

**Request for a preliminary ruling from the Tribunal Superior de Justicia de Galicia (Spain) lodged on 17 January 2018 — Cobra Servicios Auxiliares, S.A. v José Ramón Fiuza Asorey and Incatema, S.L.**

**(Case C-30/18)**

(2018/C 142/33)

*Language of the case: Spanish*

**Referring court**

Tribunal Superior de Justicia de Galicia

**Parties to the main proceedings**

*Appellant:* Cobra Servicios Auxiliares, S.A.

*Respondents:* José Ramón Fiuza Asorey and Incatema, S.L.

**Questions referred**

- (1) Must Clause 4 of the framework agreement on fixed-term work contained in the Annex to Directive 1999/70<sup>(1)</sup> be interpreted as precluding national legislation which, in respect of the same set of facts (the termination of a contract for services (contrata) between the employer and a third-party undertaking at the latter's instigation), provides for a lower level of compensation for (i) termination of a fixed-term contract (contrato) for a specific task or service with a term of the same duration as that of the contract between the employer and the third-party undertaking than it does for (ii) termination of the permanent contracts of comparable workers under a collective redundancy that is justified on production-related grounds pertaining to the employer and arises from the termination of the contract between the employer and the third-party undertaking?
- (2) If the answer is in the affirmative, is the unequal treatment between workers on fixed-term contracts and comparable permanent workers as regards compensation for termination of contract in cases where termination is prompted by the same factual circumstances but based on different legal grounds to be considered to constitute discrimination of the type prohibited in Article 21 of the Charter, inasmuch as it is contrary to the principles of equal treatment and non-discrimination in Articles 20 and 21 of the Charter, which form part of the general principles of EU law?

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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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**Request for a preliminary ruling from the Tribunale di Bari (Italy) lodged on 19 January 2018 — Criminal proceedings against Massimo Gambino and Shpetim Hyka**

**(Case C-38/18)**

(2018/C 142/34)

*Language of the case: Italian*

**Referring court**

Tribunale di Bari

**Parties to the main proceedings**

Massimo Gambino, Shpetim Hyka

**Question referred**

Must Articles 16, 18 and 20(b) of Directive 2012/29/EU <sup>(1)</sup> be interpreted as precluding the victim of a crime from having to give evidence again before the court sitting in a new composition when one of the parties to the proceedings, in accordance with Articles 511(2) and 525(2) of the Code of Criminal Procedure (as consistently interpreted by the case-law of the Supreme Court of Cassation), does not consent to that court reading the written record of the oral evidence previously given by that victim, in accordance with the *audi alteram partem* rule, before a different bench in the same proceedings?

<sup>(1)</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ 2012 L 315, p. 57).

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**Appeal brought on 22 January 2018 by the European Commission against the judgment of the General Court (Second Chamber, Extended Composition) delivered on 10 November 2017 in Case T-180/15: Icap plc and Others v European Commission**

(Case C-39/18 P)

(2018/C 142/35)

*Language of the case: English*

**Parties**

*Appellant:* European Commission (represented by: T. Christoforou, V. Bottka, M. Farley, B. Mongin, Agents)

*Other parties to the proceedings:* Icap plc, Icap Management Services Ltd, Icap New Zealand Ltd (ICAP)

**Form of order sought**

The appellant claims that the Court should:

- set aside the judgment (§ § 281-299 and the operative part) insofar as it annuls the fines in Article 2 of the contested decision;
- dismiss the fifth and sixth pleas of ICAP's application before the General Court, relating to the fines, and establish the appropriate fines on ICAP by applying its unlimited jurisdiction;
- order ICAP to bear the entirety of the costs of these proceedings and to adjust the order on costs in the judgment at first instance in order to reflect the outcome of the present appeal.

**Pleas in law and main arguments**

The Commission bases its appeal on the following single ground of appeal:

The Commission submits that in its judgment in Case T-180/15 *Icap plc and Others v Commission*, EU:T:2017:795 the General Court incorrectly applied the case law of the Court of Justice on the statement of reasons required when imposing fines. The General Court's judgment deviates from the leading judgment in Case C-194/14 P, *AC Treuhand v Commission*, EU:C:2015:717, § § 66-68 and imposes a stricter obligation on the Commission to motivate in more detail the methodology used in calculating fines imposed for breaches of Article 101 TFEU, especially when applying point 37 of the Guidelines on Fines. The Commission's appeal aims at correcting the serious errors of law committed by the General Court, which, if accepted, would be detrimental to the Commission's ability to determine adequate fines so as to achieve sufficient deterrence. A properly construed duty of reasoning, which corresponds to the case law requirements recalled in Case C-194/14 P, *AC Treuhand*, § 68, is essential to achieve that aim. By contrast, a stricter obligation of motivation on the fines, encompassing the internal deliberations and calculations of intermediary steps, impinges on the Commission's margin of discretion in setting fines, including when it relies on point 37 of the Guidelines on Fines. The latter was designed precisely with the purpose of allowing the Commission to deviate from the Guidelines on Fines in atypical cases, such as when imposing fines on facilitators. As the Union Courts have recognised, the Commission needs to preserve its power of assessment and discretion in setting appropriate fines.