

ECJ Court Watch – Pending Cases

Case C-726/19, Fixed-term work

Instituto Madrileño de Investigación y Desarrollo Agrario y Alimentario – v – JN, reference lodged by the Tribunal Superior de Justicia de Madrid (Spain) on 1 October 2019

1. Can the creation of a temporary contract such as a temporary replacement contract to cover a vacant post, where the duration of the contract is left to the discretion of the employer, who decides whether or not to fill the vacant post, when to do so and how long the process lasts, be considered compatible with the practical effect of Clauses 1 and 5 of Directive 1999/70?
2. Should the requirement established by Clause 5 of Council Directive 1999/70/EC to introduce one or more of the measures it stipulates in order to prevent abuse of temporary contracts be considered to have been transposed into Spanish law in the case of temporary replacement contracts to cover vacant posts, given that, according to the case-law, the law does not impose a time limit on such employment relationships, it does not specify the objective reasons that justify the renewal of such relationships, and it does not stipulate how many times those relationships may be renewed?
3. Is the objective and practical effect of the Framework Agreement undermined by the fact that, according to the case-law, Spanish law does not contain any effective measure to prevent and penalise abuse in respect of workers on temporary replacement contracts to cover vacant posts, in that: there is no limit on the maximum total duration of such contracts, which never become permanent contracts or non-permanent contracts of an indefinite duration, no matter how many years elapse; workers do not receive any compensation on the termination of their employment; the public authority is not required to justify the renewal of a temporary replacement contract where, for years, the vacant post is not included in the list of public vacancies or the selection process is delayed?
4. Should an employment relationship be regarded as having satisfied the purpose of Council Directive 1999/70/EC where it is not time limited, its duration, according to the case-law of the Court of Justice of the European Union (Case C-677/16, is

unusually long and is entirely at the discretion of the employer, with no limit or justification, the worker is unable to predict when the contract will come to an end, and the contract may continue until the worker retires; or should such a relationship be deemed an abuse?

5. Under the judgment of the European Court of Justice (Case C-331/17, can the financial crisis of 2008 be considered to be a justification, in the abstract, for the absence of any measure to prevent the abuse of successive fixed-term employment relationships within the meaning of Clause 5(1) of the Framework Agreement, which could prevent or discourage the employment relationship between the complainant and the Community of Madrid from continuing from 2003 until 2008, at which point the relationship is renewed and subsequently continues until 2016, meaning that the replacement contract continues for 13 years?

Case C-784/19, Social insurance

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TEAM POWER EUROPE' EOOD – v – Direktor na Teritorialna direksia na Natsionalna agentsia za prihodite – Varna, reference lodged by the Administrativen sad Varna (Bulgaria) on 22 October 2019

1. Is Article 14(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems to be interpreted as meaning that, in order for it to be possible to assume that an undertaking engaged in providing temporary personnel normally carries out its activities in the Member State in which it is established, it has to perform a substantial part of the employee assignment activity for hirers established in the same Member State?