SUMMARY

ECJ 8 March 2012, case C-251/11 (Martial Huet - v – Université de Bretagne occidentale), Fixed-term work

Facts

Mr Huet was employed by a university as a researcher (*chercheur*) on the basis of a number of successive fixed term contracts spanning a period of over six years (1 March 2002 - 15 March 2008). Upon expiration of the last of these contracts and pursuant to a provision of French law ("If, at the end of the maximum period of 6 years [É] these contracts are not renewed, this may be only [É] for an indefinite duration") he was offered, and accepted, a contract of indefinite duration, but in a different position (Research Officer, *ingénieur d'études*) and at a lower salary. In practice, however, his duties remained unchanged. In May 2008 he requested the university to restore his salary to its former level. When the university rejected his request he brought proceedings, arguing that the said French law implies that, in the event a fixed-term contract converts into a contract of indefinite duration, the latter contract may not be on inferior terms.

National proceedings

The court of first instance decided to seek guidance from the ECJ on the interpretation of the Framework Agreement on Fixed-term Work annexed to Directive 1999/70 (the "Directive"), even though neither party had invoked the Directive.

ECJ's findings

1.

The fact that neither party in the main proceedings had invoked EU law does not prevent the court from seeking an ECJ ruling (¤ 22-26).

2.

Clause 4(1) of the Framework Agreement (non-discrimination) and Clause 8(3) (non-reduction of national protection) are not relevant. The only clause potentially relevant to the dispute is Clause 5 on the prevention of abuse (¤ 27-33).

3.

The objective of Clause 5 is to place limits on successive recourse to fixed-term contracts, which is regarded as a potential source of abuse. The benefit of stable employment is viewed as a major element in the protection of workers, whereas it is only in certain circumstances that fixed-term contracts are liable to respond to the needs of both employers and workers. This is why Clause 5(1) requires Member States to adopt at least one of the three measures listed there, namely objective reasons justifying renewal, maximum total duration and maximum number of renewals. The French law which led the university to convert Mr Huet's last fixed-term contract into a permanent contract falls within the preventive measures listed in Clause 5(1) (¤ 34-37).

4.

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. Clause 5(2) leaves it to the Member States to determine the conditions under which fixed-term contracts are to be regarded as contracts of indefinite duration. It follows that the Framework Agreement does not specify the conditions under which contracts of indefinite duration may be used (¤ 38-40).

5.

The Framework Agreement does not aim to harmonise all national rules relating to fixed-term work, simply aiming to ensure equal treatment and to prevent abuse arising from the use of successive fixed-term contracts. The Member States are free in the manner in which they achieve this objective, although their margin of appreciation is not unlimited (¤ 41-43).

6.

If a Member State were to permit the conversion of a fixed-term employment contract into an employment contract of indefinite duration to be accompanied by material amendments to the principal clauses of the previous contract in a way that was unfavourable overall to the employee under contract, when the subject-matter of that employee's tasks and the nature of his functions remained unchanged, it is not inconceivable that the employee might be deterred from entering into the new contract offered to him, thereby losing the benefit of stable employment Ð which is viewed as a major element in the protection of workers. However, it is for the competent authorities to ascertain, in accordance, with national legislation, collective agreement and/or practice, whether the amendments made to the principal clauses of the employment contract in question in the main proceedings may be described as material amendments to those clauses (¤ 44-45).

Ruling

Clause 5 of the framework agreement on fixed-term work [É] must be interpreted as meaning that a Member State that provides in its national legislation for the conversion of fixed-term employment contracts into employment contracts of indefinite duration when the fixed-term employment contracts have reached a certain duration, is not obliged to require that the employment contract of indefinite duration reproduces in identical terms the principal clauses set out in the previous contract. However, in order not to undermine the practical effect of, or the objectives pursued by, Directive 1999/70, that Member State must ensure that the conversion of fixed-term employment contracts into an employment contract of indefinite duration is not accompanied by material amendments to the clauses of the previous contract in a way that is unfavourable overall to the person concerned when the subject-matter of that person's tasks and the nature of his functions remain unchanged.

Creator: European Court of Justice (ECJ)
Verdict at: 2012-03-08
Case number: C-251/11