



30.11.2018

NOTICE TO MEMBERS

Subject: Petition No 0408/2016 by Juan Carlos Laboreo Viela (Spanish) on behalf of the Navarra Civil Servants Association, on family support for employees on temporary contracts

1. Summary of petition

The petitioner, president of a civil servants union, states that employees on temporary contracts have no right to a family support allowance. According to the petitioner, this constitutes discrimination, as temporary workers receive less favourable treatment than permanent workers. The petitioner maintains that the above situation constitutes a violation of Directive 1999/70/EC, which stipulates that ‘fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation unless different treatment is justified on objective grounds’.

2. Admissibility

Declared admissible on 31 August 2016. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 31 January 2017

This petition is very similar to petition 0121/2015 and the Commission's reply is therefore the same as the one given to that petition.

Since 2012, the Commission has received numerous complaints on alleged differences in treatment between fixed-term and permanent staff working in the Spanish public sector. As this raises an issue of compliance with clause 4 of the Framework Agreement annexed to Directive 1999/70/EC on Fixed-Term Work¹, clarifications were requested from the Spanish authorities through the EU-Pilot system. The response obtained revealed the need for further

¹ Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, Official Journal L 175 , 10/07/1999 P. 0043 – 0048.

investigation of specific details and a letter of formal notice was therefore sent to the Spanish authorities on 27 March 2015. They replied on 1 June 2015.

In the meantime, the Commission services received new complaints, raising other kinds of differences in treatment between fixed-term employees and permanent officials in the public sector, including differences in the public sector in different regions of Spain. The Commission therefore sent a supplementary letter of formal notice to the Spanish authorities on 25 July 2016. A reply was received on 25 October 2016. The Commission services are currently analysing the reply.

Conclusion

The Commission services are analysing the reply of the Spanish authorities to the letter of formal notice, including in the light of the new complaints received. The Commission will decide on appropriate next steps on the basis of this analysis.

The Commission would like to recall that it cannot intervene in individual cases. Citizens whose rights have been infringed need to use the appropriate national mechanisms, including litigation, put at their disposal by national legal systems, to protect their EU rights.

4. Commission reply (REV.), received on 31 May 2017

The petitioner complains about differences in treatment between temporary and permanent staff employed by the Autonomous Community of Navarre. He claims that temporary employees, unlike permanent ones, do not receive specific family allowances nor are they included in the career progression ("carrera profesional") system. In the additional information sent by the petitioner in December 2016, he also complains about the fact that the Autonomous Community of Navarre does not make a severance payment when the fixed-term contracts of temporary staff come to an end and that teachers on fixed-term contracts, who are not assigned to a fixed place of work, are not paid travelling time.

This petition is very similar to petition no. 0121/2015 and on the question of family allowances and the career progression system, the Commission's reply is the same as the one given for that petition. The Commission has since 2012 received numerous complaints on alleged differences in treatment between fixed-term and permanent staff working in the Spanish public sector. As this raises an issue of compliance with clause 4 of the Framework Agreement annexed to Directive 1999/70/EC on Fixed-Term Work, a letter of formal notice was therefore sent to the Spanish authorities on 27 March 2015. They replied on 1 June 2015. Having received further complaints on new issues related to equal treatment, the Commission sent a supplementary letter of formal notice to the Spanish authorities on 25 July 2016. A reply was received on 25 October 2016. The Commission services are currently analysing the reply.

As regards the fact that under Spanish law, fixed-term workers employed on a temporary replacement contract do not receive a severance payment when their contract expires, this issue was the subject of a ruling of the Court of Justice of the European Union (CJEU) in Case C-596/14 *de Diego Porras* on 14 September 2016. Due to continuing litigation in the Spanish courts on this matter, two further requests for a preliminary ruling have been made to the CJEU by Spanish courts on the question of compensation for the termination of a fixed-

term contract (C-574/16 and C-677/16). The Commission awaits the rulings of the CJEU on the questions referred before taking any action on this matter.

As regards the Working Time Directive¹ and the payment of travelling time to teachers on fixed-term contracts, the Commission recalls that the Directive lays down minimum safety and health requirements for the organization of working time, notably in respect of periods of daily rest, breaks, weekly rest, maximum weekly working time and annual leave.

However, as per Article 153(5) of the Treaty on the Functioning of the European Union (TFEU), the Directive and EU labour law more generally do not deal with the level of salaries and the methods of remuneration and various pay rates which can be established at national level. This means that, even if the CJEU has held that the time spent travelling to the first and from the last customer by workers without a fixed place of work qualified as 'working time'², the Directive as such does not regulate the payment due for these hours.

Conclusion

As regards the issues of family allowances and career progression for public servants on fixed-term contracts, the Commission services are analysing the reply of the Spanish authorities to the supplementary letter of formal notice, including in the light of the new complaints received. On the question of compensation for the termination of fixed-term contracts, further judgments of the CJEU are awaited.

On the question of travelling time, the CJEU has held that the time spent travelling to the first and from the last customer by workers without a fixed place of work qualifies as 'working time'³. However, the Directive as such does not regulate the payment due for these hours.

The Commission would like to recall that it cannot intervene in individual cases. Citizens whose rights have been infringed need to use the appropriate national mechanisms, including litigation, put at their disposal by national legal systems, to protect their EU rights.

5. Commission reply (REV.II), received on 27 April 2018

The petitioner complains about differences in treatment between temporary and permanent staff employed by the Autonomous Community of Navarre. He claims that temporary employees, unlike permanent ones, do not receive specific family allowances nor are they included in the career progression ("carrera profesional") system.

This petition is very similar to petition no. 0121/2015, and on the question of family allowances and the career progression system, the Commission's reply is the same as the one given for that petition.

¹ Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, *OJ L 299, 18.11.2003*, p. 9–19.

² Judgment of 10 September 2015, *Federación de Servicios Privados del sindicato Comisiones obreras (CC.OO.) v Tyco Integrated Security SL and Tyco Integrated Fire & Security Corporation Servicios SA*, C-266/14, ECLI:EU:C:2015:578.

³ Judgment of 10 September 2015, *Federación de Servicios Privados del sindicato Comisiones obreras (CC.OO.) v Tyco Integrated Security SL and Tyco Integrated Fire & Security Corporation Servicios SA*, C-266/14, ECLI:EU:C:2015:578.

By Decree No 21/2017 of 29 March 2017¹ amending Article 11(1) of Decree No 68/2009 of 28 September 2009 governing the recruitment of staff under temporary administrative arrangements, the exclusion of this group of temporary civil servants from the right to a family allowance was repealed. This amendment was made to ensure equal treatment between civil servants or statutory staff and staff members contracted under temporary administrative arrangements as regards the right to a family allowance.

It is now for the eligible staff members to apply for a family allowance to the competent institution and, if necessary, use the appropriate redress mechanisms available at regional and national level.

As regards the issue of career progression and bonuses for grade, the infringement proceedings under NIF 2014/4224 which pertain to differences in treatment both at the central and regional level of the Spanish public sector are still ongoing.

As regards the fact that under Spanish law, fixed-term workers employed on a temporary replacement contract do not receive a severance payment when their contract expires, this issue was the subject of a ruling of the Court of Justice of the European Union (CJEU) in Case C-596/14 *de Diego Porras* on 14 September 2016. Due to continuing litigation in the Spanish courts on this matter, two further requests for a preliminary ruling were made to the CJEU by Spanish courts on the question of compensation for the termination of a fixed-term contract (C-574/16 and C-677/16). In November 2017, a further request for a preliminary ruling was made to the CJEU by the Spanish Supreme Court which relates to the same litigation as the judgment of the Court in C-596/14 *de Diego Porras*. The Commission must await the rulings of the CJEU on the questions referred before it is in a position to decide whether to take any further action on this matter.

Conclusion

Temporary civil servants working for the authorities of the Autonomous Community of Navarre are no longer subject to differential treatment as regards the right to receive a family allowance.

As regards the issue of career progression, the infringement proceedings under NIF 2014/4224 which pertain to differences in treatment both at the central and regional level of the Spanish public sector are still ongoing.

On the question of compensation for the termination of fixed-term contracts, further judgments of the CJEU are awaited.

¹ Decreto Foral (Decree of the Autonomous Government of Navarre) No 21/2017 of 29 March 2017, amending Decreto Foral 158/1984 of 4 July 1984, approving the Provisional Regulation on Remuneration of Staff of the Public Administrations of Navarre.

6. Commission reply (REV.III), received on 30 November 2018

As mentioned in the previous observations from the Commission, after the measures introduced in 2017¹, temporary civil servants working for the authorities of the Autonomous Community of Navarre are no longer subject to differential treatment as regards the right to receive a family allowance.

As regards the issue of career progression, the infringement proceedings which refer to differences in treatment both at the central and regional level of the Spanish public sector are ongoing.

On the question of compensation for the termination of fixed-term contracts, recent judgments of the Court of Justice of the European Union (C-677/16 - Montero Mateos and C-619/17 - de Diego Porras) helped to clarify the previous case law about the same issue, establishing that the Fixed-term Directive (Council Directive 1999/70/EC of 28 June 1999) must be interpreted as not precluding national legislation which does not provide for any compensation to be paid to workers employed under a fixed-term contract on expiry of the term for which that contract was concluded, whereas compensation is payable to permanent workers where their employment contract is terminated on objective grounds.

¹ Decreto Foral (Decree of the Autonomous Government of Navarre) No 21/2017 of 29 March 2017, amending Decreto Foral 158/1984 of 4 July 1984, approving the Provisional Regulation on Remuneration of Staff of the Public Administrations of Navarre.