



Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

25 October 2018*

(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)

In Case C-260/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Symvoulío tis Epikrateias (Council of State, Greece), made by decision of 11 May 2017, received at the Court on 16 May 2017, in the proceedings

Anodiki Services EPE

v

GNA, O Evangelismos — Ophthalmiatreio Athinon — Polykliniki,

Geniko Oγκολογικο Nosokomeio Kifisias — (GONK) ‘Oι Agioi Anargyroí’,

intervener:

Arianthi Iliá EPE,

Fasma AE,

Mega Sprint Guard AE,

ICM — International Cleaning Methods AE,

Myservices Security and Facility AE,

Kleenway OE,

GEN — KA AE,

Geniko Nosokomeio Athinon ‘Georgios Gennimatas’,

Ipirotiki Facility Services AE,

* Language of the case: Greek.

THE COURT (Ninth Chamber),

composed of C. Lycourgos, President of the Tenth Chamber, acting as President of the Ninth Chamber, E. Juhász and C. Vajda (rapporteur), Judges,

Advocate General: M. Wathelet,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of

- Anodiki Services EPE, by Z. Zouganeli, dikigoros,
- GNA, O Evangelismos — Ofthalmiatreio Athinon — Polykliniki, by G. Statharas, dikigoros,
- Geniko Nosokomeio Athinon ‘Georgios Gennimatas’, by M. Antonopoulou and N. Nikolopoulos, dikigoroi,
- Fasma AE, by N. Mourdoukoutas, dikigoros,
- Mega Sprint Guard AE, by S. Konstantopoulos, N. Meligos and G. Christodoulopoulos, dikigoroi,
- ICM — International Cleaning Methods AE and Kleenway OE, by E. Anagnostou, dikigoros,
- Myservices Security and Facility AE, by A. Virvilios, dikigoros,
- GEN — KA AE, by C. Pelekis, dikigoros,
- the Greek Government, by M. Tassopoulou, A. Magreppi et E. Tsaousi, acting as Agents,
- the Austrian Government, by M. Fruhmann, acting as Agent,
- the European Commission, by M. Patakia and P. Ondrůšek, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of 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 (OJ 2014 L 94, p. 65), as amended by Commission Delegated Regulation (EU) 2015/2170 of 24 November 2015 (OJ 2015 L 307, p. 5) (‘Directive 2014/24’), and Article 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 (OJ 1989 L 395, p. 33), as amended by Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 (OJ 2014 L 94, p. 1) (‘Directive 89/665’).

- 2 The request has been made in two sets of proceedings between, in the first set of proceedings, on the one hand, Anodiki Services EPE and, on the other, GNA, O Evangelismos — Ophthalmiatreio Athinon — Polykliniki, ('GNA Evangelismos') and, in the second set of proceedings, on the one hand, Anodiki Services EPE and, on the other, Geniko Oγκολογικο Νοσοκομείο Kifisias — (GONK) 'Oi Agioi Anargyroi' ('GONK Agioi Anargyroi'), concerning decisions taken by the administration boards of those public hospitals to conclude a number of fixed-term labour contracts under private law in order to meet their needs in relation to catering, the provision of meals and cleaning.

Legal context

EU law

- 3 Recital 5 of Directive 2014/24 states:

'It should be recalled that nothing in this Directive obliges Member States to contract out or externalise the provision of services that they wish to provide themselves or to organise by means other than public contracts within the meaning of this Directive. The provision of services based on laws, regulations or employment contracts should not be covered. In some Member States, this might for example be the case for certain administrative and government services such as executive and legislative services or the provision of certain services to the community, such as foreign affairs services or justice services or compulsory social security services.'

- 4 Article 1(4) of that directive provides:

'This Directive does not affect the freedom of Member States to define, in conformity with Union law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with the State aid rules, and what specific obligations they should be subject to. Equally, this Directive does not affect the decision of public authorities whether, how and to what extent they wish to perform public functions themselves pursuant to Article 14 TFEU and Protocol No 26.'

- 5 Article 4(b) of that directive sets a threshold for its application of EUR 135 000 for public supply and service contracts awarded by central government authorities and design contests organised by such authorities. Article 4(d) sets a threshold of EUR 750 000 for public service contracts for social and other specific services listed in Annex XIV of that directive. Catering services are specifically mentioned in that annex.

- 6 Article 10 of Directive 2014/24 provides:

'This Directive shall not apply to public service contracts for:

...

(g) employment contracts;

...'

- 7 Under Article 1(1) of Directive 89/665:

'This Directive applies to contracts referred to in [Directive 2014/24], unless such contracts are excluded in accordance with Articles 7, 8, 9, 10, 11, 12, 15, 16, 17 and 37 of that Directive.'

...

Contracts within the meaning of this Directive include public contracts, framework agreements, works and services concessions, and dynamic purchasing systems.

Member States shall take the measures necessary to ensure that, as regards contracts falling within the scope of [Directive 2014/24], decisions taken by the contracting authorities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out in Articles 2 to 2f of this Directive, on the grounds that such decisions have infringed [EU] law in the field of public procurement or national rules transposing that law.'

8 Article 2(1)(a) and (b) of Directive 89/665 provide:

'The Member States shall ensure that the measures taken concerning the review procedures specified in Article 1 include provision for the powers to:

- (a) take, at the earliest opportunity and by way of interlocutory procedures, interim measures with the aim of correcting the alleged infringement or preventing further damage to the interests concerned, including measures to suspend or to ensure the suspension of the procedure for the award of a public contract or the implementation of any decision taken by the contracting authority;
- (b) either set aside or ensure the setting aside of decisions taken unlawfully, including the removal of discriminatory technical, economic or financial specifications in the invitation to tender, the contract documents or in any other document relating to the contract award procedure.'

Greek law

9 Article 103(2) of the Greek Constitution provides:

'No one may be appointed as a civil servant to an established post which has not been provided for by law. Special laws may provide for exceptions in order to cover unforeseen and urgent needs with personnel hired for a certain period of time on a private law contract.'

10 Article 63(1) of Law 4430/2016 (FEK A' 205) provides:

'By decision of their relevant, single member or collective, governing body, the central and decentralised services, and all the general services of the ministries and the public law legal persons (PuLLP) and private law legal persons (PrLLP) under the authority of the ministries may, in order to meet the cleaning needs of the buildings for which they are responsible and their outdoor spaces, and the catering, meal provision and security needs, conclude fixed-term individual labour contracts under private law if the existing staff is not sufficient and in the event of emergency or unforeseen circumstances. For indicative purposes only, the following shall be regarded as such circumstances: (a) a legal or factual impediment to the unhindered provision of those services by legal or natural third persons, which is not caused by the recipients of those services, (b) the making of budgetary savings due to the conclusion of the labour contracts referred to in the present provision compared with other means. A finding that there are emergency or unforeseen circumstances requires a reasoned assessment by the above mentioned administrations. The above mentioned contracts shall be concluded in accordance with the provisions of this article, notwithstanding any other general or special legal provision. The derogating provisions under this article may be applied until 31 December 2018.'

- 11 Under Article 63(2) of that law, those contracts have a maximum duration of 24 months and may not be converted into permanent contracts.
- 12 Under Article 63(3) of that law, a provisional ranking list must be drawn up for the purposes of selecting the persons concerned by awarding them points based on how long they have been unemployed or their work experience.
- 13 Article 107(1) of Law 4461/2017 (FEK A' 38) specifically governs certain issues relating to the application of Article 63 of Law 4430/2016 to legal persons, regardless of their form, which are under the authority of the Ministry of Health, in relation to awarding points to candidates on the basis of how long they have been unemployed, whether they have dependent children and their professional experience.

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

- 14 It is clear from the order for reference that the fact that it was not possible to create statutory posts in accordance with Article 103(2) of the Greek Constitution, due to the economic crisis in Greece and its international commitments, led that Member State to adopt certain independent legal provisions.
- 15 In that regard, Law 4430/2016 was adopted in order to address certain exceptional circumstances, qualified as 'unforeseen' and 'urgent', and in view of the serious failings affecting the award and performance of public service contracts. According to the explanatory memorandum to Law 4430/2016, as reproduced in the order for reference, that law is intended to ensure that a financial benefit will ensue from the considerable reduction in the budget of the administrations in question, to improve the working conditions of the workers in the undertakings concerned and to address the urgent and unforeseen needs of the recipients of the services in a way that is compatible with the Constitution and EU law. Article 63 of that law makes it possible for legal persons under public law to conclude individual fixed-term contracts under private law in order to meet their needs, in particular in relation to catering, the provision of meals and cleaning.
- 16 By decisions taken in November 2016, the administration boards of GNA Evangelismos and GONK Agioi Anargyroi decided to conclude a number of fixed-term individual labour contracts under private law pursuant to Article 63 in order to meet the respective needs in catering, meal provision and cleaning at the hospitals which they manage.
- 17 Anodiki Services brought actions against those decisions before the referring court, the Symvoulío tis Epikrateias (Council of State, Greece). It claims that those decisions concern the provision of services which should have been subject to the public procurement procedures laid down in Directive 2014/24. In that regard, it claims that the value of the contracts which are the subject of those decisions, that is to say, between EUR 1 894 402.56 and EUR 2 050 418.16 over 24 months for the decision of GNA Evangelismos and EUR 550 000 per annum for the decision of GONK Agioi Anargyroi, is greater than the relevant thresholds laid down in Article 4 of that directive.
- 18 The referring court is unsure whether contracts such as those covered by the decisions of the administration boards of GNA Evangelismos and of GONK Agioi Anargyroi come under the notion of 'employment contracts' in Article 10(g) of Directive 2014/24, so that the public procurement contracts relating to the conclusion of those contracts is excluded from the scope of that directive.
- 19 It also asks whether Article 63 of Law 4430/2016, in so far as it allows such contracts to be concluded without using the procedures laid down in Directive 2014/24, infringes the provisions of that directive, those of the TFEU relating to freedom of establishment and freedom to provide services, Articles 16 and 52 of the Charter of Fundamental Rights of the European Union ('the Charter'), and the principles of equal treatment, non-discrimination, transparency and proportionality. In that regard, the

referring court considers that, in view of the purpose and estimated cost of the labour contracts, there can be no doubt that a public procurement procedure with the same purpose would be the subject matter of a cross-border interest.

- 20 That court also wishes to know whether the decision of a public authority not to use a public procurement procedure in accordance with Directive 2014/24, on the ground that the contract in question does not come within the scope of that directive, is open to judicial review under Directive 89/665.
- 21 In those circumstances the Symvoulio tis Epikrateias (Council of State) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) For the purposes of Article 10(g) of Directive [2014/24], is it sufficient ground, for the classification of a contract as an ‘employment contract’ under that provision, that it constitutes a contract with an employer-employee relationship or is it necessary that that contract have particular characteristics (for example with respect to the nature of the work, the contract terms, the qualifications of candidates, the procedural rules for their selection), so that the selection of each employee should be the result of an individualised judgment and subjective assessment of his or her personal qualities by the employer?

Can fixed term labour contracts which are allocated on the basis of objective criteria, such as the length of time the candidate has been unemployed, the candidate’s previous experience or the number of minor children he or she has, as the result of a formal check of supporting documents and a predetermined weighting of the above criteria, such as contracts under Article 63 of Law 4430/2016, be regarded as “employment contracts” within the meaning of Article 10(g) of Directive 2014/24?

- (2) For the purposes of the provisions of Directive [2014/24] (Articles 1(4), 18(1) and (2), 19(1), 32 and 57, read in conjunction with recital (5) of that directive), of the Treaty on the Functioning of the European Union (Articles 49 and 56) and of the [Charter] (Articles 16 and 52), and the principles of equal treatment, transparency and proportionality, is it permitted for public authorities to have recourse to other means, including employment contracts, to the exclusion of public procurement contracts, in order to meet the same public interest requirements, and if so, on what conditions, when that recourse is not part of the recurrent organisation of the public service, but — as in the case of Article 63 of Law 4430/2016 — takes place for a defined period of time and to deal with extraordinary circumstances, as well as for reasons that relate to the effectiveness of competition or the legitimacy of the operations of undertakings which are active in the public procurement market?

Can reasons of that kind, as well as circumstances such as the weakness of the unhindered performance of public contracts or the realisation of greater financial benefit compared with a public contract, be regarded as overriding reasons in the public interest, which justify the adoption of a measure which leads to a serious restriction, in extent and duration, on business activity in the field of public procurement?

- (3) For the purposes of Article 1 of Directive [89/665] ... does the scope of that provision exclude judicial protection against the decision of a public authority, such as the contested decisions in the main proceedings, with respect to the award of contracts that are treated as not falling within the scope of Directive 2014/24 (for example, as an ‘employment contract’), when an action is brought by an economic operator which would have a legal right to be awarded a comparable public contract and which claims that Directive [2014/24] has been unlawfully not implemented on the ground that its non-implementation was permissible?’

Procedure before the Court

- 22 In its request for a preliminary ruling, the referring court requested that the case be determined under an expedited procedure provided for in Article 105(1) of the Rules of Procedure of the Court of Justice. That request was refused by order of the President of the Court of 13 July 2017, *Anodiki Services* (C-260/17, not published, EU:C:2017:560).

Consideration of the questions referred

The first question

- 23 By its first question, the referring court asks, in essence, whether Article 10(g) of Directive 2014/24 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 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.
- 24 It should be pointed out that, although in accordance with Article 10(g) of Directive 2014/24, public service contracts dealing with labour contracts are excluded from the scope of that directive, the notion of ‘employment contracts’, as it appears in that provision, is not defined by that directive. Nor does that article make any reference to the laws of the Member States concerning such a definition.
- 25 In accordance with the Court’s settled case-law, the need for a uniform application of EU law requires that, where a provision of EU law makes no reference to the law of the Member States with regard to a particular concept, that concept must be given an independent and uniform interpretation throughout the European Union. That interpretation must be sought having regard not only to the wording of the provision at issue but also to its context and to the objective pursued by the legislation in question (see, to that effect, *inter alia*, judgments of 19 December 2013, *Fish Legal and Shirley*, C-279/12, EU:C:2013:853, paragraph 42, and of 19 June 2018, *Baumeister*, C-15/16, EU:C:2018:464, paragraph 24).
- 26 In that regard, first, it is apparent from recital 5 of Directive 2014/24 that that directive does not oblige Member States to contract out or externalise the provision of services which they wish to provide themselves or to organise by means other than public procurement contracts, within the meaning of that directive, and that the provision of services based on laws, regulations or employment contracts should not be covered by that directive. Accordingly, the conclusion of employment contracts is a means for the public authorities in Member States to provide services themselves and is therefore excluded from the obligations relating to public procurement contracts under that directive.
- 27 Contrary to what Anodiki Services submits in its written observations, the possibility for public authorities to meet some of their needs themselves by concluding employment contracts is not limited to the cases mentioned in the last sentence of that recital. In that respect, as regards that discretion which should be available to public authorities, the fact that the recital stipulates that ‘this might for example be the case for’ the services which it lists after those words sufficiently demonstrates that that list is not exhaustive.
- 28 Secondly, it must be observed that the conclusion of an employment contract, by its nature, gives rise to an employment relationship between the employee and the employer. In the broader context of EU law, it is settled case-law that the essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another in return for which

he receives remuneration (see, inter alia, judgments of 3 July 1986, *Lawrie-Blum*, 66/85, EU:C:1986:284, paragraph 17, and of 19 July 2017, *Abercrombie & Fitch Italia*, C-143/16, EU:C:2017:566, paragraph 19 and the case-law cited).

- 29 It follows from those considerations that the notion of ‘employment contracts’, for the purposes of Article 10(g) of Directive 2014/24, covers all contracts by which a public authority employs natural persons in order to provide services itself, and which give rise to an employment relationship by which those persons, for a certain period of time, perform services for and under the direction of that public authority in return for which they receive remuneration.
- 30 For the purposes of that definition, the manner in which those persons are employed is therefore irrelevant. In particular, although it is true that an employment relationship, as Anodiki Services stated in its written observations, may be based on a special relationship of mutual trust between the employer and the worker, it does not follow that only contracts concluded on the basis of subjective criteria as regards the persons employed, to the exclusion of contracts arising from a selection made using purely objective criteria, constitute ‘employment contracts’, for the purposes of that provision.
- 31 In addition, in accordance with the definition of ‘employment relationship’ referred to in paragraph 28 above, in so far as the worker performs services for and under the direction of his employer ‘for a certain period of time’, fixed-term labour contracts cannot be excluded from the notion of ‘employment contracts’ for the purposes of Article 10(g) of Directive 2014/24 on the ground that the length of the employment relationship which they create is limited in time.
- 32 It is ultimately for the referring court to assess, in the light of those considerations, whether the contracts at issue in the main proceedings are ‘employment contracts’ for the purposes of that provision. In particular, as the Commission stated in its written observations, it is necessary to ascertain whether they are genuine individual labour contracts concluded by the public hospitals at issue in the main proceedings and the persons recruited. However, nothing in the file submitted to the Court indicates that that is not the case.
- 33 In view of the foregoing, the answer to the first question is that Article 10(g) of Directive 2014/24 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.

The second question

- 34 By its second question, the referring court asks, in essence, whether the provisions of Directive 2014/24, Articles 49 and 56 TFEU, the principles of equal treatment, transparency and proportionality, and Articles 16 and 52 of the Charter preclude 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.
- 35 In the first place, in view of the answer to the first question, it should be noted that the provisions of Directive 2014/24 do not apply to employment contracts such as those at issue in the main proceedings.
- 36 In the second place, with regard to Articles 49 and 56 TFEU and the principles of EU law referred to in the second question, it should be recalled that, although in the field of public procurement the principle of equal treatment and the specific expressions of that principle, namely the prohibition of discrimination on grounds of nationality and Articles 49 and 56 TFEU, are to be applied in cases

where a public authority entrusts the supply of economic activities to a third party, it is nevertheless not appropriate to apply EU law on public procurement in a case where a public authority performs tasks in the public interest for which it is responsible by its own administrative, technical and other means, without calling upon external entities (see, to that effect, judgments of 11 January 2005, *Stadt Halle and RPL Lochau*, C-26/03, EU:C:2005:5, paragraph 48, and of 13 October 2005, *Parking Brixen*, C-458/03, EU:C:2005:605, paragraph 61).

- 37 Accordingly, those provisions of the TFEU and those principles of EU law do not apply to the circumstances of the main proceedings, in that the public hospitals in question in that action decided to meet some of their needs themselves when performing the tasks in the public interest for which they are responsible by entering into employment contracts.
- 38 In the third place, as regards Articles 16 and 52 of the Charter, it should be recalled that, in accordance with Article 51(1), the provisions of the Charter are addressed to the Member States only when they are implementing EU law. Under Article 51(2), the Charter does not extend the scope of EU law beyond the powers of the Union, and it does not establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties. Accordingly, the Court is called upon to interpret EU law, in the light of the Charter, within the limits of the powers conferred on it (judgment of 8 November 2012, *Iida*, C-40/11, EU:C:2012:691, paragraph 78 and the case-law cited).
- 39 As is apparent from paragraphs 35 to 37 above, the public hospitals' decisions to conclude the employment contracts at issue in the main proceedings do not fall within the implementation of EU law within the meaning of Article 51 of the Charter, so that the conformity of those decisions with fundamental rights cannot be examined by reference to the rights established by the Charter.
- 40 Consequently, the answer to the second question is that the provisions of Directive 2014/24, Articles 49 and 56 TFEU, the principles of equal treatment, transparency and proportionality, and Articles 16 and 52 of the Charter 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.

The third question

- 41 By its third question, the referring court asks in essence whether Article 1(1) of Directive 89/665 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, 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.
- 42 The wording of Article 1(1) of Directive 89/665 assumes, by using the words 'as regards procedures', that every decision of a contracting authority falling under EU rules in the field of public procurement and liable to infringe them is subject to the judicial review provided for in Article 2(1)(a) and (b) of that directive. That provision thus refers generally to the decisions of a contracting authority, without distinguishing between those decisions according to their content or time of adoption (see judgment of 5 April 2017, *Marina del Mediterráneo and Others*, C-391/15, EU:C:2017:268, paragraph 26 and the case-law cited).
- 43 That broad construction of the concept of a 'decision' taken by a contracting authority is confirmed by the fact that Article 1(1) of Directive 89/665 does not lay down any restriction with regard to the nature or content of the decisions to which it refers. Moreover, a restrictive interpretation of that

concept would be incompatible with the terms of Article 2(1)(a) of that directive which requires Member States to make provision for interim relief procedures in relation to any decision taken by the contracting authorities (see judgment of 5 April 2017, *Marina del Mediterráneo and Others*, C-391/15, EU:C:2017:268, paragraph 27 and the case-law cited).

- 44 In addition, it must be noted that any act of a contracting authority adopted in relation to a public service contract within the material scope of Directive 2014/24 and capable of producing legal effects constitutes a decision amenable to review within the meaning of Article 1(1) of Directive 89/665, regardless of whether that act is adopted outside a formal award procedure or as part of such a procedure (judgment of 11 January 2005, *Stadt Halle and RPL Lochau*, C-26/03, EU:C:2005:5, paragraph 34).
- 45 In that regard, where a contracting authority decides not to initiate an award procedure on the ground that the contract in question does not, in its opinion, fall within the scope of the relevant EU rules, such a decision is open to judicial review (see, to that effect, judgment of 11 January 2005, *Stadt Halle and RPL Lochau*, C-26/03, EU:C:2005:5, paragraph 33).
- 46 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).
- 47 Consequently, the answer to the third question is that Article 1(1) of Directive 89/665 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, 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.

Costs

- 48 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is 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 (Ninth Chamber) hereby rules:

- 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.**
- 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.

- 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.**

[Signatures]