# Case C-942/19, Fixed-term Work

## Servicio Aragonés de la Salud – v – LB, reference lodged by the Tribunal Superior de Justicia de Aragón (Spain) on 31 December 2019

Servicio Aragonés de la Salud – v – LB, reference lodged by the Tribunal Superior de Justicia de Aragón (Spain) on 31 December 2019

1. Must clause 4 of the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, annexed to Directive 1999/70/EC, be interpreted as meaning that the right, derived from obtaining a post in the public sector, to the conferral of a particular administrative status in relation to the post – also in the public sector – which was held up until then is a condition of employment in respect of which temporary workers and permanent workers may not be treated differently?
2. Must clause 4 of the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, annexed to Directive 1999/70/EC, be interpreted as meaning that justification on objective grounds for the different treatment between fixed-term workers and permanent workers includes the aim of preventing serious failings and harm as regards the instability of workforces in a field as sensitive as the provision of healthcare, which falls under the constitutional right to the protection of health, such that it can serve as the basis for refusal to grant a particular type of leave of absence to those who obtain a temporary post but not to those who obtain a permanent post?
3. Does clause 4 of the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, annexed to Directive 1999/70/EC, preclude a rule such as that laid down in Article 15 of [Royal Decree 365/1995], which excludes posts held as a temporary civil servant or as a temporary staff member from being part of the posts which give entitlement to the status of on leave of absence by reason of employment in the public sector, when that status must be granted to those who take up a permanent post in the public sector and that status is more advantageous for a public servant than the other alternative administrative statuses which that public servant would have to request in order to be able to take up a new post to which he or she has been nominated?

# Case C-27/20, Social insurance

## PF and QG – v – Caisse d'allocations familiales d'Ille-et-Vilaine (CAF), reference lodged by the Tribunal de grande instance de Rennes (France) on 21 January 2020

Is EU law, in particular Articles 20 and 45 of the Treaty on the Functioning of the European Union, Article 4 of Regulation No 883/2004 and Article 7 of Regulation No 492/2011, to be interpreted as precluding a provision of national legislation, such as Article R 532-3 of the code de la sécurité sociale (French Social Security Code), which defines the reference calendar year, for the purposes of calculating family allowances, as the year before that preceding the payment period, and results, in a situation where the income of the person claiming the allowance has risen substantially in another Member State, and then fallen [following] his or her return to his or her Member State of origin, in that person being deprived, unlike residents who have not exercised their right of free movement, of part of his or her family allowance rights?

# Case C-40/20, Fixed-term Work

## AQ, BO, CP – v – Presidenza del Consiglio dei Ministri, Ministero dell'Istruzione, dell'Università e della Ricerca – MIUR, Università degli studi di Perugia, reference lodged by the Consiglio di Stato (Italy) on 27 January 2020

AQ, BO, CP – v – Presidenza del Consiglio dei Ministri, Ministero dell'Istruzione, dell'Università e della Ricerca – MIUR, Università degli studi di Perugia, reference lodged by the Consiglio di Stato (Italy) on 27 January 2020

1. Does clause 5 of the Framework Agreement annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE





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and CEEP ('the Directive'), entitled 'Measures to prevent abuse', read in conjunction with recitals 6 and 7 and clause 4 of that agreement ('Principle of non-discrimination'), and in the light of the principles of equivalence, effectiveness and practical effect of [European Union] law, preclude national legislation, specifically Article 24(3)(a) and Article 22(9) of Law No 240/2010, which allows universities to make unlimited use of fixed-term three-year contracts for researchers which may be extended for a further two years, without making the conclusion and extension of such contracts contingent on there being an objective reason connected with the temporary or exceptional requirements of the university offering such contracts, and which only stipulates, as the sole limit on the use of multiple fixed-term contracts with the same person, a maximum duration of 12 years, continuous or otherwise?

2. Does clause 5 of the Framework Agreement, read in conjunction with recitals 6 and 7 of the Directive and clause 4 of the Framework Agreement, and in the light of the practical effect of [European Union] law, preclude national legislation (specifically Articles 24 and 29(1) of Law No 240/2010), in so far as it allows universities to recruit researchers on a fixed-term basis only – without making the decision to employ such researchers contingent on the existence of temporary or exceptional requirements and without imposing any limit on this practice – through the potentially indefinite succession of fixed-term contracts, to cover the ordinary teaching and research requirements of those universities?
3. Does clause 4 of that Framework Agreement preclude national legislation, such as Article 20(1) of Legislative Decree No 75/2017 (as interpreted by the above-mentioned Ministerial Circular No 3/2017), which – while recognising that researchers on fixed-term contracts with public research bodies may be made permanent members of staff, provided that they have been employed for at least three years prior to 31 December 2017 – does not permit this for university researchers on fixed-term contracts solely because Article 22(16) of Legislative Decree No 75/2017 applies the 'public law regime' to the employment relationship – even though, as a matter of law, that relationship is based on a contract of employment – and despite the fact that Article 22(9) of Law No 240/2010 imposes the same rule on researchers at research bodies and at universities regarding the maximum duration of fixed-term employment relationships with universities and research bodies, whether in the form of the contracts referred to in Article 24 of that law or the research projects referred to in Article 22?
4. Do the principles of equivalence, effectiveness and practical effect of EU law, with regard to the Framework Agreement, and the principle of non-discrimination enshrined in clause 4 thereof, preclude national legislation (Article 24(3)(a) of Law No 240/2010 and Article 29(2)(d) and (4) of Legislative Decree No 81/2015) which – notwithstanding the existence of rules applicable to all public-sector and private-sector workers recently set out in Legislative Decree No 81 which establish (from 2018) that the maximum duration of a fixed-term relationship is 24 months (including extensions and renewals) and make the use of such relationships by the public authorities contingent on the existence of 'temporary and exceptional requirements' – allows universities to hire researchers on a three-year fixed-term contract, which may be extended for two years in the event of a favourable assessment of the research and teaching activities carried out during those three years, without making either the conclusion of the initial contract or its extension conditional on the university having such temporary or exceptional requirements, and even allowing it, at the end of the five-year period, to enter into another fixed-term contract of the same type with the same individuals or with other individuals, in order to cover the same teaching and research requirements as those of the earlier contract?
5. Does clause 5 of the Framework Agreement, in the light of the principles of effectiveness and equivalence and clause 4 of that agreement, preclude national legislation (Article 29(2)(d) and (4) of Legislative Decree No 81/2015 and Article 36(2) and (5) of Legislative Decree No 165/2001) which prevents university researchers hired on a three-year fixed-term contract, which may be extended for a further two years (pursuant to Article 24(3)(a) of Law No 240/2010), from subsequently establishing a relationship of indefinite duration, there being no other measures within the Italian legal system which can prevent and penalise the misuse of successive fixed-term contracts by universities?



# Case C-44/20, Fixed-term Work

## Autorità di Regolazione per Energia Reti e Ambiente (ARERA) – v – PC, RE, reference lodged by the Consiglio di Stato (Italy) on 27 January 2020

Autorità di Regolazione per Energia Reti e Ambiente (ARERA) – v – PC, RE, reference lodged by the Consiglio di Stato (Italy) on 27 January 2020

1. Must clause 4 of the framework agreement on fixed-term work, concluded on 18 March 1999 and annexed to Council Directive 1999/70/EC of 28 June 1999, be construed as requiring that the periods of service carried out by a fixed-term worker employed by the Authority, in duties which coincide with those of a permanent employee in the corresponding category of that authority, be taken into account to determine his or her length of service, even where his or her subsequent permanent