



Japan Local Government Centre, London

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European Court of Justice judgement on inter-municipal co-operation

On 9th June 2009, the European Court of Justice made an important ruling for local government all across the European Union, in a landmark case stemming from an action brought by the European Commission against the Federal Republic of Germany. In their judgement, the court says that when delivering public services through inter-communal (or inter-municipal) co-operation, it is not necessary to issue a call for tenders if there is no private partner involved.

It all goes back to 1995, when four German counties near Hamburg entered a contract with the Hamburg public waste organisation (Stadtreinigung Hamburg) about the disposal of their waste in an incineration facility managed by Stadtreinigung Hamburg. The contract was concluded without a call for tenders. This led to private business complaining that they had no chance to bid for this kind of business, and later the case was taken up by the European Commission. The Commission argued that the counties must be regarded as contracting authorities within the meaning of the public procurement, that the contract was for pecuniary interest (in contrast to remuneration), and that therefore it required a public tendering process.

However, the Court of Justice has ruled that the co-operation between the local authorities involved was established solely with the aim of ensuring that a public task which they all have to carry out by law is performed.

The Court of Justice ruled that a public authority must be allowed to perform the public interest tasks with which it is legally charged by using its own resources, without being obliged to call on outside entities, and it may do so in co-operation with other public authorities.

The Court of Justice concluded that EU law (community law) does not require public authorities to use any particular legal form in order to carry out jointly their public service tasks. Secondly, such co-operation between public authorities does not undermine the principal objective of the EU rules on public procurement.

Both the German Association of Counties (Deutscher Landkreistag) and the Council of European Municipalities and Region (CEMR) which represents local government at the European level both welcomed this ruling as

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confirming what local government has emphasised for many years. Co-operation between local authorities is a way to organise services efficiently and cost effectively, and that it is the right of local authorities to decide how best to organise the tasks for which they are responsible.

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