

3. The Court of Justice of the European Union has no jurisdiction to answer the fourth question.

ECJ 14 September 2016, joined cases C-184/15 (Martínez Andrés) and C-197/15 (Castrejana López), Fixed-term work

Florentina Martínez Andrés – v – Servicio Vasco de Salud and Juan Carlos Castrejana López – v – Ayuntamiento de Vitoria

Summary

The penalty for abuse of successive fixed-term contracts must be available to all victims of such abuse, including those employed under administrative, rather than employment, law. National law may not require a victim to bring a new action before a different court in order to determine the penalty.

Facts

Ms Martínez Andrés was hired for a fixed term in the health sector. Her initial contract stated that she was appointed to provide services of a temporary, auxiliary or extraordinary nature. That contract was renewed on 13 consecutive occasions. None of the renewals contained any specific reference to the reason for the renewal, save for a general reference to ‘service requirements’. When Ms Martínez Andrés’ last contract was not renewed, she made a claim before an administrative court. She argued that the three situations in which the relevant Spanish law allow successive fixed-term contract (i.e. the completion of a specific task, a temporary excess of work and replacement) cannot be justified by grouping them into a single general category.

Mr Castrejana López was hired by a municipality as an architect based on several successive fixed-term contracts. He brought proceedings before the same administrative court as Ms Martínez Andrés.

National proceedings

The referring court referred three questions to the ECJ in respect of the Framework Agreement on fixed-term work annexed to Directive 199/70/EC. The first and second were, in essence, whether Clause 5(1) of the

Framework Agreement must be interpreted as precluding national legislation, such as that at issue in the main proceedings, from being applied by the national courts of the Member State concerned in such a manner that, in the event of misuse of successive fixed-term employment contracts, a right to maintain the employment relationship is granted to persons employed by the authorities under an employment contract governed by the rules of employment law, but that right is not conferred to staff employed by those authorities under administrative law. To understand this question it is necessary to know that the Spanish Supreme Court has, for the private sector, established the concept of ‘workers having non-permanent contracts of indefinite duration’.

The third question, which related only to Mr Castrejana López, was whether the provisions of the Framework Agreement, read in conjunction with the principle of effectiveness, must be interpreted as precluding national procedural rules which require a fixed-term worker to bring a new action in order to determine the appropriate penalty, where misuse of successive fixed-term employment contracts has been established, rather than being able to claim compensation for the harm suffered by means of an interlocutory application in the course of the proceedings in which misuse had been found.

ECJ's findings

1. Although EU law lays down an obligation on Member States to adopt preventive measures, it does not lay down any specific sanctions where instances of abuse have been found. In such a case, the national authorities must adopt measures that are not only proportionate, but also sufficiently effective and deterrent to ensure that the measures taken pursuant to the Framework Agreement are fully effective. In the absence of relevant EU rules, the detailed rules for implementing such measures, which are a matter for the domestic law of the Member State must not, however, be less favourable than those governing similar domestic situations (i.e. the principle of equivalence) or render the exercise of rights conferred by EU law impossible in practice or excessively difficult (i.e. the principle of effectiveness). Therefore, where abuse resulting from the use of successive fixed-term employment contracts has taken place, a measure offering effective and equivalent guarantees for the protection of workers must be capable of being applied in order to penalise that abuse and nullify the consequences of the breach of EU law (§36–38).
2. Clause 5 of 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. It leaves it to Member States to determine the conditions under which fixed-term employment contracts

should be converted. It follows that the Framework Agreement does not specify the conditions under which contracts of indefinite duration may be used (§39).

3. Clause 5 does not preclude a Member State from treating the abuse of successive fixed-term employment contracts differently according to whether the employer is public or private sector. However, in order for legislation to be regarded as compatible with the Framework Agreement in circumstances in which the public sector absolutely prohibits the conversion of fixed term contracts into indefinite ones, the domestic law of the Member State concerned must include another effective measure for that sector to prevent and penalise the misuse of successive fixed-term employment contracts (§40-41).
4. If the referring court finds that, in Spanish law, there is no other effective measure to prevent and penalise abuses of staff employed in public authorities under administrative law, such a situation is likely to undermine the purpose and practical effect of the Framework Agreement. Member States are obliged to achieve the result envisaged by EU directives, based on their duty under Article 4 TEU to take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations. The courts are similarly bound. Accordingly, it is for all the authorities of the Member State concerned to ensure that Clause 5(1) of the Framework Agreement is complied with. This means ensuring that workers who have experienced abuse resulting from the misuse of successive fixed-term employment contracts are not deterred from asserting their rights. In particular, the national court hearing the case must satisfy itself that the penalties provided for by national law can be applied to employers of all fixed-term workers based on Clause 3(1) of the Framework Agreement, regardless of how their contracts are classified under domestic law (§49-52).
5. If there is no other equivalent and effective protective measure that can be used for staff employed in the public authorities under administrative law, the assimilation of those fixed-term staff with ‘workers having non-permanent contracts of indefinite duration’, in accordance with the existing national case-law, could constitute a measure capable of penalising abuse resulting from abuse of fixed-term employment contracts and could eliminate the consequences of infringement of the provisions of the Framework Agreement (§53).
6. In the absence of EU rules on the matter, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down detailed procedural rules aimed at safeguarding rights for individuals derived from EU law. The requirements of equivalence and effectiveness, which embody the general obligation on Member States to ensure judicial protection of an individual’s rights under EU law apply equally to the designation of courts with jurisdiction to hear claims based on

EU law. Failure to comply with those requirements at EU level is – just like a failure to comply with them as regards the definition of detailed procedural rules – liable to undermine the principle of effective judicial protection (§57-59).

7. As regards the principle of effectiveness, the national procedural provisions at issue must be analysed by reference to the role of those provisions in the procedure as a whole and to the progress and special features of the procedure before the various national bodies. It is therefore necessary to take into consideration the principles underlying the national legal system, such as the protection of the rights of the defence, the principle of legal certainty and the proper conduct of proceedings. In the present case, it appears that the national court hearing the case may not be in a position to rule on any claim for damages suffered by the worker in question under the applicable national procedural rules (§61-62).
8. Even if national law provides for an independent administrative body competent to reclassify fixed-term employment contracts as contracts of indefinite duration, the fact remains that requiring a fixed-term worker to bring a new action before a different court to determine a penalty for misuse of successive fixed-term contracts, does not comply with the principle of effectiveness, as it may result in procedural disadvantages for the worker, for example, in terms of cost, duration and the rules of representation (§63).

Judgment

1. Clause 5(1) of the Framework Agreement must be interpreted as precluding national legislation, such as that at issue in the main proceedings, from being applied by the national courts of the Member State concerned in such a manner that, in the event of abuse resulting from the use of successive fixed-term employment contracts, a right to maintain the employment relationship is granted to persons employed by the authorities under an employment contract governed by the rules of employment law, but that right is not generally conferred on staff employed by those authorities under administrative law, unless there is another effective measure in national law to penalise abuses. This is for the national court to determine.
2. The provisions of the Framework Agreement, read in conjunction with the principle of effectiveness, must be interpreted as precluding national procedural rules which require a fixed-term worker to bring a new action in order to determine the appropriate penalty for abuse resulting from use of successive fixed-term contracts if there would be procedural disadvantages for the worker, in terms, *inter alia*, of cost, duration and the rules of representation, making it excessively difficult for the worker to exercise his or her rights under EU law.