

SUMMARY

**<strong>ECJ 5 February 2015, case C-117/14&nbsp;(Grima Janet Nisttahuz Poclava &ndash; v &ndash; Jose Mar&iacute;a Ariza Toledano), Fixed-term work</strong>**

**Facts**

In 2012, Spain enacted a law amending its employment legislation on account of the economic crisis. Among the measures for “fostering employment of indefinite duration and other measures to promote job creation” was a provision allowing undertakings with fewer than 50 workers, under certain conditions, to hire employees for an indefinite period with a probationary period clause with a duration of one year rather than the normal period (which varies between two and six months). Ms Poclava was hired under such a contract. She was dismissed 3½ months later.

**National proceedings**

Ms Poclava brought an action against her employer seeking a declaration that her dismissal was unfair and an order for reinstatement or compensation. The court referred questions to the ECJ, essentially asking whether, on a proper construction of Article 30 of the Charter and Clauses 1 and 3 of the Framework Agreement on fixed-term work annexed to Directive 1999/70, national legislation such as the Spanish law establishing and regulating employment contracts of indefinite duration to support entrepreneurs and providing for a oneyear probationary period, is precluded.

**ECJ’s findings**

The provisions of the Charter are addressed to Member States only when they are implementing EU law. The fundamental rights guaranteed in the EU legal order are applicable in situations governed by EU law, but not outside such situations. It is necessary, therefore, to determine whether the Spanish legislation at issue implements EU law (§ 28-30).

An employment contract such as that of Ms Poclava is not a fixed-term contract, and Directive 1999/70 does not regulate the duration of a probationary period. Therefore, such a contract does not fall within the scope of the Directive (§ 31-38).

The ECJ cannot rule on the interpretation of ILO Convention 158 or the European Social Charter (§ 43).

### **Ruling**

The ECJ lacks jurisdiction to answer the questions referred to it.

---

**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2015-02-05

**Case number:** C-117/14