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Court of Justice of the European Union
PRESS RELEASE No 23/18
Luxembourg, 28 February 2018

Judgment in Case C-46/17
Hubertus John v Freie Hansestadt Bremen

The extension of a contract of employment beyond the normal retirement age may be of limited duration

The employee cannot claim that it is an abuse of fixed term contracts

Mr Hubertus John was employed by the City of Bremen (Germany) as a contract teacher. As he was approaching the normal retirement age he asked for permission to continue working beyond that date. The City of Bremen agreed to extend his contract until the end of the 2014/2015 school year. Subsequently, it refused another request by Mr John to extend his contract until the end of the first half of the school year of 2015/2016. Taking the view that the fixed term of the extension granted to him is contrary to EU law, Mr John brought legal proceedings against the City of Bremen.

The Landesarbeitsgericht Bremen (Higher Regional Court, Bremen, Germany), before which the case has been brought, observes that the German legislation in force allows the parties to a contract of employment, subject to certain conditions, to postpone the date of termination of the contract which takes place simply because the worker, by reaching the normal age for retirement, is entitled to a retirement pension.

The Landesarbeitsgericht Bremen asks the Court of Justice whether such legislation is compatible with the prohibition on discrimination based on the grounds of age¹ and with the Framework Agreement on fixed-term work² (an agreement which aims to prevent the misuse of successive fixed-term contracts).

By today's judgment, **the Court declares that the prohibition on discrimination on grounds of age does not preclude a national provision, such as that at issue in the main proceedings, in so far as that provision makes the postponement of the date of termination of the employment of workers who have reached the legal qualifying age for a retirement pension subject to the employer's consent which is given for a fixed term.**

The Court states that the legislation at issue cannot be regarded as unfavourable with regard to persons having reached retirement age as compared with those who have not already reached that age. It constitutes a derogation from the principle of the automatic termination of a contract of employment when the worker reaches normal retirement age and allows the date of termination of the employment relationship to be postponed indefinitely, and on more than one occasion, without any other requirements. The continuation of the employment relationship cannot, in any event, take place without the agreement of both parties to the contract.

As regards the Framework Agreement on fixed-term work, the Court, first, expresses doubts as to whether the extension at issue may be regarded as the use of successive fixed-term contracts. It is possible that such an extension may be regarded as merely the contractual postponement of the retirement age initially agreed.

¹ The prohibition on discrimination is laid down in Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

² Framework Agreement on fixed-term work concluded on 18 March 1999, 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).

In that regard, the Court observes that nothing in the file before it indicates that the contested legislation might encourage the successive use of fixed-term contracts, or that it constitutes a potential source of abuse to the detriment of workers. In any event, it cannot be held that the age limits corresponding to the normal retirement age lead, in every case, to greater insecurity of the situation of the workers concerned, for the purposes of the Framework Agreement, if the latter benefit from a full retirement pension and, in particular, if the employer is allowed to renew the contract of employment concerned

If the Landesarbeitsgericht Bremen were to hold that the extension granted to Mr John must be regarded as the use of successive fixed-term contracts, the Court rules that the Framework Agreement on fixed-term work does not preclude national provisions, such as that at issue in the main proceedings, which allow the parties to an employment contract indefinitely to postpone, by common agreement, and on more than one occasion if necessary, the date of termination of the contract which takes place simply because the worker, by reaching normal retirement age, is entitled to a retirement pension.

In that regard, the Court refers to the observations of the Landesarbeitsgericht Bremen, according to which an employee who reaches the legal standard qualifying age for a retirement pension is not in the same position as other employees, not only because he receives social cover, but also because he is generally at the end of his working life and, with regard to the fixed term of his contract, does not have the alternative of benefitting from an indefinite employment contract. Moreover, the extension at issue guarantees that the initial contractual terms will be maintained, while preserving the right of the worker concerned to receive a retirement pension.

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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