

**Question for written answer E-002987/2014  
to the Commission**

Rule 117

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**Subject:** Potential non-compliance by the Spanish State with Clause Four of Council Directive 1999/70/EC on the equal treatment of fixed-term workers

In its answer to our question E-010480/2013<sup>1</sup>, the Commission told us that it was investigating Spain for a possible breach of Clause Five of Directive 1999/70/EC. This investigation cannot be separated from the potential infringement concerning the equal treatment and non-discrimination relating to the group of fixed-term judges set out in Clause Four of Directive 1999/70/EC. It must be pointed out that there are two types of professional judge in Spain: permanent judges, with a contract for an undetermined period, and substitute judges, with a fixed-term contract (Art. 298.2 of the Organic Law of the Spanish Judiciary<sup>2</sup> and Art. 91 of the Regulations on the Judicial Career<sup>3</sup>). Substitute or fixed-term judges are appointed annually through a competition based on merit and are included on a list of public servants with a fixed-term contract<sup>4</sup>. Both types of judge exercise the same jurisdictional powers, with the same restrictions and limitations on holding multiple posts (Arts. 201.4, 389 to 397 of the Organic Law of the Spanish Judiciary and Art. 101 of the Regulations on the Judicial Career), as recognised by the Supreme Court ruling of 8 November 2012<sup>5</sup>. It should be highlighted that amongst the body of permanent judges there are also judges appointed regionally, whose job is to serve as substitutions, replacements and support in the same way as substitute judges. However, whereas permanent judges are paid monthly and make continuous payments towards Social Security, including these regional judges and as expected by their role, substitute judges receive a salary and pay into Social Security only on days on which they are called up, despite carrying out the same jurisdictional work and serving as substitutions, replacements and support. If they are not called up, they do not receive a salary or make any Social Security payments, they are not afforded healthcare cover and they are not permitted to hold any other job or profession – except for lecturing – due to the restrictions placed on them that require their constant availability and dedication. Following a drastic reduction in the budget allocated by the Ministry of Justice from EUR 25m in 2012 to EUR 8m in 2013<sup>6</sup>, this situation has worsened with the lists of part-time judges becoming lists of competitors, without any real possibility of work and a complete lack of social protection. All of this comes after 25 years of continued service, which is falsely classed as temporary.

Does the Commission believe that Clause Four of Council Directive 1999/70/CE (28 June 1999) on equal treatment and non-discrimination is being applied correctly and effectively, with respect to the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, for the group of fixed-term judges in Spain?

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<sup>1</sup> <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2013-010480&language=ES>

<sup>2</sup> <http://www.boe.es/buscar/pdf/1985/BOE-A-1985-12666-consolidado.pdf>

<sup>3</sup> <http://www.boe.es/boe/dias/2011/05/09/pdfs/BOE-A-2011-8049.pdf>

<sup>4</sup> <http://www.boe.es/buscar/doc.php?id=BOE-A-2012-11230>

<sup>5</sup> [http://www.elderecho.com/administrativo/Tribunal-Supremo-Contencioso-Administrativo-Sentencia-EDJ\\_EDEFIL20121128\\_0008.pdf](http://www.elderecho.com/administrativo/Tribunal-Supremo-Contencioso-Administrativo-Sentencia-EDJ_EDEFIL20121128_0008.pdf)

<sup>6</sup> [http://www.mjusticia.gob.es/cs/Satellite/es/1215197982506/Estructura\\_P/1215198316441/Detalle.html](http://www.mjusticia.gob.es/cs/Satellite/es/1215197982506/Estructura_P/1215198316441/Detalle.html), 2012 – pagina 11- partida 112 A -125 25.668,08 M €. 2013 – pagina 10 partida 112ª 125. 8.540,39 M€