equal treatment in employment and occupation must be interpreted as meaning that:

– the practice adopted by an employer and consisting in the payment of an allowance to workers with disabilities who have submitted their disability certificates after a date chosen by that employer, and not to workers with disabilities who have submitted those certificates before that date, may constitute direct discrimination if it is established that that practice is based on a criterion that is inextricably linked to disability, inasmuch as it is such as to make it impossible for a clearly identified group of workers, consisting of all the workers with disabilities whose disabled status was necessarily known to the employer when that practice was introduced, to satisfy that temporal condition;
– that practice, although apparently neutral, may constitute discrimination indirectly based on disability if it is established that, without being objectively justified by a legitimate aim and without the means of achieving that aim being appropriate and necessary, it puts workers with disabilities at a particular disadvantage depending on the nature of their disabilities, including whether they are visible or require reasonable adjustments to be made to working conditions.

ECJ 4 February 2021, Case C-903/19 (Ministre de la Transition écologique en solidaire en Ministre de l'Action en des Comptes publics), Pension, Miscellaneous

DQ – v – Ministre de la Transition écologique et solidaire, EU Case

Summary

Transfer of the actuarial equivalent of pension rights from the EU pension scheme to a national scheme is possible not only if the employee enters the national administration for the first time, but also if s/he returns to it.

Question

Must Article 11(1) of Annex VIII to the Staff Regulations be interpreted as meaning that the transfer of the actuarial equivalent of retirement pension rights is restricted solely to officials and members of the contract staff who are seconded to a national administration for the first time after having been employed in an EU institution, or whether that transfer may also be requested by those who return to that administration after having performed duties in an EU institution while on non-active status or leave on personal grounds?

Ruling

Article 11(1) of Annex VIII to the Staff Regulations of Officials of the European Union must be interpreted as meaning that the transfer of the actuarial equivalent of retirement pension rights may be requested both by officials and members of the contract staff who enter a national administration for the first time after having been employed in an EU institution and by those who return to a national administration after having performed duties in an EU institution in the context of a period of non-active status or leave on personal grounds.

ECJ 11 February 2021, Case C-760/18 (M.V. and Others (Contrats de travail à durée déterminée successifs dans le secteur public)), Fixed-Term Work

M.V. and Others – v – Organismos Topikis Aftodioikisis (OTA) 'Dimos Agiou Nikolaou', Greek case

Summary

The concept of "successive fixed-term contracts" in Clause 1 and 5(2) of the framework agreement on fixed-term work (annexed to Directive 1999/70/EC) also covers automatic extensions, even if they do not meet formal national requirements. The referring court must undertake, to the fullest extent possible, assess whether national law can be interpreted in conformity with the directive.

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Question

1. Must Clause 1 and Clause 5(2) of the framework agreement be interpreted as meaning that the expression 'successive fixed-term employment contracts' therein also covers the automatic extension of the fixed-term employment contracts of workers in the cleansing sector of local and regional authorities, which has taken place in accordance with express provisions of national law, notwithstanding the fact that the generally prescribed formal requirement that successive contracts be concluded in writing has been disregarded?
2. If the answer to the first question is in the affirmative, must Clause 5(1) of the framework agreement be interpreted as meaning that, where an abuse of successive fixed-term employment contracts, within the meaning of that provision, has occurred, the obligation incumbent on the referring court to undertake, so far as possible, an interpretation and an application of all the relevant provisions of domestic law capable of duly penalising that abuse and of eliminating the consequences of the infringement of EU law, extends to the application of a provision of national law that permits the conversion of the succession of fixed-term contracts to one employment contract of indefinite duration, even though another provision of national law, of a higher rank in the hierarchy of legal rules as a provision of the Greek constitution, absolutely prohibits, in the public sector, such a conversion?

Ruling

1. Clause 1 and Clause 5(2) 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, must be interpreted as meaning that the expression 'successive fixed-term employment contracts' therein also covers the automatic extension of the fixed-term employment contracts of workers in the cleansing sector of local and regional authorities, which has taken place in accordance with express provisions of national law, notwithstanding the fact that the generally prescribed formal requirement that successive contracts be concluded in writing has been disregarded.
2. Clause 5(1) of the framework agreement on fixed-term work must be interpreted as meaning that, where abuse of successive fixed-term employment contracts, within the meaning of that provision, has occurred, the obligation incumbent on the referring court to undertake, to the fullest extent possible, an interpretation and an application of all the relevant provisions of domestic law capable of duly penalising that abuse and of nullifying the consequences of the breach of EU law extends to an assessment of whether the provisions of earlier national legislation, which remain in force, and which permit the conversion of a succession of fixed-term contracts to one employment contract of indefinite duration, may, where appropriate, be applied for the purposes of that interpretation in conformity with EU law, even though national constitutional provisions impose an absolute prohibition, in the public sector, on such conversion.

ECJ 11 February 2021, Joined Cases C-407/19 and C-471/19 (Katoen Natie Bulk Terminals and General Services Antwerp), Other Forms of Free Movement

Katoen Natie Bulk Terminals NV and General Services Antwerp NV – v – Belgische Staat and Middlegate Europe NV – v – Ministerraad, Belgian cases

Summary

Legislation which reserves dock work to recognised workers may be compatible with EU law if it is aimed at ensuring safety in port areas and preventing workplace accidents. However, the intervention of a joint administrative committee in the recognition of dockers is neither necessary nor appropriate for attaining the objective pursued.

Question

1. Must Articles 49 and 56 TFEU, Articles 15 and 16 of the Charter and the principle of equal treatment be interpreted as precluding national legislation which obliges persons or undertakings wishing to carry out port activities in a port area – including activities which, strictly speaking, are unrelated to the loading and unloading of ships – to have recourse only to dockers recognised as such in accordance with the conditions and arrangements laid down pursuant to that legislation?

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