Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 21 May 2015[1]

Case C-166/14

MedEval — Qualitäts-, Leistungs- und Struktur-Evaluierung im Gesundheitswesen GmbH
v
Bundesvergabeamt

(Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria))

(Public procurement — Directives 89/665/EEC and 2007/66/EC — Review procedure — Effective legal protection — Damages — Mandatory time limits)

I – **Introduction**

1. Is it compatible with EU law for an undertaking which considers itself to have been harmed by the allegedly unlawful award of a public contract no longer to be able to assert claims for damages against the contracting authority following the expiry of a period of six months, even where, during that period, it was still entirely unaware of the conclusion of the contract, and also, therefore, of the harm it might have suffered? That, in essence, is the question which the Court has to address in the present request for a preliminary ruling.

2. That question has arisen in the context of a public contract awarded in the public health service in Austria. A contracting authority concluded by 'direct award' a contract for the provision of certain services in the healthcare sector without the prior issue of a contract notice. A third party, who did not hear about that process until later, is now seeking damages which are being refused because the strict six-month mandatory time limit applicable to reviews as to the legality of award decisions in Austria has lapsed.

3. In the present case, the question as to whether such a strict and short mandatory time limit for applications for review made with the aim of asserting claims for damages is compatible with Directive 89/665/EEC[2] ('the Remedies Directive'), in the version of Directive 2007/66/EC,[3] must be answered with due regard for the principles of effectiveness and equivalence enshrined in EU law. This will call

1 — Original language: German.

2 — Council Directive 89/665/EEC of 21 December 1989 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 (OJ 1989 L 395, p. 33).

3 — Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (OJ 2007 L 335, p. 31). The additional amendments made by Article 46 of Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ 2014 L 94, p. 1) are not relevant to the present case.

for an appropriate balance to be sought between the conflicting interests of legal certainty and effective legal protection in the field of public procurement. In discussing specific aspects of this issue, I shall be able to refer to my earlier Opinions in *pressetext Nachrichtenagentur*[4] and *Uniplex (UK)*,[5] as well as to a number of recent judgments of the Court.

II – **Legal framework**

A – *EU law*

4. The EU law framework applicable to these proceedings is the Remedies Directive, as amended by Directive 2007/66.

5. The third subparagraph of Article 1(1) of the Remedies Directive reads:

'Member States shall take the measures necessary to ensure that, as regards contracts falling within the scope of Directive 2004/18/EC,[6] decisions taken by the contracting authorities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in Articles 2 to 2f of this Directive, on the grounds that such decisions have infringed Community law in the field of public procurement or national rules transposing that law.'

6. Article 2 of the Remedies Directive deals with the requirements for review procedures and states:

'1. Member States shall ensure that the measures taken concerning the review procedures specified in Article 1 include provision for powers to:

…

(b) either set aside or ensure the setting aside of decisions taken unlawfully …

(c) award damages to persons harmed by an infringement.

…

6. Member States may provide that where damages are claimed on the grounds that a decision was taken unlawfully, the contested decision must first be set aside by a body having the necessary powers.

…'

7. Pursuant to Article 2d of the Remedies Directive ('Ineffectiveness'):

'1. Member States shall ensure that a contract is considered ineffective by a review body independent of the contracting authority or that its ineffectiveness is the result of a decision of such a review body in any of the following cases:

(a) if the contracting authority has awarded a contract without prior publication of a contract notice in the Official Journal of the European Union without this being permissible in accordance with Directive 2004/18/EC;

4 — C-454/06, EU:C:2008:167.

5 — C-406/08, EU:C:2009:676.

6 — Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114, as amended by OJ 2004 L 351, p. 44).

…’

8. Article 2f of the Remedies Directive (‘Time limits’) states the following:

‘1. Member States may provide that the application for review in accordance with Article 2d(1) must be made:

…

(b) and in any case before the expiry of a period of at least six months with effect from the day following the date of the conclusion of the contract.

2. In all other cases … the time limits for the application for a review shall be determined by national law …’

B – *National law*

9. The Austrian Bundesvergabegesetz (Federal Law on Procurement)[7] (‘BVergG 2006’) contains rules which transpose the aforementioned provisions of the Remedies Directive. In the version of it that is relevant here,[8] that Law provided for a procedure for obtaining a declaration from the Bundesvergabeamt (Federal Procurement Office).

10. In that connection, Paragraph 331 of the BVergG 2006 provides:

‘(1) Where an undertaking had an interest in the conclusion of a contract within the scope of application of this Federal Law, it may, in so far as it has suffered or is at risk of suffering harm in consequence of the alleged infringement, apply for a declaration that:

…

2. the conduct of a procurement procedure without the prior issue of a contract notice … was unlawful …

…’

11. Paragraph 332 of the BVergG 2006 concerns the admissibility of applications for a declaration. Pursuant to subparagraph 3 thereof:

‘Applications as provided for in Paragraph 331(1)(2) … must be lodged within six months of the day following the date of the award of the contract. …

…’

12. In accordance with Paragraph 334(2) of the BVergG 2006, following the declaration that a procurement procedure was unlawfully conducted without the prior issue of a contract notice, the Bundesvergabeamt must, in principle, declare the contract null and void.

7 — Bundesgesetz über die Vergabe von Aufträgen (Federal Law on the award of contracts) (Bundesvergabegesetz 2006 — BVergG 2006), BGBl. I No 17/2006.

8 — BGBl. I No 15/2010.

13. Paragraph 341 of the BVergG 2006 contains procedural rules relating to claims for damages. Subparagraph 2 thereof states:

'An action for damages shall be admissible only where the procurement review body competent in the matter in question has made a prior declaration to the effect that:

…

2. the conduct of a procurement procedure without the prior issue of a contract notice … was unlawful …

…'

III – **Facts and the question referred**

14. The present case has its origin in a dispute between MedEval — Qualitäts-, Leistungs- und Struktur-Evaluierung im Gesundheitswesen GmbH ('MedEval') and the Hauptverband der österreichischen Sozialversicherungsträger (Central Association of Austrian Social Security Institutions) ('the Hauptverband'). The Hauptverband is the umbrella organisation for all social security schemes in Austria and a corporation under public law.

15. On 10 August 2010, the Hauptverband concluded, without the prior issue of a contract notice, a contract for the implementation of a patient safety enhancement project ('e-Medikation') with the Pharmazeutische Gehaltskasse, another corporation under public law whose tasks include, inter alia, the recovery of prescription charges for pharmacists from individual insurance institutions.

16. MedEval took the view that this constituted an unlawful direct award of a contract. Consequently, on 1 March 2011, MedEval applied to the Austrian Federal Procurement Office, pursuant to Paragraph 331(1)(2) of the BVergG 2006, for a declaration that the Hauptverband had acted unlawfully.

17. By decision of 11 May 2011, the Bundesvergabeamt refused the application because it had not been made within the time limit, laid down in Paragraph 332(3) of the BVergG 2006, of six months from the award of the contract, that is to say, in the present case, from the conclusion of the contract.

18. As the Verwaltungsgerichtshof (Administrative Court), before which the dispute has since been brought, states, under Austrian law, the time limit for initiating the procedure for a declaration on the legality of the award of a contract starts to run whether or not the applicant is aware that the contract has been concluded. To the extent, however, that an application for a declaration of infringement of public procurement law made by way of that procedure is a precondition not only for the annulment of the contract in question but also for the bringing of an action for damages, the Verwaltungsgerichtshof harbours doubts as to the compatibility of that time limit with EU law.

19. It was in those circumstances that, by order of 25 March 2014, received on 8 April 2014, the Verwaltungsgerichtshof referred the following question to the Court for a preliminary ruling:

'Is EU law — in particular the general principles of equivalence and effectiveness and … Directive 89/665/EEC …, as amended by Directive 2007/66/EC … — to be interpreted as precluding a national legal situation in which an application for a declaration of an infringement of public procurement law must be made within six months of the conclusion of the contract, if the declaration of an infringement of public procurement law is a precondition not only of annulling the contract but also of bringing a claim for damages?'

20. In the preliminary ruling proceedings before the Court, written observations have been submitted by MedEval, the Hauptverband, the Austrian Government, the Italian Government and the European Commission. The hearing of 22 April 2014 was attended by MedEval, the Austrian Government and the Commission.

IV – **Legal assessment**

21. By its question, the Verwaltungsgerichtshof seeks to ascertain, in essence, whether a national provision under which review procedures aimed at securing a declaration as to the unlawfulness of decisions of contracting authorities must be initiated within a mandatory time limit of six months, even where the declaration of illegality is sought only in its capacity as a precondition for a claim for damages, is compatible with EU law.

22. The background to that question lies in the particular configuration of the protection afforded by public procurement law in Austria, the basis of which, in the stage *following* the award of the contract, is a procedure aiming simply to secure a declaration as to the unlawfulness of the award of the contract. Such a declaration then operates as the precondition not only for any annulment of the contract concluded by the contracting authority but also for the mere assertion of a claim for damages by third parties such as MedEval.

23. As is apparent from the request for a preliminary ruling, in this case, the Verwaltungsgerichtshof is exclusively concerned with ascertaining the permissibility of the six-month mandatory time limit for the *assertion of claims for damages* by persons who consider themselves to have been harmed by the award of a contract. The question of what time limits may be attached to applications to obtain a declaration with a view to securing the *annulment of contracts*, on the other hand, does not form part of the subject matter of these proceedings.

24. In order to answer the question referred, it is appropriate to look first at the Remedies Directive (see, in this regard, Section A below) and then at the EU law principles of effectiveness and equivalence (see, in this regard, Section B below). After all, the compatibility of a time limit regime such as that laid down in Austrian law presupposes that that regime is compatible not only with the letter of the Remedies Directive but also with its spirit as shaped by the principles of effectiveness and equivalence. In so far as the directive affords the Member States a margin of discretion with respect to transposition, they must avail themselves of that discretion in accordance with the aforementioned principles.

A – *The Remedies Directive*

25. The legal protection of individuals against award decisions taken by contracting authorities is governed in greater detail in the Remedies Directive.[9] That directive requires the Member States to ensure that adequate procedures exist to make it possible for awards of contracts by contracting authorities to be subjected to review ('review procedures'). In accordance with Article 2(1) of that directive, such review procedures must permit, inter alia, the setting aside of decisions taken unlawfully (b) and the award of damages to persons harmed (c).

9 — This concerns contracts for works, supplies and services. See also Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1992 L 76, p. 14).

26. Whereas the original version of the Remedies Directive did not yet contain any express provision concerning the time limits within which review procedures are to be initiated, the directive does now contain a specific provision to that effect, namely in Article 2f. Thus, in accordance with Article 2f(1)(b), Member States may lay down an absolute mandatory time limit of (at least) six months from the day following the date of the conclusion of the contract.

27. However, as the wording of the provision itself states, that mandatory time limit applies only to reviews 'in accordance with Article 2d(1)' of the Remedies Directive, that is to say those initiated with a view to securing a declaration as to the ineffectiveness of the contract concluded by the contracting authority.

28. Contrary to the submissions put forward by Austria, therefore, the possibility provided for in Article 2f(1) of the Remedies Directive of laying down a six-month mandatory time limit does not actually relate to the assertion of claims for damages such as that at issue here. Such claims are, on the contrary, covered by Article 2f(2) of the Remedies Directive, which states that, 'in all other cases', the time limit for an application for a review is determined by national law. This point was rightly made by the Commission.

29. That conclusion is supported not only by the aforementioned wording of Article 2f of the Remedies Directive but also by the aims that informed the amendments to the Remedies Directive. Thus, as is apparent from recital 13 of Directive 2007/66, contracts concluded in the context of unlawful direct awards are in principle to be considered ineffective. The EU legislature refers in this regard to the Court's case-law to the effect that such awards are to be regarded as the most serious breach of public procurement law,[10] but, at the same time, goes on to say, in recital 25 of Directive 2007/66, that, for reasons of legal certainty, it is necessary to lay down 'period[s] of limitation' for the institution of review proceedings seeking to establish that contracts are ineffective. This is the context into which the rule relating to the six-month mandatory time limit laid down in Article 2f(1) of the Remedies Directive fits.

30. The assertion of a claim for damages such as that at issue here does *not* as a rule have the effect of causing a contract which has come into being in the course of an unlawful award procedure to be declared ineffective.[11] Accordingly, the interests at stake in the case of review procedures geared towards the award of damages are different from those that obtain in the case of review procedures aimed at securing a declaration as to the ineffectiveness of contracts which have already been concluded. The need for legal certainty is less pronounced in the case of mere actions for damages than in the case of proceedings that seek to call into question the effectiveness of contracts.[12]

31. The task of taking into account the particular interests at stake in actions for damages falls to the Member States. In accordance with Article 2f(2) of the Remedies Directive, it is left to them to determine, within the framework of their procedural autonomy, the time limits within which the persons concerned must take legal action in order to be able to assert claims for damages for the allegedly unlawful award of a contract.[13]

10 — See paragraph 37 of the judgment in *Stadt Halle and RPL Lochau* (C-26/03, EU:C:2005:5), the German-language version of which refers to 'einem ganz beträchtlichen Verstoß … gegen das Gemeinschaftsrecht über das öffentliche Auftragswesen'. The formulations used in the French- and English-language versions of that judgment read 'la violation la plus importante du droit communautaire en matière de marchés publics' and 'the most serious breach of Community law in the field of public procurement', respectively.

11 — See Article 2(7) of the Remedies Directive, pursuant to which, except where provided for in Articles 2d to 2f, the effects of review decisions on a contract concluded subsequent to its award are to be determined by national law.

12 — See points 39 and 40 of this Opinion, below, as well as point 165 of my Opinion in *pressetext Nachrichtenagentur* (C-454/06, EU:C:2008:167) and points 33 and 34 of my Opinion in *Uniplex (UK)* (C-406/08, EU:C:2009:676).

13 — See the judgments in *Universale-Bau and Others* (C-470/99, EU:C:2002:746, paragraph 71) and *Uniplex (UK)* (C-406/08, EU:C:2010:45, paragraph 26).

B – *The principles of equivalence and effectiveness*

32. It is the settled case-law of the Court that, in the absence of EU law rules in the field, it is for the Member States to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law. However, those rules must not be less favourable than those governing similar domestic situations (principle of equivalence), and they must not make it in practice impossible or excessively difficult to exercise rights conferred by EU law (principle of effectiveness). [14]

33. In particular, the rules governing actions for safeguarding the rights which EU law confers on persons who consider themselves to have been harmed by decisions taken by contracting authorities must not compromise the effectiveness of the Remedies Directive. [15]

1. The principle of effectiveness

34. With regard to the *principle of effectiveness*, the question thus arises as to whether a mandatory time limit such as the six-month time limit applicable in Austria pursuant to Paragraph 332(3) of the BVergG 2006 makes it in practice impossible or excessively difficult for the persons concerned to assert their right to damages under Article 2(1)(c) of the Remedies Directive.

35. In accordance with the Court's case-law, the setting of reasonable mandatory time limits is not, in principle, open to question, since such time limits serve the fundamental interest of legal certainty. [16] Moreover, the concept of legal certainty is itself reflected in the third subparagraph of Article 1(1) of the Remedies Directive, which states that award decisions must be reviewed 'as rapidly as possible'. At the same time, however, that provision requires that awards of contracts be reviewed 'effectively', thus emphasising not only the concern to ensure legal certainty but also the requirement to guarantee effective legal protection (see also in this regard Article 47 of the Charter of Fundamental Rights).

36. Both of those factors — legal certainty and effective legal protection — must be taken into consideration when it comes to assessing the reasonableness of the mandatory time limits applicable to public procurement review procedures. To that end, due account must be taken of the nature and legal consequences of the relevant remedy and of the relevant rights and interests of the persons concerned. [17]

37. In the present case, therefore, the question is whether the considerations that militate in favour of a particularly strict and short mandatory time limit for reviewing the effectiveness of contracts can also be applied to actions for damages.

38. In my view, that question must be answered in the negative. After all, as I have already indicated, the interests at stake in those two situations are different.

39. A contracting authority and its contractual partner are united by the clear need, deserving of protection, for legal certainty with respect to the contract concluded between them. A retrospective declaration as to the ineffectiveness of that contract represents a particularly onerous and far-reaching legal consequence. It is for that very reason that legal remedies aimed at having contracts declared

14 — See the judgments in *Rewe* (33/76, EU:C:1976:188, paragraph 5); *Peterbroeck* (C-312/93, EU:C:1995:437, paragraph 12); *van der Weerd and Others* (C-222/05 to C-225/05, EU:C:2007:318, paragraph 28); and *Gruber* (C-570/13, EU:C:2015:231, paragraph 37).

15 — See the judgments in *Universale-Bau and Others* (C-470/99, EU:C:2002:746, paragraph 72); *Uniplex (UK)* (C-406/08, EU:C:2010:45, paragraph 27); and *eVigilo* (C-538/13, EU:C:2015:166, paragraph 40).

16 — See the judgments in *Rewe* (33/76, EU:C:1976:188, paragraph 5); *Aprile* (C-228/96, EU:C:1998:544, paragraph 19); and *Bulicke* (C-246/09, EU:C:2010:418, paragraph 36), as well as, with specific regard to the Remedies Directive, the judgments in *Universale-Bau and Others* (C-470/99, EU:C:2002:746, paragraph 76); *Santex* (C-327/00, EU:C:2003:109, paragraph 52); *Lämmerzahl* (C-241/06, EU:C:2007:597, paragraphs 50 and 51); and *eVigilo* (C-538/13, EU:C:2015:166, paragraph 51).

17 — See point 161 of my Opinion in *pressetext Nachrichtenagentur* (C-454/06, EU:C:2008:167).

ineffective (*primary legal protection*) must be restrictively formulated. For the purposes of such proceedings, it is therefore reasonable — and possible under Article 2f(1) of the Remedies Directive — to lay down an absolute time limit of six months which may start to run regardless of whether the person concerned is aware of an alleged infringement of public procurement law. [18]

40. Legal remedies directed at securing an award of damages (*secondary legal protection*), by contrast, do not in principle have any bearing on the effectiveness of contracts which have already been concluded. The interests of the contractual partners are far less affected by impending claims for damages than they would be if the contract were annulled. The corollary of this is that the balance between considerations of legal certainty and legal protection cannot be struck in the same way in review procedures directed at securing an award of damages as it is in review procedures aimed at securing a declaration as to the ineffectiveness of contracts. On the contrary, much more importance must be attached to the requirements of effective legal protection in the case of procedures directed at securing an award of damages, and there would be no justification for making the detailed rules governing such legal remedies as strict as those applicable in the case of the annulment of contracts. [19]

41. Austria's argument in this regard, to the effect that third-party claims for damages also entail an intolerable lack of legal certainty for the public authorities because such claims against them 'are frequently linked to the State provisions on fiscal governance' and the availability of budgetary resources is restricted, is untenable. It is, on the contrary, within the gift of the contracting authorities themselves to prevent any claims for damages from arising in the first place by complying strictly with the rules on public procurement.

42. Moreover, the reference made by Austria and Italy to Article 2(6) of the Remedies Directive does not lead to a different conclusion. It is true that that provision empowers the Member States to provide for a two-stage system in which the assertion of claims for damages based on the unlawfulness of an award decision is conditional upon the prior 'setting aside' of that self-same decision. However, it by no means follows from that possibility of conditionality that the *mandatory time limits* for applying for a declaration as to the unlawfulness of an award decision must be formulated in the same way for the specific purpose of a claim for damages as for an application aimed at securing a declaration as to the ineffectiveness of contracts which have already been concluded.

43. On the contrary, any mandatory time limits laid down in national law with respect to applications for review made with a view to asserting claims for damages must take into account the principle of effectiveness. They do not necessarily have to be longer than those in place for applications for a declaration as to the ineffectiveness of contracts. Of much more importance is the relevant starting point of such time limits. A claim for damages can be effectively asserted only if the time limit for initiating the underlying procedure for review of the alleged infringement of public procurement law, on which the claim for damages is predicated, does not start to run until the date on which the person concerned knew, or ought to have known, of the infringement in question, [20] for example by means of a notice as provided for in Article 35(4) of Directive 2004/18.

18 — See point 162 of my Opinion in *pressetext Nachrichtenagentur* (C-454/06, EU:C:2008:167) and point 33 of my Opinion in *Uniplex (UK)* (C-406/08, EU:C:2009:676).

19 — See points 163 to 167 of my Opinion in *pressetext Nachrichtenagentur* (C-454/06, EU:C:2008:167) and point 34 of my Opinion in *Uniplex (UK)* (C-406/08, EU:C:2009:676). That distinction between primary and secondary legal protection is also reflected in the case-law of the Court, such as, for example, in the judgment in *Idrodinamica Spurgo Velox and Others* (C-161/13, EU:C:2014:307, paragraphs 45 and 46).

20 — See the judgments in *Universale-Bau and Others* (C-470/99, EU:C:2002:746, paragraph 78); *Uniplex (UK)* (C-406/08, EU:C:2010:45, paragraph 32); *Idrodinamica Spurgo Velox and Others* (C-161/13, EU:C:2014:307, paragraph 37); and *eVigilo* (C-538/13, EU:C:2015:166, paragraph 52).

44. Thus, the Commission rightly argues that, in the particular case of an allegation of an unlawful direct award, it must be assumed that the disadvantaged interested parties would be unlikely to find out that the contract had been concluded. If the time limit for initiating any review were determined solely by reference to the date on which the contract was concluded, the contracting authority could avoid exposure both to the risk of the contract being annulled and to the risk of claims for damages being brought against it simply by concealing the fact of the contract's conclusion for a sufficient length of time. This, however, would run counter to the objective pursued by the Remedies Directive of providing the persons concerned with an effective means of recourse against unlawful direct awards. [21]

45. All things considered, the principle of effectiveness therefore precludes a provision of national law under which an application for a declaration as to the infringement of public procurement law must be made within six months of the conclusion of the contract, even where that declaration is sought solely in its capacity as a precondition for a subsequent action for damages. Rather, a mandatory time limit for an application to obtain a declaration with a view to asserting a claim for damages must not start to run before the injured party knew, or ought to have known, of the alleged infringement of public procurement law.

46. It is for the referring court to examine whether, and if so when, MedEval had, or ought to have had, such knowledge in the present case.

2. The principle of equivalence

47. Finally, and solely for the sake of completeness, it remains to be considered briefly whether the Austrian provision at issue is also inconsistent with the principle of equivalence.

48. The Verwaltungsgerichtshof states that, under the general provisions of Austrian civil law, claims for damages become time-barred, in principle, three years from the point at which the harm and the party liable become known. At first sight, therefore, it is reasonable to regard the set of procedural rules applicable to the assertion of claims for damages on account of infringements of public procurement law as they are formulated in the BVergG 2006 as less favourable, and thus as an infringement of the principle of equivalence, since, under those rules, legal action must be taken within an absolute time limit of six months from the conclusion of the contract.

49. However, consideration of the specific features of the protection afforded by public procurement law casts a different light on the matter. For, as I have already pointed out, the third subparagraph of Article 1(1) of the Remedies Directive makes express reference to the matter of reviewing award decisions 'as rapidly as possible'. Legal certainty is to be established as swiftly as can be. Accordingly, the fact that applications for review in the field of public procurement — including those made for the sole purpose of obtaining an award of damages — are subject to shorter time limits than those that apply to the assertion of claims for damages under the general domestic legal provisions is not a cause for concern. [22]

50. The principle of equivalence does not therefore preclude the setting of a special mandatory time limit for applications to obtain a declaration with a view to asserting a claim for damages on account of infringements of public procurement law, even where the general limitation period applicable to claims for damages under national law is longer.

21 — See recital 6 of the Remedies Directive, which provides that the Member States must ensure that adequate procedures exist to permit the setting aside of decisions taken unlawfully and compensation of persons harmed by an infringement.

22 — See point 157 of my Opinion in *pressetext Nachrichtenagentur* (C-454/06, EU:C:2008:167).

V – **Conclusion**

51. In the light of the foregoing considerations, I therefore propose that the Court reply to the request for a preliminary ruling made by the Austrian Verwaltungsgerichtshof as follows:

In the light of the principle of effectiveness, Article 2f(2) of Council Directive 89/665/EEC of 21 December 1989 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:

— it precludes a provision of national law under which an application for a declaration as to the infringement of public procurement law must be made within a mandatory time limit of six months from the conclusion of the contract, in so far as that declaration is simply a precondition for the assertion of a claim for damages; and that

— the time limit for an application to obtain such a declaration with a view to asserting a claim for damages must not start to run before the person concerned knew, or ought to have known, of the alleged infringement of public procurement law.