

SUMMARY

ECJ 21 September 2016, case C-631/15 (Alvarez Santirso), Fixed-term employment

***<p>Spanish law which reserves participation in evaluation plans
for teachers contravenes Directive 1999/70.</p>***

Summary

Spanish law which reserves participation in evaluation plans for teachers contravenes Directive 1999/70.

Facts

Mr Alvarez Santirso was a teacher for over 16 years. During all that time, he held the status of 'interim' (as opposed to 'career') civil servant. Spanish law defined interim civil servants as civil servants who temporarily occupy vacant posts within the workforce of the government, until such time as those posts are filled by career civil servants, or who replace career civil servants in situations involving leave of absence or special service leave. A career teacher with at least five years of service may apply to be evaluated. A good evaluation makes them eligible for a financial incentive. Mr Alvarez Santirso applied but was rejected on account of his not being a career civil servant.

National proceedings

Mr Álvarez Santirso brought an administrative law appeal against the decision not to award him a financial incentive, arguing that there was unequal remuneration for career civil servants and interim civil servants arising solely from the temporary nature of the latter's employment. The government submitted that the differential treatment at issue here was justified by objective grounds relating to differences in qualifications, skills and merit as demonstrated by success in the selection process. It argued that, as career civil servants were

required to meet more stringent requirements, this justified their higher level of pay. In addition, granting interim civil servants the remuneration provided for under the career development arrangements would discriminate against career civil servants, given that their continued employment was dependent on the outcome of their evaluation. The referring court expressed doubts as to the compatibility of the rules at issue with Clause 4(1) of the Framework Agreement annexed to Directive 1999/70, inter alia in the light of ECJ case-law, according to which the temporary nature of an employment relationship, in the absence of any justification on objective grounds, does not of itself justify differences in treatment with regard to employment conditions.

ECJ's findings

-

It is common ground that there is differential treatment of established career civil servants employed under a permanent employment contract as compared to interim civil servants employed under a fixed-term employment contract, and so whether the situation of fixed-term workers and permanent ones are comparable needed to be examined first of all. In order to do so the Court needed to determine whether, in the light of a number of factors, such as the nature of the work, qualification requirements and working conditions, those persons could be regarded as being in a comparable situation, in accordance with Clauses 3(2) and 4(1) of the Framework Agreement. (§41-43).

-

In the main proceedings there was nothing to indicate that teaching activities carried out by teachers employed as established career civil servants and by teachers employed as interim civil servants required different academic qualifications or experience. On the contrary, the information in the order for reference indicated that both categories of teachers performed similar tasks and were subject to identical obligations. Therefore, the only factor distinguishing a teacher employed as an interim civil servant from one employed as an established career civil servant for the purposes of inclusion in the evaluation plan was the temporary nature of the employment relationship linking them to their employer (§45-46).

-

A difference in treatment with regard to employment conditions as between fixed-term workers and permanent one cannot be justified on the basis of a criterion which refers precisely to the term of the employment. If the mere temporary nature of an employment relationship were sufficient to justify such a difference, the objectives of Directive 1999/70 and the Framework Agreement would be negated. The unequal treatment at issue must be justified by the existence of precise and concrete factors characterising the employment condition to which it relates, in the specific context in which it occurs and on the basis of objective and transparent criteria in order to ensure that it responds to a genuine need, is appropriate for achieving the objective pursued and is necessary for that purpose. Those factors may result from the specific nature of the tasks and from the inherent characteristics of those tasks or from the pursuit of a legitimate social-policy objective of a Member State (§47-51).

-

In the present case, the government merely stated that entry-level requirements are lower for interim civil servants and referred to possible reverse discrimination against established career civil servants (§52).

-

In view of the discretion enjoyed by Member States as regards the organisation of their own public administrations, they can, in principle, without acting contrary to Directive 1999/70 or the Framework Agreement, lay down period-of-service conditions for access to certain posts, restrict access to internal promotion solely to established career civil servants and require those civil servants to provide evidence of professional experience corresponding to the grade immediately below the grade concerned by the selection procedure. However, the criteria which the Member States lay down must be applied transparently and must be open to review in order to prevent any exclusion of fixed-term workers solely on the basis of the duration of their contracts (§53-54).

-

Where, in a selection procedure, a difference in treatment flows from the need to take account of objective requirements relating to the post which are unrelated to the fixed-term nature of the interim civil servant's employment relationship, it is capable of being justified for the purposes of Clause 4(1) and/or (4) of the Framework Agreement. On the other hand, a general and abstract condition to the effect that five years' length of service must have been completed entirely as a career civil servant, with no account being taken of the specific nature of the tasks

or their inherent characteristics, does not meet the requirements of the case-law on Clause 4(1) of the Framework Agreement (§55-56).

-

Moreover, regarding the objective of preventing reverse discrimination against established career civil servants, although that objective may constitute an 'objective ground' for the purposes of Clause 4(1) and/or (4) of the Framework Agreement, it cannot justify disproportionate national legislation such as that at issue in the main proceedings which completely and in all circumstances prohibits all periods of service completed by workers under fixed-term employment contracts being taken into account in order to determine the length of service of those workers upon their recruitment on a permanent basis and, thus, their level of remuneration. Indeed, the national rules provide for inclusion in the teaching evaluation plan and a remuneration supplement in the event of a positive assessment only to teachers employed as established career civil servants having completed five years' length of service, whereas teachers employed as interim civil servants fulfil exactly the same entrance criteria, but are excluded from the benefits (§57-58).

Order

Clause 4(1) of the of the Framework agreement on fixed-term work must be interpreted as precluding national rules, such as those at issue in the main proceedings, which reserve participation in teaching evaluation plans and, in the case of a positive result, the ensuing financial incentives, exclusively for teachers employed under permanent employment relationships as established career civil servants, thereby excluding persons employed as interim civil servants under fixed-term employment relationships.

Creator: European Court of Justice (ECJ)

Verdict at: 2016-09-21

Case number: C-631/15 (Alvarez Santirso)