



27.10.2023

NOTICE TO MEMBERS

Subject: Petition 1567/2009 by C.M.S.M.C (Portuguese), on contract teachers in Portugal

Petition 1956/2012 by C.I.P. (Portuguese), on behalf of Associação Nacional dos Professores Contratados (ANVPC), on the infringement of the Fixed-Term Work Directive by the Portuguese Ministry of Education and Science

Petition No 0032/2014 by Pedro Marinho Goncalves Teixeira (Portuguese) on Terms of employment

Petition No 0182/2015 by Dulce Gonscalves (Portuguese) on behalf of 'Portuguese teachers for justice by semi-automatic connection', with three signatures, on recognition for professional qualifications

Petition No 0396/2018 by J.M. (Portuguese) on discrimination between career teachers and those on short-term contracts in Portugal1. Summary of petition 1567/2009

The petitioner refers to the problem with contract teachers in Portugal, many of whom have worked for 10 years and more on short consecutive employment contracts. The petitioner claims that the responsible Portuguese authorities do not follow the same permanent employment criteria in the case of all teachers in public sector education and, as she believes that the case in question constitutes failure to comply with EU rules that the quality of temporary employment should be improved by applying the principle of non-discrimination and laying down a framework to prevent abuse deriving from the use of several consecutive temporary employment contracts for employment relations, she calls on the European Parliament to take the matter up.

Summary of petition 1956/2012

The petitioner is the President of the *Associação Nacional dos Professores Contratados* (ANVPC), an association that represents teachers hired on a fixed-term basis. The petitioners

accuse the Portuguese Ministry of Education and Science of violating the Fixed-Term Work Directive (Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP). The petitioners note, most importantly, that the government has opened only 600 posts for permanent positions, which they find insufficient, and more generally consider that the working conditions of teachers on fixed-term contracts are precarious. The petitioners have submitted a complaint to the European Commission

Summary of petition 0032/2014

The petitioner writes about the way schools in Portugal employ their staff which he believes is contrary to the EU legislation. Over the number of years he has been repeatedly employed on a short-term contract which would finish on 31 August and would get renewed on 1 September. As such schools in Portugal secure better conditions for their annual budget but this is to the detriment of those who the school employs. The petitioner believes that he has a right to a more stable and secured situation. He has been repeatedly employed for a number of years now. He asks the EP for help.

Summary of petition 0182/2015

The petitioners are primary and secondary school teachers in the national education system and Portuguese public servants. They complain that since 2008 discrimination has occurred at many levels, specifically as regards casualisation, career progression and recruitment. They call for their experience to be taken into account regardless of their recruitment group and for the national aptitude list to be complied with for the purpose of recruitment.

Summary of petition 0396/2018

The petitioner has been a teacher in Portugal since 2004; he obtained a post as a career teacher in 2017, after having worked under contract for over ten years. During this period he completed advanced-level studies, including a master's degree in special education in 2015. He claims that promotions for teachers who have received in-service training are granted in a discriminatory manner, depending on whether they are career teachers or on short-term contracts. The petitioner alleges that this constitutes discrimination against teachers on contract, in breach of the principles of legality, equality, impartiality and justice.

2. Admissibility

Petition 1567/2009: Declared admissible on 11 February 2010.

Petition 1956/2012: Declared admissible on 25 July 2013.

Petition 0032/2014: Declared admissible on 19 December 2014

Petition 0182/2015: Declared admissible on 10 November 2015

Petition 0396/2018: Declare admissible on 29 November 2018

Information requested from Commission under Rule 216(6).

3. Commission reply, received on 11 May 2010.

The petitioner alleges that teachers in the public sector in Portugal are engaged on successive fixed-term contracts for 10 years or more.

Directive 1999/70/EC concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP¹ (hereafter "the Directive") requires one or more of the following measures to be in place in Member States to prevent abuse of successive fixed-term contracts: objective reasons justifying the renewal of a fixed term contract; a maximum time limit for successive fixed-term contracts; and/or a maximum number of renewals of fixed-term contracts.

The Commission intends to contact the Portuguese authorities for information on the transposition of the Directive in Portugal in respect of public sector teachers.

The Commission will update the Petitions Committee when a reply has been received from the Portuguese authorities

4. Further Commission reply, received on 2 September 2010.

The European Commission asked the Portuguese authorities for clarification on the application of the Directive to the public sector education system in Portugal. The Portuguese authorities replied that under Article 26 of the *Estatuto da Carreira Docente* (ECD - Teaching Career Statute), the permanent staff resources of grouped schools and ungrouped schools are intended to meet the permanent requirements of the respective educational establishments. The allocation of permanent posts to groupings or individual schools and its revision are determined by a joint ruling from the members of the government responsible for finance and education.

The Portuguese authorities have informed the Commission that a teacher may be employed on the basis of a fixed-term contract involving successive contracts if the work is at different schools or for different subjects. If the same teacher is employed to cover the same curriculum at the same school, then the measures to limit the duration or number of successive fixed-term contracts could apply.

The Portuguese authorities have indicated that a fixed-term contract is renewed only for a specific timetable in a specific school year, agreed with a particular school, corresponding to the post constituting the subject of the contract. In the light of the above and in accordance with the law governing legal relationships in the area of public employment, in the 'best case scenario', fixed-term contracts concluded with teachers are never renewed for the same post beyond 31 August each year.

The Portuguese authorities have also informed the Commission that paragraphs 4 and 5 of Article 54 of Decree Law No 20/2006, as amended by Decree Law 51/2009, govern eligibility for the renewal of *assignments* rather than *contracts*. The assignments finish on 31 August each year. Article 54 of Decree Law No 20/2006, as amended by Decree Law 51/2009, governs eligibility for the renewal of these assignments, and paragraph 4 of Article 54 of Decree Law No 20/2006, as amended by Decree law No 51/2009, specifies that successive placements, or assignments, are limited to periods of one school year, renewable for equal and successive periods, up to a limit of four school years, including the first year of the contract.

¹ OJ L 175 10.7.1999, p. 43.

However, the Portuguese authorities explained that these provisions apply to successive contracts for the same job in the same school. Where teachers are on fixed-term contracts or assignments for different posts, they are not subject to the measures to prevent abuse of successive fixed-term contracts.

Teachers on successive fixed-term contracts with different schools appear to have no protection from the abuse of successive fixed-term contracts, even though staffing decisions on temporary teachers are taken centrally and would appear to involve the same employer.

The absence of measures to prevent abuse of successive fixed-term contracts with teachers may not be in conformity with the framework agreement and the Commission has registered a formal complaint in order to pursue further with the Portuguese authorities the issue of teachers employed on successive fixed-term contracts.

If the petitioner has any additional information that could shed further light on this issue, the European Commission would be grateful to receive it.

5. Commission reply (REV. II), received on 30 August 2012.

The European Commission asked the Portuguese authorities for clarifications on the application of Directive 1999/70/EC to the public sector education system in Portugal. In short, the Portuguese position can be summarised as follows:

- Portugal imposes a limit on renewals of fixed-term employment within the meaning of Clause 5(1)(b) of the Framework Agreement annexed to Directive 1999/70/EC: 4 years maximum duration of successive fixed-term employment for the same post.
- In addition, there are '*equivalent legal measures to prevent abuse*' in the shape of an opportunity to obtain permanent employment in the regular recruitment competitions every 4 years.
- Different treatment between teachers on fixed-term employment contracts and permanently employed teachers is justified by objective differences in the tasks between temporary and permanent teachers.
- The financial assistance programme to Portugal requires painful cuts.

As a result, further information has been requested from the Portuguese authorities.

The Commission has also asked the petitioner to provide facts and figures that are not restricted by requirements of confidentiality and which could be used as evidence in infringement proceedings. In order to be able to take matters further, this data will need to be sufficiently reliable to withstand scrutiny by the Court of Justice of the European Union.

The Commission will update the Petitions Committee when this new data has been received and analysed.

6. Commission reply (REV III), received on 28 June 2013.

Directive 1999/70/EC concerning the framework agreement on fixed-term work concluded by

ETUC, UNICE and CEEP¹ (hereafter "the Directive") requires Member States to have in place measures to prevent the abuse of successive fixed-term contracts and to treat fixed-term staff in the same way as comparable permanent staff.

In petition 1567/2009 concerning the implementation of Directive 1999/70/EC in the Portuguese school-sector, the petitioner stated that teachers remain on successive-fixed term contracts for a long time and do not advance in seniority compared to colleagues on permanent contracts.

The European Commission has launched investigations and sent a Letter of Formal Notice to the Portuguese authorities on 30 September 2011. The reply gave rise to new and additional aspects that required the sending of an Additional Letter of Formal Notice on 1 October 2012. The reply requires further clarification by the Portuguese authorities.

In parallel, the Commission has asked the petitioner and the complainants to provide facts and figures that are not restricted by requirements of confidentiality, which can be used as evidence in infringement procedures.

The reply by the Portuguese authorities is currently being assessed and compared to the claims and any material submitted by the complainants and the petitioner.

Upon completion of the assessment, the appropriate action will be taken in line with the competence of the Commission in ensuring the correct application of EU law. The Commission will update the Petitions Committee of these developments as they occur.

7. Commission reply (REV IV), received on 19 December 2013

Petitions 1567/2009 and 1956/2012

On 20 November 2013, the Commission decided to issue a Reasoned Opinion to Portugal regarding fixed-term employment in Portuguese schools with the following grievances:

Portugal violates Directive 1999/70/EC, in particular clauses 4 and 5 of the framework agreement on fixed-term work, by:

- a) providing less favourable treatment of fixed-term staff in Portuguese public school compared to comparable permanent staff and
- b) providing insufficiently effective measures to combat abusive successions of fixed-term employment in Portuguese public schools.

Infringement procedures that reach this stage are made public and the further evolution of this infringement procedure may therefore now be more visible than it was before.

Some of the petitioners have been in direct contact with the Commission services and provided them with useful material for the instruction of the case.

Portugal now has two months to respond to the grievances set out in the aforementioned Reasoned Opinion.

¹ OJ L 175 10.7.1999, p. 43.

However, the Commission would like to recall that it cannot intervene in individual cases. Persons aggrieved need to use the appropriate national mechanisms, including litigation, put at their disposal by national legal systems, to protect their rights.

The Commission will update the Petitions Committee of further developments as they arise.

8. Commission reply (REV VI), received on 30 June 2015

Petitions 1567/2009 and 1956/2012

The Commission received several complaints on the issue referred to in these petitions.

Following the Commission's reasoned opinion of 20/11/2013, Portugal replied on 25/03/2014 and 28/05/2014, communicating several measures that were adopted to resolve the problem, including the organisation of special competitions for fixed-term staff and the adoption of a limit to successive fixed-term employment. The Commission services have been in regular contact with the national authorities on the implementation of these measures.

The Commission considers that a significant part of the infringement has been resolved by the new measures adopted by Portugal. However, it has received new complaints that argue that the 5-year limit now imposed on successive fixed-term employment only applies to full time fixed-term teachers. This could raise a question of compatibility with the Fixed-Term Work Directive and the Part-Time Work Directive. The Commission has therefore consulted the national authorities for further information on this outstanding issue.

The Petitions committee will be informed of further developments.

9. Commission reply received on 29 April 2015

Petition 0032/2014,

The European Commission is aware of the fact that in Portugal, teachers in public schools have been employed on fixed-term contracts for sometimes very long periods, as complained of by the petitioner.

In 2010, the Commission opened infringement proceedings against Portugal for not complying with Directive 1999/70/EC concerning the framework agreement on fixed-term work as regards public school teachers. In that context, the Commission sent a reasoned opinion to Portugal on 28/05/2014.

The Directive obliges Member States to adopt measures to prevent abuse arising from the use of successive fixed-term employment, such as requiring objective reasons for such contracts, indicating a maximum total duration or specifying a maximum number of renewals. Member States are free to choose between these options, or to provide alternative protection. Member States are not required to provide the conversion of fixed-term employment into permanent employment, and nothing in the Directive prevents the termination of fixed-term employment.

From information recently made available to the Commission, it appears that an amendment of the relevant legislative measures (articles 42 and 43 of Decree Law 132/2012) now

provides a limit of 5 years to successive fixed-term employment. In light thereof, the Commission is currently assessing whether the infringement has been resolved and whether it can be closed.

Conclusions

The issue raised by the petitioner about a lack of protection against successive fixed-term employment is the subject of an infringement procedure against Portugal in which the Commission sent a reasoned opinion on 28/05/2014.

Under the Fixed-Term Work Directive, Member States are not required to provide the conversion of fixed-term employment into permanent employment. Considering new information recently provided about new legal provisions introduced by Portugal, in particular by the amendment of articles 42 and 43 of Decree Law 132/2012 which now lay down a limit of 5 years to successive fixed-term employment, the Commission is currently assessing whether the infringement has been resolved.

10. Commission reply (REV VII), received on 30 November 2015

Petitions 1567/2009, 1956/2012 and 32/2014

The European Commission is aware of the fact that in Portugal, teachers in public schools have been employed on fixed-term contracts for sometimes very long periods, as complained of by the petitioner.

In 2010, the Commission opened infringement proceedings against Portugal for not complying with Directive 1999/70/EC concerning the framework agreement on fixed-term work as regards public school teachers. In that context, the Commission sent a reasoned opinion to Portugal on 20/11/2013.

The Directive obliges Member States to adopt measures to prevent abuse arising from the use of successive fixed-term employment, such as requiring objective reasons for such contracts, indicating a maximum total duration or specifying a maximum number of renewals. Member States are free to choose between these options, or to provide alternative protection. Member States are not required to provide the conversion of fixed-term employment into permanent employment, and nothing in the Directive prevents the termination of fixed-term employment.

Following the reasoned opinion, the Portuguese authorities have communicated several measures that were adopted to resolve the problem. An amendment of the relevant legislative measures (articles 42 and 43 of Decree Law 132/2012) now provides a limit of 5 years to successive full-time fixed-term employment. Moreover, article 57 of Law 35/2014 of 20 June 2014 requires objective reasons for all fixed-term employment, including in the case of part-time. These are sufficient measures to prevent abuse arising of successive fixed-term employment, as requested by Directive 1999/70/EC.

In light thereof, the Commission has closed the infringement on 24/09/2015.

Conclusions

The issue raised by the petitioners about a lack of protection against successive fixed-term employment was the subject of an infringement procedure against Portugal.

Under the Fixed-Term Work Directive, Member States are not required to provide the conversion of fixed-term employment into permanent employment. Following a reasoned opinion sent by the Commission on 20/11/2013, Portugal has amended articles 42 and 43 of Decree Law 132/2012 which now lay down a limit of 5 years to successive full-time fixed-term employment. Moreover, article 57 of Law 35/2014 of 20 June 2014 requires objective reasons for all fixed-term employment, including in the case of part-time.

Considering that, according to the Fixed-Term Work Directive, these new legal provisions are sufficient to prevent the abuse arising from the use of successive fixed-term employment contracts, the Commission has closed the infringement on 24/09/2015.

11. Commission reply to petition 0182/2015, received on 29 June 2016

The European Commission is aware of the fact that in Portugal, teachers in public schools have been employed on fixed-term contracts for sometimes very long periods.

In 2010, the Commission opened infringement proceedings against Portugal for not complying with Directive 1999/70/EC concerning the framework agreement on fixed-term work as regards public school teachers. In that context, the Commission sent a reasoned opinion to Portugal on 20 November 2013.

The Commission refers the Committee on Petitions to the reply already given to other petitions on the same subject (1567/2009, 1956/2012 and 0032/2014) in November 2015, which set out the reasons why this infringement was finally closed on 24 September 2015.

More recently, these petitions were discussed during the Committee on Petitions of 3 December 2015. With regard to the prevention of abusive successive renewals of fixed-term employment contracts, the Commission recalled that it is sufficient for compliance with Directive 1999/70/EC on Fixed-Term Work that one of the measures listed in Clause 5 of the Framework Agreement annexed to the Directive is taken by the Member States. As long as "objective reasons" are required by the Portuguese legislation, it is compliant with Clause 5.

However, the National Association of fixed-term teachers (Associação Nacional dos Professores Contratados - ANVPC) which launched petition 1956/2012, had submitted new information to the Committee on Petitions and to the Commission before the meeting of 3 December 2015, i.e. in relation to differences in treatment between fixed-term and permanent teachers. The Commission committed on that occasion to thoroughly analyse these new elements.

This analysis is still ongoing. The information submitted by the petitioners in the framework of petition 0182/2015 will be taken into account in this framework.

Conclusions

The Commission has closed infringement proceedings against Portugal on the issue of abusive successive renewals of fixed-term employment contracts in public schools. However, it is currently examining new information submitted in the framework of the petitions related to the issue of differences in treatment between fixed-term and permanent teachers (1567/2009, 1956/2012, 0032/2014 and 0182/2015).

12. Commission reply (REV. VIII), received on 2 May 2017

Petitions 1567/2009, 1956/2012, 0032/2014 and 0182/2015

The Commission is aware of the fact that in Portugal, teachers in public schools were employed on fixed-term contracts for sometimes very long periods, as pointed out by the petitioner.

In 2010, the Commission opened infringement proceedings against Portugal for not complying with Directive 1999/70/EC concerning the framework agreement on fixed-term work (the Fixed-Term Work Directive) as regards public school teachers. The Directive obliges Member States to adopt measures to prevent abuse arising from the use of successive fixed-term employment, such as requiring objective reasons for such contracts, indicating a maximum total duration or specifying a maximum number of renewals. Member States are free to choose between these options, or to provide alternative protection. Member States are not required to provide the conversion of fixed-term employment into permanent employment, and nothing in the Directive prevents the termination of fixed-term employment. As a result of the infringement proceedings, the Portuguese authorities have communicated several measures that were adopted to resolve the problem. An amendment of the relevant legislative measures (articles 42 and 43 of Decree Law 132/2012) now provides a limit of 5 years to successive full-time fixed-term employment. Moreover, article 57 of Law 35/2014 of 20 June 2014 requires objective reasons for all fixed-term employment, including in the case of part-time. These are sufficient measures to prevent abuse arising from successive fixed-term employment, as requested by Directive 1999/70/EC. In the light thereof, the Commission closed the infringement on 24 September 2015.

Subsequent to the closing of the infringement, the Commission received new complaints indicating that some issues of equal treatment between permanent and fixed-term teachers may remain, in particular as regards working hours and career progression. These matters are being investigated with the Portuguese authorities.

13. Commission reply (REV. IV), received on 30 November 2018

Petitions 1567/2009, 1956/2012, 0032/2014, 0182/2015 and 0396/2018

The infringement proceedings against Portugal, based on complaints about the treatment of fixed-term teachers in Portugal, were closed in Autumn 2015 after the Portuguese Government adopted several measures in order to comply with Clause 4 and 5 of the Framework Agreement included in the Directive 1999/70/EC on fixed-term work.

Nevertheless, new complaints and petitions were subsequently received and, as a consequence, an EU Pilot was opened in 2016 to examine persisting differences in treatment between permanent and fixed-term teachers in the public school service in Portugal.

In response to the infringement proceedings launched by the Commission, Portugal has adopted several further measures to combat abusive successive fixed-term employment in the school sector.

The Commission is continuing to investigate the alleged incompliance and the new measures adopted by Portugal, and should be in a position to provide further information in this respect in the first quarter of 2019.

14. Commission reply (REV. V), received on 15 December 2021

Petitions 1567/2009, 1956/2012, 0032/2014, 0182/2015 and 0396/2018

The Commission's observations

On 12 November 2021, the Commission decided to open infringement proceedings against Portugal for failing to comply with European Union law on fixed-term work (Framework Agreement annexed to Council Directive 1999/70/EC¹). Portuguese law contains less favourable employment conditions for fixed-term teachers working in Portuguese public schools compared to permanent teachers, notably in relation to salary and seniority. The Commission raised concerns based on the principle of non-discrimination. According to the Framework Agreement, differences in treatment are only permitted when they are justified on objective grounds. Such justification seems to lack in the Portuguese law. In addition, Portuguese law does not include adequate measures to prevent possible abuses that could arise from the use of successive fixed-term employment contracts or relationships applicable in the territory of the Azores.

Conclusion

Portugal has two months to reply to the shortcomings identified by the Commission. After assessing the reply, or in case no reply is given to the letter of formal notice, the Commission may decide to send a reasoned opinion.

15. Commission reply (REV. VI), received on 27 October 2023

The Commission's observations

Petitions 1567/2009, 1956/2012, 0032/2014, 0182/2015 and 0396/2018

All the petitioners referred to a number of the same issues related to the situation of fixed-term teachers in Portuguese schools.

In relation to the issues included in petitions 1567/2009, 1956/2012 and 0032/2014, which refer to potential cases of abusive use of fixed-term contracts contrary to Clause 5 of the Framework Agreement on fixed-term work annexed to Directive 1999/70/EC, the Commission considers that recent amendments of the relevant national legislation² introduced measures to prevent such abuses that comply with the requirements of that Clause.

However, in relation to the issues in petitions 0182/2015 and 0396/2018, which refer to potential cases of discrimination of fixed-term teachers when compared with permanent teachers contrary to Clause 4 of the same Framework Agreement, the Commission would like to point out that the explanations provided by the Portuguese authorities in their answer to the

¹ Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, *OJ L 175, 10.7.1999, p. 43–48*.

² See, particularly, Article 42 of Decree-law 32-A/2023, of 8 May 2023.

Letter of Formal Notice sent by the Commission in the framework of infringement (2021)4050, currently open (see previous update), were not considered satisfactory and, consequently, the Commission issued a Reasoned Opinion in July 2022.

Conclusion

The Portuguese authorities have stated their intention to modify the applicable national law and are currently discussing the introduction of legislative amendments with national trade unions. Once national law is amended, the Commission will assess its compliance with Clause 4 of the Framework Agreement and will decide on the next steps to be taken in the framework of infringement (2021)4050.