



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

22 January 2020*

(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 — Clause 5 — Measures to prevent abuse arising from the use of successive fixed-term employment contracts or relationships — Compensation if the employment relationship is terminated — Articles 151 and 153 TFEU — Articles 20 and 21 of the Charter of Fundamental Rights of the European Union — Applicability — Difference of treatment based on whether a public or private regime, within the meaning of national law, governs the employment relationship)

In Case C-177/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Contencioso-Administrativo No 14 de Madrid (Administrative Court No 14, Madrid, Spain), made by decision of 16 February 2018, received at the Court on 7 March 2018, in the proceedings

Almudena Baldonado Martín

v

Ayuntamiento de Madrid,

THE COURT (Second Chamber),

composed of A. Arabadjiev (Rapporteur), President of the Chamber, T. von Danwitz and C. Vajda, Judges,

Advocate General: M. Szpunar,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 28 February 2019,

after considering the observations submitted on behalf of,

- A. Baldonado Martín, by L. Gil Fuertes, abogada,
- l'Ayuntamiento de Madrid, by N. Taboada Rodríguez and I. Madroñero Peloché, letrados,
- the Spanish Government, initially by M.J. García-Valdecasas Dorrego, and subsequently by S. Jiménez García, acting as Agents,
- the European Commission, by N. Ruiz García and M. van Beek, acting as Agents,

* Language of the case: Spanish.

after hearing the Opinion of the Advocate General at the sitting on 17 October 2019,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 151 and 153 TFEU, Articles 20 and 21 of the Charter of Fundamental Rights of the European Union ('the Charter') and Clauses 4 and 5 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).
- 2 The request has been made in proceedings between Almudena Baldonado Martín and the Ayuntamiento de Madrid (Municipality of Madrid, Spain) concerning the payment of compensation due as a result of the termination of the employment relationship between the parties.

Legal context

EU law

- 3 According to Article 1 of Directive 1999/70, the purpose of that directive is 'to put into effect the [framework agreement] concluded between the general cross-industry organisations (ETUC, UNICE and CEEP)'.
 - 4 The first paragraph of Article 2 of that directive provides:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive [and shall] take any necessary measures to enable them at any time to be in a position to guarantee the results imposed by this Directive. ...'
- 5 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, secondly, to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships.
- 6 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 ...'

7 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.’

8 Clause 5 of the framework agreement, entitled ‘Measures to prevent abuse’, states:

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

- (a) objective reasons justifying the renewal of such contracts or relationships;
- (b) the maximum total duration of successive fixed-term employment contracts or relationships;
- (c) the number of renewals of such contracts or relationships.

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

- (a) shall be regarded as “successive”;
- (b) shall be deemed to be contracts or relationships of indefinite duration.’

Spanish law

9 The first additional provision of the Real Decreto 896/1991 por el que se establecen las reglas básicas y los programas mínimos a que debe ajustarse el procedimiento de selección de los funcionarios de Administración Local (Royal Decree 896/1991 laying down the basic rules and minimum timescales applicable to the process of selecting local government civil servants) of 7 June 1991 (BOE No 142, of 14 June 1991, p. 19669), states:

‘Following a notice of competition and in compliance, in any event, with the principles of merit and competence, the President of the municipal or provincial council may appoint interim civil servants to vacant posts provided that those posts cannot, given the urgency entailed by the circumstances, be filled by established civil servants. Those posts shall be provided with budgetary resources and included on the list of public sector vacancies, except where they have become vacant since the approval of that list.

...

The posts thus filled shall necessarily be included in the first notice of competition to fill posts or on the first list of public sector vacancies approved.

The employment of an interim civil servant shall be terminated when the post is filled by an established civil servant or when the municipal or provincial council considers that the urgent grounds for appointing an interim civil servant to cover that post no longer exist.’

10 Article 8 of the, texto refundido de la Ley del Estatuto Básico del Empleado Público (consolidated text of the Basic Statute for Public Employees), approved by the Real Decreto Legislativo 5/2015 (Royal Legislative Decree 5/2015) of 30 October 2015 (BOE No 261, of 31 October 2015) ('the EBEP'), provides:

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

2. Public servants shall be classified as:

(a) civil servants;

(b) interim civil servants;

(c) contract staff, whether engaged under permanent, indefinite-duration or fixed-term employment contracts;

(d) temporary staff.'

11 Article 10 of the EBEP reads as follows:

'1. Interim civil servants are persons who, for expressly justified reasons of necessity and urgency, are appointed to that status to perform the duties of established civil servants in one of the following cases:

(a) the existence of vacant posts which cannot be occupied by established civil servants;

(b) the temporary replacement of established civil servants;

(c) the carrying out of temporary programmes for a period not exceeding three years, which may be extended by 12 months under the laws governing the civil service adopted to implement this statute;

(d) an excessive workload or a backlog of work, for a maximum period of 6 months within a 12-month period.

...

3. The employment of interim civil servants shall be terminated not only on the grounds provided for in Article 63 but also where the reason for their appointment ceases to apply.

4. In the circumstances referred to in paragraph 1(a) of this article, vacant posts filled by interim civil servants shall be included on the list of vacancies for the year in which the appointments are made or, if that is not possible, for the following year, unless there is a decision to abolish the post.

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

12 Article 70(1) of the EBEP provides:

'Human resource needs which receive a budget allocation and are to be met by appointing new members of staff shall be included on a list of public sector vacancies or filled by means of another similar instrument for managing the fulfilment of staffing needs, which involves organising the

relevant selection procedures for the posts to be filled (up to 10% additional posts) and setting the maximum period for the publication of notices. In any event, the implementation of the list of public sector vacancies or similar instrument must take place within a non-renewable period of three years.'

- 13 Article 49 of the texto refundido de la Ley del Estatuto de los Trabajadores (consolidated text of the Law on the Workers' Statute), approved by Real Decreto Legislativo 1/1995 (Royal Legislative Decree No 1/1995) of 24 March 1995 (BOE No 75 of 29 March 1995, p. 9654), in the version applicable at the time of the facts in the main proceedings ('the Workers' Statute'), states:

'1. An employment contract shall be terminated:

...

(b) on the grounds validly set out in the contract, unless they constitute a manifest abuse of rights on the part of the employer;

(c) on expiry of the term agreed or completion of the task or service covered by the contract. At the end of the contract, except in the case of temporary replacement [*'interinidad'*] contracts and training contracts, the worker shall be entitled to receive compensation in an amount equivalent to 12 days' remuneration for each year of service, or, where applicable, the compensation provided for by specific legislation applicable in the case;

...

(1) on lawfully 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.

- 16 Article 56 of the Workers' Statute provides that the termination of an employment contract on the basis of an unfair dismissal gives rise to the payment to the worker of compensation equivalent to 33 days' salary per year of service.

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

- 17 With effect from 24 November 2005, the Municipality of Madrid appointed Ms Baldonado Martín as an interim civil servant with the task of maintaining green spaces.

- 18 The appointment decision specified that Ms Baldonado Martín would be employed to cover a vacant post until such time as the post was filled by an established civil servant. It also stated that that post would be abolished if the established civil servant being replaced lost the right to have his post retained, or if the authority took the view that the urgent grounds for appointing an interim civil servant to cover the post no longer existed.
- 19 On 15 April 2013, Ms Baldonado Martín was informed that her post had been filled, that same day, by an established civil servant and that consequently her employment was terminated.
- 20 On 20 February 2017, Ms Baldonado Martín requested payment of compensation equivalent to 20 days' remuneration per year of service by the Municipality of Madrid for termination of her employment. Her request was based on Article 4(3) TEU, Articles 20 and 21(1) of the Charter and on Clauses 4 and 5 of the framework agreement.
- 21 By decision of 25 April 2017, the Municipality of Madrid refused the request, on the grounds that the post occupied by Ms Baldonado Martín was vacant and that there had been an urgent and pressing need for it to be covered, stating that her employment had been terminated because the post had been filled by an established civil servant, and that there was no discrimination by comparison with established civil servants, since, in accordance with the legal regime applicable to them, the latter do not receive compensation upon the termination of their employment.
- 22 Hearing an appeal brought by Ms Baldonado Martín against that decision, the referring court states that in the course of her employment, Ms Baldonado Martín held the same post continuously and constantly and that she performed duties identical to those performed by green space maintenance operatives with established civil servant status.
- 23 In addition, that court notes that the Municipality of Madrid did not provide any evidence that, during the period that Ms Baldonado Martín was employed, a competition was organised or a list of public sector vacancies was approved. It was not possible to determine whether the post occupied by Ms Baldonado Martín was filled by means of internal promotion, a competition based on qualifications or tests or another selection procedure. The Municipality of Madrid had not established that there was a pressing need to appoint Ms Baldonado Martín to that post. Similarly, the reason that that post was vacant is also unknown.
- 24 As regards the requested interpretation of EU law, the referring court notes, in the first place, that, under Spanish law, established civil servants are not entitled to receive compensation, such as that claimed by Ms Baldonado Martín, upon termination of their employment. It follows that the situation at issue in the main proceedings does not constitute discrimination prohibited by Clause 4 of the framework agreement and, therefore, does not fall within the scope of that clause. Similarly, the referring court considers that it follows from paragraphs 63 to 67 of the judgment of 14 September 2016, *Pérez López* (C-16/15, EU:C:2016:679), that the comparison between, on the one hand, fixed-term interim civil servants and, on the other, fixed-term contract staff, whose employment relationship with the authorities is governed by the workers' statute, does not fall within the scope of that clause either, given that they are both categories of temporary staff.
- 25 However, the referring court notes, in the second place, that the framework agreement is designed to apply the principle of non-discrimination to fixed-term workers, that the post of gardener in the Spanish public authorities can be filled either by a civil servant or by a contract worker, that the decision of whether to engage staff under contracts governed by administrative law or employment law is entirely at the discretion of the employer, that the Municipality of Madrid does not put forward any objective reason justifying a difference in treatment, and that it follows, in particular, from the judgment of 19 April 2016, *DI* (C-441/14, EU:C:2016:278), that since the principle of non-discrimination is a general principle of EU law it must be directly and vertically applicable.

- 26 That court is uncertain whether, in those circumstances, it is possible to recognise Ms Baldonado Martín's entitlement to the compensation claimed on the basis of a comparison with contract staff engaged under fixed-term contracts or on the basis of direct vertical application of EU primary law.
- 27 The referring court observes, in the third place, that Ms Baldonado Martín performed her duties as an interim civil servant for more than seven years. The Municipality of Madrid has therefore distorted the status of interim civil servant by having recourse to such workers to meet, not temporary or provisional staffing needs, but needs that are permanent. It thus deprived the applicant of the rights granted to established civil servants. The Municipality of Madrid also failed to have regard both to the guarantees laid down in Articles 10 and 70 of the EBEP aimed at avoiding the continual use of temporary employment relationships and the misuse of those relationships, and to the requirement under the first additional provision of Royal Decree 896/1991 of 7 June 1991, according to which posts occupied by interim civil servants are necessarily to be included in the first notice of competition.
- 28 The referring court observes, moreover, that under the Spanish legislation at issue in the main proceedings, it is not possible to foresee the end of a contract of an interim civil servant, in so far as the contract may be terminated because the post is filled by an established civil servant or is abolished, or because the replaced civil servant loses the right to have his post retained, or the authority takes the view that the urgent grounds for appointing an interim civil servant no longer exist.
- 29 According to the referring court, that legislation precludes any possibility of enforcing against public-sector employers the guarantees that are enforceable against private-sector employers, which are provided for in the Workers' Statute, or any consequences of not complying with such limits. Under that legislation, the status of civil servant may be acquired only by means of a selection procedure.
- 30 The referring court adds that that same legislation does not enable the objectives pursued by Clause 5 of the framework agreement to be met. Similarly, the possibility, in the event of misuse, of converting fixed-term contract workers into non-permanent workers of indefinite duration, in accordance with the case-law of the Tribunal Supremo (Supreme Court, Spain), does not prevent or penalise the misuse of temporary employment contracts. It remains possible to abolish the post occupied by the worker concerned or to dismiss that worker if his or her post is filled by an established civil servant, which would terminate the employment relationship without granting him or her employment stability.
- 31 According to the referring court, the penalty of converting a fixed-term employment relationship into a permanent employment relationship is the only measure that would be consistent with the objectives pursued by Directive 1999/70. However, that directive has not been transposed into Spanish law as regards the public sector. Thus, the question arises as to whether compensation is payable, as a penalty, on the basis of Clause 5 of the framework agreement.
- 32 In those circumstances, the Juzgado de lo Contencioso-Administrativo No 14 de Madrid (Administrative Court No 14, Madrid, Spain) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) Is it correct to interpret Clause 4 of the framework agreement as meaning that a situation such as that described in the present case, in which an interim civil servant carries out the same work as an established civil servant (who is not entitled to compensation because the situation that would warrant it does not exist under the legal regime applicable to him) is not consistent with the situation described in that clause?

- (2) Given that the right to equal treatment and the prohibition of discrimination (in Articles 20 and 21 of the Charter and in Article 23 of the Universal Declaration of Human Rights [adopted by the General Assembly of the United Nations on 10 December 1948]) constitute a general principle of EU law given expression in a directive, and in the light of fundamental social rights within the meaning of Articles 151 and 153 TFEU, is it consistent with the framework agreement to interpret Clause 4, in such a way as to achieve its objectives, as meaning that the right of an interim civil servant to receive compensation may be established either by comparison with a temporary contract worker, since his or her status (as a civil servant or as a contract worker) is determined exclusively by the public-sector employer, or by the direct vertical application to which EU primary law is open?
- (3) Taking into account the existence, if any, of improper use of temporary appointments to meet permanent staffing needs for no objective reason and in a manner inconsistent with the urgent and pressing need that warrants recourse to them, and for want of any effective penalties or limits in Spanish national law, would it be consistent with the objectives pursued by Directive 1999/70/EC to grant, as a means of preventing abuse and eliminating the consequence of infringing EU law, compensation comparable to that for unfair dismissal, that is to say, one that serves as an adequate, proportional, effective and dissuasive penalty, in circumstances where an employer does not offer a worker a permanent post?

Consideration of the questions referred

The first question

- 33 By its first question, the referring court asks, in essence, whether Clause 4(1) of the framework agreement must be interpreted as precluding a national law that does not provide for the payment of any compensation either for fixed-term workers employed as interim civil servants or for established civil servants who have an employment relationship of indefinite duration, upon the termination of their employment.
- 34 In that regard, it should be recalled that Clause 4(1) of the framework agreement prohibits, with regard to employment conditions, less favourable treatment of fixed-term workers as compared with permanent workers, on the sole ground that they are employed for a fixed term, unless different treatment is justified on objective grounds.
- 35 The Court has held that that provision 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 (see, to that effect, the judgment of 5 June 2018, *Montero Mateos*, C-677/16, EU:C:2018:393, paragraph 40 and the case-law cited).
- 36 In the present case, first, it must be observed that, since, as stated in the order for reference, Ms Baldonado Martín was appointed by the Municipality of Madrid as an interim civil servant to the post of maintenance operative for green spaces for the period until a specific event occurred, namely the appointment to that post of an established civil servant, she falls within the definition of ‘fixed-term worker’ for the purposes of Clause 3(1) of the framework agreement and, therefore, is covered by Directive 1999/70 and that agreement (see, to that effect, the order of 22 March 2018, *Centeno Meléndez*, C-315/17, not published, EU:C:2018:207, paragraph 40). Secondly, it must be recalled that compensation granted to a worker owing to the termination of the contract of employment between him or her and the employer, such as that claimed by Ms Baldonado Martín, falls within the definition of ‘employment conditions’, within the meaning Clause 4(1) of that agreement (order of 12 June 2019, *Aragón Carrasco and Others*, C-367/18, not published, EU:C:2019:487, paragraph 33 and the case-law cited).

- 37 However, it is clear from the information provided by the referring court that interim civil servants, such as the person concerned in this case, are neither treated less favourably than established civil servants nor deprived of a right to which the latter are entitled, since neither those interim civil servants nor established civil servants receive the compensation sought by Ms Baldonado Martín.
- 38 In those circumstances, Clause 4(1) of the framework agreement must be interpreted as not precluding a national law that does not provide for the payment of any compensation either for fixed-term workers employed as interim civil servants or for established civil servants who have an employment relationship of indefinite duration, upon the termination of their employment.
- 39 Having so held, it is clear from the answer given by Ms Baldonado Martín and the Municipality of Madrid to a question asked by the Court with a view to the hearing that the post that the person concerned held when she was appointed by the Municipality of Madrid as an interim civil servant could equally be held by contract workers under an employment contract of indefinite duration and that such a contract worker was appointed by that municipality to an identical post during the same period. In addition, it is clear from the case file before the Court that a worker employed under such a contract would receive the compensation provided for in Article 53(1)(b) of the Workers' Statute, as claimed by Ms Baldonado Martín, if that worker were dismissed for one of the reasons set out in Article 52 of the statute.
- 40 It is for the referring court, which alone has jurisdiction to assess the facts, to verify that information and, if necessary, determine whether interim civil servants, such as the person concerned in this case, are in a situation comparable with that of the contract workers employed by the Municipality of Madrid under an employment contract of indefinite duration, during the same period (see, by analogy, the order of 12 June 2019, *Aragón Carrasco and Others*, C-367/18, not published, EU:C:2019:487, paragraph 37 and the case-law cited).
- 41 In that regard, it should be borne in mind that the Court has held that, where it is established that, when they were employed, those fixed-term workers carried out the same duties as contract workers employed by the same employer for an indefinite period or held the same post as them, it is necessary, in principle, to regard the situations of those two categories of worker as being comparable (see, to that effect, the judgments of 5 June 2018, *Grupo Norte Facility*, C-574/16, EU:C:2018:390, paragraphs 50 and 51; of 5 June 2018, *Montero Mateos*, C-677/16, EU:C:2018:393, paragraphs 53 and 54, of 21 November 2018, *de Diego Porras*, C-619/17, EU:C:2018:936, paragraphs 64 and 65, and the order of 12 June 2019, *Aragón Carrasco and Others*, C-367/18, not published, EU:C:2019:487, paragraph 36).
- 42 It is therefore necessary to verify whether there is an objective reason justifying the fact that the termination of the employment relationship of an interim civil servant does not give rise to payment of compensation, whereas a contract worker under a contract of indefinite duration is entitled to compensation when dismissed on one of the grounds set out in Article 52 of the Workers' Statute.
- 43 As regards the differences in treatment resulting from the application of Article 53(1)(b) of the Workers' Statute, the Court has already held that the specific purpose of the compensation for dismissal laid down in that provision and the particular context in which that compensation is paid constitute an objective reason justifying a difference in treatment such as that referred to in the preceding paragraph (see judgments of 5 June 2018, *Grupo Norte Facility*, C-574/16, EU:C:2018:390, paragraph 60; of 5 June 2018, *Montero Mateos*, C-677/16, EU:C:2018:393, paragraph 63, and of 21 November 2018, *de Diego Porras*, C-619/17, EU:C:2018:936, paragraph 74).
- 44 In that regard, the Court held that the termination of a fixed-term employment relationship falls within a context that from both a factual and legal perspective is significantly different from that in which the employment contract of a permanent worker is terminated for one of the reasons set out in Article 52 of the Workers' Statute (see, to that effect, the order of 12 June 2019, *Aragón Carrasco and Others*,

C-367/18, not published, EU:C:2019:487, paragraph 44, and, by analogy, judgments of 5 June 2018, *Grupo Norte Facility*, C-574/16, EU:C:2018:390, paragraph 56; of 5 June 2018, *Montero Mateos*, C-677/16, EU:C:2018:393, paragraph 59, and of 21 November 2018, *de Diego Porras*, C-619/17, EU:C:2018:936, paragraph 70).

- 45 Indeed, it follows from the definition of a '[fixed-term] employment contract or relationship' in Clause 3(1) of the framework agreement that an employment relationship of that kind ceases to have any future effect on expiry of the term stipulated in the contract, that term being identified as a specific date being reached, the completion of a specific task, or, as in the present case, the occurrence of a specific event. Thus, the parties to a fixed-term employment relationship are aware, from the moment that it is entered into, 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 (see, by analogy, the judgment of 21 November 2018, *de Diego Porras*, C-619/17, EU:C:2018:936, paragraph 71 and the case-law cited).
- 46 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 that were not foreseen as at the date the contract was entered into and which disrupt the normal continuation of the employment relationship, the compensation provided for in Article 53(1)(b) of that statute seeks precisely to compensate for the unforeseen nature of the severance of the employment relationship for such a reason and, accordingly, the disappointment of the legitimate expectations that the worker might then have had as regards the stability of that relationship (see, to that effect, the judgment of 21 November 2018, *de Diego Porras*, C-619/17, EU:C:2018:936, paragraph 72 and the case-law cited).
- 47 In the present case, subject to verification by the referring court, it is clear from the case file before the court that Ms Baldonado Martín's employment contract was terminated on the ground that an event foreseen for that purpose had occurred, namely that the post that she occupied on a temporary basis was filled definitively by the appointment of an established civil servant.
- 48 In those circumstances, Clause 4(1) of the framework agreement must be interpreted as not precluding a national law that does not provide for the payment of any compensation for termination of employment to fixed-term workers employed as interim civil servants whereas it provides for the payment of such compensation to contract workers employed for an indefinite duration upon the termination of their contract of employment on an objective ground.
- 49 Having regard to all the foregoing considerations, the answer to the first question is that Clause 4(1) of the framework agreement must be interpreted as not precluding a national law that does not provide for the payment of any compensation either for fixed-term workers employed as interim civil servants or for established civil servants who have an employment relationship of indefinite duration upon the termination of their employment, whereas it provides for the payment of such compensation to contract workers employed for an indefinite duration upon the termination of their contract of employment on an objective ground.

The second question

- 50 By its second question, the referring court asks, in essence, whether Articles 151 and 153 of the TFEU, Articles 20 and 21 of the Charter and Clause 4(1) of the framework agreement, must be interpreted as precluding a national law that does not provide for payment of any compensation to fixed-term workers employed as interim civil servants upon the termination of their employment, whereas compensation is granted to fixed-term contract workers upon the expiry of their contract of employment.

- 51 As a preliminary matter, it should be recalled that that question is based on the premiss that, first, fixed-term contract workers employed by the Municipality of Madrid, who are covered by the Workers' Statute, receive compensation equivalent to twelve days' remuneration for each year of service upon expiry of their employment contract, provided for in Article 49(1)(c) of that statute, second, that provision does not apply to fixed-term workers employed as interim civil servants, such as Ms Baldonado Martín, and, third, the EBEP, which covers the latter workers, does not provide for the grant of equivalent compensation upon the termination of their employment.
- 52 As regards, in the first place, Clause 4(1) of the framework agreement, it should be recalled that, since 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, any differences in treatment between specific categories of fixed-term staff are not covered by the principle of non-discrimination established by the framework agreement (judgment of 21 November 2018, *Viejobueno Ibáñez and de la Vara González*, C-245/17, EU:C:2018:934, paragraph 51 and the case-law cited).
- 53 Thus, since the difference in treatment between the two categories of fixed-term workers in question in the main proceedings is not based on whether the employment relationship is fixed-term or indefinite, but on whether it is statutory or contractual, it is not covered by Clause 4(1) of the framework agreement (see, to that effect, the judgment of 14 September 2016, *Pérez López*, C-16/15, EU:C:2016:679, paragraph 66).
- 54 Therefore, that provision must be interpreted as not precluding a national law such as that set out in paragraph 50 above.
- 55 As regards, in the second place, Articles 151 and 153 TFEU, it suffices to observe, as the European Commission has pointed out, that those articles of the Treaty establish the general objectives and measures of the EU's social policy, and that the right claimed by Ms Baldonado Martín or the obligation for a Member State to ensure such a right cannot be deduced from such provisions (see, to that effect, the judgment of 21 March 2018, *Podilá and Others*, C-133/17 and C-134/17, not published, EU:C:2018:203, paragraph 37).
- 56 As regards, in the third place, Articles 20 and 21 of the Charter, it must be observed that a difference of treatment based on whether the employment relationship is statutory or contractual may, in principle, be assessed with regard to the principle of equal treatment, which is a general principle of EU law, now enshrined in Articles 20 and 21 of the Charter (see, to that effect, the judgment of 9 March 2017, *Milkova*, C-406/15, EU:C:2017:198, paragraphs 55 to 63).
- 57 However, it should be recalled that the Charter's field of application so far as concerns action by the Member States is defined in Article 51(1) thereof, according to which the provisions of the Charter are addressed to the Member States only when they are implementing European Union law (judgment of 6 October 2016, *Paoletti and Others*, C-218/15, EU:C:2016:748, paragraph 13 and the case-law cited).
- 58 It is clear from the case-law of the Court that the concept of 'implementing Union law', as referred to in Article 51(1) of the Charter, presupposes a degree of connection between the measure of EU law and the national measure at issue which goes beyond the matters covered being closely related or one of those matters having an indirect impact on the other (judgment of 6 October 2016, *Paoletti and Others*, C-218/15, EU:C:2016:748, paragraph 14 and the case-law cited).
- 59 In accordance with the Court's settled case-law, in order to determine whether a national measure involves 'implementing of EU law' for the purposes of Article 51(1) of the Charter, it is necessary to determine, inter alia, whether that national legislation is intended to implement a provision of EU law; the nature of the legislation at issue and whether it pursues objectives other than those covered by EU

law, even if it is capable of indirectly affecting EU law; and also whether there are specific rules of EU law on the matter or rules which are capable of affecting it (judgment of 10 July 2014, *Julián Hernández and Others*, C-198/13, EU:C:2014:2055, paragraph 37 and the case-law cited).

- 60 In the present case, Ms Baldonado Martín submits that Article 49(1)(c) of the Workers' Statute is intended to implement Clause 5 of the framework agreement, whilst the Spanish Government disputes that assertion.
- 61 In that regard, it should be recalled that the Court has already held that the compensation provided for in Article 49(1) of the Workers' Statute, first, does not at first sight fall within one of the categories of measures set out in Clause 5(1)(a) to (c), of the Framework Agreement, one or more of which the Member States must establish if their legal order does not contain equivalent legal measures and, second, does not moreover appear to be an equivalent such legal measure, since it is not capable of achieving the general objective that Clause 5 assigns to Member States, consisting in preventing abuse arising from the use of successive fixed-term employment contracts or relations (see, to that effect, judgment of 21 November 2018, *de Diego Porras*, C-619/17, EU:C:2018:936, paragraphs 92 to 94).
- 62 Since the payment of that compensation is made without any consideration as to the legitimacy or misuse of such contracts or relationships, it does not appear apt to penalise misuse of successive fixed-term employment contracts or relations and nullify the consequences of the breach of EU law and, therefore, does not appear to be, in itself, a measure that is sufficiently effective and a sufficient deterrent to ensure that the measures taken pursuant to the framework agreement are fully effective (see, to that effect, judgment of 21 November 2018, *de Diego Porras*, C-619/17, EU:C:2018:936, paragraphs 94 and 95).
- 63 It follows that Article 49(1)(c) of the Workers' Statute pursues a different objective from that of Clause 5 of the framework agreement and cannot therefore be regarded as 'implementing EU law', within the meaning of Article 51(1) of the Charter.
- 64 Consequently, the difference of treatment at issue in the main proceedings cannot be assessed in the light of the guarantees of the Charter and, in particular, of Articles 20 and 21 thereof.
- 65 In view of the foregoing considerations, the answer to the second question is that Articles 151 and 153 of the TFEU and Clause 4(1) of the framework agreement must be interpreted as not precluding a national law that does not provide for payment of any compensation to fixed-term workers employed as interim civil servants upon the termination of their employment, whereas compensation is granted to fixed-term contract workers upon the expiry of their contract of employment.

The third question

- 66 It is clear from the order for reference that, by its third question, the referring court wishes to know, in essence, whether Clause 5 of the framework agreement must be interpreted as meaning that, where an employer uses fixed-term working relationships to cover its permanent needs and not for expressly justified reasons of necessity and urgency, the grant of compensation equivalent to that paid to workers in a case of unfair dismissal, in accordance with Article 56 of the Workers' Statute, is a measure designed to prevent and, where appropriate, penalise the misuse of successive fixed-term employment contracts or relationships or an equivalent legal measure, within the meaning of that clause.
- 67 The Spanish government considers that that question is inadmissible on the ground that Clause 5 of the framework agreement does not apply to a situation such as that at issue in the main proceedings, in which there has not been successive use of fixed-term employment contracts or relationships, or abuse, within the meaning of that clause.

- 68 It is settled case-law that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling from a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 21 November 2018, *de Diego Porrás*, C-619/17, EU:C:2018:936, paragraph 77 and the case-law cited).
- 69 Furthermore, the need to provide an interpretation of EU law which will be of use to the referring court requires that court to define the factual and legislative context of the questions it is asking or, at the very least, to explain the factual circumstances on which those questions are based (see, to that effect, the judgment of 31 May 2018, *Zheng*, C-190/17, EU:C:2018:357, paragraph 48 and the case-law cited).
- 70 In that regard, it is settled case-law that Clause 5(1) of the framework agreement applies only where there are successive fixed-term employment contracts or relationships (judgments of 22 November 2005, *Mangold*, C-144/04, EU:C:2005:709, paragraphs 41 and 42, and of 26 January 2012, *Kücük*, C-586/10, EU:C:2012:39, paragraph 45, and order of 12 June 2019, *Aragón Carrasco and Others*, C-367/18, not published, EU:C:2019:487, paragraph 55).
- 71 It is clear from Clause 5(2)(a) of the framework agreement that it is for Member States to determine under what conditions fixed-term employment contracts or relationships are to be regarded as “successive” (judgment of 21 November 2018, *de Diego Porrás*, C-619/17, EU:C:2018:936, paragraph 79 and order of 12 June 2019, *Aragón Carrasco and Others*, C-367/18, not published, EU:C:2019:487, paragraph 56).
- 72 In the present case, the referring court does not provide any indication that permits the view that Ms Baldonado Martín was employed by the Municipality of Madrid under several employment contracts or relationships or that the situation at issue in the main proceedings must be regarded, under Spanish law, as one of successive fixed-term employment contracts or relationships.
- 73 On the contrary, that court states that the person concerned held the same position of employment continuously and constantly. In addition, it is clear from the case file before the court that the employment relationship between the parties to the main proceedings is the first and only employment relationship between them.
- 74 In those circumstances, the issue raised by the third question is manifestly hypothetical. Consequently, this question must be held to be inadmissible.

Costs

- 75 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 (Second Chamber) hereby rules:

- 1. Clause 4(1) of the framework agreement on fixed-term work concluded on 18 March 1999, which is set out in the annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as not precluding a national law that does not provide for the payment of any compensation either for fixed-term workers employed as interim civil servants or for**

established civil servants who have an employment relationship of indefinite duration, upon the termination of their employment, whereas it provides for the payment of such compensation to contract workers employed for an indefinite duration upon the termination of their contract of employment on an objective ground.

- 2. Articles 151 and 153 of the TFEU and Clause 4(1) of the framework agreement on fixed-term work set out in the annex to Directive 1999/70 must be interpreted as not precluding a national law that does not provide for payment of any compensation to fixed-term workers employed as interim civil servants upon the termination of their employment, whereas compensation is granted to fixed-term contract workers upon the expiry of their contract of employment**

[Signatures]