



Press and Information

Court of Justice of the European Union
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Judgment in Case C-113/13
Azienda sanitaria locale No. 5 'Spezzino' and Others v San Lorenzo società
cooperativa sociale and Others

Emergency ambulance services may be entrusted on a preferential basis and by direct award to voluntary associations

In order to do so, the system must actually contribute to the pursuit of the objectives of the good of the community and budgetary efficiency

The directive for the award of public works contracts, public supply contracts and public service contracts¹ applies to public contracts of a value equal to or greater than certain thresholds (€193 000 for most service contracts).

Italian law recognises the role of voluntary associations, which contribute to the attainment of the objectives of the national health service and regulates their contribution by framework agreements and agreements concluded at regional level.

In 2010, Liguria concluded a framework agreement with various national public aid associations² representing local voluntary associations in order to regulate the relations between the health and hospital authorities and those associations. Under that framework agreement, the Azienda Sanitaria Locale No. 5 concluded agreements for urgent and emergency ambulance services with the associations affiliated to ANPAS, without issuing a call for tenders. The cooperatives San Lorenzo and Croce Verde Cogema then sought to have those agreements annulled.

Hearing an appeal in that case, the Consiglio di Stato (Council of State, Italy) asks the Court of Justice whether the rules of EU law on public procurement and competition allow national legislation which enables the local authorities to entrust the provision of ambulance services on a preferential basis and by direct award, without any form of advertising, to the voluntary associations covered by the agreements which receive only reimbursement for the costs actually incurred and a fraction of their overall costs.³

In today's judgment, the Court recalls, first of all, that **the Directive on public contracts applies to public service contracts for urgent and emergency ambulance services.**⁴ The regional framework agreement falls within the definition of public contract regardless of the fact it is concluded on behalf of non-profit-making bodies and that the remuneration remains limited to reimbursement of the expenditure incurred.⁵

If the value of the regional framework agreement exceeds the threshold fixed in the directive, whether or not all the procedural rules laid down by that directive are applicable depends on whether the value of the transport services exceeds the value of the medical services. If the value of the framework agreement exceeds the threshold laid down by the directive, and if the value of the transport services exceeds that of the medical services, the directive does not permit

¹ 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 and corrigendum OJ 2004 L 351, p. 44).

² ANPAS (Associazione nazionale pubblica assistenza – National Association of Public Aid Groups), CIPAS (Consorzio italiano pubbliche assistenze – Italian Public Aid Consortium) and the Croce Rossa Italiana (Italian Red Cross).

³ Not directly related to the provision of ambulance services.

⁴ Annex II A for the transport aspects and Annex II B for the medical aspects.

⁵ Case [C-159/11](#) *Ordine degli Ingegneri della Provincia di Lecce and Others* see also Press Release No [173/12](#).

emergency ambulance services to be entrusted to voluntary organisations on a preferential basis and by direct award. However, if that threshold is not reached or if the value of the medical services exceeds the value of the transport services (the contract must also be of some cross-border interest) only the general principles of non-discrimination and equal treatment deriving from the Treaty and the obligation of transparency are applicable, provided however that the contract at issue is of some cross-border interest.

The Court states that the system of agreements, such as that instituted by the Regione Liguria, leads to a result contrary to the objectives of the free movement of services and impedes the opening-up to competition in the Member States which is undistorted and as wide as possible. Such legislation excludes for-profit entities from an essential part of the market and operates to the detriment of undertakings in other Member States. Unless it is justified by objective circumstances, such a difference in treatment amounts to indirect discrimination on the basis of nationality.

However, the Court recalls that EU law respects the power of the Member States to organise their public health and social security systems and **the principles of universality, the good of the community, economic efficiency and suitability** which are the basis of **the method of organising ambulance services in Regione Liguria**.

It follows that **the objectives of maintaining, on grounds of public health, a balanced medical and hospital service open to all and to prevent as far as possible, of any wastage of financial, technical and human resources may justify an obstacle to the freedom to provide services**.

The Member States may not introduce or maintain unjustified restrictions on the exercise of fundamental freedoms in the area of health care. They may use private bodies which are non-profit making without using the public procurement procedure as long as the activities of the associations is carried out by the workforce only within the limits necessary for their proper functioning. Finally, national legislation cannot cover the wrongful practices of voluntary associations or their members.

In those circumstances, **a Member State may take the view that recourse to voluntary associations is consistent with the social purpose of the emergency ambulance services and may help to control costs relating to those services**.

On those grounds, the Court concludes that **the EU Treaty allows national legislation which provides that the provision ambulance services must be entrusted on a preferential basis and awarded directly, without any advertising, to the voluntary associations covered by the agreements**, in so far as the legal and contractual framework actually contributes to the social purpose and the pursuit of the objectives of the good of the community and budgetary efficiency.

It is for the referring court to verify those elements.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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