

Case C-81/98

Alcatel Austria AG and Others

v

Bundesministerium für Wissenschaft und Verkehr

(Reference for a preliminary ruling
from the Bundesvergabamt, Austria)

(Public procurement — Procedure for the award of public supply and works
contracts — Review procedure)

Opinion of Advocate General Mischo delivered on 10 June 1999 I-7673
Judgment of the Court (Sixth Chamber), 28 October 1999 I-7693

Summary of the Judgment

1. *Approximation of laws — Review procedures relating to the award of public supply and public works contracts — Directive 89/665 — Decision awarding contracts — Member States under an obligation to provide full legal protection for tenderers (Council Directive 89/665, Art. 2(1)(a) and (b) and Art. 2(6), second subpara.)*

2. *Approximation of laws — Review procedures relating to the award of public supply and public works contracts — Directive 89/665 — Member States under an obligation to provide for review procedures in respect of decisions awarding contracts — Where national legislation does not enable the protection provided for by the Directive to be ensured — Obligation to remedy damage to individuals where it is not possible to interpret national law consistently with the Directive (Council Directive 89/665, Art. 2(1)(a) and (b))*

1. The combined provisions of Article 2(1)(a) and (b) and the second subparagraph of Article 2(6) of Directive 89/665 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 must be interpreted as meaning that the Member States are required to ensure that the contracting authority's decision prior to the conclusion of the contract as to the bidder in a tender procedure with which it will conclude the contract is in all cases open to review under a procedure whereby unsuccessful tenderers may have that decision set aside if the relevant conditions are met, notwithstanding the possibility, once the contract has been concluded, of obtaining an award of damages.

2. Article 2(1)(a) and (b) of Directive 89/665 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 cannot be interpreted to the effect that, even where there is no award decision which may be the subject of an application to have it set aside, the bodies in the Member States having power to review public procurement procedures may hear applications under the conditions laid down in that provision.

In such circumstances, if provisions of national law cannot be interpreted in a manner consistent with Directive 89/665, those concerned may seek compensation, in accordance with the appropriate procedures under national law, for the damage suffered by reason of the failure to transpose the Directive within the prescribed period.