



30.11.2018

## NOTICE TO MEMBERS

**Subject: Petition No 0231/2018 by Aranzazu Alfaro Meruelo (Spanish) on the misuse of temporary contracts by the government**

### 1. Summary of petition

The petitioner complains about the current situation of temporary workers in government service, the misuse of contracts over time to meet set requirements, as well as instances of discrimination.

### 2. Admissibility

Declared admissible on 3 September 2018. Information requested from Commission under Rule 216(6).

### 3. Commission reply, received on 30 November 2018

Clause 6 of the Framework Agreement annexed to Directive 1999/70/EC on Fixed-Term Work ("the framework agreement") requires employers to inform fixed-term workers about vacancies which become available in the undertaking or establishment concerned, to ensure that they have the same opportunity to secure permanent positions as other workers.

In the Commission's view, access to vacant posts is covered by the term "working conditions" and, therefore, included in the principle of non-discrimination regarding the working conditions of fixed-term compared with permanent workers established in clause 4 of the framework agreement annexed to Directive 1999/70/EC. The Court of Justice of the European Union has interpreted the term "working conditions" widely, underlining that it can cover a range of matters that are part of the employment relationship between a worker and his employer.

However, it is for national authorities and courts to evaluate the specific details of the selection or mobility procedures used to govern access to vacant posts, and the particular

situation of fixed-term workers in the employing administration, and to decide whether the differences established between permanent and fixed-term workers in those specific procedures are justified on objective grounds.

On the basis of the information provided in the petition, it is not possible to conclude either on the existence of discrimination in the national Regulation to which the petitioner refers, or whether there are adequate provisions for seeking redress before national courts should there be discrimination.

Regarding the existence of an abusive succession of fixed-term employment relationships in the Spanish public administration, the compliance of Spanish national law implementing the provisions of the above-mentioned agreement with its clause 5 (measures to prevent abuse) is currently under scrutiny by the Commission.

### Conclusion

The Commission is not in a position to determine the conformity of a rule regulating a particular selection or mobility procedure in a national public administration, such as those referred to in the petition, with the principle of non-discrimination set out in Clause 4 of the Framework Agreement annexed to Directive 1999/70/EC. This issue must be examined by the competent national authorities or courts.