Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

9 July 2015 *

(Reference for a preliminary ruling — Social policy — Directive 1999/70/EC — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Clauses 3 and 4 — Principle of non-discrimination — 'Non-permanent staff' — Refusal to grant a three-yearly length-of-service increment — Objective grounds)

In Case C-177/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Supremo (Spain), made by decision of 31 January 2014, received at the Court on 10 April 2014, in the proceedings

María José Regojo Dans

v

Consejo de Estado,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, A. Ó Caoimh (Rapporteur), C. Toader, E. Jarašiūnas and C.G. Fernlund, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Ms Regojo Dans, by J. Pérez de Sevilla y Gitard and A. Regojo Dans, abogados,

— the Spanish Government, by L. Banciella Rodríguez-Miñón, acting as Agent,

— the Italian Government, by G. Palmieri, acting as Agent, and by S. Varone, avvocato dello Stato,

— the European Commission, by R. Vidal Puig and J. Enegren, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 20 May 2015,

gives the following

* Language of the case: Spanish.

Judgment

1 This request for a preliminary ruling concerns the interpretation of clauses 3(1) and 4(4) of the 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 The request has been made in proceedings between Ms Regojo Dans and the Consejo de Estado (Council of State), her employer, concerning the refusal of the latter to grant her three-yearly length-of-service increments because of her particular status as a member of the 'personal eventual' within the meaning of Spanish law (a category of staff appointed on a non-permanent basis, 'non-permanent staff').

Legal context

EU law

3 As set out in Article 1 of Directive 1999/70, the purpose of that directive 'is to put into effect the framework agreement … concluded … between the general cross-industry organisations (ETUC, UNICE and CEEP) annexed hereto'.

4 Clause 1 of the framework agreement provides that the purpose of that agreement is to:

'(a) improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination;

(b) establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships.'

5 Clause 2(1) of the framework agreement is worded as follows:

'This agreement applies to fixed-term workers who have an employment contract or employment relationship as defined in law, collective agreements or practice in each Member State.'

6 The term 'fixed-term worker' is defined in clause 3(1) of the framework agreement as 'a person having an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event'.

7 A 'comparable permanent worker' is defined in clause 3(2) of the framework agreement as 'a worker with an employment contract or relationship of indefinite duration, in the same establishment, engaged in the same or similar work/occupation, due regard being given to qualifications/skills. Where there is no comparable permanent worker in the same establishment, the comparison shall be made by reference to the applicable collective agreement, or where there is no applicable collective agreement, in accordance with national law, collective agreements or practice'.

8 Clause 4 of the framework agreement, entitled 'Principle of non-discrimination', provides at paragraphs 1, 3 and 4 thereof:

'1. In respect of employment conditions, fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation unless different treatment is justified on objective grounds.

…

3. The arrangements for the application of this clause shall be defined by the Member States after consultation with the social partners and/or the social partners, having regard to Community law and national law, collective agreements and practice.

4. Period-of service qualifications relating to particular conditions of employment shall be the same for fixed-term workers as for permanent workers except where different length-of service qualifications are justified on objective grounds.'

9 Clause 5 of the framework agreement, entitled 'Measures to prevent abuse', provides:

'1. To prevent abuse arising from the use of successive fixed-term employment contracts or relationships, Member States, after consultation with social partners in accordance with national law, collective agreements or practice, and/or the social partners, shall, where there are no equivalent legal measures to prevent abuse, introduce in a manner which takes account of the needs of specific sectors and/or categories of workers, one or more of the following measures:

(a) objective reasons justifying the renewal of such contracts or relationships;

(b) the maximum total duration of successive fixed-term employment contracts or relationships;

(c) the number of renewals of such contracts or relationships.

2. Member States after consultation with the social partners and/or the social partners shall, where appropriate, determine under what conditions fixed-term employment contracts or relationships:

(a) shall be regarded as "successive";

(b) shall be deemed to be contracts or relationships of indefinite duration.'

Spanish law

10 Article 149(1)(18) of the Spanish Constitution confers on the State exclusive competence to establish the legal framework of public administrations and the regulations applicable to their civil servants.

11 On the basis of that competence, the State adopted Law 7/2007 on the basic regulations relating to public servants (Ley 7/2007 del Estatuto básico del empleado público) of 12 April 2007 (BOE No 89 of 13 April 2007, p. 16270, 'Law 7/2007').

12 Article 8 of Law 7/2007, entitled 'Definition and categories of public servants', provides:

'1. Public servants are persons who carry out duties for remuneration in the public authorities in the service of the general interest.

2. Public servants shall be classified as:

(a) Career (established) civil servants.

(b) Interim (non-established) civil servants.

(c) Staff engaged under employment contracts, whether permanent, for an indefinite duration or for a fixed term.

(d) Non-permanent staff.'

13 Article 9 of Law 7/2007 defines career civil servants as follows:

'1. Career civil servants are persons who, following an appointment in accordance with the law, are attached to a public authority by a relationship defined by statute and governed by administrative law, for the purpose of performing, on a permanent basis, professional services for remuneration.

2. In any event, the performance of duties which entail direct or indirect involvement in the exercise of public powers or in the safeguarding of the general interests of the State and the public authorities falls exclusively to civil servants under such conditions as are laid down by the implementing law for each public authority.'

14 Article 12 of Law 7/2007 defines non-permanent staff as follows:

'1. Non-permanent staff are persons who, by virtue of their appointment and on a non-permanent basis, perform only duties which are expressly classified as duties consisting in positions of trust or involving the performance of special advisory functions, their remuneration being met from the budget appropriations allocated for that purpose.

2. The laws governing the civil service which are made to implement these Regulations shall determine the governing bodies of the public authorities which may use this type of staff. The maximum number shall be stipulated by the governing bodies concerned. That number and the remuneration conditions shall be made public.

3. Appointments and terminations of appointments shall not be subject to any restrictions. In any event, termination of an appointment shall occur on termination of the appointment of the postholder for whom the duty consisting in a position of trust or involving the performance of advisory functions is discharged.

4. The status of non-permanent staff member cannot constitute a qualification for access to the civil service or for internal promotion …

5. The general rules applicable to career civil servants shall apply to non-permanent staff in so far as those rules are appropriate to the nature of their status.'

15 Article 22 of Law 7/2007, which forms part of Chapter III concerning the rules on the remuneration of public servants, provides that the remuneration of career civil servants is to consist in basic remuneration and additional remuneration.

16 Article 23 of Law 7/2007 provides:

‘The basic remuneration, set out in the Ley de Presupuestos Generales del Estado (Law on the General State Budgets), shall be composed solely and exclusively of:

(a) the salary assigned to each professional classification subgroup or, if there are no subgroups, to each professional classification group;

(b) three-yearly increments consisting of a fixed amount, specific to each professional classification subgroup or, if there are no subgroups, to each professional classification group, for each three-year period of service.’

17 Article 25 of Law 7/2007 provides for the remuneration of interim civil servants as follows:

‘1. Interim civil servants shall receive the basic remuneration and bonus payments corresponding to the subgroup or group to which they are assigned, if the latter has no subgroups. They shall also receive the additional remuneration referred to in Article 24(b), (c) and (d) and that corresponding to the entry category for the body or grade to which they are appointed.

2. There shall be granted the right to three-yearly increments corresponding to services provided before the entry into force of these regulations, which shall take effect with regard to remuneration only from their entry into force.’

18 Article 26(4) of Law 2/2012 of 29 June 2012 on the General State Budgets for the year 2012 (Ley 2/2012 de Presupuestos Generales del Estado para el año 2012) (BOE No 156 of 30 June 2012, p. 46432) provides as follows:

‘Non-permanent staff shall receive remuneration in the form of the salary and bonus payments corresponding to the classification group or subgroup to which the Ministerio de Hacienda y Administraciones Públicas (Ministry of Finance and Public Administration) equates their duties and the additional remuneration corresponding to the post reserved for non-permanent staff which they hold ….

Career civil servants who, while on active duty or on secondment, hold posts reserved for non-permanent staff shall receive the basic remuneration corresponding to their classification group or subgroup, including the three-yearly increments, as appropriate, and the additional remuneration corresponding to the post which they hold.’

19 Law 30/1984 on measures to reform the civil service (Ley 30/1984 de Medidas para la Reforma de la Función Pública) of 2 August 1984 (BOE No 185 of 3 August 1984, p. 22629, ‘Law 30/1984’) includes Article 20, entitled ‘Creation of posts’. Paragraphs 2 and 3 of that Article provide:

‘2. The Government and, within their sphere of competence, the Governments of the Autonomous Communities and the local authorities in plenary session, shall determine the number of posts, together with their characteristics and remuneration, which are reserved for non-permanent staff, within the limits of the budget appropriations allocated for that purpose.

Non-permanent staff shall perform only duties which are expressly classified as consisting in positions of trust or involving the performance of special advisory functions; appointments and terminations of appointments shall not be subject to any restrictions and shall fall exclusively within the competence of Secretaries of State and Ministers and, as appropriate, of Government Ministers of Autonomous Communities and Chief Executives of local authorities. Appointments of non-permanent staff shall

terminate automatically on termination of the appointment of the postholder for whom the duty consisting in a position of trust or involving the performance of special advisory functions is discharged.

3. Under no circumstances shall the holding of a post reserved for non-permanent staff constitute a qualification for access to the civil service or internal promotion.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

20 The applicant in the main proceedings has been employed as a non-permanent member of staff by the Consejo de Estado since 1 March 1996 and she holds the post of head of the secretariat of a Permanent Member of the Council.

21 She was employed, again as a non-permanent member of staff, by the Tribunal Constitucional (Constitutional Court) and the Consejo Económico y Social (Economic and Social Council) from 4 July 1980 to 1 March 1996.

22 On 25 January 2012, the applicant in the main proceedings submitted an application to the Consejo de Estado, requesting, first, that her right to receive three-yearly length-of-service increments for the services she has provided to the various authorities since 1980 be recognised and, secondly, that she be paid the sum corresponding to three-yearly increments for the last four years.

23 By decision of 24 July 2012, the President of the Consejo de Estado rejected that application.

24 The applicant in the main proceedings then brought an action before the referring court for the annulment of that decision, on the ground that it was incompatible with EU law and in particular with clause 4 of the framework agreement.

25 The referring court states that Law 7/2007 does not provide for the granting of three-yearly length-of-service increments to non-permanent staff, contrary to the provision made in respect of career and interim civil servants. Under Law 2/2012, a career civil servant who, while on secondment, holds a post reserved for non-permanent staff will receive the remuneration corresponding to his original career group, including the three-yearly length-of-service increments.

26 It is apparent from the documents before the Court of Justice that, pursuant to the case-law of the Tribunal Supremo (Supreme Court) concerning non-permanent staff, posts of that nature are exceptional and confined to 'positions of trust and special advisory duties'. Consequently, the Tribunal Supremo considers that such staff cannot perform duties which are part of the normal functions of the public administration, be they functions entailing the provision of services to the administration or the adoption of acts relating purely to administrative organisation. As a result of the direct connection they have to the constitutional principles of objectivity and administrative effectiveness, such duties must be assigned to public servants selected according to the principles of equality, merit and ability.

27 Having regard to that case-law, but also to the particular relationship which links the Administration to non-permanent staff, based on special advice and trust, the referring court asks whether, first, such staff may be compared to permanent workers within the meaning of clause 3 of the framework agreement. Secondly, it asks whether the recourse to non-permanent staff should be restricted to cases where the need for them is clearly justified, in order to prevent any abuse, and whether remuneration should be set which is in balance with that set for other public-sector posts entailing duties having a similar professional content.

28 In those circumstances, the Tribunal Supremo decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does the definition of "fixed-term worker" in clause 3(1) of the framework agreement... include "non-permanent staff" who are currently governed by Article 12 of [Law 7/2007] and "non-permanent staff" who were previously governed by Article 20(2) of Law 30/1984 …?

(2) Is the principle of non-discrimination in clause 4(4) of the framework agreement … applicable to such "non-permanent staff", so that they may be granted the right to receive and be paid the remuneration in respect of length of service which is paid to career civil servants, staff engaged under employment contracts for an indefinite duration, interim (non-established) civil servants and staff engaged under fixed-term employment contracts?

(3) Do the rules, laid down in the two aforementioned Spanish laws, whereby the appointment of such "non-permanent staff" and the termination of their appointment are not — on account of the positions of trust involved — subject to any restrictions, come within the objective grounds which under clause 4 may justify different treatment?'

Consideration of the questions referred

The first question

29 By its first question, the referring court asks, in essence, whether the concept of 'fixed-term worker', within the meaning of clause 3(1) of the framework agreement, must be understood as applying to a worker such as the applicant in the main proceedings.

30 As is apparent from the very wording of clause 2(1) of the framework agreement, the personal scope of that agreement is conceived in broad terms, as it covers generally 'fixed-term workers who have an employment contract or employment relationship as defined in law, collective agreements or practice in each Member State' (see judgments in *Adeneler and Others*, C-212/04, EU:C:2006:443, paragraph 56, and *Fiamingo and Others*, C-362/13, C-363/13 and C-407/13, EU:C:2014:2044, paragraph 28 and the case-law cited).

31 In addition, the definition of 'fixed-term workers' for the purposes of the framework agreement, set out in clause 3(1), encompasses all workers without drawing a distinction according to whether their employer is in the public, or private, sector and regardless of the classification of their contract under domestic law (judgment in *Fiamingo and Others*, C-362/13, C-363/13 and C-407/13, EU:C:2014:2044, paragraph 29 and the case-law cited).

32 Having regard to the importance of the principles of equal treatment and non-discrimination, which are among the general principles of EU law, the provisions set out in that regard by Directive 1999/70 and the framework agreement for the purpose of ensuring that fixed-term workers enjoy the same benefits as those enjoyed by comparable permanent workers, except where a difference in treatment is justified on objective grounds, must be deemed to be of general application since they are rules of EU social law of particular importance, from which each employee should benefit as a minimum protective requirement (judgment in *Del Cerro Alonso*, C-307/05, EU:C:2007:509, paragraph 27).

33 Accordingly, Directive 1999/70 and the framework agreement are applicable to all workers providing remunerated services in the context of a fixed-term employment relationship linking them to their employer (judgments in *Del Cerro Alonso*, C-307/05, EU:C:2007:509, paragraph 28, and *Fiamingo and Others*, C-362/13, C-363/13 and C-407/13, EU:C:2014:2044, paragraph 30 and the case-law cited).

34 It must be noted that the mere fact that a worker may be classified as 'non-permanent' under national law or that his employment contract has certain particular features, such as, in the case in the main proceedings, its temporary nature, the fact that appointment or termination is not subject to any restrictions and the fact that the worker is supposed to carry out duties entailing trust and special advice, is irrelevant in that regard. Otherwise, if Member States were permitted to remove at will certain categories of persons from the protection offered by Directive 1999/70 and the framework agreement, the effectiveness of those EU instruments would be in jeopardy, as would their uniform application in the Member States (see, by analogy, judgment in *Del Cerro Alonso*, C-307/05, EU:C:2007:509, paragraph 29).

35 It is apparent from the language of clause 3(1) of the framework agreement that a fixed-term employment contract or relationship is characterised by the fact that the end of that employment contract or relationship 'is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event'. Consequently, an employment contract or relationship, such as that at issue in the main proceedings, which automatically terminates when the person for whom the duties are discharged ceases to hold his post, must be considered to have a term the end of which is determined by the 'occurrence of a specific event' within the meaning of clause 3(1).

36 A worker finding himself in such a situation is therefore covered by clause 3(1) of the framework agreement.

37 The answer to the first question is accordingly that the concept of a 'fixed-term worker', within the meaning of clause 3(1) of the framework agreement, must be interpreted as applying to a worker such as the applicant in the main proceedings.

The second and third questions

38 By its second and third questions, which must be considered together, the referring court asks, in essence, whether clause 4(1) of the framework agreement must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which excludes, without justification on objective grounds, non-permanent staff from the right to receive three-yearly length-of-service increments granted, inter alia, to career civil servants.

39 As is apparent from their wording, those questions do not seek an interpretation of clause 5 of the framework agreement, which is intended specifically to prevent abuse arising from the use of successive fixed-term employment contracts or relationships (judgment in *Deutsche Lufthansa*, C-109/09, EU:C:2011:129, paragraph 32).

40 According to clause 1(a) of the framework agreement, one of the objectives of that agreement is to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination. Similarly, the third paragraph in the preamble to the framework agreement states that it 'illustrates the willingness of the Social Partners to establish a general framework for ensuring equal treatment for fixed-term workers by protecting them against discrimination'. Recital 14 in the preamble to Directive 1999/70 states with that in view that the aim of the framework agreement is, in particular, to improve the quality of fixed-term work by setting out minimum requirements in order to ensure the application of the principle of non-discrimination (see judgments in *Gavieiro Gavieiro* and *Iglesias Torres*, C-444/09 and C-456/09, EU:C:2010:819, paragraph 47, and *Nierodzik*, C-38/13, EU:C:2014:152, paragraph 22, and orders in *Montoya Medina*, C-273/10, EU:C:2011:167, paragraph 29, and *Lorenzo Martínez*, C-556/11, EU:C:2012:67, paragraph 34).

41 The framework agreement, in particular clause 4 thereof, aims to apply the principle of non-discrimination to fixed-term workers in order to prevent an employer using such an employment relationship to deny those workers rights which are recognised for permanent workers (judgments in *Del Cerro Alonso*, C-307/05, EU:C:2007:509, paragraph 37; *Gavieiro Gavieiro and Iglesias Torres*, C-444/09 and C-456/09, EU:C:2010:819, paragraph 48; and *Nierodzik*, C-38/13, EU:C:2014:152, paragraph 23; and orders in *Montoya Medina*, C-273/10, EU:C:2011:167, paragraph 30, and *Lorenzo Martínez*, C-556/11, EU:C:2012:67, paragraph 35).

42 Having regard to the objectives pursued by the framework agreement, as recalled in the preceding two paragraphs of this judgment, clause 4 of that agreement must be understood as expressing a principle of EU social law which cannot be interpreted restrictively (see judgments in *Del Cerro Alonso*, C-307/05, EU:C:2007:509, paragraph 38; *Impact*, C-268/06, EU:C:2008:223, paragraph 114; *Gavieiro Gavieiro and Iglesias Torres*, C-444/09 and C-456/09, EU:C:2010:819, paragraph 49; and *Nierodzik*, C-38/13, EU:C:2014:152, paragraph 24; and also orders in *Montoya Medina*, C-273/10, EU:C:2011:167, paragraph 31, and *Lorenzo Martínez*, C-556/11, EU:C:2012:67, paragraph 36).

43 As regards the three-yearly length-of-service increments, the Court has held that such increments, the benefit of which was reserved under Spanish law (i) to the permanent regulated staff in the health service to the exclusion of temporary staff, (ii) to teachers employed as established civil servants of an Autonomous Community to the exclusion of teachers employed as interim civil servants and (iii) to the permanent university lecturers of an Autonomous Community, to the exclusion of the university lecturers on fixed-term contracts, are covered by the concept of 'employment conditions' referred to in clause 4(1) of the framework agreement (see, to that effect, judgments in *Del Cerro Alonso*, C-307/05, EU:C:2007:509, paragraphs 47 and 48, and *Gavieiro Gavieiro and Iglesias Torres*, C-444/09 and C-456/09, EU:C:2010:819, paragraphs 50 to 58, and orders in *Montoya Medina*, C-273/10, EU:C:2011:167, paragraphs 32 to 34, and *Lorenzo Martínez*, C-556/11, EU:C:2012:67, paragraph 37).

44 As is apparent from the case-law of the Court, as regards three-yearly length-of-service increments, which constitute employment conditions within the meaning of clause 4(1) of the framework agreement, such as those at issue in the main proceedings, fixed-term workers must not be treated less favourably than permanent workers in a comparable situation, in the absence of any objective justification (see, to that effect, judgments in *Del Cerro Alonso*, C-307/05, EU:C:2007:509, paragraphs 42 and 47; *Impact*, C-268/06, EU:C:2008:223, paragraph 126; and *Gavieiro Gavieiro and Iglesias Torres*, C-444/09 and C-456/09, EU:C:2010:819, paragraph 53).

45 It must be noted, in that regard, that a 'comparable permanent worker' is defined in clause 3(2) of the framework agreement as 'a worker with an employment contract or relationship of indefinite duration, in the same establishment, engaged in the same or similar work/occupation, due regard being given to qualifications/skills'.

46 In order to assess whether workers are engaged in the same or similar work for the purposes of the framework agreement, account must be taken, in accordance with clauses 3(2) and 4(1) of that agreement, of a number of factors, such as the nature of their work, their qualifications and abilities, the training requirements and the working conditions (see, to that effect, judgment in *Rosado Santana*, C-177/10, EU:C:2011:557, paragraph 66, and orders in *Montoya Medina*, C-273/10, EU:C:2011:167, paragraph 37, and *Lorenzo Martínez*, C-556/11, EU:C:2012:67, paragraph 43).

47 In the present case, the Spanish Government observes that non-permanent staff constitute a professional category distinct from the other categories of civil servant provided for under Spanish law, as regards their employment relations and the functions or duties which they perform, as well as recruitment criteria or the rules governing their remuneration. The Spanish Government therefore contends that the differences in treatment between non-permanent staff and other national civil servants are not limited solely to the length-of-service increment at issue in the main proceedings.

48 In addition, the Spanish Government states that, unlike career civil servants who are selected, in accordance with national law, under procedures guaranteeing observance of the constitutional principles of equality, merit and ability, non-permanent staff are appointed on a discretionary basis in order to carry out specific, non-permanent duties entailing trust or special advice. Termination of their appointment is also discretionary and occurs automatically on termination of the appointment of the postholder for whom the duties are discharged. In the view of the Spanish Government, that system of appointment and termination is justified by the specific features of the duties conferred on non-permanent staff, which are based upon trust and confidence in the context of a political or similar post.

49 However, the order for reference indicates that the functions performed by the applicant in the main proceedings do not consist in the performance of a specific duty linked to a public authority, but relate more to the carrying out of tasks involving assistance with administrative activities.

50 In any event, it is, in such circumstances, for the referring court to determine whether, as regards the receipt of the three-yearly length-of-service increments at issue in the main proceedings, career civil servants and non-permanent staff, in respect of which a difference in treatment in terms of employment conditions is alleged, are in a comparable situation (see, to that effect, the judgment in *Rosado Santana*, C-177/10, EU:C:2011:557, paragraph 67, and orders in *Montoya Medina*, C-273/10, EU:C:2011:167, paragraph 39, and *Lorenzo Martínez*, C-556/11, EU:C:2012:67, paragraph 44).

51 If the referring court finds that the duties performed by the applicant in the main proceedings in her capacity as a non-permanent member of staff of the Consejo de Estado are not identical or similar to those performed by a career official within that administration or other public entities in which she previously worked in that same capacity, it would follow that the applicant in the main proceedings is not in a comparable situation to that of a career civil servant.

52 If, on the other hand, the referring court holds that the applicant in the main proceedings performed, in her capacity as a non-permanent staff member, identical or similar duties to those performed by a career civil servant of the Consejo de Estado or other similar institution, the only fact which could distinguish her situation from that of a career civil servant would appear to be the temporary nature of the employment relationship which linked her to her employer when carrying out the periods of service as a non-permanent member of staff.

53 In such a case, that applicant in the main proceedings would be in a comparable situation to that of a career civil servant and it would be necessary to ascertain whether there was an objective ground justifying the difference in treatment between those two workers, that difference in treatment stemming in the present case from the refusal to grant the three-yearly length-of-service increments in respect of the applicant's period of service.

54 According to the settled case-law of the Court, the concept of 'objective grounds' in clause 4(1) of the framework agreement must be understood as not permitting a difference in treatment between fixed-term workers and permanent workers to be justified on the basis that the difference is provided for by a general, abstract national norm, such as a law or collective agreement (judgments in *Del Cerro Alonso*, C-307/05, EU:C:2007:509, paragraph 57, and *Gavieiro Gavieiro and Iglesias Torres*, C-444/09 and C-456/09, EU:C:2010:819, paragraph 54, and orders in *Montoya Medina*, C-273/10, EU:C:2011:167, paragraph 40, and *Lorenzo Martínez*, C-556/11, EU:C:2012:67, paragraph 47).

55 That concept requires the unequal treatment found to exist to be justified by the existence of precise and specific factors, characterising the employment condition to which it relates, in the specific context in which it occurs and on the basis of objective and transparent criteria, in order to ensure that that unequal treatment in fact responds to a genuine need, is appropriate for achieving the objective pursued and is necessary for that purpose. Those factors may result, in particular, from the specific nature of the tasks for the performance of which fixed-term contracts have been concluded

and from the inherent characteristics of those tasks or, as the case may be, from pursuit of a legitimate social-policy objective of a Member State (see judgments in *Del Cerro Alonso*, C-307/05, EU:C:2007:509, paragraphs 53 and 58, and *Gavieiro Gavieiro and Iglesias Torres*, C-444/09 and C-456/09, EU:C:2010:819, paragraph 55, and orders in *Montoya Medina*, C-273/10, EU:C:2011:167, paragraph 41, and *Lorenzo Martínez*, C-556/11, EU:C:2012:67, paragraph 48).

56 By contrast, reliance on the mere fact of the temporary nature of the employment of staff of the public administration does not meet those requirements and is therefore not capable of constituting an 'objective ground' within the meaning of clause 4(1) of the framework agreement (judgment in *Gavieiro Gavieiro and Iglesias Torres*, C-444/09 and C-456/09, EU:C:2010:819, paragraph 56, and orders in *Montoya Medina*, C-273/10, EU:C:2011:167, paragraph 42, and *Lorenzo Martínez*, C-556/11, EU:C:2012:67, paragraph 49).

57 A difference in treatment with regard to employment conditions as between fixed-term workers and permanent workers cannot be justified on the basis of a criterion which, in a general and abstract manner, refers precisely to the term of the employment. If the mere temporary nature of an employment relationship were held to be sufficient to justify such a difference, the objectives of Directive 1999/70 and the framework agreement would be negated. Instead of improving the quality of fixed-term work and promoting the equal treatment to which both Directive 1999/70 and the framework agreement aspire, reliance on such a criterion would amount to perpetuating a situation that is disadvantageous to fixed-term workers (see judgments in *Gavieiro Gavieiro and Iglesias Torres*, C-444/09 and C-456/09, EU:C:2010:819, paragraph 57, and *Nierodzik*, C-38/13, EU:C:2014:152, paragraph 38, and orders in *Montoya Medina*, C-273/10, EU:C:2011:167, paragraph 43, and *Lorenzo Martínez*, C-556/11, EU:C:2012:67, paragraph 50).

58 The Spanish Government contends that the difference in treatment at issue in the main proceedings between career civil servants and non-permanent members of staff is justified by the existence of such objective grounds. In that regard, it states, first, that non-permanent members of staff are appointed in order to carry out duties which are temporary in nature. The particular nature of the tasks and the specific features of the duties of non-permanent staff, which consist in duties entailing trust and special advice, cannot, it is alleged, be treated in the same way as duties involving tasks of a permanent nature in the administrative organisation. The Spanish Government stresses, secondly, the fact that appointment and termination of appointment of those staff are discretionary, in the sense that the employer does not have to adhere to any formal requirements in the matter. Thirdly, the posts of non-permanent staff are exceptional in nature and those employed in that capacity are not as a matter of course retained in the service for a long time. Fourth and lastly, since the three-yearly length-of-service increments at issue in the main proceedings are a reward granted to staff who remain continuously in the service of the administration performing purely administrative duties there, it would be contradictory to grant those increments to non-permanent staff who do not meet those characteristics.

59 In that regard, it must be noted that, first, although it is as a rule for the referring court to assess whether those arguments constitute objective grounds within the meaning of clause 4(1) of the framework agreement, having regard to the case-law referred to in paragraphs 54 to 57 above, the non-permanent nature of the category of staff at issue could in no case be considered such a ground.

60 Secondly, although some of the differences relating to the manner in which career civil servants and non-permanent staff are engaged, to the qualifications required and to the nature of the duties undertaken could, in principle, justify different treatment as regards their conditions of employment (see, by analogy, judgment in *Rosado Santana*, C-177/10, EU:C:2011:557, paragraph 78), that does not seem to be the case in the dispute in the main proceedings.

61 It is apparent from the wording of the second paragraph of Article 26(4) of Law 2/2012 that career civil servants on active duty or on secondment who hold posts reserved for non-permanent staff are to receive the three-yearly length-of-service increments at issue in the main proceedings. The fact that such career civil servants may benefit from those increments, including during the period when they perform the duties assigned to the non-permanent staff, is at variance with the argument that the particular nature of the duties entailing trust and special advice which non-permanent staff undertake distinguishes those two types of staff and justifies a difference in treatment between them as regards the grant of those increments.

62 In the light of all the foregoing considerations, the answer to the second and third questions raised is that clause 4(1) of the framework agreement must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which excludes, without justification on objective grounds, non-permanent staff from the right to receive a three-yearly length-of-service increment granted, inter alia, to career civil servants when, as regards the receipt of that increment, those two categories of workers are in comparable situations, a matter which is for the referring court to ascertain.

Costs

63 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

1. **The concept of a 'fixed-term worker', within the meaning of clause 3(1) of the framework agreement on fixed-term work, concluded on 18 March 1999, 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, must be interpreted as applying to a worker such as the applicant in the main proceedings.**

2. **Clause 4(1) of the framework agreement on fixed-term work must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which excludes, without justification on objective grounds, non-permanent staff from the right to receive a three-yearly length-of-service increment granted, inter alia, to career civil servants when, as regards the receipt of that increment, those two categories of workers are in comparable situations, a matter which is for the referring court to ascertain.**

[Signatures]