



Recourse to successive fixed-term contracts to cover permanent needs in the healthcare sector is contrary to EU law

The use of such contracts cannot be justified by the requirement to cover temporary needs

Ms María Elena Pérez López was recruited as a nurse at the University Hospital of Madrid from 5 February to 31 July 2009. The reason given for her appointment was to 'provide certain services of a temporary, auxiliary or extraordinary nature'. The appointment of Ms Pérez López was renewed seven times under identically worded fixed-term contracts. Shortly before her last contract expired in March 2013, the administration informed her that she would be appointed again, even though she had worked without a break in continuity for the hospital between February 2009 and June 2013. Meanwhile, Ms Pérez López was informed that her employment relationship would subsequently cease.

Ms Pérez López brought an appeal against the decision to terminate her employment relationship. She argued that her successive appointments were not intended to meet an auxiliary or extraordinary need of the health services, but in fact corresponded to a permanent activity. The Juzgado de la Contencioso Administrativo No 4 de Madrid (Administrative Court No 4, Madrid, Spain), before which the legal proceedings were brought, asks the Court of Justice whether the Spanish legislation which allows the renewal of fixed-term contracts in the healthcare sector infringes the framework agreement on fixed-term work¹ (agreement under which the Member States must introduce measures to prevent abuse arising from the use of successive fixed-term employment contracts and thereby avoid job insecurity for employees). More specifically, that court has doubts regarding the objective grounds that could justify the renewal of such contracts.

By its judgment today², the Court finds that EU law precludes national legislation which allows **the renewal of fixed-term contracts to cover temporary staff needs, when those needs are, in fact, permanent.**

The Court first points out that the framework agreement requires Member States to make provision in their legislation, with a view to preventing abusive use of fixed-term contracts, for at least one of the following three measures by any means they choose: (1) the objective grounds on which renewal of the fixed-term contract may be justified, (2) the total maximum duration for which such contracts may be concluded successively and (3) the number of possible renewals of such contracts.

¹ Framework agreement on fixed-term work, concluded on 18 March 1999, set out in the Annex to 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)

² The Court has also today delivered two other judgments concerning the use of fixed-term contracts in Spain (namely, a judgment in Joined Cases [C-184/15](#) *Florentina Martínez Andrés v Servicio Vasco de Salud* and [C-197/15](#) *Juan Carlos Castrejana López v Ayuntamiento de Vitoria* and another judgment in Case [C-596/14](#) *Ana de Diego Porras v Ministerio de Defensa*). In Joined Cases C-184/15 and C-197/15, the Court states that the national authorities must provide for adequate measures that are sufficiently effective and dissuasive to prevent and penalise established abuses both of fixed-term contracts that are subject to the rules of employment law and those subject to administrative law. With regard to Case C-596/14, the Court, referring to the principle of non-discrimination, finds that fixed-term workers are entitled to contract termination compensation in the same way as permanent workers.

Since Spanish legislation does not provide for limits on the duration or number of renewals of fixed-term contracts (points 2 and 3 of the above list), the Court examined whether an objective ground referring to precise and concrete circumstances could justify the successive appointments of Ms Pérez López (point 1 of the above list). In that regard, **the Court acknowledges that temporary replacement of workers in order to satisfy temporary needs may constitute an objective ground. On the other hand, it considers that those contracts cannot be renewed for fixed and permanent tasks which normally come under the activity of the ordinary hospital staff.** The objective ground must be able to specifically justify the requirement to cover temporary needs and not permanent needs.

However, in the case of Ms Pérez López, her successive appointments do not appear to relate to simple temporary needs of the employer. Such renewal of fixed-term contracts creates a situation of insecurity which, in view of the structural deficit of regulated staff in the healthcare sector in the Madrid region, does not only affect Ms Pérez López.

The Court further notes that the Spanish administration is under no obligation to create permanent posts and is permitted to fill posts by hiring temporary staff without limitation either as to the duration of the contracts or the number of their renewals. It follows that the insecure situation of workers is perpetuated. Accordingly, the Court finds that Spanish legislation, by allowing the renewal of fixed-term contracts in order to cover fixed and permanent needs, despite the existence of a structural deficit of posts, infringes the framework agreement.

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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