

# COURT OF JUSTICE

## JUDGMENT OF THE COURT

of 17 October 1989

in Case 109/88 (reference for a preliminary ruling made by the *Faglige Voldgiftsret*): *Handels- og Kontorfunktionærernes Forbund i Danmark v. Dansk Arbejdsgiverforening for Danfoss* <sup>(1)</sup>

(*Equal pay for men and women*)

(89/C 289/03)

(*Language of the case: Danish*)

(*Provisional translation; a definitive translation will be published in the Reports of Cases before the Court*)

In Case 109/88: reference to the Court under Article 177 of the EEC Treaty by the *Faglige Voldgiftsret* [Industrial Arbitration Board] (Denmark) for a preliminary ruling in the proceedings pending before that Board between *Handels- og Kontorfunktionærernes Forbund i Danmark* [Union of Commercial and Clerical Employees, Denmark] and *Dansk Arbejdsgiverforening for Danfoss* [Danish Employers' Association, on behalf of Danfoss] on the scope of the principle of equal treatment between male and female workers in relation to pay — the Court, composed of O. Due, President, M. Zuleeg (President of Chamber), T. Koopmans, R. Joliet, J. C. Moitinho de Almeida, G. C. Rodriguez Iglesias and M. Díez de Velasco, Judges; C. O. Lenz, Advocate-General; H. A. Rühl, Principal Administrator, for the Registrar, gave a judgment on 17 October 1989, the operative part of which is as follows:

*Council Directive 75/117/EEC of 10 February 1975 on the approximation of the laws of the Member States relating to the application of the principle of equal pay for men and women must be interpreted as meaning that*

1. *where an undertaking applies a system of pay which is totally lacking in transparency, it is for the employer to prove that his practice in the matter of wages is not discriminatory, if a female worker establishes, in relation to a relatively large number of employees, that the average pay for women is less than that for men;*
2. *where it appears that the application of criteria for additional payments such as mobility, vocational training or the length of service of the employee systematically works to the disadvantage of female employees,*

— *the employer may justify recourse to the criterion of mobility if it is understood as referring to adaptability to variable hours and places of work, by showing that such adaptability is of importance for*

*the performance of the specific tasks which are entrusted to the employee, but not if that criterion is understood as covering the quality of the work done by the employee,*

— *the employer may justify recourse to the criterion of vocational training by showing that such training is of importance for the performance of the specific tasks which are entrusted to the employee,*

— *the employer does not have to provide special justification for recourse to the criterion of length of service.*

**Action brought on 2 October 1989 by Eurotempo SA against the Commission of the European Communities**

(Case 301/89)

(89/C 289/04)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 2 October 1989 by Eurotempo SA, represented by Luc Cambier, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Bertrand Assoignons, 6 rue Heine.

The applicant claims that the Court should:

Declare void the decision contained in the letter of 7 August 1989 from the Directorate for Information, Communication and Culture, informing the applicant that its tender to manage a shop selling products promoting the Community image had not been accepted.

*Contentions and main arguments adduced in support:*

Infringement of the EEC Treaty and in particular Articles 155, 190 and 211 thereof; infringement of the Treaty establishing a Single Council and a Single Commission of the European Communities and in particular Articles 9, 15, 16 and 17 thereof; infringement of the Council Directive of 26 July 1971 concerning the coordination of procedures for the award of public works contracts (Official Journal, English Special Edition 1971 (II), p. 682) and in particular Article 29 thereof; failure to comply with the tender specifications

<sup>(1)</sup> OJ No C 124, 11. 5. 1988.

drawn up by the Commission on 10 February 1989 in respect of the public contract relating to the management of a shop selling products promoting the Community image; infringement of general legal principles and in particular those applying with regard to the award of public contracts, which prohibit any failure to treat tenderers equally; infringement of essential procedural requirements; *ultra vires* acts or misuse of powers; the contested decision was taken by an authority lacking the power to do so.

Infringement of the EEC Treaty and in particular Articles 155, 190 and 211 thereof; infringement of the Treaty establishing a Single Council and a Single Commission of the European Communities and in particular Articles 9, 15, 16 and 17 thereof; infringement of the Council Directive of 26 July 1971 concerning the coordination of procedures for the award of public works contracts and in particular Article 29 thereof; failure to comply with the tender specifications drawn up by the Commission on 10 February 1989 in respect of the public contract relating to the management of a shop selling products promoting the Community image; infringement of general legal principles and in particular those applying with regard to the award of public contracts, which prohibit any failure to treat tenderers equally; infringement of essential procedural requirements; *ultra vires* acts or misuse of powers; even assuming that the Director for Information may be considered competent to decide that certain tenders must be rejected, he was not entitled to delegate that power to one of his subordinates.

Infringement of the EEC Treaty and in particular Articles 155, 190 and 211 thereof; infringement of the Council Directive of 26 July 1971 concerning the coordination of procedures for the award of public works contracts and in particular Article 29 thereof; failure to comply with the tender specifications drawn up by the Commission on 10 February 1989 in respect of the public contract relating to the management of a shop selling products promoting the Community image; infringement of general legal principles and in particular those applying with regard to the award of public contracts, which prohibit any failure to treat tenderers equally; infringement of essential procedural requirements; *ultra vires* acts or misuse of powers; the contested decision appears to have been taken before the Commission had examined all the tenders and decided on the award of the contract.

Infringement of the EEC Treaty and in particular Articles 155, 190 and 211 thereof; infringement of essential procedural requirements; *ultra vires* acts or misuse of powers; failure to state reasons.

Infringement of the Council Directive of 26 July 1971 concerning the coordination of procedures for the award

of public works contracts and in particular Article 29 thereof; failure to comply with the tender specifications drawn up by the Commission on 10 February 1989 in respect of the public contract relating to the management of a shop selling products promoting the Community image; infringement of general legal principles and in particular those applying with regard to the award of public contracts, which prohibit any failure to treat tenderers equally; infringement of essential procedural requirements; *ultra vires* acts or misuse of powers; the tender submitted by the applicant fully meets the criteria laid down by the General Conditions.

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Reference for a preliminary ruling by the President of the Tribunal de Grande Instance de Saint-Quentin by decision of 5 October 1989 in the case of Union Départementale des Syndicats CGT de l'Aisne v. 1. Société Internationale de Distribution d'Équipements Familiaux (SIDEF Conforama), 2. Société Arts et Meubles, and 3. Société JIMA

(Case 312/89)

(89/C 289/05)

Reference has been made to the Court of Justice of the European Communities by decision of the President of the Tribunal de Grande Instance [Regional Court], Saint-Quentin, of 5 October 1989, which was received at the Court Registry on 11 October 1989, for a preliminary ruling in the case of Union Départementale des Syndicats CGT de l'Aisne [Federation of CGT Trade Unions in the Department of Aisne] v. 1. Société Internationale de Distribution d'Équipements Familiaux (SIDEF Conforama), 2. Société Arts et Meubles, and 3. Société JIMA on the following questions:

Can the concept of 'measures having equivalent effect' to quantitative restrictions on imports contained in Article 30 of the EEC Treaty be applied to a general provision whose effect is to prohibit Sunday working for employees, *inter alia* in a sector such as furniture retailing, when:

1. that sector deals to a large extent in products imported, *inter alia*, from the Member States of the EEC;
2. a considerable proportion of the sales of undertakings in that sector is made on Sundays in cases where those undertakings have taken the step of contravening the provisions of national law;
3. closure on Sundays has the effect of reducing the volume of sales effected and thus the volume of imports from Member States of the Community; and, finally,
4. the obligation to allow employees a rest day on Sundays does not apply in all the Member States?