

JUDGMENT OF THE COURT (Sixth Chamber)

8 March 2012 (*)

(Social policy – Directive 1999/70/EC – Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Clause 5(1) – Successive fixed-term employment contracts – Measures to prevent the abuse of such contracts – Conversion of the previous fixed-term contract into a contract of indefinite duration – Obligation to reproduce in identical terms the principal clauses of the previous fixed-term contract)

In Case C-251/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the tribunal administratif de Rennes (France), made by decision of 5 May 2011, received at the Court on 23 May 2011, in the proceedings

Martial Huet

v

Université de Bretagne occidentale,

THE COURT (Sixth Chamber),

composed of U. Löhmus, President of the Chamber, A. Ó Caoimh (Rapporteur) and A. Arabadjiev, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Mr Huet, by M. Faguer and V. Lahalle, lawyers,
- the French Government, by G. de Bergues and J. Rossi, acting as Agents,
- the Polish Government, by M. Szpunar, acting as Agent,
- the European Commission, by M. Van Hoof and M. van Beek, acting as Agents,

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

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of the framework agreement on fixed-term work, concluded on 18 March 1999 ('the Framework Agreement'), which is set out in the Annex 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 Mr Huet and his employer, the universit  de Bretagne occidentale (University of Western Brittany) ('the UBO') concerning the terms and conditions of the employment contract which he concluded with that university following the conversion of his previous fixed-term employment contract into a contract of indefinite duration.

Legal context

European Union legislation

3 According to Recital 14 in the preamble to Directive 1999/70, the signatory parties wished to conclude a framework agreement on fixed-term work setting out the general principles and minimum requirements for fixed-term employment contracts and employment relationships.

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

‘6. Whereas employment contracts of an indefinite duration are the general form of employment relationships and contribute to the quality of life of the workers concerned and improve performance;

7. Whereas the use of fixed-term employment contracts based on objective reasons is a way to prevent abuse;

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 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.’

8 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.’

9 Clause 4(1) of the Framework Agreement states:

‘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.'

10 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.'

11 Clause 8(3) of the Framework Agreement is worded as follows:

'Implementation of this agreement shall not constitute valid grounds for reducing the general level of protection afforded to workers in the field of the agreement.'

National legislation

12 Article 13(1) of Law No 2005-843 of 26 July 2005 laying down various measures for the transposition of Community law to the civil service states:

'When the employee, recruited to a permanent position, is in post on the date of publication of the present law or is on leave on this date, pursuant to the provisions of the decree referred to in Article 7 of Law No 84-16 of 11 January 1984 laying down special regulatory provisions relating to the civil service of the State, the renewal of his contract shall be subject to the conditions laid down in the fourth, fifth and sixth paragraphs of Article 4 of that Law. When, on the date of publication of the present law, the employee has been in continuous employment, for a period of

at least six years, his contract, at its end, may be renewed only by an express decision and for an indefinite duration. ... ‘

13 Article 4 of Law No 84-16 states:

‘By derogation from the principle laid down by Article 3 under Title I of the general staff regulations, contract staff may be recruited in the following situations:

1. Where there is no body of officials to carry out the corresponding duties;
2. For Category A posts and, in the State’s foreign representations, posts of other categories, where the nature of the duties or the needs of the service justify it.

The staff thus recruited shall be appointed on the basis of fixed-term contracts for a maximum duration of 3 years. These contracts shall be renewable, by express decision. The duration of the successive contracts may not exceed 6 years.

If, at the end of the maximum period of 6 years referred to in the previous paragraph, these contracts are renewed, this may be only by express decision and for an indefinite duration. ... ‘

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

14 The applicant in the main proceedings occupied the post of Researcher (*chercheur*) at the UBO for six consecutive years. He was employed on the basis of a number of successive renewed fixed-term employment contracts – all mentioning his duties as a Researcher – for a continuous period from 1 March 2002 until 15 March 2008.

15 Pursuant to Article 13 of Law No 2005-843 and in accordance with the request of the applicant in the main proceedings, when the last fixed-term contract expired, the UBO offered him an employment contract of indefinite duration. That contract, signed on 26 March 2008, stated, first, that the applicant in the main proceedings would occupy the post of Research Officer (*ingénieur d’études*), that is, a different post from that of a Researcher, and, second, that his remuneration would be lower than that previously received by him on the basis of the fixed-term contracts.

16 According to the applicant in the main proceedings, although his contract of indefinite duration refers to different duties from those which he was previously performing, his duties have nonetheless remained unchanged in practice.

17 On 26 May 2008, the applicant in the main proceedings submitted a request to the UBO to amend his employment contract of indefinite duration on the grounds

that that contract had effected a downgrading of his duties and had led to a decrease in his remuneration.

18 There was an implied decision by the UBO rejecting that request.

19 The applicant in the main proceedings then brought an *ultra vires* action before the tribunal administratif de Rennes (Administrative Court of Rennes) seeking, first, annulment of the implied decision rejecting the request to amend the employment contract of indefinite duration and, second, amendment of that contract regarding the level of remuneration and the nature of his duties.

20 According to the applicant in the main proceedings, where the last fixed-term employment contract is renewed for an indefinite duration, Article 13 of Law No 2005-843 necessarily implies that the principal clauses set out in that fixed-term employment contract must be reproduced in identical terms.

21 In those circumstances, the tribunal administratif de Rennes decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘In circumstances where the State decides to renew the appointment of a staff member previously appointed for a period of six years under a fixed-term contract, does the obligation to use a contract of indefinite duration pursuant to Article 13 of the Law of 26 July 2005 necessarily mean, in light of the objectives of [Directive 1999/70], that the new contract must reproduce in identical terms the principal clauses of the previous contract, in particular those clauses concerning the job title and remuneration?’

Admissibility

22 The applicant in the main proceedings claims that the reference for a preliminary ruling should not have been submitted to the Court, since neither of the parties has invoked an infringement of Directive 1999/70 or another provision of European Union law before the referring court.

23 In that regard, it should be borne in mind that the fact that the parties to the main action did not raise a point of European Union law before the referring court does not preclude the latter from bringing the matter before the Court of Justice. In providing that a reference for a preliminary ruling may be submitted to the Court where ‘a question is raised before any court or tribunal of a member state’, the second and third paragraphs of Article 267 TFEU are not intended to restrict this procedure exclusively to cases where one or other of the parties to the main action has taken the initiative of raising a point concerning the interpretation or the validity of European Union law, but also extend to cases where a question of this kind is raised by the court or tribunal itself, which considers that a decision thereon by the

Court of Justice is 'necessary to enable it to give judgment' (Case 126/80 *Salonia* [1981] ECR 1563, paragraph 7).

24 Article 267 TFEU gives national courts the power and, in certain cases, imposes on them the obligation to refer a case for a preliminary ruling, as soon as they perceive either of their own motion or at the request of the parties that the substance of the dispute raises a point referred to in the first paragraph of Article 267. They have the widest discretion in referring matters to the Court if they consider that a case pending before them raises questions involving interpretation, or consideration of the validity, of provisions of European Union law, necessitating a decision on their part (Case 166/73 *Rheinmühlen-Düsseldorf* [1974] ECR 33, paragraph 3, and Case C-261/95 *Palmisani* [1997] ECR I-4025, paragraph 20).

25 In the present case, it is sufficient to state that the referring court judged it necessary to ask the Court for interpretative guidance regarding Directive 1999/70 and the Framework Agreement which is set out in the Annex thereto in order to assess the compatibility with that framework agreement of national legislation providing for the conversion of a fixed-term employment contract into an employment contract of indefinite duration and the conditions in which that conversion takes place.

26 The objection raised by the applicant in the main proceedings as regards the referral to the Court cannot, accordingly, be upheld and it is therefore necessary to answer the question referred.

The question referred for a preliminary ruling

27 It should first of all be noted that the question referred does not mention any specific provision of Directive 1999/70 or of the Framework Agreement which is set out in the Annex thereto of which interpretation is required for the purposes of enabling the referring court to give its judgment in the dispute in the main proceedings. The question only refers, generally, to Directive 1999/70.

28 According to settled case-law, it is for the Court alone, where questions are formulated imprecisely, to extract from all the information provided by the national court or tribunal and from the documents in the main proceedings the points of European Union law which require interpretation, having regard to the subject-matter of those proceedings (Joined Cases C-436/08 and C-437/08 *Haribo Lakritzen Hans Riegel and Österreichische Salinen* [2011] ECR I-0000, paragraph 32 and the case-law cited).

29 In its order for reference, the national court mentions Clauses 4(1), 5 and 8(3) of the Framework Agreement.

30 Regarding Clause 4(1) of the Framework Agreement, which prohibits treating fixed-term workers less favourably than comparable permanent workers unless

different treatment is justified on objective grounds, it should be noted that that provision is not relevant in the present case. Indeed, as the French Government has pointed out, the applicant in the main proceedings is not complaining of different treatment compared to the permanent workers employed by the UBO.

31 In the same way, taking into account the subject-matter of the dispute in the main proceedings, the non-reduction clause laid down in Clause 8(3) of the Framework Agreement is also not relevant in the present case. As is clear from the case-law of the Court, in order for an alleged reduction to be caught by the prohibition laid down by that clause, it must, first, be connected to the 'implementation' of the Framework Agreement and, second, relate to the 'general level of protection' afforded to fixed-term workers (Joined Cases C-378/07 to C-380/07 *Angelidaki and Others* [2009] ECR I-3071, paragraph 126, and, to that effect, Case C-144/04 *Mangold* [2005] ECR I-9981, paragraph 52).

32 In the present case, the applicant in the main proceedings has not claimed that the fact that his new contract for an indefinite duration does not reproduce in identical terms the principal clauses of his previous fixed-term contract would lead to a reduction in the general level of protection afforded to workers as required by that clause.

33 In the light of the information contained in the order for reference and taking into account the fact that Article 13(1) of Law No 2005-843 constitutes a measure to prevent abuse within the meaning of Clause 5 of the Framework Agreement, it must be considered that the referring court seeks, in essence, to know whether that clause must be interpreted as meaning that a Member State, which provides in its national legislation for conversion of fixed-term employment contracts into an employment contract of indefinite duration when the fixed-term employment contracts have reached a certain duration, is obliged to require that the employment contract of indefinite duration reproduces in identical terms the principal clauses set out in the previous contract.

34 As is clear from the case-law of the Court, 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, which is 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 Case C-212/04 *Adeneler and Others* [2006] ECR I-6057, paragraph 63, *Angelidaki and Others*, paragraph 73, and Case C-586/10 *Kücük* [2012] ECR I-0000, paragraph 25).

35 It follows from the second paragraph of the preamble to the Framework Agreement, from paragraphs 6 and 8 of the general considerations thereof and from the case-law of the Court that the benefit of stable employment is viewed as a major element in the protection of workers, whereas it is only in certain circumstances that fixed-term employment contracts are liable to respond to the needs of both

fabio pantano 12/4/y 17:39

Commenta [1]: Question

fabio pantano 12/4/y 17:41

Commenta [2]: L'impiego fisso è considerato come un fondamentale strumento di tutela del lavoratore

employers and workers (*Mangold*, paragraph 64, and *Adeneler and Others*, paragraph 62).

36 Accordingly, Clause 5(1) of the Framework Agreement requires, with a view to preventing abuse of successive fixed-term employment contracts or relationships, the effective and binding adoption by Member States of at least one of the measures listed in that provision, where their domestic law does not already 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*, paragraphs 74 and 151, and Case C-3/10 *Affatato* [2010] ECR I-0000, paragraphs 43 and 44 and the case-law cited).

37 However, as is clear from paragraph 33 of this judgment and contrary to the Commission's submission, the conversion of a fixed-term contract into a contract of indefinite duration cannot be regarded as outside the scope of the Framework Agreement (see, to that effect, Case C-177/10 *Rosado Santana* [2011] ECR I-0000, paragraphs 41 to 44). Indeed, in the present case, the national law which led the UBO to convert the last fixed-term contract of the applicant in the main proceedings into a contract of indefinite duration effectively falls within the preventive measures listed in Clause 5(1)(b) of the Framework Agreement.

38 That said, the Court has also observed on a number of occasions that the Framework Agreement does not lay down a general obligation on the Member States to provide for the conversion of fixed-term employment contracts into contracts of indefinite duration (see, inter alia, *Adeneler and Others*, paragraph 91).

39 Indeed, Clause 5(2) of the Framework Agreement in principle leaves it to the Member States to determine the conditions under which fixed-term employment contracts or relationships are to be regarded as contracts or relationships of indefinite duration (see, inter alia, *Adeneler and Others*, paragraph 81).

40 It follows from the foregoing that the Framework Agreement does not specify the conditions under which contracts of indefinite duration may be used.

41 It should also be borne in mind that, as is clear from Recital 14 in the preamble to Directive 1999/70, from the third paragraph of the preamble to the Framework Agreement, from paragraphs 7 to 10 of the general considerations and from Clause 1 of the Framework Agreement, that agreement is not intended to harmonise all national rules relating to fixed-term employment contracts but simply aims, by determining general principles and minimum requirements, to establish a general framework for ensuring equal treatment for fixed-term workers by protecting them against discrimination and to prevent abuse arising from the use of successive fixed-term work agreements or contracts (see, to that effect, Case C-307/05 *Del Cerro Alonso* [2007] ECR I-7109, paragraphs 26 and 36, Case C-268/06 *Impact*

[2008] ECR I-2483, paragraph 111, and order in Case C-20/10 *Vino* [2010], paragraph 54).

42 In prescribing the effective and binding adoption of at least one of the measures listed in Clause 5(1) of the Framework Agreement intended to prevent the abuse of successive fixed-term employment contracts or relationships, where domestic law does not already include equivalent measures, Clause 5(1) assigns to the Member States the general objective of preventing such abuse, while leaving to them the choice as to how to achieve it (*Impact*, paragraph 70).

43 The margin of appreciation left for the Member States by the Framework Agreement is indeed not unlimited, because it cannot in any event go so far as to compromise the objective or the practical effect of the Framework Agreement (*Adeneler and Others*, paragraph 82, and *Angelidaki and Others*, paragraph 155).

44 As the French Government has pointed out in that regard, if a Member State were to permit the conversion of a fixed-term employment contract into an employment contract of indefinite duration to be accompanied by material amendments to the principal clauses of the previous contract in a way that is, overall, unfavourable to the employee under contract, when the subject-matter of that employee's tasks and the nature of his functions remain unchanged, it is not inconceivable that that employee might be deterred from entering into the new contract offered to him, thereby losing the benefit of stable employment, viewed as a major element in the protection of workers.

45 However, it is for the competent authorities to ascertain, in accordance with national legislation, collective agreements and/or practice, whether the amendments made to the principal clauses of the employment contract in question in the main proceedings may be described as material amendments to those clauses.

46 In the light of the foregoing, the answer to the question referred is that Clause 5 of the Framework Agreement must be interpreted as meaning that a Member State, which provides in its national legislation for conversion of fixed-term employment contracts into an employment contract of indefinite duration when the fixed-term employment contracts have reached a certain duration, is not obliged to require that the employment contract of indefinite duration reproduces in identical terms the principal clauses set out in the previous contract. However, in order not to undermine the practical effect of, or the objectives pursued by, Directive 1999/70, that Member State must ensure that the conversion of fixed-term employment contracts into an employment contract of indefinite duration is not accompanied by material amendments to the clauses of the previous contract in a way that is, overall, unfavourable to the person concerned when the subject-matter of that person's tasks and the nature of his functions remain unchanged.

Costs

47 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 (Sixth Chamber) hereby rules:

Clause 5 of the framework agreement on fixed-term work, concluded on 18 March 1999, which is set out in the Annex 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 meaning that a Member State, which provides in its national legislation for conversion of fixed-term employment contracts into an employment contract of indefinite duration when the fixed-term employment contracts have reached a certain duration, is not obliged to require that the employment contract of indefinite duration reproduces in identical terms the principal clauses set out in the previous contract. However, in order not to undermine the practical effect of, or the objectives pursued by, Directive 1999/70, that Member State must ensure that the conversion of fixed-term employment contracts into an employment contract of indefinite duration is not accompanied by material amendments to the clauses of the previous contract in a way that is, overall, unfavourable to the person concerned when the subject-matter of that person's tasks and the nature of his functions remain unchanged.

[Signatures]
