out any discretionary assessment on the basis of a legally defined position?

Case C-404/18, Gender discrimination

Jamina Hakelbracht, Tine Vandenbon, Instituut voor de Gelijkheid van Vrouwen en Mannen – v – WTG Retail BVBA, reference lodged by the Arbeidsrechtbank Antwerpen (Belgium) on 19 June 2018

1. Should European Union law and, more specifically, Article 24 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, be interpreted as precluding national legislation which affords protection against retaliation to persons who act as witnesses only to persons who, in the context of the investigation of a complaint, bring to the notice of the person with whom the complaint is lodged, in a signed and dated document, the facts which they have personally seen or heard and which relate to the situation which is the subject of the complaint filed or who appear as witnesses in legal proceedings?

Case C-428/18, Pension

Jörg Paul Konrad Fritz Bode – v – Instituto Nacional de la Seguridad Social and Tesorería General de la Seguridad Social, reference lodged by the Tribunal Superior de Justicia de Galicia (Spain) on 28 June 2018

1. Must Article 48 TFEU be interpreted as meaning that it precludes national legislation which requires as a condition for access to an early retirement pension that the amount of the pension to be received must be higher than the minimum pension which would be due to the person concerned under that same national legislation, the term 'pension to be received' being interpreted as the actual pension from the competent Member State (in this case, Spain) alone, without also taking into account the actual pension which that person may receive through another benefit of the same kind from one or more other Member States?

Case C-429/18, Fixed-term work

Berta Fernández Álvarez, BMM, TGV, Natalia Fernández Olmos, María Claudia Téllez Barragán – v – Consejería de Sanidad de la Comunidad de Madrid, reference lodged by the Juzgado de lo Contencioso-Administrativo de Madrid (Spain) on 28 June 2018

1. Is this court's interpretation of the Framework Agreement annexed to Directive 1999/70/EC correct and is it correct to take the view that the employment of the applicants on temporary appointments constitutes abuse in so far as the public employer uses different contractual models, all of which are temporary, to ensure, on a permanent and stable basis, performance of the ordinary duties of permanent regulated staff and to cover structural defects and needs which are, in fact, not temporary but fixed and permanent? Is the type of temporary appointment described therefore not justified as an objective reason for the purposes of clause 5(1)(a) of the Framework Agreement, in that such use of fixed-term contracts conflicts directly with the second paragraph of the preamble of the Framework Agreement and with general considerations 6 and 8 of that agreement, since there are no circumstances which would justify the use of such fixed-term employment contracts?
2. Is this court's interpretation of the Framework Agreement annexed to Directive 1999/70/EC correct and is it correct to take the view that, in line with that interpretation, the holding of a conventional selection process, with the features described, is not an equivalent measure and cannot be regarded as a penalty, since it is not proportional to the abuse committed, the consequence of which is the termination of the temporary worker's appointment, in breach of the objectives of the directive, and the continued unfavourable situation of temporary regulated employees, nor can it be regarded as an effective measure in so far as it does not create any detriment to the employer, and nor does it fulfil any deterrent function, and therefore it is not compatible with the first paragraph of Article 2 of Directive 1999/70 in that it does not ensure that the Spanish State achieves the results imposed by the directive?
3. Is this court's interpretation of the first paragraph of Article 2 of Directive 1999/70 and of the judgment of the Court of Justice of the European Union of 14 September 2016 in Case C-16/15 correct and is it correct to take the view that, in line with that interpretation, the holding of a selection process that is open to external candidates is not an appropriate measure to penalise abuse arising from the use of successive temporary appointments, since Spanish legislation does not provide for an effective, dissua-

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sive penalty mechanism which puts an end to the abuse arising from the appointment of temporary regulated staff and does not enable those permanent posts created to be filled by the staff who were the victims of the abuse, such that the precarious situation of those workers continues?

4. Is it correct to take the view, as this court does, that the conversion of a temporary worker who has been the victim of the misuse of temporary appointments into a worker having a appointment 'of indefinite duration but not permanent' is not an effective penalty, in so far as a worker classified in this way may have his appointment terminated either because his post has been filled in a selection process or because his post has been abolished, and therefore that penalty is incompatible with the Framework Agreement for the purposes of preventing misuse of fixed-term contracts, since it does not comply with the first paragraph of Article 2 of Directive 1999/70 in that it does not ensure that the Spanish State achieves the results imposed by the directive?
5. In the light of that situation, it is necessary in the circumstances described to repeat the following questions, included in the reference for a preliminary ruling made on 30 January 2018 in Expedited Proceedings 193/2017 before J[uzgado] C[ontencioso-]A[dministrativo] n.º 8 de Madrid (Administrative Court No 8, Madrid):
6. 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 or deterrent 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?
7. 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:
8. As a measure to prevent and penalise the misuse of successive temporary appointments 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, on the basis that the national legislation prohibits absolutely, in the public sector, the conversion into a contract of indefinite duration of a succession of fixed-term employment contracts, since no other effective measure exists to prevent and, where relevant, penalise the misuse of successive fixed-term employment contracts?
9. If there is abuse of successive temporary appointments, 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 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 staff?
10. Taking into account the existence, if any, of improper use of temporary appointments to meet permanent staffing needs for no objective reason and in a manner inconsistent with the urgent and pressing need that warrants recourse to them, and for want of any effective penalties or limits in Spanish national law, would it be consistent with the objectives pursued by Directive 1999/70/EC to grant, as a means of preventing abuse and eliminating the consequence of infringing EU law, compensation comparable to that for unfair dismissal, that is to say, compensation that serves as an adequate, proportional, effective and dissuasive penalty, in circumstances where an employer does not offer a worker a permanent post?

Case C-472/18, Part-time work

ER – v – Agencia Estatal de la Administración Tributaria, reference lodged by the Tribunal Superior de Justicia de Galicia (Spain) on 19 July 2018

1. Are a provision in a collective agreement and an employer's practice, pursuant to which, for the purposes of remuneration and promotion, the length of service of a part-time female employee whose working hours are 'distributed vertically' over the whole year is to be calculated solely on the basis of time actually worked, contrary to Clause 4(1) and (2) of the Framework Agreement on part-time work

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