



Press and Information

Court of Justice of the European Union

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Judgment in Case C-282/19

MIUR e Ufficio Scolastico Regionale per la Campania

Teachers of Catholic religious education: the requirement to hold a suitability certificate issued by a Church authority does not justify the renewal of fixed-term contracts

There is no discrimination on grounds of religion or based on the fixed-term nature of the employment relationship

YT and 17 other persons (together, 'the applicants'), who have been Catholic religious education teachers in public establishments for many years, were recruited by the Ministero dell'Istruzione dell'Università e della Ricerca – MIUR (Ministry of Education, Universities and Research, Italy) under successive fixed-term contracts. Having observed that they were not eligible for the tenure provided for under Italian law concerning teaching staff, on account of the fact that their contracts lasted one year, which precluded their inclusion on the permanent ranking lists, the applicants brought an action before the referring court, seeking primarily to obtain the transformation of their current contracts into contracts of indefinite duration.

The referring court, observing that the Italian legislation transposing the framework agreement on fixed-term work¹ excludes the transformation of successive fixed-term contracts into contracts of indefinite duration in the teaching sector, takes the view that the action cannot be upheld. According to that court, having regard to that exclusion and to the fact that the Catholic religious education teachers in question were not eligible for the tenure provided for under Italian law, that law does not provide for any measure to prevent abuse arising from the use of successive fixed-term contracts for those teachers, within the meaning of Clause 5 of the framework agreement.

It therefore decided to make a reference to the Court of Justice regarding the compatibility of the Italian legislation with that provision and with the prohibition of discrimination on grounds of religion prohibited under EU law.² In addition, it asked the Court to specify whether the requirement to hold a suitability certificate issued by a Church authority, which Catholic religious education teachers must hold in order to be able to teach, constitutes an 'objective reason' within the meaning of the framework agreement, justifying the renewal of such fixed-term contracts. Last, it was uncertain as to the consequences to be drawn, for the dispute in the main proceedings, from the Court's finding relating to the potential incompatibility of the legislation at issue.

In its judgment, the Court gives a ruling on, inter alia, the effectiveness of the measures that are intended to penalise, under national law, abuse arising from the use of successive fixed-term contracts.

Findings of the Court

As a preliminary point, observing, inter alia, that the national provisions at issue do not seek to organise the relations between a Member State and churches, but relate to the conditions of

¹ Framework agreement on fixed-term work, concluded on 18 March 1999 ('the framework agreement'), which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

² That prohibition is provided for by Article 21 of the Charter of Fundamental Rights of the European Union and by Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

employment of Catholic religious education teachers in public establishments - the case thus not relating to the status enjoyed by the churches covered by Article 17(1) TFEU - the Court finds that it has jurisdiction to give a preliminary ruling on the reference made.

Regarding the substance, after having found that there is no discrimination on grounds of religion, as tenure could not be granted to the applicants on account of the length of their contracts, a matter entirely unrelated to their religion, the Court rules, first of all, that the fact that the applicants cannot benefit from the reclassification of their contract as a contract of indefinite duration, whereas teachers of other subjects in a similar situation could, constitutes a difference in treatment between two categories of fixed-term workers. Accordingly, such a situation is not covered by Clause 4 of the framework agreement,³ as the latter prohibits differences in treatment between fixed-term workers and permanent workers. Thus, the referring court cannot refrain from applying the national rules at issue on the basis of that clause.

Next, regarding Clause 5 of the framework agreement, entitled 'Measures to prevent abuse', the Court rules that that provision precludes national legislation which excludes Catholic religious education teachers from the application of the rules intended to penalise abuse arising from the use of successive fixed-term contracts where there is no other effective measure in the domestic legal system penalising that abuse, which it is for the referring court to ascertain.

It is, admittedly, possible for the sector of public Catholic religious education to require the number of workers employed in that sector to be in constant keeping with the number of potential users, which leads to temporary recruitment needs for the employer, as the particular need for flexibility in that sector is capable of providing justification, in the light of Clause 5(1)(a) of the framework agreement, for recourse to successive fixed-term contracts. However, in order to comply with that provision, it must be specifically verified that the renewal of such contracts is intended to cover temporary needs and that such a possibility is not, in fact, being used to meet permanent staffing needs of the employer. In the present case, the various fixed-term employment contracts between the applicants and their employer have given rise to the performance of similar tasks over several years, with the result that that employment relationship can be regarded as having satisfied a long-term need, which is for the referring court to verify.

In addition, finding, *inter alia*, that the suitability certificate which Catholic religious education teachers must hold in order to be able to teach is issued once, and not before every school year giving rise to the conclusion of a fixed-term contract, irrespective of the length of the fixed-term contract given to them, and that the issuing of that certificate is not connected with measures pursuing social policy objectives, the Court rules that that certificate is not an 'objective reason' justifying the renewal of fixed-term contracts, within the meaning of Clause 5(1)(a) of the framework agreement.

Last, the Court recalls that, although that clause does not have direct effect and national courts are therefore not required to refrain from applying a national provision which conflicts with it, it is for the referring court to verify whether an interpretation of the national provisions at issue which is consistent with the framework agreement is possible, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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³ Clause 4(1) of the framework agreement, that clause being entitled 'Principle of non-discrimination', provides that, in respect of employment conditions, fixed-term workers are not to be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract unless different treatment is justified on objective grounds.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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