

SUMMARY

ECJ 18 March 2011, case C-273/10 (David Montoya Medina – v – Fondo de Garantía Salarial and Universidad de Alicante), Fixed-term work

<p>Clause 4(1) of the Framework Agreement must be interpreted as precluding national legislation which, absent objective justification, reserves the right to trienios to professors with a permanent contract.</p>

Facts

Mr Montoya Medina was a professor at the University of Alicante. In the period 10 January 2006 - 29 April 2008 he had a fixed-term contract (professor ayudante doctor). Because of this, pursuant to Article 15 of the provincial decree regulating the terms of employment of university staff ("Article 15"), he was not eligible for the three-year length of service increments (trienios) to which professors with a permanent contract (professor contratado doctor) are entitled. He claimed monetary compensation for not being given the trienios he would have had, had he been in permanent employment. He based this claim on the Framework Agreement on Fixed-Term Work annexed to Directive 1999/70 (the "Framework Agreement"), Clause 4(1) of which provides, "In respect of employment conditions, fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation unless different treatment is justified on objective grounds.

National proceedings

The court of first instance found in the plaintiff's favour, finding that there was no objective

justification for the difference in treatment between permanent and fixed-term professors, given that they performed the same sort of work and had the same qualification (PhD). The university appealed and the Court of Appeal referred to the ECJ a question on the compatibility of Article 15 with the Framework Agreement.

ECJ's ruling

1. The ECJ begins by stating that it will apply Article 104(3) of its Rules of Procedure, which allows it to rule on a matter without following the normal procedure in the event a referred question has already been answered in a previous case or where the answer can easily be deduced from the ECJ's case law. In the present case, the answer to the question can be easily deduced from the ECJ's rulings in the cases Cerro Alonso (C-307/05), Impact (C-268/06) and Gaviero (C-444 and 456/09) [see EELC 2011-1 page 36] (§ 24-25).
2. The Framework Agreement applies to employees in both private and public service, such as a provincial university (§ 26-28).
3. Given the objective of the Framework Agreement, it must not be interpreted restrictively. It is clear that Clause 4(1) applies to a situation such as the one at issue (§ 29-34).
4. The university alleges that permanent and fixed-term professors form two clearly different categories, with different duties, methods of recruitment and terms of employment that are not limited to the trienios. The question is whether these differences make permanent and fixed-term professors not "comparable" within the meaning of Clause 3(2) of the Framework Agreement, which provides that "the term 'comparable permanent worker' means a worker [É] engaged in the same or similar work/occupation, due regard being given to qualifications/skills" (§ 35-36).
5. In order to ascertain whether workers are engaged in the same or similar work, a court must examine whether they must be considered to be in a comparable situation, taking into account all relevant factors, such as the nature of their work, their academic terms and their working conditions (see Wiener Gebietskrankenkasse, case C-309/97). According to the referring court the statutes governing permanent and fixed-term professors are based on the same academic qualifications (PhD), a similar professional experience (three or two years of experience) and duties in both cases consisting of lecturing and research. Although it is up to the referring court to establish whether permanent and fixed-term professors are "comparable" in respect of the trienios. This would seem to be the case (§ 37-39).

6. A difference in treatment may only be justified by specific and relevant circumstances. A national and abstract criterion is insufficient. The mere fact that a contract is of a temporary nature cannot justify such a difference in treatment, as that would make the Framework Agreement almost meaningless. It is up to the national courts to determine whether the arguments advanced by the university constitute sufficient justification (§ 45-45).

7. Finally, the ECJ recalls that Clause 4(1) of the Framework Agreement is unconditional and sufficiently precise for it to be invoked by individuals against a governmental entity (§ 46).

Ruling

Clause 4(1) of the Framework Agreement must be interpreted as precluding national legislation which, absent objective justification, reserves the right to trienios to professors with a permanent contract.

Creator: European Court of Justice (ECJ)

Verdict at: 2011-03-18

Case number: C-273/10