



## Reports of Cases

Case C-260/17

**Anodiki Services EPE**

v

**GNA, O Evangelismos — Ofthalmiatreio Athinon — Polykliniki**

and

**Geniko Oγκολογικο Nosokomeio Kifisias — (GONK) ‘Oi Agioi Anargyroi’**

(Request for a preliminary ruling from the Symvoulío tis Epikrateias)

(Reference for a preliminary ruling — Public procurement — Directive 2014/24/EU — Article 10(g) — Exclusions from its scope — Employment contracts — Definition — Decisions of public hospitals to conclude fixed-term labour contracts for the purposes of catering, the provision of meals and cleaning — Directive 89/665/EEC — Article 1 — Right to an effective remedy)

Summary — Judgment of the Court (Ninth Chamber), 25 October 2018

1. *Approximation of laws — Procedures for the award of public works contracts, public supply contracts and public service contracts — Directive 2014/24 — Scope — Procurement for employment contracts — Not included — Notion of employment contracts*

*(European Parliament and Council Directive 2014/24, as amended by Regulation 2015/2170, Art. 10(g))*

2. *Approximation of laws — Procedures for the award of public works contracts, public supply contracts and public service contracts — Directive 2014/24 — Scope — Procurement for employment contracts — Not included — Decisions of public hospitals to conclude fixed-term labour contracts for the purposes of catering, the provision of meals and cleaning — Not included — Inapplicability of Articles 49 and 56 TFEU and of Articles 16 and 52 of the Charter of Fundamental Rights of the European Union*

*(Arts 49 TFEU and 56 TFEU; Charter of Fundamental Rights of the European Union, Arts 16 and 52; European Parliament and Council Directive 2014/24, as amended by Regulation 2015/2170, Art. 10(g))*

3. *Approximation of laws — Review procedures in respect of the award of public supply and public works contracts — Directive 89/665 — Decisions subject to appeal — Decision of a contracting authority not to undertake a public procurement procedure after concluding that EU law did not apply to the contract at issue — Obligation for Member States to allow a right of appeal — Scope*

*(European Parliament and Council Directive 2014/24, as amended by Regulation 2015/2170; Council Directive 89/665, as amended by Directive 2014/23, Art. 1(1))*

1. Article 10(g) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, as amended by Commission Delegated Regulation (EU) 2015/2170 of 24 November 2015, must be interpreted to the effect that the notion of ‘employment contracts’, referred to in that provision, covers labour contracts such as those at issue in the main proceedings, that is to say, fixed-term, individual labour contracts which are concluded with persons selected on the basis of objective criteria, such as the duration of unemployment, previous experience and the number of minor dependent children they have.

(see para. 33, operative part 1)

2. The provisions of Directive 2014/24, as amended by Delegated Regulation 2015/2170, Articles 49 and 56 TFEU, the principles of equal treatment, transparency and proportionality, and Articles 16 and 52 of the Charter of Fundamental Rights of the European Union do not apply to a decision of a public authority to make use of employment contracts such as those at issue in the main proceedings in order to perform certain tasks falling within its public interest obligations.

(see para. 40, operative part 2)

3. Article 1(1) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014, must be interpreted to the effect that a decision of a contracting authority to conclude employment contracts with natural persons for the provision of certain services without using a public procurement procedure in accordance with Directive 2014/24, as amended by Delegated Regulation 2015/2170, on the ground that, in its opinion, those contracts do not fall within the scope of that directive, may be challenged under that provision by an economic operator with an interest in participating in a public procurement procedure with the same purpose as those contracts and which considers that those contracts do fall within the scope of that directive.

An approach in which Directive 89/665 does not require judicial protection outside a formal award procedure, so that neither the contracting authority’s decision not to initiate such a procedure, nor the decision as to whether a public contract falls within the scope of the relevant EU rules, cannot be the subject of review, would have the effect of making the application of the relevant EU rules optional, at the option of every contracting authority, even though that application is mandatory where the conditions of application are satisfied (see, to that effect, judgment of 11 January 2005, *Stadt Halle and RPL Lochau*, C-26/03, EU:C:2005:5, paragraph 36 and 37).

(See paras 46, 47, operative part 3)