



Court of Justice of the European Union

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Judgment in Joined Cases C-103/18
Sánchez Ruiz and C-429/18 Fernández Álvarez and Others v Comunidad de
Madrid
(Servicio Madrileño de Salud)

Press and Information

The Member States may not exclude from the concept of ‘successive fixed-term employment relationships’ the situation of a worker who occupies continuously, by virtue of several appointments, an interim post in the absence of a competition procedure, his or her employment relationship having been thereby implicitly extended from year to year

The fact that a worker consented to the establishment of successive fixed-term employment relationships does not deprive him or her from the protection granted by the Framework Agreement on fixed-term work

In the judgment **Sánchez Ruiz et Fernández Álvarez and Others** (Joined Cases C-103/18 and C-429/18), delivered on 19 March 2020, the Court ruled that **the Member States and/or social partners cannot exclude from the concept of ‘successive fixed-term employment contracts or relationships’**, provided for in Clause 5 of the Framework Agreement on fixed-term work (‘the Framework Agreement’) ¹, **a situation in which a worker recruited on the basis of a fixed-term employment relationship, namely until the vacant post to which he or she is recruited is definitively filled, occupied, in the context of several appointments, the same post continuously over several years and continuously performed the same functions, since the continuation of that worker in that vacant post is the result of the employer’s failure to comply with its legal obligation to organise within the relevant deadline a selection procedure seeking to definitively fill that vacant post and since his or her employment relationship was thereby implicitly extended from year to year. In the event of abusive use, by a public employer, of successive fixed-term employment relationships, the fact that the worker concerned consented to the establishment and/or renewal of those employment relationships is not capable, from that perspective, of removing the abusive element from that employer’s conduct, so that the Framework Agreement would not be applicable to that worker’s situation.**

In the present case, several persons have been employed for a long time in the context of fixed-term employment relationships, within the health service of the Comunidad de Madrid (Community of Madrid, Spain). Those workers requested the recognition of their status as members of the permanent regulated staff or, in the alternative, as public employees enjoying a similar status, which was refused by the Comunidad de Madrid. Ruling on actions brought by those workers against that community’s refusals, the Juzgado Contencioso-Administrativo No 8 de Madrid (Administrative Court No 8, Madrid) and the Juzgado Contencioso-Administrativo No 14 de Madrid (Administrative Court No 14, Madrid) referred several questions to the Court for a preliminary ruling concerning the interpretation, in particular, of Clause 5 of the Framework Agreement.

In reaching the above conclusion, the Court noted, first of all, that one of the objectives pursued by the Framework Agreement is to place limits on **successive recourse to fixed-term employment contracts or relationships**, regarded as a **potential source of abuse to the detriment of**

¹ Framework Agreement on fixed-term work concluded on 18 March 1999, 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).

workers, and that it is for the Member States and/or social partners to determine, in a manner consistent with the object, the aim and the effectiveness of that agreement, **under what conditions those employment contracts or relationships are considered to be ‘successive’**. Next, it concluded that a contrary interpretation would allow insecure employment of workers for years and risk not only excluding, in practice, a large number of fixed-term employment relationships from the benefit of the protection of workers sought by Directive 1999/70 and by that Framework Agreement, largely negating the objective pursued by them, but also of permitting the misuse of such relationships by employers in order to meet fixed and permanent staffing needs of the employer.

Moreover, the Court held that **Clause 5 of the Framework Agreement precludes national legislation and case-law in accordance with which the successive renewal of fixed-term employment relationships is considered to be justified for ‘objective reasons’, on the sole ground that that renewal responds to the reasons for recruitment referred to by that legislation**, namely grounds of necessity, urgency or for the development of programmes of a temporary, cyclical or extraordinary nature, **in so far as such national legislation and case-law does not prevent the employers concerned from responding, in practice, by such renewals, to fixed and permanent staffing needs**. In that regard, the Court noted that, although the national legislation and case-law at issue do not lay down a general and abstract obligation to have recourse to successive fixed-term employment contracts, but limit the conclusion of such contracts for the purposes of satisfying, in essence, temporary requirements, **in practice, the successive appointments of the workers concerned did not meet the simple temporary needs of the Comunidad de Madrid, but sought to meet lasting and permanent staffing needs within the health service of that community**. In that regard, the Court stated that there exists a structural problem in the Spanish public health sector, in the form of a high percentage of temporary workers and by the failure to comply with the legal obligation to permanently fill posts which are temporarily covered by that staff.

The Court next ruled that **it is for the national courts to assess whether certain measures**, such as the organisation of selection procedures seeking to definitively fill posts occupied temporarily by workers employed in the context of fixed-term employment relationships, the conversion of the status of those workers into ‘non-permanent workers of indefinite duration’ and the grant of compensation equal to that paid in the event of unfair dismissal, **constitute measures which are adequate for the purposes of preventing and, where appropriate, punishing abuses resulting from the use of successive fixed-term employment contracts or relationships or equivalent legal measures**. The Court nevertheless provided clarifications seeking to guide those courts in their assessment.

In addition, the Court held that, in the event of abusive use, by a public employer, of successive fixed-term employment relationships, the fact that the worker concerned consented to the establishment and/or renewal of those employment relationships is not capable, from that perspective, of removing the abusive element from that employer’s conduct, so that the Framework Agreement would not be applicable to that worker’s situation. In that regard, the Court concluded that the objective of the Framework Agreement which is to place limits on successive recourse to fixed-term employment contracts or relationships is based implicitly but necessarily on the premise that **workers, as a result of their position of weakness vis-à-vis employers, are likely to be victims of an abusive use, by employers, of successive fixed-term employment relationships, even though they freely consented to the establishment and renewal of those relationships, and may, for that reason, be dissuaded from explicitly claiming their rights vis-à-vis their employer**. The Court therefore considered that **Clause 5 of the Framework Agreement would lack any effectiveness if fixed-term workers were deprived of the protection that it guarantees them on the sole ground that they freely consented to the conclusion of successive fixed-term employment relationships**.

The Court concluded, finally, that **EU law does not oblige a national court, ruling on a dispute between a worker and his or her public employer, to disapply national legislation which is not compatible with Clause 5(1) of the Framework Agreement since, as that clause does not**

have direct effect, it cannot be relied on, as such, in a dispute coming under EU law in order to disapply a provision of national law that conflicts with it.

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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