



Reports of Cases

Case C-596/14

Ana de Diego Porras

v

Ministerio de Defensa

(Request for a preliminary ruling from the
Tribunal Superior de Justicia de Madrid)

(References for a preliminary ruling — Social policy — Directive 1999/70/EC — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Clause 4 — Principle of non-discrimination — Concept of ‘employment conditions’ — Compensation for termination of a contract of employment — Compensation not provided for by the national legislation for temporary employment contracts — Difference of treatment as compared with permanent workers)

Summary — Judgment of the Court (Tenth Chamber), 14 September 2016

1. *Social policy — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Directive 1999/70 — Objectives*

(Council Directive 1999/70)

2. *Social policy — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Directive 1999/70 — Conditions of employment — Concept — Compensation paid to a worker by virtue of the termination of his employment contract — Included*

(Council Directive 1999/70, Annex, clause 4, para. 1)

3. *Social policy — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Directive 1999/70 — Prohibition on discrimination against fixed-term workers — National legislation which fails to provide compensation for termination of a contract of employment to a worker employed under a temporary replacement contract, but granted to comparable workers employed under a contract of indefinite duration — Unlawful — Justification — None*

(Council Directive 1999/70, Annex, clause 4)

4. *Social policy — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Directive 1999/70 — Scope — Differences in treatment between specific categories of fixed-term workers — Not included*

(Council Directive 1999/70, Annex, clause 4)

5. *Social policy — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Directive 1999/70 — Workers doing the same or similar work — Concept — Workers in a similar situation — Criteria for assessment — nature of the work, training requirements and working conditions — Determination by the national court*

(Council Directive 1999/70, Annex, clauses 3(2) and 4(1))

1. See the text of the decision.

(see para. 25)

2. Clause 4(1) of the framework agreement on fixed-term work, annexed to Directive 1999/70 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as meaning that the concept of ‘employment conditions’ covers the compensation that the employer must pay to an employee on account of the termination of his fixed-term employment contract.

The decisive criterion for determining whether a measure falls within the scope of that concept is, precisely, the criterion of employment, that is to say the employment relationship between a worker and his employer.

Furthermore, an interpretation of clause 4(1) of the framework agreement which excludes from the concept of employment conditions, within the meaning of that provision, conditions relating to termination of a fixed-term employment contract would limit the scope of the protection granted to fixed-term workers against discrimination, in disregard of the objective assigned to that provision.

Given that the compensation at issue is paid to the worker on account of the termination of his contract of employment with his employer and that such compensation met the criterion set out above, it is therefore covered by the concept of employment conditions.

(see paras 28, 30-32, operative part 1)

3. Clause 4(1) of the framework agreement on fixed-term work, annexed to Directive 1999/70 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as precluding national legislation, which fails to provide any compensation for termination of a contract of employment to a worker employed under a temporary replacement contract while allowing such compensation to be granted, inter alia, to comparable permanent workers. The mere fact that the worker has carried out his work on the basis of a temporary replacement employment contract cannot constitute an objective ground justifying the refusal to grant such compensation to that worker.

There is a difference of treatment between fixed-term workers and permanent workers, in so far as, unlike workers employed under a permanent employment contract, workers employed under a temporary replacement contract are not entitled to any compensation in the event of termination of their contract, regardless of the duration of the periods of service completed.

Furthermore, reliance on the mere temporary nature of the employment of staff of the public authorities cannot constitute an objective ground for the purposes of clause 4(1) and/or clause (4) of the framework agreement. If the mere temporary nature of an employment relationship were held to be enough to justify a difference in treatment as between fixed-term workers and permanent workers, the objectives of Directive 1999/70 and the framework agreement would be rendered meaningless and it would be tantamount to perpetuating a situation disadvantageous to fixed-term workers.

(see paras 36, 47, 52, operative part 2)

4. See the text of the decision.

(see paras 37, 38)

5. See the text of the decision.

(see paras 40, 42)