

ORDER OF THE COURT

26 January 1990*

In Case C-286/88

REFERENCE to the Court under Article 177 of the EEC Treaty by the tribunale amministrativo regionale per la Lombardia (Regional Administrative Court for Lombardy) for a preliminary ruling in the action pending before that court between

Falciola Angelo SpA

and

Comune di Pavia (Municipality of Pavia)

on the interpretation of Articles 5 and 177 and the third paragraph of Article 189 of the EEC Treaty,

THE COURT

composed of: O. Due, President, Sir Gordon Slynn, C. N. Kakouris, F. A. Schockweiler and M. Zuleeg (Presidents of Chambers), T. Koopmans, G. F. Mancini, R. Joliet, T. F. O'Higgins, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias, F. Grévisse and M. Díez de Velasco, Judges,

Advocate General: F. G. Jacobs

Registrar: J.-G. Giraud

after hearing the views of the Advocate General,

makes the following

* Language of the case: Italian.

Order

- 1 By order dated 24 September 1988 which was received at the Court on 29 September 1988, the First Chamber of the tribunale amministrativo regionale per la Lombardia referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a number of questions on the interpretation of Community law, in particular Articles 5 and 177 and the third paragraph of Article 189 of the EEC Treaty.
- 2 Those questions arose during the course of proceedings originating out of an application to that court by Impresa Falciola Angelo for the annulment, together with that of all decisions related thereto, of the deliberation of 29 July 1987 by which the Municipal Council of Pavia approved the decision of the Awards Committee on a restricted invitation to tender, awarding a road works contract to the Consorzio cooperative costruzioni di Bologna.
- 3 According to the order for reference, the contract is governed, by reason of the value of the contract, by Council Directive 71/304/EEC of 26 July 1971 concerning the abolition of restrictions on freedom to provide services in respect of public works contracts and on the award of public works contracts to contractors acting through agencies or branches and Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts (Official Journal 1971, English Special Edition 1971 II, pp. 678 and 682).
- 4 Those are the circumstances in which the tribunale asked the Court for a preliminary ruling on the following questions:
 - ‘(1) The Court of Justice is requested to state whether, apart from the Community and Italian legal orders, there is today also a third legal order (Community-cum-Italian) which is accompanied by the Community-cum-English, Community-cum-German legal orders, and so forth, and which is characterized:
 - (a) by the fact that the rules governing it are to be found primarily in the provisions of Community law and sub-primarily in the provisions of

Italian law (the two categories of provisions — primary and sub-primary — merge to form a *unitary* legislative framework);

(b) by the fact that it concerns substantial Community interests which are realized *also* through Italian instruments.

(2) The Court of Justice is requested to state whether the third paragraph of Article 189, and Articles 177 and 5 of the EEC Treaty must be interpreted as meaning that the Member States, when they give effect to the Community directives, must also provide for the relevant procedural instruments regarded as necessary for ensuring adequate judicial protection, which entails the obligation to alter *for the better* the judicial instruments already in existence and, in any event, the duty not to alter those instruments *for the worse*.

(3) The Court of Justice is requested to state whether it *necessarily* follows from Articles 5 and 177 and the third paragraph of Article 189 of the EEC Treaty, read together, that there is a duty — on the part of the Member States — to provide that disputes relating to matters governed by “Community-cum-Italian” law (and thus governed *primarily* by Community provisions and *sub-primarily* by Italian provisions) must be decided by national judges who, as regards the essence of the judicial function, are on the same footing as the Court of Justice (and accordingly are not “*less judicial*” than the Court).

(4) (In the alternative) The Court of Justice is requested to state whether it *necessarily* follows from Articles 5 and 177 and the third paragraph of Article 189 of the EEC Treaty, read together, that there is an obligation on the part of the Member States to provide, as regards the “implementation of the Community directives”, that disputes relating to matters governed by “Community-cum-Italian” law shall be decided by institutions vested with “*real*”, and not “*apparent*”, judicial power (“*utilis, non inutilis jurisdictio*”).’

5 It is clear from the grounds of the order for reference that the aim actually sought by the tribunale amministrativo regionale per la Lombardia in its four questions is that the Court should state whether the Italian courts can still offer whatever guarantees Community law may require to ensure that national judges are able to carry out their duties as Community judges in a satisfactory, wholly independent and completely impartial manner notwithstanding the enactment of Italian Law No 117/88 of 13 April 1988 on compensation for damage caused in the exercise of judicial functions and the civil liability of the judiciary (*Gazzetta ufficiale della Repubblica italiana* No 88, 15.4.1988, p. 3).

- 6 The tribunale doubts whether the law in question 'ensures the impartiality of the judge, in view of the fact that it does not appear to guarantee that he need harbour no fear of suffering any damage'. As a result, 'precisely because he may be called upon to meet a personal liability', an Italian judge may be 'a judge in appearance only' and 'in reality an institution which may be led to give judgment in a manner other than that dictated by knowledge and conscience, in flagrant infringement of the Community rules on the "essence" of the judicial function'.
- 7 As the Commission pointed out in its written observations submitted to the Court in accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the European Communities, the procedure provided for in Article 177 of the Treaty is an instrument of cooperation between the Court of Justice and the national courts, whereby the former supplies the latter with the information on the interpretation of Community law which is necessary in order to enable them to settle disputes which are brought before them.
- 8 The Court has held (see the judgment of 16 June 1981 in Case 126/80 *Salonia v Poidomani and Giglio* [1981] ECR 1563, paragraph 6) that a request from a national court may be rejected only if it is quite obvious that the interpretation of Community law or the examination of the validity of a rule of Community law sought by that court bears no relation to the actual nature of the case or to the subject-matter of the main action.
- 9 That is the situation in the present case, in which the questions raised bear no relation to the subject-matter of the action, since the request from the tribunale amministrativo regionale per la Lombardia does not concern the interpretation of Council Directives 71/304 and 71/305, and the tribunale merely informs the Court that it will have to apply those directives in the dispute which has been brought before it. It is clear from the actual wording of the order for reference that the tribunal is in doubt only as to the possible psychological reactions of certain Italian judges as a result of the enactment of the Italian Law of 13 April 1988, cited above. Consequently, the preliminary questions submitted to the Court do not involve an interpretation of Community law objectively required in order to settle the dispute in the main action.
- 10 In those circumstances, the Court of Justice clearly has no jurisdiction to rule on the questions submitted to it by the tribunale amministrativo regionale per la Lombardia.

- 11 Article 92 of the Rules of Procedure must therefore be applied, and it must be found that the Court has no jurisdiction in this case.

On those grounds,

THE COURT

hereby orders:

The Court has no jurisdiction to answer the questions put by the tribunale amministrativo regionale per la Lombardia.

Luxembourg, 26 January 1990.

J.-G. Giraud
Registrar

O. Due
President