

Spain, Órgano Administrativo de Recursos Contractuales de la Comunidad Autónoma de Euskadi (The Administrative Body for Contractual Resources of the Autonomous Community of Euskadi), 14 of march of 2024.

Member State

 Spain

Topic

Fundamental rights

Sector

Use of the Preliminary Reference Procedure

Deciding Court Original Language

Órgano Administrativo de Recursos Contractuales de la Comunidad Autónoma de Euskadi (OARC)

Deciding Court English translation

The Administrative Body for Contractual Resources of the Autonomous Community of Euskadi

Registration N

C-210/24 (CJUE)

Date Decision

14 of march of 2024

ECLI (if available)

NO

National Follow Up Of (when relevant)

NO

EU legal sources and CJEU jurisprudence

Article 56 and 267 TFEU

Article 28 of the Charter of Fundamental Rights of the European Union

CJEU, Judgment of 20 of September of 2018, C-546/16, ECLI:EU:C:2018:752

[ECtHR Jurisprudence](#)

NO

[Subject Matter](#)

Fundamental rights – article 28 of the Charter of Fundamental Rights of the European Union

[Legal issue\(s\)](#)

The referring body wishes to know whether the terms of the specifications set by the Ortuello City Council violate the EU Law and specifically the right to collective bargaining recognized in Article 28 of the Charter of Fundamental Rights of the European Union

[Request for expedited/PPU procedures](#)

NO

[Interim Relief](#)

NO

[National Law Sources](#)

N/A

[Facts of the case](#)

The business association AESTE filed an appeal to the OARC against the specifications of the contract for the "home help service" of the Ortuello City Council. The contract had a value of €166,250 and aimed to allow people with physical or social difficulties to continue living in their homes.

However, the business association AESTE challenges the contract and requests the annulment of Article 19B of Annex I. This clause awards 40 points to companies that offer better wages to the workers executing the contract. AESTE rejects the clause for three reasons. First, it believes that it prevents equal conditions in the award process and hinders competition. Second, because higher wages do not necessarily imply better outcomes in service provision. And third, because the award criteria interfere in the relationships between workers and employers and disregard the collective agreement of the sector.

In contrast, the Ortuello City Council argues that it is acting within its powers. It states that better wages are an element that reduces labour conflict and ensures the quality and continuity of the service.

[Reasoning \(role of the Charter or other EU, ECHR related legal basis\)](#)

The Administrative Body for Contractual Resources of the Autonomous Community of Euskadi

(OARC) submits a preliminary ruling to the CJEU to clarify whether the specifications of an administrative tender are contrary to Article 56 TFEU, Directive 2014/24/EU, and Article 28 of the Charter of Fundamental Rights of the European Union (CDFUE).

The first thing the OARC does is assert that it meets the requirements to be considered a judicial body under Article 267 TFEU. Thus, decisions are made based on legal parameters after an adversarial process. Furthermore, it is a permanent, independent body that exercises its functions impartially. In fact, in its ruling of September 20, 2018 (C-546/16), the CJEU explicitly recognized that the OARC can be considered a judicial body for the purposes of Article 267 TFEU.

Once it has justified its legitimacy as a judicial body (Article 267 TFEU), the OARC proceeds to justify the relevance of the preliminary ruling. The referring court believes that resolving the dispute requires addressing the preliminary question. Specifically, the OARC wants to know whether the award criteria comply with Union law and, in particular, with Article 67.1 of Directive 2014/24/EU (i.e., the identification of the economically most advantageous offer).

The OARC shares the doubts of the claimant company AESTE. First, it questions whether higher wages lead to better service provision. Second, it makes it difficult for companies with less economic capacity to participate in the tender. And third, the established conditions may constitute a violation of the right to collective bargaining (Article 28 CDFUE) and may favour wage inequality among workers of the same company.

Relation of the case to the EU Charter

The referring body wishes to know whether the terms of the specifications set by the Ortuello City Council violate the right to collective bargaining recognized in Article 28 of the Charter of Fundamental Rights of the European Union.

Relation between the EU Charter and ECHR

N/A

Use of Judicial Interaction technique(s)

preliminary reference

Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

N/A

Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

To justify that the preliminary reference is pertinent and necessary to resolve the case, the Spanish tribunal appeal to the CJEU case law (CJUE Judgments of 18 of October of 2012, C-583/10, EU:C:2012:638, paragraph 46-47; Judgments of 7 of November of 2013, C-313/12, EU:C:2013:718, Paragraph 22-23; Judgment of 16 of June of 2022, C-376/21, EU:C:2022:472, Paragraph 55-52). In conclusion, the national tribunal takes in consideration the CJEU case law in order to justify the necessity of the preliminary reference and, therefore, its admission by the Luxembourg Court.

Strategic use of judicial interaction technique (purpose aimed by the national court)

N/A

Impact on Legislation / Policy

N/A

Notes on the national implementation of the preliminary ruling by the referring court

N/A

Did the national court quote case law of the CJEU/ECtHR (in particular cases not already referred to by the CJEU in its decision) or the Explanations?

N/A

Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports?

N/A

Did the national court take into account national case law on fundamental rights?

N/A

If the court that issued the preliminary reference is not a last instance court, and the “follow up” was appealed before a higher court, include the information

N/A

Was there a consensus among national courts on how to implement the CJEU's preliminary ruling; and were there divergences between the judiciary and other state powers regarding the implementation of the preliminary ruling?

N/A

Impact on national case law from the same Member State or other Member States

N/A

Connected national caselaw / templates

N/A

Other

N/A

(Link to) full text

https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:C_202404074

Author

