Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 20 December 2017 [1]

Case C-574/16

Grupo Norte Facility SA
v
Angel Manuel Moreira Gómez

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

(Reference for a preliminary ruling — Social policy — Fixed-term employment — Directive 1999/70/EC — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Principle of non-discrimination against fixed-term workers — Entitlement of the worker to compensation on termination of the employment contract — Fixed-term employment contract in the form of a relief contract — Difference in treatment in relation to permanent workers)

I. Introduction

1. The protection of fixed-term workers against abuse and discrimination has for some time been a social concern of the European Union, which has repeatedly been addressed by this Court. At a time when an increasing number of workers are subjected to precarious employment relationships, the political and social importance of this issue should not be underestimated. The present case illustrates the tension experienced by national legislatures when they adopt rules on the protection of fixed-term workers, but also wish to take account of the particular features of different kinds of employment contracts and to allow a certain degree of flexibility on the labour market.

2. In the case at hand, a Spanish worker was employed under a fixed-term 'relief contract' [2] in order to make up the balance of the reduced working hours of a colleague who had taken partial retirement. His relief contract was for a fixed term until the colleague retired. Thereafter the worker was no longer employed.

3. The main proceedings now concern the statutory compensation to which Spanish workers are entitled from their employers under certain circumstances if their employment relationship ends. The bone of contention is that the amount of compensation varies depending on how the employment relationship ends. If the employer dismisses its employee on objective grounds, that compensation is higher under Spanish law than if — as in this case — the employer simply allows a fixed-term employment relationship to expire when its agreed end date is reached. In some cases the worker is even not entitled to any compensation at all on the expiry of his fixed-term employment contract.

1 Original language: German.

2 Spanish: contrato de relevo.

4. The judgment in *de Diego Porras*,[3] which was delivered in 2016, held — in a similar case — that the absence of any compensation for the expiry of a fixed-term employment contract constituted discrimination prohibited by EU law. The Court is now being asked to reconsider or at least refine its case-law based on that ruling. In doing so, it will also be required to have regard to the internal consistency of its case-law on the principle of equal treatment and non-discrimination.

5. In essence, the same legal issues arise in *Montero Mateos* (C-677/16),[4] in which I am also delivering my Opinion today, and in the pending cases *Rodríguez Otero* (C-212/17) and *de Diego Porras* (C-619/17).

II. Legal framework

A. EU law

6. The EU law framework for this case is established by Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP ('Directive 1999/70'). According to its Article 1, that directive puts into effect the framework agreement on fixed-term work[5] (also 'the Framework Agreement') which was concluded on 18 March 1999 between three general cross-industry organisations (ETUC, UNICE and CEEP) and is annexed to the Directive.

7. Overall, the Framework Agreement aims to set out 'the general principles and minimum requirements for fixed-term employment contracts and employment relationships' and thereby 'to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination …'.[6] 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'.[7]

8. Underlying the Framework Agreement is the consideration 'that contracts of an indefinite duration are, and will continue to be, the general form of employment relationship between employers and workers'.[8] Yet, at the same time, the Framework Agreement recognises that fixed-term employment contracts 'are a feature of employment in certain sectors, occupations and activities which can suit both employers and workers'.[9] It aims to be a 'contribution towards achieving a better balance between 'flexibility in working time and security for workers'.[10]

9. Clause 1 of the Framework Agreement defines the purpose of the agreement as follows:

'The purpose of this Framework Agreement is to:

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

3 Judgment of 14 September 2016 (C-596/14, EU:C:2016:683).

4 The *Montero Mateos* case merely concerns a different kind of contract in Spanish employment law, namely the temporary replacement contract ('contrato de trabajo de interinidad').

5 OJ 1999 L 175, p. 43.

6 Recital 14 in the preamble to Directive 1999/70.

7 Third paragraph in the preamble to the Framework Agreement.

8 Second paragraph in the preamble to the Framework Agreement; see also paragraph 6 of its general considerations.

9 Paragraph 8 of the general considerations of the Framework Agreement; see also the second paragraph in the preamble to the agreement.

10 First paragraph in the preamble to the Framework Agreement; see also paragraphs 3 and 5 of its general considerations.

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

10. The Framework Agreement's scope is determined in clause 2(1) thereof:

'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.'

11. Clause 3 of the Framework Agreement contains the following 'definitions':

'For the purpose of this Agreement:

1. 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. 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.

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.'

12. Clause 4 of the Framework Agreement is headed 'principle of non-discrimination' and includes the following provision:

'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.

2. Where appropriate, the principle of "pro rata temporis" shall apply.

…'

13. Reference should also be made to clause 5 of the Framework Agreement, which concerns 'measures to prevent abuse':

'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.'

B. National law

14. The applicable provisions of Spanish law are laid down in the Workers' Statute [11] in the version in force at the time of the conclusion of the contested employment contract.

1. General provisions

15. Under Article 15(1) of the Workers' Statute, an employment contract may be concluded for a fixed period or for an indefinite period, the permissible grounds for a fixed term being set out in detail in that provision.

16. Furthermore, Article 15(6) of the Workers' Statute makes the following provision regarding the equal treatment of workers with temporary contracts and workers with fixed-term contracts:

'Workers with temporary and fixed-term contracts shall have the same rights as workers with contracts of indefinite duration, notwithstanding the specific characteristics pertaining to termination of each different type of contract and those expressly provided for by law in relation to training contracts. When the nature of such rights allows, these shall be recognised in legislation, regulations and collective agreements in proportion to length of service.

Where a particular employment right or condition is recognised in legislation, regulations or collective agreements on the basis of the worker's length of service, that length of service shall be calculated in the same way for all workers, irrespective of their type of contract.'

17. Article 49 of the Workers' Statute ('termination of the contract') summarises all the circumstances which can result in the termination of an employment relationship. These include termination because the term agreed has been reached or the task or services covered by the contract have been completed (Article 49(1)(c)) and termination on objective grounds (Article 49(1)(l)), those objective grounds being set out in detail in Article 52 of the Workers' Statute.

18. For termination of the employment contract because the term agreed has been reached or the task or services covered by the contract have been completed, Article 49(1)(c) of the Workers' Statute provides that the worker — except in the case of temporary replacement contracts and training contracts — is entitled to receive compensation in an amount equivalent to 12 days' pay for each year of service. By way of derogation, the Thirteenth Transitional Provision for the Workers' Statute [12] stipulates in respect of fixed-term employment contracts concluded before a certain date a graduated, lower amount of compensation of 8 to 12 days' pay for each year of service; the compensation for fixed-term employment contracts concluded before 31 December 2012 thus amounts to 9 days' pay for each year of service.

11 Texto refundido de la Ley del Estatuto de los Trabajadores, aprobado por el Real Decreto Legislativo 1/1995 (Consolidated text of the Law on the Workers' Statute, approved by Royal Legislative Decree 1/1995) of 24 March 1995 (BOE No 75 of 29 March 1995, p. 9654).

12 Today, the same rule is contained in the Eighth Transitional Provision.

19. For termination of the employment contract by dismissal on objective grounds, on the other hand, Article 53(1)(b) of the Workers' Statute provides that '[t]he employer must make available to the worker, at the same time as it gives written notification [of the objective ground], compensation equal to 20 days' pay for every year of service, periods shorter than a year being calculated pro rata on a monthly basis up to a maximum of 12 monthly payments'.

2. The relief contract

20. The relief contract is a particular kind of employment contract which is governed by Article 12(6) and (7) of the Workers' Statute. It may be for a fixed period or for an indefinite period and is concluded to cover the balance of the working hours of another worker who has taken partial retirement.

III. Facts and main proceedings

21. Angel Manuel Moreira Gómez was employed as a cleaner from 1 November 2012 to 18 September 2015 under a fixed-term relief contract at Grupo Norte Facility SA[13] and during that time was deployed at the Montecelo Hospital in the Spanish Province of Pontevedra.

22. Under the relief contract, the balance of the working hours of Mr Moreira Gómez's mother, María del Carmen Gómez Piñón, which had been reduced by 75%, were to be made up; she had taken partial retirement for that period.

23. When Grupo Norte Facility terminated the employment contract on 18 September 2015 because the end of the term agreed had been reached, Mr Moreira Gómez brought an action against termination and argued, relying on an alleged business custom, that he should now be engaged, as the successor to his retired mother, on the basis of an employment contract of indefinite duration.

24. The Juzgado de lo Social nº 2 de Pontevedra[14] (Spain) upheld the action brought by Mr Moreira Gómez and ordered Grupo Norte Facility either to reinstate the employee or to grant him compensation of EUR 4 818.47.

25. The dispute has now been brought before the Tribunal Superior de Justicia de Galicia (High Court of Justice, Galicia, Spain), the referring court, following an appeal lodged by Grupo Norte Facility. That court rejects the argument put forward by Mr Moreira Gómez based on an alleged business custom. It considers the termination of Mr Moreira Gómez's employment contract to be lawful having regard to the rules of national employment legislation, but has doubts regarding the interpretation of the relevant provisions of EU law on protection of fixed-term workers from discrimination.

IV. Request for a preliminary ruling and procedure before the Court

26. By order of 7 November 2016, received on 14 November 2016, the Tribunal Superior de Justicia de Galicia (Spain) referred the following questions to the Court for a preliminary ruling pursuant to Article 267 TFEU:

'(1) For the purposes of the principle of equivalence between workers with fixed-term contracts and those with contracts of indefinite duration, must ending of the employment contract due to "objective circumstances" under Article 49(1)(c) of the Workers' Statute and its ending on

13 Formerly Limpiezas Pisuerga Grupo Norte Limpisa SA.

14 Social Court No 2, Pontevedra.

"objective grounds" under Article 52 of the Workers' Statute be regarded as "comparable situations" and does, therefore, the difference between the compensation payable in either case constitute unequal treatment between workers with fixed-term contracts and those with contracts of indefinite duration, prohibited by Directive 1999/70/EC?

(2) If so, must the social-policy objectives legitimising the creation of the "contrato de relevo" model of contract also be deemed to justify, under clause 4.1 of the Framework Agreement on fixed-term work, the difference in treatment relating to the 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, laid down in the Spanish legislation referred to above, to be interpreted as constituting discrimination of the kind prohibited by Article 21 of the Charter of Fundamental Rights of the European Union, and therefore as contrary to the principles of equal treatment and non-discrimination that are part of the general principles of EU law?'

27. In the preliminary ruling proceedings before the Court, written observations have been submitted by Grupo Norte Facility, the Spanish Government and the European Commission. On 8 November 2017, a joint hearing took place for Cases C-574/16 and C-677/16, at which Grupo Norte Facility, Mrs Montero Mateos, the Social Services Agency of the Autonomous Community of Madrid,[15] the Spanish Government and the Commission were represented.

28. At the request of Spain, pursuant to the third paragraph of Article 16(3) of its Statute, the Court is sitting in a Grand Chamber in these proceedings.

V. Assessment

29. By its three questions, the referring court is essentially seeking to ascertain whether it constitutes discrimination prohibited by EU law if a fixed-term worker whose employment contract is terminated by *expiry* of that contract because the term agreed has been reached, the agreed task has been completed or the agreed event has occurred is entitled to less compensation than a worker whose employment contract, whether for a fixed period or for an indefinite period, is terminated by *dismissal* by the employer on objective grounds.

30. The background to the questions is the fact that under the Spanish Workers' Statute a worker has a statutory entitlement, in the event of the termination of his employment contract on dismissal by the employer on objective grounds, to compensation equal to 20 days' pay for every year of service (Article 53(1)(b) of the Workers' Statute), whereas the same legislation grants a worker, in the event of the mere expiry of his fixed-term employment contract, a lesser amount of compensation of 8 to 12 days' pay for each year of service, and even gives no entitlement at all to compensation if a fixed-term 'temporary replacement contract'[16] or a training contract expires (Article 49(1)(c) of the Workers' Statute).

15 Agencia Madrileña de Atención Social de la Consejería de Políticas Sociales y Familia de la Comunidad Autónoma de Madrid (the defendant in the main proceedings in Case C-677/16).

16 As has already been mentioned, the temporary replacement contract is at issue in the parallel proceedings in *Montero Mateos* (C-677/16).

A. The principle of non-discrimination against fixed-term workers (first question)

31. The focus of interest in the present case is the first question, by which the Court is being asked, in the light of the principle of non-discrimination against fixed-term workers under clause 4(1) of the Framework Agreement, to state its view on the comparability of two situations. The first of these situations concerns the mere expiry of a fixed-term relief contract under Spanish law, while the second relates to the termination of an employment contract — for a fixed period or for an indefinite period — on dismissal by the employer on objective grounds. In essence, the question seeks to ascertain whether the different level of the statutory entitlements of compensation in those two cases results in discrimination against fixed-term workers compared with permanent workers.

1. The admissibility of the first question

32. Grupo Norte Facility contests the admissibility of this first question because, in its view, the Court is being asked less to interpret EU law than to interpret Spanish national employment legislation, or, to be more precise, to compare the situations regulated in Article 49(1)(c) and in Article 53(1)(b) of the Workers' Statute.

33. However, this objection cannot be upheld. It is true that, according to settled case-law, in preliminary ruling proceedings the Court may not rule on the interpretation of national law.[17] Nevertheless, it is necessary, in connection with this first question, less to interpret rules of Spanish employment legislation than to ascertain the inferences in terms of EU law which the national court must draw from the domestic legal situation described by it.[18] To that end, the Court can and should provide useful guidance to the referring court in preliminary ruling proceedings.[19]

34. The first question is therefore admissible.

2. The scope of the principle of non-discrimination

35. The Framework Agreement is applicable to *fixed-term employment contracts*. This is clear from its title and is confirmed by the definition of its scope in clause 2(1). Under that provision, the Framework 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.

36. It is common ground that the main proceedings concern a fixed-term relief contract, as provided for in Spain under the rules of the Workers' Statute.

37. The parties disagree, however, on whether the principle of non-discrimination under clause 4(1) of the Framework Agreement can apply specifically to a case like the present one, as clause 4(1) of the Framework Agreement prohibits less favourable treatment of fixed-term workers precisely in respect of their *employment conditions*.

17 See, among many others, judgments of 11 March 2010, *Attanasio Group* (C-384/08, EU:C:2010:133, paragraph 16), and of 26 November 2014, *Mascolo and Others* (C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraph 81).

18 It should be noted in passing that the parties are evidently not in dispute as to how the relevant rules of Spanish employment legislation are to be construed.

19 The efforts made by the Court to provide national courts with useful guidance regarding the interpretation and application of EU law are consistent with settled case-law; see, among many others, judgments of 31 January 2008, *Centro Europa 7* (C-380/05, EU:C:2008:59, paragraphs 49 to 51); of 11 March 2010, *Attanasio Group* (C-384/08, EU:C:2010:133, paragraphs 17 and 19); of 13 July 2017, *Kleinsteuber*, C-354/16, EU:C:2017:539, paragraph 61); and of 26 July 2017, *Europa Way and Persidera* (C-560/15, EU:C:2017:593, paragraphs 35 and 36).

38. The Spanish Government considers that this concept is intended to refer only to *working conditions*[20] in the narrow sense, but not to other employment conditions[21] such as the requirements for and legal consequences of termination of fixed-term employment contracts or relationships.

39. That view cannot be accepted. According to case-law, the decisive criterion for understanding the concept of 'employment conditions' in clause 4(1) of the Framework Agreement is the criterion of employment alone, that is to say the fact that the rules applicable to a worker or the benefits claimed by him are linked to his employment relationship with the employer.[22]

40. The different language versions of the Framework Agreement use wordings corresponding to 'working conditions' in some cases and wordings equivalent to 'employment conditions' in others,[23] without there being any perceptible intention to pursue two separate concepts. Furthermore, such a distinction is difficult to reconcile with the aims of the Framework Agreement and the overall system of European employment law.

41. The Framework Agreement is intended to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination.[24] It expresses the willingness of the social partners to establish a general framework for ensuring equal treatment for fixed-term workers by protecting them against discrimination.[25] According to settled case-law, the Framework Agreement contains rules of EU social law of particular importance, from which each employee should benefit as a minimum protective requirement.[26] Accordingly, the principle of non-discrimination against fixed-term workers cannot be interpreted restrictively.[27]

42. Furthermore, the coherence of European employment law requires that the concept of working or employment conditions is not interpreted independently of its meaning in related EU legislation.[28] Reference should be made in this connection in particular to anti-discrimination Directives 2000/78/EC[29] and 2006/54/EC,[30] which lay down specific rules to implement the general principle of equal treatment in employment and occupation in respect of various grounds of discrimination such as sex, age and sexual orientation. According to settled case-law, this includes conditions relating to dismissals. Not least payments to be made by the employer in connection with the employment relationship — by employment contract or by law — on termination of the employment relationship thus fall within the scope of the principle of non-discrimination.[31] The same must hold, ultimately, for the concept of 'employment conditions' in respect of the principle of non-discrimination under clause 4(1) of the Framework Agreement.[32]

20 Spanish: condiciones de trabajo.

21 Spanish: condiciones de empleo.

22 Judgments of 10 June 2010, *Bruno and Pettini* (C-395/08 and C-396/08, EU:C:2010:329, paragraphs 45 and 46); of 12 December 2013, *Carratù* (C-361/12, EU:C:2013:830, paragraph 35); of 13 March 2014, *Nierodzik* (C-38/13, EU:C:2014:152, paragraph 25); and of 14 September 2016, *de Diego Porras* (C-596/14, EU:C:2016:683, paragraph 28).

23 For example, the German version of clause 4(1) of the Framework Agreement does not refer to *Arbeitsbedingungen*, but to *Beschäftigungsbedingungen*. The same holds for the French (*conditions d'emploi*), Italian (*condizioni di impiego*), Portuguese (*condições de emprego*) and English versions (*employment conditions*).

24 Clause 1(a) of the Framework Agreement and recital 14 of Directive 1999/70.

25 Third paragraph in the preamble to the Framework Agreement.

26 Judgment of 13 September 2007, *Del Cerro Alonso* (C-307/05, EU:C:2007:509, paragraphs 27 and 38); similarly, judgments of 15 April 2008, *Impact* (C-268/06, EU:C:2008:223, paragraph 114), and of 13 March 2014, *Nierodzik* (C-38/13, EU:C:2014:152, paragraph 24).

27 Judgments of 13 September 2007, *Del Cerro Alonso* (C-307/05, EU:C:2007:509, paragraph 38 in conjunction with paragraph 37); of 15 April 2008, *Impact* (C-268/06, EU:C:2008:223, paragraph 114); and of 13 March 2014, *Nierodzik* (C-38/13, EU:C:2014:152, paragraph 24).

28 See, in the same vein, judgment of 10 June 2010, *Bruno and Pettini* (C-395/08 and C-396/08, EU:C:2010:329, paragraphs 45 and 46).

29 Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

30 Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ 2006 L 204, p. 23).

31 See, among many others, judgments of 16 February 1982, *Burton* (19/81, EU:C:1982:58, paragraph 9); of 8 June 2004, *Österreichischer Gewerkschaftsbund* (C-220/02, EU:C:2004:334, paragraph 36); and of 12 October 2010, *Ingeniørforeningen i Danmark* (C-499/08, EU:C:2010:600, paragraph 21).

32 See, in the same vein, judgment of 13 March 2014, *Nierodzik* (C-38/13, EU:C:2014:152, paragraph 28).

43. All in all, the Framework Agreement in general and the principle of non-discrimination contained therein in particular are therefore applicable to compensation which workers are entitled to claim from their employers by agreement or by law upon termination of their employment contracts. The Court has also already ruled to this effect. [33]

44. Accordingly, a case like the present one, in which precisely such compensation is at issue, comes within the scope of clause 4(1) of the Framework Agreement.

45. However, the principle of non-discrimination under clause 4(1) of the Framework Agreement can be relevant in respect of such compensation only in respect of the comparison between fixed-term workers and permanent workers. On the other hand, it is immaterial in connection with clause 4(1) of the Framework Agreement that fixed-term workers are also treated differently *from one another* with regard to the compensation at issue, depending on whether their employment relationship is terminated on dismissal by their employer on objective grounds or simply expires because the term agreed has been reached, the agreed task has been completed or the agreed event has occurred. Any differences in treatment between different categories of fixed-term workers are not covered by the principle of non-discrimination under the Framework Agreement. [34]

3. Examination of the comparability of the situation of fixed-term workers and permanent workers in respect of compensation on termination of the contract

46. It remains to be examined, as the central problem in the present case, whether fixed-term and permanent workers are in a comparable situation. [35] As is clear from the very wording of clause 4(1) of the Framework Agreement, EU law prohibits discrimination against fixed-term workers in relation to *comparable* permanent workers, but does not prescribe any equal treatment between *non* -comparable workers with a fixed-term contract and permanent workers. [36] Only where situations are comparable may different arrangements for statutory compensation, like those at issue in the main proceedings, constitute discrimination against fixed-term workers.

47. The starting point for consideration of comparability between fixed-term workers and permanent workers, which is for the referring court to determine, [37] is, in accordance with the definition of 'comparable permanent worker' in the first subparagraph of clause 3(2) of the Framework Agreement, whether both are engaged in the same or similar work or occupation in the establishment in question. This is to be determined in the light of a number of factors, such as the nature of the work, training requirements and working conditions. [38]

33 Judgment of 14 September 2016, *de Diego Porras* (C-596/14, EU:C:2016:683, paragraphs 31 and 32); similarly, judgments of 12 December 2013, *Carratù* (C-361/12, EU:C:2013:830, paragraphs 35 to 37, also regarding a system of compensation), and of 13 March 2014, *Nierodzik* (C-38/13, EU:C:2014:152, paragraphs 27 to 29, regarding the notice period).

34 Order of 11 November 2010, *Vino* (C-20/10, EU:C:2010:677, paragraph 57).

35 See also judgments of 12 December 2013, *Carratù* (C-361/12, EU:C:2013:830, paragraph 43); of 13 March 2014, *Nierodzik* (C-38/13, EU:C:2014:152, paragraph 30); and of 14 September 2016, *de Diego Porras* (C-596/14, EU:C:2016:683, paragraphs 39 and 40).

36 Judgment of 12 December 2013, *Carratù* (C-361/12, EU:C:2013:830, paragraph 42), and order of 30 April 2014, *D'Aniello and Others* (C-89/13, EU:C:2014:299, paragraph 28); similarly, judgment of 18 October 2012, *Valenza* (C-302/11 to C-305/11, EU:C:2012:646, paragraph 48), and the principle apparent in the judgment of 14 September 2016, *de Diego Porras* (C-596/14, EU:C:2016:683, paragraphs 39 and 40).

37 Judgments of 18 October 2012, *Valenza* (C-302/11 to C-305/11, EU:C:2012:646, paragraph 43); of 13 March 2014, *Nierodzik* (C-38/13, EU:C:2014:152, paragraph 32); and of 14 September 2016, *de Diego Porras* (C-596/14, EU:C:2016:683, paragraph 42).

38 Judgments of 8 September 2011, *Rosado Santana* (C-177/10, EU:C:2011:557, paragraph 66), and of 13 March 2014, *Nierodzik* (C-38/13, EU:C:2014:152, paragraph 31); and orders of 18 March 2011, *Montoya Medina* (C-273/10, EU:C:2011:167, paragraph 37), and of 9 February 2017, *Rodrigo Sanz* (C-443/16, EU:C:2017:109, paragraph 38); see, in the same vein, judgment of 31 May 1995, *Royal Copenhagen* (C-400/93, EU:C:1995:155, paragraph 33).

48. In the present case, there is no doubt that the fixed-term worker is in the same situation, with regard to the specific activity to be performed — in particular the nature of his work, training requirements and working conditions — as a permanent worker in the same establishment, since Mr Moreira Gómez performed an identical activity as a cleaner to his mother, Mrs Gómez Piñón, with whom he shared the same job during her partial retirement at a ratio of 75% to 25%. The national court also rightly proceeds from this premiss in its order for reference.

49. However, it would be premature, in a case like the present one, to infer solely by reference to the activity performed by them and the identical post awarded to them that the two workers are in a comparable situation *overall* in every respect and that the fixed-term worker is being discriminated against if less favourable rules on statutory compensation upon termination of contract apply to him. The crucial factor is whether fixed-term workers and permanent workers are in a comparable situation also and especially *with regard to the compensation at issue*, and specifically with regard to the event resulting in such compensation.

50. In assessing this question, the same criteria must be applied, ultimately, as in other matters of discrimination.[39] The principle of non-discrimination, as spelled out in clause 4(1) of the Framework Agreement, is nothing more than a special manifestation of the general EU law principle of equal treatment and non-discrimination.[40]

51. According to settled case-law, the comparability of situations must therefore in particular be determined and assessed in the light of the subject matter and purpose of the measure, which makes the distinction in question; the principles and objectives of the field to which the act relates must also be taken into account.[41]

52. The criteria for comparing the various benefits granted by the employer to which fixed-term workers, on the one hand, and permanent workers, on the other, are entitled by employment contract or by law necessarily also include the factual and legal situation in which the relevant benefits granted by the employer are to be claimed.[42]

53. The present case gives the Court an opportunity to expand specifically on this aspect, which, in my view, was somewhat neglected in *de Diego Porras*,[43] and to reconsider its case-law on this point.

54. There are undoubtedly many financial and social benefits granted by the employer to which both fixed-term and permanent workers are equally entitled according to their subject matter and purpose. These include, first and foremost, wages of course, but also possible long service bonuses and social advantages, such as allowances for food and transport and access to company sports facilities and childcare. They either reward work done in the establishment or promote integration into working life and into the establishment, the principle of pro rata temporis being applicable where appropriate (clause 4(2) of the Framework Agreement).[44]

39 See also my Opinions in *Pillbox 38* (C-477/14, EU:C:2015:854, point 38); *Pilkington Group and Others* v *Commission* (C-101/15 P, EU:C:2016:258, point 66); and *Vervloet and Others* (C-76/15, EU:C:2016:386, point 47), in which I state that the principle of equal treatment cannot be interpreted and applied differently depending on the area of law in question.

40 See, to that effect, for example, judgment of 8 September 2011, *Rosado Santana* (C-177/10, EU:C:2011:557, paragraph 65), where the settled case-law on the general principle of non-discrimination in EU law is applied to clause 4(1) of the Framework Agreement.

41 Judgments of 16 December 2008, *Arcelor Atlantique et Lorraine and Others* (C-127/07, EU:C:2008:728, paragraph 26); of 11 July 2013, *Ziegler* v *Commission* (C-439/11 P, EU:C:2013:513, paragraph 167); and of 26 July 2017, *Persidera* (C-112/16, EU:C:2017:597, paragraph 46).

42 See, to that effect, judgment of 12 December 2013, *Carratù* (C-361/12, EU:C:2013:830, paragraphs 44 and 45).

43 Judgment of 14 September 2016, *de Diego Porras* (C-596/14, EU:C:2016:683, in particular paragraphs 40 to 44 and 51).

44 In addition, entitlement to certain benefits granted by the employer can be made dependent on a minimum service period, provided that condition is based on objective and transparent criteria and is not deliberately designed to exclude fixed-term workers.

55. However, subject to a review by the referring court, the compensation at issue is not such a benefit since, as far as can be seen, the compensation payable under certain circumstances by a Spanish employer pursuant to the Workers' Statute for termination of an employment contract is, on the basis of its subject matter and its purpose, not a long service bonus, but compensation for the worker losing his job.

56. In the light of this subject matter and purpose of the compensation, contrary to first appearances, fixed-term workers on the one hand and permanent workers on the other are *not* in a comparable situation. This is certainly not only because of the temporary nature of fixed-term employment, which cannot, as such and in the abstract, be a distinguishing criterion,[45] but quite tangibly because of different levels of predictability of job loss, which may be accompanied by different levels of entitlement to compensation.

57. There is no doubt that losing a job is in any case — for a fixed-term worker as for a permanent worker — an extremely unpleasant and even dramatic event, often accompanied by considerable personal and social hardship.

58. However, for a fixed-term worker, the loss of his job because the term agreed has been reached, the agreed task has been completed or the agreed event has occurred is to be expected from the beginning and certainly does not come as a surprise. The worker himself is party to the contractual agreement which results, sooner or later, in the expiry of his employment relationship, even if he may have entertained the hope that he will be taken on by his employer at a later date in an indefinite employment relationship. In the present case the end of the term of the employment contract was even linked to a certain calendar date — the date of retirement of the worker who had taken partial retirement — and was therefore very clearly predictable.

59. On the other hand, the (early) termination of a — fixed-term or indefinite — employment relationship on dismissal by the employer on objective grounds (for example, economic difficulties suffered by the employer which make a reduction in workforce unavoidable) is *not*, as a rule, an event which can be directly predicted by the worker.

60. Furthermore, in the case of dismissal on objective grounds the statutory compensation is intended not least to compensate for the worker's frustrated expectations over the continuation of his employment relationship, which was actually intended to go on. There are no such frustrated expectations, on the other hand, in the case of the mere expiry of a fixed-term employment contract because the term agreed has been reached, the agreed task has been completed or the agreed event has occurred.

61. In any case there is no question a priori of frustrated expectations if — as in this case — the employment of a worker was based on a single fixed-term relief contract, the term of which was less than three years.[46] In addition, according to the referring court, Mr Moreira Gómez was not able to rely on any kind of business custom which would have meant that after the relief contract had expired he was entitled to be engaged in an indefinite employment relationship.

62. If the Member States were to be prevented from organising their employment legislation in a differentiated manner in the light of those differences and interests, the distinction between fixed-term and indefinite employment contracts would be undermined. As the Commission has rightly stated, however, that distinction is consistent with the values of the EU legislature and the European

45 Under clause 4(1) of the Framework Agreement, fixed-term workers may not be treated in a less favourable manner *solely because* they have a fixed-term contract or relation; see also judgments of 22 December 2010, *Gavieiro and Iglesias Torres* (C-444/09 and C-456/09, EU:C:2010:819, paragraphs 56 and 57); of 18 October 2012, *Valenza* (C-302/11 to C-305/11, EU:C:2012:646, paragraph 52); and of 13 March 2014, *Nierodzik* (C-38/13, EU:C:2014:152, paragraphs 37 and 38).

46 The parallel case *Montero Mateos* (C-677/16) concerned a fixed-term employment contract with a total term of nine years and six months. As I state in my Opinion delivered today in that case, however, the legal assessment should be the same in both cases.

social partners, in accordance with which fixed-term employment is not to be regarded per se as unacceptable or even as illegal. Instead, the Framework Agreement is based on the principle that fixed-term employment contracts 'are a feature of employment in certain sectors, occupations and activities and … can suit both employers and workers'.[47] It can also be seen as a 'contribution towards achieving a better balance between 'flexibility in working time and security for workers'.[48]

4. Intermediate conclusion

63. All in all, it can therefore be stated with regard to the interpretation of clause 4(1) of the Framework Agreement that it does not constitute discrimination against fixed-term workers if, on the expiry of their employment contracts because the term agreed has been reached, the agreed task has been completed or the agreed event has occurred, they are not entitled to compensation or are entitled to a lesser amount of compensation than workers whose employment contracts, whether for a fixed period or for an indefinite period, are terminated on dismissal by the employer on objective grounds.

B. The possible justifications for a difference in treatment (second question)

64. The second question concerns the 'objective grounds' which, according to clause 4(1) of the Framework Agreement, can justify a difference in treatment between fixed-term workers and comparable permanent workers. The referring court is seeking, in essence, to ascertain whether the differences in entitlements to compensation of fixed-term workers and permanent workers can be justified on objective grounds, considering that the employer in question can decide at its own discretion whether to conclude the relief contract for a fixed period or for an indefinite period to make up the balance of the reduced working hours of a worker who has taken partial retirement.

65. This question is asked only in the event that fixed-term workers and permanent workers are actually in a comparable situation in respect of statutory compensation for the loss of their job. As I have already proposed to the Court in connection with the first question that such comparability should be rejected and no discrimination should thus be taken to exist, I will address this second question only in the alternative.

66. By the reference to objective grounds, as is contained inter alia in clause 4(1) of the Framework Agreement, the European social partners — and ultimately also the EU legislature — express the fundamental idea that fixed-term employment relationships may not be used by employers to deny the workers concerned rights which are recognised for comparable permanent workers.[49]

67. In simple terms, the case-law on clause 4(1) of the Framework Agreement[50] recognises as objective grounds for unequal treatment between fixed-term workers and comparable permanent workers both the tasks to be performed by the workers and legitimate social-policy objectives of the Member State in question. Furthermore, unequal treatment can be justified, even if there are objective grounds, only where it is linked to precise and concrete factors and the principle of proportionality is respected.

47 Paragraph 8 of the general considerations of the Framework Agreement; see also the second paragraph in the preamble to the agreement.

48 First paragraph in the preamble to the Framework Agreement; see also paragraphs 3 and 5 of its general considerations.

49 Judgments of 13 September 2007, *Del Cerro Alonso* (C-307/05, EU:C:2007:509, paragraph 37); of 12 December 2013, *Carratù* (C-361/12, EU:C:2013:830, paragraph 41); and of 13 March 2014, *Nierodzik* (C-38/13, EU:C:2014:152, paragraph 23).

50 Judgments of 13 September 2007, *Del Cerro Alonso* (C-307/05, EU:C:2007:509, paragraphs 53 and 58); of 22 April 2010, *Zentralbetriebsrat der Landeskrankenhäuser Tirols* (C-486/08, EU:C:2010:215, paragraph 42); of 22 December 2010, *Gavieiro Gavieiro and Iglesias Torres* (C-444/09 and C-456/09, EU:C:2010:819, paragraph 55); of 18 October 2012, *Valenza* (C-302/11 to C-305/11, EU:C:2012:646, paragraph 51); and of 14 September 2016, *de Diego Porras* (C-596/14, EU:C:2016:683, paragraph 45).

68. In a case such as the present one it is clear that the different arrangements for entitlements to statutory compensation for fixed-term workers and permanent workers cannot be explained by the tasks to be performed by each of them (which are identical in the case of a relief contract), but by social-policy considerations. The decisive factors for the Spanish legislature were apparently, first, the desire to make it easier for job seekers to be integrated into the labour market and thus, ultimately, to achieve as high a level of employment as possible and, second, to place the financing of Spanish social security schemes on a better footing. These are undoubtedly legitimate social-policy objectives.

69. The referring court has doubts less about the legitimacy of the social-policy objectives pursued by the Spanish legislature than about the appropriateness and necessity of differentiated compensation arrangements for attaining those objectives. It states that its doubts stem from the fact that Spanish employers can decide at their own discretion whether to conclude the relief contract for the newly recruited worker for a fixed period or for an indefinite period where partial retirement has been taken.

70. At first sight, it would in fact seem as if the Spanish legislature did not attain its social-policy objectives in this regard in a consistent and systematic manner.[51] If relief contracts *of indefinite duration* can also be concluded in order to attain those objectives, why then should certain workers to whom only *fixed-term* relief contracts were offered be disadvantaged in respect of entitlements to statutory compensation?

71. It should be borne in mind, however, that the instrument of the relief contract would be much less attractive and could thus make a much lesser contribution to attaining the social-policy objectives pursued if the legislature did not also offer employers a fixed-term variant of the relief contract with less far-reaching financial consequences for them.

72. It may be that some employers use the variant of the fixed-term relief contract abusively if they have to meet fixed and permanent needs and thus should actually conclude a contract of indefinite duration.[52] There is absolutely no evidence of this in the present case, however.

73. In any event, combating possible abuses, which is without any doubt a key concern of the EU legislature and of the European social partners, is the subject of a separate provision in clause 5 of the Framework Agreement. Furthermore, the mere possibility that concluding fixed-term relief contracts could potentially be abused by certain employers does not mean, in itself, that any worker employed in a fixed-term relief contract is discriminated against in relation to comparable permanent workers in respect of his employment conditions. As the Commission rightly notes, the distinction between protection against discrimination under clause 4(1) and measures to combat abuse under clause 5 of the Framework Agreement should not be blurred.

74. The second question, if it is relevant, should therefore be answered in the affirmative.

51 In settled case-law the Court considers the requirement of the consistent and systematic attainment of the objectives pursued to be a corollary of the principle of proportionality; see judgments of 10 March 2009, *Hartlauer* (C-169/07, EU:C:2009:141, paragraph 55); of 17 November 2009, *Presidente del Consiglio dei Ministri* (C-169/08, EU:C:2009:709, paragraph 42); and of 13 July 2016, *Pöpperl* (C-187/15, EU:C:2016:550, paragraph 33). As I have stated elsewhere, this case-law developed on the fundamental freedoms can also be applied to secondary law (see my Opinions in *Persidera*, C-112/16, EU:C:2017:250, point 66 with footnote 46, and *Commission* v *Austria*, C-187/16, EU:C:2017:578, point 71).

52 See the leading judgment of 23 April 2009, *Angelidaki and Others* (C-378/07 to C-380/07, EU:C:2009:250, in particular paragraphs 103, 106 and 107).

C. The general principle of equal treatment (third question)

75. The third and last question asked by the referring court is posed, according to the scheme of the request for a preliminary ruling, only in the event that the first question is to be answered in the affirmative and the second answered in the negative. On the basis of my above statements, that is not the case. I will therefore discuss the third question, like the second, hereinafter only in the alternative.

76. By this question, the referring court is essentially seeking to ascertain whether it infringes Article 21 of the Charter of Fundamental Rights of the European Union and the general principles of equal treatment and non-discrimination in EU law if the amount of compensation to be paid by the employer under Spanish law on termination of an employment contract is different depending on whether termination stems from dismissal on objective grounds or the expiry of a fixed-term employment contract.

1. Admissibility of the third question

77. With regard to this third question, Grupo Norte Facility again raises a plea of inadmissibility and asserts that, by its question, the referring court is seeking to obtain an advisory opinion on general or hypothetical problems.[53] In essence, Grupo Norte Facility complains that by its question the national court has regard in very general terms to a comparison between the situations regulated in Article 49(1)(c) and in Article 53(1)(b) of the Workers' Statute and not to a specific individual case.

78. As has already been stated in connection with the first question,[54] this complaint cannot be upheld. It should be added that the link between the third question and a specific individual case — the case of Mr Moreira Gómez — is undoubtedly clear from the broader context of the request for a preliminary ruling, even if, according to its wording, the question as such makes reference only to the two provisions of Spanish law at issue.

79. In addition, it would appear that, with its relatively general formulation of the third question, the national court had in mind that the Court is not competent in preliminary ruling proceedings to apply law to the individual case, but only to provide information on the interpretation of the relevant EU law. The court making the request for a preliminary ruling cannot now be criticised for taking account of this fact.[55]

80. All in all, there are therefore no doubts as to the admissibility of the third question.

2. Substantive assessment of the third question

81. The general EU law principle of equal treatment, which has now also been established in Articles 20 and 21 of the Charter of Fundamental Rights, requires, according to settled case-law, that comparable situations must not be treated differently and different situations must not be treated in the same way unless such treatment is objectively justified.[56]

53 Grupo Norte Facility refers in this regard to settled case-law according to which in preliminary ruling proceedings the Court is not competent to deliver advisory opinions on general or hypothetical questions (see, for example, judgments of 15 December 1995, *Bosman*, C-415/93, EU:C:1995:463, paragraph 60; of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 42; and of 13 July 2017, *Kleinsteuber*, C-354/16, EU:C:2017:539, paragraph 61).

54 See above, points 32 to 34 of this Opinion.

55 See also, similarly, judgment of 12 December 2013, *Carratù* (C-361/12, EU:C:2013:830, paragraph 24).

56 Judgments of 16 December 2008, *Arcelor Atlantique et Lorraine and Others* (C-127/07, EU:C:2008:728, paragraph 23); of 14 September 2010, *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission* (C-550/07 P, EU:C:2010:512, paragraph 55); and of 26 July 2017, *Persidera* (C-112/16, EU:C:2017:597, paragraph 46).

82. There is no need in this case to answer the contentious question whether this general legal principle or the abovementioned provisions of the Charter have direct effects in a dispute between a worker and his private-sector employer — in a horizontal legal relationship —[57] as, substantively, the general EU law principle of equal treatment cannot lead to a different conclusion in this regard from the special principle of non-discrimination in clause 4(1) of the Framework Agreement (see also Article 52(2) of the Charter of Fundamental Rights).

83. As has already been stated in connection with the first question regarding clause 4(1) of the Framework Agreement, however, the termination of an employment contract, whether for a fixed period or for an indefinite period, on dismissal by the employer on objective grounds is an event which is not comparable in terms of its predictability with the mere expiry of a fixed-term employment contract because the term agreed has been reached, the agreed task has been completed or the agreed event has occurred.[58]

84. Accordingly, the general principle of equal treatment and Articles 20 and 21 of the Charter of Fundamental Rights also cannot require that the statutory entitlement to compensation for the workers concerned must be the same amount in both cases. The third question, if it is relevant, should therefore be answered in the negative.

VI. Conclusion

85. In the light of the above considerations, I propose that the Court answer the request for a preliminary ruling from the Tribunal Superior de Justicia de Galicia (Spain) as follows:

Clause 4(1) of the framework agreement on fixed-term work in the Annex to Directive 1999/70/EC is to be interpreted as meaning that it does not constitute discrimination against fixed-term workers if, on the expiry of their employment contracts because the term agreed has been reached, the agreed task has been completed or the agreed event has occurred, they are not entitled to compensation or are entitled to a lesser amount of compensation than workers whose employment contracts, whether for a fixed period or for an indefinite period, are terminated on dismissal by the employer on objective grounds.

57 This issue was discussed intensively in the judgments of 22 November 2005, *Mangold* (C-144/04, EU:C:2005:709), and of 19 January 2010, *Kücükdeveci* (C-555/07, EU:C:2010:21). See also, recently, judgments of 24 January 2012, *Dominguez* (C-282/10, EU:C:2012:33); of 15 January 2014, *Association de médiation sociale* (C-176/12, EU:C:2014:2); and of 19 April 2016, *DI* (C-441/14, EU:C:2016:278).

58 See above, points 46 to 62 of this Opinion.