



## Reports of Cases

**Case C-715/20**

**K.L.**

**v**

**X sp. z o.o.**

(Request for a preliminary ruling,  
from the Sąd Rejonowy dla Krakowa – Nowej Huty w Krakowie)

**Judgment of the Court (Grand Chamber) of 20 February 2024**

(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 – Difference in treatment in the event of dismissal – Termination of a fixed-term employment contract – No obligation to state the reasons for termination – Judicial review – Article 47 of the Charter of Fundamental Rights of the European Union)

1. *Social policy – Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Directive 1999/70 – Conditions of employment – Concept – Rules on termination of an employment contract in the event of dismissal – Included (Council Directive 1999/70, annex, clause 4(1))*

(see paragraphs 35-40)

2. *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 laying down the obligation, for an employer, to state the reasons for termination of an employment contract of indefinite duration, but not for a fixed-term employment contract – Not permissible (Council Directive 1999/70, annex, clause 4(1))*

(see paragraphs 51-56, 63-67, 82, operative part)

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 – Direct effect – Possibility to rely on that prohibition in a dispute between individuals – None (Council Directive 1999/70, annex, clause 4(1))*

(see paragraphs 75, 76)

4. *Social policy – Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Directive 1999/70 – Prohibition on discrimination against fixed-term workers – Relationship with the Charter of Fundamental Rights – Possibility of relying on Article 47 of the Charter of Fundamental Rights – Disputes between two individuals – Obligations and powers of the national courts – Interpretation of national legislation in a manner consistent with EU law – Obligation to disapply any national provision not consistent with Article 47 of the Charter*  
(Charter of Fundamental Rights of the European Union, Arts 47, 51(1) and 52(1); Council Directive 1999/70, annex, clause 4(1))

(see paragraphs 77-82, operative part)

### Résumé

Ruling on a request for a preliminary ruling, the Court of Justice, sitting as the Grand Chamber, clarifies the scope of the principle of non-discrimination against fixed-term workers in the light of the obligation to state reasons for the termination of an employment contract, as well as the obligations resting on national courts in the event of a breach of that principle in a dispute between individuals.

K.L., a worker, and X sp. z o.o., a company governed by Polish law, entered into a fixed-term part-time employment contract for the period from 1 November 2019 to 31 July 2022. On 15 July 2020, X notified K.L. of a statement of termination of that employment contract with a notice period, without stating the reasons for that termination. Under Article 30(4) of the Polish Labour Code,<sup>1</sup> an employer is required to state the reason for termination only in the case of termination of contracts of indefinite duration with a notice period.<sup>2</sup>

K.L. brought proceedings before the Sąd Rejonowy dla Krakowa – Nowej Huty w Krakowie (District Court for Kraków-Nowa Huta, Kraków, Poland), the referring court, seeking compensation on account of the unlawful nature of his dismissal. In particular, he alleged infringement of the principle of non-discrimination of fixed-term workers, laid down in clause 4 of the framework agreement on fixed-term work.<sup>3</sup>

According to the order for reference, even though the Trybunał Konstytucyjny (Constitutional Court, Poland) had already held that Article 30(4) of the Labour Code was consistent with the constitutional principles of the democratic rule of law and equality before the law, the Sąd Najwyższy (Supreme Court, Poland) had expressed doubts as to the compatibility of that national provision with EU law. However, the latter court could not have ruled out the application of the provision at issue, on the ground that the principle of non-discrimination against fixed-term workers does not have direct effect in a dispute between individuals.

It is in that context that the referring court asked the Court, in essence, whether clause 4 of the framework agreement precludes national legislation such as that at issue in the main proceedings and whether that clause may be relied on in a dispute between individuals.

<sup>1</sup> Ustawa – Kodeks pracy (Law establishing the Labour Code) of 26 June 1974 (Dz. U. No 24, item 141), in the version applicable to the dispute in the main proceedings (Dz. U. of 2020, item 1320, as amended) ('the Labour Code').

<sup>2</sup> Or where an employment contract is terminated without a notice period, whether the contract is entered into for a fixed or indefinite term.

<sup>3</sup> Framework agreement on fixed-term work, concluded on 18 March 1999, 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; 'the framework agreement').

## *Findings of the Court*

After stating that the rules on termination of an employment contract at issue fall within the concept of ‘employment conditions’, within the meaning of clause 4(1) of the framework agreement, relating to the principle of non-discrimination, the Court examines whether those rules establish a difference in treatment which constitutes less favourable treatment of fixed-term workers as compared with permanent workers in a comparable situation, before assessing, if relevant, whether such a difference in treatment can be justified on ‘objective grounds’.

In the first place, as regards the comparability of the situations in question, the Court recalls that it is for the referring court to assess whether the persons concerned are engaged in the same or similar work, within the meaning of the framework agreement,<sup>4</sup> in the light of a number of factors, such as the nature of the work, training requirements and employment conditions.

In the second place, the Court finds that, subject to verifications carried out by the referring court, the existence of less favourable treatment of fixed-term workers as opposed to permanent workers arises from the fact that the latter are not subject to the limitation in question concerning the provision of information on the reasons justifying the dismissal. Even assuming that, in response to legal proceedings brought by a fixed-term worker against the termination of his or her employment contract, the judicial review of the validity of the reasons for the termination of that contract is guaranteed and that effective judicial protection of the person concerned is ensured – that worker is not provided, beforehand, with information which may be decisive for the purposes of deciding whether or not to bring such legal proceedings.

In the third place, as regards the existence of ‘objective grounds’, within the meaning of clause 4(1) of the framework agreement, the Polish Government invokes, on the basis of the abovementioned judgment of the Constitutional Court, the pursuit of a policy of full employment requiring a great degree of flexibility in the labour market to which fixed-term employment contracts contribute.

According to the Court, those factors rather are similar to a criterion which, in a general and abstract manner, refers exclusively to the duration itself of the employment; therefore they do not make it possible to ensure that the difference in treatment at issue responds to a genuine need. It does not appear to be necessary in the light of the objective relied on by the Polish Government. The employment condition concerned does not relate to the right itself of an employer to terminate a fixed-term employment contract with a notice period, but to the provision of information to the worker, in writing, relating to the reason or reasons justifying his or her dismissal. Accordingly, even if employers were obliged to state the reasons for the early termination of a fixed-term contract, they would not, on that basis, be deprived of the flexibility inherent in that kind of employment contract.

In those circumstances, it will be for the referring court to ascertain whether Article 30(4) of the Labour Code lends itself to an interpretation consistent with clause 4 of the framework agreement. In the absence thereof, that court is not, in principle, required, solely on the basis of EU law, to disapply the provision of its domestic law that is contrary to clause 4 of the framework agreement, which does not have direct effect between individuals.

<sup>4</sup> See clause 3(2) and clause 4(1) of the framework agreement.

That being said, when adopting legislation specifying and giving specific expression to the employment conditions which are governed, inter alia, by clause 4 of the framework agreement, a Member State implements EU law<sup>5</sup> and must therefore ensure compliance, inter alia, with the right to an effective remedy enshrined in Article 47 of the Charter of Fundamental Rights of the European Union. The latter provision has direct effect. The Court holds that the difference in treatment introduced by the national provision at issue undermines that right since a fixed-term worker is deprived of the possibility, which is however available to a permanent worker, of assessing beforehand whether he or she should bring legal proceedings against the decision terminating his or her employment contract and, where appropriate, to bring an action challenging in a precise manner the reasons for such a termination.

Therefore, in a dispute between individuals, the national court is required, where it is not possible for it to interpret the applicable national law in a way which is consistent with clause 4 of the framework agreement, to guarantee the full effectiveness of Article 47 of the Charter of Fundamental Rights by disapplying, in so far as necessary, any contrary provision of national law.

<sup>5</sup> Within the meaning of Article 51(1) of the Charter of Fundamental Rights.