

ECJ 24 June 2021, case C-550/19 (Obras y Servicios Públicos en Acciona Agua), Fixed-Term Work, Transfer of Undertakings, Employment Terms

EV – v – Obras y Servicios Públicos SA and Acciona Agua SA, Spanish case

Summary

Spanish ‘fijos de obra’ employment contracts could be in breach of the Framework Agreement on Fixed-Term Work. Following a transfer, only the rights and obligations arising from the last contract transfer, provided that this is not to the detriment of the employee. Both are for the referring court to verify.

Questions

1. Must Clause 5(1) of the framework agreement be interpreted as meaning that it precludes national legislation, such as that at issue in the main proceedings, under which fixed-term ‘fijos de obra’ employment contracts may be concluded successively, with the result that workers who have concluded such contracts retain their status as fixed-term workers for an indefinite period or, on the contrary, whether the renewal of those contracts can be regarded as being justified by ‘objective reasons’, within the meaning of paragraph 1(a) of that clause, on the sole ground that that national legislation provides that those contracts are concluded, as a general rule, for a specific construction project, irrespective of its duration?
2. Must the first subparagraph of Article 3(1) of Directive 2001/23 be interpreted as precluding national legislation according to which, in the event of a transfer of staff in the context of public contracts, the rights and obligations of the transferred worker which the incoming undertaking is required to respect are limited exclusively to those arising from the last contract which that worker concluded with the outgoing undertaking?

Ruling

1. Clause 5(1) of the framework agreement on fixed-term work concluded on 18 March 1999, which is annexed to Directive 1999/70 of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as meaning that it is for the national court to assess, in accordance with all the applicable rules of national law, whether the limitation to three consecutive years, except under specific conditions, of the employment of fixed-term workers under contracts known as ‘fijos de obra’ by the same undertaking at different workplaces located within the same province and the grant to those workers of compensation for termination, assuming that that national court finds that those measures are actually taken in respect of those workers, constitute adequate measures to prevent and, where appropriate, to penalise abuse arising from the use of successive fixed-term employment contracts or relationships or ‘equivalent legal measures’ within the meaning of that Clause 5(1). In any event, such national legislation cannot be applied by the authorities of the Member State concerned in such a way that the renewal of successive fixed-term ‘fijos de obra’ employment contracts is considered justified by ‘objective reasons’, within the meaning of Clause 5(1)(a) of that framework agreement, on the sole ground that each of those contracts is generally concluded for a specific construction project, irrespective of its duration, in so far as such national legislation does not prevent, in practice, the employer concerned from covering, by means of such renewal, fixed and permanent staffing needs.
2. The first subparagraph of Article 3(1) of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses must be interpreted as not precluding national legislation under which, in the event of a transfer of employees under public contracts, the rights and obligations of the transferred worker that the incoming undertaking is required to respect are limited exclusively to those arising from the last contract concluded by that worker with the outgoing undertaking, provided that the application of that legislation does not have the effect of placing that worker in a less favourable position solely as a result of the transfer, which it is for the referring court to determine.