

Case Reports

2017/18

Employment Tribunal confirms applicability of the Fixed-Term Employees (Prohibition of Discrimination) Law, 98(I)/2003, to civil servants (CY)

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Summary

The rule has been confirmed again: the Fixed Term Employees (Prohibition on Discrimination) Law, Law 98(I)/2003 and EU Directive 1999/70 (the ‘Directive’) apply equally to all indefinite term contracts of both public and private sector employees and any remedy provided by the employer for failure to comply must be fair and equitable.

Facts

Applicant 1 and Applicant 2 were actors who had been employed by the Cyprus Theatre Organisation, the CTO, since 1996 and 2001 respectively. Both Applicants were on one-year fixed term contracts which automatically rolled over every year prior to their expiry, without interruption, until the date the employment was terminated on 30 September 2012. The reasons given for termination of the Applicants’ employment was that CTO had decided not to renew their fixed term employment contracts for another year.

The Applicants filed a claim at the Court of Industrial Disputes requesting reinstatement under the terms set

out in Law 98(I)/2003, or alternatively, compensation for unlawful dismissal.

The position of the Applicants was that in accordance with Article 7 of Law 98(I)/2003, their employment had become permanent, as they had been employed on a fixed term contract for more than 30 months. Any provision in the contract that limited its duration would be ineffective unless the employer could prove that it was justified by objective reasons.

CTO argued that there were objective grounds associated with the way actors were recruited and that this justified the fixed duration of their contracts.

Judgment

In making its decision, the Court examined two legal parameters. Firstly, whether the Applicants’ employment was governed by public or private law and secondly, whether Law 98(I)/2003 applied to both public and private sector employees. To arrive at an appropriate level of compensation, the Court had to decide whether the Applicants’ period of service should be determined as running from their date of hire or from 25 July 2003, which was the date Law 98(I)/2003 came into force, and whether the Court was justified in exercising its discretion to award aggregated damages.

With regard to the period of employment, the Applicants argued that this should count from the date they were first employed, since Law 98(I)/2003 did not alter the pre-existing legal regime but simply supplemented it. They further argued that Law 98(I)/2003 and its harmonisation with the Directive was actually irrelevant to their employment status, since their employment was deemed to be permanent in accordance with Article 5(d) of the Termination of Employment Law, Law 24/1967 – applicable prior to the implementation of Law 98(I)/2003.

The Applicants further argued that the Court should exercise its discretion to award increased damages to the Applicants on the basis that the positions they held were high ranking within the CTO and that the state of the employment market within the acting profession would not make it easy for them to find alternative work.

CTO argued in response that Article 7(3) of Law 98(I)/2003 explicitly states that any period of employment prior to the date the law came into force would not

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count towards converting a fixed term employment to a permanent one. In addition, although they recognized that the applicants had worked at CTO for a number of years in high ranking position with high salaries, the Applicants should not be awarded increased damages as it was not certain that they would find difficulty finding new employment.

The Court found that although the Applicants were hired by CTO on fixed term contracts, the needs fulfilled by their work were permanent needs. It also found that CTO was a governmental organisation and the employment of the Applicants was therefore governed by public law regulations, and not by private law.

In reaching its decision, the Court drew guidance from the Supreme Court rulings in the cases of *Avraam – v – The Republic of Cyprus (2008) 3 AAD 49*¹ and *CTO – v – Sofokleous (Civ. Appeal 512/2012)*, where it decided that the provisions of Law 98 (I)/2003, the Directive and the Constitution applied to fixed term employees in the public sector, including governmental organisations such as CTO.

Therefore, Law 98 (I)/2003 and the Directive applied to all employees hired on fixed term contracts either in the private or public sector. According to Law 98(I)/2003 and the Directive, all fixed term employees whose employment converts into permanent contracts, acquire rights and these should be guaranteed equitably and fairly by the Court of Industrial Disputes. In this case, any rights acquired by the Applicants as a result of termination of employment are acquired under the provisions of Law 98(I)/2003 and the Directive, rather than under any other legislative provision.

With regards to whether their service ran from their date of hire or from 25 July 2003, the date on which Law 98(I)/2003 entered into force, the Court clarified that Law 98(I)/2003 had no retroactive effect and that therefore, any period of employment of the Applicants that occurred before the date Law 98(I)/2003 entered into force could not be considered for the purpose of the conversion fixed-term contracts into permanent ones or for acquiring any rights arising from its implementation. Thus, to calculate compensation for unlawful dismissal purposes, the Court considered the Applicants' hiring date to be 25 July 2003.

In summary, the Court considered the termination of the Applicants' employment as unlawful, given that their employment should have been considered as permanent, and in the absence of legitimate grounds for termination, the failure to renew their contracts was unlawful.

Commentary

This ruling is in line with the ruling of the Supreme Court in the cases of *Avraam – v – The Republic of Cyprus (2008) 3 AAD 49* and *CTO – v – Sofokleous (Civ. Appeal 512/2012)*, which follow the ECJ case, C-2060/04. Thus, the prevention and settlement of disputes arising about fixed term contracts must be in accordance with law, collective agreements and practices at the national level.

As confirmed by the Court, Law 98(I)/2003 and the Directive apply to all employees on contracts of indefinite duration in both the private and public sectors, and the remedies provided by the court in cases of illegality on the part of the employer, must be fair and equitable.

Subject: Fixed-term work

Parties: 1. Stavros Louras 2. Giorgos Mouaimis – v – Cyprus Theatre Organization

Court: Court of the Industrial Disputes, Employment Tribunal

Date: 21 March 2017

Case number: 839/2012, 840/2012

1. Following ECJ case of 13 September 2007, C-260/04.