

Parties to the main proceedings

Applicant: Impact

Defendants: Minister for Agriculture and Food, Minister for Arts, Sport and Tourism, Minister for Communications, Marine and Natural Resources, Minister for Foreign Affairs, Minister for Justice, Equality and Law Reform, Minister for Transport

Re:

Preliminary ruling — Labour Court — Interpretation of Clause 4(1) (principle of non-discrimination) and Clause 5(1) (measures to prevent abuse arising from the use of successive fixed-term employment contracts or relationships) 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) — Action seeking to rely on the direct effect of those provisions — Lack of jurisdiction, under national law, of the court seised — Jurisdiction under Community law, in particular pursuant to the principles of equivalence and effectiveness

Operative part of the judgment

1. Community law, in particular the principle of effectiveness, requires that a specialised court which is called upon, under the, albeit optional, jurisdiction conferred on it by the legislation transposing Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, to hear and determine a claim based on an infringement of that legislation, must also have jurisdiction to hear and determine an applicant's claims arising directly from the directive itself in respect of the period between the deadline for transposing the directive and the date on which the transposing legislation entered into force if it is established that the obligation on that applicant to bring, at the same time, a separate claim based directly on the directive before an ordinary court would involve procedural disadvantages liable to render excessively difficult the exercise of the rights conferred on him by Community law. It is for the national court to undertake the necessary checks in that regard.
2. Clause 4(1) of the framework agreement on fixed-term work concluded on 18 March 1999, which is annexed to Directive 1999/70, is unconditional and sufficiently precise for individuals to be able to rely upon it before a national court; that is not the case, however, as regards Clause 5(1) of the framework agreement.
3. Article 10 EC, the third paragraph of Article 249 EC, and Directive 1999/70 must be interpreted as meaning that an authority of a Member State acting in its capacity as a public employer may not adopt measures contrary to the objective pursued by that directive and the framework agreement on fixed-term work as regards prevention of the abusive use of fixed-term contracts, which consist in the renewal of such contracts for an unusually long term in the period between the deadline for transposing Directive 1999/70 and the date on which the transposing legislation entered into force.
4. In so far as the applicable national law contains a rule that precludes the retrospective application of legislation unless there is a clear and unambiguous indication to the contrary, a national court

hearing a claim based on an infringement of a provision of national legislation transposing Directive 1999/70 is required, under Community law, to give that provision retrospective effect to the date by which that directive should have been transposed only if that national legislation includes an indication of that nature capable of giving that provision retrospective effect.

5. Clause 4 of the framework agreement on fixed-term work must be interpreted as meaning that employment conditions within the meaning of that clause encompass conditions relating to pay and to pensions which depend on the employment relationship, to the exclusion of conditions relating to pensions arising under a statutory social-security scheme.

(¹) OJ C 212, 2.9.2006.

Judgment of the Court (First Chamber) of 17 April 2008 — Thomas Flaherty (C-373/06 P), Larry Murphy (C-379/06 P), Ocean Trawlers Ltd (C-382/06 P) v Ireland, Commission of the European Communities

(Joined Cases C-373/06 P, C-379/06 P and C-382/06 P) (¹)

(Appeal — Resource conservation measures — Restructuring of the fisheries sector — Requests to increase the tonnage objectives of the multiannual guidance programme 'MAGP IV' — Dismissal of application)

(2008/C 142/06)

Language of the case: English

Parties

Appellants: Thomas Flaherty (C-373/06 P), Larry Murphy (C-379/06 P), Ocean Trawlers Ltd (C-382/06 P) (represented by: D. Barry, Solicitor, and A. Collins SC (C-373/06 P, C-379/06 P and C-382/06 P), and additionally by P. Gallagher SC (C-379/06 P)

Other parties to the proceedings: Ireland, Commission of the European Communities (represented by: B. Doherty and M. van Heezik, Agents)

Re:

Appeal brought against the judgment of the Court of First Instance (First Chamber) of 13 June 2006 in Joined Cases T-218/03 to T-240/03 *Boyle and Others v Commission* annulling Commission Decision 2003/245/EC of 4 April 2003 on the requests received by the Commission to increase MAGP IV objectives to take into account improvements on safety, navigation at sea, hygiene, product quality and working conditions for

vessels of more than 12 m in length overall (notified under document number C(2003) 1113) (OJ 2003 L 90, p. 48), but dismissing the applications lodged by the appellants as inadmissible — Persons (who are not) individually concerned by the annulled decision

Operative part of the judgment

The Court:

1. Sets aside the judgment of the Court of First Instance of the European Communities of 13 June 2006 in Joined Cases T-218/03 to T-240/03 *Boyle and Others v Commission* (i) in so far as it dismissed as inadmissible the applications of Mr Flaherty, Mr Murphy and Ocean Trawlers Ltd for annulment of Commission Decision 2003/245/EC of 4 April 2003 on the requests received by the Commission to increase MAGP IV objectives to take into account improvements on safety, navigation at sea, hygiene, product quality and working conditions for vessels of more than 12 m in length overall, and (ii) in so far as it ordered the appellants to bear their own costs;
2. Annuls Decision 2003/245 in so far as it applies to the vessels of Mr Flaherty, Mr Murphy and Ocean Trawlers Ltd;
3. Orders the Commission of the European Communities to pay the costs incurred by Mr Flaherty, Mr Murphy and Ocean Trawlers Ltd in respect of both the proceedings at first instance and the present appeals.

⁽¹⁾ OJ C 281, 18.11.2006.
OJ C 294, 2.12.2006.

Judgment of the Court (Grand Chamber) of 15 April 2008 (reference for a preliminary ruling from the Tribunale ordinario di Roma) — *Nuova Agricast Srl v Ministero delle Attività Produttive*

(Case C-390/06) ⁽¹⁾

(State aid — Aid scheme authorised for a specific period — Notification of the amended aid scheme for a new period — Transitional measures between the two schemes — Decision of the Commission not to raise objections — Information available to the Commission — Validity of the Commission's decision — Equal treatment — Statement of reasons)

(2008/C 142/07)

Language of the case: Italian

Referring court

Tribunale ordinario di Roma

Parties to the main proceedings

Applicant: Nuova Agricast Srl

Defendant: Ministero delle Attività Produttive

Re:

Preliminary ruling — Tribunale ordinario di Roma — Validity of the Commission Decision of 12 July 2000 declaring compatible with the Treaty an aid scheme provided for under Italian legislation in the form of aid for investment in the less-favoured regions of Italy (SG(2000)D/105754)

Operative part of the judgment

Examination of the question submitted has revealed nothing which might affect the validity of the decision of the Commission of 12 July 2000 not to raise objections against an aid scheme for investment in the less-favoured regions of Italy until 31 December 2006 (State aid No N 715/99 — Italy).

⁽¹⁾ OJ C 294, 2.12.2006.

Judgment of the Court (First Chamber) of 17 April 2008 (reference for a preliminary ruling from the Bundesgerichtshof — Germany) — *Quelle AG v Bundesverband der Verbraucherzentralen und Verbraucherverbände*

(Case C-404/06) ⁽¹⁾

(Consumer protection — Directive 1999/44/EC — Sale of consumer goods and associated guarantees — Right of the seller, where goods not in conformity are replaced, to require the consumer to pay compensation for the use of those goods — No charge for the use of the goods not in conformity)

(2008/C 142/08)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Quelle AG

Defendant: Bundesverband der Verbraucherzentralen und Verbraucherverbände