

Request for a preliminary ruling from the Tribunal Superior de Justicia de Madrid (Spain) lodged on 3 March 2022 — IK v Agencia Madrileña de Atención Social de la Comunidad de Madrid

(Case C-159/22)

(2022/C 359/20)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Madrid

Parties to the main proceedings

Appellant: IK

Respondent: Agencia Madrileña de Atención Social de la Comunidad de Madrid

Questions referred

- A) Can the national legislation be considered to include measures that are a sufficient deterrent in respect of the use of successive contracts or renewals of temporary contracts contrary to clause 5 of the Framework Agreement, which fulfil the conditions established by the case-law of the CJEU in its judgments of 7 March 2018 in Case C-494/16, *Santoro*,⁽¹⁾ and of 8 May 2019 in Case C-494/17, *Rossato*,⁽²⁾ in relation to compensation for the harm suffered by a worker by means of *restitutio in integrum*, when it provides solely for limited and objective compensation (20 days' salary for each year worked, up to a limit of one year's pay) but no provision exists for additional compensation to make full reparation for the harm caused if it exceeds that amount?
- B) Can the national legislation be considered to include measures that are a sufficient deterrent in respect of the use of successive contracts or renewals of temporary contracts contrary to clause 5 of the Framework Agreement, which fulfil the conditions established by the case-law of the CJEU in its judgments of 7 March 2018 in Case C-494/16, *Santoro*, and of 8 May 2019 in Case C-494/17, *Rossato*, in relation to compensation for the harm suffered by a worker, when it provides only for compensation that becomes due at the time when the contract is terminated because the post has been filled, but which does not provide for any compensation while the contract is in force as an alternative to a declaration that the contract is of indefinite duration? In a dispute in which the only issue is whether the worker has permanent status, but the contract has not been terminated, is it necessary to award compensation for harm suffered as a result of the temporary nature of the contract as an alternative to a declaration of permanent status?
- C) Can the national legislation be considered to include measures that are a sufficient deterrent against public administrative authorities and public sector bodies in respect of the use of successive contracts or renewals of temporary contracts contrary to clause 5 of the Framework Agreement, which are aimed at 'preventing and penalising the misuse of contracts of indefinite duration' by an employer in relation to other and future workers, which fulfil the conditions established by the case-law of the CJEU in its judgments of 7 March 2018 in Case C-494/16, *Santoro*, and of 8 May 2019 in Case C-494/17, *Rossato*, where those measures consist of legal provisions introduced with effect from 2017 (34th additional provision of Ley 3/2017 de Presupuestos Generales del Estado para el año 2017 (Law 3/2017 on General State Budgets for 2017) () of 27 June 2017; 43rd additional provision of Ley 6/2018 de Presupuestos Generales del Estado para el año 2018 (Law 6/2018 on General State Budgets for 2018) of 3 July 2018; and Real Decreto-ley 14/2021 (Royal Decree-Law 14/2021) of 6 July 2021) which state that liability will be established for 'unlawful actions' without specifying that liability other than by a general reference to legislation which does not specify [it] and without any specific instance of the establishment of liability existing in the context of thousands of judgments which have ruled that workers have non-permanent contracts of indefinite duration on the ground of non-compliance with the provisions on temporary contracts?
- D) If the view is taken that no measures exist that are a sufficient deterrent in Spanish law, must the consequence of the infringement of clause 5 of the Framework Agreement annexed to Directive 1999/70/EC⁽³⁾ by a public employer be that the contract is treated as a non-permanent contract of indefinite duration or must the worker be recognised as having fully permanent status, without making any distinction?

- E) Is the conversion of the contract into a permanent contract under the Framework Agreement annexed to Directive 1999/70/EC and the case-law of the CJEU interpreting that directive required, pursuant to the principle of the primacy of EU law, even if it is considered to be contrary to Articles 23(2) and 103(3) of the Spanish Constitution, where those constitutional provisions are interpreted as meaning that access to all public sector employment, including where engagement is under an employment contract, may occur only after a candidate has passed a competitive selection procedure in which the principles of equality, merit, ability and publicity are applied? Given that another interpretation — that used by the Tribunal Constitucional (Constitutional Court, Spain) — is possible, must the principle of conforming interpretation be applied to the constitutional provisions of the Member State, so that it is obligatory to choose the interpretation which renders those provisions compatible with EU law, in this case by construing Articles 23(2) and 103(3) of the Constitution as not requiring the application of the principles of equality, merit and ability to procedures for the recruitment of contractual staff?
- F) Is it possible that conversion of the contract into a permanent contract under the Framework Agreement annexed to Directive 1999/70/EC and the case-law of the CJEU interpreting that directive may not apply if, before that conversion is ordered by a court, provision is made for a statutory procedure for the consolidation or stabilisation of temporary employment, which is required to be conducted in the near future and which involves the publication of vacancy notices to fill the post occupied by the worker, bearing in mind that that procedure must guarantee 'compliance with the principles of free competition, equality, merit, ability and publicity' and that therefore the worker in respect of whom a succession of temporary contracts or renewals has been used may be able to consolidate his post, but may also not be able to do so because that post is awarded to another person, in which case that worker's contract will be terminated with compensation calculated at the rate of 20 days' salary for each year worked, up to a limit of one year's pay?

⁽¹⁾ EU:C:2018:166.

⁽²⁾ EU:C:2019:387.

⁽³⁾ OJ 1999 L 175, p. 43.

**Request for a preliminary ruling from the College van Beroep voor het bedrijfsleven (Netherlands)
lodged on 11 May 2022 — Pesticide Action Network Europe (PAN Europe) v College voor de
toelating van gewasbeschermingsmiddelen en biociden, in the presence of: Dow AgroScience BV
(Dow)**

(Case C-308/22)

(2022/C 359/21)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicant: Pesticide Action Network Europe (PAN Europe)

Defendant: College voor de toelating van gewasbeschermingsmiddelen en biociden

In the presence of: Dow AgroScience BV (Dow)

Questions referred

1. Does the Member State concerned, which decides on the authorisation of a plant protection product under Article 36(2) of Regulation 1107/2009, ⁽¹⁾ have any discretion to depart from the assessment of the zonal rapporteur Member State that examined the application under Article 36(1) of Regulation 1107/2009 and, if so, what is the margin of that discretion?