Question

1. Must Clause 1 and Clause 5(2) of the framework agreement be interpreted as meaning that the expression 'successive fixed-term employment contracts' therein also covers the automatic extension of the fixed-term employment contracts of workers in the cleansing sector of local and regional authorities, which has taken place in accordance with express provisions of national law, notwithstanding the fact that the generally prescribed formal requirement that successive contracts be concluded in writing has been disregarded?
2. If the answer to the first question is in the affirmative, must Clause 5(1) of the framework agreement be interpreted as meaning that, where an abuse of successive fixed-term employment contracts, within the meaning of that provision, has occurred, the obligation incumbent on the referring court to undertake, so far as possible, an interpretation and an application of all the relevant provisions of domestic law capable of duly penalising that abuse and of eliminating the consequences of the infringement of EU law, extends to the application of a provision of national law that permits the conversion of the succession of fixed-term contracts to one employment contract of indefinite duration, even though another provision of national law, of a higher rank in the hierarchy of legal rules as a provision of the Greek constitution, absolutely prohibits, in the public sector, such a conversion?

Ruling

1. Clause 1 and Clause 5(2) of the framework agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as meaning that the expression 'successive fixed-term employment contracts' therein also covers the automatic extension of the fixed-term employment contracts of workers in the cleansing sector of local and regional authorities, which has taken place in accordance with express provisions of national law, notwithstanding the fact that the generally prescribed formal requirement that successive contracts be concluded in writing has been disregarded.
2. Clause 5(1) of the framework agreement on fixed-term work must be interpreted as meaning that, where abuse of successive fixed-term employment contracts, within the meaning of that provision, has occurred, the obligation incumbent on the referring court to undertake, to the fullest extent possible, an interpretation and an application of all the relevant provisions of domestic law capable of duly penalising that abuse and of nullifying the consequences of the breach of EU law extends to an assessment of whether the provisions of earlier national legislation, which remain in force, and which permit the conversion of a succession of fixed-term contracts to one employment contract of indefinite duration, may, where appropriate, be applied for the purposes of that interpretation in conformity with EU law, even though national constitutional provisions impose an absolute prohibition, in the public sector, on such conversion.

ECJ 11 February 2021, Joined Cases C-407/19 and C-471/19 (Katoen Natie Bulk Terminals and General Services Antwerp), Other Forms of Free Movement

Katoen Natie Bulk Terminals NV and General Services Antwerp NV – v – Belgische Staat and Middlegate Europe NV – v – Ministerraad, Belgian cases

Summary

Legislation which reserves dock work to recognised workers may be compatible with EU law if it is aimed at ensuring safety in port areas and preventing workplace accidents. However, the intervention of a joint administrative committee in the recognition of dockers is neither necessary nor appropriate for attaining the objective pursued.

Question

1. Must Articles 49 and 56 TFEU, Articles 15 and 16 of the Charter and the principle of equal treatment be interpreted as precluding national legislation which obliges persons or undertakings wishing to carry out port activities in a port area – including activities which, strictly speaking, are unrelated to the loading and unloading of ships – to have recourse only to dockers recognised as such in accordance with the conditions and arrangements laid down pursuant to that legislation?

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2. Must Articles 45, 49 and 56 TFEU must be interpreted as precluding national legislation under which:
   - the recognition of dockers falls to an administrative committee, composed jointly of members designated by employers' organisations and by workers' organisations;
   - that committee also decides, according to the need for labour, whether or not recognised dockers must be included in a quota of dockers;
   - for dockers not included in that quota, the duration of their recognition is limited to the duration of their employment contract, provided that it is of indefinite duration, it being understood that, pursuant to a transitional provision, that benefit is progressively extended, initially, to dockers who have an employment contract of shorter duration and, subsequently, to those with an employment contract of whatever duration;
   - no maximum period within which that committee must act is prescribed, and
   - only judicial review is provided for against the decisions of the same committee relating to the recognition of a docker?
3. Must Articles 45, 49 and 56 TFEU be interpreted as precluding national legislation under which, unless he or she can show that he or she satisfies equivalent conditions in another Member State, a worker must, in order to be recognised as a docker:
   - be declared medically fit for dock work by an external prevention and protection at work service, to which is affiliated an organisation to which all employers active in the port area concerned must obligatorily become affiliated;
   - pass the psychotechnical tests conducted by the body designated for that purpose by that employers' organisation;
   - attend a three-week preparatory course relating to work safety and obtaining a professional qualification, and
   - pass the final test for that training?
4. Must Articles 45, 49 and 56 TFEU be interpreted as precluding national legislation under which dockers, recognised as such in accordance with the statutory regime that was applicable to them before the entry into force of that legislation, retain, pursuant to that legislation, the status of recognised docker and are included in the quota of dockers provided for in that legislation?
5. Must Articles 45, 49 and 56 TFEU be interpreted as precluding national legislation which provides that the transfer of a docker to the quota of workers of a port area other than that in which he or she obtained his or her recognition is subject to conditions and arrangements laid down by a CLA?
6. Must Articles 45, 49 and 56 TFEU be interpreted as precluding national legislation which provides that logistics workers must hold a 'safety certificate', issued on presentation of their identity card and employment contract and whose issuance modalities and obtainment procedure are fixed by a CLA?

Ruling

1. Articles 49 and 56 TFEU must be interpreted as not precluding national legislation which obliges persons or undertakings wishing to carry out port activities in a port area – including activities which, strictly speaking, are unrelated to the loading and unloading of ships – to have recourse only to dockers recognised as such in accordance with the conditions and arrangements laid down pursuant to that legislation, provided that those conditions and arrangements, first, are based on objective, non-discriminatory criteria known in advance and allow dockers from other Member States to prove that they satisfy, in their State of origin, requirements equivalent to those applied to national dockers and, second, do not establish a limited quota of workers eligible for such recognition.
2. Articles 45, 49 and 56 TFEU must be interpreted as precluding national legislation under which:
   - the recognition of dockers falls to an administrative committee composed jointly of members designated by employers' organisations and by workers' organisations;
   - that committee also decides, according to the need for labour, whether or not recognised dockers must be included in a quota of dockers, it being understood that, for dockers not included in that quota, the duration of their recognition is limited to the duration of their employment contract, such that a new recognition procedure must be initiated for each new employment contract that they conclude, and
   - no maximum period within which that committee must act is prescribed.
3. Articles 45, 49 and 56 TFEU must be interpreted as not precluding national legislation under which, unless he or she can show that he or she satisfies equivalent conditions in another Member State, a worker must, in order to be recognised as a docker:
   - be declared medically fit for port work by an external prevention and protection at work service, to which is affiliated an organisation to which all employers active in the port area concerned must obligatorily become affiliated;
   - pass the psychotechnical tests conducted by the body designated for that purpose by that employers' organisation;
   - attend a three-week preparatory course relating to work safety and obtaining a professional qualification, and
   - pass the final test, in so far as the role conferred on the employers' organisation and, as the case may be, on the recognised dockers' unions in the designation of the bodies responsible for

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conducting such examinations or tests is not such as to call into question the transparent, objective and impartial nature of those examinations or tests.

4. Articles 45, 49 and 56 TFEU must be interpreted as not precluding national legislation under which dockers, recognised as such in accordance with the statutory regime that was applicable to them before the entry into force of that legislation, retain, pursuant to that legislation, the status of recognised docker and are included in the quota of dockers provided for in that legislation.
5. Articles 45, 49 and 56 TFEU must be interpreted as not precluding national legislation which provides that the transfer of a docker to the quota of workers of a port area other than that in which he or she obtained his or her recognition is subject to conditions and arrangements laid down by a collective labour agreement, provided that those conditions and arrangements prove necessary and proportionate to the objective of ensuring safety in each port area, which is for the national court to determine.
6. Articles 45, 49 and 56 TFEU must be interpreted as not precluding national legislation which provides that logistics workers must hold a 'safety certificate', issued on presentation of their identity card and employment contract and whose issuance modalities and obtainment procedure are fixed by a collective labour agreement, provided that the conditions for the issue of such a certificate are necessary and proportionate to the objective of ensuring safety in port areas and the procedure prescribed for its obtainment does not impose unreasonable and disproportionate administrative burdens.

ECJ 25 February 2021, Case C-804/19 (Markt24), Competency

BU – v – Markt24 GmbH, Austrian Case

Summary

Section 5 of Chapter II of Regulation (EU) No. 1215/2012 also apply if an employee in one member state was recruited to work in another member state, even though that work was not performed for a reason attributable to that employer. They preclude the application of national rules of jurisdiction in respect of an action irrespective of whether those rules are more beneficial to the employee. Also, in this situation, the intention expressed by the parties to the contract as to the place of that performance is, in principle, the only element which makes it possible to establish a habitual place of work for the purposes of Article 21(1)(b)(i) of Regulation No. 1215/2012.

Questions

1. Must the provisions laid down in Section 5 of Chapter II of Regulation No. 1215/2012, under the heading 'Jurisdiction over individual contracts of employment', be interpreted as applying to a legal action brought by an employee domiciled in a Member State against an employer domiciled in another Member State in the case where the contract of employment was negotiated and entered into in the Member State in which the employee is domiciled and provided that the place of performance of the work was located in the Member State of the employer, even though that work was not performed for a reason attributable to that employer?
2. Must the provisions set out in Section 5 of Chapter II of Regulation No. 1215/2012 be interpreted as precluding the application of national rules of jurisdiction in respect of an action such as that referred to in paragraph 28 of the present judgment, in a situation where it should be established that those rules are more beneficial to the employee?
3. Must Article 21 of Regulation No. 1215/2012 be interpreted as applying to an action such as that referred to in paragraph 28 of the present judgment. As appropriate, the referring court also requests the Court of Justice to specify the competent forum under that article?

Ruling

1. The provisions set out in Section 5 of Chapter II of Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, under the heading 'Jurisdiction over individual contracts of employment', must be interpreted as applying to a legal action brought by an employee domiciled in a Member State against an employer domiciled in another Member State in the case where the contract of employment was negotiated and entered into in the Member State in which the employee is domiciled and provided that the place of performance of the work was located in the Member State of the employer, even though that work was not performed for a reason attributable to that employer.
2. The provisions set out in Section 5 of Chapter II of Regulation No. 1215/2012 must be interpreted as precluding the application of national rules of jurisdiction in respect of an action such as that referred to in point 1 of the operative part of the present judgment, irrespective of whether those rules are more beneficial to the employee.

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