SUMMARY

ECJ 7 March 2013, case C-393/11 (Autorità per l’energia e il gas - v - Antonella Bertazzi and six others), Fixed-term work

Facts

In 2006, Italy adopted Law No 296/2006. It provides for the 'stabilisation' of non-managerial staff employed by public bodies on the basis of a private-law fixed-term contract. In many cases, these contracts were unlawful and the workers concerned should have been employed permanently. Law 296/2006 allowed workers who had been employed for no less than three years, to apply to become permanent civil servants. Following their appointment as civil servants, their remuneration was set as the starting rate, no account being taken of the length of service accrued under their previous fixed-terms contracts.

The seven plaintiffs in this case had worked for the AEEG, a public body, under successive fixed-term contracts. They applied to become civil servants. Their applications were accepted and they were placed at the starting level of the pay scale category that applied to them at the time their fixed-term contracts were terminated (with certain compensation for the pay differential). They objected to the fact that their prior service with the AEEG was disregarded.

National proceedings

The plaintiffs brought proceedings against the AEEG before an administrative court, which found in their favour, whereupon the AEEG appealed to the Council of State. This judicial body noted, inter alia¬, that the national legislature had not intended retroactively to validate unlawful fixed-term recruitment by converting a series of fixed-term contracts into a permanent contract. Instead, it had viewed the length of service accrued in fixed-term employment as a qualification justifying conversion to a permanent employment relationship

without the need for the employees to go through the general competitive process for joining the public authority's permanent staff. The fact that length of service is set at nought is justified by the need to avoid reverse discrimination against workers who are already on the permanent staff and who were recruited based on an open competition.The Council of State referred questions to the ECJ.

ECJ's findings

The ECJ recalled that it had answered identical questions in its judgment in Valenza (ECJ 18 October 2012, cases C-302/11-305/11, reported in EELC 2012-4).

Ruling

Clause 4 of the framework agreement on fixed-term work [...] which is annexed to Council Directive 1999/70 [...] must be understood as precluding national legislation, such as that at issue in the main proceedings, which prohibits periods of service completed by a fixed- term worker for a public authority being taken into account in order to determine the length of service of that worker upon his recruitment as a career civil servant on a permanent basis by the same authority under a stabilisation procedure specific to his employment relationship - unless that prohibition is justified on 'objective grounds' for the purpose of clause 4(1) and/or (4). The mere fact that the fixed-term worker completed those periods of service on the basis of a fixed-term employment contract or relationship does not constitute such an objective ground.

Creator: European Court of Justice (ECJ)
Verdict at: 2013-03-07
Case number: C-393/11