

## SUMMARY

# ECJ 14 September 2016, case C-596/14 (De Diego Porras), Fixed-term work

***&lt;p&gt;Fixed-term workers must be paid the same severance compensation as comparable permanent workers.&/p&gt;***

### Summary

Fixed-term workers must be paid the same severance compensation as comparable permanent workers.

### Facts

Ms De Diego Porras had been employed by the Spanish Ministry of Defence since 2003. From 2003 to 17 August 2005 she had held several temporary contracts under which she replaced permanent employees during their absence. Starting on 17 August 2005 she replaced Ms Fernandez. The latter's absence lasted till 1 October 2012. Accordingly, Ms De Diego Porras was informed that her contract would terminate on that date. She challenged the legality of her fixed-term contract, claiming that she was actually a permanent employee and that, therefore, she was entitled to statutory severance compensation. Under Spanish law, a permanent employee who is terminated is entitled to 20 days' salary for each year of service, with a maximum of one year's salary. A fixed-term employee who is terminated is normally entitled to 12 days' salary for each year of service. However, a fixed-term employee who replaces a permanent employee during the latter's temporary absence is not entitled to any severance compensation at all.

### National proceedings

Ms De Diego Porras' action was dismissed at first instance. She appealed. The appellate court referred four questions to the ECJ. They related to the Framework Agreement on fixed-term work annexed to Directive 999/70/EC. Clause 4(1) of that agreement provides: "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". The first question was whether the concept of 'employment conditions' in Clause 4(1) of the Framework Agreement covers severance compensation. Questions 2-4 were whether Clause 4 precludes national legislation which fails to provide severance compensation to fixed-termers while allowing such compensation to comparable permanent workers.

### **ECJ's findings**

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The aim of the Framework Agreement is to improve the quality of fixed-term work by applying the principle of non-discrimination in order to prevent an employer using such an employment relationship to deny rights which are recognised for permanent workers. Given this aim, Clause 4 expresses a principle of EU social law which cannot be interpreted restrictively. The ECJ has held this in several rulings in respect of three-yearly length-of-service increments and notice period. Those rulings are fully transferable to severance compensation. Thus, the answer to the first question is that Clause 4(1) covers such compensation (§25-32).

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The principle of non-discrimination applies to differences between fixed-term workers and comparable permanent workers, not to differences between specific types of fixed-term workers (§37-38).

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It is for the Spanish courts to determine whether the nature of the work Ms De Diego Porras performed, the relevant training requirements, the working conditions and other relevant factors made her 'comparable' to a permanent worker, such as Ms Fernandez. Based on the information available, this would seem to be the case (§40-44).

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The concept of 'objective grounds' within the meaning of Clause 4 must be understood as not permitting a difference in treatment between fixed-termers and permanent workers to be

justified on the basis that the difference is provided for by a general, abstract national norm. Reliance on the mere temporary nature of the employment cannot constitute an ‘objective ground’. While it is for the Spanish courts to determine whether the arguments put forward by the Spanish government constitute ‘objective grounds’, the available information indicate that this does not seem to be the case (§45-52).

## **Judgment**

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Clause 4(1) of the Framework Agreement must be interpreted as meaning that the concept of ‘employment conditions’ covers the compensation that the employer must pay to an employee on account of the termination of his or her fixed-term employment contract.

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Clause 4 of the Framework Agreement must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which fails to provide any compensation for termination of a contract of employment to a worker employed under a temporary replacement contract while allowing such compensation to be granted, inter alia, to comparable workers employed under a contract of indefinite duration. The mere fact that the worker has carried out the work on the basis of a temporary replacement contract cannot constitute an objective ground justifying failure to grant such compensation to that worker.

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**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2016-09-14

**Case number:** C-596/14 (De Diego Porras)