

## SUMMARY

# **ECJ 13 June 2024, case C-331/22 and C-332/22 (DG de la Función Pública, Generalitat de Catalunya), fixed-term work**

***KT – v – Dirección General de la Función Pública, adscrita al Departamento de la Presidencia de la Generalitat de Catalunya and HM, VD – v – Departamento de Justicia de la Generalitat de Catalunya, Spanish case***

### **Summary**

The ECJ delivers a judgment on whether the Spanish legislation regarding the improper use of successive fixed-term employment contracts in the public sector is compatible with EU-law.

### **Questions**

1. Must clause 5 of the Framework Agreement on fixed-term work be interpreted as precluding national legislation under which recourse to successive fixed-term employment contracts or relationships in the public sector becomes abusive where the public administration concerned does not comply with the time limits laid down in national law for filling the post occupied by the temporary worker concerned, on the ground that, once those time limits have expired, those successive fixed-term employment contracts or relationships cover needs of that administration that are not temporary, but fixed and permanent?
2. Must clause 5 of the Framework Agreement on fixed-term work, read in the light of the principles of equivalence and proportionality and the principle that damage suffered must be made good, be interpreted as precluding national case-law and legislation that provide as measures intended to penalise the improper use of successive fixed-term employment contracts or relationships, respectively, the continued employment of the worker concerned

until selection procedures are organised and closed by the employing administration, as well as the organisation of such procedures and the payment of financial compensation that sets a double ceiling solely in favour of that worker who is unsuccessful in those procedures?

3. Must clauses 4 and 5 of the Framework Agreement on fixed-term work, read in the light of Articles 21 and 47 of the Charter and of the principle of equivalence, be interpreted as meaning that, in the absence of adequate measures in national law to prevent and, where appropriate, penalise, pursuant to clause 5, abuse arising from the use of successive fixed-term employment contracts or relationships, those successive fixed-term employment contracts or relationships should be converted into employment contracts or relationships of indefinite duration identical or comparable to those between officials and the administration, even if such a conversion is contrary to national provisions and case-law?

### **Ruling**

1. Clause 5 of the framework agreement on fixed-term work must be interpreted as not precluding national legislation in accordance with which recourse to successive fixed-term employment contracts or relationships in the public sector becomes abusive where the public administration concerned does not comply with the time limits laid down in national law for filling the post occupied by the temporary worker concerned, since, in such a situation, those successive fixed-term employment contracts or relationships cover needs of that administration that are not temporary, but fixed and permanent.

2. Clause 5 of the framework agreement on fixed-term work, read in the light of the principle of proportionality and the principle that the damage suffered must be made good, must be interpreted as precluding national case-law and legislation that provide as measures intended to penalise the improper use of successive fixed-term employment contracts or relationships, respectively, the continued employment of the worker concerned until selection procedures are organised and closed by the employing administration, as well as the organisation of such procedures and the payment of financial compensation that sets a double ceiling solely in favour of that worker who is unsuccessful in those procedures, where those measures are not proportionate or sufficiently effective and dissuasive measures to guarantee the full effectiveness of the rules adopted pursuant to clause 5.

3. Clause 5 of the framework agreement on fixed-term work, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that, in the absence of adequate measures provided for in national law to prevent and, where appropriate, penalise, pursuant to clause 5, abuse arising from the use of successive fixed-term employment contracts or relationships, the conversion of those successive fixed-term

contracts or relationships into an employment contract or relationship of indefinite duration is capable of constituting such a measure, provided that that conversion does not entail an interpretation of national law that is *contra legem*.

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**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2024-06-13

**Case number:** C-331/22 and C-332/22