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ple, from the specific nature of the tasks to be performed, from the inherent characteristics of those tasks or from the pursuit of a legitimate social policy objective of a Member State. On the other hand, a national provision which merely authorises recourse to successive fixed-term employment contracts in a general and abstract way, does not accord with the requirements of the Framework Agreement. Such a provision does not permit objective and transparent criteria to be identified to verify whether the renewal of a contract responds to a genuine need and is appropriate for achieving the objective pursued and necessary for that purpose. Such a provision therefore carries a real risk that it will result in misuse of that type of contract and is therefore incompatible with the objective of the Framework Agreement and the requirement that it have practical effect (§46-51).

5. In the case of Ms Popescu, the frequency and volume of the inspections to be carried out is likely to vary according to the activities of the establishments to be inspected, which themselves are subject to certain variations. The fact remains, however, that the case file submitted to the Court contains nothing establishing how those characteristics are specific to the sector in question or why they demonstrate only temporary staffing needs justifying the non-permanent nature of inspection assignments. The allegedly non-permanent nature of inspection assignments is contradicted by the fact that the extensions to the fixed-term employment contract of the claimant in the main proceedings have resulted in her providing services over an uninterrupted period of six years and seven months – so that the employment relationship has satisfied not only a temporary staffing need, but a permanent one (§52-61).
6. Whilst budgetary considerations may underlie a Member State's choice of social policy and influence the nature or scope of the measures it adopts, they do not in themselves constitute an aim pursued by that policy and, therefore, cannot justify the lack of a measure preventing the misuse of successive fixed-term employment contracts (§63).
7. Whilst national legislation permitting the renewal of successive fixed-term employment contracts in order to replace staff pending the outcome of competitive selection procedures can be justified by an objective reason, the application of that reason must be consistent with the requirements of the Framework Agreement, having regard to the particular features of the activity concerned and the conditions under which it is carried out (§64).
8. In order for clause 5(1)(a) of the Framework Agreement to be complied with, it must therefore be specifically verified that the renewal of successive fixed-term employment contracts is intended to cover temporary needs and that a national provision such as the one at issue in the main proceedings is not, in fact, being used to meet permanent staffing needs. It is necessary to consider all the circumstances of the case, in particular, the number of contracts concluded with the same person or for the purposes of performing the same work, to ensure that fixed-term contracts ostensibly concluded to meet a need for replacement staff, are not misused by employers (§65-66).
9. It is apparent that on the date the request for a preliminary ruling in the present case was made, the claimant had not been provided with any information as to the progress of any competition procedures, much less any indication as to their outcome, which was highly uncertain (§67).

Order

Clause 5(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, under which the renewal of successive fixed-term employment contracts in the public sector, is deemed justified by 'objective reasons' within the meaning of that clause on the sole ground that inspections performed by staff employed in the veterinary health sector were non-permanent in nature due to the variations in volume of the activities of the establishments to be inspected, unless the renewal of those contracts is actually aimed at covering a specific need, without the underlying reason being budgetary considerations, which it is for the national court to verify. Moreover, the fact that the renewal of successive fixed-term contracts is done pending completion of competition procedures does not make those rules compliant with that clause if this leads to the abusive use of fixed-term employment contracts. This is also for the national court to verify.

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

Carlos Alvarez Santirso – v – Consejería de Educación, Cultura y Deporte del Principado de Asturias

Summary

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

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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 latters' 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

1. 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 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).
2. 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).
3. 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).
4. 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).
5. 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).
6. Where, in a selection procedure, a difference in treatment flows from the need to take account of objective

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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).

7. 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.

ECJ (Grand Chamber) 18 October 2016, case C-135/15 (Nikiforidis), Applicable law

Republik Griechenland – v – Grigorios Nikiforidis

Summary

The Rome I Regulation only applies to contracts concluded before 17 December 2009 insofar as the contract has undergone major change afterwards. It precludes overriding mandatory provisions other than those of the forum court.

Facts

Mr Nikiforidis is a teacher in a school in Germany run by Greece. His contract, which was entered into in 2008, is governed by German law. Over the period 2010-2012, his employer, the State of Greece, reduced his salary very substantially. This was done pursuant to several Greek laws, which were designed to implement the agreements between Greece and its international creditors.

National proceedings

Mr Nikiforidis brought legal proceedings before a German court, claiming reinstatement of his contractual salary. The Greek government argued that those laws reduce the pay of all public sector employees of Greece, irrespective of whether they carry out their duties in Greece or abroad. It considered that the relevant provisions of those laws meet the definition of overriding mandatory provisions within the meaning of private international law. The *Bundesarbeitsgericht* referred three questions to the ECJ. The first related to Article 28 of Regulation 593/2008 on the law applicable to contractual obligations (the 'Rome I Regulation'). This regulation replaced the 1990 Rome Convention, with the proviso in Article 28 that: "This Regulation shall apply to contracts concluded as from 17 December 2009". In other words, the question was: which EU instrument determined the law applicable to Mr Nikiforidis' contract: the 1980 Convention or the Rome I Convention?
A second question was whether Article 9(3) of the Rome I Regulation must be interpreted as precluding overriding mandatory provisions other than those of the State of the forum or of the State where the obligations arising out of the contract had to be performed from being

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