SUMMARY

# ECJ 21 November 2018, C-245/17 (Viejobueno Ibáñez and de la Vara González), fixed-term work, paid leave

## *Pedro Viejobueno Ibáñez, Emilia de la Vara González – v – Consejería de Educación de Castilla-La Mancha, Spanish case*

**Summary**

The sole fact that fixed-term employment relationships are terminated when permanent relationships are not, does not constitute discrimination. Nevertheless, fixed-term teachers should still receive an allowance in lieu for untaken leave.

**Legal background**

Clause 4 of the Framework Agreement on Fixed-Term Work (annexed to Directive 1999/70/EC) prohibits fixed-term workers from being treated less favourably than comparable permanent workers solely because they have a fixed-term contract, unless different treatment is justified on objective grounds.

Article 7(2) of Directive 2003/88/EC (on Working Time and Annual Leave) provides that the minimum period of annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.

The Spanish Law (7/2007) on the basic regulations relating to public servants provides, inter alia, that vacant posts may be occupied by interim public servants for expressly justified 'reasons of necessity and urgency'. Their employment relationship can be terminated when the reason no longer applies.

An agreement on the selection of interim teachers (similar to a collective bargaining agreement) stipulates that those who have worked at least 5.5 months by 30 June in the year in

question will retain their post until the beginning of the next academic year (September). However, the Finance Law of 2012 states that this agreement does not apply, insofar as concerns the payment of an allowance for leave in July and August for certain interim staff. Instead, they receive a limited allowance.

**Facts**

Mr Viejobueno Ibáñez and Ms de la Vara González were both appointed as interim teachers for the academic year 2011/2012 (they had different employers). On 29 June 2012, both their employers decided to terminate their employment. They both started proceedings, in which it became clear that their positions were terminated because the 'reasons of necessity and urgency' for which they were appointed no longer applied. However, their colleagues in permanent positions kept their posts and that meant, for example, that they could benefit from summer holidays whilst in service. Both employees discrimination based on their fixed-term appointments and argued that they should remain in their position until 14 September 2012 (as had happened to teachers in previous years). They also asserted that they had been denied the opportunity to take their annual leave by being dismissed right before the summer holidays.

The referring court noted that there were no differences between fixed-term and permanent teachers except for their type of employment, and asked preliminary questions to the ECJ. In doing so, it also questioned the Finance Law of 2012.

**Questions**

Must Clause 4(1) of the Framework Agreement be interpreted as meaning that it precludes national legislation which allows an employer to terminate, at the end of the teaching period, the employment relationship of fixed-term teachers recruited as interim civil servants for one academic year, on the ground that the conditions of necessity and urgency attached to their recruitment have ceased to apply on that date, whereas the employment relationship of indefinite duration of teachers who are established civil servants is maintained?
Must Article 7(2) of Directive 2003/88 be interpreted as precluding national legislation which allows termination, at the end of the teaching period, of the fixed-term employment relationship of teachers recruited as interim civil servants for one academic year, where this deprives those teachers of days of paid annual summer leave which correspond to that academic year, even though those teachers receive an allowance on that account?

**Consideration**

**First question**

While the Framework Agreement combats discrimination, it does not specify the conditions under which employment contracts of either indefinite or fixed-term duration may be used.

This case comes down to the question of whether the principle of non-discrimination (Clause 4(1)) was infringed when the contracts were terminated before the summer holidays.

While the permanent teachers could be regarded as comparable permanent workers, as meant in Clause 3(2) of the Framework Agreement, the difference in treatment arises purely from the fact that the employment of the interim teachers was terminated while their permanent counterparts retained their jobs.

That circumstance is the very essence of the difference between the two types of employment. When a fixed-term employment relationship starts, both parties know that it will end upon the occurrence of objectively determined conditions.

In fact, the Court found that the case concerned a possible breach of contract, as the employees claimed that their employment should have ended later than 30 June 2012 – but not that it should not end. This needed to be determined under the applicable national rules. However, the Framework Agreement recognizes both fixed and indefinite term appointments as legitimate options. The sole fact that fixed-term relationships end while indefinite term relationships do not, cannot be penalised under the Framework Agreement.

Lastly, the Court considered that the fact that the teachers had been deprived of annual leave pay until 14 September 2012 did not constitute a difference in treatment, but was simply the result of the termination of their employment.

**Second question**

Workers are normally entitled to rest and only where their employment contract ends does Article 7(2) of Directive 2003/88 come into play. As the contracts of the teachers had ended, they were entitled to an allowance under Article 7(2) 2003/88/EC.

**Ruling**

Clause 4(1) of the Framework Agreement on fixed-term work, concluded on 18 March 1999, which is 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 national legislation which allows an employer to terminate, at the end of the teaching period, the employment relationship of fixed-term teachers recruited as interim civil servants for one academic year, on the ground that the conditions of necessity and urgency attached to their recruitment have ceased to apply on that date, whereas the employment relationship of indefinite duration of teachers who are established civil servants is maintained.
Article 7(2) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as not precluding national legislation which allows termination, at the end of the teaching period, of the fixed-term employment relationship of teachers recruited for one academic year as interim civil servants, even if this deprives those teachers of days of paid annual leave which correspond to that academic year, provided that such teachers receive an allowance on that account.

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**Creator**: European Court of Justice (ECJ)
**Verdict at**: 2018-11-21
**Case number**: C-245/17