number of renewals of such contracts or relationships. Thus Member States enjoy a certain margin of appreciation in how they decide to implement.
Where – as here – EU law does not specify penalties for cases of abuse, the national authorities must adopt measures that are proportionate, dissuasive and effective. The principle of effectiveness means not making it excessively difficult for people to access a remedy. The measures they implement must also comply with the principle of equivalence, meaning they must not be less favourable in some situations than others.
But it is notable that Article 5 of the Framework Agreement does not preclude treating abuse in the public sector differently than in the private sector. In terms of the effectiveness of the measures, this is a matter for the national courts to decide. The ECJ found that Italian law does include certain additional measures aimed at punishing abuse and these are directed against managers. The ECJ stated that it was for the referring court to verify whether those measures were effective.

Ruling

Clause 5 of the Framework Agreement on fixed-term work concluded on 18 March 1999, which is set out in the annex 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, on the one hand, does not punish the misuse of successive fixed-term contracts by a public sector employer through the payment of compensation to the worker concerned for the lack of conversion of the fixed-term employment relationship into an employment relationship of indefinite duration, but, on the other hand, provides for the grant of compensation of between 2.5 and 12 times the last monthly salary of that worker together with the possibility for him or her to obtain full compensation for the harm by demonstrating, by way of presumption, the loss of opportunities to find employment or that, if a recruitment competition had been duly organised, s/he would have been successful, provided that such legislation is accompanied by an effective and dissuasive penalty mechanism, a matter which is for the referring court to verify.

ECJ 7 March 2018, case C-651/16 (DW), Social insurance

DW – v – Valsts sociālās apdrošināšanas aģentūra, Latvian case

Questions to the ECJ[2]

Must Article 4(3) TEU and Article 45 TFEU be interpreted as precluding legislation of a Member State such as that at issue in the main proceedings that, for the purposes of determining the average contribution basis when calculating the amount of maternity benefit, equates the months of the reference period in which the person concerned worked in an EU institution and was not insured in that Member State with a period of unemployment and applies to them the average contribution basis in that Member State, which has the effect of substantially reducing the amount of the maternity benefit granted to that person in comparison with the amount to which she would have been entitled had she been gainfully employed in that Member State alone?

Ruling

Article 45 TFEU must be interpreted as precluding legislation of a Member State such as that at issue in the main proceedings that, for the purposes of determining the average contribution basis when calculating the amount of maternity benefit, equates the months of the reference period in which the person concerned worked in an EU institution and was not insured in that Member State with a period of unemployment and applies to them the average contribution basis in that Member State, which has the effect of substantially reducing the amount of the maternity benefit granted to that person in comparison with the amount to which she would have been entitled had she been gainfully employed in that Member State alone.

2. As rephrased by the ECJ

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