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COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH
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Press and Information

PRESS RELEASE No 12/06

9 February 2006

Judgment of the Court of Justice in Joined Cases C-226/04 and C-228/04

*La Cascina Soc.coop.arl and Zilch v. Ministero della Difesa and Others
Consorzio G.f.M v. Ministero della Difesa and Others*

**THE COURT DELIVERS ITS FIRST JUDGMENT ON THE OPTION TO
EXCLUDE SERVICE PROVIDERS WHO ARE NOT IN COMPLIANCE IN
RESPECT OF THE PAYMENT OF SOCIAL SECURITY CONTRIBUTIONS AND
TAXES FROM A PUBLIC SERVICES CONTRACT**

The Court sets out the conditions for subsequent regularisation

The undertakings La Cascina, Zilch and G.f.M responded to a call for tenders published in December 2002 by the Italian Ministry of Defence and the Ministry of Economy and Finance for the award of the contract to supply catering services to Ministry of Defence bodies and departments.

In 2003 the contracting authority excluded those undertakings from the procedure on the ground that La Cascina and G.f.M were not in compliance in respect of the payment of social security contributions for their employees and that Zilch was not in compliance in respect of the payment of its taxes.

The three undertakings sought the annulment of that decision. La Cascina and G.f.M claimed that they had subsequently regularised their position with respect to social security. Zilch submitted that it had regularised its tax position as it had benefited from a tax amnesty and tax relief.

In those circumstances the Tribunale amministrativo regionale del Lazio asked the Court of Justice of the European Communities: (1) when a service provider is regarded as having fulfilled his obligations relating to social security contributions and taxes for the purpose of being admitted to a procedure for the award of public contracts; (2) when the service

provider must provide evidence that those obligations have been fulfilled; and (3) whether a service provider, who is late in paying his social security contributions or taxes or has been authorised by the competent authorities to pay those contributions and taxes by instalment or has brought administrative or legal proceedings to contest the existence or the amount of its tax or social security obligations, must be regarded as having failed to fulfil those obligations under the directive on public service contracts¹.

The Court observes, first of all, that the directive on public service contracts lays down an exhaustive list of seven grounds for excluding candidates from a contract, including those of excluding candidates who have not fulfilled their obligations relating to social security and those who have not fulfilled their obligations as regards the payment of taxes. The application of those grounds of exclusion is left to the Member States which may not, however, provide for any other grounds of exclusion.

The directive does not contain a definition of 'has not fulfilled obligations' which is therefore a question of national law. It is therefore for the Member States to define the content and scope of the tax and social security obligations and the detailed rules for their fulfilment.

Thus, the period within which the persons concerned are to have made payments must be established by the Member States and may extend from the date for lodging the requests to participate until immediately prior to the award of the contract.² The principles of transparency and equal treatment require that that period be determined with absolute certainty and made public.

Therefore, a candidate who has within that period made the payments corresponding to its obligations in full is, in principle, regarded as having fulfilled its obligations. If it has not, it must be able to prove, within the same period, that it benefits from a tax amnesty or leniency measures, such as those laid down by national law, or an administrative arrangement, or that it has brought legal proceedings.

National legislation which considers, in those circumstances, that a candidate is in compliance in respect of its obligations is compatible with Community law.

¹ Art. 29 of 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, p. 1).

² That period may be, inter alia, the final date for lodging the request to participate in the contract, the date on which the invitation to tender was sent, the final date on which the candidates' tenders are to be lodged, the date on which the tenders are considered by the contracting authority, or even immediately prior to the award of the contract.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: CS, DE, EL, EN, ES, FR, HU, IT, SK, NL, PL

The full text of the judgment may be found on the Court's internet site
<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-226/04>

It can usually be consulted after midday (CET) on the day judgment is delivered.

For further information, please contact Christopher Fretwell

Tel: (00352) 4303 3355 Fax: (00352) 4303 2731