



Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 20 December 2017¹

Case C-677/16

Lucía Montero Mateos

v

**Agencia Madrileña de Atención Social de la Consejería de Políticas Sociales y Familia de la
Comunidad Autónoma de Madrid**

(Request for a preliminary ruling
from the Juzgado de lo Social No 33 de Madrid (Social Court No 33, Madrid, Spain))

(Request 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 for termination of the employment contract — Fixed-term employment contract in the form of a temporary replacement contract — Difference in treatment in relation to permanent workers)

I. Introduction

1. Is it discriminatory if a fixed-term worker is not entitled to claim payment from his employer as compensation for the expiry of his employment contract or in any case only a lesser payment than a worker whose employment contract is terminated on dismissal by the employer on objective grounds? That is in essence the legal question with which the Court has to deal in these preliminary ruling proceedings. The centre of interest is thus once again the protection of fixed-term workers against abuse and discrimination, which has for some time been a social concern of the European Union that has repeatedly been addressed by this Court.

2. In these proceedings, the issue of discrimination arises in the case of a Spanish worker who for several years was employed by a public corporation under a fixed-term employment contract in a temporarily vacant post pending the final outcome of a selection procedure to fill the post permanently. Under Spanish law, the worker is not entitled to any financial compensation upon the mere expiry of such a ‘temporary replacement contract’,² whereas a worker who has been dismissed by his employer on objective grounds is entitled to compensation.

¹ Original language: German.

² Spanish: contrato de trabajo de interinidad.

3. The judgment in *de Diego Porras*,³ which was delivered in 2016, held 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.

4. In essence, the same legal issues arise in *Grupo Norte Facility* (C-574/16),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). Another pending case, *Vernaza Ayovi* (C-96/17), does concern matters of discrimination relating to the Spanish temporary replacement contract, but in a completely different context.

II. Legal framework

A. EU law

5. 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 CEEP⁵ ('Directive 1999/70'). According to its Article 1, that directive puts into effect the Framework Agreement on fixed-term work (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.

6. Overall, the Framework Agreement on fixed-term work 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

7. 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

8. 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 *Grupo Norte Facility* case merely concerns a different kind of contract in Spanish employment law, namely the fixed-term relief contract ('contrato de relevo').

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.’

9. 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.’

10. 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.’

11. 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.

...’

12. 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

13. The applicable provisions of Spanish law are laid down in the Workers’ Statute in the version in force at the time of the conclusion of the contested employment contract.¹¹

1. General provisions

14. 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.

15. 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.’

16. 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.

17. 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.

18. 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’.

¹¹ Texto refundido de la Ley del Estatuto de los Trabajadores, aprobado por el Real Decreto Legislativo 2/2015 (Consolidated text of the Law on the Workers’ Statute, approved by Royal Legislative Decree 2/2015) of 23 October 2015 (BOE No 255 of 24 October 2015, p. 100224). According to the Spanish Government, the wording of the relevant provisions of the Workers’ Statute is identical to the earlier version of that law, which is referred to this Court in *Grupo Norte Facility* (C-574/16).

2. The temporary replacement contract

19. The temporary replacement contract is a particular kind of employment contract which is governed by a provision implementing the Workers' Statute, namely Article 4 of Royal Decree 2720/1998.¹² The contract may be concluded in order to replace a worker who has a reserved right to his post under legislation or under a collective or individual agreement. The contract may also be concluded in order to cover a post temporarily while the selection or promotion procedure for permanently filling the post takes place.

III. Facts and main proceedings

20. On 13 March 2007, Lucía Montero Mateos concluded a temporary replacement contract with the Social Services Agency of the Autonomous Community of Madrid¹³ (Spain) in order to replace a permanent employee of that regional authority. On 1 February 2008, her contract was converted into a temporary replacement contract in anticipation of the filling of a vacant post.¹⁴

21. Throughout the term of her employment contract, Mrs Montero Mateos worked as a cafeteria assistant at the 'González Bueno' residential home for the elderly run by the Autonomous Community of Madrid.

22. After a selection procedure had been conducted to fill cafeteria assistants' posts permanently in the Autonomous Community of Madrid, the post in which Mrs Montero Mateos had been employed up to that point was awarded to another worker. Thereupon, on 30 September 2016, the manager of the residential home informed Mrs Montero Mateos that from that date she was no longer required to provide services as a cafeteria assistant because her post had been permanently filled by someone else following the outcome of the selection procedure.

23. On 14 October 2016, Mrs Montero Mateos brought an action against the Autonomous Community of Madrid, Social Services Agency, at the Juzgado de lo Social No 33 de Madrid,¹⁵ the referring court, in respect of the termination of her employment relationship.

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

24. By order of 21 December 2016, received on 29 December 2016, the Juzgado de lo Social No 33 de Madrid referred the following question to the Court for a preliminary ruling pursuant to Article 267 TFEU:

Must clause 4(1) of the Framework Agreement on fixed-term work be interpreted as meaning that termination of a temporary 'contrato de interinidad' to cover a vacancy when the term for which the contract was concluded by the employer and the worker expires constitutes objective grounds justifying the Spanish legislature's not providing in such a case for any compensation whatsoever for the termination of the contract, whereas compensation of 20 days' pay for every year of service is provided for in the case of a comparable permanent worker dismissed on objective grounds?

¹² Real Decreto 2720/1998 por el que se desarrolla el artículo 15 del Estatuto de los Trabajadores en materia de contratos de duración determinada (Royal Decree 2720/1998 implementing Article 15 of the Workers' Statute on fixed-term contracts) of 18 December 1998 (BOE No 7 of 8 January 1999, p. 568).

¹³ Agencia Madrileña de Atención Social de la Consejería de Políticas Sociales y Familia de la Comunidad Autónoma de Madrid ('the Agencia').

¹⁴ The post was No 16.332, as was noted in the employment contract.

¹⁵ Social Court No 33, Madrid, Spain.

25. In the preliminary ruling proceedings before the Court, written observations have been submitted by Mrs Montero Mateos, the Agencia, 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 Agencia, the Spanish Government and the Commission were represented.

26. 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

27. By its question, 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 not entitled to any compensation, while a worker whose employment contract, whether for an indefinite period or for a fixed period, is terminated by *dismissal* by the employer on objective grounds receives such compensation.

28. The background to the question 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' or a training contract expires (Article 49(1)(c) of the Workers' Statute).

A. The scope of the principle of non-discrimination

29. 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.

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

31. The Court has also already made clear that the provisions of the Framework Agreement can apply to fixed-term employment contracts and relationships concluded with public authorities and other public-sector bodies¹⁶ and that individuals are able to rely directly upon clause 4(1) of the Framework Agreement before national courts against such authorities or bodies.¹⁷

32. 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*.

¹⁶ Judgments of 4 July 2006, *Adeneler and Others* (C-212/04, EU:C:2006:443, paragraphs 54 to 57); of 13 September 2007, *Del Cerro Alonso* (C-307/05, EU:C:2007:509, paragraph 25); of 22 December 2010, *Gavieiro and Iglesias Torres* (C-444/09 and C-456/09, EU:C:2010:819, paragraphs 38 to 40); 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 67).

¹⁷ Judgments of 15 April 2008, *Impact* (C-268/06, EU:C:2008:223, paragraph 68), and of 12 December 2013, *Carratù* (C-361/12, EU:C:2013:830, paragraph 28).

33. The Spanish Government considers that this concept is intended to refer only to *working conditions*¹⁸ in the narrow sense, but not to other employment conditions¹⁹ such as the requirements for and legal consequences of termination of fixed-term employment contracts or relationships.

34. 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.²⁰

35. 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,²¹ 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.

36. The Framework Agreement is intended to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination.²² 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.²³ 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.²⁴ Accordingly, the principle of non-discrimination against fixed-term workers cannot be interpreted restrictively.²⁵

37. 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.²⁶ Reference should be made in this connection in particular to anti-discrimination Directives 2000/78/EC²⁷ and 2006/54/EC,²⁸ 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.²⁹ 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.³⁰

18 Spanish: condiciones de trabajo.

19 Spanish: condiciones de empleo.

20 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).

21 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*).

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

23 Third paragraph in the preamble to the Framework Agreement.

24 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).

25 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).

26 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).

27 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).

28 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).

29 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).

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

38. 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.³¹

39. 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.

40. 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.³²

B. The question of possible discrimination between fixed-term workers and permanent workers

41. It remains to be examined, as the central problem in the present case, whether fixed-term and permanent workers are in a comparable situation.³³ 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.³⁴ 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.

42. The starting point for consideration of comparability between fixed-term workers and permanent workers, which is for the referring court to determine,³⁵ 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.³⁶

³¹ 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).

³² Order of 11 November 2010, *Vino* (C-20/10, EU:C:2010:677, paragraph 57).

³³ 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).

³⁴ 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).

³⁵ 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).

³⁶ 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).

43. In the present case, it must be assumed that the fixed-term worker is in the same situation, with regard to the specific activity to be performed — in particular the nature of her work, training requirements and working conditions — as a permanent worker in the same establishment, since, as far as can be seen, Mrs Montero Mateos performed identical activity as a cafeteria assistant to other permanent cafeteria assistants in the residential home for the elderly. She was even awarded a specific post that was actually designated for and ultimately filled by a permanent worker.

44. 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.

45. In assessing this question, the same criteria must be applied, ultimately, as in other matters of discrimination.³⁷ 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.³⁸

46. 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.³⁹

47. 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.⁴⁰

48. 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*,⁴¹ and to reconsider its case-law on this point.

49. 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).⁴²

³⁷ 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.

³⁸ 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.

³⁹ 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).

⁴⁰ See, to that effect, judgment of 12 December 2013, *Carratù* (C-361/12, EU:C:2013:830, paragraphs 44 and 45).

⁴¹ Judgment of 14 September 2016, *de Diego Porras* (C-596/14, EU:C:2016:683, in particular paragraphs 40 to 44 and 51).

⁴² 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.

50. 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.

51. 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,⁴³ but quite tangibly because of different levels of predictability of job loss, which may be accompanied by different levels of entitlement to compensation.

52. 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.

53. 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, in view of the length of his fixed-term employment, that his employment relationship would be consolidated in a similar way to that of a permanent worker.

54. 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.

55. 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.

56. It is true that the end of the term of the employment contract in the present case, unlike in Case C-574/16, is not linked to a certain calendar date, but to a contractually agreed future event: the expected appointment of a permanent worker on the conclusion of an ongoing selection procedure.

57. Even if, as in the present case or in *de Diego Porras*,⁴⁴ a worker has for some time performed the same activity for the same employer on the basis of a fixed-term employment contract,⁴⁵ in my view her employment relationship is still much less consolidated and therefore her expectation in its continuation much less worthy of protection than in the case of a permanent worker with an indefinite employment contract.

⁴³ 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).

⁴⁴ Judgment of 14 September 2016 (C-596/14, EU:C:2016:683).

⁴⁵ In this respect the present case differs from the parallel proceedings in *Grupo Norte Facility* (C-574/16), which concerned a fixed-term employment contract with a term of less than three years. As I state in my Opinion delivered today in that case, however, the legal assessment should be the same in both cases.

58. Consequently, I am also not very convinced by the Commission's proposal to regard fixed-term employment relationships with an unusually long term as comparable with permanent employment relationships of indefinite duration. Legal certainty would suffer considerably and the principle of non-discrimination in respect of fixed-term workers would be made much more difficult to manage in practice if comparability were made dependent, on a case-by-case basis, on the actual duration of the employment relationship in question and on the degree of predictability of its expiry.

59. Abusive practices by employers, which can manifest themselves inter alia in a series of successive fixed-term employment contracts, should be combatted in an effective and dissuasive manner by dedicated measures in accordance with clause 5 of the Framework Agreement, going as far as the possible conversion of a fixed-term employment contract into a contract of indefinite duration.⁴⁶ In this regard, 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, as the Commission rightly notes.⁴⁷

60. 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 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'.⁴⁸ It can also be seen as a 'contribution towards achieving a better balance between "flexibility in working time and security for workers"'.⁴⁹

C. The possible justifications for a difference in treatment

61. Only in the event that the Court should assess the issue of the comparability of the situation of fixed-term workers and permanent workers differently from my proposed assessment, I will briefly turn, finally, to the possible justifications for the different arrangements for the entitlements to statutory compensation at issue.

62. In a case like the present one, which concerns a public-sector employment relationship, two aspects above all should be discussed: budgetary considerations, which are becoming increasingly important in view of the tight financial situation of public authorities in the Member States, and the principles governing public service employment in the Member States.

⁴⁶ However, the Framework Agreement does not lay down a general obligation for the Member States to provide for the conversion of fixed-term employment contracts into contracts of indefinite duration (judgments of 4 July 2006, *Adeneler and Others*, C-212/04, EU:C:2006:443, paragraph 91; of 7 September 2006, *Marrosu and Sardino*, C-53/04, EU:C:2006:517, paragraph 47; and of 14 September 2016, *Martínez Andrés and Castrejana López*, C-184/15 and C-197/15, EU:C:2016:680, paragraph 39), in particular not in the public service.

⁴⁷ In the judgment 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, paragraphs 108 and 109), the Court intimated that it may constitute abuse within the meaning of clause 5 of the Framework Agreement to employ replacement staff under successive fixed-term employment contracts when it cannot be foreseen when the selection procedure for the recruitment of permanent workers will be completed.

⁴⁸ Paragraph 8 of the general considerations of the Framework Agreement; see also the second paragraph in the preamble to the agreement.

⁴⁹ First paragraph in the preamble to the Framework Agreement; see also paragraphs 3 and 5 of its general considerations.

63. As regards *budgetary considerations*, first of all, less favourable rules on statutory compensation for the expiry of fixed-term employment contracts in comparison with the rules on compensation for dismissal by the employer on objective grounds cannot be justified solely because more liberal rules would place too great a burden on public finances. According to settled case-law, mere budgetary considerations, even where they underlie a Member State's choice of social policy and may also influence their nature or scope, cannot in themselves serve as justification for discrimination.⁵⁰

64. The *principles governing public service employment* — for example, the 'established post' principle, the model of the established public servant and the requirement for success in a selection competition in order to be employed on an indefinite basis — do have consequences for the practical application of the provisions of the Framework Agreement.⁵¹ The Framework Agreement expressly recognises 'that ... detailed application [of the agreement's principles and minimum requirements] needs to take account of the realities of specific national, sectoral and seasonal situations'.⁵²

65. However, not all differences in treatment between fixed-term workers and comparable permanent workers can be justified generally by reference to the particular sectoral features of the public service,⁵³ but only those for which those particularities are really crucial in tangible terms.⁵⁴ Subject to closer examination by the referring court, there is nothing in the present case to suggest that it could be necessary for the realisation of principles governing public service employment to make the rules on statutory compensation for the expiry of a fixed-term employment contract in the public service less favourable than those for dismissal by the employer on objective grounds.

66. If, contrary to my above statements, the situation of a fixed-term worker whose employment contract expires and the situation of a permanent worker who is dismissed by the employer on objective grounds were therefore to be considered to be comparable, there would be no evident objective justification for the different entitlements to statutory compensation.

D. Intermediate conclusion

67. All in all, however, it can be stated with regard to the interpretation of clause 4(1) of the Framework Agreement, because, as I have established, the situations are not comparable, 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.

⁵⁰ Judgments of 24 February 1994, *Roks and Others* (C-343/92, EU:C:1994:71, paragraph 35 and, additionally, paragraphs 36 and 37); of 20 March 2003, *Kutz-Bauer* (C-187/00, EU:C:2003:168, paragraph 59 and, additionally, paragraphs 60 and 61); 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 110).

⁵¹ See my Opinions in *Angelidaki and Others* (C-378/07 to C-380/07, EU:C:2008:686, point 117) and in *Adeneler and Others* (C-212/04, EU:C:2005:654, points 85 and 86); see, in the same vein, Joined Opinion of Advocate General Poiares Maduro in *Marrosu and Sardino and Vassallo* (C-53/04 and C-180/04, EU:C:2005:569, points 42 and 43).

⁵² Third paragraph in the preamble to the Framework Agreement; see also paragraph 10 of its general considerations.

⁵³ See also, to that effect, judgments of 7 September 2006, *Marrosu and Sardino* (C-53/04, EU:C:2006:517, paragraph 45); and *Vassallo* (C-180/04, EU:C:2006:518); 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 70), in each of which the Court added as a qualification: 'provided that that is justified on objective grounds'.

⁵⁴ See, in the same vein, my View in the Review in *Commission v Strack* (C-579/12 RX-II, EU:C:2013:573, points 66 to 68).

VI. Conclusion

68. In the light of the above considerations, I propose that the Court answer the request for a preliminary ruling from the Juzgado de lo Social No 33 de Madrid (Social Court No 33, Madrid, Spain) as follows:

Clause 4(1) of the Framework Agreement on fixed-term work 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 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.