

SUMMARY

ECJ 1 October 2015, case C-432/14 (O - v - Bio Philippe Auguste SARL) (‘O’), Age discrimination

Facts

On 21 December 2010, Mr O, while he was a student, was recruited by Bio Philippe Auguste SARL under a fixed-term employment contract for the period from 21 December 2010 to 24 December 2010, during his university vacation. On the expiry of his contract, he was not paid an end-of-contract payment. This was pursuant to Article L.1243-10 of the French Code du travail. Section 8 of Article L.1243 entitles a fixed-term worker whose contract is not converted into a permanent contract to an end-of-contract payment. Section 10 excludes certain categories from this right. One of these is “where the contract is entered into with a young person for a period falling within the school holidays or university vacations”.

O brought an action before the Labour Tribunal (Conseil de prud’hommes), arguing that Article L.1243-10 is contrary to the constitutional principle of equal treatment on grounds of age. He claimed an end-of-contract payment of € 23,21, reclassification of his fixed-term contract as a permanent contract and compensation for unfair dismissal.

National proceedings

The Labour Tribunal asked the Supreme Court whether Article L.1243-10 is unconstitutional. The Supreme Court passed the question on to the Constitutional Court.

The latter concluded that students employed under a fixed-term employment contract for a period during their school holidays or university vacations are not in the same position as

either students who work in the same time as pursuing their studies or other employees on fixed-term employment contracts, and that, therefore, the legislature established a difference in treatment based on a difference in situation in line with the purpose of the law.

Despite this conclusion, the Labour Tribunal referred a question to the ECJ. It wanted to know whether Article L.1243-10 is precluded by “the general principle of non-discrimination on grounds of age”.

ECJ’s findings

There is no evidence that the dispute between O and Bio Philippe is fictitious (§15-20).

It is for the referring court to assess whether O’s employment contract is such as to enable him to claim the status of “worker” within the meaning of EU law (§22-27).

The requirement as to the comparable nature of the situations for the purposes of determining whether there is an infringement of the principle of equal treatment must be assessed in the light of all the factors characterising those situations. It must also be stated that, on the one hand, it is required not that the situations be identical, but only that they be comparable and, on the other hand, the assessment of that comparability must be carried out not in a global and abstract manner, but in a specific and concrete manner in the light of the benefit concerned. Therefore, the Court must examine whether the situation of a student such as the applicant in the main proceedings, employed under a fixed-term employment contract during his university holidays, is objectively comparable, having regard to the aim pursued by Article L. 1243-8 of the Code du Travail, to that of workers who are entitled to the end-of-contract payment under that provision (§31-32).

The end-of-contract payment, which must be paid on the expiry of a fixed-term employment contract, is intended to compensate for the insecurity of the employee’s situation where the contractual relationship is not continued in the form of a contract for an indefinite period. Article L. 1243-10 expressly excludes young persons who have concluded a fixed-term employment contract for a period during their school holidays or university vacation from entitlement to that payment. The national legislature thus, by necessary implication, considered that those young persons are not, on the expiry of their contract, in a situation of job insecurity. Employment carried out on the basis of a fixed-term contract by a pupil or student during his school holidays or university vacation is characterised by being both temporary and ancillary, since that pupil or student intends to continue his studies at the end of that holiday or vacation. It follows that, by holding that the situation of young people who have concluded a fixed-term employment contract for a period during their school holidays or university vacation is not comparable to that of other categories of workers eligible for the end-of-contract payment, the national legislature in no way exceeded the bounds of its

discretion in the field of social policy (§34-37).

Ruling

The principle of non-discrimination on grounds of age, enshrined in Article 21 of the Charter of Fundamental Rights of the European Union and given specific expression by Council Directive 2000/78 [.....] must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, under which an end-of-contract payment, paid in addition to an employee's salary on the expiry of a fixed-term employment contract where the contractual relationship is not continued in the form of a contract for an indefinite period, is not payable in the event that the contract is concluded with a young person for a period during his school holidays or university vacation.

Creator: European Court of Justice (ECJ)

Verdict at: 2015-10-01

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