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ECJ 30 May 2018, case C-517/16 (Czerwinski), Social insurance

Stefan Czerwinski – v – Zakład Ubezpieczen Społecznych Oddział w Gdansku, Polish case

Questions to the ECJ[8]

1. Is the classification of a benefit under one of the branches of social security listed in Article 3 of Regulation No 883/2004 made by the competent national authority in the declaration to be made by the Member State under Article 9(1) of that regulation definitive or is it capable of assessment by the national courts?
2. Is such a benefit to be regarded as an 'old-age benefit' within the meaning of Article 3(1)(d) of Regulation No 883/2004 or a 'pre-retirement benefit' within the meaning of Article 3(1)(i) of that regulation?

Ruling

1. The classification of a benefit under one of the branches of social security listed in Article 3 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, made by the competent national authority in the declaration submitted by the Member State pursuant to Article 9(1) of that regulation, is not definitive. The classification of a social security benefit may be made by the national court concerned, autonomously and on the basis of the elements that constitute the social security benefit at issue, and by referring, if necessary, a question for a preliminary ruling to the Court.
2. A benefit such as that at issue in the main proceedings must be regarded as an 'old-age benefit' within the meaning of Article 3(1)(d) of Regulation No 883/2004.

8. As rephrased by the ECJ

ECJ 5 June 2018, C-677/16 (Montero Mateos), Fixed-term work

Lucía Montero Mateos – v – Agencia Madrileña de Atención Social de la Consejería de Políticas Sociales y Familia de la Comunidad Autónoma de Madrid, Spanish case

Summary

Not granting compensation to fixed-term workers at the end of employment is not discriminatory as the end of the contract is foreseeable from the start, whereas the main objective of compensation for objective reasons, which generally applies to permanent workers, is to recompense them for the fact that termination of the contract is not knowable in advance.

Legal background

Clause 4(1) of the framework agreement on fixed-term work (Framework Agreement), annexed to Directive 1999/70/EC, stipulates that fixed-term workers shall not be treated less favourably than comparable permanent workers solely because they have a fixed-term contract, unless different treatment is justified on objective grounds.

Spanish law allows the use of fixed-term contracts only in limited situations, among which is the replacement of workers. A royal decree (further) specifies so-called '*interinidad*' contracts (temporary replacement contracts), to replace workers who have a reserved right to their posts, or to cover posts temporarily during a selection or promotion procedure to fill the post. Such procedures may not exceed three months, unless they are run by a public sector organisation. Upon the expiry or fulfilment of an *interinidad* contract, the employee is not entitled to compensation. Employment contracts can also end for 'objective' reasons (based on a statutory list of reasons for termination) which became apparent after the employment started. In those cases, the employee would, in principle, receive compensation equivalent to 20 days' pay per year of service, to a maximum of 12 months' pay. These provisions are mainly used in the case of permanent contracts.

Facts

In March 2007, Ms Montero Mateos was put on a temporary replacement contract by her employer, which

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was a public sector organisation, to replace a permanent worker. In February 2008, she was put on a second temporary replacement contract to cover the same vacant post temporarily. However, the position was only filled in only in 2016 – and this led to the termination of Ms Montero Mateos' contract. She brought an action before the court and it asked some preliminary questions to the ECJ about the validity of the Spanish rules on compensation for fixed-term workers in light of Clause 4(1) of the Framework Agreement.

Question to the ECJ[9]

Must Clause 4(1) of the Framework Agreement be interpreted as precluding national legislation which does not provide for any compensation to be paid to workers employed under a fixed-term contract concluded in order to cover a post temporarily while a selection or promotion procedure to fill the post permanently takes place, such as the temporary replacement contract at issue in the main proceedings, on expiry of the term for which that contract was concluded, whereas compensation is payable to permanent workers where their employment contract is terminated on objective grounds?

Judgment

The Framework Agreement has, as one of its aims, to improve the quality of fixed-term work by ensuring the principle of non-discrimination is enshrined in the law of Member States. Clause 4(1) of the Framework Agreement says that: "*In respect of employment conditions, fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation unless different treatment is justified on objective grounds.*" This principle should not be interpreted strictly, meaning that the rules on the compensation of workers after termination of their contracts fall within the scope of 'employment conditions.'

Various factors determine whether persons can be regarded to be in a comparable situation. The ECJ felt that it was generally for the referring court to assess this, but in this case, it was clear from the facts that that the employee was in a comparable situation to that of an employee with a permanent contract.

In terms of whether there are objective reasons to justify unequal treatment, it must be possible to point to precise and specific factors characterizing the employment based on objective and transparent criteria. There must be a genuine need for the employment, and it must be put in place in a way that is appropriate and necessary to fulfil its purpose. The factors based on which fixed-term contracts may be concluded must relate to the specific nature and inherent characteristics of the tasks. These factors may be apparent from socio-policy objectives of Member States.

The Spanish Government argued that compensation for termination of an indefinite term contract is meant to provide redress for a worker whose contract ends unexpectedly from his or her point of view, for an objective reason that was not apparent at the beginning of the contract. A fixed term contract is fundamentally different, in that its termination is known by both parties from the start. Moreover, if a fixed-term contract ends for 'objective reasons', the employee is entitled to a similar compensation to someone with a permanent contract. In those circumstances, the purpose of the compensation and the context in which it is paid constitute objective grounds justifying the different treatment. Therefore, the ECJ asked the referring court in this case to consider whether the contract should be redefined as a permanent contract, given that the point when it would end was unforeseeable for Ms Mateos, as it had gone on so long.

Ruling

Clause 4(1) of the framework agreement on fixed-term work concluded on 18 March 1999, which is annexed 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 does not provide for any compensation to be paid to workers employed under a fixed-term contract entered into in order to cover a post temporarily while the selection or promotion procedure to fill the post permanently takes place, such as the temporary replacement contract at issue in the main proceedings, on expiry of the term for which that contract was concluded, whereas compensation is payable to permanent workers where their employment contract is terminated on objective grounds.

9. As rephrased by the ECJ.

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