

Press and Information Division

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Judgment of the Court of Justice in Case C-57/01

Makedoniko Metro v Elliniko Dimosio

**PUBLIC WORKS CONTRACTS: A NATIONAL LAW MAY PROHIBIT A CHANGE
IN THE COMPOSITION OF A CONSORTIUM AFTER SUBMISSION OF TENDERS**

The effective and rapid review procedures prescribed by Community law must be available to a consortium which has been excluded from the award procedure

The Greek State issued an international invitation to tender for the planning, construction, self-financing and operation of the Thessaloniki underground railway, with a budget of GRD 65 000 000 000, and opted to use a form of restricted procedure.

On conclusion of the phase for preselecting candidates, eight consortia, including Makedoniko Metro and the Thessaloniki Metro consortium, were authorised to submit tenders.

The contract notices stated that a preselected consortium could be enlarged by the addition of new members during the pre-tender stage, but only up to the deadline for submission of tenders.

When the candidates were pre-selected, the members of Makedoniko Metro were Mikhaniki, Eddi-Stra-Edilizia Stradale SpA, Fidel SpA and Teknocenter-Centro Servizi Administrativi Srl. During the second stage of the procedure (submission of tenders) and up to the time when it was appointed provisional contractor, the Makedoniki Metro consortium also included AEG Westinghouse Transport Systems GmbH.

Its composition then proceeded to change again (and also included German and Belgian companies).

Since Makedoniko Metro had departed substantially from the requirements laid down for the contract, the Minister for the Environment, Regional Development and Public Works terminated the negotiations between the Greek State and Makedoniko Metro and invited the competing tenderer Thessaloniki Metro to enter into negotiations with it.

The Administrative Court of Appeal, Athens, in an action by Makedoniko Metro for compensation for damage suffered pursuant to the Minister's decision, has referred a question to the Court of Justice for a preliminary ruling.

The main question for the Court is whether national rules prohibiting a change, after submission of tenders, in the composition of a consortium taking part in the procedure for the award of a public works contract are permissible under the 1993 directive on the coordination of procedures for the award of public works contracts.

The Court starts by observing that **the directive in question does not contain specific requirements** concerning the composition of such consortia. Any such rules are thus a matter for the Member States and consequently the directive **does not preclude national rules prohibiting a change in the composition of a consortium** which occurs **after submission of tenders.**

Second, the national court asks the Court of Justice whether and to what extent the 1989 directive on the coordination of provisions relating to the application of review procedures to the award of public contracts gives such a consortium rights of recourse.

Directive 89/665 requires Member States to ensure that decisions taken by contracting authorities in the course of procedures for the award of public contracts **may be reviewed effectively and as rapidly as possible** and that the review procedures **are available** at least to **any person having or having had an interest in obtaining a particular public supply or works contract and who has been or risks being harmed by an alleged infringement.**

The Court has replied that it follows from general principles of Community law – including the principle of equal treatment in particular – that, in so far as a contracting authority's decision adversely affects the rights conferred on a consortium by Community law, the consortium must be able to avail itself of the review procedures provided for by the Community legislation and therefore in this case by the 1989 directive.

In the case referred to the Court, **it is for the court making the reference** to establish whether Makedoniko Metro can be regarded, including with its new membership, as having or having had an interest in obtaining the contract at issue in the main proceedings and as having been harmed by the Minister's decision.

*Unofficial document for media use only; not binding on the Court of Justice.
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*For the full text of the judgment, please consult our internet page
www.curia.eu.int at approximately 3 pm today.*

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*Pictures of the hearing are available on "Europe by Satellite", European Commission, Press and Information
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