JUDGMENT OF THE COURT (First Chamber)

18 July 2007 *

In Case C-213/06 P,

APPEAL under Article 56 of the Statute of the Court of Justice, lodged on 8 May 2006,

European Agency for Reconstruction (EAR), represented by S. Orlandi, and J.-N. Louis, avocats, with an address for service in Luxembourg,

applicant,

the other party to the proceedings being:

Georgios Karatzoglou, former member of the temporary staff of the European Agency for Reconstruction, residing in Ioannina (Greece), represented by S. Pappas, dikigoros,

applicant at first instance,

* Language of the case: English.

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, R. Schintgen, A. Tizzano (Rapporteur), A. Borg Barthet and E. Levits, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

having regard to the written procedure and further to the hearing on 10 May 2007,

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

gives the following

Judgment

1 In this appeal, the European Agency for Reconstruction ('the EAR') asks the Court of Justice to set aside the judgment of the Court of First Instance of the European Communities of 23 February 2006 in Case T-471/04 *Karatzoglou* v *EAR* [2006] ECR-SC I-A-2-35 and II-A-2-157 ('the judgment under appeal'), by which it annulled the EAR's decision of 26 February 2004 terminating Mr Karatzoglou's employment contract ('the contested decision').

Legal context

2 The EAR was set up by Council Regulation (EC) No 2454/1999 of 15 November 1999 amending Regulation (EC) No 1628/96 relating to aid for Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia (OJ 1999 L 299, p. 1).

3 According to the 19th recital in the preamble to Regulation No 2454/1999, the EAR was set up for the purposes of the reconstruction of those States and, once that objective has been achieved, a proposal will be made to wind it up.

4 The provisions relating to the operation of the EAR were laid down in Council Regulation (EC) No 2667/2000 of 5 December 2000 on the European Agency for Reconstruction (OJ 2000 L 306, p. 7). That regulation has been amended several times, most recently by Council Regulation (EC) No 1756/2006 of 28 November 2006 (OJ 2006 L 332, p. 18) ('Regulation No 2667/2000') which, inter alia, extended the EAR's mandate to 31 December 2008.

5 Under Article 10 of Regulation No 2667/2000:

'The [EAR]'s staff shall be subject to the rules and regulations applicable to officials and other servants of the European Communities ...

The [EAR]'s staff shall consist of a strictly limited number of officials assigned or seconded by the Commission or Member States to carry out management duties. The remaining staff shall consist of other employees recruited by the [EAR] for a period strictly limited to its requirements.'

6 Articles 2 and 3 of Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ English Special Edition 1968(I), p. 30), in the version in force until 30 April 2004 establish, respectively, the Staff Regulations of Officials of the European Communities ('the Staff Regulations') and the Conditions of Employment of Other Servants of the European Communities ('the CEOS').

7 Chapter 9 of Title II of the CEOS, entitled 'Termination of employment', in the version in force at the time of the events in the main proceedings, comprised Articles 47 to 50 and provided for the different situations in which temporary staff contracts could be terminated.

8 In particular, Article 47(2)(a) of the CEOS laid down that the employment of a member of the temporary staff for an indefinite period was to cease 'at the end of the period of notice stipulated in the contract'.

The facts of the dispute

9 According to Article 4 of his employment contract ('the contract'), Mr Georgios Karatzoglou was recruited by the EAR from 7 November 2001 as a member of the temporary staff for a period of 18 months.

10 Article 5(b) of the contract provides that:

'This contract may be terminated by the institution or by the staff member for any of the reasons specified in Articles 47 to 50 of the [CEOS] subject to the conditions laid down in those Articles ...'

11 At the end of the initial contract period of 18 months, the parties agreed to extend their contractual relations under a contract for an indefinite period. They, therefore, amended the initial contract by an addendum dated 7 May 2003 ('the Addendum').

12 Article 4 of the contract, as amended by the Addendum, states that:

'The contract shall run for an indefinite period. However, the duration shall not exceed the expiry date of the [EAR].

The [EAR] reserves the right to terminate the contract following a reduction or winding-up of its operations before the expiry date of the [EAR].'

13 Under the Addendum, all other articles of the initial contract, including Article 5, continued unchanged.

14 By letter of 26 February 2004, the director of the EAR informed Mr Karatzoglou of the termination of his contract in the following words:

'I regret to inform you that the decision has been taken to terminate your contract of employment with the [EAR]. The notice period will be of three months, starting on the 27 February 2004, in accordance with Article 47(2) of the [CEOS] and the second [sub]paragraph of Article 5(b) of your contract.'

15 On 27 May 2004, Mr Karatzoglou lodged a complaint, pursuant to Article 90 of the Staff Regulations, against the contested decision. That complaint was rejected by implication, since the EAR failed to reply within the four month period laid down in the Staff Regulations.

The action before the Court of First Instance and the judgment under appeal

16 By application lodged at the Registry of the Court of First Instance on 6 December 2004, Mr Karatzoglou brought an action for annulment of the contested decision.

17 That action was based on five pleas in law, alleging respectively:

— breach of the requirement to state reasons;

— breach of the principle of the protection of legitimate expectations;

— breach of Article 47 of the CEOS concerning the period of notice;

— misuse of powers and

— breach of the principle of sound administration.

18 The Court of First Instance examined the second plea in law relied on by the applicant by which he alleges a breach of the principle of the protection of legitimate expectations. At paragraphs 33 and 34 of its judgment, it noted the Community case-law according to which the right to rely on the principle of the protection of legitimate expectations extends to any individual in a situation where it is clear that the Community administration has, by giving him precise assurances, led him to entertain reasonable expectations. Such assurances must, in any event, comply with the provisions of the Staff Regulations.

19 In the light of that principle, the Court of First Instance examined whether Article 4 of the contract, as amended by the Addendum, gave Mr Karatzoglou a legitimate expectation that his contract would be terminated only in the event of a significant reduction or winding-up of the EAR's operations before the expiry date of its mission.

20 At paragraphs 36 and 37 of the judgment under appeal, the Court of First Instance accepted that the amendment of Article 4 of the contract by the Addendum had 'brought about an ambiguous situation as regards the content of the contract'. The contract still referred, in its unchanged Article 5, to the means of termination specified in Articles 47 to 50 of the CEOS permitting the EAR inter alia to terminate the contract of a member of its temporary staff without stating reasons. According to the Court, however, the addition of the second paragraph of Article 4 could have 'given the applicant the impression that the EAR had restricted its power to terminate the contract to circumstances in which there was a reduction or winding-up of the operations of the EAR before the expiry date of its mission'.

21 The Court of First Instance therefore found, at paragraphs 38 and 39 of the judgment under appeal, that Mr Karatzoglou could have believed that the purpose of Article 4 of the contract, as amended by the Addendum, was to indicate, in advance, the ground for a possible subsequent termination — namely a significant reduction or winding-up of the operations of the EAR before the expiry date of its mission — so that, under the contractual arrangements as amended by the Addendum, Article 5(b) of the contract could be applied only partially. Moreover, it considered that Mr Karatzoglou could have entertained a legitimate expectation that imprecise provisions of an employment contract would be interpreted in favour of the weaker contracting party.

22 The Court of First Instance concluded, at paragraphs 41 to 45 of the judgment under appeal, that 'the belief thus generated in the mind of the applicant' must be regarded as legitimate, given that, in particular, no provision of the CEOS precludes the EAR from restricting its power to terminate contracts by means of contractual provisions.

23 Having upheld the second plea in law in the action, the Court of First Instance annulled the contested decision without examining the other pleas.

Forms of order sought

24 The EAR claims that the Court should:

— set aside the judgment under appeal;

— give judgment itself on the dispute, dismissing the action brought by Mr Karatzoglou; and

— order Mr Karatzoglou to pay the costs at first instance and on appeal.

25 Mr Karatzoglou contends that the Court should:

— dismiss the appeal as inadmissible or, in the alternative, as unfounded; and

— order the EAR to pay the costs.

Admissibility of the appeal

26 Mr Karatzoglou claims that the appeal is inadmissible, alleging that it was lodged outside the time-limit. According to him, the two-month time-limit for lodging laid down by Article 56 of the Statute of the Court of Justice expired on 8 May 2006 and the appeal was brought on 9 May 2006.

27 It must, however, be noted that the appeal was lodged by electronic means on 8 May 2006, that is to say, within the time-limit laid down by Article 56 of the Statute of the Court. The date relied on by Mr Karatzoglou is that of the lodging of the original of the application initiating the proceedings.

28 Article 37(6) of the Rules of Procedure of the Court of Justice provides that 'the date on which a copy of the signed original of a pleading ... is received at the Registry by telefax or other technical means of communication available to the Court shall be

deemed to be the date of lodgement for the purposes of compliance with the time-limits for taking steps in proceedings, provided that the signed original of the pleading ... is lodged at the Registry no later than 10 days thereafter'.

29 Clearly, therefore, the requirement has been complied with in the present case. The appeal must accordingly be declared admissible.

Appeal

30 In its appeal, the EAR alleges that the Court of First Instance erred in law in various respects. By its first plea in law, it submits that the Court interpreted the terms of the contract in a way which was manifestly contrary to the parties' intentions. By its second plea in law, it submits that that Court erred in finding that there was a breach of the principle of the protection of legitimate expectations.

31 By its second plea in law, which it is appropriate to examine first, the EAR submits, in particular, that the conditions for reliance on the principle of the protection of legitimate expectations set by the Community case-law are not fulfilled in the present case. Citing the settled case-law of the Court of First Instance (see Case T-199/01 *G* v *Commission* [2002] ECR-SC I-A-217 and II-1085, paragraph 38), the EAR maintains that 'specific, unconditional and consistent assurances' cannot arise from the contradictory stipulations which appear in the contract. In addition, the assurances allegedly given to Mr Karatzoglou do not comply with the rules applicable to the EAR and, in particular, to Article 23 of Regulation No 2454/1999 which imposes on the EAR the obligation to recruit members of the temporary staff only for a period strictly limited to its needs.

32 Mr Karatzoglou contends that the Court of First Instance was justified in holding that he had been given sufficiently specific, unconditional and consistent assurances regarding the restriction of the reasons for which his contract could be terminated. The EAR did not confine itself to giving him vague assurances, but had gone on to conclude with him an Addendum to the contract with the purpose of changing the legal terms on which he was employed. Moreover, the legitimate expectation on which Mr Karatzoglou relies on is completely consistent with the relevant law, given that no provision of the CEOS precludes the competent authority from limiting its power to terminate employment contracts by contractual stipulations.

33 In that respect it is necessary to state as a preliminary point that, according to well-established case-law, the principle of the protection of legitimate expectations is one of the fundamental principles of the Community (see, in particular, Case 112/80 *Dürbeck* [1981] ECR 1095, paragraph 48). It also follows from the case-law that any individual is entitled to rely on that principle in a situation where the Community authorities, by giving him precise assurances, have caused him to entertain legitimate expectations (see Case 111/86 *Delauche* v *Commission* [1987] ECR 5345, paragraph 24; Case C-82/98 P *Kögler* v *Court of Justice* [2000] ECR I-3855, paragraph 33; and Joined Cases C-182/03 and C-217/03 *Belgium and Forum 187* v *Commission* [2006] ECR I-5479, paragraph 147). The assurances given must, moreover, comply with the relevant rules (see, to that effect, Case 228/84 *Pauvert* v *Court of Auditors* [1985] ECR 1969, paragraphs 14 and 15, and Case 162/84 *Vlachou* v *Court of Auditors* [1986] ECR 481, paragraph 6).

34 It must be pointed out that, whilst the Court of First Instance correctly cited that case-law at paragraphs 33 and 34 of the judgment under appeal, it wrongly applied the criteria defined thereby in the present case.

35 In particular, it is clear from the judgment that Mr Karatzoglou was given no 'precise assurance' capable of giving rise to any legitimate expectation as to the length of his employment contract.

36 The Court of First Instance stated, at paragraph 36 of the judgment under appeal, that 'the amendment of Article 4 of the initial contract by [the] Addendum ... brought about an ambiguous situation as regards the content of the contract'. At paragraph 37 of that judgment, it explained that 'had the second paragraph of Article 4 not been added, the EAR would indisputably have had the right to terminate [Mr Karatzoglou's] contract for one of the reasons specified in Articles 47 to 50 of the CEOS, subject to compliance with the conditions laid down in those articles, as provided by Article 5(b) of the initial contract. However, the addition of the second paragraph of Article 4 could have given the applicant the impression that the EAR had restricted its power to terminate the contract to circumstances in which there was a reduction or winding-up of the operation of the EAR before the expiry date of its mission'.

37 It is clear from the foregoing that the Court of First Instance itself recognised that Mr Karatzoglou's contractual situation was at least uncertain.

38 Contrary to the Court of First Instance's findings at paragraphs 38 to 40 of the judgment under appeal, such ambiguity cannot give rise to 'precise assurances'. The new Article 4 of the contract was capable of being interpreted both in the sense relied on by Mr Karatzoglou and in that chosen by the EAR (see, to that effect, *Kögler* v *Court of Justice*, paragraph 34).

39 Moreover, it must be pointed out that no other factor capable of giving rise to Mr Karatzoglou's belief as to the length of his contract is clear from the judgment under appeal. The Court of First Instance's finding that such assurances exist rests solely on the contractual situation arising from the amendment of Article 4 of Mr Karatzoglou's initial contract.

40 Nor, in that respect, is it possible to rely on the principle, referred to by the Court of First Instance at paragraph 39 of the judgment under appeal, to the effect that the weaker party to an employment contract can expect vague provisions of the contract to be interpreted in his favour.

41 Suffice it to observe that whether or not Mr Karatzoglou may be considered the weaker party to the contract has no effect on the finding that there were no specific assurances in the present case by the Community administration. Factors linked to Mr Karatzoglou's contractual situation in relation to his employer cannot make up for the absence of one of the pre-conditions for establishing the existence of a legitimate expectation.

42 It follows, in the present case, that the requirements for a finding of breach of the principle of the protection of legitimate expectations were not met.

43 Accordingly, the Court of First Instance erred in law when it held that the contested decision had adversely affected Mr Karatzoglou's legitimate expectation that his contract would be terminated only in the event of a significant reduction or winding-up of the EAR's operations before the expiry date of its mission.

44 Having regard to all of the foregoing, the second plea in law of the appeal must be upheld.

45 Without it being necessary to examine the other pleas in law relied on in support of the appeal, the judgment under appeal must consequently be set aside.

Referral of the case back to the Court of First Instance

46 Under the first paragraph of Article 61 of the Statute of the Court of Justice, when the Court sets aside a decision of the Court of First Instance, it may, where the state of the proceedings so permits, either give final judgment in the matter itself or refer the case back to the Court of First Instance for final judgment.

47 As the Court of First Instance has examined only one of the five pleas in law relied on by Mr Karatzoglou, the Court does not consider itself to be in a position to judge the case. It is therefore necessary to refer it to the Court of First Instance for that Court to rule on the applicant's submissions to the effect that the contested decision should be annulled and to reserve the costs.

On those grounds, the Court (First Chamber) hereby:

1. **Sets aside the judgment of the Court of First Instance of the European Communities of 23 February 2006 in Case T-471/04 *Karatzoglou* v *EAR*;**

2. **Refers the case back to the Court of First Instance of the European Communities for that Court to rule on Mr Karatzoglou's submissions to the effect that the decision of the European Agency for Reconstruction (EAR) of 26 February 2004 terminating his employment contract should be annulled;**

3. **Reserves the costs.**

[Signatures]