

**Request for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo No 24 de Madrid (Spain)
lodged on 11 February 2019 — Sindicato Único de Sanidad e Higiene de la Comunidad de Madrid and
Sindicato de Sanidad de Madrid de la CGT v Consejería de Sanidad de la Comunidad de Madrid**

(Case C-103/19)

(2019/C 319/24)

Language of the case: Spanish

Referring court

Juzgado de lo Contencioso-Administrativo No 24 de Madrid

Parties to the main proceedings

Applicants: Sindicato Único de Sanidad e Higiene de la Comunidad de Madrid and Sindicato de Sanidad de Madrid de la CGT

Defendant: Consejería de Sanidad de la Comunidad de Madrid

Questions referred

1. Does the legislation that is the subject of this action, namely Order 406/2017 of 8 May 2017 of the Minister for Health, comply with the Framework Agreement annexed to Directive 1999/70/EC, ⁽¹⁾ specifically Clause 5 [of the Framework Agreement] and points 6 and 8 of the [general considerations contained in that agreement], and with the parameters established by the judgment of the Court of Justice (Tenth Chamber) of 14 September 2016, *Pérez López*, C-16/15, EU:C:2016:679, in a situation where — following successive renewals of fixed-term appointments in the public healthcare sector which were based on provisions of national law that permitted appointments to be renewed in order to cover and safeguard services of a temporary, interim or extraordinary nature, but which were actually being used to cover permanent ongoing needs — the Order changes the status of 9 126 posts, with occasional (*eventual*) temporary staff becoming interim (*interino*) temporary staff, and the result of the procedure is the inclusion of the posts in question in public sector vacancies lists and the termination of the temporary worker's employment relationship?
2. Is the interpretation of this court correct when it takes the view that the way (as described here) in which Order 406/2017 of 8 May 2017 of the Minister for Health implements Article 9(3) of the Framework Regulations does not comply either with Clause 5 of the Framework Agreement and points 6 and 8 of the [general considerations contained in that agreement], or with the parameters established by the judgment of the Court of Justice (Tenth Chamber) of 14 September 2016, *Pérez López*, C-16/15, EU:C:2016:679, since, in a situation in which there has been abuse arising from the use of temporary contracts to cover permanent needs and in which a structural defect has been acknowledged, the said Order allows that abuse to go permanently unpunished, which is in breach of the objectives of the directive and perpetuates the disadvantaged position of temporary regulated employees?
3. Is this court's interpretation, as set out in this order, of Clause 5 of the Framework Agreement and points 6 and 8 of the [general considerations contained in that agreement], and of the parameters established by the judgment of the Court of Justice (Tenth Chamber) of 14 September 2016, *Pérez López*, C-16/15, EU:C:2016:679, correct in concluding that Order 406/2017 of 8 May 2017 of the Minister for Health does not comply with the first paragraph of Article 2 of Directive 1999/70, inasmuch as the Spanish State is not ensuring that the outcomes established in the directive are achieved because, following the abuse arising

from the use of fixed-term contracts, it fails to offer workers effective and equivalent guarantees of protection so as to punish that abuse appropriately and remove the effects of the breach of EU law, and it allows the abuse to go unpunished, thus permitting a situation in which ... Directive [1999/70] is not applied in the health sector?

4. Given that, under the national legislation, there is in the public sector an absolute prohibition on converting a succession of fixed-term contracts into an employment contract of indefinite duration, or making the individual who has suffered abuse a permanent employee, and given that the national legislation contains no other effective measure to prevent and, where applicable, punish the misuse of successive fixed-term employment contracts, is this court correct in taking the view that Order 406/2017 of 8 May 2017 of the Minister for Health (which belatedly implements Article 9(3) of the Framework [Regulations]) and the subsequent competitive selection procedure cannot be considered to provide an effective means of preventing and, where applicable, punishing the misuse of successive fixed-term employment contracts, given that, as this court believes and reiterates, the application and fulfilment of the objectives established in ... Directive [1999/70] are thus avoided?
5. Order 406/2017 of 8 May 2017 of the Minister for Health applies only to occasional (*eventual*) staff, and, so far as other temporary staff employed for excessively long periods of time are concerned, the Authority is failing to examine the reasons for this within the timescales established in the national legislation in order to assess, as appropriate, whether a structural post should be created within the workforce. As a result, in practice, employees are left in a permanent state of insecurity, the abuse is left unpunished, and workers are not offered effective or equivalent guarantees of protection so as to punish the abuse appropriately and remove the effects of the breach of EU law. Must it therefore be concluded that the situation described entails a breach of the requirements laid down in the judgment of the Court of Justice (Tenth Chamber) of 14 September 2016, *Pérez López*, C-16/15, EU:C:2016:679, and is therefore contrary to the relevant EU legislation?

⁽¹⁾ Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

Request for a preliminary ruling from the Sąd Rejonowy w Koszalinie (Poland) lodged on 21 February 2019
— V.C. Sp. z. o. o. v P.K.

(Case C-150/19)

(2019/C 319/25)

Language of the case: Polish

Referring court

Sąd Rejonowy w Koszalinie

Parties to the main proceedings

Applicant: V.C. Sp. z. o. o.

Defendant: P.K.

By order of 4 June 2019, the Court of Justice of the European Union has held that Case C-150/19 is to be removed from the register of the Court.
