

Employment Law Remark

The European Union Court of Justice corrects and clarifies its criterion on the compensation regime applicable to temporary contracts in Spain

June 2018

Judgments of the Grand Chamber of the Court of Justice dated 5th June 2018

On 5th June 2018, the Grand Chamber of the European Union Court of Justice delivered two judgments in response to two questions referred for a preliminary ruling on the compensation of temporary contracts by the Madrid Court of Social Affairs No 33 ([Montero Mateos case: C-677/16](#), on an interim worker) and by the High Court of Justice Galicia ([Grupo Norte Facility case: C-574/16](#)), concerning the termination of a replacement contract.

The content of this opinion reflects the correction of the doctrine of the famous judgment of the Court of Justice of 14 September 2016 ([C-596/14: Diego Porras case](#)), which held that the refusal to grant compensation for termination of the temporary employment contract was contrary to Clause 4 of the Framework Agreement on fixed-term work annexed to Directive 1999/70, *'while allowing for the award of such compensation, to comparable permanent workers'*.

1.- Firstly, the Judgment of the Court of Justice of the European Union ([Montero Mateos case: C-677/16](#)) emphasises that the Spanish labour legislation governing the non-reimbursement of temporary workers is compatible with Community law.

The reporting judge, the Bulgarian Alexander Arabadjiev, determines that it is necessary to check whether there is an objective reason why the termination of an interim contract should not give rise to the payment of compensation to the temporary worker concerned, whereas a permanent worker is entitled to compensation when he or she is dismissed on one of the grounds provided for in Article 52 of the worker's statute.

After analysing the difference between the regulation of the termination of temporary contracts regulated in Article 49(1)(c) of the worker's statute and the termination for objective reasons of Article 52, it considers that 'Spanish law does not apply any difference in treatment between workers on temporary contracts and comparable permanent workers, since Article 53(1)(b) of the Workers' Statute provides for the payment of a legal indemnity equivalent to 20 days' salary per year of service in favour of the worker, regardless of the fixed or indefinite duration of his employment contract' (point 62)'.

Furthermore, the specific subject-matter of the compensation provided for in the two provisions, the payment of which is part of fundamentally different contexts, 'constitutes an objective reason justifying the difference in treatment at issue' (paragraph 63).



It therefore concludes that, with regard to the interim contract, the Framework Agreement must be interpreted as meaning that it does not preclude national legislation which does not provide for the payment of any compensation to workers with fixed-term contracts concluded for the temporary filling of a post during the selection or promotion process for the definitive filling of that post, on the expiry of the term for which those contracts were concluded, while compensation is granted to permanent workers on the termination of their employment contract for an objective reason' (paragraph 65).

2.- For its part, the Judgment of the Court of Justice of the European Union Norte Facility case (C-574/16) endorses the Spanish legislation on the retirement respite contract, which allows the employer to choose whether the respite contract is for an indefinite period or a fixed-term contract - up to the retirement age of the replaced worker.

It is clear from the definition of the term 'fixed-term contract' in Clause 3(1) of the Framework Agreement that such a contract ceases to have effect for the future when the term assigned to it expires and that the term may be the completion of a specific task, a specific date or, as in this case, the occurrence of a specific event. Thus, the parties to a temporary employment contract know, from the moment of its conclusion, the date or event that determines its termination. This term limits the duration of the employment relationship, without the parties having to express their willingness to do so after the conclusion of the contract (paragraph 57).

And that in the present case, the payment of compensation on the occasion of the termination of a replacement contract, which was foreseen, from the moment of its conclusion, to end on the occasion of the worker's access to full retirement, took place in a context that was significantly different, from the factual and legal point of view, from that in which the employment contract of a permanent worker is terminated due to the existence of one of the grounds provided for in Article 52 of the worker's statute (point 56).

In order to continue in this way, the same previous reporting judge, pointing out that Spanish law does not provide for any difference in treatment between workers with temporary contracts and comparable permanent workers, since Article 53(1)(b) of the worker's statute provides for the payment of a legal indemnity equivalent to twenty days' salary per year worked in the company in favour of the worker, irrespective of the fixed or indefinite duration of their contract of employment (point 59), so that in these circumstances the specific subject-matter of the allowances provided for in Articles 49(1)(c) and 53(1)(b) of the workers' statutes respectively, the payment of which is part of fundamentally different contexts, can be regarded as an objective reason justifying the difference in treatment at issue (point 60), and finally it can be held that:

"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 it does not preclude national legislation under which the compensation paid to workers on fixed-term contracts concluded to cover the working day left vacant by a worker who partially retires, such as the relief contract at issue in the main proceedings, at the end of the term for which those contracts were concluded, is less than the compensation paid to workers on indefinite-term contracts on termination of their employment contracts for an objective reason'.

3.- The conclusion drawn from the two judgments mentioned above is that in Spain the differences in the termination of temporary contracts are not discriminatory (no provision for severance pay in the event of termination of temporary contracts and lower severance pay in the event of termination of replacement contracts).

Furthermore, regarding the resolution of the questions referred for a preliminary ruling to the Court of Justice, it seems reasonable that in the future the decisions to be taken by the European Court should follow the same doctrine.

One of these questions, let us remember, is the one raised by the Social Chamber of the Supreme Court itself by means of an order dated 25 October 2017 (precisely in the Diego Porrás file), before deciding on the appeal for the unification of doctrine against the Judgment of the High Court of Justice Madrid of 5 October 2016, in which ruling, in spite of declaring the termination of a temporary employment contract to be appropriate, the employer was ordered to pay an indemnity equivalent to 20 days' salary per year worked.

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