Government's Employment Policy for Higher Education is a clear breach of European Law

The Employment Control Framework for the Higher Education Sector which was issued by the Higher Education Authority on the 24th July 2009 represents a clear breach of the European Directive concerning fixed-term contracts of employment.

The Framework (in paragraph 13) says that even in the exceptionally limited number of cases where Academic appointments are judged to be essential, all such appointments "must be made on a fixed term contract basis".

This policy is in direct contravention of at least two rulings of the European Court of Justice (ECJ).

In the agreement annexed to European Council Directive 1999/70/EC all parties, including Ireland, agreed that "contracts of an indefinite duration are, and will continue to be, the general form of employment relationship between employers and workers".

What this means is that, in effect, all contracts should be of indefinite duration unless there are **objective** reasons as to why they should be of a fixed term. In two separate judgments the European Court of Justice has stated explicitly that the objective reasons must arise out the precise nature of each job concerned and it is **not** permissible for a State-such as Ireland-to issue a blanket ruling making all jobs temporary.

The ECJ cases are as follows:

Case of Adeneler and others v Ellinikos Organismos Galaktos (Case C-212/04)
In paragraph 69 of this landmark ruling the Court said that objective reasons justifying a fixed term contract "must be understood as referring to precise and concrete circumstances characterising a given activity". They must be based on "the specific nature of the tasks" and "the inherent characteristics of these tasks". The Court then went on to say

> "On the other hand, a national provision which merely authorises recourse to successive fixed term employment contracts in a general and abstract manner by a rule of statute or secondary legislation does not accord with the requirements [of the Directive]". (paragraph 71).

In paragraph 73 the ECJ is even more explicit:

> "Thus, to admit that a national provision may, automatically and without further precision, justify successive fixed term employment contracts would effectively have no regard to the aim of the Framework Agreement, which is to protect workers against instability of employment, and render meaningless the principle that contracts of indefinite duration are the general form of employment relationship."

Case of Yolanda Del Cerro Alonso v Osakidetza-Servicio Vasco de Salud (Case C-307/05)

Here, the ECJ reiterated that a blanket decision to the effect that jobs should be fixed term is not permissible because "the specific nature of the tasks" and their "inherent characteristics" must be taken into account and "a national provision which merely authorises recourse to successive fixed term contracts, in a general and abstract manner by a rule of statute or secondary legislation, does not accord with the requirements [of the Directive]". (paragraph 54).

IFUT raised these concerns directly with the HEA on the 29th July 2009. The HEA's only response was that they assumed that the Government's policy was legal because they could not imagine the Department of Education being in conflict with European law! To which IFUT responded by saying that this is the same flawed logic which underpinned Lord Denning's infamous "appalling vista" judgment in the Birmingham Six Case. That is, you assume that something is right because you cannot believe an authority would not get it right!

Politically the timing is incredibly stupid

Another aspect of this issue which IFUT draws attention to is the incredible political stupidity of the Government's actions in the run up to Lisbon 2.

Just when the Taoiseach and his Ministers are trying to persuade Irish workers that the EU is good for delivering employment rights, Minister O'Keefe issues a directive which not only ignores EU law but also reinstates the kind of employment insecurity which the EU Directive was designed to tackle. What kind of a signal is that to send to voters?

Conclusion

IFUT would never agree to a blanket ruling which undermines all decent norms of security of employment. This would be our position whether or not we have the support of an explicit legal ruling. However, since we can point to clear and unambiguous rulings from the ECJ then we are putting all universities and other institutions of higher education on notice that we will take whatever action is necessary to reinstate employment rights which were hard won and long fought for.