

Ruling

1. Articles 1, 2 and 6 of Directive 2000/78, read in conjunction with Article 21 of the Charter, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which entered into force retroactively, and which, for the purpose of putting a stop to discrimination on grounds of age, provides for the transfer of currently employed civil servants to a new remuneration and advancement system under which the initial classification of those civil servants is determined on the basis of the last salary they received under the previous system.
2. Article 47 of the Charter and Article 9 of Directive 2000/78 must be interpreted as precluding national legislation which, in a situation such as that at issue in the main proceedings, reduces the scope of the review which national courts are entitled to conduct, by excluding questions concerning the basis of the ‘transition amount’ calculated according to the rules of the previous remuneration and advancement system.
3. EU law must be interpreted as meaning that where there has been a finding of discrimination which is contrary to EU law, and for as long as measures reinstating equal treatment have not been adopted, the reinstatement of equal treatment, in a case such as that at issue in the main proceedings, involves granting civil servants disadvantaged by the previous remuneration and advancement system the same benefits as those enjoyed by the civil servants treated more favourably by that system, both as regards the recognition of periods of service completed before the age of 18 and advancement in the pay scale and, accordingly, the award of financial compensation to those civil servants discriminated against in the sum of the difference between the amount of remuneration that the civil servant concerned ought to have received had he not been treated in a discriminatory manner and the remuneration which he in fact received.

ECJ 8 May 2019, case C-494/17, (Rossato and Conservatorio di Musica F.A. Bonporti), Fixed-Term Work

Ministero dell'Istruzione, dell'Università e della Ricerca (MIUR) – v – Fabio Rossato, Conservatorio di Musica F.A. Bonporti, Italian case

Question

Is Clause 5(1) of the Framework Agreement to be interpreted as precluding national legislation which, as applied by the national supreme courts, precludes any entitlement to financial compensation on account of the misuse of successive fixed-term employment contracts for public sector teachers whose employment relationship has been converted from a fixed-term relationship into one of indefinite duration, with limited retroactive effect?

Ruling

Clause 5(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, is to be interpreted as not precluding legislation which, as applied by the national supreme courts, precludes any entitlement to financial compensation on account of the misuse of successive fixed-term employment contracts for public-sector teachers whose employment relationship has been converted from a fixed-term relationship into one of indefinite duration, with limited retroactive effect, if such conversion is neither uncertain nor unpredictable or fortuitous and the limited account taken of the period of service completed under those successive fixed-term employment contracts constitutes a measure that is proportionate for the purpose of punishing that misuse, which is a matter for the national court to determine.