



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 4/12**

Luxembourg, 26 January 2012

Judgment in Case C-586/10

Bianca Küçük

## **The renewal of fixed-term employment contracts may be justified by replacement needs, even where that need is recurring or even permanent**

*However, the non-abusive use of those successive fixed-term contracts may, where necessary, be verified, taking into account their number and cumulative duration*

European Union law<sup>1</sup>, which implements a framework agreement of the European social partners on fixed-term employment, is based on the premise that contracts of indefinite duration are the general form of employment relationship. It accordingly obliges the Member States to adopt measures aimed at preventing any abusive use of successive fixed-term employment contracts. Those measures relate *inter alia* to 'objective reasons' which justify the renewal of such contracts. Under German law the temporary replacement of an employee constitutes such an objective reason, including in cases of replacement to cover maternity or parental leave. Where there is no objective reason for renewing a fixed-term employment contract, under German law that contract becomes a contract of indefinite duration.

Ms Bianca Küçük was employed by the Land Nordrhein-Westfalen (North Rhine-Westphalia, Germany) as a clerk in the court office of the civil procedural division of the Amtsgericht Köln (District Court, Cologne) for a period of 11 years, on the basis of a total of 13 fixed-term employment contracts. Those contracts were always concluded in order to replace court clerks employed for an indefinite duration who were on leave for an indeterminate period because of temporary leave (such as parental leave).

Before the Arbeitsgericht Köln (Labour Court, Cologne, Germany), Ms Küçük argued that her last employment contract had become a contract of indefinite duration in the absence of any objective reason justifying its being limited in time. A total of 13 fixed-term employment contracts concluded successively and without interruption over a period of 11 years cannot, in any event, be deemed to be a response to a temporary need for replacement staff. The Bundesarbeitsgericht (Federal Labour Court), which ultimately has to rule on the case, made a reference to the Court of Justice concerning the interpretation of the relevant provisions of EU law.

In its judgment delivered today, the Court holds that that a temporary need for replacement staff – as provided for under German law – may, in principle, constitute an objective reason under EU law justifying both fixed-term contracts being concluded with replacement staff and the renewal of those contracts.

The mere fact that an employer may have to employ temporary replacements on a recurring, or even permanent, basis and that those replacements may also be covered by the hiring of employees under employment contracts of indefinite duration does not mean that there is no objective reason or that there is abuse. To require automatically the conclusion of contracts of indefinite duration when the size of the undertaking or entity concerned and the composition of its personnel mean that the employer is faced with a recurring or permanent need for replacement staff would go beyond the objectives pursued by the framework agreement of the European social

<sup>1</sup> Council Directive 1999/70/EC of 28 June 1999 concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

partners implemented by European Union law and would disregard the discretion those instruments leave the Member States and the social partners.

However, in the assessment in a specific case of the issue whether the renewal of a fixed-term contract is justified by an objective reason, such as temporary replacement of staff, the national authorities must take account of all the circumstances of the case, including the number and cumulative duration of the fixed-term contracts concluded in the past with the same employer.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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