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Court of Justice of the European Union
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Judgment in Case C-158/16
Margarita Isabel Vega González v Consejería de Hacienda y Sector Público
del Principado de Asturias

A fixed-term worker elected to a parliamentary role must be able to benefit, for the purposes of holding political office, from the same special leave granted to a permanent civil servant

A worker, who had been employed by the Government of the Principality of Asturias for several years, was appointed, by the same government, as a non-established civil servant¹ in order to replace an established civil servant on secondment. During the elections for the regional Parliament of Asturias, which took place in May 2015, she was elected a member of Parliament. In order to be able to attend to her parliamentary duties on a full-time basis she applied, in June 2015, to the Government of the Principality of Asturias for special service leave provided for by Spanish law or special personal leave. Her application was rejected on the ground that special service leave and special personal leave apply only to established civil servants, to the exclusion of non-established civil servants. Spanish law states that civil servants on special service leave are entitled to have their status and place of employment reserved and the time spent on such leave to be included for the purposes of the calculation of three-yearly length-of-service increments and promotion in grade.

The purpose of the Framework Agreement on fixed-term work² is, in part, to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination. The Framework Agreement provides that, in respect of employment conditions, fixed-term workers must 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 Juzgado de lo Contencioso-Administrativo n.º 1 de Oviedo (Administrative Court No 1, Oviedo, Spain), which is hearing the case, takes the view that the temporary nature of the activity carried out by a non-established civil servant is not, in itself, an objective reason justifying a difference in treatment that deprives him of the right to return to his post at the end of his parliamentary term of office. Indeed, it cannot be ruled out that the situation which justified the appointment of that non-established civil servant might still exist at the end of his parliamentary term of office. The Spanish court is uncertain whether the concept of 'working conditions' covers the obligation to place a fixed-term worker onto an administrative status which allows him to suspend the employment contract in order to fulfil a political mandate for which he has been elected. It is also uncertain whether the difference in treatment, made by Spanish law, between non-established civil servants and established civil servants is compatible with the principle of non-discrimination.

By today's judgment, the Court states that the concept of 'employment conditions' includes the right for a worker who has been elected to a parliamentary role to benefit from special service leave, provided for by national legislation, under which the employment relationship

¹ 'Non-established civil servants' are those legally appointed to temporarily occupy vacant posts within the workforce of the Government of the Principality of Asturias until such time as those posts are filled by established civil servants, or who replace established civil servants in situations involving leave of absence or special service leave.

² The framework agreement on fixed-term work, concluded on 18 March 1999, 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).

is suspended such that the worker's job and his entitlement to promotion are guaranteed until the end of that parliamentary term of office.

The Court notes that the concept of 'employment conditions' should be understood to mean the rights, entitlements and obligations that define a given employment relationship, including both the conditions under which a person takes up employment and those concerning the termination of that relationship. A decision granting special service leave which leads to the suspension of certain elements of the employment relationship whilst others are maintained must be deemed to fall within the concept of 'employment conditions'. The Court takes the view that, first, the decision to grant such leave to a worker is necessarily taken on the basis of the employment relationship which connects him to the employer and, second, the special service leave at issue not only leads to the suspension of the employment relationship but also allows for the worker's place of employment to be reserved until his reinstatement at the end of his parliamentary term of office, ensuring that it is included for the purposes of calculating three-yearly length-of-service increments and promotion in grade — matters which have already been expressly recognised as falling within the definition of 'employment conditions'. The Court adds that, in any case, an interpretation of the framework agreement which excludes from the definition of 'employment conditions' the right to special service leave would limit the scope of the protection granted to fixed-term workers against discrimination.

The Court also states that the Framework Agreement precludes legislation that, like the legislation at issue, absolutely precludes granting a fixed-term worker leave, so that he may hold political office, during which the employment relationship is suspended until reinstatement of that worker at the end of their term of office, when that right is conferred on permanent workers.

The Court finds there to be a difference in treatment between fixed-term workers and permanent workers as regards the special leave at issue, since a non-established civil servant who, unlike an established civil servant, cannot benefit from that leave must resign from his post in order to hold office. It is for the Spanish court to determine whether the worker is in a situation comparable to that of workers employed on a permanent basis by the same authority for the same period. If that is the case and thus there is found to be inequality of treatment the Spanish court would have to ascertain whether that difference in treatment may be justified on objective grounds.

The Court concludes that, in any case, the absolute refusal to grant fixed-term workers special service leave does not appear to be indispensable to the objective pursued by the Spanish law, namely the maintenance of jobs and the entitlement to promotion of permanent workers — and more specifically established civil servants holding political office — in as much as the referring court itself considers it entirely feasible that fixed-term workers holding a similar office could be granted special service leave that suspends the employment relationship until the end of that term of office (at which time they would be guaranteed reinstatement to their post, provided it had not, in the meantime, been abolished or filled by an established civil servant).

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

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