



31.1.2019

NOTICE TO MEMBERS

Subject: Petition No 0580/2018 by Athanasios Kikinis (Greek) on fixed-term contracts for primary school teachers in Greece

1. Summary of petition

The petitioner objects that, for many years, the Greek Government has failed to recruit permanent staff to meet the permanent functional needs of primary education, and has instead been recruiting substitute teachers on fixed-term contracts, without providing adequate social protection for such employees. He further claims that the provisions, which have been periodically introduced for the recruitment of permanent staff, have not been implemented. The petitioner claims this situation has been ongoing for several years, with the last recruitment procedure taking place in 2008. As a result, there are currently tens of thousands of substitute teachers who have been employed with successive fixed-term contracts for over 15 years.

The petitioner considers that the Greek government is in breach of Directive 1999/70/EC concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, and also of Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship.

2. Admissibility

Declared admissible on 5 November 2018. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 31 January 2019

According to Clause 5 of the Framework Agreement on fixed-term work which is given effect

by Council Directive 1999/70/EC¹ to prevent abuse arising from the use of successive fixed-term employment contracts or relationships, Member States shall, where there are no equivalent legal measures to prevent abuse, introduce one or more of the following measures: (a) objective reasons justifying the renewal of fixed-term contracts or relationships; (b) the maximum total duration of successive fixed-term employment contracts or relationships; and/or (c) the number of renewals of such contracts or relationships. Member States have a significant margin of appreciation as to how to implement this provision.

Under Greek legislation, Article 5 of Presidential Decree 164/2004 implements Clause 5 of the Framework Agreement annexed to Council Directive 1999/70/EC. It provides that successive contracts concluded between and performed by the same employer and the same worker in the same or similar professional activity and under the same or similar terms of employment shall be prohibited if the contracts are separated by a period of less than three months, unless objectively justified. According to Clause 5, point 2, there is an objective justification if the contracts succeeding the original contract are concluded for the purpose of meeting similar special needs which are directly and immediately related to the form, the type or the activity of the undertaking. Moreover, pursuant to Article 6 of the same decree, the number of successive contracts shall not, in any circumstances be higher than three and may not exceed an overall period of 24 months in total, irrespective of whether they are concluded in application of other provisions of current legislation. However, an overall period of employment exceeding 24 months may be permitted in certain cases of workers engaged in special categories of work provided for under the current legislation².

The Commission notes that there are also specific sectoral provisions on fixed-term work in place for the educational sector, notably Article 5 paragraph 1 of Law 348/2010, which provides objective reasons for the purposes of Clause 5(1)(a) of the Framework Agreement. Under this provision, and in the event of teacher absence, or in the event of vacancies for teachers due to ‘extraordinary reasons’, teachers can be recruited under a fixed-term contract.

Greece has therefore put in place certain measures with a view to transposing Clause 5 of the Framework Agreement. However, in the light of the petitioner’s allegations that the last competition for permanent teaching posts was held in 2008 and that some teachers have been employed on successive fixed-term contracts since 2002, it should be investigated whether the national implementing measures sufficiently transpose Clause 5. The Commission will contact the Greek authorities to further investigate how Clause 5 has been implemented into national law and how such national rules have been applied with regard to primary school teachers.

According to Clause 4(1) of the Framework Agreement on fixed-term work which is given effect by Council Directive 1999/70/EC, in respect of employment conditions, fixed-term

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 Such as, in particular, senior managerial staff, workers recruited for a specific research or any subsidised or financed programme or workers recruited in order to perform work required in order to honour obligations pursuant to contracts with international organisations.

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. The Court of Justice of the European Union has held that Clause 4 must be interpreted as articulating a principle of social law that cannot be interpreted restrictively³.

Under Greek legislation, Article 4 or Presidential Decree 164/2004 implements Clause 4 of Council Directive 1999/70/EC. However, the petitioner lists a number of provisions under Greek law regulating regular and special leave of absence for teachers which appear to treat those on a fixed-term contract in a less favourable manner than those under permanent contracts with regard to number of leave days and entitlement to pay during leave. The petitioner also claims that fixed-term teachers are, in contrast to permanent teachers, not remunerated for certain periods when they are not working. The Commission will therefore investigate how Clause 4 of the Directive has been implemented into national law and how such national rules have been applied with regard to primary school teachers.

The petitioner has not substantiated its claim with regard to Council Directive 1991/533/EC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship. The Commission can therefore not at this stage make any comments in that respect.

Conclusions

The Commission will seek additional information from Greece on what steps it has taken to ensure the correct implementation of Clause 4 and 5 of Council Directive 1999/70/EC law and how such national rules have been applied with regard to primary school teachers.

³ Case C-268/06 *Impact* [2008] ECR I-2486.