

ABUSE OF TEMPORARY EMPLOYMENT IN THE PUBLIC ADMINISTRATION
JUDGMENT OF THE EU COURT OF JUSTICE OF FEBRUARY 22, 2024

Following the **recent Judgment of the Court of Justice of the European Union (CJEU) on February 22, 2024, issued in the combined cases C-59/22, C-110/22, and C-159**, there has been a veritable flood of headlines in the news, more or less grandiloquent and almost always hasty, as is customary when attempting to summarize the content of CJEU rulings in a telegraphic and/or tweet-like manner.

Does the recent Judgment constitute a further step against the abuse of temporary employment in the public sector? Certainly, it does. However, far from entailing the much-repeated - and even longed-for - automatic conversion of temporary employees to permanent positions, what the CJEU essentially does is once again highlight a situation of defective compliance with sanctions and penalties regarding the abuse of temporary employment contracts in the Spanish public sector. Furthermore, the CJEU's responses to the preliminary questions raised do not determine the conversion of temporary employees to permanent status¹.

After a few weeks of maturation, with the possibility of more deliberate and serene re-readings of the CJEU's pronouncement, it might appear that there is, in essence, no innovation regarding community jurisprudence. The criticism of the abusive dynamics of public administrations with their temporary public employees has long been established (as evidenced, for instance, by the **CJEU Judgment of June 3, 2021, in Case C-726/19**).

However, with the Judgment of 22 February 2024 there are some new developments, since part of the focus of the ruling was on the analysis of the sufficiency of the employment consolidation processes that were devised as truly effective remedies to combat fraud and abuse in temporary employment. And, in the words of the CJEU "it does not appear to be capable of preventing abusive use by the employer concerned", or "it does not appear that such legislation constitutes a sufficiently effective and dissuasive measure to ensure the full effectiveness of the rules adopted", as opposed to the mechanisms of Italian domestic law that were addressed by the **CJEU on March 7,**

¹ It is worth noting that the Judgment of February 22, 2024, pertains to the interpretation of accumulated preliminary questions raised within the framework of conflicts known to the social jurisdiction, rather than the administrative litigation.

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2018 (C-494/16). ². Even so, this Judgment does not directly refer to the stabilization processes arising from Law 20/2021 of December 28, on urgent measures for the reduction of public employment, another measure that has also entailed judicial doubts in terms of EU law.

With the recent Judgment of the Court of Justice of the European Union (CJEU), the measures or solutions of Spanish domestic law regarding the evident abuse of temporary employment for public employees are once again called into question. However, the CJEU does not definitively define (and likely will not do so in future interpretations) that the sole remedy for punishing temporal abuse must be the conversion of temporary positions to permanent ones. This is partly because Member States have discretion in defining measures and means to achieve community objectives. Nevertheless, in this latest pronouncement, it may seem that such conversion could be an appropriate measure, especially if there are no other legal avenues that effectively deter the abuse of temporary contracts. Despite this, the fundamental constitutional principles regarding access to public employment remain robust. However, it is essential to continue developing optimal measures to achieve the aforementioned community objective. Once again, the CJEU places the responsibility on internal decision-makers to define what these measures should be, without categorically asserting that conversion to permanent positions is the sole consideration. Consequently, responses and actions must be sharpened to serve as both punishment and sanction against the abuse of temporary employment by Public Administrations. Beyond the above, some Social Courts have already had the opportunity to offer interpretations on the content of this recent CJEU Judgment in the context of their respective cases, and as expected, there are some different approaches. Let's cite some examples:

- **Judgment No. 66/2024 of February 23, 2024, from the 26th Social Court of Madrid**, in an ordinary process, declared the worker as a permanent employee, considering that the declaration of "indefinite non-fixed" would not be a sufficient penalty for the public sector employer.
- **Judgment No. 51/2024 of February 27, 2024, from the 14th Social Court of Seville**, in a wrongful dismissal case, recognizes the indefinite nature of the employment

² In Italian domestic law, there was a regulation that, among other measures to prevent and penalize abusive use of fixed-term contracts, required administrations to recover amounts paid to workers as compensation for harm suffered due to violations of provisions related to selection. This considered the performance evaluation of managers, who were penalized to obtain salary supplements linked to outcomes. Other preventive Italian measures include prohibiting public administrations that have violated selection or hiring provisions from conducting selection processes for a certain period after committing the infringement (see paragraph 52 of the CJEU Judgment of March 7, 2018, C-494/16).

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relationship for the temporary worker whose contract was terminated due to filling a vacancy. It declares that filling a vacancy does not constitute a valid reason for termination in the case of permanency.

- **Judgment No. 856/2024 of March 14, 2024, from the Social Chamber of the Superior Court of Justice of Andalusia in Seville**, confirms the “indefinite non-fixed” status determined by the 6th Social Court of Seville. It considers that nowhere in the CJEU Judgment of February 22, 2024, is it affirmed that the solution should be permanency. Instead, the appropriate remedy would be the declaration of “indefinite non-fixed,” and the suitable penalty for abuse would be the compensation set as wrongful dismissal.

Similarly, reactions to the recent CJEU Judgment have not been delayed in the administrative litigation sphere, and some relevant ones can be highlighted:

- **Judgment of the 3rd Section of the National Court dated March 1, 2024**, citing the CJEU, considers that the announcement of selection processes for permanent positions is an appropriate measure. It refers to the established doctrine of the Third Chamber of the Supreme Court, which prohibits converting temporary civil servants into permanent or career positions.
- A recent Judgment from the Court of Justice of the Valencian Community (not yet published) has recognized that an interim technician from the Elche City Council has the right to “sustain the employment relationship, with professional and economic rights,” until the position is announced. It rejects the legal solution of converting the interim civil servant into indefinite non-fixed personnel, as would happen in the social order for Labor personnel. Instead, it advocates for this continuation even until retirement if the position remains unannounced.

It should be noted that, for the moment, other Administrative Courts continue to maintain a legal position opposing the conversion of temporary civil servants into permanent and career positions. This stance aligns with the recent Judgment No. 137/2024 of February 29, 2024, from the Third Section of the Superior Court of Justice of Madrid. Despite the CJEU’s pronouncement on February 22, 2024, this judgment merely adhered to the well-established criterion of the Supreme Court. Other recent rulings that also omitted reference to the community judgment include Judgments No. 216/24 and 221/24, both dated February 28, 2024, from the Second Section of the Superior Court of Justice of the Valencian Community. These judgments rejected the automatic indemnification solution when abuse occurs due to the chaining of interim appointments by the Administration.

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Finally, it is worth noting that some interesting preliminary questions regarding the abuse of temporary positions for civil servants in the public sector remain unresolved. For instance, the 17th Administrative Court of Barcelona raised such questions through an order dated May 6, 2022, concerning employment stabilization processes under Law 20/2021; or even the most recent issue raised by the Plenary of the Social Chamber of the Supreme Court, which was confirmed a few days ago. We will closely follow these developments.

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