

Case C-234/03

Contse SA and Others

v

**Instituto Nacional de Gestión Sanitaria (Ingesa), formerly
Instituto Nacional de la Salud (Insalud)**

(Reference for a preliminary ruling from the Audiencia Nacional)

(Freedom of establishment — Freedom to provide services — Directive 92/50/EEC
— Public service contracts — Principle of non-discrimination — Health services of
home respiratory treatments — Admission condition — Evaluation)

Judgment of the Court (Third Chamber), 27 October 2005 I - 9317

Summary of the Judgment

*Freedom to provide services — Procedures for the award of public service contracts — Award
of contracts — Criteria — Conditions of admissibility — Specific case
(Art. 49 EC)*

Article 49 EC precludes a contracting authority from providing, in the tendering specifications for a public contract for health services of home respiratory treatments and other assisted breathing techniques, first, for an admission condition which requires an undertaking submitting a tender to have, at the time the tender is submitted, an office open to the public in the capital of the province where the service is to be supplied and, second, for evaluation criteria which reward, by awarding extra points, the existence at the time the tender is submitted of oxygen production, conditioning and bottling plants situated within 1 000 kilometres of that province or offices open to the public in other specified towns in that province, and

which, in the case of a tie between a number of tenders, favours the undertaking which was previously providing the service concerned, in so far as those criteria are applied in a discriminatory manner, are not justified by imperative requirements in the general interest, are not suitable for securing the attainment of the objective which they pursue or go beyond what is necessary to attain it, which is a matter for the national court to determine.

(see para. 79, operative part)