**Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 3 November 2017 — Ministerio de Defensa v Ana de Diego Porras**

**(Case C-619/17)**

(2018/C 022/38)

*Language of the case: Spanish*

**Referring court**

Tribunal Supremo

**Parties to the main proceedings**

*Appellant:* Ministerio de Defensa

*Other party:* Ana de Diego Porras

**Questions referred**

1. Must Clause 4 of the Framework Agreement on fixed-term work, contained in the Annex to Directive 1999/70, ([1]) be interpreted as precluding national legislation that does not provide for any compensation for termination of a temporary replacement contract, to replace another worker who has a reserved right to his post, when such termination is due to the reinstatement of the replaced worker, but does provide for compensation when the contract of employment is terminated on other legal grounds?

2. If the answer to Question 1 is in the negative, does Clause 5 of the Framework Agreement cover a measure such as that introduced by the Spanish legislature, consisting of fixing compensation of 12 days' salary for every year of service, to be received by the worker at the end of a temporary contract even if the temporary employment has been limited to a single contract?

3. If the answer to question 2 is in the affirmative, is a legal provision granting fixed-term workers compensation of 12 days' salary for every year of service at the end of the contract, but excluding fixed-term workers from that measure when the contract is a temporary replacement contract to replace a worker who has a reserved right to his post, contrary to Clause 5 of the Framework Agreement?

([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).

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**Request for a preliminary ruling from the Székesfehérvári Törvényszék (Hungary) lodged on 2 November 2017 — Hochtief Solutions AG Magyarországi Fióktelepe v Fővárosi Törvényszék**

**(Case C-620/17)**

(2018/C 022/39)

*Language of the case: Hungarian*

**Referring court**

Székesfehérvári Törvényszék

**Parties to the main proceedings**

*Applicant:* Hochtief Solutions AG Magyarországi Fióktelepe

*Defendant:* Fővárosi Törvényszék

**Questions referred**

1. Are the basic principles and rules of EU law (in particular Article 4(3) TEU, and the requirement for uniform interpretation), as interpreted by the Court of Justice of the European Union, especially in the judgment in *Köbler*, to be interpreted as meaning that the declaration of liability of the court of the Member State ruling at final instance in a judgment which infringes EU law may be based exclusively on national law or on the criteria laid down by national law? If not, are the basic principles and rules of EU law, particularly the three criteria laid down by the Court of Justice of the European Union in *Köbler* for declaring the liability of the 'State' to be interpreted as meaning that whether the conditions for liability of the Member State for infringement of EU law by the courts of that State are met is to be assessed on the basis of national law?

2. Are the basic principles and rules of EU law (in particular Article 4(3) TEU and the requirement for effective judicial protection), particularly the judgements of the Court of Justice of the European Union concerning the liability of the Member State delivered *inter alia* in *Francovich*, *Brasserie du pécheur* and *Köbler*, to be interpreted as meaning that the force of res judicata attaching to judgments which infringe EU law delivered by courts of the Member States ruling at final instance precludes a declaration that the Member State is liable for damages?

3. In the light of Directive 89/665/EEC, as amended by Directive 2007/66/EC ([1]), and of Directive 92/13/EEC, are the review procedure concerning the award of public contracts of a value greater than the Community thresholds and the judicial review of the administrative decision adopted in that procedure relevant for the purposes of EU law? If so, are EU law and the case-law of the Court of Justice of the European Union (*inter alia*, the judgments in *Kühne & Heitz*, *Kapferer*, and especially *Impresa Pizzarotti*) regarding the need to grant review, as an extraordinary appeal, which derives from national law on judicial review of the administrative decision adopted in the aforementioned review procedure concerning the award of public contracts, relevant for the purposes of EU law?

4. Are the Directives on review procedures concerning the award of public contracts (namely, Directive 89/665/EEC, as amended in the meantime by Directive 2007/66/EC, and Directive 92/13/EEC) to be interpreted as meaning that national legislation under which the national courts before which the dispute in the main proceedings is brought may disregard a fact which should be examined in accordance with a judgment of the Court of Justice of the European Union — delivered in a preliminary ruling procedure in connection with a review procedure concerning the award of public contracts — a fact which is also not taken into account by the national courts ruling in proceedings instituted as a result of the review procedure brought against the decision adopted in the main proceedings, is compatible with those directives?

5. Are 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, in particular Article 1(1) and (3) thereof, and Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, in particular Articles 1 and 2 thereof — particularly in the light of the judgments delivered in *Willy Kempter*, *Pannon GSM* and *VB Pénzügyi Lízing*, and also *Kühne & Heitz*, *Kapferer* and *Impresa Pizzarotti* — to be interpreted as meaning that national legislation, or an application thereof, under which, although a judgment of the Court of Justice of the European Union delivered in a preliminary ruling procedure before judgment in the proceedings at second instance establishes a relevant interpretation of the rules of EU law, the court hearing the case rejects its on the grounds that it is out of time and subsequently the court hearing the application for review does not consider the review admissible, is compatible with the aforementioned Directives and with the requirements of effective judicial protection and with the principles of equivalence and effectiveness?

6. If, under national law, review must be granted in order to re-establish constitutionality by means of a new decision of the Constitutional Court, should review not be granted, in accordance with the principle of equivalence and the principle laid down in the judgment in *Transportes Urbanos*, if it has not been possible to take into account a judgment of the Court of Justice of the European Union in the main proceedings owing to the provisions of national law concerning procedural time limits?

7. Are 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, in particular Article 1(1) and (3) thereof, and Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, in particular Articles 1 and 2 thereof, in the light of the judgment of the Court of Justice of the European Union in *Willy Kempter*, C-2/06, EU:C:2008:78, according to which an individual does not have to rely specifically on the case-law of the Court of Justice, to be interpreted as meaning that the review procedures concerning the award of public contracts governed by the aforementioned Directives may be initiated only by an action which contains an express description of the infringement concerning the award of public contracts invoked and, furthermore, expressly states the procurement rule which has been infringed — the specific article and paragraph —, that is to say, that in a review procedure concerning the award of public contracts it is only possible to examine the infringements which the applicant has indicated by reference to the procurement provision which has been infringed — the specific article and paragraph —, whereas in any other administrative and civil procedure it is sufficient for the individual to present the facts and the evidence which supports them, and the competent authority or court gives a ruling according to their content?

8. Is the requirement of a sufficiently serious infringement laid down in the judgments in *Köbler* and *Traghetti* to be interpreted as meaning that such infringement does not exist if the court ruling at final instance, in clear contravention of the established case-law, cited with maximum detail, of the Court of Justice of the European Union — which is also supported by various legal opinions — refuses an individual's request for a reference for a preliminary ruling concerning the need to grant a review, on the absurd grounds that EU law — in this case, in particular, Directives 89/665/EEC and 92/13/EEC — do not contain rules governing review, in spite of the fact that, for that purpose, reference has also been made with maximum detail to the relevant case-law of the Court of Justice of the European Union, also including the judgment in *Impresa Pizzarotti*, which specifically states the need for review in relation to the public procurement procedure? In the light of the judgment of the Court of Justice of the European Union in *CILFIT*, 283/81, EU:C:1982:335, with what degree of detail must the national court which does not grant the review justify its decision to depart from the authoritative legal interpretation given by the Court of Justice?

9. Are the principles of effective judicial protection and of equivalence in Article 19 TEU and Article 4(3) TEU, freedom of establishment and freedom to provide services laid down in Article 49 TFEU, and Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts, and also Directives 89/665/EEC, 92/13/EEC and 2007/66/EC, to be interpreted as meaning that they do not preclude the competent authorities and courts, in manifest disregard of the applicable EU law, from dismissing one after another the appeals brought by the applicant because he has been unable to participate in a public procurement procedure, appeals for which it is necessary to prepare, depending on the circumstances, multiple documents with considerable investment of time and money or to participate at hearings, and, although it is true that it is in theory possible to declare liability for damage caused in the exercise of judicial functions, the relevant legislation prevents the applicant from claiming from the court compensation for harm suffered as a consequence of the unlawful measures?

10. Are principles laid down in the judgments in *Köbler*, *Traghetti* and *Saint Giorgio* to be interpreted as meaning that compensation cannot be paid for damage caused by the fact that, in infringement of the established case-law of the Court of Justice, the court of the Member State ruling at final instance has not granted the review requested within the proper time by the individual, in which he would have been able to claim compensation for the costs incurred?

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([1]) Both Directives were amended by Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts (OJ L 335, 20.12.2007, p. 31).