

SUMMARY

ECJ 22 February 2024, joined cases C-59/22, C-110/22 and C-159/22 (Consejeria de Presidencia, Justicia e Interior de la Comunidad de Madrid), Fixed-term work

MP – v – Consejeria de Presidencia, Justicia e Interior de Madrid, IP – v – Universidad Nacional de Educacion a Distancia, IK – v- Agencia Madrilenana de Atencion Social de la Comunidad de Madrid, Spanish case

Summary

The ECJ interprets the Framework Agreement on Fixed-term work. A worker with a non-permanent contract for indefinite duration falls within the scope of this framework agreement. The ECJ emphasized that national legislation must include measures to prevent the abuse of these contracts.

Questions

Must Clause 2 and 3 of the Framework Agreement on fixed-term work be interpreted as meaning that a worker having a non-permanent contract of indefinite duration is to be regarded as a fixed-term worker within the meaning of that framework agreement and, therefore, as falling within its scope?

Must the expression ‘use of successive fixed-term employment contracts or relationships’ in Clause 5 of the Framework Agreement on fixed-term work be interpreted as encompassing the case of a worker having a single, non-permanent contract of indefinite duration with the administration concerned, where that contract does not set a term, but is terminated if the

post concerned is awarded following the publication of a vacancy notice and that vacancy notice has not been published within the period prescribed by that administration?

Must Clause 5 of the Framework Agreement on fixed-term work be interpreted as precluding national legislation which does not provide for any of the measures referred to in paragraph 1(a) to (c) of that clause, or an 'equivalent legal measure', within the meaning of that clause, in order to prevent the abuse of non-permanent contracts of indefinite duration?

Must Clause 5 of the Framework Agreement on fixed-term work be interpreted as precluding national legislation which provides for the payment of limited compensation, equal to 20 days' salary for each year worked, up to a limit of one year's pay, to any worker whose employer has abused non-permanent contracts of indefinite duration successively extended?

Must Clause 5 of the Framework Agreement on fixed-term work be interpreted as precluding national provisions under which 'unlawful actions' give rise to liability on the part of the public administrations, 'in accordance with the rules in force in each of [those] public administrations'?

Should the national provisions, adopted as from 2017, apply to abuses committed before the respective dates on which the provisions entered into force?

Must Clause 5 of the Framework Agreement on fixed-term work be interpreted as precluding national legislation which provides for the organisation of procedures for the consolidation of temporary employment, by means of the publication of vacancy notices to fill the posts occupied by temporary workers, including workers having non-permanent contracts of indefinite duration?

Must Clause 5 of the Framework Agreement on fixed-term work be interpreted as meaning that, in the absence of adequate measures in national law to prevent and, where necessary, penalise, pursuant to Clause 5, abuse arising from the use of successive temporary contracts, including non-permanent contracts of indefinite duration which are successively extended, such temporary contracts should be converted into permanent contracts, even if such conversion is contrary to Article 23(2) and Article 103(3) of the Constitution, as interpreted by the Tribunal Supremo (Supreme Court)?

Ruling

Clauses 2 and 3 of the Framework Agreement on fixed-term work must be interpreted as meaning that a worker having a non-permanent contract of indefinite duration must be regarded as a fixed-term worker, within the meaning of that framework agreement, and, therefore, as falling within the scope of that agreement.

Clause 5 of the Framework Agreement on fixed-term work must be interpreted as meaning that the expression 'use of successive fixed-term employment contracts or relationships' in that provision encompasses a situation in which, since the administration concerned failed to

organise within the relevant deadline a selection procedure seeking definitively to fill the post occupied by a worker having a non-permanent contract of indefinite duration, that worker's temporary contract with that administration was automatically extended.

Clause 5(1)(a) to (c) of the Framework Agreement on fixed-term work must be interpreted as precluding national legislation which does not provide for any of the measures referred to in that provision or an 'equivalent legal measure', within the meaning of that provision, in order to prevent the abuse of non-permanent contracts of indefinite duration.

Clause 5 of the Framework Agreement on fixed-term work must be interpreted as precluding national legislation which provides for the payment of limited compensation, equal to 20 days' salary for each year worked, up to a limit of one year's pay, to any worker whose employer has abused non-permanent contracts of indefinite duration successively extended, where the payment of that end-of-contract compensation is independent of any consideration relating to the lawful or abusive nature of the use of those contracts.

Clause 5 of the Framework Agreement on fixed-term work must be interpreted as precluding national provisions under which 'unlawful actions' give rise to liability on the part of the public administrations, 'in accordance with the rules in force in each of [those] public administrations', where those national provisions are not effective and a deterrent in order to ensure that the measures taken pursuant to that clause are fully effective.

Clause 5 of the Framework Agreement on fixed-term work must be interpreted as precluding national legislation which provides for the organisation of procedures for the consolidation of temporary employment, by means of the publication of vacancy notices to fill the posts occupied by temporary workers, including non-permanent workers having contracts of indefinite duration, where that organisation is independent of any consideration relating to the abusive nature of the use of those temporary contracts.

Clause 5 of the Framework Agreement on fixed-term work must be interpreted as meaning that in the absence of adequate measures in national law to prevent and, where necessary, penalise, pursuant to Clause 5, abuse arising from the use of successive fixed-term contracts, including non-permanent contracts of indefinite duration which have been extended successively, the conversion of those temporary contacts into permanent contracts is capable of constituting such a measure. It is, as the case may be, for the national court to amend the established national case-law if it is based on an interpretation of the provisions of national law, including constitutional provisions, which is incompatible with the objectives of Directive 1999/70 and, in particular, of Clause 5 of the Framework Agreement on fixed-term work.

Creator: European Court of Justice (ECJ)

Verdict at: 2024-02-22

Case number: C-59/22, C-110/22 and C-159/22