

6. How must the above regulations be interpreted in the event that local action groups which have hitherto conducted their activities efficiently and legally are abolished? What happens in such a case to the obligations undertaken and the rights acquired by local action groups, having particular regard to the whole group of bodies affected by the abolition?
7. Can Article 62(2) of Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) be interpreted as meaning that a provision is acceptable and complies with the law if, under it, a Member State requires Leader local action groups which take the form of non-profit companies to convert into associations within a year on the ground that only the association as a legal form of company organisation can properly guarantee the creation of a network between local members, given that, under the applicable Hungarian law, the fundamental aim of a company is the obtaining of profits and the involvement of economic interests prevents the attraction of the public and the recruitment of new members?

⁽¹⁾ Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2005 L 277, p. 1).

⁽²⁾ Commission Regulation (EC) No 1974/2006 of 15 December 2006 laying down detailed rules for the application of Council Regulation (EC) No 1698/2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ 2006 L 368, p. 15).

Request for a preliminary ruling from the Kúria (Hungary) lodged on 21 January 2013 — Kásler Árpád, Káslerné Rábai Hajnalka v OTP Jelzálogbank Zrt.

(Case C-26/13)

(2013/C 156/28)

Language of the case: Hungarian

Referring court

Kúria

Parties to the main proceedings

Applicants: Kásler Árpád, Káslerné Rábai Hajnalka

Defendant: OTP Jelzálogbank Zrt.

Questions referred

1. Must Article 4(2) of Council Directive 93/13/EEC (⁽¹⁾) of 5 April 1993 on unfair terms in consumer contracts ('the Directive') be interpreted as meaning that, in the case of a debt in respect of a loan which is denominated in a foreign currency but, in reality, is advanced in the national currency, and which is repayable by the consumer solely in national currency, the contractual clause concerning the rate of

exchange of the currency, which was not individually negotiated, may form part of the 'definition of the main subject matter of the contract'?

If that is not the case, on the basis of the second indent of Article 4(2) of the Directive, must it be considered that the difference between the buying rate of exchange and the selling rate of exchange constitutes remuneration whose equivalence with the service provided cannot be analysed from the viewpoint of unfairness? In this regard, does the question whether there has in fact been a foreign exchange operation between the financial entity and the consumer have any impact?

2. If it were necessary to interpret Article 4(2) of the Directive as meaning that the national court is also entitled to examine, regardless of the provisions of its national law, the unfairness of the contractual clauses referred to in that article, provided that such clauses are not drafted in a clear and intelligible manner, must it be considered, in the light of the latter requirement, that the contractual clauses must in themselves appear to be clear and intelligible to the consumer from the grammatical point of view or, in addition, must the economic reasons for using the contractual clause and its relationship with the other contractual clauses also be clear and intelligible?
3. Must Article 6(1) of the Directive and paragraph 73 of the judgment of the Court of Justice in Case C-618/10 *Banco Español de Crédito* be interpreted as meaning that the national court is not entitled to eliminate, for the benefit of the consumer, [the causes] of ineffectiveness of an unfair clause included in the general conditions of a loan contract concluded with a consumer, amending the contractual clause in question and completing the contract, not even where, otherwise, if such a clause is eliminated, the contract cannot be performed on the basis of the remaining contractual clauses? In that regard, is it relevant that national law contains a provision which, in the event of omission of the ineffective clause, governs [in its place] the legal question at issue?

⁽¹⁾ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Request for a preliminary ruling from the Tribunale di Napoli (Italy) lodged on 22 February 2013 — Luigi D'Aniello and Others v Poste Italiane SpA

(Case C-89/13)

(2013/C 156/29)

Language of the case: Italian

Referring court

Tribunale di Napoli

Parties to the main proceedings

Applicants: Luigi D'Aniello and Others

Defendant: Poste Italiane SpA

Questions referred

1. Is it contrary to the principle of equivalence if, in implementing Directive 1999/70/EC, ⁽¹⁾ national legislation makes provision, for cases where an employment contract is unlawfully suspended by operation of a clause which sets an expiry date, for economic consequences which are different from and considerably less favourable than the economic consequences which are to ensue in cases where an ordinary civil law contract is suspended by operation of a clause which sets an expiry date?
2. Is it compatible with the law of the European Union that the effectiveness, within the scope of its application, of a penalty benefits the employer who has acted wrongfully, to the detriment of the employee who has been wronged, in such a way that the temporal duration and the physical demands of the procedure directly damage the employee to the advantage of the employer, and the efficacy in remedial terms is inversely proportional to the length of the process, so far as almost to be cancelled out?
3. Within the scope of European Union law under Article 51 of the Charter [of Fundamental Rights], is it compatible with Article 47 of [that] Charter ... and Article 6 of the European Convention on Human Rights for the temporal duration and the physical demands of the procedure directly to damage the employee to the advantage of the employer and for the efficacy in remedial terms to be inversely proportional to the length of the procedure, so far as almost to be cancelled out?
4. In the light of the explanations given in Article 3(1)(c) of Directive 2000/78/EC ⁽²⁾ and Article 14(1)(c) of Directive 2006/54/EC, ⁽³⁾ does the notion of 'employment conditions' referred to in Clause 4 of Directive 1999/70/EC also cover the consequences ensuing from the unlawful interruption of an employment relationship?
5. In the event that [Question 4] is answered in the affirmative, is the difference between the consequences normally provided for under national law in relation to the unlawful interruption of a permanent employment relationship, on the one hand, and the consequences in the case of a fixed-term employment relationship, on the other, justifiable under Clause 4 [of Directive 1999/70/EC]?
6. On a proper construction of the general Community law principles of legal certainty, protection of legitimate expectations, equality of arms in proceedings, effective judicial protection, and the right to an independent and impartial tribunal and, more generally, to a fair hearing, guaranteed by Article 6(2) of the Treaty on European Union (as amended by Article 1(8) of the Treaty of Lisbon and to which Article 46 of the Treaty on European Union refers), read in conjunction with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950,

and with Articles 46, 47 and 52(3) of the Charter of Fundamental Rights of the European Union, proclaimed at Nice on 7 December 2000, as implemented by the Treaty of Lisbon, do those principles preclude the adoption by the Italian State, after a significant period of time, of a provision (such as Article 32(7) of Law No 83/10 as interpreted by Article 1(13) of Law No 92/12) which alters the consequences of ongoing proceedings directly to the detriment of the employee and to the advantage of the employer, the result being that the efficacy in remedial terms is inversely proportional to the length of the process, so far as almost to be cancelled out?

7. In the event that the Court of Justice does not recognise the above principles as having the authority of fundamental principles of the European Union for the purposes of their horizontal application *erga omnes*, with the effect that a provision such as Article 32(5) to (7) of Law No 183/10 (as interpreted by Article 1(13) of Law No 92/12) is incompatible only with the obligations under Directive 1999/70/EC and the Charter [of Fundamental Rights], must a company such as the defendant company be regarded as a public body for the purposes of the direct, 'ascending' vertical application of European Union law and, in particular, of Clause 4 of Directive 1999/70/EC, and the Charter?
8. In the event that the Court of Justice ... answers Questions 1, 2, 3 or 4 in the affirmative, does the duty to cooperate in good faith — a fundamental principle of the European Union — make it possible for an interpretative provision, such as Article 1(13) of Law No 92/12, which makes it impossible to observe the principles confirmed by the answers to Questions 1 to 4, not to be applied?

⁽¹⁾ 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).

⁽²⁾ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

⁽³⁾ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ 2006 L 204, p. 23).

Request for a preliminary ruling from the Verwaltungsgerichtshof Baden-Württemberg (Germany) lodged on 28 February 2013 — U v Stadt Karlsruhe

(Case C-101/13)

(2013/C 156/30)

Language of the case: German

Referring court

Verwaltungsgerichtshof Baden-Württemberg