



Press and Information

Court of Justice of the European Union

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Judgment in Case C-177/10

Francisco Javier Rosado Santana v Consejería de Justicia y Administración  
Pública de la Junta de Andalucía

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**Where a certain number of years' service is required for the internal promotion of career civil servants, Member States can be required to recognise periods worked as an interim civil servant**

*For the recognition of those periods, the duties undertaken as an interim civil servant must be comparable with those of a career civil servant*

The aim of Directive 1999/70<sup>1</sup> is to put into effect the Framework Agreement on fixed-term work, concluded between the general cross-industry organisations (ETUC, UNICE and CEEP). The Framework Agreement is intended to improve the quality of fixed-term work. Accordingly, it lays down a principle of non-discrimination, making it illegal to treat fixed-term workers less favourably than permanent workers, unless different treatment is justified on objective grounds.

Between 1989 and 2005, Francisco Javier Rosado Santana was an interim civil servant<sup>2</sup> with the Junta de Andalucía (Autonomous Community of Andalusia, Spain). He became a career civil servant<sup>3</sup> with the same regional administrative authority in 2005.

In 2007, that regional administrative authority published a competition notice stating that selection tests would be held for the internal promotion of its career civil servants.

That notice laid down the conditions which the candidates in the tests had to meet. One of those conditions was that they had to hold, or be in a position to obtain, the qualification of 'Bachiller Superior' (Baccalaureate), failing which they had to have completed 10 years' service as a career civil servant in a particular grade. In that connection, the competition notice stated that no account would be taken of prior periods of service completed as a temporary or interim employee in another area of the public administration or of other similar previous periods of service.

Although Mr Rosado Santana had neither the qualification required for participation in the competition nor 10 years' seniority as a career civil servant, he was admitted to the tests and passed the competition. He was accordingly placed on the definitive list of successful candidates, published in November 2008. Nevertheless, on 25 March 2009, the regional administrative authority annulled his promotion on the ground that he did not have the required qualification or 10 years' seniority as a career civil servant.

On the view that it was in breach of the principle of non-discrimination laid down in the Framework Agreement, Mr Rosado Santana challenged that decision before the courts. In his opinion, periods of service completed as an interim civil servant (in his case, from 1989 to 2005) should be taken into account for the purposes of calculating the 10 years' seniority required to be able to take part in the tests for promotion. However, according to the Spanish Court, Mr Rosado Santana did not bring his action within two months of the publication of the competition notice, that is to say, he did

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<sup>1</sup> 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).

<sup>2</sup> Person who, for reasons of necessity and urgency, is linked to a public administrative authority through the performance of services on a temporary basis (thus, civil servants from that category can be appointed, for example, for the temporary replacement of career civil servants).

<sup>3</sup> Person linked to a public administrative authority through the performance of services on a permanent basis.

not bring his action within the period prescribed by Spanish legislation for contesting the lawfulness of the competition.

Against that background, the Juzgado de lo Contencioso-Administrativo nº 12 de Sevilla (Court for Contentious Administrative Proceedings, No 12, Seville) (Spain), the court hearing the case, asks the Court of Justice a number of questions. Essentially, the Spanish Court wishes to know whether it is permissible for a Member State to make the right to internal promotion in the civil service, which is available only to career civil servants, conditional upon candidates having worked for a certain period as career civil servants, while excluding all possibility of account being taken of periods of service completed as interim civil servants.

In its judgment delivered today, the Court of Justice states that **the mere fact that Mr Rosado Santana has obtained the status of career civil servant** – and is no longer, therefore, a fixed-term worker – **does not prevent the Framework Agreement from applying**. In that regard, the Court finds that, since the discrimination of which Mr Rosado Santana claims to be the victim concerns periods of service completed as an interim civil servant, the fact that he has meanwhile become a career civil servant is irrelevant.

The Court goes on to state that **the Framework Agreement applies to fixed-term employment contracts and relationships concluded with the public authorities and other public-sector bodies**. Accordingly, the Framework Agreement requires that there must not be any difference in treatment as between career civil servants and **comparable** interim civil servants of a Member State, **unless different treatment is justified on objective grounds**.

That being so, in order to determine whether, in the circumstances, the non-recognition of periods of service completed by Mr Rosado Santana as an interim civil servant constitutes discrimination, **it is for the Spanish Court to establish, first, whether Mr Rosado Santana, when he was working as an interim civil servant, was in a situation comparable with that of the career civil servants** admitted to the promotion procedure. As part of that exercise, the national court must in particular take into consideration the nature of the duties performed by Mr Rosado Santana in the years during which he worked as an interim civil servant and the quality of the experience which he thereby acquired.

Accordingly, **if the national court were to find that the duties performed by Mr Rosado Santana as an interim civil servant did not correspond to those performed by a career civil servant** in the grade required by the competition notice, **he could not reasonably claim to be the victim of discrimination**.

**If, on the other hand**, it emerges from the national court's consideration of the duties performed by Mr Rosado Santana as an interim civil servant that **his situation was comparable** with that of a career civil servant in the grade required by the competition notice, **the Spanish Court would then, as a second step, have to be ascertain whether there was an objective ground justifying the failure to take account, in the context of the selection procedure at issue, of those periods of service**.

In that connection, the Court states that the **concept of 'objective grounds'** requires the unequal treatment found to exist to be justified by the existence of precise and specific factors, characterising the employment condition to which it relates, in order to ensure that that unequal treatment in fact meets a genuine need, is appropriate for achieving the objective pursued and is necessary for that purpose. Those factors may **result, in particular, from the specific nature of the tasks for the performance of which fixed-term contracts have been concluded and from the inherent characteristics of those tasks or, as the case may be, from pursuit of a legitimate social-policy objective of a Member State**. In any event, **reliance on the mere temporary nature of the employment of staff of the public authorities does not meet those requirements and is therefore not, of itself, capable of constituting an 'objective ground' for the purposes of the Framework Agreement**.

Lastly, the Court states that EU law does not, in principle, preclude national legislation under which an action brought by a career civil servant challenging a decision rejecting his candidature for a competition and relying on breach of the Framework Agreement must, on pain of being time-barred, be brought within two months of the date of publication of the competition notice. However, if – as in this case – a civil servant has been admitted to the tests and his name has been placed on the definitive list of successful candidates for that competition, the possibility cannot be ruled out that making time for the purposes of the two-month time-limit laid down in Spanish law run from the date of publication of the competition notice could make it impossible or excessively difficult to exercise the rights conferred by the Framework Agreement. If that were found to be the position in Mr Rosado Santana’s case – a matter for the national court to determine – time for the purposes of the two-month time-limit could not start to run until the date on which the decision annulling his promotion was notified.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court’s decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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