Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

18 October 2016*

(Reference for a preliminary ruling — Judicial cooperation in civil matters — Law applicable to an employment contract — Regulation (EC) No 593/2008 — Article 28 — Temporal scope — Article 9 — Concept of 'overriding mandatory provisions' — Application of overriding mandatory provisions of Member States other than the State of the forum — Legislation of a Member State imposing a reduction in public sector pay because of a budgetary crisis — Duty of sincere cooperation)

In Case C-135/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesarbeitsgericht (Federal Labour Court, Germany), made by decision of 25 February 2015, received at the Court on 20 March 2015, in the proceedings

Republik Griechenland

v

Grigorios Nikiforidis,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, M. Ilešič, L. Bay Larsen, T. von Danwitz, Presidents of Chambers, A. Borg Barthet, A. Arabadjiev, E. Jarašiūnas, C.G. Fernlund, C. Vajda, S. Rodin, F. Biltgen and C. Lycourgos (Rapporteur), Judges,

Advocate General: M. Szpunar,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 1 February 2016,

after considering the observations submitted on behalf of:

— Mr Nikiforidis, by G. Zeug, Rechtsanwalt,

— the German Government, by T. Henze, J. Kemper and J. Mentgen, acting as Agents,

— the Greek Government, by S. Charitaki and A. Magrippi, acting as Agents,

— the United Kingdom Government, by J. Kraehling, acting as Agent, and M. Gray, Barrister,

— the European Commission, by M. Wilderspin, acting as Agent,

* Language of the case: German.

after hearing the Opinion of the Advocate General at the sitting on 20 April 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 4(3) TEU and of Article 9(3) and Article 28 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ 2008 L 177, p. 6, and corrigendum at OJ 2009 L 309, p. 87; 'the Rome I Regulation') which replaced in the Member States, in accordance with the conditions laid down in Article 24 thereof, the Convention on the law applicable to contractual obligations, opened for signature in Rome on 19 June 1980 (OJ 1980 L 266, p. 1; 'the Rome Convention').

2 This request has been made in proceedings between Republik Griechenland (the Hellenic Republic) and Grigorios Nikiforidis, a Greek national employed as a teacher at the Greek primary school in Nuremberg (Germany), concerning in particular the reduction in his gross salary following the enactment by the Hellenic Republic of two laws designed to reduce its public deficit.

Legal context

EU law

Rome I Regulation

3 Recitals 6, 7, 16 and 37 of the Rome I Regulation are worded as follows:

'(6) The proper functioning of the internal market creates a need, in order to improve the predictability of the outcome of litigation, certainty as to the law applicable and the free movement of judgments, for the conflict-of-law rules in the Member States to designate the same national law irrespective of the country of the court in which an action is brought.

(7) The substantive scope and the provisions of this Regulation should be consistent with Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [(OJ 2001 L 12, p. 1)] (Brussels I) and Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations [(OJ 2007 L 199, p. 40)] (Rome II).

...

(16) To contribute to the general objective of this Regulation, legal certainty in the European judicial area, the conflict-of-law rules should be highly foreseeable. The courts should, however, retain a degree of discretion to determine the law that is most closely connected to the situation.

...

(37) Considerations of public interest justify giving the courts of the Member States the possibility, in exceptional circumstances, of applying exceptions based on public policy and overriding mandatory provisions. The concept of "overriding mandatory provisions" should be distinguished from the expression "provisions which cannot be derogated from by agreement" and should be construed more restrictively.'

4 Article 3 of the Rome I Regulation states:

‘1. A contract shall be governed by the law chosen by the parties. The choice shall be made expressly or clearly demonstrated by the terms of the contract or the circumstances of the case. By their choice the parties can select the law applicable to the whole or to part only of the contract.

2. The parties may at any time agree to subject the contract to a law other than that which previously governed it, whether as a result of an earlier choice made under this Article or of other provisions of this Regulation. Any change in the law to be applied that is made after the conclusion of the contract shall not prejudice its formal validity under Article 11 or adversely affect the rights of third parties.

3. Where all other elements relevant to the situation at the time of the choice are located in a country other than the country whose law has been chosen, the choice of the parties shall not prejudice the application of provisions of the law of that other country which cannot be derogated from by agreement.

4. Where all other elements relevant to the situation at the time of the choice are located in one or more Member States, the parties’ choice of applicable law other than that of a Member State shall not prejudice the application of provisions of Community law, where appropriate as implemented in the Member State of the forum, which cannot be derogated from by agreement.

5. The existence and validity of the consent of the parties as to the choice of the applicable law shall be determined in accordance with the provisions of Articles 10, 11 and 13.’

5 Article 8 of the Rome I Regulation, headed ‘Individual employment contracts’, provides:

‘1. An individual employment contract shall be governed by the law chosen by the parties in accordance with Article 3. Such a choice of law may not, however, have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law that, in the absence of choice, would have been applicable pursuant to paragraphs 2, 3 and 4 of this Article.

2. To the extent that the law applicable to the individual employment contract has not been chosen by the parties, the contract shall be governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract. The country where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country.

3. Where the law applicable cannot be determined pursuant to paragraph 2, the contract shall be governed by the law of the country where the place of business through which the employee was engaged is situated.

4. Where it appears from the circumstances as a whole that the contract is more closely connected with a country other than that indicated in paragraphs 2 or 3, the law of that other country shall apply.’

6 Article 9 of the Rome I Regulation, headed ‘Overriding mandatory provisions’, states:

‘1. Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.

2. Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.

3. Effect may be given to the overriding mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, in so far as those overriding mandatory provisions render the performance of the contract unlawful. In considering whether to give effect to those provisions, regard shall be had to their nature and purpose and to the consequences of their application or non-application.'

7 Article 10 of the Rome I Regulation, headed 'Consent and material validity', states:

'1. The existence and validity of a contract, or of any term of a contract, shall be determined by the law which would govern it under this Regulation if the contract or term were valid.

2. Nevertheless, a party, in order to establish that he did not consent, may rely upon the law of the country in which he has his habitual residence if it appears from the circumstances that it would not be reasonable to determine the effect of his conduct in accordance with the law specified in paragraph 1.'

8 Under the heading 'Application in time', Article 28 of the Rome I Regulation states:

'This Regulation shall apply to contracts concluded as from 17 December 2009.'

Decision 2010/320/EU

9 On 10 May 2010, the Council adopted Decision 2010/320/EU addressed to the Hellenic Republic with a view to reinforcing and deepening fiscal surveillance and giving notice to Greece to take measures for the deficit reduction judged necessary to remedy the situation of excessive deficit (OJ 2010 L 145, p. 6).

10 Article 2 of Decision 2010/320 required that Member State, inter alia, to adopt, in the course of 2010 and 2011, a reform of its wage legislation in the public sector, including, in particular, the introduction of unified principles and a timetable to establish a streamlined and unified public sector wage grid, with remuneration reflecting productivity and tasks.

11 Decision 2010/320 was repealed by Council Decision 2011/734/EU of 12 July 2011 addressed to the Hellenic Republic with a view to reinforcing and deepening fiscal surveillance and giving notice to Greece to take measures for the deficit reduction judged necessary to remedy the situation of excessive deficit (recast) (OJ 2011 L 296, p. 38).

The Rome Convention

12 Under the heading 'Mandatory rules', Article 7 of the Rome Convention states as follows:

'1. When applying under this Convention the law of a country, effect may be given to the mandatory rules of the law of another country with which the situation has a close connection, if and in so far as, under the law of the latter country, those rules must be applied whatever the law applicable to the contract. In considering whether to give effect to these mandatory rules, regard shall be had to their nature and purpose and to the consequences of their application or non-application.

2. Nothing in this Convention shall restrict the application of the rules of the law of the forum in a situation where they are mandatory irrespective of the law otherwise applicable to the contract.'

13 Article 17 of the Rome Convention states:

‘This Convention shall apply in a Contracting State to contracts made after the date on which this Convention has entered into force with respect to that State.’

National law

German law

14 It is apparent from the order for reference that, until the Rome I Regulation entered into force, Article 27 et seq. of the Einführungsgesetz zum Bürgerlichen Gesetzbuch (Introductory Law to the Civil Code; ‘the EGBGB’) constituted the rules of German private international law concerning contractual relationships. According to the referring court, Article 34 of the EGBGB in essence did not preclude foreign overriding mandatory provisions from being taken into consideration at least as matters of fact in the context of substantive legal rules ‘requiring further precision’.

Greek law

15 During the crisis connected with the financing of Greek public debt, the Hellenic Republic enacted Law No 3833/2010 laying down urgent measures to address the crisis in public finances (FEK A’ 40/15.03.2010; ‘Law No 3833/2010’). Article 1 thereof, which entered into force on 1 January 2010, imposes a reduction of 12% in the allowances of any kind, reimbursement and remuneration of officials and employees of public authorities. That reduction applies also to staff in a private-law employment relationship with a public authority and prevails over any provision of a collective agreement, arbitral award or individual employment contract.

16 The Hellenic Republic also enacted Law No 3845/2010 laying down ‘Measures for applying the support mechanism for the Greek economy of the euro area Member States and the International Monetary Fund’ (FEK A’ 65/6.05.2010; ‘Law No 3845/2010’). Article 3 thereof, which entered into force on 1 June 2010, imposes, in essence, a further reduction of 3% in the remuneration of the employees referred to in Article 1 of Law No 3833/2010.

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

17 Mr Nikiforidis has been employed since 1996 as a teacher at a primary school in Nuremberg run by the Hellenic Republic. Over the period from October 2010 to December 2012, the Hellenic Republic reduced Mr Nikiforidis’s gross remuneration, which had previously been calculated in accordance with German collective bargaining law, by EUR 20262.32, on account of the enactment of Laws No 3833/2010 and No 3845/2010 by the Greek legislature. Those laws were designed to implement the agreements that the Hellenic Republic had concluded with the European Commission, the European Central Bank and the International Monetary Fund (UN), and also Decision 2010/320.

18 Mr Nikiforidis brought legal proceedings in Germany claiming additional remuneration for the period from October 2010 to December 2012 and seeking to obtain payslips.

19 The Bundesarbeitsgericht (Federal Labour Court, Germany) dismissed the plea of inadmissibility put forward by the Hellenic Republic based on its immunity, on the ground that the employment relationship at issue in the main proceedings is governed by private law. It also observed that Laws No 3833/2010 and No 3845/2010 reduce the pay of all public-sector employees of the Hellenic

Republic, irrespective of whether they carry out their duties in Greece or abroad. It considered that the relevant provisions of those laws meet the definition of overriding mandatory provisions within the meaning of private international law.

20 According to the Bundesarbeitsgericht (Federal Labour Court), the outcome of the dispute in the main proceedings turns on whether Laws No 3833/2010 and No 3845/2010 can apply directly or indirectly to an employment relationship conducted in Germany and subject to German law, which does not permit reductions in remuneration similar to those to which the Hellenic Republic had recourse without a rider to the contract or an *Änderungskündigung* (termination with reengagement on amended terms). It observes in this context that, if the Rome I Regulation did not apply to the main proceedings, Article 34 of the EGBGB would permit it to take into account the overriding mandatory provisions of another State.

21 The Bundesarbeitsgericht (Federal Labour Court) considers that divergent interpretations are possible regarding the moment at which an employment contract is concluded for the purposes of Article 28 of the Rome I Regulation, especially in the case of long-term employment relationships, and that it is necessary to determine whether that provision relates only to the initial conclusion of the contract or whether it may also encompass certain changes in the employment relationship such as contractual variation of the gross remuneration or of the obligation to work, or continuance of work after a breach of contract or after another form of interruption in the performance of the contract. That court points out in this regard that, in the present instance, the last written variation of the employment contract was agreed upon in 2008.

22 In addition, that court is uncertain whether Article 9(3) of the Rome I Regulation must be interpreted restrictively as meaning that only the overriding mandatory provisions of the State of the forum or of the State of performance of the contract can be relied upon or whether it remains possible to have indirect regard to the overriding mandatory provisions of another Member State.

23 Finally, both if the previous provisions of German private international law were to apply and if recourse should be had to Article 9(3) of the Rome I Regulation, irrespective of whether or not that provision precludes account from being taken of the overriding mandatory provisions of a Member State other than the State of the forum or that of the place of performance of the contract, the Bundesarbeitsgericht (Federal Labour Court) raises the question of the consequences which performance of the duty of sincere cooperation, enshrined in Article 4(3) TEU, has for the outcome of the dispute in the main proceedings. According to that court, that requirement could give rise to an obligation to support the Hellenic Republic in the implementation of the agreements which it concluded with the Commission, the International Monetary Fund (UN) and the European Central Bank and of Decision 2010/320, by taking account of Laws No 3833/2010 and No 3845/2010 in the main proceedings.

24 In those circumstances, the Bundesarbeitsgericht (Federal Labour Court) decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

‘1. Is the Rome I Regulation applicable under Article 28 of that regulation to employment relationships exclusively in the case where the legal relationship was formed by a contract of employment entered into after 16 December 2009, or does every subsequent agreement by the contracting parties to continue their employment relationship, whether with or without variation, render that regulation applicable?

2. Does Article 9(3) of the Rome I Regulation exclude solely the direct application of overriding mandatory provisions of another country in which the obligations arising out of that contract are not to be performed, or have not been performed, or does that provision also exclude indirect regard to those mandatory provisions in the law of the Member State the law of which governs the contract?

3. Is the principle of sincere cooperation enshrined in Article 4(3) TEU relevant, for legal purposes, for the decision of national courts on whether overriding mandatory provisions of another Member State are directly or indirectly applicable?'

Consideration of the questions referred

Question 1

25 By its first question, the referring court asks, in essence, whether Article 28 of the Rome I Regulation must be interpreted as meaning that that regulation applies solely to employment relationships established on the basis of a contract concluded after 16 December 2009 or as meaning that it also applies to employment relationships entered into on that date at the latest which the parties agree, after that date, to continue, with or without variation.

26 Article 28 of the Rome I Regulation provides that that regulation is to apply to contracts concluded as from 17 December 2009, without distinguishing between the various types of contracts that fall within the regulation's substantive scope. Thus, the employment relationships to which the first question specifically relates are also covered by that provision.

27 In the present instance, it is apparent from the information provided by the referring court that the employment contract at issue in the main proceedings was initially concluded in 1996, that is to say, before the Rome I Regulation entered into force.

28 That point having been clarified, it should be noted that, according to settled case-law, it follows from the need for uniform application of EU law and from the principle of equality that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union (see, to that effect, judgments of 17 July 2008, *Kozłowski*, C-66/08, EU:C:2008:437, paragraph 42, and of 24 May 2016, *Dworzecki*, C-108/16 PPU, EU:C:2016:346, paragraph 28).

29 As Article 28 of the Rome I Regulation makes no express reference to the law of the Member States, it should therefore be interpreted autonomously and uniformly.

30 Doubt is not cast on this conclusion by Article 10 of the Rome I Regulation pursuant to which questions related to the existence and validity of a contract, or of any term of a contract, are to be determined by the law which would govern it under that regulation if the contract or term were valid. That provision, which does not deal with the temporal scope of the Rome I Regulation, is not relevant in connection with the answer to be given to the first question referred.

31 By virtue of Article 28, the Rome I Regulation is intended to apply only to contractual relationships arising from mutual agreement of the contracting parties which has manifested itself on or after 17 December 2009.

32 Nonetheless, in order to answer the first question it must be determined whether a variation of an employment contract concluded before 17 December 2009, agreed between the parties to that contract on or after that date, can lead to a new employment contract being regarded as having been concluded between those parties on or after that date, for the purposes of Article 28 of the Rome I Regulation, so that that contract would fall within the regulation's temporal scope.

33 In this connection, it should be noted that the EU legislature ruled out the Rome I Regulation having immediate application whereby the future effects of contracts concluded before 17 December 2009 would have been brought within its scope.

34 Although Commission Proposal COM(2005) 650 final of 15 December 2005 for a regulation of the European Parliament and the Council on the law applicable to contractual obligations (Rome I) envisaged the inclusion within the scope of the regulation of 'contractual obligations arising after its entry into application', the reference to such obligations was replaced in Article 28 of the Rome I Regulation by a reference to 'contracts' concluded as from 17 December 2009. Whilst the reference, proposed by the Commission, to contractual obligations arising after the entry into application of that regulation covered, in addition to contracts concluded after its entry into application, the future effects of contracts concluded before then, that is to say, obligations arising from the latter after then, this is not so in the case of the wording of Article 28 of the Rome I Regulation, which covers exclusively contracts concluded on or after 17 December 2009, the date on which that regulation became applicable pursuant to Article 29 thereof. It follows that, contrary to what the referring court envisages, any agreement by the contracting parties, after 16 December 2009, to continue performance of a contract concluded previously cannot have the effect of making the Rome I Regulation applicable to that contractual relationship without thwarting the clearly expressed intention of the EU legislature.

35 That choice would be called into question if any, even minor, variation made by the parties, on or after 17 December 2009, to a contract initially concluded before that date were sufficient to bring that contract within the scope of the Rome I Regulation.

36 Furthermore, it would be contrary to the principle of legal certainty and, more specifically, have an adverse effect on predictability of the outcome of litigation and on certainty as to the law applicable, which, according to recital 6 of the Rome I Regulation, constitute an objective of the latter, to hold that any variation made to the initial contract by mutual agreement, on or after 17 December 2009, brings that contract within the scope of the regulation and, ultimately, makes that contract subject to conflict-of-law rules other than those applicable when it was initially concluded.

37 On the other hand, the possibility remains, as the Commission has pointed out in its written observations, that a contract concluded before 17 December 2009 may be subject, on or after that date, to a variation agreed between the contracting parties of such magnitude that it gives rise not to the mere updating or amendment of the contract but to the creation of a new legal relationship between the contracting parties, so that the initial contract should be regarded as having been replaced by a new contract, concluded on or after that date, for the purposes of Article 28 of the Rome I Regulation.

38 It is for the referring court to determine whether, in the present instance, the contract concluded between Mr Nikiforidis and his employer underwent a variation agreed between the parties of such magnitude on or after 17 December 2009. If it did not, the Rome I Regulation would not be applicable in the main proceedings.

39 In the light of all the foregoing considerations, the answer to the first question is that Article 28 of the Rome I Regulation must be interpreted as meaning that a contractual employment relationship that came into being before 17 December 2009 falls within the scope of the regulation only in so far as that relationship has undergone, as a result of mutual agreement of the contracting parties which has manifested itself on or after that date, a variation of such magnitude that a new employment contract must be regarded as having been concluded on or after that date, a matter which is for the referring court to determine.

Questions 2 and 3

40 By its second and third questions, which it is appropriate to examine together, the referring court asks in essence, first, whether Article 9(3) of the Rome I Regulation must be interpreted as precluding overriding mandatory provisions other than those of the State of the forum or of the State where the obligations arising out of the contract have to be or have been performed from being taken into account, directly or indirectly, by the court of the forum pursuant to the national law applicable to the contract and, secondly, what requirements might arise from the principle of sincere cooperation, enshrined in Article 4(3) TEU, in relation to the direct or indirect taking into account of those other overriding mandatory provisions by the court of the forum.

41 According to Article 9(1) of the Rome I Regulation, overriding mandatory provisions are provisions respect for which is regarded as crucial by a country for safeguarding its public interests, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law applicable to the contract under that regulation. Article 9(2) provides that the Rome I Regulation does not preclude the application of the overriding mandatory provisions of the State of the forum. Article 9(3) states that the court of the forum may give effect to the overriding mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, in so far as those overriding mandatory provisions render the performance of the contract unlawful. It is added in Article 9(3) that, before deciding to give effect to the latter provisions, the court of the forum is to have regard to their nature and purpose and to the consequences of their application or non-application.

42 For the purpose of determining the precise scope of Article 9 of the Rome I Regulation, it should be noted that it is apparent from Article 3(1) thereof and, so far as concerns, more specifically, employment contracts, Article 8(1), that freedom of contract of the contracting parties as to the choice of the applicable law constitutes the general principle laid down by the Rome I Regulation.

43 Article 9 of the Rome I Regulation derogates from that principle that the applicable law is to be freely chosen by the parties to the contract. As recital 37 of the regulation states, this exception has the purpose of enabling the court of the forum to take account of considerations of public interest in exceptional circumstances.

44 As a derogating measure, Article 9 of the Rome I Regulation must be interpreted strictly (see, by analogy, judgment of 17 October 2013, *Unamar*, C-184/12, EU:C:2013:663, paragraph 49).

45 Furthermore, it is apparent from the drafting history of the Rome I Regulation that the EU legislature sought to restrict disturbance to the system of conflict of laws caused by the application of overriding mandatory provisions other than those of the State of the forum. Thus, whilst Commission Proposal COM(2005) 650 final took up the possibility, provided for by the Rome Convention, of giving effect to overriding mandatory provisions of a State which has a close connection with the contract concerned, that option was removed by the EU legislature (see draft report of the European Parliament on the proposal for a regulation of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I), 2005/0261(COD), p. 15).

46 Moreover, to permit the court of the forum to apply overriding mandatory provisions of the legal order of Member States other than those which are expressly referred to in Article 9(2) and (3) of the Rome I Regulation would be liable to jeopardise full achievement of the regulation's general objective, which, as stated in recital 16, is legal certainty in the European area of justice.

47 Acceptance that the court of the forum has such a power would increase the number of overriding mandatory provisions applicable by way of derogation from the general rule set out in Article 3(1) of the Rome I Regulation and, more specifically, for employment contracts, in Article 8(1) of that regulation and would therefore be such as to affect the foreseeability of the substantive rules applicable to the contract.

48 Finally, to accord the court of the forum the power to apply, by virtue of the law applicable to the contract, overriding mandatory provisions other than those referred to in Article 9 of the Rome I Regulation could affect the objective pursued by Article 8 thereof, which is intended to ensure, as far as possible, compliance with the provisions protecting the employee that are laid down by the law of the State in which he carries out his work (see, by analogy, judgment of 15 March 2011, *Koelzsch*, C-29/10, EU:C:2011:151, paragraph 42).

49 It follows from the foregoing that the list, in Article 9 of the Rome I Regulation, of the overriding mandatory provisions to which the court of the forum may give effect is exhaustive.

50 Article 9 of the Rome I Regulation must therefore be interpreted as precluding the court of the forum from applying, as legal rules, overriding mandatory provisions other than those of the State of the forum or of the State where the obligations arising out of the contract have to be or have been performed. Consequently, since, according to the referring court, Mr Nikiforidis's employment contract has been performed in Germany, and the referring court is German, the latter cannot in this instance apply, directly or indirectly, the Greek overriding mandatory provisions which it sets out in the request for a preliminary ruling.

51 On the other hand, Article 9 of the Rome I Regulation does not preclude overriding mandatory provisions of a State other than the State of the forum or the State where the obligations arising out of the contract have to be or have been performed from being taken into account as a matter of fact, in so far as this is provided for by a substantive rule of the law that is applicable to the contract pursuant to the regulation.

52 The Rome I Regulation harmonises conflict-of-law rules concerning contractual obligations and not the substantive rules of the law of contract. In so far as the latter provide that the court of the forum is to take into account, as a matter of fact, overriding mandatory provisions of the legal order of a State other than the State of the forum or the State of performance of the contractual obligations, Article 9 of the regulation cannot prevent the court seised from taking that matter of fact into account.

53 Accordingly, the referring court has the task of ascertaining whether Laws No 3833/2010 and No 3845/2010 are capable of being taken into account when assessing the facts of the case which are relevant in the light of the substantive law applicable to the employment contract at issue in the main proceedings.

54 Examination of the principle of sincere cooperation enshrined in Article 4(3) TEU does not enable a different conclusion to be reached. That principle does not authorise a Member State to circumvent the obligations that are imposed upon it by EU law and accordingly is not capable of permitting the referring court to disregard the fact that the list of overriding mandatory provisions to which effect may be given, as set out in Article 9 of the Rome I Regulation, is exhaustive, in order to give effect, as legal rules, to the Greek overriding mandatory provisions at issue in the main proceedings (see, by analogy, judgment of 23 January 2014, *Manzi and Compagnia Naviera Orchestra*, C-537/11, EU:C:2014:19, paragraph 40).

55 In the light of all the foregoing considerations, the answer to the second and third questions is that Article 9(3) of the Rome I Regulation must be interpreted as precluding overriding mandatory provisions other than those of the State of the forum or of the State where the obligations arising out of the contract have to be or have been performed from being applied, as legal rules, by the court of

the forum, but as not precluding it from taking such other overriding mandatory provisions into account as matters of fact in so far as this is provided for by the national law that is applicable to the contract pursuant to the regulation. This interpretation is not affected by the principle of sincere cooperation laid down in Article 4(3) TEU.

Costs

56 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Grand Chamber) hereby rules:

1. **Article 28 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) must be interpreted as meaning that a contractual employment relationship that came into being before 17 December 2009 falls within the scope of the regulation only in so far as that relationship has undergone, as a result of mutual agreement of the contracting parties which has manifested itself on or after that date, a variation of such magnitude that a new employment contract must be regarded as having been concluded on or after that date, a matter which is for the referring court to determine.**

2. **Article 9(3) of Regulation No 593/2008 must be interpreted as precluding overriding mandatory provisions other than those of the State of the forum or of the State where the obligations arising out of the contract have to be or have been performed from being applied, as legal rules, by the court of the forum, but as not precluding it from taking such other overriding mandatory provisions into account as matters of fact in so far as this is provided for by the national law that is applicable to the contract pursuant to the regulation. This interpretation is not affected by the principle of sincere cooperation laid down in Article 4(3) TEU.**

[Signatures]