Case C-40/20

Summary of a request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

23 April 2020

Referring court:

Consiglio di Stato (Italy)

Date of the decision to refer:

30 January 2020

Appellants:

AQ

BO

CP

Respondents:

Presidenza del Consiglio die Ministri (President of the Council of Ministers)

Ministero dell'Istruzione, dell'Università e della Ricerca — MIUR (Minister for Education, Universities and Research)

Università degli studi di Perugia (University of Perugia)

Subject matter of the main proceedings

Appeals before the Consiglio di Stato (Council of State, Italy) against the judgment of the Tribunale Amministrativo Regionale per l'Umbria (Regional Administrative Court, Umbria), by which that court dismissed the actions brought by the appellants against the University of Perugia's decisions rejecting their requests for selection procedures to be launched with a view to their being engaged on a permanent basis at the university, and against the corresponding Circular No 3/2017 adopted by the Ministro per la semplificazione e la pubblica amministrazione (Italian Minister for Simplification and Public Administration),

and also seeking to establish their right to be employed for an indefinite duration as researchers and to undergo the evaluation procedure referred to in Article 24(5) of legge n. 240 del 2010 (Law No 240/2010) in order to be classified as associate professors.

Subject matter and legal basis of the reference

Compatibility of Article 24(5) and (6) of Law No 240 of 30 December 2010 with Clause 4 of the Framework Agreement on fixed-term work annexed to Directive 1999/70/EC, in conjunction with Articles 20 and 21 of the Charter of Fundamental Rights of the European Union, and also in the light of the principles of equivalence and effectiveness.

Question referred

Does Clause 4 of the Framework Agreement annexed to Directive No 1999/70/EC of 28 June 1999 ('Council Directive concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP'), headed 'Principle of non-discrimination', read in conjunction with Articles 20 and 21 of the Charter of Fundamental Rights of the European Union, and also in the light of the principles of equivalence and effectiveness, preclude national legislation, such as that set out in [Article] 24(5) and (6) of Law No 240 of 2010, which grants fixed-term researchers referred to in Article 24(3)(b) who have obtained the national academic qualification referred to in Article 16 of that law, and permanent researchers who have also obtained that qualification, respectively, the right and the opportunity (implemented by the allocation of special funds) to undergo — the former on expiry of the contract and the latter until 31 December 2021 — a special appraisal procedure for appointment to the post of associate professor, whilst no similar right or opportunity is granted to fixed-term researchers referred to in Article 24(3)(b) who hold the relevant national academic qualification, despite the fact that they are workers who are required to perform identical duties, without distinction?

Provisions of EU law relied on

As set out in detail in the previous order for reference made in the same national proceedings, to which reference is made, the provisions of European Union law relied on are as follows:

Article 155 of the Treaty on the Functioning of the European Union.

Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP ('Directive 1999/70'); in particular Clause 5 and Clause 4 of the Framework Agreement annexed thereto, and recitals 3, 14 and 15 thereof.

Commission Recommendation of 11 March 2005 on the European Charter for Researchers and on a Code of Conduct for the Recruitment of Researchers (2005/251/EC).

Provisions of national law relied on

As set out in detail in the previous order for reference made in the same national proceedings, to which reference is made, the provisions of national law relied on are as follows:

Legge del 30 dicembre 2010, n. 240, 'Norme in materia di organizzazione delle università, di personale accademico e reclutamento, nonché delega al Governo per incentivare la qualità e l'efficienza del sistema universitario' (Law No 240 of 30 December 2010 laying down rules on the organisation of universities, academic staff and recruitment and delegating powers to the Government to enhance the quality and efficiency of the university system) ('Law No 240/2010'); in particular Article 24(1) to (3), (5) and (6).

Decreto legislativo del 25 maggio 2017, n. 75, 'Modifiche e integrazioni al decreto legislativo 30 marzo 2001, n. 165 (…)' (Legislative Decree No 75 of 25 May 2017 amending and supplementing Legislative Decree No 165 of 30 March 2001 (…)') ('Legislative Decree No 75/2017'); in particular, Article 20.

Decreto legislativo del 30 marzo 2001, n. 165 (Legislative Decree No 165 of 30 March 2001 ('Legislative Decree No 165/2001'), which constitutes the basic consolidated law on employment by public authorities, in particular Article 3(2) and Article 36, in the version in force since 22 June 2017.

Decreto legislativo del 15 giugno 2015, n. 81, 'Disciplina organica dei contratti di lavoro e revisione della normativa in tema di mansioni (…)' (Legislative Decree No 81 of 15 June 2015 laying down comprehensive rules governing contracts of employment and amending legislation on employment related duties (…) ('Legislative Decree No 81/2015'), which constitutes the implementation of Directive 1999/70/EC in domestic law; in particular Article 19, in the version applicable to the present case and prior to the amendment made by Decree-Law No 87/2018, and Article 29(2)(d), in force since 12 August 2018.

Succinct presentation of the facts and the main proceedings

1 Following publication of the previous order for reference made in the same national proceedings — to which reference is made as regards the facts of the case — various professional and trade union associations intervened in support of the appellants in the three cases in question: the ANIEF — Associazione Professionale e Sindacale, the Federazione Lavoratori della Conoscenza — CGIL [Confederazione Generale Italiana del Lavoro] and the CIPUR — Coordinamento

Intersedi Professori Universitari di Ruolo, which seek leave to intervene in the proceedings before the Court of Justice.

2 In addition, the appellants filed a new pleading, in which they state that there is an additional common ground in the three appeals they have lodged against the judgment of the Tribunale Amministrativo Regionale per l'Umbria.

The essential arguments of the parties to the main proceedings

3 By the abovementioned additional ground of appeal, the appellants allege infringement of Clause 4 of the Framework Agreement annexed to Directive 1999/70 and of the principle of non-discrimination enshrined in that agreement, on the ground that they have obtained the category 2 national academic qualification entitling them to be assessed for the purposes of appointment to the post of associate professor, as provided for in Article 24 (5) and (6) of Law No 240/2010.

Succinct presentation of the reasons for the request for a preliminary ruling

4 The referring court refers first of all to the judgment of 25 October 2018, *Sciotto* (C-331/17), in which the Court of Justice held that 'since the national law at issue in the main proceedings does not in any case allow, in the sector of activity of operatic and orchestral foundations, for the conversion of fixed-term employment contracts into a contract of indefinite duration, it is likely to lead to discrimination between fixed-term workers in that sector and fixed-term workers in other sectors, as the latter may become, after the transformation of their employment contract in the case of infringement of the rules on the conclusion of fixed-term contracts, comparable permanent workers within the meaning of Clause 4(1) of the Framework Agreement'.

5 The referring court also refers to the judgment of 20 June 2019, *Ustariz Aróstegui* (C-72/18), in which the Court, referring to its own case-law, ruled that 'the concept of "objective grounds" requires the observed unequal treatment to be justified by the existence of precise and concrete factors, characterising the employment condition to which it relates, in the specific context in which it occurs and on the basis of objective and transparent criteria in order to ensure that that unequal treatment in fact responds to 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' and that therefore 'clause 4(1) of the Framework Agreement must be interpreted as precluding a national legislative provision such as that at issue in the main proceedings which restricts entitlement to particular additional remuneration to teachers employed for an indefinite duration as established public officials, to the exclusion of, in particular, teachers employed

under fixed-term contracts governed by public law, if the completion of a certain period of service is the only condition for grant of that additional remuneration'.

6 In the case of the appellants, the discrimination alleged occurred within the same workers' sector, namely that of university researchers.

7 The referring court notes that the three categories of university researchers recognised in law — namely researchers whose contracts fall within the type governed by Article 24(3)(a) of Law 240/2010 ('type A researchers'), researchers whose contracts fall within the type governed by Article 24(3)(b) of Law 240/2010 ('type B researchers'), and fixed-term researchers — perform identical duties (teaching activities, non-curricular activities, providing student services, research activities, etc.).

8 However, although type A researchers perform the same functions as researchers belonging to the other categories and have been successful in a competition of equal difficulty and selectivity as those in which the latter have been successful, they are unable to be appointed to the position of category 2 associate professor, which is available only to the other two categories of researcher pursuant to Article 24(5) and (6) of Law No 240/2010. The referring court also notes that the procedure laid down in Article 25(6) is applicable until 31 December 2021, in accordance with the extension provided for in Article 5(1)(b) of Decree-Law No 126 of 29 October 2019.

9 Therefore, if a type A researcher has obtained the national academic qualification and a two-year extension following a positive appraisal of the activities carried out, that person will loses his or her job on expiry of his or her contract with no rational or non-discriminatory justification.

10 The alleged discrimination in question is also aggravated by the extraordinary plans for the recruitment of associate professors, aimed at restricting career progression to permanent researchers holding the national academic qualification, which were introduced by Ministerial Decree No 364 of 2019.

11 In the light of the foregoing, the referring court has decided to refer to the Court of Justice for a preliminary ruling the question set out above, in addition to those set out the previous order made by the same court in the same national proceedings.