

SUMMARY

2016/42 Court finds fixed-term employee eligible for contract of indefinite duration (CY)

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Facts

A state secondary technical school employed an employee regularly from 25 September 2003, each time under a fixed term contract. He argued that these multiple engagements, all of them for the same job with the same duties and for the same employer, exceeded the total of 30 months prescribed by law. Therefore, those fixed term contracts should be converted into an indefinite term contract. He argued that his most recent contract did not terminate at the end of the fixed term and that he was still employed by his employer.

He filed a claim before the Court of Industrial Disputes requesting the following remedies:

A declaration by the Court that his employment agreements had been converted into an indefinite term agreement as from the date when he had worked for 30 months.

Reappointment in the same job with the same duties from the moment his employment was unlawfully terminated.

Payment of all rights including wages, benefits and other allowances and contributions from

the moment he was reappointed.

A written contract of indefinite duration starting on the date that he had completed 30 months of work.

The employer challenged his claims, arguing that during the school year 2011-2012 he was employed as a cover teacher, replacing teachers temporarily absent from their duties. This, the employer alleged, by law, is a reason justifying the employee working under a fixed term contract and together with the fact that the needs for the specific profession of the applicant's expertise were reduced in 2011-2012 constitute objective reasons why the employee was on a fixed-term contract.

Judgment

The Court had to decide on the employment status of the employee. Was he employed under an agreement of indefinite duration, or were there objective reasons justifying the use of successive temporary employment agreements?

The Court referred to the Law on Employees with Fixed-term Work (Prohibition of unfavourable Treatment), Law 2003 (N.98 (I)/2003), (the 'Law'). This says that successive fixed term employment agreements will be converted into agreements for indefinite duration once their aggregated term exceeds 30 months. There are, however, limited statutory reasons justifying fixed term contracts beyond this term.

The Law was adopted in order to harmonize Cypriot law with the provisions of Directive 1999/70 of 28 June 1999 concerning the framework agreement on fixed-term work, concluded by the European social partners (ETUC, UNICE and CEEP), (the 'Directive'). In determining whether there are objective grounds justifying fixed term contracts beyond the 30-month term, the Court must take into account the proposed aims of Directive 1999/70. In its decision, the Court referred to three joined cases of 23 April 2009

Kiriaki Angelidaki and others – v – Organismos Nomarchiakis Autodioikisis Rethymnis (C-378/07); Charikleia Giannoudi – v – Dimos Geropotamou (C-379/07); and Georgios Karabousanos and Sofoklis Michopoulos – v – Dimos Geropotamou (C-380/07).

“Clause 5(1)(a) of the framework agreement on fixed-term work, which is annexed to Directive 1999/70 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as precluding the application of national legislation by the authorities of the Member State concerned in such a way that the renewal of successive fixed-term employment contracts in the public sector is deemed to be justified by ‘objective reasons’ within the meaning of that clause solely on the ground that those contracts

are founded on legal provisions allowing them to be renewed in order to meet certain temporary needs when, in fact, those needs are fixed and permanent”.

The Court specifically highlighted in the case at hand, based on the three cases referred and quoted above:

“No evidence was put before the Court which showed that, at the end of successive fixed term contracts that the Respondents had concluded with the Applicant, it could not be said with sufficient certainty that there was no further need for the Applicant’s employment.”

In the case at hand, the Court pointed out that the employer had to prove that entering into the fixed term agreements was justified on one of the objective grounds laid down by law. The employer was unable to substantiate this.

The Court held that the employer failed to prove objective reasons for not converting the employment contract of the employee into a contract of indefinite duration. It therefore ruled that:

Based on the circumstances, it is obvious that the employee worked in the service of the employer, at the same location and with the same duties on a temporary basis, under successive fixed-term employment contracts from 25 March 2003 until 28 August 2011; then from 22 November 2011 for a limited period as a cover teacher and then from 5 November 2012 until now with intermediate pauses. Already by 31 August 2006 the employee had a total recognized educational service of more than 30 months, which at the time he applied to Court would have amounted to eight years. In short, he met the time test for being regarded as a permanent employee.

The need of the employer for the work the employee was hired to do was not a temporary need but a permanent one. The employer chose to meet this need by entering into multiple successive fixed-term contracts, but this deprived the employee, for no particular reason, of stable employment.

As a result, the Industrial Dispute Court held that the only appropriate remedy was to convert these contracts into a contract for an indefinite term.

Commentary

In light of the court's decision, employers should take on board the following lessons:

Employers should be very careful when entering into successive fixed term contracts with an employee. There is a possibility that the court will treat successive fixed term contracts as an indefinite contract of service after a period of 30 months. The employer has the burden of proving that the successive fixed term contracts met temporary needs which ceased to exist after the end of the fixed term contracts.

If the needs of the employer are permanent, it is difficult for the employer to prove that the employee is not a permanent employee, in effect, after 30 months.

The Court tends to interpret the Law in favour of employees in an attempt to address unfavourable treatment of employees, provided there are grounds to do so.

An appeal is pending.

Comments from other jurisdictions

Finland (Kaj Swanljung and Janne Nurminen, Roschier, Attorneys Ltd): According to the Finnish Employment Contracts Act (55/2001, as amended), an employment contract is valid indefinitely unless it has been made for a specific fixed term, for a justified reason. Contracts made for a fixed term on the employer's initiative without a justified reason are considered to be valid indefinitely. Unlike in Cyprus, however, there are no limited statutory reasons justifying fixed-term contracts. Instead, the assessment is always done on a case-by-case basis.

Further, it is prohibited to use consecutive fixed-term contracts when the total duration of the fixed-term contracts indicates a permanent need of work. And on top of that, as noted, in Finland, regardless of the length and number of consecutive fixed-term contracts, all fixed-term employment contracts require a justified reason. In a recent case, 56 consecutive employment contracts lasting altogether over five years were considered justified, as each one was based on a need for a substitute and there was no permanent need for work.

Note however, that the Finnish Government has proposed changes to the current law to allow long-term unemployed job-seekers to be employed for a fixed term for up to one year without a justified reason.

Greece (Panagiota Tsinouli, KG Law Firm): In this case, the Greek courts would have reached a significantly different outcome. The key element in this case is that the employee was employed by a state school and not a private one. The Greek legislator has transposed

Directive 1999/70/EC by means of two separate Presidential Decrees, one for the private and one for the state sector. In addition to a decree regulating fixed term employment agreements with public bodies, Article 103 of the Constitution also applies, and these provide strict terms for the recruitment of fixed term personnel to meet the operational needs of the public sector. This is aimed at preventing claims of a similar kind to that of the employee in this case: i.e. the conversion of fixed term contracts into ones of an indefinite duration - even if fixed term contracts were being used to cover permanent needs. Since the Greek courts would not have been able to convert the employee's fixed term agreement into an indefinite one, the employee would have been entitled to request any salary due for the term of his employment, as well as compensation equal to the amount that he would have been entitled to as an employee under an indefinite term employment agreement.

Subject: Dismissal, conversion fixed term contracts

Parties: Sotos Koullouros – | – Attorney General of the Republic of Cyprus through the Education Service Commission and the Ministry of Education and Culture

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Creator: Court of Industrial Disputes

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