requirements relating to the post which are unrelated to the fixed-term nature of the interim civil servant's employment relationship, it is capable of being justified for the purposes of Clause 4(1) and/or (4) of the Framework Agreement. On the other hand, a general and abstract condition to the effect that five years' length of service must have been completed entirely as a career civil servant, with no account being taken of the specific nature of the tasks or their inherent characteristics, does not meet the requirements of the case-law on Clause 4(1) of the Framework Agreement (§55-56).

7. Moreover, regarding the objective of preventing reverse discrimination against established career civil servants , although that objective may constitute an 'objective ground' for the purposes of Clause 4(1) and/or (4) of the Framework Agreement, it cannot justify disproportionate national legislation such as that at issue in the main proceedings which completely and in all circumstances prohibits all periods of service completed by workers under fixed-term employment contracts being taken into account in order to determine the length of service of those workers upon their recruitment on a permanent basis and, thus, their level of remuneration. Indeed, the national rules provide for inclusion in the teaching evaluation plan and a remuneration supplement in the event of a positive assessment only to teachers employed as established career civil servants having completed five years' length of service, whereas teachers employed as interim civil servants fulfil exactly the same entrance criteria, but are excluded from the benefits (§57-58).

Order

Clause 4(1) of the of the Framework agreement on fixed-term work must be interpreted as precluding national rules, such as those at issue in the main proceedings, which reserve participation in teaching evaluation plans and, in the case of a positive result, the ensuing financial incentives, exclusively for teachers employed under permanent employment relationships as established career civil servants, thereby excluding persons employed as interim civil servants under fixed-term employment relationships.

ECJ (Grand Chamber) 18 October 2016, case C-135/15 (Nikiforidis), Applicable law

Republik Griechenland – v – Grigorios Nikiforidis

Summary

The Rome I Regulation only applies to contracts concluded before 17 December 2009 insofar as the contract has undergone major change afterwards. It precludes overriding mandatory provisions other than those of the forum court.

Facts

Mr Nikiforidis is a teacher in a school in Germany run by Greece. His contract, which was entered into in 2008, is governed by German law. Over the period 2010-2012, his employer, the State of Greece, reduced his salary very substantially. This was done pursuant to several Greek laws, which were designed to implement the agreements between Greece and its international creditors.

National proceedings

Mr Nikiforidis brought legal proceedings before a German court, claiming reinstatement of his contractual salary. The Greek government argued that those laws reduce the pay of all public sector employees of Greece, 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. The *Bundesarbeitsgericht* referred three questions to the ECJ. The first related to Article 28 of Regulation 593/2008 on the law applicable to contractual obligations (the 'Rome I Regulation'). This regulation replaced the 1990 Rome Convention, with the proviso in Article 28 that: "This Regulation shall apply to contracts concluded as from 17 December 2009". In other words, the question was: which EU instrument determined the law applicable to Mr Nikiforidis' contract: the 1980 Convention or the Rome I Convention?
A second question was 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 had to be performed from being

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taken into account by the court of the forum pursuant to the national law applicable to the contract. In other words, did the Rome I Regulation prevent the German courts from applying overriding provisions of Greek law to the dispute?
The third question related to the principle of sincere cooperation embodied in Article 4(3) of the Treaty on European Union.

ECJ's findings

1. In order to answer the first question, the Court had to determine whether a variation of an employment contract concluded before 17 December 2009, agreed between the parties to that contract on or after that date, could 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 scope. This was not found to be the case. It was clear from the drafting history of Article 28 that the EU legislature did not wish the Rome I Regulation to apply to the future effects of contracts concluded before 17 December. Any other interpretation of Article 25 would mean that even minor variations made by the parties, on or after 17 December 2009, to a contract initially concluded before that date would be sufficient to bring that contract within the scope of the Rome I Regulation. That 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 (§32-36).
2. However, a contract concluded before 17 December 2009 could be subject, on or after that date, to a variation agreed between the contracting parties of such magnitude that it gives rise 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. It was for the referring court to determine whether the contract concluded between Mr Nikiforidis and his employer underwent a variation of such magnitude on or after 17 December 2009. If it did not, the Rome I Regulation would not apply in the main proceedings (§37-38).
3. Freedom of the contracting parties to choose the applicable law is a general principle laid down by the Rome I Regulation, but Article 9 derogates from that principle. It has the purpose of enabling the court of the forum to take account of considerations of public interest in exceptional circumstances. As a derogating measure, Article 9 must be interpreted strictly (§43-44).
4. It was 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. To permit the court of the forum to apply overriding mandatory provisions other than those 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 was legal certainty in European justice. 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 would therefore affect the foreseeability of the substantive rules applicable to the contract (§45-47).
5. Finally, to accord the court of the forum the power to apply overriding mandatory provisions other than those referred to in Article 9 of the Rome I Regulation could affect the objective pursued by Article 8, which was intended to ensure compliance with provisions to protect employees that are laid down by the law of the State in which he carries out his work (§48).
6. 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 where this is provided for by a substantive rule of law applicable to the contract. The Rome I Regulation harmonises conflict-of-law rules concerning contractual obligations and not the substantive rules of the law of contract. Insofar as the latter provide that the court of the forum should take into account 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 from taking that into account (§51-52).
7. The principle of sincere cooperation does not authorise a Member State to circumvent the obligations imposed on it by EU law and does not permit the referring court to disregard the fact that the list of overriding mandatory provisions which may be given effect under Article 9 of the Rome I Regulation is exhaustive in considering the Greek provisions at issue (§54).

Judgment

1. Article 28 of Regulation (EC) No 593/2008 must be interpreted as meaning that an employment contract that came into being before 17 December 2009 falls within the scope of the Regulation only insofar as that relationship has undergone a variation of such magnitude that a new employment contract must be regarded as having been concluded on or after that date. This is a matter for the referring court to determine.

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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 by the court of the forum. However, it does not preclude the court from taking other overriding mandatory provisions into account as matters of fact, where this is provided for by the national law applicable to the contract. This interpretation is not affected by the principle of sincere cooperation laid down in Article 4(3) TEU.

ECJ 10 November 2016, case C-548/15 (De Lange), Age discrimination – tax

J.J. de Lange – v – Staatssecretaris van Financiën

Summary

Tax law may, in principle, allow persons aged under 30 to deduct from their taxable income more vocational training expenses than older persons.

Facts

The Dutch Income Tax Act allows persons aged between 18 and 30, to deduct the full expense of training from their taxable income provided certain conditions are satisfied. Others may deduct no more than € 15,000.
When he was 32, Mr De Lange started training as a commercial airline pilot. In his 2009 declaration of taxable income he deducted € 44,507, being the full cost of his training. The tax authorities allowed a deduction of no more than € 15,000.

National proceedings

Mr De Lange appealed unsuccessfully in two instances. He argued that the distinction between individuals under and over 30 violated Article 3(1) of Directive 2000/78, which provides that the Directive applies to all persons in relation to "access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience". Mr De Lange appealed to the Supreme Court, which referred questions to the ECJ. The first question was whether a taxation scheme such as the one at issue falls outside the material scope of the Directive. The third and fourth questions were whether Article 6 of the Directive precludes a taxation scheme such as that at issue.

ECJ's findings

1. While the existence and scope of a right to deduct are not preconditions, as such, for access to vocational training, the resulting financial consequences may affect accessibility to training. According to the Dutch government, the right to deduct training expenses is designed to help young people by offering them tax concessions to make it easier for them to study during that period and gain a firm position on the labour market. In those circumstances, a taxation scheme such as that at issue can be regarded as relating to access to vocational training, within the meaning of Article 3(1)(b) of Directive 2000/78 (§18-20).
2. Article 6(1)(a) of Directive 2000/78 provides that the differences of treatment may include the setting of special conditions for young people on access to employment and vocational training, including dismissal and remuneration conditions, in order to promote their vocational integration or ensure their protection. Consequently, the objective of promoting the position of young people on the labour market can be regarded as legitimate for the purposes of Article 6(1) of Directive 2000/78. It is thus necessary to examine whether the means used to attain that objective are appropriate and necessary (§25-28).
3. As regards the appropriateness of a taxation scheme such as that at issue, it is common ground that such a scheme is capable of improving the position of young people on the labour market as it amounts to an incentive to pursue vocational training. It is, however, for the national court to determine whether that is indeed the case (§29).
4. The Netherlands Government observes that, while this scheme reserves the right to deduct the whole of their training costs from their taxable income solely to those under 30, those over 30 are nonetheless not excessively disadvantaged by that scheme. Persons over 30 enjoy a right each year to deduct training expenditure of up to € 15 000, irrespective of whether the costs incurred concern a first cycle of studies or a further cycle. Moreover, the right may be exercised without any limitation in time, whereas those under can only deduct the whole of their training costs in an ordinary period of study of 16 calendar quarters. In addition, training costs amount to an average of € 15,000 per annum. Finally, as whether it is justified to exclude those over 30 from the right to full deduction of training costs, the government of the Netherlands argued that those over 30 have generally had the opportunity to undertake prior training and to pursue a professional activity, with the result that

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