



Press and Information

Court of Justice of the European Union

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Judgment in Case C-96/17

Gardenia Vernaza Ayovi v Consorci Sanitari de Terrassa

The framework agreement on fixed-term work does not mean that non-permanent workers in the Spanish public sector must be guaranteed reinstatement in the event that their disciplinary dismissal is found to be wrongful

In accordance with ordinary law, the employer may in such a case choose between reinstating and compensating the worker. The different treatment accorded to permanent workers, who must be reinstated, is justified by the guarantee of permanence of employment that permanent workers alone enjoy under the national law governing the civil service

Ms Gardenia Vernaza Ayovi was a nurse and worked for the Consorci Sanitari de Terrassa (Health Consortium, Terrassa, Spain) under a non-permanent employment contract. In July 2011 she was granted leave on personal grounds. When she asked to be reinstated, the Consorci Sanitari de Terrassa offered her a part-time job. Refusing to accept any job that was not a full-time position, she did not turn up for work and was the subject of a disciplinary dismissal on that ground in July 2016.

Ms Vernaza Ayovi thereupon brought proceedings before the Juzgado de lo Social n.º 2 de Terrassa (Social Court No 2, Terrassa, Spain) seeking a declaration that her dismissal was wrongful and an order requiring her employer either to reinstate her or to pay her the maximum amount of compensation available in law for wrongful dismissal. In this regard Ms Vernaza Ayovi relies on ordinary employment law.

However, by virtue of a distinction made in Spanish legislation, when the disciplinary dismissal of a *permanent* worker (permanent contract agent) in the service of a public authority, who does not have the status of an official, is declared to be wrongful, the worker in question must be reinstated, whereas, in the same situation, a *non-permanent* worker (an employee employed under a non-permanent contract of indefinite duration or a temporary contract) performing the same duties as that permanent worker need not be reinstated but instead may receive compensation.

The Spanish court asks the Court of Justice whether EU law, and, in particular, the framework agreement on fixed-term work,¹ precludes that legislation. In respect of employment conditions, the framework agreement provides that fixed-term workers must 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.

By today's judgment, the Court holds that the framework agreement does not preclude the Spanish legislation at issue.

The Court finds that there is a difference between the treatment of permanent workers and that of non-permanent workers with regard to the consequences arising from possible wrongful dismissal. Therefore, it is necessary to ascertain whether there is an objective ground justifying that difference in treatment. In that regard, the Court notes that the general rule applicable in Spain in the event of wrongful or unlawful dismissal provides that the employer

¹ 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 (OJ 1999 L 175, p. 43).

may choose between reinstating the worker in question and granting that worker compensation. By way of exception to that general rule, permanent workers in the service of the public authorities whose disciplinary dismissal has been declared wrongful must be reinstated.

The Court takes the view that such a difference in treatment cannot be justified by the public interest which attaches, in itself, to the methods of recruitment of permanent workers. However, **the Court finds that considerations based on the characteristics of the law governing the national civil service, such as impartiality, efficiency and independence of the administration, which imply a certain permanence and stability of employment are capable of justifying such a difference in treatment.** Those considerations, which have no counterpart in ordinary employment law, explain and justify the limitations on the power of public employers to terminate employment contracts unilaterally and, as a consequence, the national legislature's decision not to grant them the right to choose between reinstatement and compensation for harm suffered by reason of wrongful dismissal. Consequently, **the Court finds that the automatic reinstatement of permanent workers takes place in a significantly different context, from a factual and legal point of view, to that in which non-permanent workers find themselves. The Court concludes from this that the unequal treatment found to exist is thus justified** by the existence of precise and specific factors, characterising the employment condition to which it relates, in the particular context in which it occurs, and on the basis of objective and transparent criteria.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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