



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

11 March 2015*

(Reference for a preliminary ruling — Statute of the European Schools — Competence of the Complaints Board of the European Schools to rule on a fixed-term employment contract entered into between a European school and a teacher not posted or seconded by a Member State)

In Joined Cases C-464/13 and C-465/13,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Bundesarbeitsgericht (Germany), made by decisions of 24 April 2013, received at the Court on 27 August 2013, in the proceedings

Europäische Schule München

v

Silvana Oberto (C-464/13),

Barbara O’Leary (C-465/13),

THE COURT (Fourth Chamber),

composed of L. Bay Larsen (Rapporteur), President of the Chamber, K. Jürimäe, J. Malenovský, M. Safjan and A. Prechal, Judges,

Advocate General: P. Mengozzi,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 15 May 2014,

after considering the observations submitted on behalf of:

- the Europäische Schule München, by H. Kunz-Hallstein, Rechtsanwalt,
- Ms Oberto and Ms O’Leary, by A. Freiherr von Schorlemer, Rechtsanwalt,
- the European Commission, by B. Eggers and J. Currall, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 September 2014,

gives the following

* Language of the cases: German.

Judgment

- 1 These requests for a preliminary ruling concern the interpretation of the first sentence of the first subparagraph of Article 27(2) of the Convention defining the Statute of the European Schools, concluded in Luxembourg on 21 June 1994 between the Member States and the European Communities (OJ 1994 L 212, p. 3).
- 2 The requests have been made in two sets of proceedings between the Europäische Schule München and, respectively, Ms Oberto and Ms O'Leary concerning the jurisdiction of the German courts to deal with actions seeking an examination of the validity of the fixed-term nature of the employment contracts of the parties concerned.

Legal context

The Vienna Convention

- 3 Under Article 1 of the Vienna Convention on the Law of Treaties of 23 May 1969 (*United Nations Treaty Series*, vol. 1155, p. 331; 'the Vienna Convention'), entitled 'Scope of the present Convention', the Vienna Convention applies to treaties between States.
- 4 Article 3 of the Vienna Convention, which is entitled 'International agreements not within the scope of the present Convention', provides:

'The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect:

...

- (b) the application to [such agreements] of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention;

...'

- 5 Under Article 31 of the Vienna Convention, entitled 'General rule of interpretation':

'1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. ... for the purpose of the interpretation of a treaty ...

3. [t]here shall be taken into account, together with the context:

...

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties.

...'

The Convention defining the Statute of the European Schools

- 6 The first, second, third and fourth recitals in the preamble to the Convention defining the Statute of the European Schools state:

‘considering that, for the education together of children of the staff of the European Communities in order to ensure the proper functioning of the European Institutions, establishments bearing the name “European School”, have been set up from 1957 onwards;

considering that the European Communities are anxious to ensure the education together of these children and, for this purpose, make a contribution to the budget of the European Schools;

considering that the European School system is “*sui generis*”; considering that it constitutes a form of cooperation between the Member States and between them and the European Communities while fully acknowledging the Member States’ responsibility for the content of teaching and the organisation of their educational system, and for their cultural and linguistic diversity;

considering that:

...

- adequate legal protection against acts of the Board of Governors or the Administrative Boards should be provided to the teaching staff as well as other persons covered by it; to this end a Complaints Board should be created, with strictly limited jurisdiction;
- the jurisdiction of the Complaints Board will be without prejudice to national courts’ jurisdiction in relation to civil and criminal liability.’

- 7 Article 7 of that convention provides:

‘The organs common to all the Schools shall be:

1. the Board of Governors;
2. the Secretary-General;
3. the Boards of Inspectors;
4. the Complaints Board.

Each School shall be administered by the Administrative Board and managed by the Headteacher.’

- 8 Article 8(1) of that convention provides:

‘1. Subject to Article 28, the Board of Governors shall consist of the following members:

- (a) the representative or representatives at ministerial level of each of the Member States of the European Communities authorised to commit the Government of that Member State, on the understanding that each Member State has only one vote;
- (b) a member of the Commission of the European Communities;
- (c) a representative designated by the Staff Committee (from among the teaching staff) in accordance with Article 22;

(d) a representative of the pupils' parents designated by the Parents' associations in accordance with Article 23.'

9 Article 12(1) of the convention is worded as follows:

'In administrative matters, the Board of Governors shall:

1. lay down the Service Regulations for the Secretary-General, the Headteachers, the teaching staff and, in accordance with Article 9(1)(a), for the administrative and ancillary staff.'

10 Article 19(4) and (6) of the Convention defining the Statute of the European Schools provides:

'Subject to Articles 28 and 29, each Administrative Board provided for in Article 7 shall comprise eight members, as follows:

...

4. two members of the teaching staff, one representing the staff of the secondary school and the other the staff of the primary and nursery schools jointly;

...

6. a representative of the administrative and ancillary staff.'

11 Under the second paragraph of Article 21 of that convention, the headteacher is required to have the competence and the qualifications required in his country for directing an educational establishment providing a leaving certificate entitling the holder to university entrance.

12 Under the first paragraph of Article 22 of that convention, a Staff Committee is to be established comprising elected representatives of the teaching staff and of the administrative and ancillary staff of each school.

13 Article 26 of the convention states:

'The Court of Justice of the European Communities shall have sole jurisdiction in disputes between Contracting Parties relating to the interpretation and application of this Convention which have not been resolved by the Board of Governors.'

14 Article 27(1), (2) and (7) of the Convention defining the Statute of the European Schools provides:

'1. A Complaints Board is hereby established.

2. The Complaints Board shall have sole jurisdiction in the first and final instance, once all administrative channels have been exhausted, in any dispute concerning the application of this Convention to all persons covered by it with the exception of administrative and ancillary staff, and regarding the legality of any act based on the Convention or rules made under it, adversely affecting such persons on the part of the Board of Governors [or] the Administrative Board of a school in the exercise of their powers as specified by this Convention. When such disputes are of a financial character, the Complaints Board shall have unlimited jurisdiction.

The conditions and the detailed rules relative to these proceedings shall be laid down, as appropriate, by the Service Regulations for the teaching staff or by the conditions of employment for part-time teachers, or by the General Rules of the Schools.

...

7. Other disputes to which the Schools are party shall fall within national jurisdiction. In particular, national courts' jurisdiction with regard to matters of civil and criminal liability is not affected by this Article.'

Conditions of Employment for Part-time Teachers

15 Points 1.1 to 1.3 of the Conditions of Employment for Part-time Teachers recruited between 1 September 1994 and 31 August 2011 ('the Conditions of Employment for Part-time Teachers'), adopted by the Board of Governors, provide:

'1.1. The Statute of the European Schools provides for teachers seconded for a given period by the Member States as basic teaching staff.

1.2. In addition to these basic staff, the Schools need part-time teachers ...

1.3. The Conditions of Employment for Part-time Teachers provide for annual contracts. The duties of part-time teachers can vary from year to year according to the number of hours not taught by seconded teachers.

...'

16 According to point 2 of the Conditions of Employment for Part-time Teachers, the headteacher may recruit teachers to meet a temporary need.

17 Points 3.2 and 3.4 of those conditions, which concern the recruitment of temporary teaching staff, provide as follows:

'3.2 The provisions of Articles ... and 80 of [the Regulations for Members of the Seconded Staff] shall apply to teachers recruited by the headteacher.

...

3.4 Legislation of the country in which the School is situated

The conditions of appointment and of dismissal of part-time teachers, teachers of religion and temporary staff shall be governed by the legislation of the country in which the School is situated with respect to employment relationship, social security and taxation regulations, without prejudice to the provisions above.

The courts of the country in which the School is situated shall have jurisdiction in any dispute to be resolved.'

Regulations for Members of the Seconded Staff

18 Article 6(a) of the Regulations for Members of the Seconded Staff of the European Schools ('Regulations for Members of the Seconded Staff'), adopted by the Board of Governors, provides:

'The posts covered by these Regulations shall be classified in the following categories:

(a) Executive staff:

— [headteacher]

...'

19 Article 80 of the Regulations for Members of the Seconded Staff provides:

'1. The Complaints Board shall have sole jurisdiction in the first and final instance in any dispute between the management organs of the School and members of staff regarding the legality of an act adversely affecting them. Where such disputes are of a financial character, the Complaints Board shall have unlimited jurisdiction.

2. A contentious appeal to the Complaints Board, without prejudice to the provisions of Article 77, shall lie only:

— if an administrative appeal within the meaning of Article 79 of these Regulations has been lodged with the Secretary-General or the Board of Inspectors beforehand

and

— if an express or implied decision rejecting the said administrative appeal has been taken.

3. Notwithstanding paragraph 2 above, a contentious appeal against decisions of the Administrative Boards of the Schools and of the Board of Governors may be lodged direct with the Complaints Board.

...'

20 Article 86 of the Regulations for Members of the Seconded Staff is worded as follows:

'The articles in these Regulations which are analogous to articles in the Staff Regulations of Officials of the European Communities shall be interpreted according to the criteria applied by the Commission.'

German law

21 Paragraph 20 of the Law on the constitution of the courts (Gerichtsverfassungsgesetz) ... provides:

'...

(2) Furthermore, the jurisdiction of the German courts shall also not extend to persons ... who are exempt from such jurisdiction pursuant to the general rules of international law or on the basis of international agreements or other provisions of law.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

22 Ms Oberto and Ms O'Leary are part-time teachers at the Europäische Schule München (European School, Munich) who have carried out this function since 1998 and 2003 respectively. Their teaching contracts, signed by the headteacher of that school, were concluded for a fixed term of one year. Their last consecutive teaching contracts, of 13 July 2010, covered the period from 1 September 2010 to 31 August 2011.

23 Paragraph 10 of the teaching contracts of 13 July 2010 entered into between the Europäische Schule München and, respectively, Ms Oberto and Ms O'Leary provided:

'Applicable law, jurisdiction and place of jurisdiction

1. The following apply to the relationship to which the teaching contract relates in the following order: the provisions of this contract, the "New Conditions of Employment" and the provisions of the Regulations for Members of the Seconded Staff ... which are applicable pursuant to point 3.2 of the New Conditions of Employment. Under point 3.4 of the Conditions of Employment, German law applies only in so far as this contract and the service law of the European Schools applicable to the contract do not contain any provisions and only in so far as the gap in the provisions of this contract relates to an employment relationship in respect of which no provision has been made, to social security and to taxation regulations.

2. In respect of disputes between the School and the part-time teacher arising out of the present contract, the Complaints Board has sole jurisdiction under Article 80 of the Regulations for Members of the Seconded Staff ... in so far as the legal relationships of the parties are governed by the contract and service law of the European Schools. Recourse may be had to the national German courts, pursuant to point 3.4 of the Conditions of Employment for Part-time Teachers ..., only in the case of disputes between the School and the part-time teacher which relate exclusively to matters in respect of which German law applies in accordance with subparagraph 1 above.'

24 By two actions brought before the Arbeitsgericht München (Labour Court, Munich), Ms Oberto and Ms O'Leary challenged the one-year limitation on the duration of their employment contracts. They argued before the Arbeitsgericht München that the German courts have jurisdiction to rule on the validity of the fixed-term nature of their employment relationships. By means of an interlocutory ruling, the Arbeitsgericht München, notwithstanding the plea of inadmissibility raised by the Europäische Schule München, declared those actions to be admissible.

25 As the appeal brought by the Europäische Schule München was not successful, it brought an appeal on a point of law ('Revision') before the Bundesarbeitsgericht (Federal Labour Court). The Europäische Schule München has claimed before that court that it is not subject to the German courts, as the main proceedings fall within the exclusive competence of the Complaints Board of the European Schools.

26 In that context, the Bundesarbeitsgericht is uncertain as to whether German courts have jurisdiction to deal with the disputes in the main proceedings. The referring court considers that the decision which it will have to take on the issue of jurisdiction is dependent on the interpretation of the first sentence of the first subparagraph of Article 27(2) of the Convention defining the Statute of the European schools.

27 In those circumstances, the Bundesarbeitsgericht decided to stay the proceedings and to refer, in each of the cases in the main proceedings, the following questions to the Court of Justice for a preliminary ruling:

'(1) Is the first sentence of the first subparagraph of Article 27(2) of the Convention defining the Statute of the European Schools to be interpreted as meaning that part-time teachers employed by a European school, who are not seconded by the Member States, are persons covered by the Convention defining the Statute of the European Schools and are not — unlike the administrative and ancillary staff — excepted from the application of that provision?

(2) If the Court of Justice answers the first question in the affirmative:

Is the first sentence of the first subparagraph of Article 27(2) of the Convention defining the Statute of the European Schools to be interpreted as meaning that that provision also covers the legality of any act, based on the Convention or on the rules made under it, which is performed in relation to part-time teachers by the headteacher of a school in the exercise of his powers and which adversely affects such part-time teachers?

(3) If the Court of Justice answers the second question in the affirmative:

Is the first sentence of the first subparagraph of Article 27(2) of the Convention defining the Statute of the European Schools to be interpreted as meaning that the conclusion of a contract between the headteacher of a European school and a part-time teacher concerning the fixed-term nature of the part-time teacher's employment relationship constitutes an act which is performed by the headteacher in relation to that part-time teacher and which adversely affects the latter?

(4) If the Court of Justice answers the second or third question in the negative:

Is the first sentence of the first subparagraph of Article 27(2) of the Convention defining the Statute of the European Schools to be interpreted as meaning that the Complaints Board referred to therein has exclusive jurisdiction in the first and final instance, once all administrative channels have been exhausted, in any dispute relating to the fixed-term nature of a contract of employment which the headteacher of a school concludes with a part-time teacher if that contract is essentially based on the requirement of the Board of Governors in point 1.3 of the Conditions of Employment for Part-time Teachers, which provides for "annual contracts"?

Consideration of the questions referred

The jurisdiction of the Court

28 Ms Oberto and Ms O'Leary have contested the jurisdiction of the Court to interpret the provisions of the Convention defining the Statute of the European Schools, on the ground that that convention should not be considered to be part of EU law.

29 In this regard, it should be borne in mind that an agreement entered into by the Council of the European Union under Articles 217 TFEU and 218 TFEU is, as far as the European Union is concerned, an act of an EU institution within the meaning of point (b) of the first paragraph of Article 267 TFEU and, as from its entry into force, the provisions of such an agreement form an integral part of the EU legal system; within the framework of that system the Court has jurisdiction to give preliminary rulings concerning the interpretation of such an agreement (see judgment in *Demirel*, 12/86, EU:C:1987:400, paragraph 7).

- 30 The same is true of an international agreement, such as the Convention defining the Statute of the European Schools, which was concluded on the basis of Article 235 of the EC Treaty (which became Article 308 EC, now Article 352 TFEU) by the European Communities, which were empowered to do so by Council Decision 94/557/EC, Euratom of 17 June 1994 authorising the European Community and the European Atomic Energy Community to sign and conclude the Convention defining the Statute of the European Schools (OJ 1994 L 212, p. 1).
- 31 The Court therefore has jurisdiction to give preliminary rulings on the interpretation of that convention and of the acts adopted on the basis thereof.

Preliminary observations

- 32 First of all, it should be borne in mind that the European schools system is a *sui generis* system, which achieves, by means of an international agreement, a form of cooperation between the Member States and between those States and the European Union (see judgment in *Miles and Others*, C-196/09, EU:C:2011:388, paragraph 39).
- 33 It also follows from the case-law that the European schools are an international organisation which, despite the functional links which it has with the European Union, remains formally distinct from it and from its Member States (see, to that effect, judgment in *Miles and Others*, EU:C:2011:388, paragraph 42).
- 34 Therefore, although the Convention defining the Statute of the European Schools constitutes, as far as the European Union is concerned, an act of one of the institutions of the European Union, within the meaning of point (b) of the first paragraph of Article 267 TFEU, it is also governed by international law and, more specifically, as regards its interpretation, by the international law of treaties (see, to that effect, judgment in *Brita*, C-386/08, EU:C:2010:91, paragraph 39).
- 35 The international law of treaties was consolidated, essentially, in the Vienna Convention. Under Article 1 of that convention, the latter applies to treaties between States. However, under Article 3(b) of that convention, the fact that it does not apply to international agreements concluded between States and other subjects of international law is not to affect the application to such agreements of any of the rules set forth in the Vienna Convention to which they would be subject under international law independently of that convention.
- 36 It follows that the rules laid down in the Vienna Convention apply to an agreement concluded between the Member States and an international organisation, such as the Convention defining the Statute of the European Schools, in so far as those rules are an expression of general international customary law. Consequently, that convention must be interpreted in accordance with those rules (see, to that effect, judgment in *Brita*, EU:C:2010:91, paragraph 41).
- 37 Pursuant to Article 31 of the Vienna Convention, which expresses general customary international law (see, to that effect, judgment in *Commission v Finland*, C-118/07, EU:C:2009:715, paragraph 39), a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of that treaty in their context and in the light of its object and purpose (see judgment in *Brita*, EU:C:2010:91, paragraph 43).
- 38 Moreover, in accordance with Article 31(3)(b) of the Vienna Convention, account must be taken, when interpreting a treaty, of any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.

Question 1

- 39 By Question 1, the referring court asks, essentially, whether the first sentence of the first subparagraph of Article 27(2) of the Convention defining the Statute of the European Schools must be interpreted as meaning that part-time teachers employed by a European school, who are not seconded by the Member States, are among the persons covered by that provision, unlike the administrative and ancillary staff, who are excluded from it.
- 40 In this regard, it must be noted that, under the first sentence of the first subparagraph of Article 27(2) of that convention, as well as under the second subparagraph of Article 27(2) thereof, first, the Complaints Board of the European Schools is to have sole jurisdiction in the first and final instance, once all administrative channels have been exhausted, in any dispute concerning the application of that convention to all persons covered by it, with the exception of administrative and ancillary staff, and, second, the conditions and detailed rules relative to these proceedings are to be laid down, as appropriate, by the Service Regulations for the teaching staff or by the Conditions of Employment for Part-time Teachers.
- 41 It follows therefore from the wording of Article 27(2) of the Convention defining the Statute of the European Schools that part-time teachers are among the persons referred to in the first sentence of the first subparagraph of that provision of the Convention, unlike the administrative and ancillary staff, who are excluded.
- 42 Such an interpretation is also supported by the context of Article 27(2) of the Convention defining the Statute of the European Schools.
- 43 As noted by the Commission in its observations, it is clear from that convention, in particular Article 19.4 and 19.6 and the first paragraph of Article 22 thereof, that it draws a clear distinction between the teaching staff, on the one hand, and the administrative and ancillary staff, on the other.
- 44 Consequently, the answer to Question 1 is that the first sentence of the first subparagraph of Article 27(2) of the Convention defining the Statute of the European Schools must be interpreted as meaning that part-time teachers employed by a European school who are not seconded by the Member States are among the persons covered by that provision, unlike the administrative and ancillary staff, who are excluded from it.

Question 3

- 45 By Question 3, which it is appropriate to examine before Question 2, the referring court asks, essentially, whether the first sentence of the first subparagraph of Article 27(2) of the Convention defining the Statute of the European Schools must be interpreted as meaning that an agreement concerning the fixed-term nature of the employment relationship contained in the employment contract entered into between the school and the part-time teacher constitutes an act adversely affecting that part-time teacher.
- 46 It should be noted, in this regard, that that convention contains no definition of the notion of an 'act ... adversely affecting' a person contained in the first sentence of the first subparagraph of Article 27(2) thereof.
- 47 As noted by the Europäische Schule München and the Commission, there is a discrepancy between the different language versions of that convention in regard to the words 'act ... adversely affecting', some of which, including the Spanish, English, French and Italian versions, use, respectively, the words 'un acto', 'any act', 'un acte' and 'un atto', which are broader in scope than that used in the German version, namely 'Entscheidung', or, literally, 'decision'.

- 48 In that regard, it must be recalled that, according to the fifth indent of the fourth recital in the preamble to the Convention defining the Statute of the European Schools, that convention has, among its objectives, that of providing to the teaching staff, as well as to other persons covered by that convention, adequate legal protection against acts of the Board of Governors or the Administrative Boards.
- 49 Since nothing, moreover, in the convention or in the measures adopted to give it effect, which must be taken into account by reason of Article 31(3)(c) of the Vienna Convention, opposes it, it is appropriate, having regard in particular to the objective reiterated in the preceding paragraph of the present judgment, to favour, in the present case, a broad interpretation of the notion of an 'act ... adversely affecting' a person.
- 50 It should be noted that, in accordance with the second subparagraph of Article 27(2) of the Convention defining the Statute of the European Schools, the Conditions of Employment for Part-time Teachers, which determine, inter alia, the conditions and detailed rules relative to proceedings brought before the Complaints Board, provide, in point 3.2, that Article 80 of the Regulations for Members of the Seconded Staff, which features in Title VII thereof, dealing with appeals, applies to part-time teachers, as the Complaints Board of the European Schools has sole jurisdiction in the first and final instance in any dispute between the management organs of the European schools and part-time teachers regarding the legality of 'any ... act adversely affecting' the latter.
- 51 In this regard, it is clear that Article 80(1) of the Regulations for Members of the Seconded Staff is formulated in a manner analogous to Article 91 of the Staff Regulations of Officials of the European Communities (Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ, English Special Edition 1968(I), p. 30)), under which the Court of Justice of the European Union is to have jurisdiction in any dispute between the European Union and any person to whom the Staff Regulations apply with regard to the legality of an act adversely affecting such a person within the meaning of Article 90(2) thereof.
- 52 Furthermore, in accordance with Article 86 of the Regulations for Members of the Seconded Staff, the articles in those regulations which are analogous to articles in the Staff Regulations of Officials of the European Union are to be interpreted in accordance with the criteria applied by the Commission.
- 53 According to established case-law of the Court, only acts which directly and individually affect the legal position of the persons concerned may be regarded as acts adversely affecting them. Likewise, the Court has repeatedly interpreted the expression 'act adversely affecting' a person, within the meaning of Article 90 of the Staff Regulations of Officials of the European Union, as referring to any act that is capable of directly affecting an official's legal position (see, inter alia, order in *Strack v Commission*, C-237/06 P, EU:C:2007:156, paragraph 62 and the case-law cited).
- 54 Moreover, the Court has already held, in the context of a dispute between a member of the auxiliary staff and the Commission, that the 'act adversely affecting' that person, within the meaning of Article 90(2) of those Regulations, was, in that case, the contract of employment (see judgment in *Castagnoli v Commission*, 329/85, EU:C:1987:352, paragraph 11).
- 55 Consequently, the employment contract of a part-time teacher must be regarded as constituting an 'act adversely affecting' that person within the meaning of Article 80 of the Regulations for Members of the Seconded Staff, *a fortiori* where, as in the present case, the matter in issue is an element of the contract imposed by the applicable law, such as its duration, which arises directly from the application of point 1.3 of the Conditions of Employment for Part-time Teachers.

56 In the light of the foregoing, the answer to Question 3 is that the first sentence of the first subparagraph of Article 27(2) of the Convention defining the Statute of the European Schools must be interpreted as not precluding an agreement concerning the fixed-term nature of the employment relationship, contained in the employment contract concluded between the school and the part-time teacher, from being regarded as constituting an act adversely affecting that part-time teacher.

Question 2

57 By Question 2, the referring court asks whether the first sentence of the first subparagraph of Article 27(2) of the Convention on the Statute of the European Schools must be interpreted as meaning that an act carried out by the headteacher of the school in the exercise of his powers comes under that provision.

58 It must be noted that the mere fact that the acts of the headteacher are not expressly mentioned in the first sentence of the first subparagraph of Article 27(2) of that convention cannot have the effect of excluding them from the scope of that provision.

59 First, it must be recalled that, under the second subparagraph of Article 27(2) of the Convention defining the Statute of the European Schools, the conditions and detailed rules relative to proceedings brought before the Complaints Board are to be laid down, as appropriate, in particular by the Service Regulations for the teaching staff or by the Conditions of employment for part-time teachers.

60 Second, the Convention defining the Statute of the European Schools must be interpreted, in particular, in accordance with Article 31 of the Vienna Convention, under which it is appropriate to take into account any relevant rules of international law applicable in the relations between the parties and to attach great importance to any subsequent practice in the application of the Convention defining the Statute of the European Schools.

61 In that regard, as is clear from the case-law of the International Court of Justice, the subsequent practice followed in the application of a treaty may override the clear terms of that treaty if that practice reflects the parties' agreement (ICJ, Case concerning the Temple of Preah Vihear (*Cambodia v Thailand*), judgment of 15 June 1962, ICJ Reports 1962, p. 6).

62 Therefore, in order to determine the scope of the words 'act ... on the part of the board of Governors [or] the Administrative Board of a school' contained in the first sentence of the first subparagraph of Article 27(2) of the Convention, it is appropriate to refer to any relevant rule of international law applicable in the relations between the parties and to any subsequent practice in the application of the Convention defining the Statute of the European Schools.

63 In the present case, it should be noted that, under Article 80 of the Regulations for Members of the Seconded Staff, to which point 3.2 of the Conditions of Employment for Part-time Teachers refers and which determines, in accordance with the second subparagraph of Article 27(2) of the Convention defining the Statute of the European Schools, certain conditions and detailed rules relating to proceedings before the Complaints Board of the European Schools, the sole jurisdiction of the latter extends to any dispute between the management organs of the European schools and members of staff regarding the legality of any act which adversely affects the latter. It is clear, in particular from the last paragraph of Article 7 of that convention, read in conjunction with the second paragraph of Article 21 thereof, and from Article 6(a) of and Annex I to the Regulations for Members of the Seconded Staff, that the headteacher of a European school is a management organ of that school.

- 64 The wording of Article 80 of the Regulations for Members of the Seconded Staff therefore differs from that of the first sentence of the first subparagraph of Article 27(2) of the Convention defining the Statute of the European Schools.
- 65 The case-law of the Complaints Board of the European Schools has subsequently developed on the basis of Article 80 of the Regulations for Members of the Seconded Staff; according to that case-law, it is possible to bring proceedings against acts adversely affecting an individual carried out by the management organs of the European schools. That case-law should be considered to be a subsequent practice in the application of the Convention defining the Statute of the European Schools within the meaning of Article 31(3)(b) of the Vienna Convention.
- 66 That practice has never been the subject of challenge by the parties to that convention. The absence of any challenge by those parties must be regarded as reflecting their tacit agreement to such a practice.
- 67 It follows that it is appropriate to categorise that practice, based on Article 80 of the Regulations for Members of the Seconded Staff, as establishing the agreement of the parties on the matter of the interpretation of the first sentence of the first subparagraph of Article 27(2) of the Convention defining the Statute of the European Schools. That same practice is therefore liable to override the wording of Article 27(2) of the Convention, which must therefore be read as not precluding the acts of the management organs of the European schools from, in principle, being regarded as covered by Article 27(2) of the Convention defining the Statute of the European schools.
- 68 With regard to the effect of point 3.4 of the Conditions of Employment for Part-time Teachers on the dispute in the main proceedings, it should be borne in mind that, under that provision, the courts of the country in which a European school is situated are to have jurisdiction in any dispute to be resolved concerning the conditions of appointment and dismissal of part-time teachers, teachers of religion and temporary staff who are to be governed by the courts of the country in which that school is situated with respect to employment-relationship, social-security and taxation regulations, without prejudice to the provisions above.
- 69 To the extent to which that dispute concerns the limitation of the duration of the employment contract, such as provided for in point 1.3 of the Conditions of Employment for Part-time Teachers, it cannot come within the jurisdiction of the courts of the country in which the European school concerned is situated. Moreover, that finding is also reflected in Article 10(2) of the teaching contracts concluded between the parties to the main proceedings.
- 70 It follows that it is appropriate to take the view that points 1.3, 3.2 and 3.4 of the Conditions of Employment for Part-time Teachers must be interpreted as meaning that a dispute as to the legality of an agreement on limiting the duration of the employment relationship included in the employment contract entered into between a part-time teacher and the headteacher of a European school comes within the exclusive jurisdiction of the Complaints Board of the European Schools.
- 71 Furthermore, contrary to what Ms Oberto and Ms O'Leary submitted at the hearing, it should be noted that that interpretation of the relevant provisions of the Convention defining the Statute of the European Schools and of the Conditions of Employment for Part-time Teachers, according to which that Complaints Board has exclusive jurisdiction to rule on a dispute such as that at issue in the main proceedings, does not adversely affect the right of the interested parties to effective judicial protection.
- 72 So far as the Complaints Board of the European Schools is concerned, the Court has held that it satisfies all of the requirements which must be met in order for a body to be recognised as 'a court or tribunal' for the purposes of Article 267 TFEU, in particular that it is established by law, is permanent, its jurisdiction is compulsory, its procedure is *inter partes*, it applies rules of law and it is independent, with the exception of the requirement that it be a court or tribunal of one of the Member States (see, to that effect, judgment in *Miles and Others*, EU:C:2011:388, paragraphs 37 to 39).

- 73 Next, it should be borne in mind that, under Article 47 of the Charter of Fundamental Rights of the European Union, the principle of effective judicial protection does not afford a right of access to a second level of jurisdiction but only to a court or tribunal (see judgment in *Sánchez Morcillo and Abril García*, C-169/14, EU:C:2014:2099, paragraph 36).
- 74 Finally, although the Court stated in the judgment in *Miles and Others* (EU:C:2011:388, paragraphs 43 to 45) that it did not have jurisdiction to answer the question raised by the Complaints Board of the European Schools because the latter does not constitute a 'court or tribunal of a Member State' within the meaning of Article 267 TFEU, it also accepted the possibility, or indeed the obligation, which that Complaints Board has to refer a question to the Court in the course of a dispute between teachers seconded to a European school and that school, in which it is appropriate to apply the general principles of EU law, but that it was for the Member States to reform the system of judicial protection established by the Convention defining the Statute of the European Schools currently in force.
- 75 The view must therefore be taken that the obligation for the respondents in the main proceedings to bring their dispute relating to the legality of an agreement on limiting the duration of the employment relationship included in their employment contracts entered into with the headteacher of the Europäische Schule München before the Complaints Board of the European Schools, which rules in the first and final instance and is not entitled to apply to the Court for a preliminary ruling, does not affect the respondents' right to effective judicial protection.
- 76 In the light of the foregoing, the answer to Question 2 is that the first sentence of the first subparagraph of Article 27(2) of the Convention defining the Statute of the European Schools must be interpreted as not precluding an act carried out by the headteacher of a European school in the exercise of his powers from coming, in principle, within the scope of that provision. Points 1.3, 3.2 and 3.4 of the Conditions of Employment for Part-time Teachers must be interpreted as meaning that a dispute concerning the legality of an agreement on limiting the duration of the employment relationship included in the employment contract concluded between a part-time teacher and that headteacher comes within the exclusive jurisdiction of the Complaints Board of the European Schools.

Question 4

- 77 In view of the answer to Question 2, there is no need to answer Question 4.

Costs

- 78 Since these proceedings are, for the parties to the main proceedings, a step in the actions pending before the national court, the decisions on costs are a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

- 1. The first sentence of the first subparagraph of Article 27(2) of the Convention defining the Statute of the European Schools, concluded in Luxembourg on 21 June 1994 between the Member States and the European Communities, must be interpreted as meaning that part-time teachers employed by a European school who are not seconded by the Member States are among the persons covered by that provision, unlike the administrative and ancillary staff, who are excluded from it.**

2. **The first sentence of the first subparagraph of Article 27(2) of the Convention defining the Statute of the European Schools must be interpreted as not precluding an agreement concerning the fixed-term nature of the employment relationship, contained in the employment contract concluded between the school and the part-time teacher, from being regarded as constituting an act adversely affecting that part-time teacher.**
3. **The first sentence of the first subparagraph of Article 27(2) of the Convention defining the Statute of the European Schools must be interpreted as not precluding an act carried out by the headteacher of a European school in the exercise of his powers from coming, in principle, within the scope of that provision. Points 1.3, 3.2 and 3.4 of the Conditions of Employment for Part-time Teachers recruited between 1 September 1994 and 31 August 2011 must be interpreted as meaning that a dispute concerning the legality of an agreement on limiting the duration of the employment relationship included in the employment contract concluded between a part-time teacher and that headteacher comes within the exclusive jurisdiction of the Complaints Board of the European Schools.**

[Signatures]