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Judgment of the Court in Case C-547/22 | INGSTEEL

Public procurement: a tenderer who has been unlawfully excluded from a procurement procedure may claim damages for loss of opportunity

In 2013, the Slovak Football Association excluded a consortium, which included INGSTEEL, from a public procurement procedure for the reconstruction, modernisation and construction of 16 football stadiums. That consortium had been excluded because it had not met the requirements of the contract notice, in particular with regard to its economic and financial standing. Having referred the matter to the Court of Justice for a preliminary ruling ¹, the Slovak Supreme Court annulled that exclusion.

In the meantime, the public procurement procedure was closed by the conclusion of a framework agreement with the only tenderer remaining in the competition. In those circumstances, INGSTEEL brought an action for damages before the District Court of Bratislava II (Slovakia) in respect of the loss it claimed to have suffered as a result of the exclusion of the consortium from that procedure. That court asks the Court of Justice whether the directive governing review of the award of public contracts ² precludes Slovak national legislation or practice which appears to exclude the possibility for a tenderer who has been unlawfully excluded from an award procedure to be compensated for the loss suffered as a result of the loss of the opportunity to participate in that procedure with a view to obtaining the contract concerned.

The Court finds that the directive requires the Member States to award damages to persons harmed by an infringement of EU law on the award of public contracts. However, in the absence of any indication to distinguish different categories of damage, the directive **refers to any type of damage** suffered by such persons, **including that resulting from the loss of the opportunity** to participate in the procedure for the award of a contract. In that regard, the Court points out that, while damage may result from the failure to obtain, as such, a public contract and take the form of loss of profit, it is also possible for a tenderer who has been unlawfully excluded to suffer separate damage, which corresponds to the lost opportunity to participate in the procedure for the award of a public contract concerned in order to obtain that contract.

Consequently, the directive precludes national legislation or a national practice which excludes the possibility, as a matter of principle, for a tenderer who has been unlawfully excluded from a procedure for the award of a public contract to be compensated for the loss suffered as a result of the loss of the opportunity to participate in that procedure with a view to obtaining the contract concerned.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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Images of the delivery of the judgment are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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¹ See judgment of 13 July 2017, INGSTEEL and Metrostav, [C-76/16](#).

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.