

SUMMARY

ECJ 21 September 2016, case C-614/15 (Popescu), Fixed-term employment

<p>The fact that veterinary health inspections are non-permanent in nature does not justify successive fixed-term contracts unless the renewal of those contracts is in fact aimed at covering a specific need in the relevant sector, without the underlying reason being budgetary considerations.</p>

Summary

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Facts

Ms Popescu was employed by the Veterinary Health Directorate under eight consecutive fixed-term contracts. Her job was to inspect slaughterhouses and meat processing plants. Each contract was for the duration of operation of the establishment. Article 82 of the Romanian Labour Code provides that the number of successive fixed-term contracts concluded by the same parties may not exceed three and each contract may not exceed 12 months in duration. Article 83(h) allows derogations “in the cases expressly provided for by specific legislation or in order to complete work, projects or programmes”. Article 19(4) of Government Order No 42/2004 (the ‘contested provision’) is such a derogation. It allows the Veterinary Health Directorate to extend the contracts of veterinary health inspectors beyond the maximum term “so long as the circumstances in which they were concluded continue to exist, provided that the financial resources available in that respect are guaranteed, until a new individual employment contract is concluded following the organisation of a competition”.

National proceedings

Ms Popescu applied to the local tribunal seeking to have the various extensions of her contract declared void and to have it recategorised as a contract of indefinite duration. The tribunal dismissed claim. Ms Popescu appealed. The Court of Appeal was divided. The majority opinion held that the contested provision comes within the exception laid down in Article 83(h) of the Labour Code. The minority opinion held otherwise. The court referred questions to the ECJ, noting that much litigation on the same subject was pending. The questions were, essentially, whether Clause 5(1) of the Framework Agreement annexed to Directive 1999/70 must be interpreted as precluding national rules, such as those at issue in the main proceedings, under which the renewal of successive fixed-term employment contracts, in the public sector, is deemed justified by 'objective reasons' within the meaning of that clause on the sole ground that inspections performed by staff employed in the veterinary health sector are non-permanent in nature, due to the variations in volume of the activities of the establishments to be inspected.

ECJ's findings

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Since the Framework Agreement does not exclude any particular sector from its scope, it applies to staff recruited in the veterinary health inspection sector (§34).

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Clause 5(1) of the Framework Agreement assigns to Member States the general objective of preventing abuse of the use of successive fixed-term contracts, while leaving to them the choice as to how to achieve it, provided that they do not compromise the objective or the practical effect of the Framework Agreement. Where, as in the present instance, EU law does not lay down any specific penalties in the event that abuse is established, it is incumbent on the national authorities to adopt measures that are not only proportionate, but also sufficiently effective and a sufficient deterrent to ensure that the provisions adopted pursuant to the Framework Agreement are fully effective (§40-41).

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While, in the absence of relevant EU rules, the detailed rules for implementing these

provisions are a matter for Member States under their procedural autonomy, they must not, however, be less favourable than those governing similar domestic situations (i.e. the principle of equivalence) or render it impossible or excessively difficult in practice for people to exercise their rights under EU law (i.e. the principle of effectiveness). It is therefore for the referring court to determine to what extent the conditions for application and the actual implementation of the relevant provisions of national law make it an appropriate measure for preventing and, where necessary, punishing the misuse of successive fixed-term contracts (§42-45).

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As Government Order No 42/2004 does not contain a measure equivalent to that laid down in Clause 5(1) of the Framework Agreement, the renewal of fixed-term employment contracts in veterinary health inspection may be permitted only if justified by an 'objective reason' within the meaning of Clause 5(1)(a) of the Framework Agreement. According to case-law, an 'objective reason' must refer to precise and concrete circumstances characterising a given activity, which are therefore capable in the context, of justifying the use of successive fixed-term employment contracts. Those circumstances may result, for example, from the specific nature of the tasks to be performed, from the inherent characteristics of those tasks or from the pursuit of a legitimate social policy objective of a Member State. On the other hand, a national provision which merely authorises recourse to successive fixed-term employment contracts in a general and abstract way, does not accord with the requirements of the Framework Agreement. Such a provision does not permit objective and transparent criteria to be identified to verify whether the renewal of a contract responds to a genuine need and is appropriate for achieving the objective pursued and necessary for that purpose. Such a provision therefore carries a real risk that it will result in misuse of that type of contract and is therefore incompatible with the objective of the Framework Agreement and the requirement that it have practical effect (§46-51).

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In the case of Ms Popescu, the frequency and volume of the inspections to be carried out is likely to vary according to the activities of the establishments to be inspected, which themselves are subject to certain variations. The fact remains, however, that the case file submitted to the Court contains nothing establishing how those characteristics are specific to the sector in question or why they demonstrate only temporary staffing needs justifying the non-permanent nature of inspection assignments. The allegedly non-permanent nature of inspection assignments is contradicted by the fact that the extensions to the fixed-term

employment contract of the claimant in the main proceedings have resulted in her providing services over an uninterrupted period of six years and seven months – so that the employment relationship has satisfied not only a temporary staffing need, but a permanent one (§52-61).

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Whilst budgetary considerations may underlie a Member State's choice of social policy and influence the nature or scope of the measures it adopts, they do not in themselves constitute an aim pursued by that policy and, therefore, cannot justify the lack of a measure preventing the misuse of successive fixed-term employment contracts (§63).

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Whilst national legislation permitting the renewal of successive fixed-term employment contracts in order to replace staff pending the outcome of competitive selection procedures can be justified by an objective reason, the application of that reason must be consistent with the requirements of the Framework Agreement, having regard to the particular features of the activity concerned and the conditions under which it is carried out (§64).

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In order for clause 5(1)(a) of the Framework Agreement to be complied with, it must therefore be specifically verified that the renewal of successive fixed-term employment contracts is intended to cover temporary needs and that a national provision such as the one at issue in the main proceedings is not, in fact, being used to meet permanent staffing needs. It is necessary to consider all the circumstances of the case, in particular, the number of contracts concluded with the same person or for the purposes of performing the same work, to ensure that fixed-term contracts ostensibly concluded to meet a need for replacement staff, are not misused by employers (§65-66).

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It is apparent that on the date the request for a preliminary ruling in the present case was made, the claimant had not been provided with any information as to the progress of any competition procedures, much less any indication as to their outcome, which was highly uncertain (§67).

Order

Clause 5(1) of the of the Framework agreement on fixed-term work must be interpreted as precluding national rules, such as those at issue in the main proceedings, under which the renewal of successive fixed-term employment contracts in the public sector, is deemed justified by ‘objective reasons’ within the meaning of that clause on the sole ground that inspections performed by staff employed in the veterinary health sector were non-permanent in nature due to the variations in volume of the activities of the establishments to be inspected, unless the renewal of those contracts is actually aimed at covering a specific need, without the underlying reason being budgetary considerations, which it is for the national court to verify. Moreover, the fact that the renewal of successive fixed-term contracts is done pending completion of competition procedures does not make those rules compliant with that clause if this leads to the abusive use of fixed-term employment contracts. This is also for the national court to verify.

Creator: European Court of Justice (ECJ)

Verdict at: 2016-09-21

Case number: C-614/15 (Popescu)