

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Order of the Court (Eighth Chamber) of 7 March 2013 (request for a preliminary ruling from the Consiglio di Stato — Italy) — *Autorità per l'energia elettrica e il gas v Antonella Bertazzi and Others*

(Case C-393/11) ⁽¹⁾

(Article 99 of the Rules of Procedure of the Court of Justice — Social policy — Directive 1999/70/EC — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Clause 4 — Fixed-term employment contracts in the public sector — Stabilisation procedure — Recruitment of workers employed for a fixed term as career civil servants without a public competition — Determination of length of service — Complete disregard of periods of service completed under fixed-term employment contracts — Principle of non-discrimination)

(2013/C 129/02)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedingsApplicant: *Autorità per l'energia elettrica e il gas*

Defendants: *Antonella Bertazzi, Annalise Colombo, Maria Valeria Contin, Angela Filippina Marasco, Guido Giussani, Lucia Lizzi, Fortuna Peranio*

Re:

Request for a preliminary ruling — Consiglio di Stato — Interpretation of Clause 4 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) — National legislation under which it is possible, in derogation from the principle that public officials must be recruited by means of an open competition, for the public administrative authorities to enter into permanent work contracts with workers who have been in the employ of those authorities under fixed-term contracts — No account taken of the length of service accrued on the basis of the earlier, fixed-term contract, even where there is no interruption of the employment relationship

Operative part of the order

Clause 4 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 understood as precluding national legislation, such as that at issue in the main proceedings, which completely prohibits periods of service completed by a fixed-term worker for a public authority being taken into account in order to determine the length of service of that worker upon his recruitment on a permanent basis by that same authority as a career civil servant under a stabilisation procedure specific to his employment relationship, unless the functions carried out under fixed-term employment contracts are not the equivalent of those carried out by a career civil servant belonging to the relevant category of that authority or, if not, that that prohibition is justified on 'objective grounds' for the purposes of clause 4(1) and/or (4), which it is for the referring court to determine. The mere fact that the fixed-term worker completed those periods of service on the basis of a fixed-term employment contract or relationship does not constitute such an objective ground.

⁽¹⁾ OJ C 282, 24.9.2011.

Order of the Court (Fifth Chamber) of 28 February 2013 (request for a preliminary ruling from the Augstākās tiesas Senāts — Latvia) — *SIA Forwards V v Valsts ieņēmumu dienests*

(Case C-563/11) ⁽¹⁾

(Article 99 of the Rules of Procedure — Taxation — VAT — Sixth Directive — Right to deduct — Refusal — Invoice issued by a company considered fictitious)

(2013/C 129/03)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāts

Parties to the main proceedingsApplicant: *SIA Forwards V*

Defendant: Valsts ieņēmumu dienests

Re:

Request for a preliminary ruling — Augstākās tiesas Senāts — Interpretation of Article 17(2)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Right to deduct input VAT — Taxable person fulfilling the requirements imposed by national law for deduction of the tax paid when goods are purchased, without any abusive conduct having been demonstrated — Refusal of the right to deduct VAT if it is established that the other party to the transaction is unable to supply the goods listed on the invoice which is formally in order

Operative part of the order

Article 17(2)(a) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 95/7/EC of 10 April 1995, must be interpreted as precluding the recipient of an invoice from being denied the right to deduct input value added tax on the ground that, in the light of the fraud or irregularities committed by the issuer of that invoice, the transaction corresponding to the invoice is considered not to have been actually carried out, unless it is established, on the basis of objective factors and without requiring of the recipient of the invoice checks which are not its responsibility, that the recipient knew or should have known that that transaction was connected with value added tax fraud, a matter which it is for the referring court to determine.

(¹) OJ C 13, 14.1.2012

Order of the Court (Sixth Chamber) of 7 March 2013 (request for a preliminary ruling from the Tribunal do Trabalho do Porto — Portugal) — Sindicato dos Bancários do Norte, Sindicato dos Bancários do Centro, Sindicato dos Bancários do Sul e Ilhas, Luís Miguel Rodrigues Teixeira de Melo v BPN — Banco Português de Negócios SA

(Case C-128/12) (¹)

(Reference for a preliminary ruling — Article 53(2) of the Rules of Procedure — Charter of Fundamental Rights of the European Union — National legislation establishing salary reductions for certain public sector workers — Failure to implement European Union law — Clear lack of jurisdiction of the Court of Justice)

(2013/C 129/04)

Language of the case: Portuguese

Referring court

Tribunal do Trabalho do Porto

Parties to the main proceedings

Applicants: Sindicato dos Bancários do Norte, Sindicato dos Bancários do Centro, Sindicato dos Bancários do Sul e Ilhas, Luís Miguel Rodrigues Teixeira de Melo

Defendant: BPN — Banco Português de Negócios SA

Re:

Request for a preliminary ruling — Tribunal do Trabalho do Porto — Interpretation of Articles 20, 21(1) and 31(1) of the Charter of Fundamental Rights of the European Union (OJ 2000 C 364, p. 1) — Observance of the principles of equality and non-discrimination and of the right to fair and just working conditions — National legislation providing for salary reductions for certain public sector workers

Operative part of the order

The Court of Justice of the European Union clearly lacks jurisdiction with regard to the request for a preliminary ruling from the Tribunal do Trabalho do Porto (Portugal), made by decision of 6 January 2012.

(¹) OJ C 151, 26.5.2012.

Order of the Court (Seventh Chamber) of 28 February 2013 — Carrols Corp. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) and Giulio Gambettola

(Case C-171/12 P) (¹)

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 51(1)(b) — Community figurative mark Pollo Tropical CHICKEN ON THE GRILL — Application for a declaration of invalidity submitted by the proprietor of the national figurative mark Pollo Tropical CHICKEN ON THE GRILL and the national word mark POLLO TROPICAL — Absolute grounds for invalidity — Bad faith — Inadmissibility)

(2013/C 129/05)

Language of the case: Spanish

Parties

Appellant: Carrols Corp. (represented by: I. Temiño Ceniceros, abogado)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. Crespo Carrillo, acting as Agent), Giulio Gambettola (represented by: F. Brandolini Kujman, abogado)

Re:

Appeal against the judgment of the General Court (Eighth Chamber) of 1 February 2012 in Case T-291/09 *Carrols Corp. v OHIM*, by which that Court dismissed an application for annulment of the decision of the First Board of Appeal of OHIM of 7 May 2009 (Case R 632/2008-1), relating to invalidity proceedings between Carrols Corp. and Mr Giulio Gambettola