

SUMMARY

ECJ 26 February 2015, case C-238/14 (European Commission – v – Grand Duchy of Luxembourg), Fixed-term work

Facts

Clause 5(1) of the Framework Agreement on fixed-term work annexed to Directive 1999/70 requires the Member States to introduce one or more of the following measures:

- a. objective reasons justifying the renewal of fixed-term contracts;
- b. the maximum total duration of successive fixed-term contracts;
- c. the number of renewals of such contracts.

Luxembourg law permits fixed-term contracts to be concluded “for the performance of a specific and non-permanent task”. The law lists certain tasks as being specific and non-permanent. The list includes “employment posts in respect of which it is normal in some sectors of economic activity not to use permanent contracts owing to the nature of the activity or the temporary nature of the posts”. Where a fixed-term contract is permitted, it may not be renewed more than twice and it may not exceed a total duration of 24 months. However, by way of derogation from these principles, an unlimited number of successive fixed-term contracts may be concluded, without any limit in duration, with “occasional workers in the entertainment arts”. The definition of “occasional worker in the entertainment arts” includes any artist or technician “who pursues his occupation primarily on behalf of an entertainment company or in connection with a cinematographic, audio-visual, theatrical or musical production”, irrespective of the type of work actually carried out.

In March 2009, the Commission asked Luxembourg to clarify the compatibility of this legislation with the Framework Directive. The Commission was not satisfied with Luxembourg's reply. In May 2014, this resulted in an application to the ECJ for a declaratory judgment.

ECJ'S findings

It is undisputed that the national legislation at issue permits the recruitment of occasional workers in the entertainment arts on the basis of successive fixed-term employment contracts without limit in terms of number or total duration of contracts. The issue, therefore, is whether this practice can be justified by an "objective reason" within the meaning of Clause 5(1)(a) of the Framework Directive (§ 41-42).

The concept of "objective reason" refers to precise and concrete circumstances characterising a given activity. Those circumstances may result, in particular, from the specific nature of the tasks or from the pursuit of a legitimate social-policy objective of a Member State (§ 44-45).

The definition of "occasional worker in the entertainment arts" is neutral as regards whether the worker's activity is temporary. Therefore, even assuming that the workers in question participate exclusively in individual projects which are limited in time, as Luxembourg alleges, that does not explain how the law requires them to engage in their professional activities within the framework of such projects (§ 46).

Moreover, the assertion that every "occasional worker in the entertainment arts" is hired for projects of a temporary nature is contradicted by the fact that "by way of derogation" from the normal rules, these workers may be hired on the basis of successive fixed-term contracts without limitation. If every one of these workers always worked on temporary projects there would be no need to derogate (§ 47).

Luxembourg's argument that the derogation actually favours the workers in question, because it makes it more attractive for employers to hire them, is not valid. Even supposing that the legislation at issue pursues this objective, it does not prove the existence of specific and concrete circumstances characterising the activity (§ 50).

Ruling

The ECJ declares that, by maintaining in force, with respect to occasional workers in the entertainment arts, derogations from the measures designed to prevent the abusive use of successive fixed-term contracts, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Clause 5 of the Framework Agreement [...].

Creator: European Court of Justice (ECJ)

Verdict at: 2015-02-26

Case number: C-238/14