

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 12 November 2009 — Commission of the European Communities v Hellenic Republic(Case C-199/07) ⁽¹⁾**(Failure of a Member State to fulfil obligations — Public procurement — Directive 93/38/EEC — Contract notice — Consultancy project — Criteria for automatic exclusion — Qualitative selection and award criteria)**

(2010/C 11/02)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Patakia and D. Kukovec, acting as Agents)

Defendant: Hellenic Republic (represented by: D. Tsagkaraki, acting as Agent, and by K. Christodoulou, dikigoros)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 4(2), 31(1) and (2) and 34(1)(a) of Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1993 L 199, p. 84) and of Articles 12 and 49 EC — Selection of candidates for a restricted or negotiated procedure — Criteria for exclusion

Operative part of the judgment

The Court:

1. Declares that, by reason, firstly, of the exclusion, by virtue of Section III, point 2.1.3(b), second paragraph, of the contract notice in question issued by ERGA OSE on 16 October 2003, numbered 2003/S 205-185214 and 2003/S 206-186119, of foreign consultancy firms or consultants who had submitted an expression of interest in ERGA OSE tendering procedures in the six months preceding the date of their expression of interest in the current competition and who had declared qualifications corresponding to certificate categories different from those now

required and, secondly, of the failure to distinguish in Section IV, point 2, of that notice between qualitative selection criteria and award criteria for the contract in question, the Hellenic Republic has failed to fulfil its obligations under Articles 4(2) and 34(1)(a) of Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications.

2. Dismisses the remainder of the application.
3. Orders the Commission of the European Communities and the Hellenic Republic to bear their own costs.

⁽¹⁾ OJ C 197, 2.8.2008.

Judgment of the Court (Third Chamber) of 12 November 2009 — Commission of the European Communities v Kingdom of Spain(Case C-154/08) ⁽¹⁾

(Failure of a Member State to fulfil obligations — Sixth VAT Directive — Article 2 and Article 4(1), (2) and (5) — Harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment — Taxable persons — Activities or operations carried out by ‘registradores de la propiedad’ (land registrars) acting as settlement agents in charge of settlement offices of a mortgage district — Economic activities — Activity carried out independently — Public-law bodies carrying out activities in connection with their public duties — Infringement of Community law attributable to a national court)

(2010/C 11/03)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: M. Afonso and F. Jimeno Fernández, acting as Agents)

Defendant: Kingdom of Spain (represented by: J.M. Rodríguez Cárcamo, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 2 and 4(1) and (2) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Taxable persons — Activities or operations carried out by ‘registradores de la propiedad’

Operative part of the judgment

The Court:

1. Declares that, by considering that the services supplied to an Autonomous Community by ‘registradores de la propiedad’ acting as settlement agents in charge of a settlement office of a mortgage district (*‘oficina liquidadora de distrito hipotecario’*) are not subject to value added tax, the Kingdom of Spain has failed to fulfil its obligations under Article 2 and Article 4(1) and (2) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment;
2. orders the Kingdom of Spain to pay the costs.

(¹) OJ C 171, 05.07.2008.

Judgment of the Court (Second Chamber) of 12 November 2009 (reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland)) — TeliaSonera Finland Oyj v iMEZ Ab

(Case C-192/08) (¹)

(Telecommunications sector — Electronic communications — Directive 2002/19/EC — Article 4(1) — Networks and services — Interconnexion agreements between telecommunications undertakings — Obligation to negotiate in good faith — Definition of ‘operator of public communications networks’ — Articles 5 and 8 — Powers of the national regulatory authorities — Undertaking without significant market power)

(2010/C 11/04)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: TeliaSonera Finland Oyj

Intervening parties: iMEZ Ab

Re:

Reference for a preliminary ruling — Korkein hallinto-oikeus — Interpretation of Articles 4(1), 5 and 8 of Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) (OJ 2002 L 108, p. 7) — National legislation requiring every telecommunications operator to negotiate on interconnection with other telecommunications operators — Extent of the obligation to negotiate and requirements which may be imposed by the national regulatory authority

Operative part of the judgment

1. Article 4(1) of Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (the ‘Access Directive’), read in conjunction with recitals 5, 6, 8 and 19 in its preamble and with Articles 5 and 8 thereof, precludes national legislation such as the Communications Market Law (*Viestintämarkkinalaki*) of 23 May 2003 in so far as it does not restrict the possibility of relying on the obligation to negotiate on the interconnection of networks solely to operators of public communications networks. It is for the national court to determine whether, having regard to the status and the nature of the operators concerned in the main proceedings, they may be classified as operators of public communications networks.
2. A national regulatory authority may take the view that the obligation to negotiate an interconnection has been breached where an undertaking which does not have significant market power proposes interconnection to another undertaking under unilateral conditions likely to hinder the emergence of a competitive market at the retail level where those conditions prevent the clients of the second undertaking from benefiting from its services.
3. A national regulatory authority may require an undertaking which does not have significant market power but which controls access to end-users to negotiate in good faith with another undertaking for either interconnection of the two networks concerned if the undertaking which requests such access must be classified as an operator of public communications networks, or interoperability of SMS and MMS message services if that undertaking is not covered by that classification.

(¹) OJ C 197, 02.08.2008.