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Court of Justice of the European Union

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Judgment in Joined Cases C-302/11 to C-305/11
Rosanna Valenza and Others v Autorità Garante della Concorrenza e del Mercato

EU law precludes ‘stabilisation’ of the employment relationship of public sector workers employed on a fixed-term basis which does not take account of the length of service accrued

The fixed-term nature of the contract does not constitute an ‘objective ground’ capable of justifying the refusal to take account of previous service

A number of employees, including Ms Valenza, recruited by the Italian National Competition Authority (Autorità Garante della Concorrenza e del Mercato) (‘the AGCM’) under successive fixed-term employment contracts, obtained permanent contracts from that authority and were placed on its permanent staff.

That ‘stabilisation’ procedure in respect of public sector employees, provided for by a specific Italian law¹, confers upon the worker – who meets certain requirements concerning the length of his employment relationship and the selection procedure followed for his recruitment – the status of civil servant. His initial salary is fixed without any regard for the length of service accrued in employment under fixed-term contracts.

The AGCM thus refused to take into account the periods of service previously completed by those employees for that same public authority under fixed-term contracts. The employees consequently contested that refusal.

The Consiglio di Stato (Italy) asks the Court of Justice whether the European ‘framework agreement’ on fixed-term work² precludes that Italian legislation.

In its judgment given today, the Court first of all points out that the **principle of non-discrimination** set out in the framework agreement provides that fixed-term workers must not be treated in a less favourable manner than comparable permanent workers solely because they work on a fixed-term basis, unless different treatment is justified on objective grounds. The fact that they have acquired the status of permanent workers does not exclude the possibility of relying on that principle, which is, accordingly, applicable in the present case.

The Court next compares the situations of fixed-term workers and permanent workers. It notes in that regard that – according to the explanations provided by the Italian Government itself – the purpose of the national legislation is precisely to promote the experience accrued with the employer.

The Court states that **it is for the referring court to determine whether the employees, when they were working under fixed-term contracts, were in a situation comparable to that of career civil servants employed on a permanent basis**. The nature of the duties performed by those employees under fixed-term employment contracts and the quality of the experience which they thereby acquired constitute criteria which make it possible to determine whether they are in a situation comparable to that of career civil servants. In any event, the fact that – unlike career civil

¹ Law No 296 of 27 December 2006 (Finance Law for 2007).

² 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 (OJ 1999 L 175, p. 43).

servants – they have not passed the general competition for obtaining a post in the public sector does not mean that they are in a different situation, given that the conditions for stabilisation set by the national legislature are specifically intended to enable the stabilisation of only those fixed-term workers whose situation may be viewed in the same way as that of career civil servants.

In the event that the duties performed for the AGCM under fixed-term contracts correspond to those performed by a career civil servant in the corresponding category, it has to be ascertained whether there is an **objective ground justifying the complete failure to take account** of the length of service accrued under the fixed-term contracts.

Thus, the Court points out that **there may be an objective ground justifying a difference in treatment, in a particular context and accompanied by precise and specific factors, resulting from the specific nature of the tasks.** The unequal treatment must be based on objective and transparent criteria enabling it to be ascertained whether that unequal treatment meets a genuine need and is appropriate and necessary for achieving the objective pursued. In any event, **the mere fact that the fixed-term worker completed periods of service on the basis of a fixed-term contract does not constitute such an objective ground.** To allow that the mere temporary nature of an employment relationship is sufficient to justify a difference in treatment as between fixed-term workers and permanent workers would render the objectives of EU law meaningless and would be tantamount to perpetuating a situation that is disadvantageous to fixed-term workers.

The Court acknowledges the discretion enjoyed by the Member States as regards the organisation of their own public administrations and the conditions for obtaining a post in the public sector. However, the criteria which the Member States lay down must be applied in a transparent manner and must be open to review in order to prevent any unfavourable treatment of fixed-term workers solely on the basis of the duration of the employment contracts which attest to their length of service and professional experience. Thus, some of the differences relating to the manner in which fixed-term workers are recruited under ‘stabilisation’ procedures with respect to career civil servants recruited following a general competition, the qualifications required and the nature of the duties which they must undertake could, in principle, justify a difference in treatment as regards their conditions of employment. Thus a difference in treatment could be justified if it takes account of objective requirements relating to the post which the recruitment procedure is intended to fill and which are unrelated to the fixed-term nature of the employment relationship.

The objective – as claimed by the Italian Government – of preventing reverse discrimination against career civil servants recruited after passing a general competition, may constitute an ‘objective ground’. However, the Court takes the view that **the Italian legislation is disproportionate in that it completely prohibits all periods of service completed under fixed-term contracts being taken into account** in order to determine the length of service upon recruitment on a permanent basis and, thus, the remuneration. Such a complete and absolute prohibition is based on the mistaken idea that the permanent nature of the employment relationship of certain public officials in itself justifies a difference in treatment with respect to public officials employed on a fixed-term basis, thereby rendering the objectives of the directive and of the framework agreement meaningless.

It is for the referring court to ascertain whether there are ‘objective grounds’ justifying that difference in treatment.

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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