

Court rules on fixed-term employment contracts

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Introduction

In *Holger Briel v Edex-Educational Excellence Corporation Ltd*, the Labour Court recently examined the employment status of an employee after successive fixed-term contracts, and in particular whether he was considered a permanent employee or whether there were objective reasons to justify his temporary employment.

Under Article 7 of the Fixed-Term Employees (Prohibition of Discrimination) Law 2003 (N98(I)/2003), when an employee is employed on a fixed-term contract for 30 months or more, the contract is regarded for all purposes to be permanent and any provision in the contract that limits its duration will be inapplicable unless the employer can prove that employment under a fixed-term contract can be justified for objective reasons. According to the same article, 'objective reasons' exist when the company's need for completion of a task is temporary and the particularity of the ongoing task justifies the contract's fixed duration.

In *Holger*, the court examined the interpretation of 'objective reasons', which was crucial in reaching a decision on whether the applicant's employment contract should remain fixed-term or become permanent.

Facts

On October 1 2008 the applicant was employed by the respondents as an associate professor on a fixed-term contract which was renewed annually. In May 2012 the respondents orally informed the applicant that his services would be terminated on August 31 2012.

On June 6 2012 the respondents sent a letter to the applicant asking him to complete the staff/faculty clearance form for the termination of employment. Through letters from his lawyer dated August 30 2012 and October 12 2012, the applicant asked the respondents to inform him in writing of the reasons for his dismissal. In a letter from their lawyer dated October 25 2012, the respondents requested time to examine the applicant's request, but never provided a response.

The applicant argued that his employment was governed by a fixed-term contract which was renewed annually, and that at the time of his dismissal he had already completed 30 months of employment. As a result, his contract was considered to be permanent under Law 98(I)/2003. Consequently, he claimed that termination of his employment was unlawful, arbitrary and unjust.

The respondents claimed that the applicant was employed on a fixed-term contract that was justified by objective reasons in full compliance with Law 98(I)/2003. To define the claimed objective reasons, the respondents stated that the applicant had been employed on a fixed-term contract to teach a media and communications postgraduate programme, which had not attracted a sufficient number of students despite best efforts. Instead, the programme was operating with a minimum number of students. For this reason, the postgraduate programme for which the applicant was

employed was operating under specific objective conditions. Therefore, the respondents argued that the applicant's employment on a fixed-term contract was justified by objective reasons. The respondents claimed that since the applicant provided services under a fixed-term contract that expired on August 31 2012, the employment contract was legally terminated on its termination date and therefore the applicant was not entitled to compensation or any other remedy.

Issues

The question that the court had to consider when reaching its final decision was the applicant's employment status (ie, whether he had become a permanent employee or whether there were objective reasons justifying his temporary employment). This would determine whether the applicant's dismissal was legal.

The court referred to the Fixed-Term Employees (Prohibition of Discrimination) Law 2003, emphasising that it aimed to harmonise legislation with EU Directive 1999/70/EC on the implementation of the framework agreement regarding fixed-term employment. Specific reference was made to Articles 3 and 7 of the law, which cover the prevention of abuse arising from the use of successive fixed-term contracts.

The court analysed the definition of 'objective reasons', which must exist under Article 7 for employment to be regarded as temporary, and referred to *Kyriaki Angelidaki v Rethymnon Prefecture Agency* (C-378/07 to C-380/07), in which the European Court of Justice accepted that the term includes clear and specific circumstances characterising a particular task, which can justify successive fixed-term employment contracts in a particular context. These circumstances may be the result of the specific nature of the particular tasks for which such contracts have been concluded and the related characteristics of these tasks.

In *Holger*, the main argument that the respondents invoked as an objective reason for not considering the applicant to be a permanent employee was the uncertainty regarding the future of the postgraduate programme that the applicant was employed to teach, as it had not attracted a sufficient number of students. By concluding four successive annual fixed-term contracts with the applicant, the respondents sought to place the business risk on his shoulders, as they were unsure whether they would need his services after the end of each successive fixed-term contract due to the uncertainty of the business.

Decision

The court referred to and finally adopted an extract from *Labour Law, Individual Labour Relations* by D Zerdeli, according to which it is a basic principle that the employer, not the employee, should bear the business risk, and that this risk includes the uncertainty about a business's future staff needs. Fixed-term contracts should not be used as a means to shift this risk from the employer to the employee.

As a result, it found that the respondents had failed to present any particular objective circumstances which could justify the limited duration of the applicant's employment contract; as a result, he was considered to be covered by a permanent contract.

The court decided that there were no legitimate grounds for the dismissal of a permanent employee and therefore the dismissal of the applicant was deemed illegal. The application was accepted.

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