Case C-37/18, Miscellaneous

Vueling Airlines SA – v – Jean-Luc Poignan, reference lodged by the the Cour de cassation (France) on 19 January 2018

1. Is the interpretation by the Court of Justice of the European Union in its judgment of 27 April 2017, A-Rosa Flussschiff, C-620/15, of Article 14(2)(a) of Regulation (EEC) No 1408/71, as amended and updated by Regulation (EC) No 118/97, as amended by Regulation (EC) No 647/2005 of the European Parliament and of the Council of 13 April 2005, applicable to a dispute relating to the offence of concealed employment in which E 101 certificates were issued under Article 14(1)(a), pursuant to Article 11(1) of Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation No 1408/71, although the situation was covered by Article 14(2)(a)(i), for workers carrying on their activity in the territory of the Member State of which they are nationals and in which the air transport undertaking established in another Member State has a branch, and a mere reading of the E 101 certificate, which refers to an airport as the place where the worker is employed and an air transport undertaking as employer, suggested that that certificate had been obtained fraudulently?
2. In the affirmative, must the principle of the primacy of EU law be interpreted as precluding a national court, bound under its domestic law by the principle that the force of res judicata of a judgment of a criminal court is binding on a civil court, from drawing the appropriate conclusions from a decision of a criminal court which is not compatible with the rules of EU law by ordering, in civil proceedings, an employer to pay damages to a worker solely because of the criminal conviction of that employer for concealed employment?

Case C-44/18, Fixed-term work

Cobra Servicios Auxiliares, S.A. – v – FOGASA, Jesus Valiño Lopez en Incatema, S.L., reference lodged by the Tribunal Superior de Justicia de Galicia (Spain) on 24 January 2018

1. Must Clause 4 of the framework agreement on fixed-term work contained in the Annex to Directive 1999/70 be interpreted as precluding national legislation which, in respect of the same set of facts (the termination of a contract for services (*contrata*) between the employer and a third-party undertaking at the latter's instigation), provides for a lower level of compensation for (i) termination of a fixed-term contract (*contrato*) for a specific task or service with a term of the same duration as that of the contract between the employer and the third-party undertaking than it does for (ii) termination of the permanent contracts of comparable workers under a collective redundancy that is justified on production-related grounds pertaining to the employer and arises from the termination of the contract between the employer and the third-party undertaking?
2. If the answer is in the affirmative, is the unequal treatment between workers on fixed-term contracts and comparable permanent workers as regards compensation for termination of contract in cases where termination is prompted by the same factual circumstances but based on different legal grounds to be considered to constitute discrimination of the type prohibited in Article 21 of the Charter, inasmuch as it is contrary to the principles of equal treatment and non-discrimination in Articles 20 and 21 of the Charter, which form part of the general principles of EU law?

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