Reference for a preliminary ruling from the Monomeles Protodikio Athinon (Greece) lodged on 27 November 2008 — Arkhontia Koukou v Elliniko Dimosio

(Case C-519/08)

(2009/C 44/50)

Language of the case: Greek

Referring court

Monomeles Protodikio Athinon (Court of First Instance, Athens)

Parties to the main proceedings

Claimant: Arkhontia Koukou

Defendant: Elliniko Dimosio (Greek State)

Questions referred

1. Is clause 5 of the framework agreement on fixed-term work set out in the annex to Directive 1999/70/EC to be interpreted as meaning that an objective reason for the entering into of successive fixed-term employment contracts or relationships can be considered to be constituted by the fact that those contracts have been entered into in reliance upon a legislative provision which provides for the entering into of fixed-term employment contracts or relationships, irrespective of whether fixed and permanent needs of the employer are in fact covered by them?

2. Does the addition of criteria for establishing abuse, in the measures which were adopted in implementation of clause 5 of the framework agreement on fixed-term work (for example, a maximum duration of contracts and number of renewals within the framework of which employment is permitted even without an objective reason justifying the entering into or renewal of fixed-term employment contracts or relationships), constitute an impermissible reduction, within the meaning of clause 8(3) of the framework agreement, of the general level of protection that existed prior to Directive 1999/70, given that under the legal regime that preceded that directive the sole criterion for establishing abuse was employment under an employment contract or relationship entered into for a fixed term without an objective reason?

3. Does the enactment of imprecise and non-exhaustive lists of exceptions, such as those set out by the permanent provisions of Presidential Decree No 164/2004, to the maximum limits that are laid down in principle with regard to the entering into of successive fixed-term employment contracts or relationships constitute an effective measure for preventing the abuse that arises from the use of successive fixed-term employment contracts or relationships, for the purposes of clause 5 of the framework agreement on fixed-term work?

4. Can measures such as those at issue in the main proceedings, which were laid down by Article 7 of Presidential Decree No 164/2004, be considered to be effective for preventing and protecting against abuse, for the purposes of clause 5 of the framework agreement, when:

   (a) they lay down, as a means of preventing abuse and protecting fixed-term workers against abuse, the obligation on the employer to pay wages and severance 'compensation' in the event of abuse in the form of employment under successive fixed-term employment contracts, given that (i) the obligation to pay wages and severance 'compensation' is laid down by national law for all employment relationships and is not intended specifically to prevent abuse, within the meaning of the framework agreement, and (ii) in particular, the obligation to pay 'compensation' on the termination of fixed-term employment contracts or relationships is a consequence of the application of clause 4 of the framework agreement which is concerned with fixed-term workers not being discriminated against vis-à-vis the corresponding permanent workers; and

   (b) they provide, as a means of preventing abuse, for penalties to be imposed on the competent organs of the employer, in so far as it has been found that similar or analogous penalties which were also prescribed in the past as regards the public sector were ineffective for combating abuse resulting from the use of successive fixed-term employment contracts or relationships?

5. Is Directive 1999/70 correctly transposed into Greek law by measures, even if they are effective, such as those adopted in Article 11 of Presidential Decree No 164/2004, which entered into force on 19 July 2004, that is to say after the time-limit laid down by Directive 1999/70, and which were given only three months' retroactivity, so that they cover only successive fixed-term employment contracts or relationships that were valid after 19 April 2004 and do not cover fixed-term employment contracts or relationships which continued to be entered into successively even after the expiry of the period for compliance with Directive 1999/70 and before 19 April 2004?

6. If the view is taken that the measures adopted in Presidential Decree No 164/2004 to comply with clause 5 of the framework agreement are not effective, is the court obliged, within the framework of the obligation to interpret national law in conformity with Community law, to apply in conformity with Directive 1999/70 the Greek law which existed before that decree (such as Article 8(3) of Law No 2112/1920), on the basis of which it is possible to achieve protection of the claimant against abuse, in a manner that leads to the elimination of the consequences of the breach of Community law?

7. If the view is taken that the measures adopted in Presidential Decree No 164/2004 are not effective and the legal regime existing before it (Article 8(3) of Law No 2112/1920) is applicable, within the framework of the obligation to interpret national law in conformity with Community law, is it compatible with Community law to interpret national rules

which are formally higher-ranking (Article 103(8) of the Constitution) as prohibiting absolutely the conversion of fixed-term contracts into contracts of indefinite duration, even where it is apparent that in reality those contracts have been entered into by way of an abuse on the legal basis of provisions designed to cover needs that are exceptional and temporary generally, because the contracts covered fixed and permanent needs of a public-sector employer (to this effect, Judgments No 19/2007 and No 20/2007 of the Arios Pagos (Full Court)), when a possible interpretation is also that that prohibition must be limited solely to fixed-term employment contracts which have in fact been entered into to cover temporary, unforeseen, urgent or exceptional needs and not also cover cases where they have in reality been entered into to cover fixed and permanent needs (to this effect, Judgment No 18/2006 of the Arios Pagos (Full Court))?

8. Is it consistent with Community law for disputes relating to fixed-term work and clause 5 of the framework agreement to fall, after the entry into force of Presidential Decree No 164/2004, within the exclusive jurisdiction of the administrative courts, when that renders access of a claimant fixed-term worker to justice more difficult, given that, before the adoption of Presidential Decree No 164/2004, all disputes relating to fixed-term work fell within the jurisdiction of the civil courts under the special labour disputes procedure which is more lenient as regards observance of formal requirements, simpler, less costly for the claimant fixed-term worker and, as a rule, quicker?

Action brought on 2 December 2008 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-526/08)

(2009/C 44/51)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: S. Pardo Quintillán and N. von Lingen, Agents)

Defendant: Grand Duchy of Luxembourg

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply fully and properly with Articles 4 and 5, in conjunction with Annex II A(1) and Annex III 1(1), Annex II A(5) and Annex III 1(2), and Annex II A(2) and Annex II A(6), of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources [1], the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

— order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The Commission raises four complaints in support of its action.

By its first complaint, the Commission criticises the defendant for not complying with the procedures and periods for land application, as laid down in the directive. Although the prohibition on land application during certain periods should cover both organic and artificial fertilisers, the Luxembourg legislation refers solely to organic fertilisers. In addition, the prohibition on the land application of fertilisers during certain periods should relate to all agricultural land, including prairies, which are omitted from the national implementing measures. The Commission also claims that the national legislation should define, with greater precision, those circumstances which may give rise to a derogation from the land application prohibition, as this was not envisaged in the directive.

By its second complaint, the Commission claims that the national legislation does not lay down any requirement for a minimum manure storage capacity for all installations, but refers only to new installations or those being modernised. Such an implementing measure does not comply with the Directive in so far as the existing installations also present pollution risks. The national legislation should, therefore, impose a minimum storage capacity for all installations.

By its third complainant, the Commission claims that, in the context of the prohibition of land application on steeply sloping ground, the national legislation should include all fertilisers, and not only organic fertilisers.

By its fourth and final complaint, it is alleged that the defendant did not adopt sufficient measures concerning land application techniques, in particular, to ensure a uniform and efficient application of fertilisers.

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[1] OJ 1991 L 375, p. 1.