



Key Issues: Social Policy – fixed term work – penalty for misuse

Case: **Giuseppa Santoro v Comune di Valderice, Presidenza del Consiglio dei Ministri,**

Reference: **Case C-494/16, CJEU (First Chamber), 7 March 2018**

Legislation: **Directive 1999/70/EC**

From 1996 to 2002, Ms Santoro worked as a provider of socially useful services for the municipality of Valderice. She was then employed by that municipality under a continuous and coordinated contractual relationship until the end of 2010. On 4 October 2010 she entered into a part-time contract of employment with that municipality, which was due to end on 31 December 2012. The contract was extended three times until 31 December 2016, that is, for a total period of four years.

Ms Santoro brought an action before the Tribunale di Trapani (District Court, Trapani, Italy), seeking *inter alia* a declaration that those fixed-term contracts were unlawful, an order that the municipality of Valderice compensate in kind the loss suffered, by ordering the establishment of an employment relationship of indefinite duration, and, in the alternative, an order that the municipality award her financial compensation for that loss by compensating her and by granting her treatment, in legal terms, identical to that of a worker of that municipality employed for an indefinite period and having the same length of service as her.

The Tribunale di Trapani decided to stay the proceedings and to refer a number of questions to the Court of Justice EU (CJEU) for a preliminary ruling on the interpretation of Council Directive 1999/70/EC.

Consideration by CJEU

The CJEU recalled that the purpose of clause 5(1) of the Framework Agreement (which is set out in the annex to Council Directive 1999/70/EC) is to implement one of the objectives of that agreement, namely to place limits on successive recourse to fixed-term employment contracts or relationships, which are regarded as a potential source of abuse to the detriment of workers, by laying down as a minimum a number of protective provisions designed to prevent the status of employees from being insecure.

It follows that clause 5(1) of the Framework Agreement requires Member States, in order to prevent the misuse of successive fixed-term employment contracts or relationships, to adopt one or more of the measures listed in that provision, where their domestic law does not include equivalent legal measures. The measures listed in clause 5(1)(a) to (c), of which there are three, relate, respectively, to objective reasons justifying the renewal of such

contracts or relationships, the maximum total duration of successive fixed-term employment contracts or relationships, and the number of renewals of such contracts or relationships.

The Member States enjoy a certain discretion in this regard since they have the choice of relying on one or more of the measures listed in clause 5(1)(a) to (c) of the Framework Agreement, or on existing equivalent legal measures, while taking account of the needs of specific sectors and/or categories of workers. In that way, clause 5(1) of the Framework Agreement assigns to the Member States the general objective of preventing such abuse, 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.

Furthermore, where, as in the present instance, EU law does not lay down any specific penalties in the event that instances of abuse are nevertheless 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.

The CJEU held that:

Clause 5 of the framework agreement on fixed-term work concluded on 18 March 1999 (which is set out in the annex to Council Directive 1999/70/EC of 28 June 1999) must be interpreted as not precluding national legislation which, on the one hand, does not punish the misuse of successive fixed-term contracts by a public sector employer through the payment of compensation to the worker concerned for the lack of conversion of the fixed-term employment relationship into an employment relationship of indefinite duration, but, on the other hand, provides for the grant of compensation of between 2.5 and 12 times the last monthly salary of that worker together with the possibility for him to obtain full compensation for the harm by demonstrating, by way of presumption, the loss of opportunities to find employment or that, if a recruitment competition had been duly organised, he would have been successful, provided that such legislation is accompanied by an effective and dissuasive penalty mechanism, a matter which is for the referring court to verify.

Why is this decision important?

Fixed term contracts are common in many workplaces but employers need to act with care to ensure that a chain of successive fixed term contracts does not create a breach of EU law. The obligation to balance such contracts with a right to compensation or alternative employment requires careful consideration and appropriate legal advice.

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