case within a reasonable period of time. The Court has therefore considered that there was no need to make use of the option mentioned in the preceding paragraph of this judgment.
- 41 In the light of the above, the Court rejects the arguments of the Italian Government seeking to have the written observations submitted by the interveners in the main proceedings declared inadmissible. Those written observations submitted to the Court are admissible.

Consideration of the question referred

- 42 By its question the referring court asks, in essence, whether Article 1 of Directive 89/665 and the principles of effectiveness and equivalence must be interpreted as precluding a provision of national law, such as that at issue in the main proceedings, which requires, when actions are brought in administrative judicial proceedings relating to public procurement, the payment of higher court fees than in other matters.
- 43 Article 1(1) and (3) of Directive 89/665 requires the Member States to take the measures necessary to guarantee reviews which are effective and as rapid as possible against decisions of the contracting authorities which are incompatible with EU law and ensure wide availability of reviews with respect to any person having or having had an interest in obtaining a particular contract and who has been or risks being harmed by an alleged infringement.
- 44 That directive leaves Member States a discretion in the choice of the procedural guarantees for which it provides, and the formalities relating thereto (see judgment in *Combinatie Spijker Infrabouw-De Jonge Konstruktie and Others*, C-568/08, EU:C:2010:751, paragraph 57).
- 45 In particular, Directive 89/665 does not contain any provision relating specifically to the court fees to be paid by individuals when they bring, in accordance with Article 2(1)(b) of that directive, an action for annulment against an allegedly unlawful decision concerning a procedure for the award of public contracts.
- 46 The Court has consistently held that, in the absence of EU rules governing the matter, it is for each Member State, in accordance with the principle of the procedural autonomy of the Member States, to lay down the detailed rules of administrative and judicial procedures governing actions for safeguarding rights which individuals derive from EU law. Those detailed procedural rules must, however, be no less favourable than those governing similar domestic actions (principle of equivalence) and must not render practically impossible or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness) (judgments in *Club Hotel Loutraki and Others*, C-145/08 and C-149/08, EU:C:2010:247, paragraph 74, and *eVigilo*, C-538/13, EU:C:2015:166, paragraph 39).
- 47 In addition, since such court fees amount to detailed procedural rules governing actions for safeguarding rights conferred by EU law on candidates and tenderers harmed by decisions of contracting authorities, they must not compromise the effectiveness of Directive 89/665 (see, to that effect, judgments in *Universale-Bau and Others*, C-470/99, EU:C:2002:746, paragraph 72, and *eVigilo*, C-538/13, EU:C:2015:166, paragraph 40).

- 48 As regards the principle of effectiveness, the Court has already held that it implies a requirement of judicial protection, guaranteed by Article 47 of the Charter, that is binding on the national court (see, to that effect, judgment in *Sánchez Morcillo and Abril García*, C-169/14, EU:C:2014:2099, paragraph 35 and the case-law cited).
- 49 Accordingly, Article 1 of Directive 89/665 must be interpreted in the light of the fundamental rights set out in the Charter, in particular the right to an effective remedy before a court or tribunal, laid down in Article 47 thereof (see, to that effect, judgment in *Ryneš*, C-212/13, EU:C:2014:2428, paragraph 29).
- 50 It is therefore necessary to examine whether legislation such as that at issue in the main proceedings may be considered to be consistent with the principles of equivalence and effectiveness and consistent with the effectiveness of Directive 89/665.
- 51 The two parts of that investigation concern (i) the amounts of the standard fee to be paid for bringing an action in administrative judicial proceedings relating to public procurement and (ii) cases of a cumulation of such fees paid within the same administrative judicial proceedings relating to public procurement.
- The standard fee to be paid for bringing an action in administrative judicial proceedings relating to public procurement*
- 52 At the outset, it is important to recall, as the Austrian Government has observed, that, pursuant to Article 1(1) of Directive 89/665, that directive applies to the contracts referred to in Directive 2004/18, except for cases in which such contracts are excluded in accordance with Articles 10 to 18 of the latter directive.
- 53 However, according to Article 7, in Chapter II of Directive 2004/18, entitled ‘Scope’, that directive applies only to public contracts which have a value, exclusive of value-added tax, estimated to be equal or greater than the thresholds provided for in that provision.
- 54 It follows that public service contracts awarded by contracting authorities other than central governmental authorities with a value less than EUR 193 000 are not covered by Directive 2004/18 and, as a result, are also not covered by Directive 89/665.
- 55 As regards the principle of effectiveness, it should be recalled that the court fee regime at issue in the main proceedings includes three fixed amounts of standard fee amounting to EUR 2 000, EUR 4 000 and EUR 6 000 for the three categories of public contracts, namely those with a value equal to or less than EUR 200 000, those with a value between EUR 200 000 and EUR 1 000 000, and those with a value exceeding EUR 1 000 000.
- 56 It is apparent from the file placed before the Court that the system of fixed amounts of standard fee is proportional to the value of the public contracts falling within those three different categories and is, as a whole, degressive in nature.
- 57 In fact, the standard fee to be paid, expressed as a percentage of the ‘limit’ values of the three categories of public contracts, varies from 1.0% to 1.036% of the value of the contract if it is between EUR 193 000 and EUR 200 000, from 0.4% to 2.0% if that value is between EUR 200 000 and EUR 1 000 000, and corresponds to 0.6% of the value of the contract or less if that value exceeds EUR 1 000 000.

- 58 The court fees to be paid for bringing an action in administrative proceedings relating to public procurement, which do not exceed 2% of the value of the contract concerned, are not liable to render practically impossible or excessively difficult the exercise of rights conferred by EU public procurement law.
- 59 None of the factors raised by the referring court or by the interested parties which submitted observations to the Court calls that finding into question.
- 60 In particular, so far as concerns the fixing of the standard fee depending on the value of the contract at issue in the main proceedings, and not depending on the profit which the undertaking participating in the call for tenders is entitled to expect from that contract, it should be stated, first, that several Member States recognise the possibility of calculating procedural costs on the basis of the value of the subject-matter to which a dispute relates.
- 61 Secondly, as the Advocate General stated at point 40 of his Opinion, in the field of public procurement, a rule requiring specific calculations for each call for tenders and for each undertaking, the result of which could be challenged, would prove to be complicated and unpredictable.
- 62 As for the application of the Italian standard fee to the detriment of economic operators with weak financial capacity, it should be observed, first, as has the Commission, that that fee is imposed without distinction, as to its form and its amount, with regard to all individuals intending to bring an action against a decision adopted by contracting authorities.
- 63 It must be held that such a system does not give rise to discrimination between operators practising in the same sector of activity.
- 64 Moreover, it is apparent from the provisions of the EU directives on public procurement, such as Article 47 of Directive 2004/18, that the participation of an undertaking in a public contract presupposes an appropriate economic and financial capacity.
- 65 Lastly, even though an applicant is obliged to pay the standard fee when bringing a court action against a decision relating to public procurement, the unsuccessful party is, as a rule, required to reimburse the court fees paid by the successful party.
- 66 With regard to the principle of equivalence, the fact that, in the context of procedures for the award of public contracts, the standard fee to be paid is larger than (i) the amounts to be paid for administrative disputes subject to ordinary proceedings and (ii) the court fees charged in civil proceedings cannot in itself demonstrate an infringement of that principle.
- 67 As has been noted in paragraph 46 of this judgment, the principle of equivalence requires that actions based on an infringement of national law and similar actions based on an infringement of EU law be treated equally and not that there be equal treatment of national procedural rules applicable to proceedings of a different nature such as civil proceedings, on the one hand, and administrative proceedings, on the other, or applicable to proceedings falling within two different branches of law (see judgment in *ÖBB Personenverkehr*, C-417/13, EU:C:2015:38, paragraph 74).
- 68 In the present case, no factor raised before the Court is capable of substantiating the argument that the Italian standard fee system applies differently to actions based on rights which individuals derive from EU public procurement law than it does to actions based on infringement of national law having the same subject-matter.

69 It must be concluded that court fees to be paid when an action is brought in administrative judicial proceedings relating to public procurement, such as the standard fee at issue in the main proceedings, do not adversely affect the effectiveness of Directive 89/665 or the principles of equivalence and effectiveness.

The cumulation of the standard fees paid within the same administrative judicial proceedings relating to public procurement

70 According to the national legislation, the standard fee is to be paid not only upon registration of the application initiating proceedings against a decision taken by a contracting authority so far as concerns the award of public contracts, but the same amount must be paid also for cross-claims and supplementary pleas introducing new claims in the course of proceedings.

71 It is apparent from the order for reference that, as set out in a circular of the Segretario Generale della Giustizia Amministrativa of 18 October 2001, only the introduction of procedural steps which are independent of the application initiating proceedings and which are designed to considerably extend the subject-matter of the dispute gives rise to the payment of additional fees.

72 The levying of multiple and cumulative court fees within the same administrative judicial proceedings is not, in principle, contrary to Article 1 of Directive 89/665, read in the light of Article 47 of the Charter, or to the principles of equivalence and effectiveness.

73 As a rule, such levying contributes to the proper functioning of the judicial system, since it amounts to a source of financing for the judicial activity of the Member States and discourages the submission of claims which are manifestly unfounded or which seek only to delay the proceedings.

74 Those objectives justify the multiple application of court fees such as those at issue in the main proceedings only where the subject-matter of the actions or supplementary pleas are in fact separate and amount to a significant enlargement of the subject-matter of the dispute that is already pending.

75 By contrast, if that is not the case, an obligation of additional payment of such court fees because of the submission of such actions or pleas is contrary to the availability of legal remedies ensured by Directive 89/665 and to the principle of effectiveness.

76 Where a person brings several actions before a court or submits several supplementary pleas within the same court proceedings, the mere fact that the ultimate objective of that person is to obtain a given contract does not necessarily mean that the subject-matter of his actions or his pleas are identical.

77 In the event of objections being raised by a party concerned, it is for the national court to examine the subject-matter of the actions submitted by an individual or the pleas raised by that individual within the same proceedings. If the national court finds that their subject-matter is not in fact separate or does not amount to a significant enlargement of the subject-matter of the dispute that is already pending, it is required to relieve that individual of the obligation to pay cumulative court fees.

78 In addition, no factor has been raised before the Court which is capable of calling into question the conformity of the cumulation of standard fees with the principle of equivalence.

79 In the light of the foregoing, the answer to the question referred must be as follows:

- Article 1 of Directive 89/665 and the principles of equivalence and effectiveness must be interpreted as not precluding national legislation which requires the payment of court fees such as the standard fee at issue in the main proceedings when an action relating to public procurement is brought before administrative courts.

- Article 1 of Directive 89/665 and the principles of equivalence and effectiveness do not preclude the charging of multiple court fees to an individual who brings several court actions concerning the same award of a public contract or that individual from having to pay additional court fees in order to be able to raise supplementary pleas concerning the same award of a public contract within ongoing judicial proceedings. However, in the event of objections being raised by a party concerned, it is for the national court to examine the subject-matter of the actions submitted by an individual or the pleas raised by that individual within the same proceedings. If the national court finds that the subject-matter of those actions is not in fact separate or does not amount to a significant enlargement of the subject-matter of the dispute that is already pending, it is required to relieve that individual of the obligation to pay cumulative court fees.

Costs

- ⁸⁰ Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

1. **Article 1 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, as amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007, and the principles of equivalence and effectiveness must be interpreted as not precluding national legislation which requires the payment of court fees such as the standard fee at issue in the main proceedings when an action relating to public procurement is brought before administrative courts.**
2. **Article 1 of Directive 89/665, as amended by Directive 2007/66, and the principles of equivalence and effectiveness do not preclude the charging of multiple court fees to an individual who brings several court actions concerning the same award of a public contract or that individual from having to pay additional court fees in order to be able to raise supplementary pleas concerning the same award of a public contract within ongoing judicial proceedings. However, in the event of objections being raised by a party concerned, it is for the national court to examine the subject-matter of the actions submitted by an individual or the pleas raised by that individual within the same proceedings. If the national court finds that the subject-matter of those actions is not in fact separate or does not amount to a significant enlargement of the subject-matter of the dispute that is already pending, it is required to relieve that individual of the obligation to pay cumulative court fees.**

[Signatures]