



FRANCE

Administrative courts are competent to examine follow-on actions in the context of public tenders

🕒 *Tribunal des Conflits, Paris area, November 16, 2015*

On November 16, 2015, the French *Tribunal des conflits* ruled that actions for damages resulting from anti-competitive practices relating to public tenders fall within administrative tribunals' jurisdiction.

This judgment was made in the Ile-de-France High Schools case whose facts are well known: companies colluded in the process of bidding on public contracts for the renovation and the reconstruction of schools for which the Ile-de-France region was responsible for providing management, maintenance and construction.

The French Competition Authority (the "FCA") fined the undertakings in question on the basis of Article L. 420-1 of the French Commercial Code concerning cartels. Furthermore, the Paris Criminal Court fined several individuals for

non-material damages. The decision of the FCA and the judgment of the Paris Criminal Court were both upheld on appeal on July 3, 2008, and on February 27, 2007, respectively.

The Ile-de-France region then brought a claim before the Court of First Instance of Paris for the conviction of several individuals in compensation for material damages that resulted from the cartel's actions.

However, the action was deemed statute-barred by a ruling handed down on December 17, 2013. The region then lodged an appeal before the Paris Court of Appeal. The administrative authorities challenged the jurisdiction of civil courts in favor of the administrative judge. After the chamber proved them wrong, the administrative

authorities asked that the case be referred to the French *Tribunal des conflits*.

The French *Tribunal des conflits* reversed the Paris Court of Appeal's judgment, ruling that the dispute was related to the liability of companies and their employees because of actions that led the Ile-de-France region to award contracts on unfavorable price conditions and was intended to compensate for damages resulting from the difference between the terms of the public contracts actually entered into and those that would have been approved under normal competitive conditions.

The French *Tribunal des conflits*' solution is the straight continuation of another judgment handed down on May 23, 2005, *Savoy-SPTV c/ Apalats Company*. The *Tribunal des conflits* held that a dispute between a contracting authority and an applicant based on the award

of a procurement contract fell within administrative tribunals' jurisdiction, even if it did not relate to compliance with public procurement rules or the implementation of the contract.

Similar solutions have also been reached by the French Highest Administrative Court, in a dispute regarding the liability of companies because of fraudulent actions that may have led a public person to enter into a contract with unfavorable terms (Council of State, 19 December 2007, *Campenon Bernard Company and others*)¹ and by the French Civil Highest Court (Cass. Civ., 18 June 2014, No. 13-19 408).²

¹ <https://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000018007825&fastReqId=43985983&fastPos=12>

² <https://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000029116055&fastReqId=560891533&fastPos=1>