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Provisional text

JUDGMENT OF THE COURT (Eighth Chamber)

8 October 2020 (*)

(Reference for a preliminary ruling – Social policy – Directive 2000/78/CE – Equal treatment in employment and occupation – Articles 1, 2 and 3 – Directive 1999/70/CE – Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Clause 4 – Principle of non-discrimination – Measure taken by a university pursuant to national law – Retention of tenured lecturer status beyond the statutory retirement age – Possibility restricted to lecturers with doctoral supervisor status – Lecturers who do not have this status – Fixed-term employment contracts – Lower remuneration than for tenured lecturers)

In Case C-644/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia, Romania), made by decision of 27 May 2019, received at the Court on 28 August 2019, in the proceedings

FT

v

Universitatea 'Lucian Blaga' Sibiu,

GS and Others,

HS,

Ministerul Educaţiei Naţionale,

THE COURT (Eighth Chamber),

composed of N. Wahl, President of the Chamber, F. Biltgen (Rapporteur) and L.S. Rossi, Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– FT, by D. Târşia, avocat,

– the Romanian Government, by E. Gane, A. Rotăreanu and S.-A. Purza, acting as Agents,

– the European Commission, by M. van Beek and C. Gheorghiu, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 1, Article 2(2)(b) and Article 3 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) and of Clause 4(1) 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 request has been made in proceedings brought by FT against Universitatea 'Lucian Blaga' Sibiu ('the University'), GS and Others, HS and the Ministerul Educaţiei Naţionale (Ministry of National Education, Romania) concerning the conditions of employment relating to her position at the University after she had reached the statutory retirement age.

Legal context

EU law

Directive 2000/78

3 According to Article 1, the purpose of Directive 2000/78 is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.

4 Article 2(1) and (2) of that directive provides:

'1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;

(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary …'

5 Article 3(1) of that directive provides:

'Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

…

(c) employment and working conditions, including dismissals and pay;

…'

Directive 1999/70

6 Recital 17 of Directive 1999/70 states:

'As regards terms used in the framework agreement but not specifically defined therein, this Directive allows Member States to define such terms in conformity with national law or practice as is the case for other Directives on social matters using similar terms, provided that the definitions in question respect the content of the framework agreement.'

The framework agreement

7 Clause 3 of the framework agreement is worded as follows:

1. For the purpose of this agreement the term "fixed-term worker" means a person having an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event.

2. For the purpose of this agreement, the term "comparable permanent worker" means a worker with an employment contract or relationship of indefinite duration, in the same establishment, engaged in the same or similar work/occupation, due regard being given to qualifications/skills. Where there is no comparable permanent worker in the same establishment, the comparison shall be made by reference to the applicable collective agreement, or where there is no applicable collective agreement, in accordance with national law, collective agreements or practice.'

8 Clause 4 of the framework agreement, headed 'Principle of non-discrimination', provides in paragraph 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.’

Romanian law

9 Article 118(1) and (2) of Legea nr. 1/2011 a educației naționale (Law No 1/2011 on national education) of 5 January 2011 (*Monitorul Oficial*, Part I, No 18 of 10 January 2011), in the version in force at the material time (‘Law No 1/2011’), provides:

‘1. The national system of higher education is based on the following principles:

(a) the principal of the autonomy of universities;

…

2. Discrimination based on age, ethnicity, gender, social origin, political or religious convictions, sexual orientation or any other type of discrimination shall be prohibited in the field of higher education, with the exception of affirmative measures foreseen by law.’

10 Article 123(2) of Law No 1/2011 provides:

‘The autonomy of universities confers on them the right to determine their own objectives, institutional strategies, structures, activities, organisation and operating methods, and the management of physical and human resources, in strict compliance with prevailing legislation.’

11 Article 289 of Law No 1/2011 states:

‘1. Teaching and research staff shall retire at the age of 65.

…

3. The senates of State, private and faith-based universities may decide, based on professional performance criteria and the financial situation, that a member of the teaching staff or a researcher may continue to work after retirement under a fixed-term, one-year contract, which may be extended annually in accordance with the university’s statutes and regulations, without any restriction on age. A university senate may decide to award the honorary title of professor emeritus for teaching and research excellence to teaching staff who have reached retirement age. Retired members of the teaching staff may be paid on an hourly basis.

…

6. By way of derogation from Article 289(1), if higher-education establishments are unable to fill posts with tenured members of staff they may decide that a tenured member of the teaching and/or research staff should retain his or her status, with all the attendant rights and obligations, on the basis of an annual assessment of academic performance, in accordance with a methodology established by the university senate.

7. The reinstatement of retired members of the teaching staff is to be carried out annually and the rights and obligations attaching to the teaching activity carried on prior to retirement shall be maintained, subject to the approval of the university senate, in accordance with the methodology

referred to in Article 289(6), provided that the staff member's pension is suspended throughout the period of reinstatement.'

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

12 From 1994 to 2015 FT held the teaching position of lecturer with tenure at the University under a contract of indefinite duration.

13 When FT reached the statutory retirement age of 65 on 11 June 2015, she was able to maintain her status as a tenured lecturer, under a decision by the University, from that date until 30 September 2015 for the 2014/2015 academic year.

14 The University's governing body subsequently rejected a request by FT to maintain her status as a tenured lecturer for the 2015/2016 academic year, on the ground that the request did not comply with the 'methodology for approving the retention of tenured status for teaching staff who have reached the age of 65' ('the methodology'), approved by the University's senate by decision No 3655 of 28 September 2015. The methodology stated that the possibility of retaining the status of a tenured lecturer beyond the age of 65, as foreseen by Article 289(6) of Law No 1/2011, was restricted to members of the teaching staff who had doctoral supervisor status. An amendment to the methodology led to that possibility being removed for such members of staff from 1 October 2016.

15 Since her request was rejected, FT concluded successive fixed-term contracts with the University from 2016 for the same university work she had previously performed, under a system of remuneration of 'payment on an hourly basis', leading to a lower salary than for tenured lecturers.

16 By an action based on employment law before the Tribunalul Sibiu (Regional Court of Sibiu, Romania), FT challenged the decision by the University, which took note of the fact that her status as a tenured lecturer had come to an end on 1 October 2015 because she had reached the statutory retirement age. That court dismissed her action as it found that there had not been any discrimination under Directive 2000/78, as relied on by FT. That judgment became final after being upheld by the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia, Romania).

17 The Tribunalul Alba (Regional Court, Alba, Romania) also dismissed the administrative action brought by FT, seeking annulment of the administrative measures on which the University had based its refusal to grant her request to retain her status as a tenured lecturer.

18 The referring court, which is hearing the appeal against that dismissal, observes that the main proceedings concern the fact that under the methodology the possibility of retaining the status of tenured lecturer beyond the statutory retirement age is restricted only to teaching staff who have doctoral supervisor status. That court enquires, more particularly, whether the setting of such a restrictive criterion amounts to indirect discrimination, given that the application of that criterion also leads to the conclusion of successive fixed-term contracts at a lower level of salary. If the question is answered in the affirmative, the referring court wishes to know whether it may set aside the effects of a decision of a national court that has become final, which has held that the situation at issue in the main proceedings did not involve discrimination that was in breach of Directive 2000/78.

19 In those circumstances the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Are Article 1, Article 2(2)(b) and Article 3 of [Directive 2000/78] and Clause 4 of the framework agreement to be interpreted as meaning that a measure, such as that at issue in the main proceedings, is discriminatory, within the meaning of those provisions, where it enables an employer to decide that individuals who have reached the age of 65 may continue to perform their duties as tenured members of staff and retain the rights which they enjoyed prior to retirement only if they have doctoral supervisor status, thereby placing at a disadvantage other individuals in a similar situation who would otherwise be able to do the same only if there are vacant posts and they meet certain requirements relating to professional performance, and to require individuals who do not have doctoral supervisor status to perform similar academic duties under successive fixed-term employment contracts under which they receive remuneration on an “hourly basis” at a level below that paid to tenured members of a university’s staff?

(2) Can the precedence in the application of EU law (the principle of the primacy of EU law) be interpreted as permitting a national court to disapply a final ruling of another national court in which it has been held that, in the factual situation described, [Directive 2000/78] has been complied with and there has been no discrimination?’

The admissibility of the request for a preliminary ruling

20 In its written observations, the Romanian Government disputes the admissibility of the request for a preliminary ruling. First, it submits that the interpretation of EU law requested by the referring court is not necessary for the purposes of the main proceedings, which could be resolved on the basis solely of the national provisions transposing that law, and, secondly, that that court has not provided a sufficient explanation for its choice of the provisions of EU law for which it requests an interpretation, or the link which it establishes between those provisions and the domestic legislation applicable to the main proceedings.

21 In that connection, it is apparent from the Court’s settled case-law that 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 a rule of EU law, the Court is in principle bound to give a ruling (judgment of 19 November 2019, *A.K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 97 and the case-law cited.)

22 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 19 November 2019, *A.K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 98 and the case-law cited.)

23 In the present case, it is not obvious that the provisions of EU law mentioned in the questions raised by the referring court, which concern types of discrimination which are prohibited in the context of employment and working relationships, bear no relation to the main proceedings. By contrast, the question of whether the national legislation at issue in the main proceedings and the

manner in which the University implemented it involve such types of discrimination goes to the substance of the case.

24 Moreover, although the statement of reasons for the request for a preliminary ruling is, admittedly, succinct, it is still possible to understand from it that the main proceedings concern an alleged difference in treatment among members of the teaching staff at the University who continue to work beyond the statutory retirement age, depending on whether or not they have doctoral supervisor status, and that the Court is being asked whether such a difference in treatment is contrary to the provisions of EU law cited in the first question referred for a preliminary ruling. Since the request for a preliminary ruling also contains a sufficient summary of the relevant national factual and legal framework, it must be held that, in this case, the request satisfies the requirements of Article 94 of the Rules of Procedure of the Court of Justice.

25 Accordingly, the questions referred for a preliminary ruling are admissible.

Consideration of the questions referred

The first question

The first part of the first question

26 By the first part of its first question, the referring court asks, in essence, whether Articles 1 and 2 of Directive 2000/78 must be interpreted as precluding the application of national legislation under which, among members of the teaching staff of a university continuing to work there after reaching the statutory retirement age, only lecturers with doctoral supervisor status may retain their status as tenured lecturers, while lecturers without doctoral supervisor status may conclude only fixed-term employment contracts with that establishment, which include a system of lower remuneration than that for tenured lecturers.

27 It is clear from Article 3(1)(c) of Directive 2000/78 that that directive applies, within the limits of the areas of competence conferred on the European Union, to all persons, as regards both the public and private sectors, including public bodies, in relation to, inter alia, employment and working conditions, including dismissals and pay.

28 It thus follows that FT's situation, which concerns the employment contracts which she concluded with the University and the remuneration she received under those contracts, falls within the scope of that provision.

29 However, as is apparent from the request for a preliminary ruling, the difference in treatment in employment and working conditions which is at the origin of the main proceedings is based on whether or not teaching staff who continue to work at the University after reaching the statutory retirement age have doctoral supervisor status, with teaching staff who do not have that status being placed at a disadvantage when compared with those who do.

30 According to settled case-law, it is apparent both from its title and preamble and its content and purpose that Directive 2000/78 is intended to establish a general framework for ensuring that everyone benefits from equal treatment 'in matters of employment and occupation' by providing effective protection against discrimination based on any of the grounds listed in Article 1 thereof (see, to that effect, judgments of 18 June 2009, *Hütter*, C-88/08, EU:C:2009:381, paragraph 33, and of 15 January 2019, *E.B.*, C-258/17, EU:C:2019:17, paragraph 40 and the case-law cited).

31 In that connection, the Court has made clear that, in accordance with Article 2(1) of Directive 2000/78, the grounds set out in Article 1 of the directive are listed exhaustively (see, to that effect, judgment of 9 March 2017, *Milkova*, C‑406/15, EU:C:2017:198, paragraph 34 and the case-law cited).

32 It must be noted that the difference in treatment at issue in the main proceedings is not covered by any of the grounds listed in Article 1. In particular, such a difference in treatment cannot be founded on age, even indirectly, when those placed at an advantage or disadvantage by the national rules are in the same age group, namely individuals who have reached the statutory retirement age.

33 A difference in treatment which is due to the holding or lack of doctoral supervisor status is based on the professional category of the individuals concerned. The Court has already held that Directive 2000/78 does not cover discrimination based on such a criterion (see, to that effect, judgment of 21 May 2015, *SCMD*, C‑262/14, not published, EU:C:2015:336, paragraph 29 and the case-law cited).

34 It follows that a situation such as that at issue in the main proceedings does not fall within the general framework laid down in Article 2(2) of Directive 2000/78 to combat certain forms of discrimination in the workplace.

35 Consequently, the answer to the first part of the first question is that Articles 1 and 2 of Directive 2000/78 must be interpreted as not being applicable to national legislation under which, among members of the teaching staff of a university continuing to work there after reaching the statutory retirement age, only lecturers with doctoral supervisor status may retain their status as tenured lecturers, while lecturers without doctoral supervisor status may conclude only fixed-term employment contracts with that establishment, which include a system of lower remuneration than that for tenured lecturers.

The second part of the first question

36 By the second part of its first question, the referring court asks, in essence, whether Clause 4(1) of the framework agreement must be interpreted as precluding the application of national legislation under which, among members of the teaching staff of a university continuing to work there after reaching the statutory retirement age, only lecturers with doctoral supervisor status may retain their status as tenured lecturers, while lecturers without doctoral supervisor status may conclude only fixed-term employment contracts with that establishment, which include remuneration which is lower than that for tenured lecturers.

37 It should be noted that, in respect of employment conditions, Clause 4(1) of the framework agreement provides that fixed-term workers are not to 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.

38 Clause 4 of the framework agreement aims to apply the principle of non-discrimination to fixed-term workers in order to prevent an employer using such an employment relationship to deny those workers rights which are recognised for permanent workers (judgment of 21 November 2018, *de Diego Porras*, C‑619/17, EU:C:2018:936, paragraph 55 and the case-law cited).

39 It follows from the wording and the objective of Clause 4 that it does not relate to the actual choice of concluding fixed-term employment contracts instead of employment contracts of

indefinite duration, but to the employment conditions of workers who have concluded the first type of contract when compared with those of workers employed under the second type of contract, with the concept of 'employment conditions' including measures falling within the employment relationship between a worker and his or her employer (see, to that effect, judgment of 20 June 2019, *Ustariz Aróstegui*, C-72/18, EU:C:2019:516, paragraph 25 and the case-law cited).

40 It is thus necessary to examine whether, in the light of the conditions of employment of teaching staff with doctoral supervisor status who exercise their profession after reaching the statutory retirement age, employment conditions such as those resulting from the fixed-term employment contracts concluded by FT, in particular the system of lower remuneration associated with them, amount to a difference in treatment contrary to Clause 4(1) of the framework agreement.

41 In that regard, it is appropriate to determine, first, whether members of the teaching staff with the status of doctoral supervisors, with whom FT's situation must be compared, come within the scope of the term 'comparable permanent workers' within the meaning of that provision. Under Clause 3(2) of the framework agreement, that term means workers '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'.

42 First, the term 'employment contract of indefinite duration' is not specifically defined in the framework agreement and so, as set down in recital 17 to Directive 1999/70, it is for Member States to define, in conformity with national law and practice, to the extent that the definition respects the content of the framework agreement (see, to that effect, judgment of 15 March 2012, *Sibilio*, C-157/11, not published, EU:C:2012:148, paragraphs 42 to 45).

43 In its written observations, the Commission expresses doubts as to whether teaching staff who have doctoral supervisor status and who have reached the statutory retirement age are employed under an employment contract of indefinite duration, as it is clear from the national legislation in question that they are subject to annual assessment and approval by the University for retaining their status as tenured lecturers. However, it is for the referring court to assess whether those members of the teaching staff are employed under such a contract of indefinite duration, on the basis of the criteria referred to in the preceding paragraph.

44 Secondly, assuming that it can be concluded that such members of the teaching staff are employed under a contract of indefinite duration, it is appropriate to examine whether they are 'comparable' permanent workers, within the meaning of Clause 4(1) of the framework agreement. In that regard, it is important to bear in mind that according to settled case-law the principle of non-discrimination, of which that provision is a specific expression, requires that comparable situations should not be treated differently and that different situations should not be treated alike, unless such treatment is objectively justified (judgment of 21 November 2018, *de Diego Porras*, C-619/17, EU:C:2018:936, paragraph 60 and the case-law cited).

45 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 21 November 2018, *de Diego Porras*, C-619/17, EU:C:2018:936, paragraph 61 and the case-law cited).

46 In order to assess whether the persons concerned are engaged in the 'same or similar' work within the meaning of the framework agreement, it must be determined, in accordance with Clauses 3(2) and 4(1) of the framework agreement, whether, in the light of a number of factors, such as the nature of the work, training requirements and working conditions, those persons can be regarded as

being in a comparable situation (judgment of 21 November 2018, *de Diego Porras*, C-619/17, EU:C:2018:936, paragraph 62 and the case-law cited).

47 In the present case. it is for the referring court, which alone has jurisdiction to assess the facts, to determine whether FT, when she was employed by the University under a series of fixed-term contracts, was in a comparable situation to members of the teaching staff with doctoral supervisor status employed for an indefinite duration by the same employer after also reaching the statutory retirement age (see, by analogy, judgment of 21 November 2018, *de Diego Porras*, C-619/17, EU:C:2018:936, paragraph 63).

48 In that context, it is necessary, in particular, to ascertain whether the fact that the latter members of the teaching staff have doctoral supervisor status means that the nature of their work and their training requirements are different from lecturers such as FT.

49 Where it can be considered that the situation of those two categories of teaching staff is comparable, it is appropriate to examine, secondly, if there is an objective ground, within the meaning of Clause 4(1) of the framework agreement, which could justify the difference in treatment, relating in particular to their remuneration.

50 According to settled case-law, the concept of 'objective reasons' requires that the unequal treatment found to exist be justified by the existence of precise and concrete factors, characterising the employment condition to which it relates, in the particular context in which it occurs and on the basis of objective, transparent criteria so it can be determined whether that unequal treatment 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 the pursuit of a legitimate social-policy objective of a Member State (judgments of 13 September 2007, *Del Cerro Alonso*, C-307/05, EU:C:2007:509, paragraph 53, and of 20 June 2019, *Ustariz Aróstegui*, C-72/18, EU:C:2019:516, paragraph 40 and the case-law cited).

51 In the present case, it is apparent from the order for reference that, according to an explanatory note, the methodology is intended to address the worrying increase in the number of teaching posts at the level of professor and lecturer at the University in comparison with the number of teaching posts of assistant lecturers and teaching assistants, and to achieve a financial balance between sustainability and the University's development in the short and medium term. It is for the referring court to assess whether those reasons are in fact the objectives of the methodology.

52 Without prejudice to that assessment, it is important to bear in mind that the Court has already found that such objectives, which are related essentially to personnel management and budget considerations, and which, moreover, are not based on objective and transparent criteria, cannot be considered objective reasons justifying a difference in treatment such as that at issue in the main proceedings (see, to that effect, judgment of 22 April 2010, *Zentralbetriebsrat der Landeskrankenhäuser Tirols*, C-486/08, EU:C:2010:215, paragraph 46, and order of 9 February 2017, *Rodrigo Sanz*, C-443/16, EU:C:2017:109, paragraphs 52 and 54).

53 Whilst budgetary considerations may underlie a Member State's choice of social policy and influence the nature or scope of the measures which it wishes to adopt, they do not in themselves constitute an aim pursued by that policy and, therefore, cannot justify the application of national legislation giving rise to a difference of treatment to the detriment of fixed-term workers (order of 9 February 2017, *Rodrigo Sanz*, C-443/16, EU:C:2017:109, paragraph 53 and the case-law cited).

54 In the light of the above, the answer to the second part of the first question is that Clause 4(1) of the framework agreement must be interpreted as precluding the application of national legislation under which, among members of the teaching staff of a university who continue to work there after reaching the statutory retirement age, only lecturers with doctoral supervisor status may retain their status as tenured lecturers, while lecturers without doctoral supervisor status may conclude only fixed-term employment contracts with that establishment, which include a system of lower remuneration than that for tenured lecturers, to the extent that the first category of lecturer is composed of permanent workers comparable to the workers in the second category and that the difference in treatment arising, in particular, from the system of remuneration in question is not justified by an objective reason, which it is for the referring court to determine.

The second question

55 Given the answer to the first part of the first question, there is no need to answer the second question.

Costs

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

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

1. **Articles 1 and 2 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as not being applicable to national legislation under which, among members of the teaching staff of a university continuing to work there after reaching the statutory retirement age, only lecturers with doctoral supervisor status may retain their status as tenured lecturers, while lecturers without doctoral supervisor status may conclude only fixed-term employment contracts with that establishment, which include a system of lower remuneration than that for tenured lecturers.**

2. **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 precluding the application of national legislation under which, among members of the teaching staff of a university who continue to work there after reaching the statutory retirement age, only lecturers with doctoral supervisor status may retain their status as tenured lecturers, while lecturers without doctoral supervisor status may conclude only fixed-term employment contracts with that establishment, which include a system of lower remuneration than that for tenured lecturers, to the extent that the first category of lecturer is composed of permanent workers comparable to the workers in the second category, and that the difference in treatment arising, in particular, from the system of remuneration in question is not justified by an objective reason, which it is for the referring court to determine.**

[Signatures]

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* Language of the case: Romanian.