



Press and Information

Court of Justice of the European Union

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Judgment in Case C-72/18

Daniel Ustariz Aróstegui v Departamento de Educación del Gobierno de Navarra

According to the framework agreement on fixed-term work, professors who are contract agents under public law are entitled to the same additional remuneration for grade as civil servant professors with the same seniority if the completion of a certain period of service is the only condition for granting that supplement

Mr Daniel Ustariz Aróstegui was hired in 2007 by the Departamento de Educación del Gobierno de Navarra (Ministry of Education of the Government of Navarre, Spain; 'the Ministry') as a professor under a fixed-term public law contract. Since then, he has been working in several educational centres.

In 2016, Mr Ustariz Aróstegui asked the Ministry to grant him the additional remuneration for grade enjoyed by civil servant professors with the same seniority as him. His request having been rejected, he brought an action before the Juzgado Contencioso-Administrativo de Pamplona N^o. 1. (Administrative Court, Pamplona, Spain).

The Pamplona Court notes that the legal regime currently in force in Navarre lays down, as the only objective condition for the payment of the additional remuneration for grade, a seniority of six years and seven months in the grade immediately below, the advancement of grade thus occurring automatically as time passes. It also specifies that the national rules, since they perceive the grade as a mechanism for professional development specific to officials, consider that the additional remuneration for grade is a personal remuneration inherent in the status of official, which would thus constitute a subjective condition for its granting.

The framework agreement on fixed-term work¹ ('the framework agreement') prohibits the treatment, with regard to conditions of employment, of fixed-term workers in a less favourable way than permanent workers in a comparable situation, solely on the ground that they work for a fixed period, unless different treatment is justified on objective grounds.

As the Pamplona Court is uncertain whether the nature and purpose of the additional remuneration for grade may constitute an objective reason justifying the less favourable treatment accorded to contract agents under public law, it decided to refer the question to the Court of Justice.

By today's judgment, **the Court considers that the framework agreement precludes the granting, by national legislation, of additional remuneration to teachers employed as statutory civil servants, excluding teachers employed as fixed-term contract agents under public law, if the only condition for granting that supplement is the completion of a certain period of service.**

According to the Court, the granting of the additional remuneration for grade must be considered as an 'employment condition' for the purpose of the framework agreement, since the only objective

¹ Framework agreement on fixed-term work, concluded on 18 March 1999 ('the framework agreement'), 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). (1)

condition for receiving that grant is the completion of a period of six years and seven months of service.

The Court then examines whether the statutory officials and contract agents under public law in question are in a comparable situation. While stressing that it is for the Pamplona Court, which alone has jurisdiction to assess the facts, to determine whether this is the case, the Court of Justice notes that there is no difference between the functions, services and professional obligations performed by a civil servant professor and those performed by a professor who is a contract agent under public law. It must therefore be held in principle that the situation of a fixed-term worker such as Mr Ustariz Aróstegui is comparable to that of an indefinite worker in the service of the Ministry. However, the Court finds that there is a difference in the treatment of workers in a comparable situation. It therefore examines whether there is an 'objective reason' capable of justifying such a difference in treatment.

The Court points out that the reference to the mere temporary nature of the work of contract agents under public law is not capable of constituting, in itself, an 'objective reason' within the meaning of the framework agreement. The exclusion of contract agents under public law from the benefit of the additional remuneration for grade cannot therefore be justified unless the characteristics inherent in the Staff Regulations of Officials are really decisive for the granting of that benefit. The Court observes to that end that **the grant of the supplement in question seems to be linked not to the promotion in grade of the official concerned but to seniority**. Indeed, the applicable regulations grant the right to that supplement only at the end of a given period of service, thus eliminating any difference with regard to a simple seniority bonus. Thus, subject to verification by the Pamplona Court, **the supplement in question is granted to officials solely on the basis of the completion of the required period of service and does not affect their position within the professional development scheme**. The Court concludes that **there is, in the present case, no 'objective reason' capable of justifying the exclusion of contract agents under public law who have completed the required period of service from receiving the additional remuneration in question**.

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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