

JUDGMENT OF THE COURT (Eighth Chamber)

13 March 2014 (*)

(Social policy – Directive 1999/70/EC – Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Universities – Associate lecturers – Successive fixed-term employment contracts – Clause 5(1) – Measures to prevent the abusive use of fixed-term contracts – Concept of ‘objective reasons’ justifying such contracts – Clause 3 – Concept of ‘employment contract of indefinite duration’ – Penalties – Right to compensation – Difference in treatment between permanent workers)

In Case C-190/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Social No 3 de Barcelona (Spain), made by decision of 4 April 2013, received at the Court on 15 April 2013, in the proceedings

Antonio Márquez Samohano

v

Universitat Pompeu Fabra,

THE COURT (Eighth Chamber),

composed of C.G. Fernlund, President of the Chamber, A. Ó Caoimh (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Universitat Pompeu Fabra, by E. Arranz Serrano, abogado,
- the Spanish Government, by M.J. García-Valdecasas Dorrego, acting as Agent,
- the European Commission, by L. Lozano Palacios and D. Martin, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of clauses 3 and 5 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).

- 2 The reference has been made in proceedings between Márquez Samohano and his employer, the Universitat Pompeu Fabra ('the UPF'), concerning the classification of employment contracts between them.

Legal context

European Union law

- 3 Recital 14 in the preamble to Directive 1999/70, which is based on Article 139(2) EC, indicates that, in concluding the Framework Agreement, the signatory parties wished 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 states that the purpose of that directive is 'to put into effect the framework agreement ... concluded ... between the general cross-industry organisations (ETUC, UNICE and CEEP) annexed hereto'.

- 5 The second and third paragraphs in the preamble to the Framework Agreement are worded as follows:

'The parties to this agreement recognise that contracts of an indefinite duration are, and will continue to be, the general form of employment relationship between employers and workers. They also recognise that fixed-term employment contracts respond, in certain circumstances, to the needs of both employers and workers.'

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 Paragraphs 8 and 10 of the general considerations of the Framework Agreement are worded as follows:

'8. Whereas fixed-term employment contracts are a feature of employment in certain sectors, occupations and activities which can suit both employers and workers;

...

10. Whereas this agreement refers back to Member States and social partners for the arrangements for the application of its general principles, minimum requirements and provisions, in order to take account of the situation in each Member State and the circumstances of particular sectors and occupations, including the activities of a seasonal nature.'

- 7 Pursuant to clause 1 of the Framework Agreement, entitled 'Purpose', the purpose of that 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.

8 Clause 2 of the Framework Agreement, entitled 'Scope', states at point 1 that the 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.

9 Clause 3 of the Framework Agreement, headed 'Definitions', provides:

'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.'

10 Clause 4 of the Framework Agreement, headed 'Principle of non-discrimination', provides, at point 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.'

11 Clause 5 of the Framework Agreement, entitled 'Measures to prevent abuse', states:

'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.'

Spanish law

The rules applicable to universities

- 12 Article 48 of Framework Law 6/2001 on universities (Ley Orgánica 6/2001 de Universidades) of 21 December 2001 (BOE No 307 of 24 December 2001, p. 49400), as amended by Framework Law No 7/2007 of 12 April 2007 (BOE No 89 of 13 April 2007, 'Law 6/2001'), provides:

'1. Universities may recruit teaching and research staff pursuant to general rules of employment law by using the forms of employment contract specific to universities that are set out in this law or by using the forms of contract referred to in the Workers' Statute [(Estatuto de los Trabajadores)] for the replacement of workers who are entitled to return to a particular post. They may also recruit research, technical or other staff needed to carry out scientific or technical research projects using the type of employment contract intended for a specific task or service.

Universities may also appoint emeritus professors in accordance with the provisions of this law.

2. The forms of employment contract that are specific to universities are those relating to assistants, assistant lecturers [holding a doctoral qualification], tenured lecturers [holding a doctoral qualification], associate lecturers and visiting lecturers.

These forms of employment contract shall be governed by the rules set out in this law and in its implementing measures. The provisions of the consolidated text of the Law on the Workers' Statute [(Ley del Estatuto de los Trabajadores)], approved by Royal Legislative Decree 1/1995 of 24 March 1995 [(BOE No 75 of 29 March 1995, p. 9654)] and its implementing measures shall apply supplementally.

...'

- 13 Article 53 of Law 6/2001, entitled 'Associate lecturers', provides:

'The recruitment of associate lecturers shall be carried out in accordance with the following provisions:

(a) specialists of recognised competence who can establish that they carry out their professional activity otherwise than in a university may be engaged;

(b) the purpose of the engagement is the performance of teaching tasks through which they bring their professional knowledge and experience to the university;

(c) the engagement shall be temporary and part-time;

(d) the engagement shall be for a quarterly, half-yearly or annual period, and may be renewed for periods of the same duration, provided that it is still established that the professional activity is carried out otherwise than in a university.'

- 14 Article 20 of Royal Decree 898/1985 on university teaching staff (Real Decreto 898/1985 sobre el régimen del profesorado universitario) of 30 April 1985 (BOE No 146 of 19 June 1985, p. 18927), in the version applicable at the material time, provides:

'Article 20: Associate lecturers

1. Under the conditions laid down in their constitutions and in compliance with budget forecasts, universities may engage, on a temporary, full-time or part-time basis, associate lecturers from among specialists with renowned competence who normally carry out their professional activity outside the university.

2. For the purposes of the previous paragraph, normal exercise of a professional activity shall mean the exercise otherwise than in a university of any paid professional activity which is made possible by the diploma held by the interested person for a minimum period of three years in the course of the five years preceding his employment as an associate lecturer by a university.

Notwithstanding the provisions of the previous paragraph, and under the conditions laid down in their constitution where appropriate, universities may recruit persons of recognised competence.

...

9. The constitutions of the universities shall fix the maximum duration of those contracts, their renewable or non-renewable nature, the conditions under which successive renewals may take place if at all, and the maximum number of renewals.

...

10. Compliance with the expiry date set in the contract shall imply its automatic termination without the need for prior termination, unless the parties agreed at the outset upon the renewal of the contract for a period permitted by the constitution or for a shorter period.

11. The termination of the contracts of associate lecturers on expiry of the agreed period shall not give right to any compensation, unless otherwise provided in the constitution.

...

15. The contracts of associate lecturers shall terminate not only under the conditions referred to in paragraph 10 of this article, but also when the lecturer engaged reaches the age of retirement, and for any other reason provided for in the constitution which does not amount to an abuse of law.'

15 Law 1/2003 on the universities of Catalonia (Ley 1/2003 de Universidades de Cataluña) of 19 February 2003 (BOE No 60 of 11 March 2003, p. 9404) provides:

'Article 43. Composition

1. The university teaching body shall be made up of university teaching staff and of staff engaged on a permanent or temporary basis, according to the categories set out in this law.

2. In exercising their powers, universities must ensure that staff engaged on a permanent basis and the university teaching staff are afforded the same rights, without prejudice to the provisions of the basic legislation of the State.

Article 44. Engaged teaching staff

1. Teaching staff engaged on a permanent basis shall be professors, associate professors and permanent assistant lecturers.

2. The category of teaching staff engaged on a temporary basis shall comprise: assistant lecturers holding a doctoral qualification, senior lecturers, associate professors, visiting professors and emeritus professors.

...

Article 50. Associate lecturers

Associate lecturers shall be recruited under a part-time engagement, which shall be temporary and contractual in nature, from among specialists with recognised competence who can establish that they carry out their professional activity outside the university, for the performance of teaching tasks within the university. They may teach on a full-time basis within their area of competence.'

- 16 The constitution of the Universitat Pompeu Fabra, approved by Decree 209/2003 of 9 September 2003 (BOE No 266 of 6 November 2003, p. 39397) and amended by Agreement GOV/203/2010 of 9 November 2010, provides:

'Title 6. Academic staff

...

Chapter 2. Teaching staff

Article 93. Legal framework

93.1. The teaching staff of the [UPF] is governed by Law [6/2001] and by the regulations that implement it, by the provisions imposed by the Generalitat of Catalonia, by the general civil service legislation, by this constitution and by the rules that implement it.

93.2. Teaching staff engaged shall be governed by Law [6/2001], Law [1/2003 of 19 February 2003] on the universities of Catalonia, the rules that implement them; the provisions of the Workers' Statute and the rules implementing it, this constitution and any applicable collective agreement shall, in addition, apply.

...

Section 1. Recruited teaching staff

Article 101. Contract categories and duration

...

101.3. Associate lecturers shall be recruited on a part-time, temporary basis from among specialists with recognised competence who can establish that they carry out their professional activity otherwise than in a university, for the performance of specific teaching tasks. Contracts shall be concluded for the period set out in Law [6/2001], and may be renewed for periods of the same duration, provided the requirements for exercising professional activity are upheld.'

- 17 Article 16(3) of the collective agreement applicable to teaching staff and researchers of Catalan public universities for the period from 10 October 2006 to 31 December 2009 provides:

'So far as concerns the condition relating to the carrying out of a professional activity in order to be able to participate in competitions for the recruitment of associate lecturers, that

condition shall be considered to be met when candidates demonstrate that they have carried out a professional activity for at least two years in the course of the last four years, on behalf of another person or on their own behalf, or according to any other alternative procedure upon which each university may agree with the corresponding works council.'

The general rules applicable to fixed-term workers

- 18 Article 15(3) and (5) of Royal Legislative Decree 1/1995 approving the consolidated text of the Workers' Statute, in the version resulting from Royal Decree-Law 10/2010 of 16 June 2010 on urgent measures to reform the labour market (Real Decreto-ley 10/2010, de medidas urgentes para la reforma del mercado de trabajo) (BOE No 147 of 17 June 2010, p. 51699, 'the Worker's Statute'), in force since 18 June 2010, provides:

'3. Temporary contracts entered into in circumvention of the law are presumed to be entered into for an indefinite duration.

...

5. Without prejudice to the provisions of paragraphs 1(a), 2 and 3 of this article, workers who have been engaged, with or without interruption, for longer than [24] months over a period of [30] months, to occupy an identical or different work position within the same undertaking or the same group of undertakings, by having entered into at least two temporary contracts, whether it be directly or by their provision by temporary work agencies, according to identical or different fixed-term contractual procedures, shall acquire the status of permanent workers.

...'

- 19 Additional provision 15 of the Workers' Statute, entitled 'Application of timelimits to contracts for a particular task or service and to successive contracts in public authorities', as amended by Article 1(6) of Law 35/2010 on urgent measures to reform the labour market (BOE No 227 of 18 September 2010, p. 79326), which came into force on 19 September 2010, reads as follows:

'1. The provisions of Article 15(1)(a), on the maximum duration of contracts for a particular task or service, and of Article 15(5), relating to the limits applicable to successive contracts, of this law shall have effect with regard to public authorities and public bodies which are linked to or dependent on them, without prejudice to the application of the constitutional principles of equality, merit and competence in access to public employment, in such a way that that is not an obstacle to the obligation to fill the posts in question by means of normal procedures, in accordance with the provisions laid down in the applicable legislation.

To that end, the worker shall retain the post which he occupied until that post is filled in accordance with the procedures referred to above, which shall mark the end of the employment relationship, unless that worker gains access to public employment by having successfully passed the corresponding selection procedure.

...

3. For the purposes of applying the limit applicable to successive contracts laid down in Article 15(5), only contracts entered into within the purview of each of the public authorities shall be taken into account, to the exclusion, for those purposes, of public bodies, agencies and other public law entities which have a legal personality of their own and are linked to or dependent on those public authorities. In any event, the provisions of Article 15(5) shall not

apply to the specific conditions of employment contracts referred to in Law [6/2001] or in any other legal rule having the rank of a law.'

- 20 Pursuant to Royal Decree-Law 3/2012 of 10 February 2012 on urgent measures to reform the labour market (Real Decreto-Ley 1/2012 de medidas urgentes para la reforma del mercado laboral), the application of Article 15(5) of the Workers' Statute was suspended until 31 December 2012.

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

- 21 Mr Márquez Samohano signed an employment contract with the UPF for the purpose of exercising the duties of part-time associate lecturer for the period from 30 September 2008 to 29 September 2009. That contract was renewed on three occasions, first of all until 21 September 2010, then until 21 September 2011, and finally until 28 July 2012. In the course of the employment relationship at issue in the main proceedings, the working hours of the interested person were altered to reach six hours per week in the last employment contract entered into.
- 22 On 29 June 2012, UPF informed the applicant in the main proceedings that his duties would end on 28 July 2012.
- 23 On the last-mentioned date, the applicant in the main proceedings submitted a request for the renewal of his employment contract.
- 24 On 29 July 2012, the Vice-chancellor of the UPF informed Mr Márquez Samohano that the employment relationship had ended on that day because his fixed-term employment contract had come to an end in accordance with Article 53 of Law 6/2001 and Article 20 of Royal Decree 898/1985, and that, consequently, neither Mr Márquez Samohano's employment nor the termination of that employment contract were vitiated by irregularities.
- 25 The referring court states that, when the applicant in the main proceedings entered into his first employment contract, he signed a declaration stating that he was intending to combine working as an associate lecturer with work in the private sector. Mr Márquez Samohano did not subsequently sign other declarations and was never questioned about this matter. He also made his superiors aware that working at the university was his main occupation.
- 26 On 13 September 2012, the applicant in the main proceedings brought an action before the Juzgado de lo Social No 3 de Barcelona against the UPF, whereby he sought the annulment of his dismissal or, alternatively, a finding that that dismissal was unfounded. That applicant claims, in essence, that his employment contract and the subsequent renewals of that contract are unlawful and were entered into in circumvention of the law, both because the legal requirements for his employment as an associate lecturer were not met, and because the circumstances stipulated by national law for the conclusion of a fixed-term employment contract were not present.
- 27 In the order for reference, the Juzgado de lo Social No 3 de Barcelona states that, unlike the general rules applicable to fixed-term employment contracts, the rules applicable to universities, in particular Article 53 of Law 6/2011, do not lay down, in respect of the employment of associate lecturers, any equivalent legal measure to prevent the abusive use of successive fixed-term employment contracts. Nor do those rules lay down objective reasons justifying the renewal of such contracts and impose neither a maximum total duration nor a limit on the number of renewals of those contracts. In particular, Article 15(5)

of the Workers' Statute, according to which workers engaged for a period of more than 24 months over a period of 30 months may, under certain conditions, obtain an employment contract of indefinite duration, is not applicable in the present case. The national rules applicable to universities therefore seem incompatible with clause 5 of the Framework Agreement.

- 28 The referring court also states that, in the private sector, when a fixed-term employment contract is unlawful, whether because of the abusive use of successive contracts or because of a circumvention of the law, which implies, in accordance with Article 15(3) and (5) of the Workers' Statute, that that contract is deemed to be entered into for an indefinite duration, the employment relationship may be terminated by the employer only by a dismissal coupled with the payment of statutory compensation. By contrast, in the public sector, in a similar situation, having regard to the constitutional principles of equality, merit and competence to which access to public employment is subject, the employment relationship of indefinite duration thus established can, in accordance with the second paragraph of additional provision 15(1) of the Workers' Statute, be terminated without the payment of any compensation, on the ground that the post held by the worker concerned was filled or discontinued. Consequently, workers with contracts 'of indefinite duration' ('por tiempo indefinido') in the public sector are not treated in the same way as 'permanent' ('fijos') workers in that sector who, as workers contracted without any limitation in time, obtain the same rights regarding the effects of the termination of employment contracts as workers with contracts of indefinite duration in the private sector. The first set of those workers, described by that court as workers having contracts 'of indefinite duration but not permanent', are therefore in reality treated in the same manner as fixed-term workers.
- 29 The referring court takes the view that that concept of workers having contracts 'of indefinite duration but not permanent' does not correspond to the definition of 'permanent worker' found in clause 3 of the Framework Agreement because the employment relationship of such a worker ends by reason of the occurrence of a specific event. As a consequence, the question arises whether a worker falling within that concept must be treated, so far as concerns the right to obtain compensation in the event of the unilateral termination of the employment relationship by the employer, in the same way as a permanent worker in the public sector or a worker having a contract of indefinite duration in the private sector.
- 30 In those circumstances, the Juzgado de lo Social No 3 de Barcelona decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '1. Must clause 5 of the Framework Agreement ... be interpreted as precluding national legislative provisions such as Articles 48 and 53 of [Law 6/2001], which do not provide for a maximum duration for successive employment contracts, in circumstances where there are no domestic legal measures in place to prevent abuse arising from the use of successive fixed-term employment contracts for university lecturers?
 2. Must the definition of "permanent worker" set out in clause 3 of the Framework Agreement ... be interpreted as precluding a provision such as the second paragraph of additional provision 15(1) of the [Workers' Statute] which states that the employment contract of such a worker may be terminated where the contracting authority fills the post occupied?
 3. In view of the fact that under domestic law it is deemed an appropriate measure, for the purposes of preventing and punishing the misuse of temporary employment contracts in the private sector, for workers that are considered to have a contract of indefinite duration to be entitled to receive compensation where the contract is terminated for a reason unrelated to the individual worker concerned, and that no equivalent measure

exists in the public sector, is it an appropriate measure within the terms of clause 5 of the Framework Agreement ... for government employees with contracts of indefinite duration to be given the same right to receive compensation as is laid down by law in respect of workers having contracts of indefinite duration in the private sector?'

Consideration of the questions referred

The first question

- 31 By its first question, the referring court is asking, in essence, whether clause 5 of the Framework Agreement must be interpreted as precluding national rules, such as those at issue in the main proceedings, which allow universities to renew successive fixed-term employment contracts entered into with associate lecturers, with no limitation as to the maximum duration and the number of renewals of those contracts.
- 32 The Spanish government claims that this question is inadmissible in two respects.
- 33 First, the Spanish government claims that this question bears no relation to the subject of the main proceedings. In his application submitted before the referring court, the applicant in the main proceedings simply claims that his fixed-term employment contracts were entered into in circumvention of the law within the meaning of Article 15(3) of the Workers' Statute, on the ground that the legal requirements for his employment as an associate lecturer were not met, and that the circumstances stipulated by law for the conclusion of a fixed-term contract were not present. However, circumvention of the law does not fall within the subject-matter of the Framework Agreement.
- 34 Secondly, the Spanish government claims that the Framework Agreement is not applicable to fixed-term employment contracts entered into with associate lecturers. In the present case, there are no comparable permanent workers within the meaning of clause 4 of the Framework Agreement. Furthermore, a fixed-term employment contract entered into with an associate lecturer cannot, by its nature, be subject to abuse within the meaning of clause 5 of the Framework Agreement. Since the activity of such a lecturer is ancillary to an external activity of a specialist with recognised competence, the use of successive fixed-term employment contracts cannot, in any case, place the interested person in an insecure situation.
- 35 It should be borne in mind that, according to settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, *inter alia*, Joined Cases C-188/10 and C-189/10 *Melki and Abdeli* [2010] ECR I-5667, paragraph 27 and the case-law cited, and Case C-290/12 *Della Rocca* [2013] ECR, paragraph 29).
- 36 In the present case, it is sufficient to note that, first, whatever the wording of the application made before the referring court by the applicant in the main proceedings, it is clear from the information provided by the referring court that the applicant in the main proceedings entered into several successive fixed-term employment contracts, which are precisely the subject of clause 5 of the Framework Agreement. The interpretation of that clause is therefore clearly capable of being relevant for the purposes of resolving the dispute in the main proceedings.

Secondly, the claim that an associate lecturer, such as the applicant in the main proceedings, does not fall within the scope of the Framework Agreement concerns the response to the substance of the question raised and not the admissibility of that question.

- 37 In those circumstances, it must be held that the first question is admissible.
- 38 As regards the substance, as a preliminary point, it must be borne in mind that it is apparent from the very wording of clause 2(1) of the Framework Agreement that the scope of the Framework Agreement is conceived in broad terms, covering generally 'fixed-term workers who have an employment contract or employment relationship as defined in law, collective agreements or practices in each Member State'. In addition, the definition of 'fixed-term workers' for the purposes of the Framework Agreement, set out in clause 3(1), encompasses all workers without drawing a distinction according to whether their employer is in the public or private sector (Case C-212/04 *Adeneler and Others* [2006] ECR I-6057, paragraph 56; and *Della Rocca*, paragraph 34).
- 39 It follows that a worker such as an associate lecturer of a university, whose employment contract, according to the provisions of national law, must necessarily have been entered into for a fixed period, falls within the scope of the Framework Agreement.
- 40 Contrary to what the Spanish government argues, it is irrelevant in that respect that a comparable permanent worker does not exist for such a worker or that that worker cannot form the subject of abusive successive fixed-term employment contracts. Such considerations are relevant only for the purpose of identifying a possible infringement of clauses 4 and 5 of the Framework Agreement, which relate to the compliance with the principle of non-discrimination between fixed-term workers and permanent workers and to measures to prevent the abusive use of successive fixed-term employment contracts, respectively. By contrast, those considerations are not relevant for determining the scope of the Framework Agreement, which is defined in clause 2(1), read in conjunction with clause 3(1), of the Framework Agreement.
- 41 It should be borne in mind that the purpose of clause 5(1) of the Framework Agreement is to implement one of the objectives of that agreement, namely to place limits on successive recourse to fixed-term employment contracts or relationships, regarded as a potential source of abuse to the detriment of workers, by laying down as a minimum a number of protective provisions designed to prevent the status of employees from being insecure (see *Adeneler and Others*, paragraph 63; Joined Cases C-378/07 to C-380/07 *Angelidaki and Others* [2009] ECR I-3071, paragraph 73; and Case C-586/10 *Kücük* [2012] ECR, paragraph 25).
- 42 Thus, clause 5(1) of the Framework Agreement requires Member States, in order to prevent abuse arising from the use of successive fixed-term employment contracts or relationships, actually to adopt in a binding manner one or more of the measures listed where domestic law does not include equivalent legal measures. The measures listed in clause 5(1)(a) to (c), of which there are three, relate, respectively, to objective reasons justifying the renewal of such contracts or relationships, the maximum total duration of successive fixed-term employment contracts or relationships, and the number of renewals of such contracts or relationships (see *Angelidaki and Others*, paragraph 74, and *Kücük*, paragraph 26).
- 43 In the present case, it is common ground that the rules applicable to the applicant in the main proceedings, in particular the constitution of the UPF, include no equivalent legal measure within the meaning of clause 5(1) of the Framework Agreement, and impose no limitation as to both the maximum total duration and the number of renewals of fixed-term employment contracts entered into by universities with associate lecturers pursuant to clause 5(1)(b) and (c) of the Framework Agreement.

- 44 In those circumstances, it must be examined to what extent the renewal of such employment contracts may be justified by an objective reason within the meaning of clause 5(1)(a) of the Framework Agreement.
- 45 According to the case-law, the concept of 'objective reason' must be understood as referring to precise and concrete circumstances characterising a given activity, which are therefore capable, in that particular context, of justifying the use of successive fixed-term employment contracts. Those circumstances may result, in particular, from the specific nature of the tasks for the performance of which such contracts have been concluded and from the inherent characteristics of those tasks or, as the case may be, from pursuit of a legitimate social-policy objective of a Member State (*Angelidaki and Others*, paragraph 96 and the case-law cited, and *Kücük*, paragraph 27).
- 46 On the other hand, a national provision which merely authorises recourse to successive fixed-term contracts, in a general and abstract manner by a rule of statute or secondary legislation, does not accord with the requirements stated in the previous paragraph (*Angelidaki and Others*, paragraph 97 and the case-law cited, and *Kücük*, paragraph 28).
- 47 Such a provision, which is of a purely formal nature, does not permit objective and transparent criteria to be identified in order to verify whether the renewal of such contracts actually responds to a genuine need and is appropriate for achieving the objective pursued and necessary for that purpose. That provision therefore carries a real risk that it will result in misuse of that type of contract and, accordingly, is not compatible with the objective of the Framework Agreement (see, to that effect, *Angelidaki and Others*, paragraphs 98 and 100 and the case-law cited, and *Kücük*, paragraph 29).
- 48 It is clear, however, from the national rules at issue in the main proceedings, as set out in the order for reference, that the conclusion and renewal by universities of fixed-term employment contracts with associate lecturers, such as the applicant in the main proceedings, are justified by the need to entrust 'specialists with recognised competence' who exercise a professional activity otherwise than in a university with the performance, on a part-time basis, of specific teaching tasks, so that those specialists can bring their knowledge and professional experience to the university, thus establishing a partnership between university teaching circles and professional circles. According to those rules, such an associate lecturer must have exercised a paid professional activity on the basis of a diploma obtained by that associate lecturer for a minimum period of several years in the course of a specific period preceding his employment by the university. Furthermore, the employment contracts in question are entered into and renewed on condition that the conditions relating to the exercise of the professional activity remain in place and those employment contracts must be terminated when the associate lecturer concerned reaches the age of retirement.
- 49 Subject to the verifications which it is for the referring court to carry out, since that court has exclusive jurisdiction to interpret national law, it thus appears that those rules lay down the precise and concrete circumstances in which fixed-term employment contracts may be concluded or renewed for the purpose of the employment of associate lecturers and that they respond to a genuine need.
- 50 In particular, such temporary contracts appear to be capable of achieving the objective pursued, consisting in enriching university teaching in specific areas by the experience of recognised specialists, because those contracts allow the development both of the competences of the persons concerned in the areas concerned and of the needs of the universities to be taken into account.

- 51 In this respect, it should be recalled that, whilst contracts of indefinite duration are the general form of employment relationship, the Framework Agreement itself recognises, as is apparent from the second and third paragraphs in its preamble and from paragraphs 8 and 10 of its general considerations, that fixed-term contracts are a feature of employment in certain sectors or in respect of certain occupations or activities (see, to that effect, *Adeneler and Others*, paragraph 61; Case C-268/06 *Impact* [2008] ECR I-2483, paragraph 86; and Case C-157/11 *Sibillo* [2012] ECR, paragraph 38).
- 52 Furthermore, in the light of the fact that, in order to be recruited as an associate lecturer, the person in question must necessarily exercise a professional activity outside the university and that he may perform his teaching tasks only on a parttime basis, it does not appear that such a fixed-term employment contract is capable, as such, of undermining the purpose of the Framework Agreement, which is to protect workers against job instability.
- 53 As all of the interested parties who have submitted written observations to the Court have pointed out, it must therefore be held that national rules, such as those at issue in the main proceedings, which allow universities to renew successive fixed-term employment contracts entered into with associate lecturers, appear consistent with clause 5(1) of the Framework Agreement, subject to verification to be carried out by the referring court.
- 54 It must be noted, however, that although the objective reason provided for in national rules such as those at issue in the main proceedings may, in principle, be accepted, the competent authorities must ensure that the actual application of those national rules satisfies the requirements of the Framework Agreement, having regard to the particular features of the activity concerned and to the conditions under which it is carried out. In the application of the relevant provision of national law, those authorities must therefore be in a position to identify objective and transparent criteria in order to verify whether the renewal of such contracts actually responds to a genuine need and is appropriate for achieving the objective pursued and necessary for that purpose (see *Kücük*, paragraph 34).
- 55 It should be borne in mind in that regard that the renewal of fixed-term employment contracts or relationships in order to cover needs which are, in fact, not temporary in nature but, on the contrary, fixed and permanent, is not justified under clause 5(1)(a) of the Framework Agreement (see, inter alia, *Kücük*, paragraph 36).
- 56 Such use of fixed-term employment contracts or relationships conflicts directly with the premiss on which the Framework Agreement is founded, namely that contracts of indefinite duration are the general form of employment relationship, even though fixed-term employment contracts are a feature of employment in certain sectors or in respect of certain occupations and activities (see *Adeneler and Others*, paragraph 61, and *Kücük*, paragraph 37).
- 57 The mere facts that fixed-term employment contracts concluded with associate lecturers are renewed in order to cover a recurring or permanent need of the relevant universities and that such a need can be met within the framework of a contract of an indefinite duration are not, however, such as to preclude the existence of an objective reason within the meaning of clause 5(1) of the Framework Agreement because the nature of the teaching activity at issue and the inherent characteristics of that activity can justify the use of fixed-term employment contracts in the context in question. Whilst fixed-term employment contracts concluded with associate lecturers cover a permanent need of the universities, in that the associate lecturer performs, under such a fixed-term employment contract, specifically defined tasks which are part of the universities' usual activities, the fact remains that the need in terms of employment of associate lecturers remains temporary in so far as that lecturer is supposed

to resume his professional activity on a full-time basis at the end of his contract (see, to that effect, *Kücük*, paragraphs 38 and 50).

- 58 By contrast, fixed-term employment contracts such as those at issue in the main proceedings cannot be renewed for the purpose of the performance, in a fixed and permanent manner, even on a part-time basis, of teaching tasks which normally come under the activity of the ordinary teaching staff.
- 59 It is therefore for all the authorities of the Member State concerned, including the national courts, to ensure, for matters within their respective spheres of competence, that clause 5(1)(a) of the Framework Agreement is complied with by ascertaining that the renewal of successive fixed-term employment contracts or relationships concluded with associate lecturers is intended to cover temporary needs and that a provision such as that at issue in the main proceedings is not, in fact, being used to meet fixed and permanent needs of the universities in terms of employment of teaching staff (see, by analogy, *Angelidaki and Others*, paragraph 106, and *Kücük*, paragraph 39).
- 60 Having regard to all the above considerations, the answer to the first question is that clause 5 of the Framework Agreement must be interpreted as not precluding national rules, such as those at issue in the main proceedings, which allow universities to renew successive fixed term employment contracts concluded with associate lecturers, with no limitation as to the maximum duration and the number of renewals of those contracts, where such contracts are justified by an objective reason within the meaning of clause 5(1)(a), which is a matter for the referring court to verify. However, it is also for that court to ascertain that, in the main proceedings, the renewal of the successive fixed-term employment contracts at issue was actually intended to cover temporary needs and that rules such as those at issue in the main proceedings were not, in fact, used to meet fixed and permanent needs in terms of employment of teaching staff.

The second and third questions

- 61 By its second and third questions, the referring court is asking, in essence, whether clause 3 of the Framework Agreement must be interpreted as precluding a national provision such as that laid down in the second paragraph of additional provision 15(1) of the Workers' Statute, according to which public sector workers who have been employed under fixed-term employment contracts which exceeded the maximum period laid down in Article 15(5) of that statute are subject to the specific regime for workers having contracts 'of indefinite duration but not permanent', under which, when the employer fills their post following competition procedures, their employment relationship automatically comes to an end, without them having the right to payment of compensation, whereas both workers having contracts of indefinite duration in the private sector and permanent workers in the public sector would have the right, in similar circumstances, to obtain severance pay.
- 62 As all of the interested parties who have submitted written observations to the Court have submitted, those questions are irrelevant for the purpose of resolving the dispute in the main proceedings because they are hypothetical.
- 63 Even if it is conceded that an abuse of the use of successive fixed-term employment contracts may be found in the main proceedings, the referring court itself stated in its decision, as is apparent from paragraphs 27 and 43 of this judgment and as the wording of the first question presupposes, that the transformation of those contracts into employment contracts of indefinite duration, as provided for in Article 15(5) of the Workers' Statute, does not apply to an associate lecturer such as the applicant in the main proceedings.

64 It follows that, in accordance with the case-law referred to in paragraph 35 of this judgment, the second and third questions are inadmissible.

Costs

65 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 (Eighth Chamber) hereby rules:

Clause 5 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 not precluding national rules, such as those at issue in the main proceedings, which allow universities to renew successive fixed-term employment contracts concluded with associate lecturers, with no limitation as to the maximum duration and the number of renewals of those contracts, where such contracts are justified by an objective reason within the meaning of clause 5(1)(a), which is a matter for the referring court to verify. However, it is also for that court to ascertain that, in the main proceedings, the renewal of the successive fixed-term employment contracts at issue was actually intended to cover temporary needs and that rules such as those at issue in the main proceedings were not, in fact, used to meet fixed and permanent needs in terms of employment of teaching staff.

[Signatures]

* Language of the case: Spanish.