

als working for more than eight hours a month. The definition boils down to the concept of services performed for a certain period of time under the direction of another person in return for pay. The criterion of ‘genuine and effective economic activity’ has been intentionally left out in order to expand the potential scope of application and not to exclude marginal and ancillary activities, particularly digital platform work. Workers will be granted new rights in relation to: information on the essential aspects of their work, the length of probationary periods, seeking additional employment, knowing a reasonable period in advance when work will take place (especially in the case of zero-hours contracts or on-call work), receiving free mandatory training and receiving a written reply to any request to transfer to another more secure job. The proposal itself is a part of the European Pillar of Social Rights which should be implemented before Juncker’s Commission term finishes in late-2019. Further discussions can be expected.

## ECJ 20 December 2017, case C-158/16 (Vega González), Fixed-term work, Other forms of discrimination

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Margarita Isabel Vega González – v – Consejería de Hacienda y Sector Público del Gobierno del Principado de Asturias, Spanish case

### Summary

A fixed-term worker elected to a parliamentary role must be able to benefit from the same special leave granted to a permanent civil servant, to enable them to hold a public office.

### Facts

On 15 April 2011, the Government of Asturias appointed Ms Vega González as an interim civil servant (on a fixed-term contract). In 2015, Ms Vega González was elected a Member of Parliament. In order to be able to attend to her parliamentary duties on a full time basis, Ms Vega González submitted a request for special service leave or – alternatively – personal leave. By a decision of 23 June 2015, the Spanish Directorate General for the Civil Service turned down Ms Vega González’s request on the grounds that special service leave and personal leave can only be granted to ‘established’ civil servants (i.e. civil servants with indefinite term con-

tracts). Ms Vega González lodged an internal appeal against this decision at the Ministry, which was dismissed as well. The Ministry explained that Ms Vega González’s request would have been granted if she had had an indefinite term contract, and that the only way for Ms Vega González to carry out her political duties full time was to resign from her post as a civil servant. Ms Vega González lodged an appeal against this decision with the Juzgado de lo Contencioso-Administrativo n.1 de Oviedo (Spanish Administrative Court).

### National proceedings

The Spanish Administrative Court found that the temporary nature of activities carried out by a civil servant who works on a fixed-term contract is not an objective reason justifying a difference in treatment that deprives the civil servant the right to return to his or her post at the end of the parliamentary term of office.

The Spanish Administrative Court was therefore uncertain as to whether the concept of ‘working conditions’ – as laid down in Clause 4 (1) of Framework Agreement on fixed-term work (Directive 1999/70/EC) – meant that employers were obliged to give fixed-term workers (in the present case a ‘non-established civil servant’) a status that would enable them to suspend their employment contract in order to fulfil a political mandate – in the same way as a permanent worker could. Second, the Spanish Administrative Court was uncertain whether the difference in treatment between non-established and established civil servants was compatible with the principle of non-discrimination established in Clause 4(1) of the Framework Agreement.

### Questions put to the ECJ<sup>7</sup>

1. Must Clause 4(1) of the Framework Agreement be interpreted as meaning that the concept of ‘employment conditions’, referred to in that provision, includes the right for a worker who has been elected to a parliamentary role to benefit from special service leave, provided for by national legislation, under which the employment relationship is suspended such that the worker’s job and his entitlement to promotion are guaranteed until the end of his parliamentary term of office?
2. Must Clause 4 of the Framework Agreement be interpreted as precluding national legislation, such as that at issue in the main proceedings, that absolutely excludes fixed-term workers from the right to be granted leave, so that they may hold political office, during which the employment relationship is suspended until the worker’s reinstatement at the

7. As rephrased by the ECJ.

end of the term of office, when that right is conferred on permanent workers?

## ECJ's findings

### First question

Clause 4 of the Framework Agreement aims to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination. Consequently, the Framework Agreement was established to ensure equal treatment for fixed-term workers by protecting them against discrimination. Therefore employers must not deprive fixed-term workers of certain rights that permanent workers have. In this regard, the ECJ mentioned that the aforementioned objective pursued by the Framework Agreement is a principle of EU Social law, which cannot be interpreted restrictively (*de Diego Porras*, C-596/14).

Regarding 'employment conditions' within the meaning of Clause 4(1) of the Framework Agreement, the decisive criterion as to whether a measure falls within the scope of that concept is that of employment, i.e. an employment relationship between a worker and his or her employer (*Carratù*, C-361/12; *Nierodzik*, C-38/13; *de Diego Porras*, C-596/14; *Rodrigo Sanz*, C-443/16). As the Advocate-General noted, this concept should be understood to mean: "*the rights, entitlements and obligations that define a given employment relationship, including both the condition under which a person takes up employment and those concerning the termination of that relationship.*" Therefore, a decision granting special service leave, which leads to the suspension of certain elements of the employment relationship, falls within the concept of 'employment conditions' within the meaning of Clause 4 of the Framework Agreement.

Two circumstances were decisive. First, the decision to grant special service leave to Ms Vega González was made based on the employment relationship between Ms Vega González and her employer, the Government of Asturias. Second, the employment relationship would not only be suspended by special service leave, but would also be reserved until the end of Ms Vega González's parliamentary term of office.

The argument that Ms Vega González unilaterally decided to take part in the elections, did not lead to a different judgment, since a permanent worker in the same situation would have been faced with the same need. Someone who puts themselves up for election to parliament cannot be sure to be chosen, so taking part does not lead inexorably to an application for special leave.

### Second question

Clause 4 (1) of the Framework Agreement prohibits treating fixed-term workers less favourably than permanent workers in a comparable situation solely because they work on a fixed-term contract, unless different

treatment is justified on objective grounds. In the present case there is in fact a difference in treatment between Ms Vega González, a fixed-term worker, and permanent workers, since the latter could be granted special service leave – under which the contract of employment relationship was suspended until reinstatement – whilst Ms Vega González was forced to resign in order to hold office.

This different in treatment could only be justified if she carried out activities which were not identical or equivalent to those of permanent employees. It was therefore for the Spanish Administrative Court to determine whether Vega González's situation was comparable to that of permanent workers. If the Spanish Administrative Court found inequality of treatment, it would then have to ascertain whether it may be justified on objective grounds.

In any event, a blanket refusal to grant fixed-term workers special service leave was not indispensable to the objective of the law, namely the maintenance of jobs and the entitlement to promotion of permanent workers.

## Ruling

Clause 4(1) of the framework agreement on fixed-term work concluded on 18 March 1999, annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP must be interpreted as meaning that the concept of 'employment conditions', referred to in that provision, includes the right for a worker who has been elected to a parliamentary role to benefit from special service leave, provided for by national legislation, under which the employment relationship is suspended such that the worker's job and his entitlement to promotion are guaranteed until the end of that parliamentary term of office.

Clause 4 of the framework agreement on fixed-term work concluded on 18 March 1999, annexed to Council Directive 1999/70 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, that absolutely precludes granting a fixed-term worker, so that he may hold political office, leave during which the employment relationship is suspended until reinstatement of that worker at the end of the term of office, when that right is conferred on permanent workers.