

SUMMARY

ECJ 3 July 2014, joined cases C-362/13, C-363/13 and C-407/13 (Maurizio Fiamingo and others - v - Rete Ferroviaria Italiana SpA), Fixed-term work

Facts

Mr Fiamingo and his two co-plaintiffs were employed as seafarers on board ferries that plied between two Italian ports. They were hired under fixed-term contracts for one or more voyages for a maximum of 78 days. Considering that their employment relationship had been unlawfully terminated, they brought proceedings, seeking a declaration that their fixed-term contracts were void, the conversion of those contracts into ones of indefinite duration, immediate reengagement or reinstatement and compensation for loss suffered. They based their case on the Framework Agreement on Fixed-Term Work annexed to Directive 1999/70 (the “Framework Agreement”), arguing that the use of fixed-term contracts was abusive because their use was explained not by the particular character of maritime work or the existence of objective reasons, but in order to remedy structural staff shortages.

National proceedings

On appeal, their claims were dismissed. The Court of Appeal held that the Framework Agreement does not apply to seafarers. It also held that the fixed-term contracts were lawful even though they did not indicate the termination date of the contracts but only their duration by the phrase “a maximum of 78 days”. The plaintiffs brought their case to the Supreme Court. It referred four questions to the ECJ for a preliminary ruling.

ECJ’s findings

1. The first question is whether the Framework Agreement applies to seafarers. The ECJ answers affirmatively (§ 27-40).

2. The second question is whether the Framework Agreement precludes national legislation which provides that fixed-term employment contracts must indicate their duration, but need not specify their termination date. The Framework Agreement does not contain any provision that lays down the formal particulars that must be included in fixed-term contracts. It defines the concept of a “fixed-term worker” and sets out the central characteristic of a fixed-term contract, namely the fact that the end of such a contract is determined “by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event” (§ 41-46).

3. Inasmuch as this question seeks to determine whether the Framework Agreement is applicable to workers whose employment contracts, such as those at issue in the main proceedings, indicate only their duration (by referring to a “maximum of 78 days”), it suffices to state that such workers must be regarded as ‘fixed-term workers’ within the meaning of Clause 3(1) of the Framework Agreement, given that such a reference permits the end of those contracts to be determined objectively and that the Framework Agreement therefore applies to them (§ 47).

4. The third and fourth questions are whether the Framework Agreement precludes national legislation which, on the one hand, considers that the mere indication of one or several voyages to be made constitutes objective justification for the fixed-term contract and, on the other hand, provides that fixed-term contracts are converted into permanent contracts only where the worker has been employed continuously under such contracts by the same employer for a period longer than one year, the employment relationship being considered to be continuous when the time that elapses between contracts is less than or equal to 60 days (§ 49).

5. For the purposes of implementing Clause 5(1) of the Framework Agreement, a Member State can legitimately choose not to adopt the measure referred to in Clause 5(1)(a), which requires the renewal of such successive fixed-term employment contracts or relationships to be justified by objective reasons. It may, on the contrary, prefer to adopt one or both of the measures referred to in Clause 5(1)(b) and (c) which deal, respectively, with the maximum total duration of those successive fixed-term employment contracts or relationships and the number of renewals of such contracts or relationships, or it may even choose to maintain an existing equivalent legal measure, and it may do so provided that, whatever the measure thus chosen, the effective prevention of the misuse of fixed-term employment contracts or relationships is assured (§ 61).

6. Furthermore, where, as in the present case, EU law does not lay down any specific penalties in the event that instances of abuse are nevertheless established, it is incumbent on the national authorities to adopt measures that are not only proportionate, but also sufficiently effective and a sufficient deterrent to ensure that the measures taken pursuant to the Framework Agreement are fully effective (§ 62).

7. While, in the absence of relevant EU rules, the detailed rules for implementing such measures are a matter for the domestic legal order of the Member States, under the principle of their procedural autonomy, they must not, however, be less favourable than those governing similar domestic situations (principle of equivalence) or render impossible in practice or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness) (§ 63).

8. Therefore, where the abuse of successive fixed-term contracts or relationships has taken place, a measure offering effective and equivalent guarantees for the protection of workers must be capable of being applied in order duly to punish that abuse and nullify the consequences of the breach of EU law (§ 64).

9. The Framework Agreement does not lay down a general obligation on the Member States to provide for the conversion of fixed-term employment contracts into contracts of indefinite duration (§ 65).

10. It is for the referring court to determine to what extent the conditions for the application and effective implementation of the relevant provisions of national law constitute a measure adequate to deter and, if necessary, punish the misuse of successive fixed-term employment contracts or relationships (§ 67).

11. The Italian legislation at issue in this case, which lays down a mandatory rule that, when a worker has been employed continuously by the same employer under several fixed-term employment contracts for a period longer than one year, those contracts are converted into an employment contract of indefinite duration, is likely to satisfy the requirements of the Framework Agreement (§ 69).

12. This conclusion does not appear to be thrown into doubt by the provision of that legislation whereby only those fixed-term employment contracts separated by a time lapse of less than or equal to 60 days are considered to be 'continuous' and, hence, 'successive'. Such a lapse of time may generally be considered to be sufficient to interrupt any existing employment relationship and to have the effect that any contract signed after that time is not considered to be successive, especially where, as in the cases in the main proceedings, the duration of those fixed-term employment contracts cannot exceed 78 days. It would seem difficult for an

employer, who has permanent and lasting requirements, to circumvent the protection against abuse afforded by the Framework Agreement by allowing a period of about two months to elapse following the end of every fixed-term employment contract (§ 71).

13. That said, it is for the national authorities and courts responsible for implementing the measures transposing Directive 1999/70 and the Framework Agreement, and which are called upon to rule on the classification of successive fixed-term employment contracts, to consider in each case all the circumstances at issue, taking account, in particular, of the number of successive contracts concluded with the same person or for the purposes of performing the same work, in order to ensure that fixed-term relationships are not abused by employers (§ 72).

14. In particular, in cases such as those in the main proceedings, the referring court must satisfy itself that the maximum duration of one year, provided for by the national legislation at issue in the main proceedings, is calculated in a manner that does not substantially reduce the effectiveness of the prevention and punishment of the misuse of successive fixed-term employment contracts. That might arise, if, rather than being calculated on the basis of the number of calendar days covered by those employment contracts, the maximum duration of one year was calculated on the basis on the number of days' service actually completed by the worker concerned, where, for example, as a result of the low volume of crossings, the latter number is considerably lower than the former (§ 73).

Ruling

1. The Framework Agreement on fixed-term work [...], must be interpreted as meaning that it applies to workers, such as the appellants in the main proceedings, who are employed as seafarers under fixed-term employment contracts on board ferries making sea crossings between two ports situated in the same Member State.

2. The provisions of the Framework Agreement on fixed-term work must be interpreted as meaning that they do not preclude national legislation, such as that at issue in the main proceedings, which provides that fixed-term employment contracts have to indicate their duration, but not their termination date.

3. Clause 5 of the Framework Agreement on fixed-term work must be interpreted as meaning that it does not preclude, in principle, national legislation, such as that at issue in the main proceedings, which provides for the conversion of fixed-term employment contracts into employment contracts of indefinite duration only in circumstances where the worker concerned has been employed continuously under such contracts by the same employer for a period longer than one year, the employment relationship being considered to be continuous

where the fixed-term employment contracts are separated by time lapses of less than or equal to 60 days. It is, however, for the referring court to satisfy itself that the conditions of application and the effective implementation of that legislation result in a measure that is adequate to prevent and punish the misuse of successive fixed-term employment contracts or relationships.

Creator: European Court of Justice (ECJ)

Verdict at: 2014-07-03

Case number: C-362/13, C363/13 and C-407/13