EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC must be interpreted as meaning that a national of a Member State who, having exercised his right to free movement, acquired, in another Member State, the status of worker within the meaning of Article 7(1)(a) of that directive, on account of the activity he pursued there for a period of two weeks, otherwise than under a fixed-term employment contract, before becoming involuntarily unemployed, retains the status of worker for a further period of no less than six months under those provisions, provided that he has registered as a jobseeker with the relevant employment office.
It is for the referring court to determine whether, in accordance with the principle of equal treatment guaranteed in Article 24(1) of Directive 2004/38, that national is, as a result, entitled to receive social assistance payments or, as the case may be, social security benefits on the same basis as if he were a national of the host Member State.

ECJ 11 April 2019, joined cases C-29/18, C-30/18 and C-44/18 (Cobra Servicios Auxiliares), fixed-term work

Cobra Servicios Auxiliares, S.A. – v – José David Sánchez Iglesias, José Ramón Fiuza Asorey, Jesús Valiño López, Fogasa, Incatema, S.L., Spanish case

Summary

It is objectively justified to grant fixed-term workers a lower severance payment than indefinite term workers, if the payment has other aims and is paid in a different context.

Legal background

The Framework Agreement on fixed-term work annexed to Directive 1999/70 aims to improve the quality of fixed-term work. To that end, Clause 4(1) stipulates that, as regards employment conditions, employees with a fixed-term contract are not treated less favourably than employees on an indefinite contract, unless this is justified on objective grounds.
Spanish law allows for the use of fixed-term contracts in certain situations. If their use is allowed, they can be concluded for a specific period of time or for the duration of a project or a service. If their term expires or if the project or service ends, the employment contract ends. The employee is then entitled to compensation of 12 days' salary per year of service.
Under Spanish law, indefinite contracts can end for multiple reasons, one of them being collective redundancy. If the employment contract ends for one of these reasons, an employee in principle is entitled to compensation of 20 days' salary per year of service.

Facts

In 2011, *Cobra Servicios Auxiliares* ('Cobra') entered into a service contract with *Unión Fenosa*, an electricity and gas company, to provide various services for electricity meters. Consequently, Cobra recruited several employees on fixed-term employment contracts for the period of this service contract. In February 2015, *Unión Fenosa* gave notice to terminate the service contract, effective from 31 March 2015. Subsequently, Cobra informed the said fixed-term employees that their employment contracts would end per that date and that they would be entitled to compensation of 12 days' salary per year of service. At the same time, Cobra terminated the employment contracts of indefinite term employees who also worked for the service contract by way of a collective redundancy. Consequently, they were entitled to compensation of 20 days' salary per year of service.
In the subsequent proceedings, the issue arose whether the difference in severance payments of fixed-term and indefinite term workers was justified in light of Clause 4(1) of the Framework Agreement.

Question

Must Clause 4 of the Framework Agreement on fixed-term work contained in the Annex to Directive 1999/70 be interpreted as precluding national legislation which, in respect of the same set of facts (the termination of a contract for services between the employer and a third-party undertaking at the latter's instigation), provides for a lower level of compensation for (i) termination of a fixed-term contract for a specific task or service with a term of the same duration as that of the contract between the employer and the third-party undertaking than it does for (ii) termination of the permanent contracts of comparable workers under a collective redundancy that is justified on production-related grounds pertaining to the employer and arises from the termination of the contract between the employer and the third-party undertaking?

Consideration

Firstly, the fixed-term employment contracts at issue qualify as fixed-term employment contracts within the meaning of Clause 4(1), in conjunction with Clause 3(1).

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Secondly, the severance payment at issue qualifies as an employment condition within the meaning of Clause 4(1).
Thirdly, Clause 4(1) only applies if equal situations are treated differently or if different situations are treated equally. The referring court must verify whether this is the case. Based on the information provided, the workers performed the same work. The situations therefore seem equal, but there is a difference in treatment as the severance payment is not equal.
In the fourth place, it must be determined whether there is an objective justification for the difference in treatment. That concept requires, according to equally settled case-law, the unequal treatment found to exist to be justified by the presence of precise and specific 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 that unequal treatment in fact responds to a genuine need, is appropriate for the purpose of attaining the objective pursued and is necessary for that purpose. Those factors may be apparent, in particular, from the specific nature of the tasks for the performance of which fixed-term contracts have been concluded and from the inherent characteristics of those tasks or, as the case may be, from the pursuit of a legitimate social-policy objective of a Member State.
In this case, as the Spanish government has put forward, the compensation for indefinite term workers amounts to compensation for an unforeseen situation, while for fixed-term workers it was apparent from the beginning that the employment contract would end at some point. That is an essential different context. Furthermore, it should be noted that the 12 days' salary rule only applies if the fixed-term contract ends by expiry or end of the project/contract. Otherwise, the normal rules (including the 20 days' salary compensation) apply. The referring court must determine which rules apply in the current situation.
In these circumstances, the specific goal of the 20 days' salary compensation rule justifies the difference in treatment.

Ruling

Clause 4 of the Framework Agreement on fixed-term work contained in the Annex to Directive 1999/70 must be interpreted as not precluding national legislation which, in the situation at issue, where the termination of a service contract between the employer and one of its customers has led to a termination of employment contracts for a certain project or service, and otherwise has led to a collective redundancy, based on objective grounds, provides a higher compensation to indefinite term employees than fixed-term employees.

ECJ 8 May 2019, case C-161/18 (Villar Láiz), Gender Discrimination, Social Insurance

Violeta Villar Láiz – v – Instituto Nacional de la Seguridad Social (INSS), Tesorería General de la Seguridad Social (TGSS), Spanish case

Question

Must Article 4(1) of Directive 79/7 be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which provides that the amount of the contributory retirement pension of a part-time worker is to be calculated by multiplying a basic amount, established on the basis of remuneration actually received and contributions actually paid, by a percentage which is related to the length of the contribution period, that period being modified, by a reduction factor equal to the ratio of the duration of the part-time work actually carried out to the duration of the work carried out by a comparable full-time worker, and increased by the application of a factor of 1.5?

Ruling

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 must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which provides that the amount of retirement pension based on contributions of a part-time worker is to be calculated by multiplying a basic amount, established from the remuneration actually received and contributions actually paid, by a percentage which relates to the length of the period of contribution, that period being itself modified, by a reduction factor equal to the ratio of the time of part-time work actually carried out to the time of work carried out by a comparable full-time worker, and increased by the application of a factor of 1.5, to the extent that that legislation places at a particular disadvantage workers who are women as compared with workers who are men.

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