

SUMMARY

ECJ 13 March 2014, case C-190/13 (Antonio M^uerquez Samohano - v - Universitat Pompeu Fabra), Fixed- term work

Facts

Mr Samohano was employed by a Spanish university as a part-time associate lecturer. Initially, he was employed for the fixed term of one year. This contract was renewed three times, on each occasion for (almost) one year. When his fourth contract was not renewed, he brought legal proceedings, seeking the annulment of his “dismissal” or, alternatively, a finding that his “dismissal” was unfounded.

Unlike the general Spanish rules on fixed-term contracts, the rules applying to universities do not require objective reasons for the renewal of such contracts, nor do they impose a maximum total duration or a limit on the number of renewals, nor do they lay down, in respect of associate lecturers, any equivalent measure to prevent the abusive use of successive fixed-term contracts.

National proceedings

The court referred three questions to the ECJ. The first related to the Spanish law allowing universities to renew fixed-term employment contracts without limitation. The second and third questions related to differences, as regards fixed-term employment, between public and private sector workers and between categories of public sector workers.

ECJ’s findings

1. According to case-law (see Angelidaki, C-378/07), the concept of “objective reason” in Clause 5(1)(a) of the Framework Agreement annexed to Directive 1999/70 must be

understood as referring to precise and concrete circumstances characterising a given activity, which are therefore capable, in that particular context, of justifying the use of successive fixed-term employment contracts. Those circumstances may result, in particular, from the specific nature of the tasks or the pursuit of a legitimate social-policy objective. On the other hand, a national provision which merely authorises recourse to successive fixed-term contracts, in a general and abstract manner by a rule of statute or secondary legislation, does not accord with these requirements. Such a provision, which is of a purely formal nature, does not permit objective and transparent criteria to be identified in order to verify whether the renewal of such contracts actually responds to a genuine need and is appropriate for achieving the objective pursued and necessary for that purpose. A provision such as the one at issue therefore carries a real risk that it will result in misuse (§ 45-47).

2. The Spanish rules at issue justify the conclusion and renewal by universities of fixed-term employment contracts with associate lecturers by the need to entrust “specialists with recognised competence”, who exercise a professional activity otherwise than in a university, with the performance, on a part-time basis, of specific teaching tasks, so that those specialists can bring their knowledge and professional experience to the university, thus establishing a partnership between university teaching circles and professional circles. According to those rules, such an associate lecturer must have exercised a paid professional activity for a minimum period of several years before being employed by the university. Furthermore, the employment contracts in question are entered into and renewed on condition that the conditions relating to the exercise of the professional activity remain in place and those employment contracts must be terminated when the associate lecturer concerned reaches the age of retirement. Thus, the Spanish rules in question appear to lay down the precise and concrete circumstances in which fixed-term employment contracts may be concluded or renewed and to respond to a genuine need (§ 48-50).

3. Given that, in order to be recruited as an associate lecturer, the person in question must necessarily exercise a professional activity outside the university and that he may perform his teaching tasks only on a part-time basis, it does not appear that such a fixed-term employment contract is capable of undermining the purpose of the Framework Agreement, which is to protect workers against job instability (§ 52).

4. However, the Spanish authorities must ensure that the actual application of the rules in question satisfies the requirements of the Framework Agreement, having regard to the particular features of the activity concerned and to the conditions under which it is carried out. Those authorities must be in a position to identify objective and transparent criteria in order to verify whether the renewal of such contracts actually responds to a genuine need and is appropriate and necessary to achieve the objective pursued. It should be borne in mind that

the renewal of fixed-term employment contracts in order to cover needs which are, in fact, not temporary in nature is not justified (see Küçük, C-486/10) (§ 54-56).

5. The mere fact that associate lecturers' contracts are renewed in order to cover a recurring or permanent need and that such a need can be met with a permanent contract is not, however, sufficient to preclude the existence of an objective reason within the meaning of Clause 5(1) of the Framework Agreement. Whilst such fixed-term contracts cover a permanent need, in that the associate lecturers perform tasks that are part of universities' usual activities, the fact remains that the need in terms of employment of associate lecturers remains temporary in so far as lecturers are supposed to resume their professional activity on a full-time basis at the end of their contract. Fixed-term contracts such as those at issue cannot be renewed for the performance of teaching tasks which normally come under the activity of the university's ordinary teaching staff (§ 57-58).

6. Questions 2 and 3 are irrelevant for the purpose of resolving the dispute in the main proceedings because they are hypothetical.

Ruling

Clause 5 of the framework agreement on fixed-term work [...] must be interpreted as not precluding national rules, such as those at issue in the main proceedings, which allow universities to renew successive fixed-term employment contracts concluded with associate lecturers, with no limitation as to the maximum duration and the number of renewals of those contracts, where such contracts are justified by an objective reason within the meaning of clause 5(1)(a), which is a matter for the referring court to verify. However, it is also for that court to ascertain whether, in the main proceedings, the renewal of the successive fixed-term employment contracts at issue was actually intended to cover temporary needs and whether the rules such as those at issue in the main proceedings were not, in fact, used to meet fixed and permanent needs in terms of employment of teaching staff.

Creator: European Court of Justice (ECJ)

Verdict at: 2014-03-13

Case number: C-190/13