

Reference for a preliminary ruling by the Audiencia Provincial de Barcelona (15th Chamber) by decision of that court of 28 June 2004 in the case of Matratzen Concord AG against Hukla Gemany SA

(Case C-421/04)

(2004/C 300/57)

Reference has been made to the Court of Justice of the European Communities by order of the Audiencia Provincial (Provincial Court) (15th Chamber), Barcelona (Spain) of 28 June 2004, received at the Court Registry on 1 October 2004, for a preliminary ruling in the case of Matratzen Concord AG against Hukla Gemany SA on the following question:

'May the validity of the registration of a trade mark in a Member State, where that trade mark is devoid of any distinctive character or serves, in trade, to designate the product which it covers or its kind, quality, quantity, intended purpose, value, geographical origin or other characteristics of goods, in the language of another Member State when that language is not the language spoken in the first Member State, as may be the case so far as concerns use of the Spanish trade mark "MATRATZEN" to designate mattresses and related products, constitute a disguised restriction on trade between Member States?'

Reference for a preliminary ruling by a Social Security Commissioner, London, by direction of that tribunal dated 14 September 2004, in the case of Sarah Margaret Richards against Secretary of State for Work and Pensions

(Case C-423/04)

(2004/C 300/58)

Reference has been made to the Court of Justice of the European Communities by direction of a Social Security Commissioner, London, dated 14 September 2004, which was received at the Court Registry on 4 October 2004 for a preliminary ruling in the case of Sarah Margaret Richards and Secretary of State for Work and Pensions on the following questions:

(1) Does Directive 79/7⁽¹⁾ prohibit the refusal of a retirement pension to a male-to-female transsexual until she reaches the age of 65 and who would have been entitled to such a

pension at the age of 60 had she been held to be a woman as a matter of national law?

(2) If so, from what date should the Court's ruling on question 1 have effect?

⁽¹⁾ Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ L 6, 10.01.1979, p. 24).

Action brought on 4 October 2004 by the Commission of the European Communities against the French Republic

(Case C-424/04)

(2004/C 300/59)

An action against the French Republic was brought before the Court of Justice of the European Communities on 4 October 2004 by the Commission of the European Communities, represented by K. Wiedner and B. Stromsky, acting as Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that, by failing to provide for an obligation on contracting authorities to ensure genuine competition by the presence of a minimum of five tenderers in restricted procedures, even where no range is prescribed, the French Republic has failed to fulfil its obligations under Article 19(2) of Council Directive 93/36/EEC of 14 June 1993,⁽¹⁾ Article 27(2) of Council Directive 92/50/EEC of 18 June 1992⁽²⁾ and Article 22(2) of Council Directive 93/37/EEC of 14 June 1993;⁽³⁾
2. declare that, by excluding from the scope of the French Code of Public Procurement contracts concerning loans or financial undertakings, whether intended to cover financing or liquidity requirements, not connected with real property transactions, the French Republic has failed to fulfil its obligations under Article 1(a)(vii) of Council Directive 92/50/EEC of 18 June 1992 and Article 1(4)(c)(iv) of Council Directive 93/38/EEC of 14 June 1993;⁽⁴⁾
3. declare that, by providing that public contracts concerning

— legal services,

— social and health services,

- recreational, cultural and sports services,
- educational services and occupational qualification and integration services

are to be subject, as regards their award, only to the obligations relating to the definition of services by reference to standards where they exist, and to the sending of an award notice, without expressly specifying that the rules and principles of the Treaty are to be complied with, the French Republic has failed to fulfil its obligations flowing from compliance with the principles and rules of the Treaty (Article 49), and in particular the principle of equal treatment and the principle of transparency of which adequate publicity is the corollary;

4. order the French Republic to pay the costs.

Pleas in law and main arguments

The French Code of Public Procurement is incompatible in certain respects with the rules and principles of the EC Treaty and the Community directives relating to public procurement.

First, by failing to provide for an obligation on the contracting authority to ensure the presence of a minimum of five tenderers where no range is prescribed, the French Republic is in breach of the obligation in the Community directives to ensure genuine competition in certain restricted procedures for the award of public contracts.

The French Republic is also in breach of its obligations by excluding from the scope of the French Code of Public Procurement contracts concerning loans or financial undertakings, whether intended to cover financing or liquidity requirements, not connected with real property transactions. Those contracts relate to the provision of services and thus fall within the scope of the directives. Nor may they be regarded as covered by the exception concerning securities and other financial instruments.

Finally, the exclusion of certain service contracts from the scope of the obligation to ensure an adequate degree of publicity constitutes a breach of the principle of non-discrimination as laid down in Article 49 EC and of the principle of transparency.

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- (¹) Council Directive 93/36/EEC coordinating procedures for the award of public supply contracts (OJ L 199 of 9.8.1993, p. 1).
 (²) Council Directive 92/50/EEC relating to the coordination of procedures for the award of public service contracts (O) L 209 of 24.7.1992, p. 1).
 (³) Council Directive 93/37/EEC concerning the coordination of procedures for the award of public works contracts (OJ L 199 of 9.8.1993, p. 54).
 (⁴) Council Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ L 199 of 9.8.1993, p. 84).

Action brought on 4 October 2004 by the Commission of the European Communities against the Italian Republic

(Case C-425/04)

(2004/C 300/60)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 4 October 2004 by the Commission of the European Communities, represented by Wouter Wils and Claudio Loggi, acting as Agents.

The applicant claims that the Court should:

- declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2001/16/EC (¹) of the European Parliament and of the Council of 19 March 2001 on the interoperability of the trans-European conventional rail system or, in any event, by failing to communicate those provisions to the Commission, the Italian Republic has failed to fulfil its obligations under Article 27 of that directive;
- order the Italian Republic to pay the costs.

Pleas in law and main arguments:

The period for transposition of the directive expired on 20 April 2003.

(¹) OJ L 110 of 20.04.2001, p. 1.

Appeal brought on 4 October 2004 by the European Agency for Reconstruction (EAR) against the judgment delivered on 7 July 2004 by the Fourth Chamber of the Court of First Instance of the European Communities in Case T-175/03 between Norbert Schmitt and the European Agency for Reconstruction (EAR)

(Case C-426/04 P)

(2004/C 300/61)

An appeal against the judgment delivered on 7 July 2004 by the Fourth Chamber of the Court of First Instance of the European Communities in Case T-175/03 between Norbert Schmitt and the European Agency for Reconstruction (EAR) was brought before the Court of Justice of the European Communities on 4 October 2004 by the European Agency for Reconstruction (EAR), represented by Albert Coolen, Jean-Noël Louis, Etienne Marchal and Sébastien Orlandi, avocats.