SUMMARY

ECJ 20 September 2018, C-466/17 (Motter), Fixed-term work, other forms of discrimination

<p>Chiara Motter – v – Provincia autonoma di Trento, Italian case</p>
<p>A system, as exists in Italy, that only-partially counts service under fixed-term contracts for the purpose of classifying staff in grades, is compatible with the Framework Agreement on fixed-term work, as there was an objective justification.</p>

Legal background

The Framework Agreement on fixed-term work, annexed to Directive 1999/70/EC, aims to improve the quality of fixed-term work by ensuring non-discrimination and the prevention of abuse from the successive use of fixed-term employment contracts.

Clause 4(1) provides that fixed-term workers shall not be treated less favourably than comparable permanent workers solely because they have a fixed-term contract unless different treatment is justified on objective grounds. Clause 4(4) stipulates that length of service must be calculated the same way for fixed-term workers as for permanent workers except where this is justified on objective grounds.

The Italian 'Consolidated Law incorporating legislative provisions on education relating to schools of every type and level', established in 1994, contains rules on the grading of fixed-term workers. It stipulates that periods of service by fixed-term teaching staff must be recognised as periods of permanent employment for all legal and salary purposes for the first four years. Thereafter, periods of service are counted at a rate of two thirds for most purposes and one-third for salary. Salary and other financial rights awarded as a result of calculations

made along these lines must be used in all subsequent calculations.

Facts

Ms Motter was recruited as a secondary school teacher by the Autonomous Province of Trento under a fixed-term contract in 2003 for the academic year 2003/2004. She was later employed on seven more contracts for subsequent academic years. On 1 September 2011, she was finally made permanent. She was established in her post on 1 September 2012.

On 8 September 2014, her employer graded her in accordance with the Consolidated Law, deeming that she had completed 80 months out of the 96 months actually worked: the first four years in full (48 months) and the following four years at a rate of two thirds (32 of 48 months). Ms Motter started proceedings claiming she had been discriminated against. She argued that Clause 4 of the Framework Agreement had been breached, as her part-time employment had only been partly taken into account.

According to the referring court, Ms Motter's situation was comparable to that of a permanent worker, but it was uncertain whether it was exactly the same. Permanent teaching staff were appointed following a competitive process and it was therefore arguable that the quality of fixed-term teachers may be inferior. The question was whether this could justify the difference in treatment. Italian case law was mixed on this question, with the lower courts deviating from the Supreme Court's case law. Also, according to ECJ joined cases Valenza and Others (C-302/11 to C-305/11), taking the length of service of fixed-term employees fully into account could lead to reverse discrimination against permanent workers. The Court therefore decided to stay proceedings and ask preliminary questions.

Question

Must clause 4 of the Framework Agreement be interpreted as precluding national legislation, such as that at issue in the main proceedings, which, for the purpose of classifying a worker in a salary grade at the time of his recruitment on the basis of qualifications as a career civil servant, takes full account of only the first four years of service completed under fixed-term contracts, only two thirds of subsequent periods of service being taken into consideration?

Consideration

First, the ECJ noted that classification within a salary grade falls within the meaning of 'employment conditions' in Clause 4(1) of the Framework Agreement. It found that there was a clear difference in treatment but whether that amounted to unlawful discrimination would depend on whether the situations of fixed and permanent workers were comparable and

whether there was any objective justification for the difference.

As mentioned, one difference between the fixed-term employees and permanent 'career civil servants' is that the latter are recruited by competition. Ms Motter's duties as fixed-term employee and a permanent one were identical, but she was not recruited based on an open competition at the time she was hired permanently. This would have required there to be regular competitions, whereas in fact, competitions only take place sporadically. This may or may not indicate that her professional skills were inferior to those of a civil servant, but it does not mean that their situations are not comparable, as she had the same professional experience. The Court felt that it could not be said definitively that teachers on fixed-term contracts were inferior to permanent employees and consequently, their situations could be compared.

The Court found no logic to the rule whereby the first years of employment were counted in full but subsequent ones were counted only partially. There was no objective justification in law for this and therefore it needed to be substantiated.

The Italian Government argued that the experience of fixed-term teachers cannot be fully equated to civil servants recruited by competition. Fixed-term teachers are frequently called upon to act as supply teachers and to teach a variety of subjects. Their working time is also calculated in another way. These differences were put in place to prevent reverse discrimination against the civil servants.

The Italian Government further explained that services by fixed-term teachers provided over a period of 180 days, which corresponds with two thirds of an academic year, are treated by national legislation as equivalent to a whole academic year's service. This conformed to the principle of *pro rata temporis*, to which Clause 4(2) of the Framework Agreement explicitly referred. In addition, the Government explained that the Italian legal system places particular importance on administrative competitions to ensure the impartiality and efficiency of the administration.

The ECJ was of the view that the provision of Italian law in question could not be considered to go beyond what was necessary to reach the objectives referred to above and strike a balance between the legitimate interests of fixed-term and permanent workers.

Ruling

Clause 4 of the framework agreement on fixed-term work, concluded on 18 March 1999, annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as

not precluding, in principle, national legislation, such as that at issue in the main proceedings, which for the purpose of classifying a worker in a salary grade at the time of his recruitment on the basis of qualifications as a career civil servant, takes full account only of the first four years of service completed under fixed-term contracts, only two thirds of subsequent periods of service taken into consideration.

Creator: European Court of Justice (ECJ)
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