C/2024/4556

29.7.2024

Judgment of the Court (Sixth Chamber) of 13 June 2024 (requests for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo n.º 17 de Barcelona – Spain) – KT (C-331/22), HM, VD (C-332/22) v Dirección General de la Función Pública, adscrita al Departamento de la Presidencia de la Generalitat de Catalunya (C-331/22), Departamento de Justicia de la Generalitat de Catalunya (C-332/22)

(Joined Cases C-331/22 [1] and C-332/22, [2] DG de la Función Pública, Generalitat de Catalunya and Others)

(References for a preliminary ruling – Directive 1999/70/EC – Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Fixed-term employment contracts in the public sector – Interim civil servants – Clause 5 – Measures to prevent and penalise the improper use of successive fixed-term employment contracts or relationships)

(C/2024/4556)

Language of the case: Spanish

Referring court

Juzgado de lo Contencioso-Administrativo n.º 17 de Barcelona

Parties to the main proceedings

Applicants: KT (C-331/22), HM, VD (C-332/22)

Defendants: Dirección General de la Función Pública, adscrita al Departamento de la Presidencia de la Generalitat de Catalunya (C-331/22), Departamento de Justicia de la Generalitat de Catalunya (C-332/22)

Operative part of the judgment

1. Clause 5 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 not precluding national legislation in accordance with which recourse to successive fixed-term employment contracts or relationships in the public sector becomes abusive where the public administration concerned does not comply with the time limits laid down in national law for filling the post occupied by the temporary worker concerned, since, in such a situation, those successive fixed-term employment contracts or relationships cover needs of that administration that are not temporary, but fixed and permanent.

2. Clause 5 of the framework agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Directive 1999/70, read in the light of the principle of proportionality and the principle that the damage suffered must be made good,

   must be interpreted as precluding national case-law and legislation that provide as measures intended to penalise the improper use of successive fixed-term employment contracts or relationships, respectively, the continued employment of the worker concerned until selection procedures are organised and closed by the employing administration, as well as the organisation of such procedures and the payment of financial compensation that sets a double ceiling solely in favour of that worker who is unsuccessful in those procedures, where those measures are not proportionate or sufficiently effective and dissuasive measures to guarantee the full effectiveness of the rules adopted pursuant to clause 5.

[1] OJ C 359, 19.9.2022.
[2] OJ C 472, 12.12.2022.

3. Clause 5 of the framework agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Directive 1999/70, read in the light of Article 47 of the Charter of Fundamental Rights of the European Union,

must be interpreted as meaning that, in the absence of adequate measures provided for in national law to prevent and, where appropriate, penalise, pursuant to clause 5, abuse arising from the use of successive fixed-term employment contracts or relationships, the conversion of those successive fixed-term contracts or relationships into an employment contract or relationship of indefinite duration is capable of constituting such a measure, provided that that conversion does not entail an interpretation of national law that is *contra legem*.