

SUMMARY

**ECJ 18 January 2011, case C-272/10
(Souzana Berziki-Nikolakaki – v
– ASEP and Aristoteleio
Panepistimio Thessalonikis), Fixed-
term work**

Facts

Ms Berziki was employed as a full-time microbiologist by the University of Thessaloniki on the basis of five consecutive fixed-term contracts, the fifth of which ran from July to December 2004. On 19 July 2004, the Greek law transposing Directive 1999/70 on fixed-term work, Presidential Decree 164/2004 (“the Decree”), which was published in the Greek Official Gazette, came into effect. This was more than two years after the transposition deadline (10 July 2002) had expired. Presidential Decree 164/2004 limits the use of fixed-term contracts in accordance with the Framework Agreement implemented by Directive 1999/70 (“the Directive”). This case concerns the transitional provisions of the Decree, as provided in Article 11. Article 11(1) of the Decree provided that fixed-term contracts that were in force on 19 July 2004 or had expired less than three months previously, converted into permanent contracts, if certain conditions were satisfied. Article 11(2) provided that an employee who believed that he or she satisfied these conditions had to inform the relevant authority (in this case, the “ASEP”) in writing within two months of 19 July 2004, i.e. no later than 19 September 2004. Failure to do so would lead to the loss of the conversion into permanent employment. Ms Berziki applied for conversion of her (fifth) fixed-term contract on 15 October 2004. The ASEP turned down her application on the basis that it had been submitted too late, namely after the 19 September 2004 deadline. Ms Berziki applied to the local court, seeking to annul the ASEP’s decision.

National proceedings

The court found it necessary to refer three questions to the ECJ, given the fact that the two-month deadline is shorter than similar deadlines in domestic Greek law and that many of the persons eligible to take advantage of the Decree had not read its publication in the Official Journal in time. The first two questions essentially asked whether the Decree was compatible with the Directive. The third question related to Clause 8(3) of the Framework Agreement, which provides that implementation of that agreement does not constitute valid grounds for reducing the general level of protection afforded to workers in the field of the agreement.

ECJ's ruling

1. The ECJ recalls that it already answered the first two questions in its rulings in the cases of Angelidaki (C-378/07), Vassilakis (C-364/07) and Koukou (C-519/08). In those cases, the ECJ held that the conditions imposed by the Decree for conversion of a fixed-term contract into a permanent one are not, in principle, incompatible with the Directive. It also held that it is up to the national courts to determine whether the measures laid down in Article 11 of the Decree are appropriate for the purpose of punishing any misuse of fixed-term employment contracts that took place between 10 July 2002 and 19 July 2004 (Angelidaki § 171), provided that those measures bestow an effective protection against such misuse (§ 29-36).
2. The means that an employee has at his or her disposal to exercise rights under the Directive must not be inferior to those that he or she has to exercise similar rights under domestic law (equivalency principle). The means must not be such as to render the exercise of those rights impossible or excessively difficult (effectiveness principle). In this regard, the referring court noted that in the past the Greek legislature had systematically extended deadlines for exercising similar rights under domestic law. However, those extensions are no longer in effect, and the referring court mentions no other facts indicating a more favourable treatment of claims under domestic Greek law as compared to claims under the Directive. Thus, the equivalency principle does not seem to have been breached (§ 37-41).
3. As for the effectiveness principle, a period of two months is sufficient (§ 48-55).
4. It is up to the Greek courts to determine whether publication of the Decree in the Official Gazette is sufficient to initiate the two-month deadline (§ 56-59).
5. As for the third question, the ECJ already provided an answer in previous rulings, including Mangold, Angelidaki, Sorge, Koukou and Vino. In those rulings, the ECJ held that a reduction as provided in Clause 8(3) of the Framework Agreement must (i) be linked to the implementation of that agreement and (ii) relate to "the general level of protection". These conditions have not been met (§ 62-77).

Ruling

The Decree is not incompatible with the Directive.

Creator: European Court of Justice (ECJ)

Verdict at: 2011-01-18

Case number: C-272/10