

Judgment of the Court (Third Chamber) of 24 November 2010 — European Commission v Council of the European Union

(Case C-40/10) ⁽¹⁾

(Actions for annulment — Regulation (EU, Euratom) No 1296/2009 — Annual adjustment of the remuneration and pensions of officials and other servants of the European Union — Method of adjustment — Article 65 of the Staff Regulations — Articles 1 and 3 to 7 of Annex XI to the Staff Regulations — Exception clause — Article 10 of Annex XI to the Staff Regulations — Council's discretion — Adjustment differing from that proposed by the Commission — Review clause allowing for intermediate adjustment of remunerations)

(2011/C 30/15)

Language of the case: French

Parties

Applicant: European Commission (represented by: J. Currall, G. Berscheid and J.-P. Keppenne, Agents)

Defendant: Council of the European Union (represented by: M. Bauer and D. Waelbroeck, Agents)

Intervener in support of the applicant: European Parliament (represented by: S. Seyr and A. Neergaard, Agents)

Intervener in support of the defendant: Kingdom of Denmark (represented by: B. Weis Fogh, Agent), Federal Republic of Germany (represented by: J. Möller and B. Klein, Agents), Hellenic Republic (represented by: A. Samoni-Rantou and S. Chala, Agents), Republic of Lithuania (represented by: D. Kriaučiūnas and R. Krasuckaitė, Agents), Republic of Austria (represented by: E. Riedl, Agent), Republic of Poland (represented by: M. Szpunar, Agent), United Kingdom of Great Britain and Northern Ireland (represented by: S. Behzadi-Spencer and L. Seeboruth, Agents)

Re:

Action for annulment — Council Regulation (EU, Euratom) No 1296/2009 of 23 December 2009 adjusting with effect from 1 July 2009 the remuneration and pensions of officials and other servants of the European Union and the correction coefficients applied thereto (OJ 2009 L 348, p. 10) — Failure to respect the method for the adjustment of salaries and pensions for a reference period — Breach of Article 65 of the Staff Regulations of officials and of Articles 1 and 3 to 7 of Annex XI thereto — Discretion of the Council — Protection of legitimate expectations and the 'patere legem quam ipse fecisti' principle — Review clause allowing the intermediate adjustment of remuneration

Operative part of the judgment

The Court:

1. Annuls Articles 2 and 4 to 18 of Council Regulation (EU, Euratom) No 1296/2009 adjusting with effect from 1 July 2009 the remuneration and pensions of officials and other servants of the European Union and the correction coefficients applied thereto;
2. Maintains the effects of Articles 2 and 4 to 17 of Regulation No 1296/2009 until the entry into force of a new regulation adopted by the Council of the European Union in order to ensure compliance with this judgment;
3. Orders the Council of the European Union to pay the costs;
4. Orders the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Republic of Lithuania, the Republic of Austria, the Republic of Poland, the United Kingdom of Great Britain and Northern Ireland and the European Parliament to bear their own costs.

⁽¹⁾ OJ C 51, 27.2.2010.

Order of the Court (Seventh Chamber) of 6 October 2010 (reference for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo No 2 de Granada-Spain) — Carlos Sáez Snchez, Patricia Rueda Vargas v Junta de Andalucía, Manuel Jalón Morente and Others

(Case C-563/08) ⁽¹⁾

(First subparagraph of Article 104(3) of the Rules of Procedure — Article 49 TFEU — Freedom of establishment — Public health — Pharmacies — Proximity — Provision of medicinal products to the public — Operating licence — Territorial distribution of pharmacies — Establishment of limits based on population density — Minimum distance between pharmacies keywords)

(2011/C 30/16)

Language of the case: Spanish

Referring court

Juzgado de lo Contencioso-Administrativo No 2 de Granada-Spain

Parties to the main proceedings

Applicants: Carlos Sáez Sánchez, Patricia Rueda Vargas

Defendants: Junta de Andalucía, Manuel Jalón Morente and Others

Re:

Reference for a preliminary ruling — Juzgado de lo Contencioso-Administrativo No 2 de Granada — Interpretation of Article 43 EC — Legislation laying down the conditions for the opening of new pharmacies — Limits according to the number of inhabitants and the need to maintain a minimum distance between the pharmacies

Operative part of the order

Article 49 TFEU must be interpreted as not precluding, in principle, national legislation, such as that at issue in the cases before the referring court, which imposes restrictions on the issue of licences for the opening of new pharmacies, by providing that:

- in each pharmaceutical area, a single pharmacy may be opened, as a general rule, per unit of 2800 inhabitants;
- a supplementary pharmacy may not be opened until that threshold has been exceeded, that pharmacy being established for the fraction above 2000 inhabitants; and
- each pharmacy must be a minimum distance away from existing pharmacies, that distance being, as a general rule, 250 metres.

Nevertheless, Article 49 TFEU precludes such national legislation in so far as the basic '2800 inhabitants' and '250 metres' rules prevent, in any geographical area which has special demographic features, the establishment of a sufficient number of pharmacies to ensure adequate pharmaceutical services, that being a matter for the national court to ascertain.

(¹) OJ C 69, 21.03.2009.

Order of the Court (Sixth Chamber) of 1 October 2010 (reference for a preliminary ruling from the Tribunale di Rossano (Italy)) — Franco Affatato v Azienda Sanitaria Provinciale di Cosenza

(Case C-3/10) (¹)

(Article 104(3) of the Rules of Procedure — Social policy — Directive 1999/70/EC — Clause 5 of the Framework Agreement on fixed-term work — Fixed-term employment contracts in the public sector — Successive contracts — Abuse — Preventive measures — Sanctions — Conversion of fixed-term contracts to a contract of unlimited duration — Prohibition — Compensation for damage — Principles of equivalence and effectiveness)

(2011/C 30/17)

Language of the case: Italian

Referring court

Tribunale di Rossano (Italy)

Parties to the main proceedings

Applicant: Franco Affatato

Defendant: Azienda Sanitaria Provinciale di Cosenza

Re:

Reference for a preliminary ruling — Tribunale di Rossano — Interpretation of Clauses 2, 3, 4 and 5 of the Annex to 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) — Compatibility of certain provisions of national law on socially useful workers/publicly useful workers — National legislation that allows not indicating the reason for the first a fixed-term contract for workers in the education sector — Concept of a state body — Inclusion of a person with the characteristics of Poste Italiane SpA

Operative part of the order

1. The first 12 questions referred by the Tribunale di Rossano (Italy), by decision of 21 December 2009, are manifestly inadmissible.
2. Clause 5 of the Framework Agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as meaning that:

— it does not preclude national legislation, such as that in Article 36(5) of Legislative Decree No 165 of 30 March 2001 laying down general rules concerning the organisation of employment in public administrations, which prohibits, in the event of abuse resulting from the use of successive fixed-term employment contracts by a public sector employer, the conversion of those contracts to a contract of unlimited duration, where the internal legal order of the Member State concerned contains, in the sector under consideration, other effective measures to avoid and, as necessary, penalise the abusive use of successive fixed-term contracts. Nevertheless, it is for the national court to assess to what extent the conditions for application and the effective implementation of the relevant provisions of domestic law constitute an adequate measure for the prevention and, as necessary, penalisation of the abusive use by the public administration of successive fixed-term employment contracts or relationships;

— it is, as such, in no way liable to affect the fundamental political and constitutional structures or the essential functions of the Member State concerned within the meaning of Article 4(2) TEU.