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Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

20 February 2024 (\*)

(Reference for a preliminary ruling – Social policy – Directive 1999/70/EC – Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Clause 4 – Principle of non-discrimination – Difference in treatment in the event of dismissal – Termination of a fixed-term employment contract – No obligation to state the reasons for termination – Judicial review – Article 47 of the Charter of Fundamental Rights of the European Union)

In Case C715/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Rejonowy dla Krakowa – Nowej Huty w Krakowie (District Court for Kraków-Nowa Huta, Kraków, Poland), made by decision of 11 December 2020, received at the Court on 18 December 2020, in the proceedings

**K.L.**

v

**X sp. z o.o.,**

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, A. Prechal, E. Regan, F. Biltgen, N. Piçarra, Presidents of Chamber, S. Rodin, P.G. Xuereb, L.S. Rossi, A. Kumin (Rapporteur), N. Wahl, I. Ziemele, J. Passer and D. Gratsias, Judges,

Advocate General: G. Pitruzzella,

Registrar: M. Siekierzyńska, Administrator,

having regard to the written procedure and further to the hearing on 22 November 2022,

after considering the observations submitted on behalf of:

- the Polish Government, by B. Majczyna, J. Lachowicz and A. Siwek-Ślusarek, acting as Agents,
  - the European Commission, by D. Martin, D. Recchia and A. Szmytkowska, acting as Agents,
- after hearing the Opinion of the Advocate General at the sitting on 30 March 2023,

gives the following

## **Judgment**

1 This request for a preliminary ruling concerns the interpretation of clause 4 of the framework agreement on fixed-term work concluded on 18 March 1999 (‘the framework agreement’), 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), and the interpretation of Articles 21 and 30 of the Charter of Fundamental Rights of the European Union (‘the Charter’).

2 The request has been made in proceedings between K.L., a worker who has been dismissed, and X sp. z o.o., a limited liability company governed by Polish law and the former employer of K.L., concerning the termination of the fixed-term employment contract between that worker and that company.

## **Legal context**

### *European Union law*

#### *Directive 1999/70/EC*

3 Recital 14 of Directive 1999/70 states as follows:

‘The signatory parties wished to conclude a framework agreement on fixed-term work setting out the general principles and minimum requirements for fixed-term employment contracts and employment relationships; they have demonstrated their desire to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination, and to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships’.

4 Article 1 of Directive 1999/70 provides that:

‘The purpose of the Directive is to put into effect the [framework agreement].’

#### *The framework agreement*

5 The third paragraph in the preamble to the framework agreement is worded as follows:

‘This agreement sets out the general principles and minimum requirements relating to fixed-term work, recognising that their detailed application needs to take account of the realities of specific national, sectoral and seasonal situations. 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 and for using fixed-term employment contracts on a basis acceptable to employers and workers.’

6 Pursuant to clause 1 thereof, the purpose of the framework agreement is, first, to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination and, second, to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships.

7 Clause 2(1) of the framework agreement, entitled ‘Scope’, provides:

‘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.’

8 Clause 3 of that framework agreement is worded as follows:

‘1. For the purpose of this agreement 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. For the purpose of this agreement 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.’

9 Clause 4 of the framework agreement, entitled ‘Principle of non-discrimination’, provides, in paragraph 1 thereof:

‘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.’

### ***Polish law***

10 In accordance with Article 8 of the ustawa – Kodeks pracy (Law establishing the Labour Code) of 26 June 1974 (Dz. U. No 24, item 141), in the version applicable to the dispute in the main proceedings (Dz. U. of 2020, item 1320, as amended) (‘the Labour Code’), a right may not be exercised in a manner which would be contrary to its socioeconomic purpose or which would infringe the rules of social conduct.

11 Article 18<sup>3a</sup>(1) and (2) of the Labour Code provides:

‘1. Workers shall be treated equally with respect to the establishment and termination of an employment relationship, employment conditions and promotion conditions, as well as access to training in order to improve professional qualifications, in particular regardless of gender, age, disability, race, religion, nationality, political beliefs, trade union membership, ethnic origin, creed, sexual orientation, and regardless of whether they are employed for a fixed term or for an indefinite term or on a full-time or part-time basis.

2. Equal treatment in employment means that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in paragraph 1.’

12 Article 18<sup>3b</sup>(1) of the Labour Code provides:

‘An employer who treats a worker differently on one or more of the grounds referred to in Article 18<sup>3a</sup>(1) shall be considered to be in breach of the principle of equal treatment in employment, subject to paragraphs 2 to 4, where the effects of such a difference in treatment include, in particular:

- (1) a refusal to enter into, or the termination of, an employment relationship;
- (2) disadvantageous remuneration or other disadvantageous employment conditions, failure to be promoted or to be granted other work-related benefits;

(3) ...

– unless the employer demonstrates that that difference in treatment is justified on objective grounds.

...’

13 Article 30 of the Labour Code states:

‘1. An employment contract shall be terminated:

- (1) by mutual agreement between the parties;
- (2) following a statement by one of the parties, subject to a notice period (termination of an employment contract with a notice period);
- (3) following a statement by one of the parties without a notice period (termination of an employment contract without a notice period);
- (4) on expiry of the term for which the employment contract was concluded.

...

3. The statement by either party concerning the termination of an employment contract, with or without a notice period, shall be made in writing.

4. The statement by the employer concerning the termination of an employment contract of indefinite duration, with or without a notice period, shall state the reason justifying that termination.’

14 Article 44 of the Labour Code states:

‘A worker may bring an action against the termination of an employment contract before a labour court ...’

15 Article 45(1) of the Labour Code states:

‘Where it is found that the termination of an employment contract of indefinite duration is unjustified or infringes the provisions on termination of employment contracts, the labour court shall – if so requested by the worker – declare the termination void or, if the contract has already been terminated, order the reinstatement of the worker on the same conditions or the payment of compensation to that worker.’

16 Article 50(3) of the Labour Code provides:

‘Where a fixed-term employment contract is terminated in infringement of the provisions on termination of such a contract, the worker shall be entitled only to compensation.’

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

17 K.L. and X entered into a fixed-term part-time employment contract for the period from 1 November 2019 to 31 July 2022.

18 On 15 July 2020, X notified K.L., who is the applicant in the main proceedings, of the termination of his employment contract by means of a statement and respected the one-month notice period. Accordingly, that termination took effect on 31 August 2020; however, K.L. was not informed of the reasons for that termination.

19 Following his dismissal, K.L. brought an action before the Sąd Rejonowy dla Krakowa – Nowej Huty w Krakowie (District Court for Kraków-Nowa Huta, Kraków, Poland), the referring court, seeking compensation on the basis of Article 50(3) of the Labour Code, arguing that his dismissal was unlawful.

20 In that application, K.L. claimed, first, that X’s statement contained formal defects which constituted an irregularity giving rise to a right to be awarded compensation under Article 50(3) of the Labour Code. Second, he submitted that, even though the Labour Code does not require employers to state the reasons for termination in the event of termination of fixed-term employment contracts, the absence of such information infringed the principle of non-discrimination enshrined in EU law and in Polish law, since that obligation exists in the event of termination of employment contracts concluded for an indefinite period.

21 By contrast, X claimed that it had dismissed the applicant in the main proceedings in accordance with the provisions of Polish labour law in force, which the applicant does not dispute.

22 The referring court confirms, in the request for a preliminary ruling, that, under Polish law, where a worker brings an action against the termination of his or her fixed-term employment contract, the court having jurisdiction does not review the reason for dismissal and the worker concerned is not entitled to any compensation based on the absence of justification for that dismissal. Consequently, such a worker is deprived of the protection deriving from Article 30 of the Charter, according to which ‘every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices’.

23 The referring court notes in this respect that, in the course of 2008, the Trybunał Konstytucyjny (Constitutional Court, Poland) delivered a judgment which concerned the compatibility of Article 30(4) of the Labour Code with the Konstytucja Rzeczypospolitej Polskiej (Constitution of the Republic of Poland) of 2 April 1997 (Dz. U. of 1997, No 78, item 483) (‘the Constitution’), in the light of the different requirements laid down in that provision regarding termination depending on the type of employment contract concerned.

24 In that judgment, that constitutional court held that Article 30(4) of the Labour Code, in so far as it does not lay down an obligation to state the reason for termination in the employer's statement of termination of a fixed-term employment contract, and Article 50(3) of that code, in so far as it does not provide for a right to compensation for a worker in the event of the unjustified termination of such an employment contract, are compatible with Article 2 of the Constitution, which enshrines the democratic rule of law principle, and with Article 32 thereof, which lays down the principle of equality before the law and which prohibits discrimination in political, social or economic life on any ground.

25 The Trybunał Konstytucyjny (Constitutional Court) found that there was also no reason to consider that the differentiation introduced – which is based on duration of employment – was not executed in accordance with a relevant criterion, for the purposes of Article 32 of the Constitution.

26 The referring court states in that context that, in a judgment delivered in 2019, the Sąd Najwyższy (Supreme Court, Poland), by contrast, expressed doubts as to the correct implementation of clause 4 of the framework agreement in Polish law and, consequently, as to the compatibility of the relevant provisions of the Labour Code with EU law. That being said, that supreme court stated that an entity which is not an emanation of the State, such as a private employer, cannot be held responsible for unlawfulness arising from the incorrect transposition of Directive 1999/70 into national law. That supreme court could therefore not have disapplied Article 30(4) of the Labour Code in the case which gave rise to that judgment, since even a clear, precise and unconditional provision of a directive seeking to confer rights or impose obligations on individuals cannot apply in the context of a dispute which is exclusively between individuals.

27 The referring court adds that, in that context, it is necessary to take into consideration, inter alia, the judgments of 22 January 2019, *Cresco Investigation* (C193/17, EU:C:2019:43), and of 19 April 2016, *DI* (C441/14, EU:C:2016:278). It states, in that regard, that the criteria whose application is prohibited for the purpose of drawing a distinction between workers and which formed the subject matter of those two judgments, namely religion in the case which gave rise to the judgment of 22 January 2019, *Cresco Investigation* (C193/17, EU:C:2019:43), and age in the case which gave rise to the judgment of 19 April 2016, *DI* (C441/14, EU:C:2016:278), are expressly referred to in Article 21 of the Charter, whereas an employment relationship under a fixed-term employment contract is not one of the criteria listed in that provision. However, the referring court points out that Article 21(1) of the Charter prohibits all discrimination since the list of criteria to which it refers is not exhaustive, as is shown by the use of the expression 'such as' in that provision.

28 Lastly, the referring court considers that, if the Court of Justice were to interpret the framework agreement as precluding national legislation such as that at issue in the main proceedings without clarifying the question of the horizontal direct effect of the EU legislation the interpretation of which is sought, two separate systems of termination of fixed-term contracts would apply in Polish law depending on whether or not the employer is an emanation of the State.

29 It is in those circumstances that the Sąd Rejonowy dla Krakowa – Nowej Huty w Krakowie (District Court for Kraków-Nowa Huta, Kraków) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is Article 1 of [Directive 1999/70], and also [clauses 1 and 4] of that framework agreement, to be interpreted as precluding provisions of national law obliging employers to state in writing the reasons for a decision giving notice of termination of an employment contract only in relation to employment contracts of indefinite duration, and consequently subjecting to judicial review the well-foundedness of the reasons for the notice of termination of contracts of indefinite duration,

without at the same time imposing such an obligation on employers (that is to say, an obligation to state the reasons justifying the notice of termination) in relation to fixed-term employment contracts (as a result of which only the issue of the compliance of the notice of termination with the provisions on termination of contracts is subject to judicial review)?

(2) May the parties to a dispute before a court of law, in which private parties appear on both sides, rely on [clause 4] of the abovementioned framework agreement and the general EU-law principle of non-discrimination (Article 21 of the [Charter]), and consequently do the rules referred to above have horizontal effect?’

### **Consideration of the questions referred**

30 According to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it. The fact that a national court has, formally speaking, worded a question referred for a preliminary ruling with reference to certain provisions of EU law does not prevent the Court from providing the national court with all the points of interpretation which may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to them in its questions. In that regard, it is for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision referring the questions, the points of EU law which require interpretation, having regard to the subject matter of the dispute (judgment of 5 December 2023, *Nordic Info*, C128/22, EU:C:2023:951, paragraph 99 and the case-law cited).

31 In the present case, in the light of all the information provided by the referring court and the observations submitted by the Polish Government and by the European Commission, the questions referred must be reformulated in order to provide the referring court with useful points of interpretation.

32 Thus, without it being necessary to rule on the request for an interpretation of Article 21 of the Charter, it must be considered that, by its questions, which it is appropriate to examine together, the referring court asks, in essence, whether clause 4 of the framework agreement must be interpreted as precluding national legislation under which an employer is not required to state, in writing, the reasons for the termination of a fixed-term employment contract with a notice period, although it is bound by such an obligation in the event of termination of an employment contract of indefinite duration, and whether that clause may be relied on in a dispute between individuals.

33 In the first place, it must be borne in mind that the framework agreement applies to all workers providing remunerated services in the context of a fixed-term employment relationship linking them to their employer (see, to that effect, judgment of 30 June 2022, *Comunidad de Castilla y León*, C192/21, EU:C:2022:513, paragraph 26 and the case-law cited).

34 In the present case, it is common ground that the applicant in the main proceedings, in the context of his employment relationship with X, was regarded as a worker employed under a fixed-term contract, for the purposes of clause 2(1) of the framework agreement, read in conjunction with clause 3(1) thereof, with the result that the dispute in the main proceedings falls within the scope of that framework agreement.

35 In the second place, the prohibition of less favourable treatment of fixed-term workers as opposed to permanent workers, referred to in clause 4 of the framework agreement, concerns the

employment conditions of workers. It is therefore necessary to determine whether the legislation at issue in the main proceedings, in so far as it governs the termination of an employment contract, falls within the scope of the concept of ‘employment conditions’ within the meaning of clause 4 of the framework agreement.

36 It follows from the wording and the objective of that clause that it does not relate to the actual choice of concluding fixed-term employment contracts instead of employment contracts of indefinite duration, but to the employment conditions of workers who have concluded the first type of contract when compared with those of workers employed under the second type of contract (judgment of 8 October 2020, *Universitatea „Lucian Blaga” Sibiu and Others*, C644/19, EU:C:2020:810, paragraph 39 and the case-law cited).

37 In that regard, the decisive criterion for determining whether a measure falls within the scope of the concept of ‘employment conditions’ within the meaning of clause 4 of the framework agreement is precisely the criterion of employment, that is to say, the employment relationship between a worker and his or her employer (order of 18 May 2022, *Ministero dell’istruzione (Electronic card)*, C450/21, not published, EU:C:2022:411, paragraph 33 and the case-law cited).

38 The Court has thus held that that concept covers, inter alia, the protection afforded to a worker in the event of unlawful dismissal (judgment of 17 March 2021, *Consulmarketing*, C652/19, EU:C:2021:208, paragraph 52 and the case-law cited) and the rules for determining the notice period applicable in the event of termination of fixed-term employment contracts, as well as those relating to the compensation paid to a worker on account of the termination of his or her employment contract with his or her employer, such compensation being paid on account of the employment relationship that has been established between them (judgment of 25 July 2018, *Vernaza Ayovi*, C96/17, EU:C:2018:603, paragraph 28 and the case-law cited).

39 An interpretation of clause 4(1) of the framework agreement which excludes from the definition of the concept of ‘employment conditions’ conditions relating to the termination of a fixed-term employment contract would limit the scope of the protection afforded to fixed-term workers against less favourable treatment, in disregard of the objective assigned to that provision (see, to that effect, judgment of 25 July 2018, *Vernaza Ayovi*, C96/17, EU:C:2018:603, paragraph 29 and the case-law cited).

40 In the light of that case-law, national legislation such as that at issue in the main proceedings comes within the concept of ‘employment conditions’ within the meaning of clause 4(1) of the framework agreement. That legislation lays down the rules on termination of an employment contract in the event of dismissal; the rationale for the existence of those rules is the employment relationship that has been established between a worker and his or her employer.

41 In the third place, it should be recalled that, according to clause 1(a) of the framework agreement, one of the objectives of that agreement is to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination. Similarly, the third paragraph in the preamble to the framework agreement states that that agreement ‘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’. Recital 14 of Directive 1999/70 states, to that effect, that the aim of the framework agreement is, in particular, to improve the quality of fixed-term work by setting out minimum requirements in order to ensure the application of the principle of non-discrimination (judgment of 17 March 2021, *Consulmarketing*, C652/19, EU:C:2021:208, paragraph 48 and the case-law cited).



42 The framework agreement, in particular clause 4 thereof, aims to apply the principle of non-discrimination to fixed-term workers in order to prevent an employer using such an employment relationship to deny those workers rights which are recognised for permanent workers (judgment of 3 June 2021, *Servicio Aragónés de Salud*, C942/19, EU:C:2021:440, paragraph 34 and the case-law cited).

43 Moreover, the prohibition of discrimination laid down in clause 4(1) of that framework agreement is simply a specific expression of one of the fundamental principles of EU law, namely the general principle of equality (judgment of 19 October 2023, *Lufthansa CityLine*, C660/20, EU:C:2023:789, paragraph 37 and the case-law cited).

44 In the light of those objectives, that clause must be interpreted as articulating a fundamental principle of EU social law which cannot be interpreted restrictively (see, to that effect, judgment of 19 October 2023, *Lufthansa CityLine*, C660/20, EU:C:2023:789, paragraph 38 and the case-law cited).

45 In accordance with the objective of eliminating discrimination between fixed-term workers and permanent workers, that clause, which has direct effect, prohibits, in paragraph 1 thereof, in respect of employment conditions, fixed-term workers from being treated less favourably than comparable permanent workers, on the sole ground that they are employed for a fixed term, unless different treatment is justified on ‘objective grounds’ (see, to that effect, judgments of 8 September 2011, *Rosado Santana*, C177/10, EU:C:2011:557, paragraphs 56 and 64, and of 5 June 2018, *Montero Mateos*, C677/16, EU:C:2018:393, paragraph 42).

46 More specifically, it is necessary to examine whether the legislation at issue in the main proceedings leads, so far as concerns those rules on termination, to a difference in treatment which amounts to less favourable treatment of fixed-term workers as opposed to comparable permanent workers, before determining, if relevant, whether such a difference in treatment can be justified on ‘objective grounds’.

47 As regards, first, the comparability of the situations in question, in order to assess whether the persons concerned are engaged in the same or similar work for the purposes of the framework agreement, it must be determined, in accordance with clauses 3(2) and 4(1) of the framework agreement, whether, in the light of a number of factors, such as the nature of the work, training requirements and working conditions, those persons can be regarded as being in a comparable situation (judgments of 5 June 2018, *Grupo Norte Facility*, C574/16, EU:C:2018:390, paragraph 48 and the case-law cited, and of 5 June 2018, *Montero Mateos*, C677/16, EU:C:2018:393, paragraph 51 and the case-law cited).

48 Having regard to the general nature of the legislation at issue in the main proceedings, which governs the provision of information relating to the reasons for dismissal of a worker whose employment contract is terminated, it appears that that legislation applies to workers employed under a fixed-term contract who may be compared to workers employed under a contract of indefinite duration.

49 It will be for the referring court, which alone has jurisdiction to assess the facts, to determine whether the applicant in the main proceedings was in a situation comparable to that of workers employed for an indefinite period by X during the same period (see, by analogy, judgments of 14 September 2016, *de Diego Porrás*, C596/14, EU:C:2016:683, paragraph 42 and the case-law cited, and of 17 March 2021, *Consulmarketing*, C652/19, EU:C:2021:208, paragraph 54).

50 So far as concerns, second, the existence of less favourable treatment of fixed-term workers as opposed to the treatment enjoyed by permanent workers, it is common ground that, in the event of termination of a fixed-term employment contract with a notice period, the employer is not required to inform the worker in writing at the outset of the reason or reasons justifying that termination, although that employer is required to do so in the event of termination of an employment contract of indefinite duration with a notice period.

51 It should be noted in that regard that the existence of less favourable treatment, within the meaning of clause 4(1) of the framework agreement, is to be assessed objectively. In a situation such as that at issue in the main proceedings, a fixed-term worker whose employment contract is terminated with a notice period, since he or she is not informed, unlike a permanent worker whose employment contract is terminated, of the reason or reasons for that dismissal, is deprived of important information in order to assess whether the dismissal is unjustified and to consider whether to bring proceedings before a court. Accordingly, there is a difference in treatment between those two categories of workers, for the purposes of that provision.

52 Moreover, both the referring court and the Polish Government suggest that the fact that there is no requirement for the provision of such information does not preclude the possibility for the worker concerned to bring an action before the competent labour court, in order for that court to be able to ascertain whether the dismissal concerned is potentially discriminatory or constitutes an abuse of rights on account of its incompatibility with the socioeconomic objective of the right concerned or an infringement of the rules of social conduct, for the purposes of Article 8 of the Labour Code.

53 It should be noted that such a situation is liable to give rise to unfavourable consequences for a fixed-term worker since that worker – even assuming that the judicial review of the validity of the reasons for the termination of his or her employment contract is guaranteed and that, accordingly, effective judicial protection of the person concerned is ensured – is not provided, beforehand, with information which may be decisive for the purposes of deciding whether or not to bring legal proceedings against the termination of his or her employment contract.

54 Consequently, if the worker concerned has doubts as to the validity of the reason for his or her dismissal, he or she, in the absence of his or her employer voluntarily informing him or her of the reason for the dismissal, has no choice other than to bring an action seeking to challenge that dismissal before the competent labour court. It is only in the context of that action that that worker may obtain that that court order his or her employer to inform him or her of the reason or reasons concerned, without that worker being able to assess a priori the prospects of success of that action. According to the explanations given by the Republic of Poland at the hearing, that worker is required, *prima facie*, to substantiate, in that action, his or her arguments seeking to demonstrate that his or her dismissal was discriminatory or unfair, despite the fact that he or she is unaware of the reasons for the dismissal. In addition, even if the lodging of such an action, by a fixed-term worker, before that labour court is free of charge, in accordance with what was also stated by the Republic of Poland at the hearing, the preparation and follow-up of the procedure for its examination are likely to entail costs for that worker, or even costs to be borne by him or her if that action is unsuccessful.

55 Lastly, it should be borne in mind in that context that a fixed-term contract ceases to have any future effect on expiry of the term stipulated in the contract, that term being identified as, *inter alia*, a specific date being reached, as in the present case. Thus, the parties to a fixed-term employment contract are aware, from the moment of its conclusion, of the date which determines its end. That term limits the duration of the employment relationship without the parties having to make their

intentions known in that regard after entering into the contract (judgment of 5 June 2018, *Grupo Norte Facility*, C574/16, EU:C:2018:390, paragraph 57). The early termination of such an employment contract, on the initiative of the employer, resulting from the occurrence of circumstances which were not foreseen on the day the contract was entered into and which thus disrupt the normal course of the employment relationship, is, because of its unforeseen nature, liable to affect a fixed-term worker at least as much as the termination of an employment contract of indefinite duration for the corresponding worker.

56 It follows that, subject to the verifications which it will be for the referring court to carry out, national legislation such as that at issue in the main proceedings establishes a difference in treatment involving less favourable treatment of fixed-term workers as opposed to permanent workers, arising from the fact that the latter are not subject to the limitation in question concerning the provision of information on the reasons justifying the dismissal.

57 Third, subject to the verification which the referring court is asked to carry out in paragraph 49 of the present judgment, it is still necessary to determine whether the difference in treatment between fixed-term workers and comparable permanent workers, which is the subject of the referring court's doubts, can be justified on 'objective grounds' within the meaning of clause 4(1) of the framework agreement.

58 In that regard, it should be noted that, according to settled case-law, the concept of 'objective grounds', within the meaning of clause 4(1) of the framework agreement, must be understood as not permitting a difference in treatment between fixed-term workers and permanent workers to be justified on the basis that that difference is provided for by a general, abstract norm, such as a law or a collective agreement (see, to that effect, judgment of 19 October 2023, *Lufthansa CityLine*, C660/20, EU:C:2023:789, paragraph 57 and the case-law cited).

59 On the contrary, that concept requires the difference in treatment found to exist to be justified by the presence of precise and specific factors, characterising the employment condition to which they relate, in the specific context in which it occurs and on the basis of objective and transparent criteria, in order to ascertain that that difference in treatment in fact responds to a genuine need, is appropriate for achieving the objective pursued and is necessary for that purpose. Those circumstances may result, in particular, from the specific nature of the tasks for the performance of which such fixed-term contracts have been concluded and from the inherent characteristics of those tasks or, as the case may be, from the pursuit of a legitimate social policy objective of a Member State (judgment of 19 October 2023, *Lufthansa CityLine*, C660/20, EU:C:2023:789, paragraph 58 and the case-law cited).

60 In the present case, the Polish Government, on the basis of the reasoning followed by the Trybunał Konstytucyjny (Constitutional Court) in the judgment referred to in paragraphs 23 to 25 of the present judgment, relies on the difference between the social and economic function of a fixed-term employment contract and that of a contract of indefinite duration.

61 According to the Polish Government, the distinction drawn in Polish law as regards the requirement to state reasons, depending on whether the termination concerns a contract of indefinite duration or a fixed-term contract, is part of the pursuit of the legitimate objective of a 'national social policy aimed at full productive employment'. The pursuit of that objective requires great flexibility on the labour market. A fixed-term employment contract contributes to that flexibility, first, by giving a greater number of persons employment opportunities while providing the workers concerned with appropriate protection and, second, by allowing employers to meet their needs in

the event of an increase in their activity, without, however, being permanently linked to the worker concerned.

62 The Polish Government thus points out that guaranteeing fixed-term workers the same level of protection as that enjoyed by permanent workers against termination of an employment contract with a notice period would jeopardise the attainment of that objective. That was confirmed by the Trybunał Konstytucyjny (Constitutional Court) when it held that such a difference in rules was lawful under Articles 2 and 32 of the Constitution, which enshrine the principle of the democratic rule of law and the principles of equality before the law and prohibition of discrimination in political, social or economic life, respectively.

63 It should be noted that the factors relied on by the Polish Government in order to justify the legislation at issue in the main proceedings are not precise and specific factors, characterising the employment condition to which they relate, as required by the case-law referred to in paragraphs 58 and 59 of the present judgment, but rather are similar to a criterion which, in a general and abstract manner, refers exclusively to the duration itself of the employment. Therefore, those factors do not make it possible to ensure that the difference in treatment at issue in the main proceedings responds to a genuine need, as provided for by that case-law.

64 In that regard, if the mere temporary nature of an employment relationship were considered to be sufficient to justify a difference in treatment between fixed-term workers and permanent workers, the objectives of the framework agreement would be rendered meaningless and it would be tantamount to perpetuating a situation that is disadvantageous to fixed-term workers (see, to that effect, judgment of 16 July 2020, *Governo della Repubblica italiana (Status of Italian magistrates)*, C658/18, EU:C:2020:572, paragraph 152 and the case-law cited).

65 In any event, in accordance with the case-law referred to in paragraphs 58 and 59 of the present judgment, in addition to the fact that that difference in treatment must respond to a genuine need, it must be such as to make it possible to attain the objective pursued and be necessary in order to do so. Moreover, that objective must be pursued in a consistent and systematic manner, in accordance with the requirements of that case-law (judgment of 19 October 2023, *Lufthansa CityLine*, C660/20, EU:C:2023:789, paragraph 62 and the case-law cited).

66 The legislation at issue in the main proceedings does not appear to be necessary in the light of the objective relied on by the Polish Government.

67 Even if employers were obliged to state the reasons for the early termination of a fixed-term contract, they would not, on that basis, be deprived of the flexibility inherent in that kind of employment contract, which can contribute to full employment on the labour market. It should be pointed out in that regard that the employment condition concerned does not relate to the right itself of an employer to terminate a fixed-term employment contract with a notice period, but to the provision of information to the worker, in writing, relating to the reason or reasons justifying his or her dismissal, with the result that it cannot be considered that that condition may be such as to significantly impair that flexibility.

68 As regards the question whether a national court is obliged, in a dispute between individuals, to disapply a national provision which is contrary to clause 4 of the framework agreement, it must be recalled that, where the national courts are called on to give judgment in proceedings between individuals in which it is apparent that the national legislation concerned is contrary to EU law, it is the responsibility of the national courts to provide the legal protection which individuals derive

from the rules of EU law and to ensure that those rules are fully effective (judgment of 7 August 2018, *Smith*, C122/17, EU:C:2018:631, paragraph 37 and the case-law cited).

69 More specifically, the Court has repeatedly held that a national court, when hearing a dispute which is exclusively between individuals, is required, when applying the provisions of domestic law adopted for the purpose of transposing obligations laid down by a directive, to consider the whole body of rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of the directive in order to achieve an outcome consistent with the objective pursued by that directive (judgment of 18 January 2022, *Thelen Technopark Berlin*, C261/20, EU:C:2022:33, paragraph 27 and the case-law cited).

70 However, the principle that national law must be interpreted in conformity with EU law has certain limits. Thus, the obligation on a national court to refer to the content of a directive when interpreting and applying the relevant rules of domestic law is limited by general principles of law and it cannot serve as the basis for a *contra legem* interpretation of national law (judgment of 18 January 2022, *Thelen Technopark Berlin*, C261/20, EU:C:2022:33, paragraph 28 and the case-law cited).

71 It will be for the referring court to ascertain whether the national provision at issue in the main proceedings, namely Article 30(4) of the Labour Code, lends itself to an interpretation consistent with clause 4 of the framework agreement.

72 Where it is not possible for a provision of national law to be interpreted in a way which is consistent with the requirements of EU law, the principle of primacy of EU law requires a national court, which is called upon, within its jurisdiction, to apply provisions of EU law, to disapply any provision of national law which is contrary to provisions of EU law having direct effect.

73 However, it is settled case-law that a directive cannot of itself impose obligations on an individual and cannot therefore be relied on as such against that individual before a national court. In accordance with the third paragraph of Article 288 TFEU, the binding nature of a directive, which constitutes the basis for the possibility of relying on it, exists only in relation to ‘each Member State to which it is addressed’; the European Union has the power to enact, in a general and abstract manner, obligations for individuals with immediate effect only where it is empowered to adopt regulations. Therefore, even a clear, precise and unconditional provision of a directive does not allow a national court to disapply a provision of its national law which conflicts with it if, were that court to do so, an additional obligation would be imposed on an individual (judgments of 24 June 2019, *Popławski*, C573/17, EU:C:2019:530, paragraphs 65 to 67, and of 18 January 2022, *Thelen Technopark Berlin*, C261/20, EU:C:2022:33, paragraph 32 and the case-law cited).

74 Accordingly, a national court is not required, solely on the basis of EU law, to disapply a provision of its domestic law which is contrary to a provision of EU law if the latter provision does not have direct effect, without prejudice, however, to the possibility, for that court, or for any competent national administrative authority, to disapply, on the basis of domestic law, any provision of that law which is contrary to a provision of EU law that does not have such effect (see, to that effect, judgment of 18 January 2022, *Thelen Technopark Berlin*, C261/20, EU:C:2022:33, paragraph 33).

75 It is true that the Court has recognised the direct effect of clause 4(1) of the framework agreement, ruling that, so far as its subject matter is concerned, that provision appears to be unconditional and sufficiently precise for individuals to be able to rely on it before a national court against the State in the broad sense (see, to that effect, judgments of 15 April 2008, *Impact*,

C268/06, EU:C:2008:223, paragraph 68, and of 12 December 2013, *Carratù*, C361/12, EU:C:2013:830, paragraph 28; see also judgment of 10 October 2017, *Farrell*, C413/15, EU:C:2017:745, paragraphs 33 to 35 and the case-law cited).

76 Nevertheless, in the present case, since the dispute in the main proceedings is between individuals, EU law cannot require the national court to disapply Article 30(4) of the Labour Code solely on the basis of the finding that that provision is contrary to clause 4(1) of the framework agreement.

77 That being said, when adopting legislation specifying and giving specific expression to the employment conditions which are governed, inter alia, by clause 4 of the framework agreement, a Member State implements EU law, for the purposes of Article 51(1) of the Charter, and must therefore ensure compliance, inter alia, with the right to an effective remedy enshrined in Article 47 of the Charter (see, by analogy, judgment of 6 October 2020, *État luxembourgeois (Right to bring an action against a request for information in tax matters)*, C245/19 and C246/19, EU:C:2020:795, paragraphs 45 and 46 and the case-law cited).

78 It follows from what has been stated in paragraphs 47 to 56 of the present judgment that the national legislation at issue in the main proceedings – which provides that a fixed-term worker whose employment contract is terminated with a notice period is not at the outset informed in writing of the reason or reasons for that dismissal, unlike a permanent worker – restricts the access of such a fixed-term worker to legal proceedings, the guarantee of which is enshrined in particular in Article 47 of the Charter. That worker is, in that way, deprived of important information for assessing whether his or her dismissal is unjustified and, where appropriate, to prepare a challenge to that dismissal before the courts.

79 In the light of those considerations, it must be held that the difference in treatment introduced by the applicable national law, as established in paragraph 56 of the present judgment, undermines the fundamental right to an effective remedy enshrined in Article 47 of the Charter, since a fixed-term worker is deprived of the possibility, which is however available to a permanent worker, of assessing beforehand whether he or she should bring legal proceedings against the decision terminating his or her employment contract and, where appropriate, to bring an action challenging in a precise manner the reasons for such a termination. Moreover, in view of what has been stated in paragraphs 60 to 67 of the present judgment, the factors relied on by the Polish Government are not such as to justify such a limitation of that right, pursuant to Article 52(1) of the Charter.

80 The Court has stated that Article 47 of the Charter is sufficient in itself and does not need to be made more specific by provisions of EU or national law to confer on individuals a right on which they may rely as such (see, to that effect, judgment of 17 April 2018, *Egenberger*, C414/16, EU:C:2018:257, paragraph 78).

81 Consequently, in the situation referred to in paragraph 76 of the present judgment, the national court is required to ensure, within its jurisdiction, the judicial protection which individuals derive from Article 47 of the Charter, read in conjunction with clause 4(1) of the framework agreement, as regards the right to an effective remedy, which includes access to justice, and therefore to disapply Article 30(4) of the Labour Code to the extent necessary to ensure the full effect of that provision of the Charter (see, to that effect, judgments of 17 April 2018, *Egenberger*, C414/16, EU:C:2018:257, paragraph 79, and of 8 March 2022, *Bezirkshauptmannschaft Hartberg-Fürstenfeld (Direct effect)*, C205/20, EU:C:2022:168, paragraph 57).

82 In the light of all the foregoing considerations, the answer to the questions referred is that clause 4 of the framework agreement must be interpreted as precluding national legislation according to which an employer is not required to state, in writing, the reasons for the termination of a fixed-term employment contract with a notice period, although it is bound by such an obligation in the event of termination of an employment contract of indefinite duration. The national court hearing a dispute between individuals is required, where it is not possible for it to interpret the applicable national law in a way which is consistent with that clause, to ensure, within its jurisdiction, the judicial protection which individuals derive from Article 47 of the Charter and to guarantee the full effectiveness of that article by disapplying, in so far as necessary, any contrary provision of national law.

### Costs

83 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

**Clause 4 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 precluding national legislation according to which an employer is not required to state, in writing, the reasons for the termination of a fixed-term employment contract with a notice period, although it is bound by such an obligation in the event of termination of an employment contract of indefinite duration. The national court hearing a dispute between individuals is required, where it is not possible for it to interpret the applicable national law in a way which is consistent with that clause, to ensure, within its jurisdiction, the judicial protection which individuals derive from Article 47 of the Charter of Fundamental Rights of the European Union and to guarantee the full effectiveness of that article by disapplying, in so far as necessary, any contrary provision of national law.**

[Signatures]

\* Language of the case: Polish.