JUDGMENT OF THE COURT (Second Chamber)

8 September 2011 (*)

(Social policy – Directive 1999/70/EC – Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Clause 4 – Application of the framework agreement to the civil service – Principle of non-discrimination)

In Case C-177/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Contencioso-Administrativo nº 12 de Sevilla (Spain), made by decision of 24 March 2010, received at the Court on 7 April 2010, in the proceedings

Francisco Javier Rosado Santana

v

Consejería de Justicia y Administración Pública de la Junta de Andalucía,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, A. Arabadjiev, A. Rosas, A. Ó Caoimh (Rapporteur) and P. Lindh, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Consejería de Justicia y Administración Pública de la Junta de Andalucía, by A. Cornejo Pineda, acting as Agent,

– the Spanish Government, by J. Rodríguez Cárcamo, acting as Agent,

– the European Commission, by M. van Beek and S. Pardo Quintillán, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 May 2011,

gives the following

Judgment

1 This reference for a preliminary ruling relates to 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).

2 The reference has been made in the course of proceedings between Mr Rosado Santana, currently a career civil servant with the Junta de Andalucía, in the Consejería de Justicia y Administración Pública de la Junta de Andalucía (Ministry of Justice and Public Administration of the Autonomous Government of Andalusia; 'the Consejería'), concerning a decision of the Consejería annulling the acts relating to his appointment under the internal promotion system as a career civil servant within the general category of assistants.

Legal context

European Union ('EU') legislation

3 According to recital 14 in the preamble to Directive 1999/70, the legal basis for which is Article 139(2) EC, the signatory parties of the framework agreement 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 Under Article 1 of Directive 1999/70, the purpose of that directive is to 'put into effect the framework agreement … concluded … between the general cross-industry organisations (ETUC, UNICE and CEEP)'.

5 Under the first paragraph of Article 2 of that directive:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 10 July 2001, or shall ensure that, by that date at the latest, management and labour have introduced the necessary measures by agreement, the Member States being required to take any necessary measures to enable them at any time to be in a position to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.'

6 Clause 1 of the framework agreement states that the purpose of that agreement is to:

'(a) improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination;

(b) 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 is worded as follows:

'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 the framework agreement 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.'

9 Clause 4 of the framework agreement, entitled 'Principle of non-discrimination', provides:

'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.

…

4. Period-of-service qualifications relating to particular conditions of employment shall be the same for fixed-term workers as for permanent workers except where different length-of-service qualifications are justified on objective grounds.'

National legislation

10 Article 1(2) of Law 70/1978 of 26 December 1978 on the recognition of prior service in the public administration (Ley 70/1978 de reconocimiento de servicios previos en la Administración Pública) (BOE No 9 of 10 January 1979, p. 464; 'Law 70/1978'), provides:

'All periods of service, without exception, in the sectors of the public administration referred to in the previous paragraph, completed either as a temporary civil servant (fixed-term or interim) or under a contract governed by administrative or employment law, irrespective of whether or not such a contract was recorded in writing, shall be regarded as effective periods of service.'

11 The 22nd additional provision to Law 30/1984 of 2 August 1984 on the reform of the civil service (Ley 30/1984 de reforma de la Función Pública) (BOE No 185 of 3 August 1984, p. 22629), as amended by Law 42/1994 of 31 December 1994 on fiscal, administrative and social measures (Ley 42/1994 de medidas fiscales, administrativas y de orden social) (BOE No 313 of 31 December 1994, p. 39457), provides:

'Access to categories or steps in Group C may be by internal promotion from categories or steps in Group D in the corresponding area or duties, if need be, and is implemented by competition, with an assessment at the competition stage of qualifications with regard to the career bracket and the posts occupied, level of training and seniority.

For those purposes, the qualifications referred to in Article 25 of this law or 10 years' seniority in a category or step in Group D, or 5 years if the person concerned has received specific training accessible on the basis of objective criteria, is required.

This provision is a basic rule of civil service status, adopted under point 18 of Article 149(1) of the Constitution.'

12 Article 32 of Decree 2/2002 of 9 January 2002 laying down general rules for recruitment, internal promotion, filling of posts and professional promotion of civil servants in the general administration of the Autonomous Government of Andalusia (Decreto 2/2002 por el que se aprueba el Reglamento General de Ingreso, promoción interna, provisión de puestos de trabajo y promoción profesional de los funcionarios de la Administración General de la Junta de Andalucía) (BOJA No 8 of 19 January 2002, p. 913) is framed in terms similar to those of the abovementioned additional provision.

13 Law 7/2007 of 12 April 2007 on the basic regulations relating to public servants (Ley 7/2007 del Estatuto básico del empleado público) (BOE No 89 of 13 April 2007, p. 16270; the 'LEBEP' LEBEP') applies, in accordance with Article 2(1) thereof, to established civil servants and, where appropriate, to contract staff working, inter alia, in the administrative departments of the Autonomous Communities.

14 Article 8(2) of the LEBEP provides that public servants are to be categorised as career civil servants ('funcionarios de carrera'), interim civil servants ('funcionarios interinos'), staff engaged under employment contracts and staff appointed *ad personam*.

15 Article 9(1) of the LEBEP provides:

'Career civil servants are persons appointed under the law who are part of a public administration under a status governed by administrative law for the purpose of performing permanently remunerated professional services.'

16 Article 10(1) of the LEBEP provides:

'Interim civil servants are persons who, for expressly justified reasons of necessity and urgency, are appointed to that status to perform the duties of established civil servants in one of the following cases:

(a) The existence of vacant posts which cannot be occupied by career civil servants.

(b) Temporary replacement of career civil servants.

(c) The carrying out of temporary programmes.

(d) An excess or backlog of work, for a maximum period of 6 months in the course of an overall period of 12 months.'

17 Article 18 of the LEBEP, entitled 'Internal promotion of career civil servants', is worded as follows:

'1. Internal promotion shall be carried out in the framework of selection procedures which ensure respect for the constitutional principles of equal treatment, merit and capacity …

2. Civil servants must meet the conditions required for access to those procedures; they must have at least two years of active service in the sub-group below or in the professional classification group, if that group does not have sub-groups; and they must pass the relevant selection tests.'

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

18 It appears from the information submitted to the Court that, between 1989 and 2005, Mr Rosado Santana was an interim civil servant in the administration of the

Junta de Andalucía. He became a career civil servant in the same administration in 2005.

19 A competition notice was published by the Consejería on 17 December 2007 in the *Boletín Oficial de la Junta de Andalucía* stating that selection tests would be held for the advancement of civil servants, under the internal promotion system, to the general category of assistants in that public administration.

20 That notice laid down a number of conditions which the candidates in the tests had to meet. First of all, they had to be members of the general body of civil servants of the Junta de Andalucía. Secondly, candidates were required 'to hold or to be in a position to obtain the qualification of *Bachiller Superior* or equivalent, or, alternatively, to have completed 10 years' service as a career civil servant in a group D post, or to have completed five years' service and passed a specific course held by the Instituto Andaluz de la Administración Pública (Andalusian Institute of Public Administration)'. Lastly, the candidates in the tests had to be promoted internally from categories belonging to the group immediately below the category competed for and to furnish evidence that they had served for at least two years as a career civil servant in that group.

21 The competition notice also stated that 'no account will be taken of prior periods of service completed as a temporary or interim employee in another area of the public administration or of other similar previous periods of service'.

22 Mr Rosado Santana, who took part in the tests in the selection procedure in his capacity as a career civil servant in group D of the Junta de Andalucía with more than two years' service, was initially placed on the definitive list of successful candidates, published on 12 November 2008.

23 Following the publication on 2 February 2009 of a list of available vacancies, and after Mr Rosado Santana had supplied the required documents, the Secretary General of the Consejería, by decision of 25 March 2009 ('the decision at issue in the main proceedings'), annulled the decision admitting Mr Rosado Santana to the competition and appointing him as a career civil servant in group C on the ground that he did not have the required qualifications or, in the absence thereof, 10 years' seniority as a career civil servant.

24 On 8 June 2009, Mr Rosado Santana brought an action challenging the decision at issue in the main proceedings on the basis of Article 14 of the Spanish Constitution, which enshrines the principle of equality before the law, and of Article 1 of Law 70/1978. In addition, he claimed that, since the Secretary General of the Consejería took account only of seniority accrued as a career civil servant since 2005 and not of prior periods of service as an interim civil servant, the decision at issue in the main proceedings infringes the principle of non-discrimination laid down in clause 4 of the framework agreement.

25 Before the national court, the Consejería argued that Law 70/1978 may not be applied for the purposes of determining the qualifications required for a competition, since prior periods of service in respect of interim civil servants can be calculated only for economic purposes. Otherwise, a civil servant who had previously served as an interim civil servant would be better treated than one who had not. That would be discriminatory because, given the nature of the work preformed by an interim civil servant, which is not characterised by the permanence and stability inherent in the civil service, seniority acquired as a career civil servant must always take precedence over any merits relating to periods of service as an interim civil servant.

26 In its order for reference, the Juzgado de lo Contencioso-Administrativo nº 12 de Sevilla (Court for Contentious Administrative Proceedings, No 12, Seville (Spain)) questions the consequences of decisions of the Tribunal Constitucional under which it is permissible to treat differently career civil servants, on the one hand, and interim civil servants performing the same duties, on the other. However, the national court notes that those decisions are in part contradicted by other judgments of the Tribunal Constitucional.

27 The national court also notes that the approach followed by many Spanish courts is that, in the case of published notices of public competitions which state the conditions for the admission of candidates and for the attribution of marks, those conditions constitute the 'law' of the competition and, if those conditions are not challenged by the person concerned within the time-limit, their illegality can no longer be relied on at a later stage in order to challenge the result of the competition in so far as it affects the person concerned.

28 According to the national court, the essential question in the main proceedings is whether national legislation which, while using as its terms of comparison two career civil servants, does not take into account the periods of service completed by one of them merely because he was an interim civil servant at the relevant time, is contrary to clause 4 of the framework agreement.

29 In those circumstances, the Juzgado de lo Contencioso-Administrativo No 12 de Sevilla decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is [Directive 1999/70] to be interpreted as meaning that, if the Constitutional Court of a Member State [of the European Union] has ruled that the establishment of different rights for temporary civil servants and career civil servants of that State might not be contrary to its Constitution, that necessarily means that the directive is excluded from applying in the sphere of that State's civil service?

2. Is [the directive] to be interpreted as meaning that it precludes a national court from interpreting the principles of equal treatment and non-discrimination in a manner which generally excludes from their scope the placing of temporary civil servants and career civil servants on an equal footing?

3. Is clause 4 [of the framework agreement] to be interpreted as meaning that it precludes a refusal to take into account as length of service, in attaining the status of member of the permanent staff, previous periods of service as a temporary employee, specifically for the purposes of remuneration, grading and career advancement in the civil service?

4. Does clause 4 [of the framework agreement] require the national legislation to be interpreted so as not to exclude periods worked under a temporary employment relationship from the calculation of length of service of civil servants?

5. Is clause 4 [of the framework agreement] to be interpreted as meaning that, even though the rules of a public selection process were published and were not contested by the applicant, the national court must examine whether those rules are contrary to [EU] legislation and, in that case, must the national court refrain from applying those rules or the national provision on which they are based in so far as they conflict with that clause?'

Admissibility

30 The Consejería argues that the order for reference in general, and Questions 1, 2 and 5 in particular, fail to satisfy the conditions established by the case-law of the Court for the admissibility of references for a preliminary ruling. No mention is made in the order for reference of the national legislation applicable to the main proceedings or of the national legal framework in which those proceedings are placed. According to the Consejería, the national court also omitted to set out the reasons which led it to choose Directive 1999/70 and did not establish the relationship between the directive and the national legislation.

31 Furthermore, the Consejería argues that the scope of clause 4 of the framework agreement is misconstrued in the questions referred and, for that reason also, those questions are inadmissible.

32 It should be recalled in that regard that, in the context of the cooperation between the Court and national courts under Article 267 TFEU, it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle bound to give a ruling (see, inter alia, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 59, and Case C-45/09 *Rosenbladt* [2010] ECR I-0000, paragraph 32).

33 In addition, it is for the national courts to furnish the Court with the factual and legal information necessary to enable it to give useful answers to the questions referred (Case C-249/97 *Gruber* [1999] ECR I-5295, paragraph 19).

34 It should be pointed out that, in the present case, the national court has provided a sufficiently clear description both of the provisions of Spanish law applicable to the main proceedings and of the national legal framework in which those proceedings were placed. In addition, the reasons why the national court referred questions concerning the interpretation of Directive 1999/70 are clear from the order for reference.

35 With regard to the Consejería's argument that the national court misconstrued the scope of clause 4(1) of the framework agreement, it is sufficient to note that such a question goes, not to the admissibility of the reference for a preliminary ruling, but to the merits.

36 In the light of the foregoing, the reference for a preliminary ruling is admissible in its entirety.

Consideration of the questions referred

Preliminary observations concerning the applicability of Directive 1999/70 and the framework agreement

37 According to the Spanish Government and the European Commission, Directive 1999/70 and the framework agreement in the Annex thereto are not applicable to the dispute before the referring court.

38 The Spanish Government notes that, when Mr Rosado Santana took part in the internal promotion procedure, to which, pursuant to the applicable rules, solely career civil servants could be admitted, he had himself been a career civil servant since 2005. Accordingly, the different treatment to which Mr Rosado Santana refers arises in comparison with other career civil servants who also took part in that procedure and either held the qualifications required or had completed 10 years' service as a career civil servant. Both the Spanish Government and the Commission argue that the framework agreement does not address the equal treatment of permanent workers, some of whom have in the past been fixed-term workers.

39 In that regard, it should be borne in mind that, under clause 2(1) of the framework agreement, 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.

40 The Court has held that Directive 1999/70 and the framework agreement are applicable to all workers providing remunerated services in the context of a fixed-term employment relationship linking them to their employer (Case C-307/05 *Del Cerro Alonso* [2007] ECR I-7109, paragraph 28).

41 The mere fact that Mr Rosado Santana obtained the status of career civil servant and that his access to an internal selection procedure is conditional upon the holding of that status does not mean that, in certain circumstances, he cannot rely on the principle of non-discrimination laid down in clause 4 of the framework agreement.

42 In the main proceedings, Mr Rosado Santana, in his capacity as a career civil servant, is seeking essentially to challenge a difference in treatment arising when account was taken of seniority and professional experience acquired, for the purposes of an internal selection procedure. Periods of service as a career civil servant are taken into account whereas service as an interim civil servant is not, without – according to Mr Rosado Santana – the nature of the duties performed or their inherent characteristics being considered. Since the discrimination contrary to clause 4 of the framework agreement of which Mr Rosado Santana alleges that he is the victim concerns periods of service completed as an interim civil servant, the fact that he meanwhile became a career civil servant is irrelevant.

43 In addition, it should be pointed out that clause 4(4) of the framework agreement provides that period-of-service qualifications relating to particular conditions of employment are to be the same for fixed-term workers as for permanent workers, except where different period-of-service qualifications are justified on objective grounds. It does not follow either from the wording of clause 4(4) of the framework agreement or from the context in which it is placed that that provision ceases to be applicable once the worker concerned has become a permanent worker. The objectives pursued by Directive 1999/70 and the framework agreement, which are intended both to prohibit discrimination and to prevent abuse resulting from the use of successive employment contracts or relationships, suggest the contrary.

44 To exclude automatically application of the framework agreement in a situation such as that in the case before the referring court – as the Spanish Government and the Commission suggest – would, in disregard of the objective attributed to clause 4, effectively reduce the scope of the protection against discrimination for the workers concerned and would give rise to an unduly restrictive interpretation of that clause, contrary to the case-law of the Court (see, to that effect, *Del Cerro Alonso*, paragraphs 37 and 38, and Case C-268/06 *Impact* [2008] ECR I-2483, paragraphs 114 and 115).

45 For its part, the Consejería argues that clause 4(1) of the framework agreement does not apply in the case before the referring court since the condition relating to seniority as a career civil servant is a condition for access to the post which must be satisfied in order to participate in a selection procedure and not an ‘employment condition’ for the purposes of that clause.

46 The Court has already pointed out that national rules concerning periods of service to be completed in order to be classified in a higher salary grade or

calculation of the periods required to have performance assessed each year and, consequently, to qualify for promotion – such as the rule at issue in the main proceedings – constitute employment conditions (see, by analogy, in the field of equal treatment of men and women workers, Case C-136/95 *Thibault* [1998] ECR I-2011, paragraph 27, and Case C-284/02 *Sass* [2004] ECR I-11143, paragraphs 31 and 34).

47 It follows that the concept of employment conditions in clause 4(1) of the framework agreement covers a condition, such as the condition at issue in the main proceedings, relating to the taking into account, in the context of a selection procedure for internal promotion, of periods of service previously completed as an interim civil servant.

48 In the light of the foregoing considerations, it must be held that – contrary to the interpretation argued for by the Consejería, the Spanish Government and the Commission – there is no reason why Directive 1999/70 and clause 4 of the framework agreement should not apply to the dispute in the main proceedings.

Questions 1 and 2

49 By Questions 1 and 2, which it is appropriate to examine together, the national court asks, in essence, whether the courts of a Member State, including the Constitutional Court, can interpret Directive 1999/70 and the principle of non-discrimination laid down in clause 4 of the framework agreement in such a way as to exclude the application of those measures of EU law to the civil service of that Member State and to all differences in treatment between interim civil servants and career civil servants.

50 It should be recalled at the outset that a directive imposes an obligation on all Member States to which it is addressed to adopt all the measures necessary to ensure that the directive concerned is fully effective in accordance with the objective which it pursues (see Case 14/83 *von Colson and Kamann* [1984] ECR 1891, paragraph 15, and *Impact*, paragraph 40).

51 The obligation on Member States, arising from a directive, to achieve the result envisaged by that directive and their duty under Article 4(3) TEU to take all appropriate measures, whether general or particular, to ensure the fulfilment of that obligation is § (*Impact*, paragraph 41).

52 It is the responsibility of the national courts, in particular, to provide the legal protection which individuals derive from the rules of EU law and to ensure that those rules are fully effective (*Impact*, paragraph 42).

53 According to the case-law of the Court, where they are unable to interpret and apply national law in compliance with the requirements of EU law, it is for the national courts and administrative bodies to apply EU law in its entirety and to

protect the rights which the latter confers on individuals, disapplying, if necessary, any contrary provision of national law (see, to that effect, Case 103/88 *Costanzo* [1989] ECR 1839, paragraph 33; Case C-208/05 *ITC* [2007] ECR I-181, paragraphs 68 and 69; and Case C-429/09 *Fuß* [2010] ECR I-0000, paragraph 63).

54 The framework agreement, which is the product of a dialogue, based on Article 139(1) EC, between management and labour at EU level, has been implemented in accordance with Article 139(2) EC by a directive of the Council of the European Union, of which it is thus an integral component (*Impact*, paragraph 58).

55 According to settled case-law, the provisions laid down in the framework agreement are intended to apply to fixed-term employment contracts and relationships concluded with the public authorities and other public-sector bodies (Case C-212/04 *Adeneler and Others* [2006] ECR I-6057, paragraph 54, and Joined Cases C-444/09 and C-456/09 *Gavieiro Gavieiro and Iglesias Torres* [2010] ECR I-0000, paragraph 38).

56 Clause 4 of the framework agreement, which has direct effect, prohibits, in respect of employment conditions and periods of service related to employment conditions, the treatment of fixed-term workers in a less favourable manner than comparable permanent workers, solely because their employment is for a fixed term (*Impact*, paragraphs 59 and 68).

57 Admittedly, Clause 4 of the framework agreement contains, in relation to the principle of non-discrimination laid down therein, a reservation concerning justification on objective grounds.

58 However, the fact of being able, in specific circumstances and where there are objective reasons, to treat fixed-term workers differently from permanent workers certainly does not in any way imply that workers employed in the civil service of a Member State can be excluded from the application of Directive 1999/70 and the framework agreement.

59 For its part, the Spanish Government argues that the premiss on which Question 1 is based is false, inasmuch as the Tribunal Constitucional has not refused to apply Directive 1999/70 to Spanish interim civil servants, and has not accepted, in general terms, unjustified differences in treatment between the latter and career civil servants.

60 In that regard, it is sufficient to note that it is not the role of the Court of Justice to rule on the interpretation of provisions of national law, which is a matter falling within the exclusive jurisdiction of the national courts (Case C-409/06 *Winner Wetten* [2010] ECR I-0000, paragraph 35), and that the Court cannot substitute its own judgment for that of the referring court as regards the development of case-law of those courts.

61 If a national court, including a constitutional court, excluded the application of Directive 1999/70 or the framework agreement to the staff of the civil service of a Member State, and/or permitted different treatment of interim civil servants as compared with career civil servants, in the absence of objective grounds for the purposes of clause 4(1) of the framework agreement, it would have to be concluded that such a line of authority would run counter to those measures of EU law and would infringe the obligations incumbent upon the courts of the Member States to provide, in matters within their jurisdiction, the legal protection which individuals derive from the rules of EU law and to ensure that those rules are fully effective.

62 Accordingly, the answer to Questions 1 and 2 is that Directive 1999/70 and the framework agreement in the Annex thereto must be interpreted, on the one hand, as applying to employment contracts and relationships concluded with the public authorities and other public-sector bodies and, on the other, as precluding any difference in treatment as between career civil servants and comparable interim civil servants of a Member State based solely on the ground that the latter are employed for a fixed term, unless different treatment is justified on objective grounds for the purposes of clause 4(1) of the framework agreement.

Questions 3 and 4

63 By Questions 3 and 4, which it is appropriate to examine together, the national court asks, in essence, whether clause 4 of the framework agreement must be interpreted as precluding account not being taken of periods of service completed by an interim civil servant in a public administration for the purposes of permitting such a person, who has subsequently become a career civil servant, to obtain an internal promotion available only to career civil servants.

64 As is clear from the answer to the first two questions, clause 4(1) of the framework agreement prohibits, with regard to employment conditions, less favourable treatment of fixed-term workers as compared with permanent workers, solely because they are employed for a fixed term, unless different treatment is justified on objective grounds. Clause 4(4) lays down the same prohibition as regards period-of-service qualifications relating to particular conditions of employment.

65 It should be recalled that, according to settled case-law, the principle of non-discrimination requires that comparable situations must not be treated differently and different situations must not be treated alike unless such treatment is objectively justified (see, inter alia, Case C-313/04 *Franz Egenberger* [2006] ECR I-6331, paragraph 33 and the case-law cited).

66 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 first be determined, in accordance with clauses 3(2) and 4(1) of that 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 (order of 18 March 2011 in Case C-273/10 *Montoya Medina*, paragraph 37).

67 In principle, it is for the national court to determine whether Mr Rosado Santana, when he was working as an interim civil servant, was in a situation comparable to that of career civil servants who, in the context of the selection procedure at issue, have shown that they have 10 years' seniority accrued in the categories of civil servants belonging to group D.

68 If it were to be found that the duties performed by Mr Rosado Santana as an interim civil servant did not correspond to those performed by a career civil servant in one of the categories belonging to group D, as required by the competition notice, it would follow that he is not, in any event, in a situation comparable with that of a career civil servant who is a candidate for internal promotion and has completed the periods of service required in those categories.

69 The nature of the duties performed by Mr Rosado Santana in the years during which he worked for the Junta de Andalucía as an interim civil servant and the quality of the experience which he thereby acquired are not merely one of the factors which could objectively justify different treatment as compared with career civil servants. They are also among the criteria which make it possible to determine whether he is in a situation comparable with that of career civil servants.

70 If, on the other hand, Mr Rosado Santana had completed 10 years' service as an interim civil servant in the categories of civil servants belonging to group D, or in another category whose duties corresponded to those performed by a career civil servant in the categories belonging to that group, the only factor which could distinguish his situation from that of a career civil servant who was a candidate in the selection procedure at issue would seem to be the temporary nature of the relationship which linked him to his employer during the periods of service completed as an interim civil servant.

71 In such a case, it would have to be ascertained whether there was an objective ground justifying the failure to take account of such periods of service in the context of the selection procedure at issue.

72 According to the settled case-law of the Court, the concept of 'objective grounds' for the purposes 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 the difference is provided for by a general, abstract national norm, such as a law or collective agreement (*Del Cerro Alonso*, paragraph 57; *Gavieiro Gavieiro and Iglesias Torres*, paragraph 54; and the order in *Montoya Medina*, paragraph 40).

73 That concept requires the unequal treatment found to exist to be justified by the existence of precise and specific factors, characterising the employment condition to which it relates, in the particular context in which it occurs and on the basis of objective and transparent criteria in order to ensure that that unequal treatment in fact meets a genuine need, is appropriate for achieving the objective pursued and is necessary for that purpose. Those factors may result, in particular, from the specific nature of the tasks for the performance of which fixed-term 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 (see, inter alia, *Del Cerro Alonso*, paragraphs 53 and 58; and *Gavieiro Gavieiro and Iglesias Torres*, paragraph 55).

74 Reliance on the mere temporary nature of the employment of staff of the public authorities does not meet those requirements and is therefore not, of itself, capable of constituting an 'objective ground' for the purposes of clause 4(1) of the framework agreement. If the mere temporary nature of an employment relationship were held to be sufficient to justify a difference in treatment as between fixed-term workers and permanent workers, the objectives of Directive 1999/70 and the framework agreement would be rendered meaningless and it would be tantamount to perpetuating a situation that is disadvantageous to fixed-term workers (*Gavieiro Gavieiro and Iglesias Torres*, paragraphs 56 and 57, and the order in *Montoya Medina*, paragraphs 42 and 43).

75 The Spanish Government points to the existence of a number of differences between career civil servants and interim civil servants which could justify the different treatment at issue in the main proceedings. With regard to interim civil servants, the Spanish Government states, first, that less stringent requirements are imposed on them as regards entry to the civil service and proof of merits and capacities. Secondly, it points to the lack of mobility among interim civil servants, since they are tied to the posts which they occupy on a temporary basis, which makes their work different from that of a career civil servant and not of the same value. In addition, the Spanish Government states that certain duties are reserved for career civil servants, which implies that there is a difference in the quality of their experience and training. Lastly, the Spanish Government emphasises that the employment relationship with interim civil servants may be terminated when the need which prompted their appointment no longer exists.

76 In view of the discretion enjoyed by Member States as regards the organisation of their own public administrations, they can, in principle, without acting contrary to Directive 1999/70 or the framework agreement, lay down period-of-service conditions for access to certain posts, restrict access to internal promotion solely to career civil servants and require those civil servants to provide evidence of professional experience corresponding to the grade immediately below the grade concerned by the selection procedure.

77 However, that discretion notwithstanding, the criteria which the Member States lay down must be applied in a transparent manner and must be open to review in order to prevent any exclusion of fixed-term workers solely on the basis of the duration of the contracts or employment relationships which attest to their length of service and professional experience.

78 As the Advocate General pointed out in points 62 to 65 of her Opinion, some of the differences raised by the Spanish Government relating to the manner in which interim and career civil servants are engaged, the qualifications required and the nature of the duties undertaken could, in principle, justify different treatment as regards their conditions of employment.

79 Where, in a selection procedure, such a difference in treatment flows from the need to take account of objective requirements relating to the post which that procedure is intended to fill and which are unrelated to the fixed-term nature of the interim civil servant's employment relationship, it is capable of being justified for the purposes of clause 4(1) and/or (4) of the framework agreement.

80 On the other hand, a general and abstract condition to the effect that the period of service required must have been entirely completed as a career civil servant, with no account being taken, in particular, of the specific nature of the tasks to be performed or their inherent characteristics, does not meet the requirements of the case-law on clause 4(1) of the framework agreement, as set out in paragraphs 72 to 74 above.

81 Even though Mr Rosado Santana clearly fulfils the condition relating to the completion of at least two years' service as a career civil servant in the group immediately below the category in which the post competed for is placed, it is not clear from the documents before the Court what duties he performed during the years when he was an interim civil servant; nor is it clear at what grade he performed those duties; nor the relationship between those duties and the duties of civil servants in group D.

82 It does not therefore emerge from the documents placed before the Court whether the exclusion of periods of service completed by interim civil servants is justified solely by the duration of their employment contracts or whether there are other justifications related to the objective requirements of the posts for which the selection procedure was organised, capable of being regarded as 'objective grounds' for the purposes of clause 4(1) of the framework agreement.

83 Accordingly, it is for the national court to ascertain whether, on the one hand, the situation of Mr Rosado Santana was, as regards the periods of service which he completed as an interim civil servant, comparable with that of another employee of the Junta de Andalucía who had completed his periods of service as a career civil servant and, on the other hand, to assess, in the light of the case-law referred to in paragraphs 72 to 74 above, whether the arguments put forward before it by the

Consejería constitute objective grounds for the purposes of clause 4(1) of the framework agreement.

84 In the light of the foregoing considerations, the answer to Questions 3 and 4 is that clause 4 of the framework agreement must be interpreted as precluding account not being taken of periods of service completed as an interim civil servant in a public administration for the purposes of permitting such a person, who has subsequently become a career civil servant, to obtain an internal promotion available only to career civil servants, unless that exclusion is justified by objective grounds for the purposes of clause 4(1) of that agreement. The mere fact that the interim civil servant completed those periods of service under a fixed-term employment contract or relationship does not constitute such an objective ground.

Question 5

85 In view of the information provided by the national court and by the Spanish Government, Question 5 must be construed as meaning that the national court is asking, essentially, whether the primary law of the European Union, Directive 1999/70 and the framework agreement are to be interpreted as precluding national legislation which provides that, where an action brought by a career civil servant challenging a decision rejecting his candidature for a competition is based on the fact that the promotion procedure was contrary to clause 4 of the framework agreement, that action must be brought within two months of the date of publication of the competition notice.

86 The Spanish Government notes that, pursuant to Article 46(1) of Law 29/1998 regulating the administrative courts (Ley 29/1998 reguladora de la Jurisdicción Contencioso-administrativa) of 13 July 1998 (BOE n° 167 of 14 July 1998, p. 23516), an action could have been brought within two months of the day after publication of the competition notice, that is to say, on 17 December 2007. Under Spanish law, Mr Rosado Santana should have brought either a direct action, within the time-limit, challenging the conditions laid down in the competition notice or – if the conditions for admission to the competition were not themselves null and void and the defect giving rise to the alleged nullity flowed from the conduct of the competent authority when it applied those conditions – an action challenging the outcome of the competition. By contrast, he cannot challenge, indirectly, the conditions of a competition for access to the civil service, outside the time allowed, by means of a direct action challenging the outcome of the competition.

87 The Court has consistently held that, in the absence of EU rules governing the matter, it is for the domestic legal system of each Member State, pursuant to the principle of the procedural autonomy of those legal systems, to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law (*Impact*, paragraph 44, and Joined Cases C-378/07 to C-380/07 *Angelidaki and Others* [2009] ECR I- 3071, paragraph 173).

88 The Member States, however, are responsible for ensuring that those rights are effectively protected in each case (*Impact*, paragraph 45 and the case-law cited).

89 On that basis, as is apparent from well-established case-law, the detailed procedural rules governing actions for safeguarding an individual's rights under EU law must be no less favourable than those governing similar domestic actions (principle of equivalence) and must not render practically impossible or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness) (see, inter alia, *Impact*, paragraph 46 and the case-law cited).

90 The principle of equivalence requires that the national rule in question be applied without distinction, whether the infringement alleged is of EU law or national law, where the purpose and cause of action are similar. In order to establish whether the principle of equivalence has been complied with, it is for the national court, which alone has direct knowledge of the procedural rules governing actions under national law, to ensure, in national law, that the procedural rules intended to ensure that the rights derived by individuals from EU law are safeguarded respect that principle and to consider both the purpose and the essential characteristics of allegedly similar domestic actions. To that end, the national court must assess the similarity of the actions concerned in terms of their purpose, cause of action and essential characteristics. In order to determine whether a national procedural provision is less favourable, the national court must take account of the role of that provision in the procedure, viewed as a whole, of the conduct of that procedure and of its special features (Case C-246/09 *Bulicke* [2010] ECR I-0000, paragraphs 26 to 29, and the order of 18 January 2011 in Case C-272/10 *Berkizi-Nikolakaki*, paragraphs 40 and 41).

91 In the present case, it is not clear from the information placed before the Court that the two-month time-limit at issue in the main proceedings is contrary to the principle of equivalence. As the Spanish Government argues, that time-limit is the general rule laid down for all actions challenging administrative measures or the provisions of such measures. It is for the national court, however, to ascertain whether that is so in the main proceedings.

92 As regards the principle of effectiveness, it is clear from the case-law of the Court that every case in which the question arises as to whether a national procedural provision makes the exercise of rights conferred on individuals under the EU legal order practically impossible or excessively difficult must be analysed similarly by reference to the role of that provision in the procedure, viewed as a whole, to the conduct and special features of that procedure before the various national judicial bodies. For those purposes, account must be taken, where appropriate, of the basic principles of the domestic judicial system, such as protection of the rights of the defence, the principle of legal certainty and the proper conduct of procedure (*Bulicke*, paragraph 35, and the order in *Berkizi-Nikolakaki*, paragraph 48).

93 The Court has thus recognised that it is compatible with EU law to lay down reasonable time-limits for bringing proceedings, on pain of the action being time-barred, in the interests of legal certainty, since such time-limits are not liable to render practically impossible or excessively difficult the exercise of rights conferred by EU law. As regards such time-limits, the Court has also held that, in respect of national legislation which falls within the scope of EU law, it is for the Member States to establish those time-limits in the light, inter alia, of the significance for the parties concerned of the decisions to be taken, the complexities of the procedures and of the legislation to be applied, the number of persons who may be affected and any other public or private interests which must be taken into consideration (*Bulicke*, paragraph 36, and the order in *Berkizi-Nikolakaki*, paragraph 49)

94 In the present case, the Spanish Government argues that the two-month time-limit is based on the principle of legal certainty and is intended, essentially, to protect the other candidates in selection procedures in which the number of posts to be filled is limited and annulment of the conditions applicable to the competition would make it necessary to recommence the procedure and would deprive the successful candidates of the rights which they thought they had acquired.

95 It should be pointed out in that regard that the Court has held that the fixing of a two-month time-limit did not appear, in the cases before it, liable to render practically impossible or excessively difficult the exercise of rights conferred by EU law (see *Bulicke*, paragraph 39, and the order in *Berkizi-Nikolakaki*, paragraph 58). The Court has, in particular, confirmed the validity of such a time-limit as regards an action challenging a measure of general application laying down a complex procedure and involving a large number of persons (see, to that effect, order in *Berkizi-Nikolakaki*, paragraphs 56 to 58).

96 In those circumstances, it must be held that a time-limit such as the time-limit at issue in the main proceedings is not, in principle, liable to render practically impossible or excessively difficult the exercise of the rights conferred by the framework agreement.

97 However, it should be pointed out that, as is clear from the order for reference, Mr Rosado Santana was admitted to the competition organised by the Consejería, in which he was successful, and, until the adoption of the decision at issue in the main proceedings by the Secretary General of the Consejería, was on the definitive list of successful candidates for that competition, published on 12 November 2008. In those circumstances, the possibility cannot be ruled out that making time for the purposes of the two-month time-limit laid down in Spanish law run from the date of publication of the competition notice – 17 December 2007 – could render practically impossible or excessively difficult the exercise of the rights conferred by the framework agreement.

98 In view of the fact that Mr Rosado Santana was admitted to the tests for the competition and, in particular, the fact that he was placed on the definitive list of

successful candidates for that competition, it was not until, by the decision at issue in the main proceedings, the Secretary General of the Consejería annulled the admission of Mr Rosado Santana to the competition and his appointment as a career civil servant – that is to say, not until 25 March 2009 – that it became clear that the competition notice was being applied in a way which could adversely affect the rights conferred by the framework agreement.

99 In those circumstances, and given the points of uncertainty in the documents placed before the Court, it is for the national court to carry out the necessary checks regarding compliance with the principle of effectiveness and to determine whether, if time for the purposes of the two-month time-limit for the bringing of actions should, in the circumstances of the main proceedings, run solely from notification of that decision, Mr Rosado Santana none the less brought his action in good time.

100 In the light of the foregoing, the answer to Question 5 is that the primary law of the European Union, Directive 1999/70 and the framework agreement are to be interpreted as not precluding, in principle, national legislation which provides that, where an action brought by a career civil servant challenging a decision rejecting his candidature for a competition is based on the fact that the promotion procedure was contrary to clause 4 of the framework agreement, that action must be brought within two months of the publication of the competition notice. Nevertheless, such a time-limit could not be relied upon against a career civil servant, who has been a candidate in that competition, who has been admitted to the tests and whose name was placed on the definitive list of successful candidates for that competition, if that were liable to render practically impossible or excessively difficult the exercise of the rights conferred by the framework agreement. In those circumstances, time for the purposes of the two-month time-limit could run only from notification of the decision annulling the civil servant's admission to that competition and his appointment as a career civil servant in the higher group.

Costs

101 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 (Second Chamber) hereby rules:

1. **Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, set out in the Annex thereto, must be interpreted, on the one hand, as applying to contracts and relationships concluded with the public authorities and other public-sector bodies and, on the other, as precluding any difference in treatment as between career civil servants and comparable interim civil servants of a Member State, based solely on the ground that the latter are**

employed for a fixed term, unless different treatment is justified on objective grounds for the purposes of clause 4(1) of the framework agreement.

2. **Clause 4 of the framework agreement on fixed-term work must be interpreted as precluding account not being taken of periods of service completed as an interim civil servant in a public administration for the purposes of permitting such a person, who has subsequently become a career civil servant, to obtain an internal promotion available only to career civil servants, unless that exclusion is justified by objective grounds for the purposes of clause 4(1) of that agreement. The mere fact that the interim civil servant completed those periods of service under a fixed-term employment contract or relationship does not constitute such an objective ground.**

3. **The primary law of the European Union, Directive 1999/70 and the framework agreement are to be interpreted as not precluding, in principle, national legislation which provides that, where an action brought by a career civil servant challenging a decision rejecting his candidature for a competition is based on the fact that the promotion procedure was contrary to clause 4 of the framework agreement, that action must be brought within two months of the publication of the competition notice. Nevertheless, such a time-limit could not be relied upon against a career civil servant, who has been a candidate in that competition, who has been admitted to the tests and whose name was placed on the definitive list of successful candidates for that competition, if that were liable to render practically impossible or excessively difficult the exercise of the rights conferred by the framework agreement. In those circumstances, time for the purposes of the two-month time-limit could run only from notification of the decision annulling the civil servant's admission to that competition and his appointment as a career civil servant in the higher group.**

[Signatures]