



Workers in the sector of activity of operatic and orchestral foundations cannot be excluded from protection against the abuse of fixed-term employment contracts

Ms Sciotto was employed from 2007 to 2011 as a ballet dancer by the Fondazione Teatro dell'Opera di Roma under multiple fixed-term contracts. In 2012, she asked the Tribunale di Roma (District Court, Rome, Italy) to declare that the fixed terms applied to those contracts were unlawful and to convert her employment relationship into a contract of unlimited duration.

In 2013, the Tribunale di Roma dismissed that action on the ground that the specific national rules applicable to operatic and orchestral foundations exclude the application to those foundations of rules governing common law employment contracts and thus preclude the conversion of fixed-term employment contracts concluded by those foundations into employment relationships of indefinite duration.

Hearing the dispute on appeal, the Corte d'appello di Roma (Court of Appeal, Rome, Italy) asks the Court of Justice whether EU law¹ precludes **national legislation which excludes the sector of activity of operatic and orchestral foundations from the application of general rules of employment law** penalising the misuse of successive fixed-term contracts by the automatic transformation of the fixed-term contract into a contract of indefinite duration if the employment relationship goes beyond a specific date.

By today's judgment, the Court finds that **the framework agreement on fixed-term work precludes such national legislation where, in the Member State, there is no other effective sanction of abuse found to be present in that sector.**

The Court recalls that the Framework Agreement lays down minimum measures designed to prevent the status of employees from being insecure.² Member States must accordingly adopt at least one of the preventive measures provided for by the Framework Agreement,³ whilst enjoying, in that regard, a certain discretion and the discretion to take account of the particular needs of specific sectors and/or certain categories of workers.⁴

The Court notes that it is apparent from the file that the Italian legislation in the sector of activity of operatic and orchestral foundations does not provide for any limit referred to in the Framework Agreement regarding the maximum total duration of those contracts or the number of renewals of such contracts. In addition, it likewise does not appear that the recourse to successive fixed-term

¹ Framework agreement on fixed-term work concluded on 18 March 1999 ('the Framework Agreement'), which is set out in the Annex to 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)

² Case: [C-212/04 Adeneler and Others](#) see also Press Release No [54/06](#), Joined Cases: [C-22/13 and others Mascolo and Others](#), Joined Cases: [C-494/16 Santoro](#), see also Press Release No [161/14](#).

³ The Framework Agreement obliges Member States to lay down at least one of the following: a measure indicating the objective reasons justifying the renewal of contracts or otherwise a measure determining the maximum total duration of the contracts or the number of renewals of contracts. In addition, in order to ensure that the Framework Agreement is fully effective, a penalising measure must be applied in the event of misuse of successive fixed-term contracts. That measure must be proportionate, effective and a deterrent.

⁴ Case: [C-238/14 Commission v Luxembourg](#) see also Press Release No [21/15](#).

employment contracts in that sector is justified by an objective reason. In that regard, the Court observes that:

- the public nature of operatic and orchestral foundations has no bearing on the protection enjoyed by workers under the Framework Agreement, since the Framework Agreement is applicable to all workers, irrespective of whether their employer is in the public or private sector;
- the fact that Italy has traditionally used fixed-term contracts in the specific sector does not relieve that State from having to comply with the obligations stemming from the Framework Agreement;
- it is not apparent from the file that there is a reason why the objectives relating to the development of Italian culture and the safeguarding of Italian historic and artistic heritage would require employers in the cultural and artistic sector to take on fixed-term staff;
- it is not apparent from the file that temporary needs of the employer justified the renewal of fixed-term employment contracts. On the contrary, Ms Sciotto appears to have been taken on, over several years, to perform tasks which were always similar and therefore for usual programming needs (which the national courts will have to verify);
- budgetary considerations cannot justify the lack of any measure preventing the misuse of successive fixed-term employment contracts;
- it is not apparent from the file that the renewal of fixed-term employment contracts responds to the need to replace staff pending the outcome of competition procedures organised for the purposes of recruiting workers for an indefinite duration.

Concerning the penalties for the misuse of fixed-term contracts, the Court observes that the Framework Agreement does not lay down a general obligation on the Member States to provide for the **conversion into contracts of indefinite duration**. However, **where the national legislation prohibits that type of penalty in a specific sector** (in this case, the operatic and orchestral foundations sector), **there must, in that same sector, be another effective measure to prevent and, where relevant, punish the abuse of successive fixed-term contracts**. It is for the national courts to determine whether such a measure exists in the domestic legal system⁵ and whether it is **sufficiently effective, dissuasive and proportionate** to ensure the application of the Framework Agreement.

The Court notes that, if the national courts were to find that there is no other effective measure in the national legislation to prevent and penalise abuses in respect of staff employed in the operatic and orchestral foundations sector, they would still be **obliged to interpret the national law, so far as possible, in such a way as to penalise that abuse in a due manner and nullify the consequences of the breach of EU law, for example by applying the penalty laid down by general rules of employment law and consisting of automatically transforming a fixed-term contract into a contract of indefinite duration** where the employment relationship goes beyond a specific date.

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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⁵ In this respect, the Italian Government invoked the liability of directors as an effective measure.

