Case C-55/18, Working time

Federación de Servicios de Comisiones Obreras (CCOO) – v – Deutsche Bank SAE, reference lodged by the Audiencia Nacional (Spain) on 29 January 2018

1. Must it be understood that the Kingdom of Spain, by means of Articles 34 and 35 of the Workers' Statute, as they have been interpreted by case-law, has taken the measures necessary to ensure the effectiveness of the limits to working time and of the weekly and daily rest periods established by Articles 3, 5 and 6 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 [concerning certain aspects of the organisation of working time, OJ L 299, 18/11/2003, p. 9] for full-time workers who have not expressly agreed, whether individually or collectively, to work overtime and who are not mobile workers or persons working in the merchant navy or railway transport?
2. Must Article 31(2) of the Charter of Fundamental Rights of the European Union and Articles 3, 5, 6, 16 and 22 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003, in conjunction with Articles 4(1), 11(3) and 16(3) of Council Directive 89/391/EEC of 12 June 1989 [on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183, 29/06/1989, p. 1], be interpreted as precluding internal national legislation such as Articles 34 and 35 of the Workers' Statute from which, as settled case-law has shown, it cannot be inferred that employers must set up a system for recording actual daily working time for full-time workers who have not expressly agreed, whether individually or collectively, to work overtime and who are not mobile workers or persons working in the merchant navy or railway transport?
3. Must the imperative requirement laid down in Article 31(2) of the Charter of Fundamental Rights of the European Union, and Articles 3, 5, 6, 16 and 22 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003, in conjunction with Articles 4(1), 11(3) and 16(3) of Council Directive 89/391/EEC of 12 June 1989, for the Member States to limit the working time of all workers in general, be understood to be satisfied for ordinary workers by the internal national legislation, contained in Articles 34 and 35 of the Workers' Statute from which, as settled case-law has shown, it cannot be inferred that employers are required to set up a system for recording actual daily working time for full-time workers who have not expressly agreed, whether individually or collectively, to work overtime, unlike mobile workers or persons working in the merchant navy or railway transport?

Case C-72/18, Fixed-term work

Daniel Ustariz Aróstegui – v – Consejería de Educación del Gobierno de Navarra, reference lodged by the Juzgado de lo Contencioso-Administrativo No 1 de Pamplona (Spain) on 5 February 2018

1. Must Clause 4 of the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP approved by Council Directive 1999/70/EC of 28 June 1999 be interpreted as precluding a regional legislative provision, such as that at issue in the main proceedings, which expressly excludes the award and payment to staff employed by the Public Administration of Navarre who are classified as 'employed under an administrative contract' (a fixed-term contract) of particular additional remuneration, on the grounds that the additional remuneration in question constitutes remuneration for promotion and development in a professional career that is open only to staff classified as 'established public officials' (with a contract of indefinite duration)?

Case C-103/18, Fixed-term work

Domingo Sánchez Ruiz – v – Comunidad de Madrid (Servicio Madrileño de Salud), reference lodged by the Juzgado de lo Contencioso-Administrativo No 8 de Madrid (Spain) on 13 February 2018

1. Can a situation such as that described in the present case (in which the public-sector employer fails to observe the statutory time limits and thus either permits successive temporary contracts or preserves the temporary nature of the appointment by changing the nature of the appointment from occasional to interim or replacement) be considered an abusive use of successive appointments and therefore be regarded as a situation described in Clause 5 of the Framework Agreement annexed to Directive 1999/70/EC?
2. Must the provisions in the Framework Agreement on fixed-term work in the Annex to Directive 1999/70/EC, in conjunction with the principle of effectiveness, be interpreted as precluding national procedural rules that require a fixed-term worker actively to challenge or appeal against all the successive appointments and terminations of employment as the only way in which to benefit from the protection of the EU Directive and claim the rights conferred on him by EU law?

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3. In view of the fact that, in the public sector and in the provision of essential services, the necessity of providing cover for vacancies, sickness, holidays … is essentially 'permanent', and given that the concept of 'objective reason' justifying a fixed-term appointment has to be delimited:
4. Can it be held to be contrary to Directive 1999/70/EC (Clause 5(1)(a)) and, therefore, that there is no objective reason, when a fixed-term worker is employed under an uninterrupted succession of '*contratos de interinidad*' (temporary replacement contracts), working all or nearly all the days of the year, under a succession of consecutive appointments/engagements that continue on a completely stable basis for years, and the stated grounds for engaging the worker are always satisfied?
5. Must the need be considered permanent rather than temporary, and therefore not to be covered as an 'objective reason' within the meaning of Clause 5(1)(a), having regard either to the parameters described above, that is to say, the existence of countless appointments and engagements that extend over a period of years, or to the existence of a structural defect that is reflected in the percentage of temporary appointments in the sector in question, when those needs are as a general rule always met by temporary workers, so that this has become an essential and long-term element of the operation of the public service?
6. Or is it to be understood that, in essence, in order to determine the permitted limit for temporary appointments, regard must be had only to the letter of the legislation that covers the employment of such fixed-term workers, when it states that they may [Or. 26] be taken on on grounds of necessity, urgency or for the development of programmes of a temporary, cyclical or extraordinary nature: in short, that in order for an objective reason to be deemed to exist, such employment must meet these exceptional circumstances, and that this ceases to be the case, and use therefore constitutes misuse, when it is no longer isolated, occasional or ad hoc?
7. Is it compatible with the Framework Directive annexed to Directive 1999/70/EC to regard grounds of need, urgency or the development of programmes of a temporary, interim or extraordinary nature as an objective reason for appointing and successively reappointing IT specialists on temporary regulated terms where these public employees are performing the normal functions of permanent regulated employees on a permanent and regular basis, and the employing Administration neither establishes maximum limits to such appointments nor fulfils its legal obligations to use permanent staff to cover these posts and meet these needs, and no equivalent measure is established to prevent and avoid misuse of successive temporary appointments, with the result that IT specialists employed on temporary regulated terms continue to carry out these duties for periods that, in the present case, amount to an uninterrupted duration of 17 years?
8. Are the provisions in the Framework Agreement on fixed-term work in the Annex to Directive 1999/70/EC and the interpretation of that Agreement by the CJEU compatible with the case-law of the Tribunal Supremo (Supreme Court, Spain), insofar as it fixes the existence of an objective reason for an appointment by reference to the time limit to the appointment, without regard to other parameters, or finds that there can be no comparison made with a career public official because of the different legal rules covering them and different access routes or because career officials are permanently established but employees recruited to cover vacancies hold temporary appointments?
9. If the national courts find that there is abuse arising from the use of successive appointments of temporary regulated staff to cover vacancies in the Madrid Health Service and that they are being used to cover permanent structural needs in the provision of services by permanent regulated employees, given that domestic law contains no effective measure to penalise such misuse and eliminate the consequences of the breach of EU legislation, must Clause 5 of the Framework Agreement annexed to Directive 1999/70/EC be interpreted as requiring the national courts to adopt effective deterrent measures to ensure the effectiveness of the Framework Agreement, and therefore to penalise that misuse and eliminate the consequences of the breach of that EU legislation, disapplying the rule of domestic law that prevents it from being effective?
10. If the answer should be affirmative, as held by the Court of Justice of the European Union in paragraph 41 of its judgment of 14 September 2016 in Cases C 184/15 and C 197/15:
11. As a measure to prevent and penalise the misuse of successive temporary contracts and to eliminate the consequence of the breach of EU law, would it be consistent with the objectives pursued by Directive 1999/70/EC to convert the temporary interim/occasional/replacement regulated relationship into a stable regulated relationship, the employee being classified as a permanent official or an official with an appointment of indefinite duration, with the same security of employment as comparable permanent regulated employees?
12. If there is abuse of successive temporary contracts, can the conversion of the temporary regulated relationship into an indefinite or permanent relationship be regarded as satisfying the objectives of Directive 1999/70/EC and its Framework Agreement only if the temporary regulated employee who has been the victim of this misuse enjoys exactly the same working conditions as permanent regulated employees (as regards social security, promotion, opportunities to cover vacant posts, training, leave of absence, determination of administrative status, sick leave and other permitted absences, pension

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rights, termination of employment and participation in selection competitions to fill vacancies and obtain promotion) in accordance with the principles of permanence and security of employment, with all associated rights and obligations, on equal terms with permanent regulated IT specialists?

13. In the circumstances described here, is there an obligation under EU law to review final judgments/administrative acts when the four conditions laid down in Kühne & Heitz NV (C 453/00 of 13 January 2004) are met: (1) Under Spanish national law, the authorities and the courts may review decisions (even if the restrictions involved make it very difficult or even impossible); (2) The contested decisions have become final as a result of a judgment of a national court issued in sole or final instance; (3) That judgment is based on an interpretation of EU law inconsistent with the case-law of the CJEU and adopted without a question being referred to the CJEU for a preliminary ruling; and (4) The person concerned applied to the administrative body as soon as it knew of the relevant case-law?
14. May and must national courts, as European courts that must give full effect to EU law in the Member States, require and order the internal administrative authority of a Member State – within its respective area of jurisdiction – to adopt the relevant measures in order to eliminate rules of domestic law incompatible with EU law in general, and with Directive 1999/70/EC and its Framework Agreement in particular?

Case C-134/18, Social insurance

Maria Vester – v – Rijksdienst voor Ziekte- en Invaliditeitsverzekering (Riziv), reference lodged by the Arbeidsrechtbank Antwerpen (Belgium) on 19 February 2018

1. Are Articles 45 TFEU and 48 TFEU infringed in the case where the last competent Member State refuses, upon commencement of incapacity for work, after expiry of a waiting period of 52 [Or. 9] weeks of incapacity for work, during which illness benefits were awarded, entitlement to invalidity benefit on the basis of Article 57 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, and the other, previously competent Member State applies, for the examination of the entitlement to a pro-rata invalidity benefit, a 104-week waiting period in accordance with the national law of that Member State?
2. If that is the case, is it compatible with the right of free movement that the person concerned, during this waiting time gap, is dependent on social assistance, or do Articles 45 TFEU and 48 TFEU oblige the previously competent Member State to examine the entitlement to invalidity benefits after expiry of the waiting period under the legislation of the last competent Member State, even if the national law of the previously competent Member State does not permit this?

Case C-161/18, Equal treatment, Pension

Violeta Villar Láiz – v – Instituto Nacional de la Seguridad Social (INSS), Tesorería General de la Seguridad Social (TGSS), reference lodged by the Tribunal Superior de Justicia de Castilla y León (Spain) on 27 February 2018

1. Under Spanish law, in order to calculate a retirement pension, a percentage based on the number of years for which contributions have been paid throughout the person's entire working life must be applied to the reference basis, which is calculated on the basis of earnings in the most recent years. Must a rule of national law, such as that in Article 247(a) and Article 248(3) of the Ley General de la Seguridad Social (General Law on Social Security), which reduces the number of qualifying years for the purpose of applying the percentage in the case of periods of part-time working, be considered contrary to Article 4(1) of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security? Does Article 4(1) of Directive 79/7/EEC require that the number of years of contributions that are taken into account in order to determine the percentage to be applied in calculating the retirement pension be determined in the same way for full-time workers and part-time workers?
2. Must a rule of national law such as that in dispute in the present proceedings be interpreted as also being contrary to Article 21 of the Charter of Fundamental Rights of the European Union, thus requiring the national court to give full effect to the Charter and to refrain from applying the disputed provisions of national law, without requesting or awaiting the prior setting aside of the provisions by legislative or other constitutional means?

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