Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

5 June 2018*

(Reference 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 — Definition of 'employment conditions' — Comparability of situations — Justification — Definition of 'objective grounds' — Compensation in the event of termination of a permanent employment contract on objective grounds — Lesser amount of compensation paid on expiry of a fixed-term 'relief' employment contract)

In Case C-574/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Superior de Justicia de Galicia (High Court of Justice, Galicia, Spain), made by decision of 7 November 2016, received at the Court on 14 November 2016, in the proceedings

Grupo Norte Facility SA

v

Angel Manuel Moreira Gómez,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, L. Bay Larsen, J.L. da Cruz Vilaça, A. Rosas and C.G. Fernlund, Presidents of Chambers, A. Arabadjiev (Rapporteur), M. Safjan, D. Šváby, M. Berger, A. Prechal, E. Jarašiūnas and E. Regan, Judges,

Advocate General: J. Kokott,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 8 November 2017,

after considering the observations submitted on behalf of:

– Grupo Norte Facility SA, by A.I. López Fernández and E. Orusco Almazán, abogados,

– the Spanish Government, by A. Gavela Llopis, acting as Agent,

– the European Commission, by M. van Beek and N. Ruiz García, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 20 December 2017,

* Language of the case: Spanish.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Clause 4(1) of the framework agreement on fixed-term work concluded on 18 March 1999 ('the Framework Agreement'), which is annexed 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), and the interpretation of Article 21 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between Grupo Norte Facility SA ('Grupo Norte') and Mr Angel Manuel Moreira Gómez concerning the expiry of the 'relief' employment contract under which the latter was engaged by that company.

Legal context

EU law

3 Recital 14 of Directive 1999/70 states:

'The signatory parties wished to conclude a framework agreement on fixed-term work setting out the general principles and minimum requirements for fixed-term employment contracts and employment relationships; they have demonstrated their desire to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination, and to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships.'

4 Article 1 of Directive 1999/70 states that the purpose of the directive is 'to put into effect the [Framework Agreement] concluded … between the general cross-industry organisations (ETUC, UNICE and CEEP). ...'

5 The second paragraph in the preamble to the Framework Agreement is worded as follows:

'The parties to this agreement recognise that contracts of an indefinite duration are, and will continue to be, the general form of employment relationship between employers and workers. They also recognise that fixed-term employment contracts respond, in certain circumstances, to the needs of both employers and workers.'

6 The third paragraph of the preamble states:

'[The Framework Agreement] sets out the general principles and minimum requirements relating to fixed-term work, recognising that their detailed application needs to take account of the realities of specific national, sectoral and seasonal situations. 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 and for using fixed-term employment contracts on a basis acceptable to employers and workers.'

7 According to Clause 1 of the Framework Agreement, the purpose of that agreement is, first, to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination and, second, to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships.

8 Clause 3 of the Framework Agreement, entitled 'Definitions', provides:

'1. For the purpose of this agreement the term "fixed-term worker" means 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.

2. For the purpose of this agreement, the term "comparable permanent worker" means 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. ...'

9 Clause 4 of the Framework Agreement, entitled 'Principle of non-discrimination', provides in paragraph 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.'

The relevant provisions of Spanish law

10 Article 12(6) and (7) of the texto refundido de la Ley del Estatuto de los Trabajadores (consolidated text of the Law on the Workers' Statute), approved by the Real Decreto Legislativo 1/1995 (Royal Legislative Decree 1/1995) of 24 March 1995 (BOE No 75 of 29 March 1995, p. 9654), in its version applicable at the time of the facts in the main proceedings ('the Workers' Statute'), provides:

'6. In order for a worker to take partial retirement, … he shall agree with his employer to a reduction in working hours and remuneration of at least 25% and no more than 75%, … At the same time the employer shall conclude a "relief" contract, in accordance with the provisions of the following paragraph, in order to cover the working hours no longer covered as a result of the worker taking partial retirement. A "relief" contract may equally be concluded in order to replace workers taking partial retirement after reaching the age of 65.

There may be an 85% reduction in working hours and remuneration where the "relief" contract is concluded for an indefinite duration on a full-time basis …

The performance of that part-time employment contract and remuneration under the contract shall be compatible with the retirement pension granted to the worker by social security in respect of partial retirement.

The employment relationship shall come to an end when the worker takes full retirement.

7. The "relief" contract shall be governed by the following rules:

(a) It shall be entered into with an unemployed worker or a worker who already has a fixed-term contract with the employer.

(b) Except in the case referred to in the second subparagraph of paragraph 6, the "relief" contract entered into following a partial retirement must be of indefinite duration or at least of a duration equal to the time remaining until the replaced worker reaches the age of 65. If, when he reaches that age, the partially-retired worker is still employed by the employer, the "relief" contract concluded for a fixed-term may be extended, by agreement of the parties, from year to year; in any case it shall terminate at the end of the period corresponding to the year during which the "relieved" worker takes full retirement.

Where a worker takes partial retirement after reaching the age of 65, the "relief" contract that may be concluded by the employer in order to cover the working time no longer covered by that worker may be of indefinite duration or annual. In the latter case, the contract shall be extended automatically from year to year and terminate in the way described in the preceding subparagraph.

…

(d) The post of the "relief" worker may be the same as that of the worker replaced or a similar post, namely a post the tasks of which fall within the same occupational group or within an equivalent category.

…'

11 Article 15(1) of the Workers' Statute provides:

'An employment contract may be concluded for an indefinite period or for a fixed term. A fixed-term contract may be concluded in the following cases:

(a) Where the worker is employed in order to complete a task which is specific, autonomous and separable from the employer's activities as a whole, and the task, while limited in time, will be performed, in principle, over an undeterminable period …

(b) Where market circumstances, an accumulation of work or an excessively large number of orders so require, including in the course of the employer's normal business …

(c) In the event of replacement of workers entitled to retain their post, provided that the employment contract specifies the name of the replaced worker and the reason for the replacement.'

12 Under the first subparagraph of Article 15(6) of that statute, workers with temporary fixed-term contracts are to have the same rights as workers with contracts of indefinite duration, without prejudice to the special arrangements of each type of contract as regards termination and those expressly provided for by law in relation to training contracts.

13 Article 49(1) of the Workers' Statute is worded as follows:

'An employment contract shall be terminated:

…

(b) for valid reasons set out in the contract, unless they constitute a manifest abuse of legal procedure by the employer;

(c) on expiry of the term agreed or completion of the task or services covered by the contract. At the end of the contract, except in the case of temporary replacement contracts and training contracts, the worker shall be entitled to receive compensation in an amount equivalent to twelve days' remuneration for each year of service, or, where applicable, the compensation provided for by specific legislation applicable in the case.

…

(l) on legally permissible objective grounds;

…'

14 Under Article 52 of the Workers' Statute, 'objective grounds' which may justify the termination of the employment contract are: the worker's incompetence, which became apparent or developed after the worker actually joined the undertaking; the worker's failure to adapt to reasonable technical changes made to his job; economic or technical grounds or grounds relating to organisation or production when the number of posts lost is lower than that required in order to classify the termination of employment contracts as a "collective dismissal"; and, subject to certain conditions, repeated absence from work, even if justified.

15 In accordance with Article 53(1)(b) of the Workers' Statute, the termination of an employment contract on any of the grounds set out in Article 52 of the statute confers entitlement on the worker to payment, at the same time as written notification of termination is given, of compensation equivalent to twenty days' remuneration per year of service, periods of less than one year being calculated pro rata on a monthly basis, up to a maximum of twelve monthly payments.

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

16 On 1 November 2012, Mr Moreira Gómez concluded a relief employment contract ('*contrato de relevo*') with Grupo Norte, pursuant to Article 12(6) of the Workers' Statute, to work as cleaner 28.12 hours per week — that being 75% of normal working hours — at the Montecelo Hospital in Pontevedra, for which Grupo Norte was the cleaning contractor. The purpose of that contract was to replace Mr Moreira Gómez's mother who had occupied that post and taken partial retirement, reducing her working hours and remuneration by 75%. The parties to the contract agreed that it would terminate on 18 September 2015, the date on which Mr Moreira Gómez's mother was to take full retirement.

17 On 18 September 2015, Grupo Norte informed Mr Moreira Gómez that his contract had terminated and it ceased to provide him with social security cover.

18 Mr Moreira Gómez brought before the Juzgado de lo Social No 2 de Pontevedra (Social Court No 2, Pontevedra, Spain) an action against Grupo Norte for unfair dismissal. In support of his action he claimed that it is custom and practice at the Montecelo Hospital of Pontevedra that, when a 'relieved' worker employed as cleaner fully retires, the 'relief' worker is engaged by the company responsible for cleaning the establishment under a contract of indefinite duration.

19 Grupo Norte contends that there is no such custom and practice, stating that the principle of the freedom to conduct a business allowed it to hire the person of its choice for the post in question. It also submitted that, as Mr Moreira Gómez's contract had reached its agreed end, namely the date on which the relieved worker took full retirement, it had been terminated lawfully.

20 The Juzgado de lo Social No 2 de Pontevedra (Social Court No 2, Pontevedra) found that Mr Moreira Gómez had been unfairly dismissed and ordered Grupo Norte to choose between reinstating him or paying him compensation.

21 Grupo Norte appealed against the judgment of the Juzgado de lo Social No 2 de Pontevedra (Social Court No 2, Pontevedra) before the referring court.

22 The latter court considers that the termination of the relief employment contract at issue in the main proceedings is lawful, in so far as the contract complied with all the legal requirements, Grupo Norte terminated the contract on the date stipulated in the contract and there was no customary obligation for that company to engage Mr Moreira Gómez at the end of that contract under an employment contract of indefinite duration.

23 According to the referring court, under Spanish law, any worker, whether engaged under a contract of indefinite duration or a fixed-term contract, may be dismissed on any of the 'objective' grounds set out in Article 52 of the Workers' Statute and receive, on that basis, in accordance with Article 53 of that statute, compensation equivalent to twenty days' remuneration per year of service. Although a fixed-term employment contract may also be terminated on the basis of objective circumstances — namely, a specific date being reached, completion of the specific task covered by the contract or the occurrence of a specific event — the compensation awarded in such a case is only twelve days' remuneration per year of service, pursuant to Article 49(1)(c) of the statute. In the present case, Mr Moreira Gómez's contract terminated at the end of the term stipulated in that contract, namely the date on which the relieved worker took full retirement.

24 The referring court notes that the grounds for dismissal set out in Article 52 of the Workers' Statute relate to unforeseeable circumstances, which justifies the difference in the amounts of compensation — that provided for in Article 53 of the statute being intended to compensate for early termination of the contract at the volition of just one of the parties.

25 In addition, by establishing the fixed-term relief employment contract, the Spanish legislator derogated from the principle of stable employment, both in order to allow businesses to engage temporary workers and establish criteria for determining the end of their employment contracts, and to give them the means of ridding themselves of a comparable worker engaged under an employment contract of indefinite duration. However, the termination of a fixed-term relief employment contract and the termination of a contract of indefinite duration give rise to the payment of different amounts of compensation.

26 These various factors lead the Tribunal Superior de Justicia de Galicia (High Court of Justice, Galicia, Spain) to question whether that difference constitutes different treatment prohibited by the Framework Agreement.

27 If that is the case, the referring court is uncertain whether such different treatment could be considered justified by social-policy objectives.

28 If the different treatment cannot be considered justified by social-policy objectives, the referring court states that it would be impossible to adopt an interpretation of Article 49(1)(c) of the Workers' Statute that is compatible with the Framework Agreement. In those circumstances, the referring court is uncertain whether, in the light of the Court's case-law resulting from the judgments of 22 November 2005, *Mangold* (C-144/04, EU:C:2005:709), of 19 January 2010, *Kücükdeveci* (C-555/07, EU:C:2010:21), of 13 September 2011, *Prigge and Others* (C-447/09, EU:C:2011:573), and of 19 April 2016, *DI* (C-441/14, EU:C:2016:278), the prohibition on different treatment between fixed-term workers and permanent workers also stems from the principle of equal treatment and non-discrimination enshrined in Articles 20 and 21 of the Charter.

29 It is in those circumstances that the Tribunal Superior de Justicia de Galicia (High Court of Justice, Galicia) decided to stay proceedings and to refer to the Court the following questions for a preliminary ruling:

'(1) For the purposes of the principle of equal treatment between temporary and permanent workers, must the termination of an employment contract due to "objective circumstances" under Article 49(1)(c) of the Workers' Statute and the termination of an employment contract on "objective grounds" under Article 52 of the Workers' Statute be regarded as "comparable situations" and, accordingly, does the difference between the compensation payable in each case constitute unequal treatment between workers with fixed-term contracts and those with contracts of indefinite duration, prohibited by Directive [1999/70]?

(2) If so, must the social-policy objectives that justified the creation of the "contrato de relevo" model of contract also be deemed to justify, under Clause 4(1) of [the Framework Agreement], the difference in treatment consisting in the payment of a lower amount of compensation for termination of the employment relationship when the employer freely decides that such a "contrato de relevo" should be for a fixed term?

(3) For the purposes of guaranteeing the practical effect of Directive 1999/70/EC, if there should be found to be no reasonable justification under Clause 4(1), is the unequal treatment of temporary and permanent employees with regard to compensation for termination of their contracts, as provided for in the Spanish legislation referred to above, to be interpreted as constituting discrimination of the kind prohibited by Article 21 of the [Charter] and, therefore, as contrary to the principles of equal treatment and non-discrimination that are part of the general principles of EU law?'

30 By letter lodged at the Court Registry on 25 April 2017, the Spanish Government, by virtue of the third paragraph of Article 16 of the Statute of the Court of Justice of the European Union, requested that the Court sit in a Grand Chamber.

Consideration of the questions referred

The first and second questions

Admissibility

31 Grupo Norte contends that the first and second questions are inadmissible. In its opinion, the first question concerns the comparison of the various reasons that may, under Spanish law, lead to termination of an employment contract. The referring court is therefore seeking to obtain from the Court an interpretation, not of EU law, but of national law. In addition, by its second question, the referring court is merely seeking a review by the Court of the social-policy reasons that justified the creation by the Spanish legislator of the relief employment contract. It contends, therefore, that the Court lacks jurisdiction to answer those questions.

32 In that regard, it is true that it is settled case-law that it is not for the Court to rule on the interpretation of provisions of national law, as such an interpretation falls within the exclusive jurisdiction of the national courts (judgment of 23 November 2017, *CHEZ Elektro Bulgaria and FrontEx International*, C-427/16 and C-428/16, EU:C:2017:890, paragraph 30 and the case-law cited).

33 The Court notes, however, that the first and second questions, as formulated by the referring court, do not concern the interpretation of Spanish law, but rather the interpretation of EU law, specifically the principle of non-discrimination, as given expression in Clause 4(1) of the Framework Agreement, which falls under the jurisdiction of the Court.

34 In the light of the foregoing, the Court finds that those questions are admissible.

Substance

35 By its first and second questions, which it is appropriate to examine together, the referring court asks, essentially, whether Clause 4(1) of the Framework Agreement must be interpreted as precluding national legislation under which the compensation to be paid to workers employed under fixed-term contracts entered into in order to cover working hours no longer covered as a result of a worker

taking partial retirement, such as the relief contract at issue in the main proceedings, on the expiry of the term for which those contracts were concluded, is less than the compensation awarded to permanent workers on termination of their employment contract on objective grounds.

36 It should be recalled in that regard that, according to Clause 1(a) of the Framework Agreement, one of its objectives 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 of Directive 1999/70 states, to this end, that the aim of the Framework Agreement is, inter alia, 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 (judgments of 22 December 2010, *Gavieiro Gavieiro and Iglesias Torres*, C-444/09 and C-456/09, EU:C:2010:819, paragraph 47; of 12 December 2013, *Carratù*, C-361/12, EU:C:2013:830, paragraph 40, and of 13 March 2014, *Nierodzik*, C-38/13, EU:C:2014:152, paragraph 22).

37 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 of 13 September 2007, *Del Cerro Alonso*, C-307/05, EU:C:2007:509, paragraph 37; of 22 December 2010, *Gavieiro Gavieiro and Iglesias Torres*, C-444/09 and C-456/09, EU:C:2010:819, paragraph 48, and of 13 March 2014, *Nierodzik*, C-38/13, EU:C:2014:152, paragraph 23).

38 In view of the objectives pursued by the Framework Agreement, as referred to in the two preceding paragraphs, Clause 4 of the agreement must be interpreted as articulating a principle of EU social law, which cannot be interpreted restrictively (judgments of 22 December 2010, *Gavieiro Gavieiro and Iglesias Torres*, C-444/09 and C-456/09, EU:C:2010:819, paragraph 49 and of 13 March 2014, *Nierodzik*, C-38/13, EU:C:2014:152, paragraph 24; see, to that effect, judgment of 13 September 2007, *Del Cerro Alonso*, C-307/05, EU:C:2007:509, paragraph 38).

39 It is important to bear in mind that Clause 4(1) of the Framework Agreement prohibits, with regard to employment conditions, less favourable treatment of fixed-term workers than comparable permanent workers, on the sole ground that they are employed for a fixed term, unless different treatment is justified on objective grounds.

40 In the present case, it should be noted, first, that as Mr Moreira Gómez's contract ended on a specific date, he is a 'fixed-term worker' within the meaning of Clause 3(1) of the Framework Agreement.

41 It is therefore necessary, second, to establish whether the payment of compensation by an employer on account of the termination of an employment contract falls within the concept of 'employment conditions' within the meaning of Clause 4(1) of the Framework Agreement. In that regard, the Court has held that the decisive criterion for determining whether a measure falls within the scope of that concept is the criterion of employment, that is to say the employment relationship between a worker and his employer (judgments of 12 December 2013, *Carratù*, C-361/12, EU:C:2013:830, paragraph 35, and of 13 March 2014, *Nierodzik*, C-38/13, EU:C:2014:152, paragraph 25).

42 The Court has thus held that, inter alia, rules for determining the notice period applicable in the event of termination of fixed-term employment contracts fall within that concept (see, to that effect, judgment of 13 March 2014 in *Nierodzik*, C-38/13, EU:C:2014:152, paragraph 29).

43 The Court has also held that an interpretation of Clause 4(1) of the Framework Agreement which excludes from the definition of that concept conditions relating to termination of a fixed-term employment contract would limit the scope of the protection afforded to fixed-term workers against discrimination, contrary to the objective assigned to that provision (judgment of 13 March 2014, *Nierodzik*, C-38/13, EU:C:2014:152, paragraph 27).

44 Those considerations are fully transferable to the compensation paid to a worker on account of the termination of his contract of employment with his employer, such compensation being paid on account of the employment relationship that has been established between them (see, to that effect, judgment of 14 September 2016, de *Diego Porras*, C-596/14, EU:C:2016:683, paragraph 31).

45 It follows that compensation such as that at issue in the main proceedings falls within the concept of 'employment conditions' within the meaning of Clause 4(1) of the Framework Agreement.

46 It must be noted, third, that according to the Court's settled case-law, the principle of non-discrimination, of which Clause 4(1) of the Framework Agreement is a specific expression, requires that comparable situations should not be treated differently and different situations should not be treated alike, unless such treatment is objectively justified (see, to that effect, judgment of 8 September 2011, *Rosado Santana*, C-177/10, EU:C:2011:557, paragraph 65 and the case-law cited).

47 In that regard, the principle of non-discrimination has been implemented and specifically applied by the Framework Agreement solely as regards differences in treatment as between fixed-term workers and permanent workers in a comparable situation (judgment of 14 September 2016, *de Diego Porras*, C-596/14, EU:C:2016:683, paragraph 37 and the case-law cited).

48 According to the Court's settled case-law, in order to assess whether the persons concerned are engaged in the same or similar work for the purposes of the Framework Agreement, it must be determined, in accordance with Clauses 3(2) and 4(1) of the Framework Agreement, whether, in the light of a number of factors, such as the nature of the work, training requirements and working conditions, those persons can be regarded as being in a comparable situation (judgments of 18 October 2012, *Valenza and Others*, C-302/11 to C-305/11, EU:C:2012:646, paragraph 42 and the case-law cited, and of 13 March 2014, *Nierodzik*, C-38/13, EU:C:2014:152, paragraph 31).

49 In the present case it is for the referring court, which alone has jurisdiction to assess the facts, to determine whether Mr Moreira Gómez, when he was engaged by Grupo Norte under a fixed-term relief employment contract, was in a situation comparable to that of employees hired for an indefinite duration by the same employer during the same period (see, by analogy, judgments of 8 September 2011, *Rosado Santana*, C-177/10, EU:C:2011:557, paragraph 67; of 18 October 2012, *Valenza and Others*, C-302/11 to C-305/11, EU:C:2012:646, paragraph 43, and of 13 March 2014, *Nierodzik*, C-38/13, EU:C:2014:152, paragraph 32).

50 That said, it is clear from the evidence available to the Court that, when he was engaged by Grupo Norte under that contract, Mr Moreira Gómez occupied the same post of 'cleaner' at the Montecelo Hospital of Pontevedra as the worker he partially 'relieved' pending her full retirement, that post also not requiring any specific training.

51 Accordingly, subject to the referring court's definitive assessment of all the relevant factors, it must be concluded that the situation of a fixed-term worker such as Mr Moreira Gómez was comparable to that of a permanent worker engaged by Grupo Norte to carry out the same cleaning tasks.

52 It is therefore necessary to ascertain whether there is an objective reason justifying the payment of less compensation to the fixed-term worker in question on the expiry of his fixed-term relief contract than that received by a permanent worker when the latter is dismissed on one of the grounds set out in Article 52 of the Workers' Statute.

53 In that regard, it should be noted that, according to the Court's settled case-law, the term 'objective grounds', within the meaning of 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 different treatment is provided for by a general or abstract measure, such as a law or a collective agreement (judgments of 13 September 2007, *Del Cerro Alonso*, C-307/05, EU:C:2007:509, paragraph 57, and of 22 December 2010, *Gavieiro Gavieiro and Iglesias Torres*, C-444/09 and C-456/09, EU:C:2010:819, paragraph 54, and order of 22 March 2018, *Centeno Meléndez*, C-315/17, not published, EU:C:2018:207, paragraph 62).

54 That concept requires, according to equally settled case-law, the unequal treatment found to exist to be justified by the presence 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 the purpose of attaining the objective pursued and is necessary for that purpose. Those factors may be apparent, 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 (judgments of 13 September 2007, *Del Cerro Alonso*, C-307/05, EU:C:2007:509, paragraph 53, and of 14 September 2016, *de Diego Porras*, C-596/14, EU:C:2016:683, paragraph 45, as well as order of 22 March 2018, *Centeno Meléndez*, C-315/17, not published, EU:C:2018:207, paragraph 65).

55 In the present case, the Spanish Government relies on the difference between the context in which compensation, such as that provided for in Article 49(1)(c) of the Workers' Statute, is paid, when a fixed-term employment contract, such as the fixed-term relief contract, expires, and the context which calls for payment of the higher amount of compensation provided for in the event of dismissal on one of the grounds set out in Article 52 of that statute, such as economic or technical grounds or grounds relating to the employer's organisation or production when the number of posts lost is lower than that required in order to classify the termination of employment contracts as a 'collective dismissal'. That government states, in essence, that while the Spanish legislator introduced the first form of compensation in order to prevent excessive recourse to temporary employment and to enhance employment stability, such compensation is paid when an event that could have been foreseen by the worker when he entered into the fixed-term employment contract occurs. Therefore, the purpose of that compensation is not, unlike the second form of compensation, to compensate for the frustration of a worker's legitimate expectation that his employment relationship would continue, as a result of his dismissal on one of the grounds set out in Article 52 of the statute. Such a difference explains why the level of compensation awarded to the worker on termination of his employment contract is not the same in both cases.

56 In that respect, it should be noted that the payment of compensation such as that payable by Grupo Norte on termination of Mr Moreira Gómez's employment contract — which was expected to occur, from the moment that contract was concluded, when the worker he replaced took full retirement — takes place in a significantly different context, from a factual and legal point of view, to that in which the employment contract of a permanent worker is terminated on one of the grounds set out in Article 52 of the Workers' Statute.

57 Indeed, it follows from the definition of 'fixed-term contract' in Clause 3(1) of the Framework Agreement that a contract of that kind ceases to have any future effect on expiry of the term stipulated in the contract, that term being identified as the completion of a specific task, the occurrence of a specific event or, as in the present case, a specific date being reached. Thus, the parties to a fixed-term employment contract are aware, from the moment of its conclusion, of the date or event which determines its end. That term limits the duration of the employment relationship without the parties having to make their intentions known in that regard after entering into the contract.

58 By contrast, the termination of a permanent employment contract on one of the grounds set out in Article 52 of the Workers' Statute, on the initiative of the employer, is the result of circumstances arising which were not foreseen at the date that contract was entered into and which disrupt the normal continuation of the employment relationship. As is clear from the Spanish Government's explanations set out in paragraph 55 above and as the Advocate General noted, in essence, in point 60 of her Opinion, it is precisely in order to compensate for the unforeseen nature of the termination of the employment relationship for such a reason and, accordingly, the frustration of any legitimate expectations the worker may have had at that date as regards the stability of that relationship, that Article 53(1)(b) of the Workers' Statute requires compensation equivalent to twenty days' remuneration per year of service to be paid to the dismissed worker.

59 In the latter case, Spanish law does not treat fixed-term workers and comparable permanent workers differently, since Article 53(1)(b) of the Workers' Statute provides for statutory compensation equivalent to twenty days' remuneration per year of service with the employer to be paid to a worker, irrespective of whether their employment contract is for a fixed term or for an indefinite duration.

60 In those circumstances, it must be held that the fact that the respective compensation amounts provided for in Articles 49(1)(c) and 53(1)(b) of the Workers' Statute, which are paid in fundamentally different contexts, have different purposes constitutes an objective reason justifying the different treatment at issue.

61 In the light of the foregoing considerations, the answer to the first and second questions is that Clause 4(1) of the Framework Agreement must be interpreted as not precluding national legislation under which the compensation paid to workers employed under fixed-term contracts entered into in order to cover working hours no longer covered as a result of a worker taking partial retirement, such as the relief contract at issue in the main proceedings, on expiry of the term for which those contracts were concluded, is less than the compensation awarded to permanent workers on termination of their employment contract on objective grounds.

The third question

62 It is clear from the order for reference, in essence, that the third question is put only in the event that the first and second questions are answered in the affirmative. Given the answer to those first two questions, there is no need to answer the third.

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 (Grand Chamber) hereby rules:

Clause 4(1) of the framework agreement on fixed-term work concluded on 18 March 1999, which is annexed 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 not precluding national legislation under which the compensation paid to workers employed under fixed-term contracts entered into in order to cover working hours no longer covered as a result of a worker taking partial retirement, such as the relief contract at issue in the main proceedings, on expiry of the term for which those contracts were concluded, is less than the compensation awarded to permanent workers on termination of their employment contract on objective grounds.

[Signatures]