ECLI:EU:C:2018:934

Provisional text

JUDGMENT OF THE COURT (First Chamber)

21 November 2018 (*)

(Reference for a preliminary ruling — Directive 1999/70/EC — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Clause 4 — Principle of non-discrimination — National legislation which permits the termination of fixed-term employment contracts where the reason for recruitment ceases to apply — Teachers employed for the academic year — Termination of the employment relationship at the end of the teaching period — Organisation of working time — Directive 2003/88/EC)

In Case C–245/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Superior de Justicia de Castilla-La Mancha (High Court of Justice of Castile-La Mancha, Spain), made by decision of 19 April 2017, received at the Court on 11 May 2017, in the proceedings

Pedro Viejobueno Ibáñez,

Emilia de la Vara González

v

Consejería de Educación de Castilla-La Mancha,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, Vice-President, acting as President of the First Chamber, J.-C. Bonichot, A. Arabadjiev (Rapporteur), E. Regan and S. Rodin, Judges,

Advocate General: J. Kokott,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 11 April 2018,

after considering the observations submitted on behalf of:

– Mr Viejobueno Ibáñez and Ms de la Vara González, by J.J. Donate Valera, abogado,

– the Consejería de Educación de Castilla-La Mancha, by C. Aguado Martín and M. Barahona Migueláñez, letrados,

– the Spanish Government, by A. Gavela Llopis and S. Jiménez García, acting as Agents,

– the European Commission, by M. van Beek and N. Ruiz García, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 31 May 2018,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Clause 4 of the Framework Agreement on fixed-term work, concluded on 18 March 1999 ('the Framework Agreement'), annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

2 The request has been made in proceedings brought by Mr Pedro Viejobueno Ibáñez and Ms Emilia de la Vara González (together 'the persons concerned') against the Consejería de Educación de Castilla-La Mancha (Regional Ministry of Education of Castile-La Mancha, Spain) ('the Regional Ministry') concerning the termination of the employment relationships of the persons concerned with the Regional Ministry.

Legal context

EU law

3 It is apparent from recital 14 of Directive 1999/70 that 'the signatory parties wished to conclude a framework agreement on fixed-term work setting out the general principles and minimum requirements for fixed-term employment contracts and employment relationships; they have demonstrated their desire to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination, and to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships'.

4 Article 1 of Directive 1999/70 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 paragraph in the Preamble to the Framework Agreement is 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.'

6 The third paragraph of that preamble states that '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'.

7 According to Clause 1 of the Framework Agreement, 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 3 of the Framework Agreement, entitled '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. ...'

9 Clause 4 of the Framework Agreement, entitled '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.'

10 Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9) is worded as follows:

'Annual leave

1. Member States shall take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and/or practice.

2. The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.'

Spanish law

11 Article 1(1) of Ley 7/2007, del Estatuto Básico del Empleado Público (Law 7/2007 on the basic regulations relating to public servants) of 12 April 2007 ('Law 7/2007'), provides:

'The purpose of these regulations is to establish the foundations of the statutory scheme for public servants falling within its scope.'

12 Under Article 2 of that law, the basic regulations relating to public servants are to apply, inter alia, to civil servants and other persons working in the public authorities of the Autonomous Communities.

13 Article 10(1) of that law provides as follows:

‘Interim civil servants are persons who, for expressly justified reasons of necessity and urgency, are appointed as such to perform tasks of established civil servants in one of the following situations:

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

(b) Temporary replacement of established civil servants.

(c) The implementation of temporary programmes.

(d) An excessive workload or a backlog of work, for a maximum period of 6 months within a 12-month period.’

14 Under Article 10(3) of that law, termination of the employment relationship of interim civil servants occurs, as well as for the reasons associated with the loss of the status of established civil servant, where the ground which justified the recruitment of such staff no longer applies.

15 Article 10(5) of Law 7/2007 provides that the general rules applicable to established civil servants are to apply to interim civil servants in so far as those rules are appropriate to the nature of the latter’s status.

16 Article 7 of Ley 4/2011, del Empleo Público de Castilla La Mancha (Law 4/2011 on public servants in the Autonomous Community of Castile-La Mancha) of 10 March 2011 (‘Law 4/2011’) provides:

‘For the purposes of this Law, interim civil servants are persons who, for expressly justified reasons of necessity and urgency, are appointed as such, on a temporary basis, to perform tasks of established civil servants in one of the situations listed in Article 8.’

17 Article 8(1) of that law states:

‘The recruitment of an interim civil servant may only take place in one of the following situations:

(a) There are vacant posts for which appropriations have been allocated to the lowest grade and for which recruitment takes the form of a qualifications-based competition, when those posts cannot be filled by established civil servants.

...’

18 Article 9(1) of that law is worded as follows:

‘The employment relationship of interim civil servants shall be terminated on the following grounds:

...

(b) the grounds of necessity and urgency, on the basis of which the appointment was made, cease to apply.’

19 According to the Agreement of 10 March 1994 concluded between the Ministerio de Educación y Ciencia (Ministry of Education and Science, Spain) and the ANPE trade union, published by Decision of 15 March 1994 of the Dirección General de Personal y Servicios (Directorate-General of Personnel and Services) of that Ministry, on the procedure for the selection of teachers appointed as interim civil servants ('the Agreement of 10 March 1994'), interim civil servants who have worked at least five and a half months by 30 June of an academic year will perform the duties pertaining to their post from that date until the beginning of the next academic year.

20 The 13th Additional Provision of Ley 5/2012, de Presupuestos Generales de la Junta de Comunidades de Castilla la Mancha para 2012 (Law 5/2012 on the general finances of the Government of Castile-La Mancha for 2012) of 12 July 2012 ('the Finance Law of 2012'), provides:

'1. In accordance with Article 38(10) of [Law No 7/2007] and Article 153(6) of [Law 4/2011], the following agreements shall not apply in the following circumstances:

...

(i) [the Agreement of 10 March 1994], so far as concerns [the payment of an allowance] for leave in July and August for replacements of more than five and a half months and for coverage of vacant posts. In this respect, non-university teachers appointed as interim civil servants shall receive an allowance corresponding to 22 working days if they were recruited for the entire academic year, or to the number of days they have worked if the time worked amounts to less than one academic year.

...'

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

21 Mr Viejobueno Ibáñez was recruited by the Dirección General de Recursos Humanos y Programación Educativa (Directorate-General for Human Resources and Educational Programming) of the Regional Ministry as a *funcionario interino*, a person appointed to a civil service post on a temporary basis ('interim civil servant'). He was appointed to the post of secondary education teacher in the Alonso Quijano School in Esquivias (Province of Toledo, Spain) for the academic year 2011/2012. Ms de la Vara González was recruited by that directorate as an interim civil servant for the post of technical vocational training teacher in the adult education centre Campos del Záncara in San Clemente (Province of Cuenca, Spain) for the same academic year.

22 On 29 June 2012, the end of the teaching period, the Provincial Education Coordinators in Toledo and Cuenca each adopted a decision terminating the employment relationships of Mr Viejobueno Ibáñez and Ms de la Vara González from that date, on the grounds of 'termination at the employer's discretion of the employment relationship of an interim civil servant' and 'termination of the employment relationship due to a change of administrative status' respectively.

23 The persons concerned appealed against those decisions terminating their employment relationships. Their appeals having been implicitly dismissed, they brought, on 12 April 2013, proceedings before the Juzgado de lo Contencioso-Administrativo No 2 (Toledo) (Administrative Court No 2, Toledo, Spain), seeking, inter alia, (i) annulment of the implied decisions rejecting their appeals and of the decisions terminating their employment relationships and (ii) recognition of their

right to remain in their respective posts until 14 September 2012. In support of their actions, they claimed, inter alia, that the decisions terminating their employment relationships infringed the principle of equal treatment, inasmuch as they resulted in teachers being treated differently depending on whether they are interim civil servants or established civil servants, as the latter remain in their posts after the end of the teaching period.

24 By judgment of 26 January 2015, that court dismissed the actions, on the grounds, inter alia, (i) that the decisions appointing the persons concerned did not mention a specific termination date, (ii) that, because recruitment of interim civil servants had to be based on reasons of necessity and urgency, the fact that those reasons ceased to apply constitutes a legal ground for the termination of these civil servants' employment, even if an end date for termination is indicated on the payslips, and (iii) that the end of the teaching period could imply that the grounds of necessity and urgency, which were the reasons for the recruitment of interim civil servants, have ceased to apply. Moreover, the Juzgado de lo Contencioso-Administrativo No 2 (Toledo) (Administrative Court No 2, Toledo) considered that there was no infringement of the principle of equal treatment, on the ground that the situation of interim civil servants, whose employment relationship with the authorities is mainly temporary, was not comparable to that of established civil servants, whose employment relationship with the authorities is permanent.

25 The persons concerned then appealed against that judgment before the referring court, namely, the Tribunal Superior de Justicia de Castilla-La Mancha (High Court of Justice of Castile-La Mancha, Spain), claiming, inter alia, that the fact that the termination of their employment occurred on 29 June 2012 constitutes a breach of Clause 4 of the Framework Agreement. They submit that, owing to their status as interim civil servants, they are treated less favourably than teachers who are established civil servants, as the latter remain in their posts during the period normally corresponding to the annual summer holidays. They also submit that, since they were recruited for the academic year 2011/2012 and they carry out the same functions as a teacher who is an established civil servant, there is no reason why they could not perform the tasks corresponding to their posts after the end of the teaching period. The persons concerned further argue that the decisions terminating their employment infringe Article 7 of Directive 2003/88 because their employment was terminated before they could take their annual leave days and because they received an allowance in lieu. They also argue that the termination of their employment infringes the Agreement of 10 March 1994.

26 The referring court states that employment relationships such as those of the persons concerned are concluded, in accordance with Article 7 of Law 4/2011, for reasons of necessity and urgency. According to that court, it follows from Spanish case-law that the fact that the work of teachers is not needed after the end of the teaching period constitutes, as regards those persons recruited as interim civil servants, a legal basis for the termination of their employment relationship at the end of that period, pursuant to Article 9(1)(b) of that law and Article 10(3) of Law 7/2007, since the reason for their recruitment has ceased to apply.

27 As regards the application of the principle of non-discrimination, the referring court considers that teachers engaged as interim civil servants fall within the concept of a 'fixed-term worker', within the meaning of the Framework Agreement, as they are recruited to fill civil-service teaching posts which were vacant. Teachers who are established civil servants might, for their part, fall within the concept of 'comparable permanent worker', within the meaning of Clause 4 of that agreement. It is therefore necessary to compare, for the purpose of applying that clause, the situation of interim civil servants to that of established civil servants whose work in the same educational establishments or other establishments in the same Autonomous Community is similar.

28 The question therefore arises as to whether the end of the teaching period in fact constitutes an objective ground which justifies different treatment as between teachers according to whether they are interim civil servants or established civil servants.

29 The referring court also asks whether the practice of ending employment relationships of teachers recruited as interim civil servants at the end of the teaching period is compatible with Article 7(2) of Directive 2003/88, since in this situation the Regional Ministry is required to provide an allowance for the days of annual leave which those teachers were not able to take.

30 The referring court further states that the Administration of the Autonomous Community of Castile-La Mancha had respected the Agreement of 10 March 1994 until the academic year 2011/2012 and that the abovementioned practice began with the adoption of the Finance Law of 2012. As the practice was authorised by that law, which introduced austerity measures and control of the public deficit, the question arises whether that law is contrary to the principle of non-discrimination as expressed through the Framework Agreement and, if so, whether the national court may depart from that law on the ground that it is incompatible with EU law.

31 In those circumstances the Tribunal Superior de Justicia de Castilla-La Mancha (High Court of Justice of Castile-La Mancha) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘Having regard to the approach taken in the earlier judgments of the referring court ... as well as the submissions set out in the present appeal, whereby the decision extinguishing or terminating the employment relationship of the appellants as interim civil-servants ... at the end of the teaching period in the academic year is challenged on the ground that it infringes the principle of equal treatment between fixed-term workers and permanent workers laid down in Clause 4 of the Framework Agreement, and in view of the fact that, under the Spanish legal rules applicable to the civil service of Castile-La Mancha, interim teaching staff cease their employment “when the reasons of necessity and urgency giving rise to their appointment cease to exist” …:

(1) May the ending of the teaching period in the academic year be regarded as an objective ground justifying different treatment for the abovementioned interim teaching staff as compared with established teaching staff?

(2) Is the fact that interim civil-servant teaching staff whose employment is terminated at the end of the teaching period cannot take their leave on actual rest days, but are paid the remuneration corresponding thereto, compatible with the principle that such interim staff should not be discriminated against?

(3) Is an abstract rule like that contained in the 13th Additional Provision of the [Finance Law of 2012], which, among other measures, for reasons of budgetary savings and the fulfilment of deficit objectives, suspended the application of [the Agreement of 10 March 1994], so far as concerns paid leave in July and August for replacements of more than five-and-a-half months and for coverage of vacant posts, and required payment to be made to interim non-university teaching staff in respect of leave corresponding to 22 working days if the interim appointment was for a full academic year, or for the days corresponding thereto on a proportional basis, compatible with the principle that there should be no discrimination against such staff, who fall within the category of fixed-term workers?’

Consideration of the questions referred

The first question

32 By its first question, the referring court asks, in essence, whether Clause 4(1) of the Framework Agreement must be interpreted as meaning that it precludes national legislation which allows an employer to terminate, at the end of the teaching period, the employment relationship of fixed-term teachers recruited as interim civil servants for one academic year, on the ground that the conditions of necessity and urgency attached to their recruitment have ceased to apply on that date, whereas the employment relationship of indefinite duration of teachers who are established civil servants is maintained.

33 In that regard, it should be recalled that the second paragraph in the Preamble to the Framework Agreement states that the parties to the agreement 'recognise that contracts of an indefinite duration are, and will continue to be, the general form of employment relationship between employers and workers [and that] fixed-term employment contracts respond, in certain circumstances, to the needs of both employers and workers'.

34 According to Clause 1(a) of the Framework Agreement, one of the objectives of that agreement is to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination. Similarly, the third paragraph in the Preamble to the Framework Agreement states that 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'. Recital 14 of Directive 1999/70 states, to this end, that the aim of the Framework Agreement is, in particular, to improve the quality of fixed-term work by setting out minimum requirements in order to ensure the application of the principle of non-discrimination (judgment of 5 June 2018, *Montero Mateos*, C-677/16, EU:C:2018:393, paragraph 39 and the case-law cited).

35 The Framework Agreement, in particular Clause 4 thereof, seeks to apply the principle of non-discrimination to fixed-term workers in order to prevent an employer using such an employment relationship to deny those workers rights which are recognised for permanent workers (judgment of 5 June 2018, *Montero Mateos*, C-677/16, EU:C:2018:393, paragraph 40 and the case-law cited).

36 However, the Framework Agreement does not specify the conditions under which employment contracts of indefinite duration may be used, nor does it specify those under which fixed-term contracts may be used (see, to that effect, judgments of 18 October 2012, *Valenza and Others*, C-302/11 to C-305/11, EU:C:2012:646, paragraph 63, and of 14 September 2016, *Martínez Andrés and Castrejana López* C-184/15 and C-197/15, EU:C:2016:680, paragraph 39).

37 In the present case, the referring court asks whether the principle of non-discrimination, as implemented and given specific expression by Clause 4(1) of the Framework Agreement, has been infringed on the ground that — unlike the situation of teachers, such as Mr Viejobueno Ibáñez and Ms de la Vara González, who were hired under a fixed-term employment relationship as interim civil servants — the employment relationship of indefinite duration of teachers who are established civil servants is not terminated at the end of the teaching period, as they remain in their posts, inter alia, during the period of the annual summer holidays.

38 It should be borne in mind that, according to the Court's settled case-law, in order to assess whether the persons concerned are engaged in the same or similar work for the purposes of the Framework Agreement, it must be determined, in accordance with Clause 3(2) and Clause 4(1) of the Framework Agreement, whether, in the light of a number of factors such as the nature of the work, training requirements and working conditions, those persons can be regarded as being in a comparable situation (judgment of 5 June 2018, *Montero Mateos*, C-677/16, EU:C:2018:393, paragraph 51 and the case-law cited).

39 That said, it appears from the material available to the Court that, when they were appointed by the Directorate-General for Human Resources and Educational Programming as interim civil servants, Mr Viejobueno Ibañez and Ms de la Vara González performed the same functions as teachers who were established civil servants.

40 Consequently, the situation of an interim civil servant such as Mr Viejobueno Ibañez or Ms de la Vara González could, in principle, be regarded as comparable to that of a teacher who is an established civil servant.

41 However, it should be noted that, unlike the case which gave rise to the case-law cited in paragraph 38 of this judgment, in the main proceedings, the difference in treatment invoked arises exclusively from the fact that the employment relationship of the persons concerned was terminated at a given date whereas that of teachers who are established civil servants was maintained beyond that date.

42 That circumstance is the essential characteristic which distinguishes a fixed-term employment relationship from an employment relationship of indefinite duration.

43 Indeed, the fact that, at end of the teaching period, the employment relationship of teachers who are established civil servants is not terminated, or that this relationship is not suspended, is inherent in the very nature of the employment relationship of such workers. They will occupy a permanent post precisely because they are hired in the context of an employment relationship of indefinite duration.

44 Fixed-term employment relationships, such as those of the persons concerned, are, by contrast, as follows from Clause 3(1) of the Framework Agreement, characterised by the fact that the employer and the worker agree, at the point those relationships begin, that they will end upon the occurrence of objectively determined conditions, such as the completion of a specific task, the occurrence of a specific event or a specific date being reached (see, to that effect, judgments of 5 June 2018, *Grupo Norte Facility*, C-574/16, EU:C:2018:390, paragraph 57, and *Montero Mateos*, C-677/16, EU:C:2018:393, paragraph 60).

45 In the present case, it is for the referring court alone to determine whether the employer terminated the employment relationship of the persons concerned before the occurrence of the condition determined objectively by the parties to the proceedings before it. If that proves to be the case, this circumstance does not constitute discrimination prohibited by the Framework Agreement, but a breach by the employer of the contractual terms governing these relationships, which could, where appropriate, be penalised under the applicable national rules.

46 In those circumstances, since, as was pointed out, in essence, in paragraphs 33 and 36 of this judgment, the Framework Agreement recognises, in principle, that it is legitimate to have recourse to both employment relationships of indefinite duration and fixed-term employment relationships and does not specify the conditions under which use may be made of such relationships, a difference in treatment, such as that at issue in the main proceedings, which consists solely in the fact that a fixed-term employment relationship has come to an end at a given date, whereas an employment relationship of indefinite duration has not, cannot be penalised on the basis of that agreement.

47 That assessment is not called into question by the European Commission’s argument that the mere temporary nature of an employment relationship is not capable of constituting an ‘objective

ground' which may justify a difference in treatment within the meaning of Clause 4(1) of the Framework Agreement.

48 Indeed, the difference referred to in paragraph 46 of this judgment is inherent in the coexistence of employment relationships of indefinite duration and ones which are fixed-term and cannot, lest all difference between these two categories of employment relationships is to be erased, come within the prohibition laid down in that clause.

49 Moreover, it is apparent from the order for reference that Mr Viejobueno Ibáñez and Ms de la Vara González argue, in essence, that their fixed-term employment relationships should have come to an end not on 29 June 2012, at the end of the teaching period, but on 14 September 2012, approximately two-and-a-half months later, as envisaged in the Agreement of 10 March 1994.

50 In this regard, it should be noted that the persons concerned are not asking, as regards the duration of their employment relationship, that they in fact be treated in the same way as their colleagues who are established civil servants, as the latter will remain in their posts even after 14 September 2012. Their requests amount, in reality, to claiming that they should be treated in the same way as teachers who were employed as interim civil servants in previous academic years, until 14 September.

51 The principle of non-discrimination has been implemented and specifically applied by the Framework Agreement solely as regards differences in treatment as between fixed-term workers and permanent workers in a comparable situation (judgment of 5 June 2018, *Montero Mateos*, C-677/16, EU:C:2018:393, paragraph 50 and the case-law cited). Consequently, any differences in treatment between specific categories of fixed-term staff are not covered by the principle of non-discrimination established by the Framework Agreement (see, to that effect, judgment of 14 September 2016, *de Diego Porras*, C-596/14, EU:C:2016:683, paragraph 38 and the case-law cited).

52 Accordingly, the difference in treatment alleged by the persons concerned cannot, in any event, come within Clause 4(1) of the Framework Agreement.

53 As regards, lastly, the fact (i) that the persons concerned were deprived of the possibility of actually enjoying their annual leave, (ii) that they have not received remuneration for the months of July, August and September 2012, and (iii) that those months have not counted towards their length of service for the purposes of their career progression, it must be observed that this situation is merely the direct result of the termination of their employment relationship, which does not constitute a difference in treatment prohibited by the Framework Agreement.

54 In the light of all the foregoing considerations, the answer to the first question is that Clause 4(1) of the Framework Agreement must be interpreted as not precluding national legislation which allows an employer to terminate, at the end of the teaching period, the employment relationship of fixed-term teachers recruited as interim civil servants for one academic year, on the ground that the conditions of necessity and urgency attached to their recruitment have ceased to apply on that date, whereas the employment relationship of indefinite duration of teachers who are established civil servants is maintained.

The second and third questions

55 It is apparent from the order for reference that, by its second and third questions, which it is appropriate to examine together, the referring court seeks to ascertain, in essence, whether

Article 7(2) of Directive 2003/88 must be interpreted as precluding national legislation which allows termination, at the end of the teaching period, of the fixed-term employment relationship of teachers recruited as interim civil servants for one academic year, where this deprives those teachers of days of paid annual summer leave which correspond to that academic year, even though those teachers receive an allowance on that account.

56 In this respect, it should be recalled that workers must normally be entitled to actual rest, with a view to ensuring effective protection of their health and safety. It is thus only where the employment relationship is terminated that Article 7(2) of Directive 2003/88 permits an allowance to be paid in lieu of paid annual leave which has not been taken (judgment of 20 January 2009, *Schultz-Hoff and Others*, C-350/06 and C-520/06, EU:C:2009:18, paragraph 23, and order of 21 February 2013, *Maestre García*, C-194/12, EU:C:2013:102, paragraph 28).

57 In the case in the main proceedings, it is undisputed that the employment relationships of the persons concerned have ended. Therefore, under Article 7 of Directive 2003/88, the Spanish legislature could provide that they would receive an allowance in lieu of paid annual leave which they were not able to take.

58 In view of the above considerations, the answer is that Article 7(2) of Directive 2003/88 must be interpreted as not precluding national legislation which allows termination, at the end of the teaching period, of the fixed-term employment relationship of teachers recruited for one academic year as interim civil servants, even if this deprives those teachers of days of paid annual leave which correspond to that academic year, provided that such teachers receive an allowance on that account.

Costs

59 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 (First Chamber) hereby rules:

1. Clause 4(1) 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 legislation which allows an employer to terminate, at the end of the teaching period, the employment relationship of fixed-term teachers recruited as interim civil servants for one academic year, on the ground that the conditions of necessity and urgency attached to their recruitment have ceased to apply on that date, whereas the employment relationship of indefinite duration of teachers who are established civil servants is maintained.

2. Article 7(2) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as not precluding national legislation which allows termination, at the end of the teaching period, of the fixed-term employment relationship of teachers recruited for one academic year as interim civil servants, even if this deprives those teachers of days of paid annual leave which correspond to that academic year, provided that such teachers receive an allowance on that account.

[Signatures]

* Language of the case: Spanish.