

Limited-Term Contracts with Actors Are Permissible

Pia Pracht

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Decision

In its judgment of 30 August 2017 (Ref.: 7 AZR 864/15), the Federal Labour Court ruled that a limited-term contract was permissible in order to preserve the artistic freedom of the production company in the case of an actor who had been playing the role of a police detective in the ZDF series “Der Alte” for 18 years.

Implications for Practice

Limited-term employment contracts are common in the film and television industry. However, terms of over two years are valid only if justified by a specific reason. That explains why stations and production companies prefer project-related terms (§ 14(1) sent. 2 no. 1 of the Act on Part-Time Employment and Fixed-Term Contracts (Teilzeit-und Befristungsgesetz – TzBfG), for example, for the duration of the production of a series.

In addition, whether or not a limited term is permissible may also depend upon the specific nature of the work involved (§ 14(1) sent. 2 no. 4 of the Act on Part-Time Employment and Fixed-Term Contracts). The broadcasting and artistic freedom of the employer and the employee’s freedom to exercise the profession of his or her choice must be weighed against one another when testing the underlying reason for constitutional compliance. In the opinion of the Federal Labour Court, the employer’s interest in artistic creativity ultimately outweighs the vested interests of the employee, in any case as regards the employment of actors who play a specific role.

This conclusion seems appropriate since production companies and the screenplay writers they employ would otherwise be permanently committed to characters and roles once they are introduced and therefore be deprived of any possibility for the further artistic development of a format. It must in fact be possible to let characters “die” and replace these with other characters.

Conclusion

With its judgment, the Federal Labour Court has now expressly confirmed, first of all, that the practice of using limited-term contracts that is acceptable in the film and television industry may also be adopted by production companies; previously, the case law focused on television stations, which could directly invoke broadcasting freedom. However, the argument of the Federal Labour Court cannot simply be applied to the employment relationships of other creative film and television personnel such as, for example, cameramen or make-up artists, since the argument based on the artistic freedom of a broadcaster or a production company will be less convincing in the case of personnel “behind the camera”.

Legal Update

Note

This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author Pia Pracht on ++49 221 33660-524 or by email to ppracht@goerg.de. For further information about the author visit our website www.goerg.com.

Our offices

GÖRG Partnerschaft von Rechtsanwälten mbB

BERLIN

Kantstraße 164, 10623 Berlin
Phone +49 30 884503-0, Fax +49 30 882715-0

COLOGNE

Kennedyplatz 2, 50679 Köln
Phone +49 221 33660-0, Fax +49 221 33660-80

ESSEN

Alfredstraße 220, 45131 Essen
Phone +49 201 38444-0, Fax +49 201 38444-20

FRANKFURT AM MAIN

Neue Mainzer Straße 69 – 75, 60311 Frankfurt am Main
Phone +49 69 170000-17, Fax +49 69 170000-27

HAMBURG

Dammtorstraße 12, 20354 Hamburg
Phone +49 40 500360-0, Fax +49 40 500360-99

MUNICH

Prinzregentenstraße 22, 80538 München
Phone +49 89 3090667-0, Fax +49 89 3090667-90