EELA EUROPEAN EMPLOYMENT LAWYERS ASSOCIATION

SUMMARY

ECJ 12 December 2013, case C-50/13 (Rocco Papalia - v - Commune di Aosta), Fixed-term work

Facts

Mr Papalia was employed by the municipality of Aosta from 1983 until 2012 on the basis of multiple successive fixed-term contracts. On 17 July 2012 he was informed that his last contract, which ran until 30 June 2012 would not be extended. He brought proceedings in which he claimed conversion of his contract into a permanent one or, alternatively, monetary compensation.

National proceedings

The court referred to Article 36(5) of Law 165/2001 ('Article 36(5)'), which provides that employees in the public sector who have been illegally employed on fixed-term contracts instead of permanent contracts, are not entitled to have their contract converted into a permanent contract. The court further referred to settled case law of the Italian Supreme Court to the effect that such employees can only claim monetary compensation for abuse of the fixed-term rules if they prove that that abuse has obligated them to give up a better job opportunity. However, being uncertain as to the compatibility of Article 36(5) with Clause 5 of the Framework Agreement on Fixed-Term Work annexed to Directive 1999/79 ('Clause 5'), the court referred a question to the ECJ.

ECJ's findings

The ECJ begins by pointing out that it has already provided the answer to the questions in its judgments and orders
in Adeneler (2001), Marrosu (2006), Vassallo (2006), Angelidaki (2009), Vassilakis (2008), Ko

ukou (2009), Lagoudakis (2009) and Affatato (2010). The rulings in Marrosu (C-53/84) and Vassallo (C-180/04) even concerned Article 36(5). In these cases, the ECJ held that Clause 5 does not require Member States to provide for the conversion of fixed-term contracts into permanent ones, neither does it require them to provide details of the circumstances in which fixed-term contracts may be used, leaving to the Member States a certain margin of appreciation (§ 15-16).

The Member States must adopt legislative measures to guarantee the effectiveness of the measures it has taken to comply with Clause 5 and such measures must be proportionate, effective and dissuasive. Moreover, the remedies must not be less favourable than those applicable in similar situations under domestic law (principle of equivalence) and they must not render the exercise of the rights conferred by EU law impossible or excessively difficult (principle of effectiveness) (§ 17-22).

In terms of the principle of equivalence, Mr Papalia and the Italian government disagree on whether it is true, as the former alleges, that a plaintiff, who claims to have suffered a loss as a result of having been employed unlawfully on the basis of successive fixed-term contracts, does not benefit from a presumption of having suffered a loss and must, therefore, prove that the succession of fixed-term contracts prevented him from accepting a better job. Given this disagreement on the facts of the matter, the ECJ cannot pronounce on this point (§ 23-28).

In terms of the principle of effectiveness, it is the domestic court's privilege to determine, within the context of the domestic law, whether it is impossible or excessively difficult for a plaintiff such as Mr Papalia to exercise his rights under Clause 5. However, seeing that the referring court has observed that this is the case, it will need to examine this aspect, including the burden of proof issue (§ 29-33).

Ruling

The Framework Agreement on Fixed-Term Work precludes measures under national law, such as those in the present case, which provide solely for the right to claim monetary loss, in the case of abuse of successive fixed-term contracts by a public sector employer, and not for conversion into a permanent employment contract, if the right of conversion would entail having to prove lost employment opportunity and the burden of proving that would have the effect of rendering the exercise of the rights conferred by EU law practically impossible or excessively difficult.

Creator: European Court of Justice (ECJ)
Verdict at: 2013-12-12
Case number: C-50/13