

**Questions referred**

1. Is the compensation due on termination of a temporary contract covered by the employment conditions to which Clause 4(1) of the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP refers <sup>(1)</sup>?
2. If such compensation is covered by the employment conditions, must workers with an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions, such as reaching a specific date, completing a specific task or service, or the occurrence of a specific event, receive, on termination of the contract, the same compensation as that to which a comparable permanent worker is entitled when his contract is terminated for objective reasons?
3. If a temporary worker is entitled to receive the same compensation as a permanent worker on termination of the contract for objective reasons, must Article 49(1)(c) of the Estatuto de los Trabajadores (Workers' Statute) be regarded as having correctly transposed Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, or is it discriminatory and contrary to that directive in that it undermines its purpose and its effectiveness?
4. If there are no objective reasons for excluding temporary replacement workers from the entitlement to receive compensation on termination of a temporary contract, is the distinction which the Worker's Statute establishes between the employment conditions of those workers discriminatory, compared not only with the conditions of permanent workers but also with those of other temporary workers?

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<sup>(1)</sup> Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

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**Appeal brought on 22 December 2014 by Office for Harmonisation in the Internal Market (trade marks and designs) (OHIM) against the judgment delivered on 21 October 2014 in Case T-453/11 Szajner v OHIM**

**(Case C-598/14 P)**

(2015/C 096/06)

*Language of the case: French*

**Parties**

*Appellant:* Office for Harmonisation in the Internal Market (trade marks and designs) (represented by: A. Folliard-Monguiral, acting as Agent)

*Other parties to the proceedings:* Gilbert Szajner, Forge de Laguiole

**Form of order sought**

- set aside the judgment under appeal,
- order the applicant before the General Court to pay the costs incurred by the Office.

**Pleas in law and main arguments**

The appellant puts forwards to grounds in support of its appeal, namely, the infringement of Article 65 of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark <sup>(1)</sup> and the infringement of Article 8(4) of that regulation read in conjunction with Article L 711-4 of the French Intellectual Property Code.

According to the appellant, the General Court may annul or amend the decision only where, at the time it was adopted, it was vitiated by one of the grounds for annulment or amendment set out in Article 65(2) of Regulation (EC) No 207/2009. The General Court infringed Article 65(2) of that regulation by misconstruing the scope of its review of legality, which must be restricted to matters of law (including the case-law existing at the time when the decision was adopted) and of fact put forward before the Board of Appeal. The General Court failed to establish that the Board of Appeal had committed an error at the time when the contested decision was adopted. The General Court substituted its own assessment for that of the Board of Appeal and carried out an assessment of the judgment of the French Court of Cassation of 10 July 2012 about which that Board was unable to take a position.

Furthermore, the General Court distorted the judgment of the French Court of Cassation of 10 July 2012 by declaring that it was 'devoid of any ambiguity regarding the scope of protection afforded to a company name and which may be applied generally' and by granting it a scope that it clearly did not have in relation to the other documents in the file, in the context of Article L 711-4 of the French Intellectual Property Code.

Finally, the General Court committed an error by assessing the areas of activity of Forge de Laguiole in the light of the criteria of trade mark law. The General Court should have assessed the areas of activity of Forge de Laguiole with reference to the purpose and use of the goods sold by that company, and not only in the light of the criterion of the nature of the product.

<sup>(1)</sup> OJ 2009 L 78, p. 1.

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**Reference for a preliminary ruling from Supreme Court (Ireland) made on 30 December 2014 —  
James Elliott Construction Limited v Irish Asphalt Limited**

**(Case C-613/14)**

**(2015/C 096/07)**

*Language of the case: English*

**Referring court**

Supreme Court, Ireland

**Parties to the main proceedings**

*Applicant:* James Elliott Construction Limited

*Defendant:* Irish Asphalt Limited

**Questions referred**

- 1 (a) Where the terms of a private contract oblige a party to supply a product produced in accordance with a national standard, itself adopted in implementation of a European standard made pursuant to a mandate issued by the European Commission under the provisions of the Construction Products Directive (89/106/EEC) <sup>(1)</sup>, is the interpretation of the said Standard a matter upon which a preliminary ruling may be sought from the Court of Justice of the European Union pursuant to Article 267 TFEU?
- (b) If the answer to question 1(a) is yes, does EN13242:2002 require that compliance, or breach of the said Standard, be established only by evidence of testing in accordance with the (unmandated) standards adopted by CEN (*Le Comité Européen de Normalisation*) and referred to in EN13242:2002, and where such tests are carried out at the time of production and/or supply; or may breach of the Standard (and accordingly breach of contract), be established by evidence of tests conducted later, if the results of such tests are logically probative of breach of the Standard?
- 2 When hearing a private-law claim for breach of contract in respect of a product manufactured pursuant to a European standard issued pursuant to a mandate from the European Commission under the Construction Products Directive, is a national court obliged to disapply the provisions of national law implying terms as to merchantability and fitness for purpose or quality, on the grounds that either the statutory terms, or their application, create standards or impose technical specifications or requirements which have not been notified in accordance with the provisions of the Technical Standards Directive (98/34/EC) <sup>(2)</sup>?