Case C-439/23

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

Date lodged:

13 July 2023

Referring court:

Tribunale Civile di Padova (Italy)

Date of the decision to refer:

22 June 2023

Applicant:

KV

Defendant:

CNR – Consiglio Nazionale delle Ricerche

Subject matter of the main proceedings

Action brought by KV seeking a declaration that he is entitled to recognition, for the purposes of length of service and acquisition of the corresponding salary increases, of the entire period of work completed on the basis of various fixed-term contracts with the Consiglio Nazionale delle Ricerche (National Research Council, 'the CNR') before being recruited for an indefinite duration, and to obtain an order that the CNR reconstruct his career and pay the differences in salary due.

Subject matter and legal basis of the request

Request for interpretation, on the basis of Article 267 TFEU, of clause 4(1) of Directive 1999/70/EC, in particular whether that clause can be applied to fixed-term employment contracts entered into and concluded, first, on a date prior to the entry into force of that directive and, second, in the period between the date of the entry into force of the directive and the expiry of the deadline given to the Member States for its transposition.

Question referred for a preliminary ruling

Should clause 4(1) of Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP be applied:

– *ratione temporis* to fixed-term employment relationships established and concluded as a result of the expiry of the contractual term prior to the entry into force of Directive 1999/70/EC (10 July 1999);

– *ratione temporis* to fixed-term employment relationships established on the basis of an individual employment contract entered into before the entry into force of Directive 1999/70/EC (10 July 1999) and concluded as a result of the expiry of the contractual term on a date between the entry into force of the directive and the expiry of the deadline given to the Member States for its transposition (10 July 2001); or

– *ratione temporis* to fixed-term employment relationships established on the basis of an individual employment contract entered into in the period between the entry into force of Directive 1999/70/EC (10 July 1999) and the expiry of the deadline given to Member States for its transposition (10 July 2001), and concluded as a result of the expiry of the contractual term after that latter date?

Provisions of European Union law relied on

Charter of Fundamental Rights of the European Union, in particular Article 21;

Directive 1999/70/EC, in particular clause 4, which enshrines the principle of non-discrimination between fixed-term workers and comparable permanent workers;

Treaty on the Functioning of the European Union, in particular Article 267.

Provisions of national law relied on

Decreto legislativo n. 368 (Legislative Decree No 368) of 6 September 2001, in force since 24 October 2001, which implemented Directive 1999/70/EC; in particular Article 6, according to which a worker recruited under a fixed-term contract is entitled to leave and all the treatment provided for workers with comparable contracts of indefinite duration, and in proportion to the period of work completed, provided that this is not objectively incompatible with the nature of the fixed-term contract.

Legge n. 70 (Law No 70) of 20 March 1975, in the version in force at the time of the facts at issue in the main proceedings; in particular Article 36, which

recognises the CNR's power to recruit researchers and highly specialised technical staff under fixed-term contracts of a duration not exceeding five years.

Succinct presentation of the facts and procedure in the main proceedings

1 The CNR, an Italian public body responsible for carrying out and promoting research activities in the main fields of development of knowledge and its applications, entered into several fixed-term employment contracts with the applicant, KV, in accordance with Article 36 of Law No 70 of 20 March 1975.

2 In particular, from 2 November 1993 to 31 March 1995 KV was recruited by the CNR as a Level III technologist, from 1 August 1995 to 1 August 2000 he was recruited in the same capacity, while from 4 September 2000 to 31 December 2001 he was recruited as a Level III researcher.

3 That latter contract was terminated on 30 September 2001, as KV passed a public competition, which resulted in his appointment for an indefinite duration as a Level III researcher, from 1 October 2001.

4 However, at the time of that recruitment for an indefinite duration, KV's length of service completed under the abovementioned fixed-term employment contracts entered into on a date prior to the expiry of the deadline given to Member States for the transposition of Directive 1999/70/EC, namely 10 July 2001, was not recognised.

5 On 8 February 2022, KV therefore brought an action before the Tribunale di Padova (District Court, Padua), seeking recognition of the period of work completed under those three fixed-term employment contracts with a view to acquiring the related length of service and the subsequent impact on his remuneration.

The essential arguments of the parties in the main proceedings

6 The CNR, as a party to the proceedings, contends that the action should be dismissed, relying on the non-retroactivity of Directive 1999/70/EC.

Succinct presentation of the reasoning in the request for a preliminary ruling

7 First of all, the referring court notes that, in the main proceedings, it is common ground that, under Italian law, the periods of employment carried out by a worker recruited for a fixed-term, within the meaning of Article 36 of Law No 70/1975, are not calculated for the purposes of recognising the overall length of service acquired, even in the event of subsequent recruitment for an indefinite duration, unlike in the case, for equivalent work, of staff recruited from the outset for an indefinite duration.

8 The referring court considers that, for the purposes of the present reference for a preliminary ruling, the issue of the temporal scope of application of clause 4(1) of Directive 1999/70/EC, which has been in force since 10 July 1999 and which the Member States were obliged to transpose by 10 July 2001, is relevant. In that regard, it notes that, in Italian case-law, there are two different approaches.

9 According to the first approach, clause 4 of that directive and, therefore, the principle of non-discrimination laid down in it, does not apply to fixed-term employment relationships which are carried out in full before the deadline given to the Member States for transposition of the directive. That is supported by the principle of non-retroactivity of EU law, according to which the rules of substantive law apply only to factual situations that have arisen since their entry into force, unless EU law itself establishes their retroactive scope.

10 The second and most recent approach, which now appears to have been settled in the national case-law of the Corte di cassazione (Court of Cassation, Italy), argues that, for the purposes of calculating the overall length of service of a worker recruited for an indefinite period, periods of fixed-term work carried out and concluded in full before the entry into force of Directive 1999/70/EC may also be taken into account. That approach is based on the principle of interpretation, settled in the case-law of the Court of Justice of the European Union, according to which new rules apply, unless otherwise specifically provided, immediately to the 'future effects' of a situation which arose under the old rule (judgments of 10 June 2010, *Bruno and Others*, C-395/08 and C-396/08, paragraph 53; 12 September 2013, *Kuso*, C-614/11, paragraph 25; 14 April 1970, *Brock*, C-68/69, paragraph 7; 10 July 1986, *Licata* v *ESC*, C-270/84, paragraph 31; 18 April 2002, *Duchon*, C-290/00, paragraph 21; 11 December 2008, *Commission* v *Freistaat Sachsen*, C-334/07, paragraph 43; and 22 December 2008, *Centeno Mediavilla and Others* v *Commission*, C-443/07, paragraph 61).

11 However, in the view of the referring court, that principle of interpretation laid down in the case-law of the Court of Justice must instead be understood as supporting the first of those two approaches in case-law. When the Court of Justice states that the supervening rule applies to 'future effects', it supposedly refers, in principle, only to factual situations which arose before the entry into force of the new rule of EU law and which persist, with substantial continuity also subsequently, and not, on the other hand, to situations which have arisen and ended completely before the supervening rule entered into force.

12 According to the referring court, that conclusion is consistent with the constraints imposed by the principles of legal certainty and the protection of legitimate expectations, which preclude substantive rules of EU law from applying, retroactively, to situations existing before their entry into force, unless it follows clearly from their terms, their objectives or their general scheme that such an effect must be given to them (judgments of 25 February 2001, *Caisse pour l'avenir des enfants*, C-129/20, paragraph 31; 29 January 2002, *Pokrzeptowicz-Meyer*, C-162/00, paragraphs 49-50; 26 March 2015, *Commission v Moravia Gas*

Storage, C-596/13 P, paragraphs 32 and 33; 7 November 2013, *Gemeinde Altrip and Others*, C-72/12, paragraph 22; 12 November 1981, *Meridionale Industria Salumi and Others*, 212/80 to 217/80, paragraph 9; 23 February 2006, *Molenbergnatie*, C-201/04, paragraph 31; 10 February 1982, *Bout*, C-21/81, paragraph 13; and 15 July 1993, *GruSa Fleisch*, C-34/92, paragraph 22).

13 The referring court notes that, moreover, such an interpretation emerges precisely from the judgments of the Court of Justice which the above-mentioned second approach in national case-law puts forward, in contrast, as the basis for its different interpretation (judgments of 10 July 1986, *Licata* v *ESC*, C-270/84, paragraph 31; 29 June 1999, *Butterfly Music*, C-60/98, paragraph 24; 14 April 1970, *Brock*, C-68/69, paragraphs 6-9; 24 January 2018, *Pantuso and Others*, C-616/16 and C-617/16, paragraph 37; *Centeno Mediavilla and Others* v *Commission*, paragraph 64; *Commission* v *Freistaat Sachsen*, paragraphs 33 and 53; *Gavieiro and Iglesias Torres*, Joined cases C-444/09 and C-456/09, paragraph 90; *Bruno and Others*, paragraphs 52-55; 22 June 2022, *Volvo*, C-267/20, paragraphs 99-104, as well as *Pokrzeptowicz-Meye* and *Kuso* cited above).

14 In those circumstances, the referring court considers that clause 4(1) of Directive 1999/70/EC, interpreted in the light of the case-law of the Court of Justice on the non-retroactivity of EU law and the applicability of a supervening rule to the 'future effects' of situations created in the past, must be understood as meaning that it does not cover the fixed-term employment relationships between the applicant and the CNR from 2 November 1993 to 31 March 1995 and from 1 August 1995 to 1 August 2000, given that each of them was carried out and concluded on a date prior to the expiry of the deadline for transposition of the Directive. By contrast, that clause applies to the fixed-term employment relationship between the applicant and the CNR from 4 September 2000 to 30 September 2001, since it was ongoing on the date of expiry of the deadline for transposition of the Directive.