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that State of employment? Or must entitlement to a benefit under the AOW be regarded as an entitlement to a benefit which, under national legislation, is not subject to conditions relating to paid employment or to insurance within the meaning of the *Bosmann* judgment, with the result that the line of reasoning followed in that judgment can be applied in her case?

Case C-96/18, Social Insurance

Sociale Verzekeringsbank – v – C.E. Franzen, reference lodged by the Hoge Raad der Nederlanden (Netherlands) on 9 February 2018

1. Must Articles 45 TFEU and 48 TFEU be interpreted as meaning that, in a case such as that at issue here, those provisions preclude a national rule such as Article 6a, introductory sentence and (b), of the AKW? 1 That rule means that a resident of the Netherlands is not insured for purposes of the social security scheme of that State of residence if that resident works in another Member State and is subject to the social security legislation of the State of employment on the basis of Article 13 of Regulation No 1408/71. The present case is characterised by the fact that, on the basis of the legislation of the State of employment, the interested party does not qualify for child benefit because of the limited scope of her work there?
2. For the purpose of the answer to Question 1, is it significant that the possibility existed for the interested party to request the Svb to conclude an agreement as referred to in Article 17 of Regulation No 1408/71?

Case C-103/18, Fixed-Term Work

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

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?

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?

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:

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?

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?

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?

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 cov-

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er 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?

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?

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?

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:

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?

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 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?

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?

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-168/18, Insolvency

Pensions-Sicherungs-Verein VVaG – v – Günther Bauer, reference lodged by the Bundesarbeitsgericht (Germany) on 5 March 2018

1. Is Article 8 of Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer applicable if occupational old-age pension benefits are provided via an inter-occupational pension institution subject to State supervision of financial services, and, for financial reasons, that institution legitimately reduces its benefits with the consent of the supervisory authority, and, although the employer must assume liability for the reductions vis-à-vis the former employees under national law, its insolvency means that it is unable to discharge its obligation to offset those benefit reductions?
2. If the first question referred is answered in the affirmative: Under what circumstances can a former employee's losses suffered in respect of occupational old-age pension benefits as a result of the insolvency of the employee be regarded as manifestly dispro-

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