

ECJ 5 June 2018, C-574/16 (Grupo Norte), Fixed-term work

Grupo Norte Facility SA – v – Angel Manuel
Moreira Gómez, Spanish case

Summary

Differences in compensation at the end of employment between fixed-term and permanent workers is found non-discriminatory, as the different types of compensation meet different objectives.

Legal Background

Clause 4(1) of the framework agreement on fixed-term work (Framework Agreement), annexed to Directive 1999/70/EC, stipulates that fixed-term workers shall not be treated less favourably than comparable permanent workers, solely because they have a fixed-term contract, unless different treatment is justified on objective grounds.

⁴⁶ Spanish law provides for partial retirement, whereby an employer can make a so-called ‘relief contract’ either with an external candidate or with someone already employed by the employer to fill the post partially vacated by the retiree. This may be done by means of a relief contract either for a fixed term or on a permanent basis (but it should at least cover the period until the retiree is fully retired). Spanish law also provides that fixed-term workers have the same rights as permanent workers, subject to those clauses within the agreement that are intrinsically different, such as the termination provisions.

The Spanish Workers’ Statute provides multiple ways in which employment contracts can end. Upon the expiry of certain forms of temporary contract, an employee is generally entitled to compensation equivalent to 12 days’ pay for each year of service. Employment contracts can also end on certain ‘objective grounds’ specified in the law, but the applicability of these only becomes apparent after the employment has started. If one of those grounds is used to terminate an employment contract, the employee will generally receive compensation equivalent 20 days’ pay per year of service, to a maximum of 12 months’ pay.

Facts

Mr Gomez worked on a ‘relief contract’ for almost three years, until its termination on 18 September 2015. He claims he was unfairly dismissed for various reasons (not involving EU law and therefore not relevant to this case report). The High Court of Justice of Galicia found the dismissal not unlawful but had to establish Mr Gomez’ compensation for the expiry of his temporary contract. It noticed the difference in compensation between fixed-term and permanent workers under Spanish law and asked preliminary questions to the ECJ in light of Clause 4(1) of the Framework Agreement.

Question to the ECJ¹⁰

Must Clause 4(1) of the Framework Agreement be interpreted as precluding national legislation under which the compensation to be paid to workers employed under fixed-term contracts entered into in order to cover working hours no longer covered as a result of a worker taking partial retirement, such as the relief contract at issue in the main proceedings, on the expiry of the term for which those contracts were concluded, is less than the compensation awarded to permanent workers on termination of their employment contract on objective grounds?

Judgment

One of the main aims of the Framework Agreement is to improve the quality of fixed-term work by ensuring the principle of non-discrimination is enshrined in the law of Member States. Clause 4(1) of the Framework Agreement says that: “*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.*” This principle should not be interpreted strictly, meaning that the rules on the compensation of workers after termination of their contracts fall within the scope of ‘employment conditions’.

Various factors determine whether persons can be regarded to be in a comparable situation. The ECJ felt that it was generally for the referring court to assess this, but in this case, it was clear from the facts that that the employee was in a comparable situation to that of an employee with a permanent contract.

In terms of whether there are objective reasons to justify unequal treatment, it must be possible to point to precise and specific factors characterizing the employment based on objective and transparent criteria. There must

¹⁰. As rephrased by the ECJ.

be a genuine need for the employment, and it must be put in place in a way that is appropriate and necessary to fulfil its purpose. The factors based on which fixed-term contracts may be concluded must relate to the specific nature and inherent characteristics of the tasks. These factors may be apparent from socio-policy objectives of Member States, for example.

The two forms of compensation are paid in very different circumstances. As the Spanish Government argued, the compensation for certain fixed-term workers aims to prevent excessive use of temporary employment, in order to enhance employment stability. Both parties know that this compensation will be paid at the end of the contract. Compensation in cases of termination for objective reasons on the other hand (- which can also apply to fixed-term workers, though during, rather than at the end of the term -) is meant to compensate for the fact that a worker's legitimate expectation that the employment relationship would continue has been frustrated - and this would not have been known to the worker in advance.

As the compensation is payable in fundamentally different contexts for different reasons, the ECJ found that there were objective reasons justifying the difference in treatment.

Ruling

Clause 4(1) of the framework agreement on fixed-term work concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as not precluding national legislation under which the compensation paid to workers employed under fixed-term contracts entered into in order to cover working hours no longer covered as a result of a worker taking partial retirement, such as the relief contract at issue in the main proceedings, on expiry of the term for which those contracts were concluded, is less than the compensation awarded to permanent workers on termination of their employment contract on objective grounds.