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The Court of Justice of the European Union and fixed-term workers: still fixed, but at least equal

Caroline de la Porte and Patrick Emmenegger

“The CJEU indirectly supports the politics of dualisation”.

This Working Paper focuses on the impact of the directive on fixed-term work and the EU's Court of Justice (CJEU) case law concerning fixed-term work from 2007 and 2013. By doing so, this working paper develops an analytical framework to analyse the Europeanisation of labour law with an eye on the literature on labour-market dualisation.

The findings of this publication show that the fixed-term work directive addresses and affirms the equal treatment of workers, while the position of the CJEU is rather restrictive (especially in cases of clear abuse of fixed-term contract and abusive recourse). The Court indirectly supports the politics of labour dualisation, whereby member states can continue to use fixed-term contracts to increase the labour supply.

Key findings

- The directive on fixed-term work does have potential for Europeanisation in respect of anti-discrimination, recourse to fixed-term work, and conversion of fixed-term contracts into open-ended contracts. However, as a directive it is an incomplete contract characterised by ambiguous norms and exceptions where member states are able to give in differing interpretations.
- The analysis of the CJEU case law shows that the large majority of cases come from continental and in particular Southern European countries with corporatist-conservative welfare states where social rights are derived from labour market participation. In these countries, the increasing of employment rates by means of labour market deregulation has been high on domestic political agendas. In addition, most cases emanate from fixed-term contracts in the public, rather than the private sector.
- In general, equal treatment is the most substantial consideration governing the formulation of CJEU judgments on fixed-term work. In line with the precedents set by the first major Spanish cases, the principle of equal treatment was strongly upheld in subsequent rulings.
- The CJEU rules weakly against age discrimination practices.
- In case of unreasonable renewals of successive fixed-term contracts, the CJEU rulings express an opposition in principle, but with discretion being left to national judges to examine the situation. The rulings do, nonetheless, come out more strongly against unreasonable renewals in cases of gross abuse.
- With regard to conversion of fixed-term to open-ended contracts (and the prevention of successive use of fixed-term contracts), the CJEU in principle aims to facilitate such a transition; in practice, however, its legal base is weak, leaving room for national judges to determine the particularities of cases.
- Furthermore, the CJEU rulings contain repeated reference to clauses of exception, thereby condoning serial fixed-term contracts for the same worker, particularly in relation to the furtherance of social policy objectives