SUMMARY

ECJ 11 November 2010, case C-20/10 (Vino Damiano – v – Poste Italiane SpA), Fixed-term work

<p>Clause 8(3) of the Framework Agreement does not preclude a national measure such as Paragraph 2(1bis).</p>

Facts

Until 1987, Italian law did not allow fixed-term employment contracts except for certain specific reasons. In 1987, the law was relaxed somewhat by allowing collective agreements to provide that a fixedterm contract may be concluded without giving a reason, provided that no more than a certain percentage of the workforce was employed on the basis of such a contract. In 1994, and again in 2001, the Italian Postal Service ("Poste Italiane") entered into collective agreements with the relevant unions, which authorised it to employ a maximum of (initially) 10% and (then) 5%, respectively, of its workforce for a fixed term. Italy transposed Directive 1999/70 in 2001 by means of Law 368/2001. It provides that workers may only be hired for a fixed term for technical, production or organisational reasons or in order to replace another temporarily absent worker, such reason to be specified in writing. On 1 January 2006, a new provision (Paragraph 2(1bis)) was added to Law 368/2001, for budgetary reasons. It allows postal service companies to hire workers for a maximum duration of six months (in summer) or four months (at any time of the year) without providing any reason, up to a maximum of 15% of the workforce. Poste Italiane hired Mr Vino for a fixed term from 1 April to 31 May 2008. It gave no reason for offering a fixed term rather than a permanent contract. Mr Vino applied to the local court, seeking a declaration that his contract was unlawful.

National proceedings

The court was uncertain whether Paragraph 2(1bis) is compatible with the Framework Agreement implemented by Directive 1999/70 ("The Framework Agreement"), in particular Clause 8(3), which provides that "Implementation of this agreement shall not constitute valid

grounds for reducing the general level of protection afforded to workers in the field of the agreement". It noted that Paragraph 2(1bis) reduced the level of protection previously enjoyed by workers without introducing any compensatory measures. This reduction was not limited to any particular category of workers, given that Poste Italiane hired over 21,000 fixed-term workers in 2008, during which time it had approximately 147,000 permanent workers. The court also had other doubts regarding the compatibility of Paragraph 2(1bis) with the Framework Agreement.

ECJ's findings

1. The ECJ begins by noting that it had already answered questions 1, 2 and 6 in previous rulings (Mangold, Angelidaki, Sorge and Koukou) by holding that Clause 8(3) of the Framework Agreement does not prohibit any reduction in the level of protection of fixed-term workers, only such reductions that (i) form part of an implementation of the Framework Agreement and (ii) reduce the general level of protection (§ 27-35).

2. As already held in Mangold, Clause 8(3) of the Framework Agreement, where it refers to "implementation of this agreement", relates not merely to the initial transposition of the Directive but covers all domestic legislation intended to ensure that the objective pursued by the Directive may be attained. This includes legislation that, after transposition in the strict sense, adds to or amends domestic rules previously adopted. However, such legislation cannot be regarded as conflicting with Clause 8(3), if the reduction it entails is in no way connected to the implementation of the Framework Agreement – for example, if the reduction is justified not by the need to put the Framework Agreement into effect, but by the need to encourage another objective, one that is distinct from that implementation. It is clear that the removal of the duty on employers such as Poste Italiane, to specify an objective reason for hiring someone for a fixed term, does not result from the adoption of Law 368/2001. On the contrary, that removal was enacted for budgetary reasons and to increase the postal services' efficiency in the light of Directive 97/67 on postal services (§ 36-42).

3. There is no indication that the removal reflected a desire by the legislature to revisit the transposition of the Framework Agreement and thus to create a new balance between the rights of employers and employees. Therefore, Paragraph 2(1bis) cannot be considered as being linked to the implementation of the Framework Agreement, and it is not incompatible with Clause 8(3) of the Framework Agreement. Given this fact, there is no need to investigate whether Paragraph 2(1bis) reduced the "general level of protection" (§ 43-48).

4. The Framework Agreement prohibits discrimination between permanent workers and

fixed-term workers, but only in respect of their terms of employment. The discrimination resulting from the duration of the employment itself is not caused by any EU legislation, so that the ECJ has no jurisdiction to rule on it (§ 49-65).

5. The referring court's fifth question related to Poste Italiane's monopoly position. This aspect of the case is not relevant to EELC.

Ruling

Clause 8(3) of the Framework Agreement does not preclude a national measure such as Paragraph 2(1bis).

Creator: European Court of Justice (ECJ)
Verdict at: 2010-11-11
Case number: C-20/10