

3. *In circumstances such as those in the main proceedings, the Court's finding, in a judgment following a reference for a preliminary ruling, that the retroactive nature of a national law at issue is incompatible with EU law has no bearing on the starting date of the limitation period laid down by national law in respect of claims against the State.*

(¹) OJ C 113, 1.5.2010.

Judgment of the Court (Grand Chamber) of 6 September 2011 (reference for a preliminary ruling from the Tribunale di Venezia — Italy) — Ivana Scattolon v Ministero dell'Istruzione, dell'Università e della Ricerca

(Case C-108/10) (¹)

(Social policy — Directive 77/187/EEC — Maintenance of the rights of workers in the event of a transfer of an undertaking — Meaning of 'undertaking' and 'transfer' — Transferor and transferee governed by public law — Application, from the date of transfer, of the collective agreement in force with the transferee — Salary treatment — Whether length of service completed with the transferor to be taken into account)

(2011/C 311/12)

Language of the case: Italian

Referring court

Tribunale Ordinario di Venezia

Parties to the main proceedings

Applicant: Ivana Scattolon

Defendant: Ministero dell'Istruzione, dell'Università e della Ricerca

Re:

Reference for a preliminary ruling — Tribunale Ordinario di Venezia — Scope of Council Directives 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (OJ 1977 L 61, p. 26) and 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ 2001 L 82, p. 16) — Interpretation of Article 3(1) of Directive 77/187/EEC — Transfer of local authority cleaning staff from a local authority to the State — Safeguarding of rights, including length of service with the local authority

Operative part of the judgment

1. *The takeover by a public authority of a Member State of staff employed by another public authority and entrusted with the supply to schools of auxiliary services including, in particular, tasks of maintenance and administrative assistance constitutes a transfer of an undertaking falling within Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of*

employees' rights in the event of transfers of undertakings, businesses or parts of businesses, where that staff consists in a structured group of employees who are protected as workers by virtue of the domestic law of that Member State.

2. *Where a transfer within the meaning of Directive 77/187 leads to the immediate application to the transferred workers of the collective agreement in force with the transferee, and where the conditions for remuneration are linked in particular to length of service, Article 3 of that directive precludes the transferred workers from suffering, in comparison with their situation immediately before the transfer, a substantial loss of salary by reason of the fact that their length of service with the transferor, equivalent to that completed by workers in the service of the transferee, is not taken into account when determining their starting salary position with the latter. It is for the national court to examine whether, at the time of the transfer at issue in the main proceedings, there was such a loss of salary.*

(¹) OJ C 134, 22.5.2010.

Judgment of the Court (First Chamber) of 8 September 2011 (reference for a preliminary ruling from the Conseil d'État — Belgium) — European Air Transport SA v Collège d'environnement de la Région de Bruxelles-Capitale, Région de Bruxelles-Capitale

(Case C-120/10) (¹)

(Air transport — Directive 2002/30/EC — Noise-related operating restrictions at Community airports — Noise level limits that must be observed when overflying built-up areas near an airport)

(2011/C 311/13)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: European Air Transport SA

Defendants: Collège d'environnement de la Région de Bruxelles-Capitale, Région de Bruxelles-Capitale

Re:

Reference for a preliminary ruling — Conseil d'État — Interpretation of Articles 2(e), 4(4) and 6(2) of Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports (OJ 2002 L 85, p. 40) — Limits on noise levels to be complied with by aircraft over-flying urban territories located near an airport — Concept of 'operating restrictions' — Restrictions adopted in connection with aircraft which are marginally compliant — Whether it is possible to impose such restrictions on the basis of the noise level as measured on the ground — Effect of the Convention on International Civil Aviation (Chicago Convention)

Operative part of the judgment

Article 2(e) of Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports must be interpreted as meaning that an 'operating restriction' is a prohibition, absolute or temporary, that prevents the access of a civil subsonic jet aeroplane to a European Union airport. Consequently, national environmental legislation imposing limits on maximum noise levels, as measured on the ground, to be complied with by aircraft overflying areas located near the airport, does not itself constitute an 'operating restriction' within the meaning of that provision, unless, in view of the relevant economic, technical and legal contexts, it can have the same effect as prohibitions of access to the airport in question.

(¹) OJ C 148, 5.6.2010.

Judgment of the Court (Grand Chamber) of 6 September 2011 (reference for a preliminary ruling from the Tribunale di Isernia — Italy) — Criminal proceedings against Aldo Patriciello

(Case C-163/10) (¹)

(Member of the European Parliament — Protocol on Privileges and Immunities — Article 8 — Criminal proceedings for the offence of making false accusations — Statements made outside the precincts of the Parliament — Definition of opinion expressed in the performance of parliamentary duties — Immunity — Conditions)

(2011/C 311/14)

Language of the case: Italian

Referring court

Tribunale di Isernia

Party in the main proceedings

Aldo Patriciello

Re:

Reference for a preliminary ruling — Tribunale di Isernia — Interpretation of Article 9 of the Protocol on the privileges and immunities of the European Communities (OJ 1967 152, p. 13) — Member of the European Parliament charged with slander following a false accusation levelled at a representative of the forces of law and order — Notion of the expression of an opinion in the performance of parliamentary duties

Operative part of the judgment

Article 8 of the Protocol on the Privileges and Immunities of the European Union, annexed to the EU, FEU and EAEC Treaties, must be interpreted to the effect that a statement made by a Member of the European Parliament beyond the precincts of that institution and giving rise to prosecution in his Member State of origin for the offence of making false accusations does not constitute

an opinion expressed in the performance of his parliamentary duties covered by the immunity afforded by that provision unless that statement amounts to a subjective appraisal having a direct, obvious connection with the performance of those duties. It is for the court making the reference to determine whether those conditions have been satisfied in the case in the main proceedings.

(¹) OJ C 161, 19.6.2010.

Judgment of the Court (Second Chamber) of 8 September 2011 (reference for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo n° 12 de Sevilla (Spain)) — Francisco Javier Rosado Santana v Consejería de Justicia y Administración Pública de la Junta de Andalucía

(Case C-177/10) (¹)

(Social policy — Directive 1999/70/EC — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Clause 4 — Application of the framework agreement to the civil service — Principle of non-discrimination)

(2011/C 311/15)

Language of the case: Spanish

Referring court

Juzgado de lo Contencioso-Administrativo n° 12 de Sevilla

Parties

Applicant: Francisco Javier Rosado Santana

Defendant: Consejería de Justicia y Administración Pública de la Junta de Andalucía

Re:

Reference for a preliminary ruling — Juzgado de lo Contencioso-Administrativo No 12 de Sevilla — Interpretation of 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) — Clause 4 of the Annex (principle of non-discrimination) — Scope — Discrimination held to be permissible by the constitutional court — Obligations of the national court

Operative part of the judgment

1. Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, set out in the Annex thereto, must be interpreted, on the one hand, as applying to contracts and relationships concluded with the public authorities and other public-sector bodies and, on the other, as precluding any difference in treatment as between career civil servants and comparable interim civil servants of a Member State, based solely on the ground that the latter are employed for a fixed term, unless different treatment is justified on objective grounds for the purposes of clause 4(1) of the framework agreement.