ECLI:EU:C:2016:680

JUDGMENT OF THE COURT (Tenth Chamber)

14 September 2016 (*)

(Reference for a preliminary ruling — Social policy — Directive 1999/70/EC — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Clauses 5 and 8 — Use of successive fixed-term employment contracts — Measures to prevent abuse resulting from the use of successive fixed-term employment contracts or relationships — Penalties — Reclassification of the fixed-term employment relationship as a 'non-permanent employment contract of indefinite duration' — Principle of effectiveness)

In Joined Cases C-184/15 and C-197/15,

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the Tribunal Superior de Justicia del País Vasco (High Court of Justice of the Basque Country, Spain), by decisions of 9 March 2015, received at the Court on 23 April 2015 (C-184/15) and on 29 April 2015 (C-197/15), in the proceedings

Florentina Martínez Andrés

v

Servicio Vasco de Salud (C-184/15)

and

Juan Carlos Castrejana López

v

Ayuntamiento de Vitoria (C-197/15)

THE COURT (Second Chamber),

composed of F. Biltgen (Rapporteur), President of the Chamber, E. Levits and M. Berger, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

– Martínez Andrés, by J. Corchón Barrientos, abogado, and M. Ezcurra Fontán, procuradora,

– Castrejana López, by A. Gómez Barahona, abogado, and P. Basterreche Arcocha, procuradora,

– Ayuntamiento de Vitoria, by P.J. Goti González, abogado, and G. Ors Simón, procurador,

– the Spanish Government, by L. Banciella Rodríguez-Miñón, acting as Agent,

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

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

gives the following

Judgment

1 These requests for a preliminary ruling concern 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 requests have been made in proceedings between, first, Ms Florentina Martínez Andrés and the Servicio Vasco de Salud (Basque Health Service, Spain) concerning the renewal of the fixed-term employment relationship between the parties and the legality of the decision terminating that relationship and, secondly, Mr Juan Carlos Castrejana López and the Ayuntamiento de Vitoria (municipality of Vitoria, Spain) concerning the legal classification of the employment relationship between the parties and the legality of the decision terminating that relationship.

Legal context

EU law

3 Article 1 of Directive 1999/70 states that the purpose of the directive is ‘to put into effect the framework agreement ... concluded … between the general cross-industry organisations (ETUC, UNICE and CEEP)’.

4 The first paragraph of Article 2 of that directive states:

‘Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive [and must] take any necessary measures to enable them at any time to be in a position to guarantee the results imposed by this Directive ...’.

5 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, secondly, to establish a framework to prevent abuse arising from the use (or ‘misuse’) of successive fixed-term employment contracts or relationships.

6 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.

…’.

7 Clause 5 of the framework agreement, entitled ‘Measures to prevent abuse’, provides:

‘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.’

8 In accordance with clause 8(5) of the framework agreement, ‘[t]he prevention and settlement of disputes and grievances arising from the application of this agreement shall be dealt with in accordance with national law, collective agreements and practice’.

Spanish law

9 Article 89 of Ley 7/1985 Reguladora de las Bases de Régimen local (Law 7/1985 regulating the basis of the local government system), of 2 April 1985 (BOE No 80 of 3 April 1985) defining the various types of staff composing the local authorities, is worded as follows:

‘The staff employed by local authorities is composed of established officials, persons under an employment contract and auxiliary staff, who occupy positions of trust or of specialist advice.’

10 Under Article 15(1) of the Texto Refundido de la Ley del Estatuto de los Trabajadores, aprobado por el Real Decreto Legislativo 1/1995 (consolidated text of the Workers’ Statute, adopted by Royal Legislative Decree 1/1995) of 24 March 1995 (BOE No 75 of 29 March 1995, p. 9654), in the version applicable at the material time (‘the Workers’ Statute’), the employment contract may be concluded for an indefinite period or for a fixed term. A fixed-term contract may be concluded in the following cases:

‘(a) when the worker is employed in order to complete a task which is specific, autonomous and separable from the undertaking’s activities as a whole, the performance of which, while being limited in time, is in principle for an indefinite period. …

(b) when market circumstances, an accumulation of work or an excess of orders so requires, even in the course of the normal activity of the company. …

(c) in the event of replacement of workers entitled to retain their post, provided that the employment contract specifies the name of the replaced worker and the reason for the replacement.’

11 Under Article 15(3) of the Workers’ Statute ‘fixed-term contracts concluded in breach of the law are deemed to be concluded for an indefinite period.’

12 Under Article 15(5) of the Workers’ Statute, workers who have been employed, with or without interruption, for longer than 24 months over a period of 30 months, to

occupy an identical or different work position within the same undertaking or the same group of undertakings, by having entered into at least two temporary contracts, according to identical or different fixed-term contractual procedures, are to acquire the status of permanent workers.

13 Additional provision 15 of the Workers' Statute is worded as follows:

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

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

…'

14 Article 9 of Ley estatal 55/2003 del Estatuto Marco del personal estatutario de los servicios de salud (State Law 55/2003 on the framework regulations for health service staff regulated under administrative law ('regulated staff')) of 16 December (BOE No 301 of 17 December 2003, p. 44742) ('the framework regulations'), provides as follows:

'1. On grounds of need, urgency or for the development of programmes of a temporary, auxiliary or extraordinary nature, the health services may appoint temporary regulated staff.

Temporary regulated staff may be appointed on an interim, occasional or replacement basis.

2. Appointment on an interim basis shall be made to cover a vacant post in the health-care institutions or services where it is necessary to ensure performance of the duties pertaining to that post.

The interim regulated staff member's service shall be terminated if a permanent regulated staff member is appointed, through the procedure laid down in law or regulation, to the post occupied by that interim regulated staff member, or if that post is abolished.

3. Appointment on an occasional basis shall be made in the following situations:

(a) when it concerns the provision of certain services of a temporary, auxiliary or extraordinary nature;

(b) when it is necessary in order to ensure the permanent and continuous operation of the health-care institutions;

(c) for the provision of additional services in order to compensate for a reduction of normal working hours.

The occasional regulated staff member's service shall be terminated when the purpose of the appointment has been accomplished, when the period expressly set out in his notice of appointment has expired, or when the duties for which the appointment was made are abolished.

…

4. Appointment on an interim basis may be used where it is necessary in order to ensure performance of the duties of a permanent or temporary member of staff during holidays, leave periods and other absences of a temporary nature which involve the retention of the post.

The appointment of the interim regulated staff member shall terminate when the person being replaced returns to work, or when that person loses his right to return to the same post or function.'

The facts of the cases in the main proceedings and the questions referred for a preliminary ruling

Case C-184/15

15 On 2 February 2010, Ms Martínez Andrés was appointed as administrative assistant with the occasional regulated staff to provide services of a temporary, auxiliary or extraordinary nature. That appointment was renewed on 13 consecutive occasions, but none of the renewals contained any specific reference to the reason for the renewal, save for a general reference to 'service requirements' The appointment of Ms Martínez Andrés was terminated on 1 October 2012.

16 The action brought by Ms Martínez Andrés was dismissed by a judgment of the Juzgado No 6 de lo Contencioso-Administrativo de Bilbao (Administrative Court No 6 of Bilbao, Spain) of 30 July 2013.

17 Ms Martínez Andrés appealed against that judgment to the Tribunal Superior de Justicia del País Vasco (High Court of Justice of the Basque Country, Spain) on the ground that Article 9(3) of the framework regulations for regulated health service staff had been infringed, as the three situations which are provided for therein cannot be

grouped into a single general category to justify the existence of a fixed-term employment relationship.

Case C-197/15

18 On 1 December 1993 Mr Castrejana López entered into a fixed-term employment contract with the Ayuntamiento de Vitoria (municipal authority of Vitoria) for the provision of services as an architect. That contract terminated on 30 November 1994.

19 On 1 December 1995, the parties entered a new fixed-term employment contract, also for the provision of services as an architect, but this time with a view to implementing an agreement relating to an urban planning programme, signed on 22 November 1995 between the Ayuntamiento de Vitoria and the Instituto Foral de Bienestar Social (regional social welfare institute), for the removal of architectural and urban barriers and to promote accessibility of the urban environment for people with reduced mobility.

20 By decision of 22 January 1998, the municipal councillor with responsibility for the civil service altered the legal status of Mr Castrejana López by appointing him as non-established municipal employee for the purposes of implementing that agreement, with provision for the termination of that employment relationship on the date of completion of the urban planning programme.

21 On 10 November 1998, the councillor with responsibility for the civil service took a new decision terminating that employment relationship with effect from 31 December 1998, on the ground that the abovementioned urban planning programme had been completed.

22 However, on 11 January 1999, the councillor with responsibility for the civil service revoked the decision of 10 November 1998, as the urban planning programme in question had been extended. The employment relationship between Mr Castrejana López and the Ayuntamiento de Vitoria was definitively terminated by decision of 10 December 2012 with effect from 31 December 2012, on the grounds that the programme had been fully completed and the prevailing context of crisis required public authorities to reduce their costs.

23 The action brought by Mr Castrejana López was dismissed by a judgment of the Juzgado No 1 de lo Contencioso-Administrativo de Vitoria-Gasteiz (Administrative Court No 1 of Vitoria-Gasteiz, Spain) of 23 September 2013.

24 Mr Castrejana López brought an appeal against that judgment before the Tribunal Superior de Justicia del País Vasco (High Court of Justice of the Basque Country) claiming, inter alia, that the court of first instance had not ruled on whether the employment relationship between him and the Ayuntamiento de Vitoria was contractual or administrative.

25 In the two requests for a preliminary ruling, the referring court notes, first, that the applicants in the main proceedings fall within the scope of Directive 1999/70.

26 Furthermore, it considers that, in both cases, there has been misuse of fixed-term contracts. As regards Ms Martínez Andrés, the reasons indicated in the appointment and in the successive renewals do not, it is claimed, meet the legal requirements to guarantee that the temporary contracts are not misused. In the absence of an express indication of the services which the various renewals were intended to cover, the referring court considers that it is unable to determine whether the renewals were actually used to cover temporary needs or to cover the fixed and permanent needs of the authorities. As regards Mr. Castrejana López, the referring court states, first, that the purpose of the temporary appointment in order to carry out a planning programme extended over a long period, from 1995 to 2012 and, secondly, that the contractual relationship continued even beyond the completion of the project.

27 Finally, the referring court adds that the Social Division of the Tribunal Supremo (Supreme Court, Spain) established the concept of 'workers having non-permanent contracts of indefinite duration' to describe temporary contracts concluded in breach of the law by public authorities, the indefinite duration of the contract implying that it is not subject to a time limit. Since such a worker, however, could only gain a permanent position after he had succeeded in the selection procedures in accordance with the legal provisions applicable to the selection of permanent staff within public authorities, there was, therefore, a lawful ground for termination of the non-permanent employment contract where the process of selection or abolition of that post has been regularly completed. As the Administrative Division of the Tribunal Supremo (Supreme Court) only rules, however, in disputes involving established public officials, there is no uniform case-law regarding temporary regulated staff or non-established state employee. While some jurisdictions deny, in general, that temporary regulated staff, or non-established state employees, can be equated with workers who have non-permanent contracts of indefinite duration, there are other scenarios in which the effects of the termination of such a temporary employment relationship could be compared to those resulting from the termination of a non-permanent contract of indefinite duration, particularly with regard to the obligation to reinstate.

28 The referring court, therefore, raises the issue of whether national legislation, or a practice of the national courts, which does not confer on auxiliary regulated staff or non-established state employees the right to remain in post, whereas that right is conferred on workers having non-permanent contracts of indefinite duration, complies with the requirements provided for in Directive 1999/70.

29 The referring court points out that the situation of Mr. Castrejana López is particularly shocking, given that, if his initial contractual relationship with the Ayuntamiento de Vitoria had been maintained, he would have benefited from the protective provisions relating to the end of an employment relationship, which benefit was, however, denied to him by the national legislation and related case-law because of his status as a non-established state employee.

30 The referring court also asks whether, having regard to the principle of equivalence, the services provided by those various categories of staff are comparable for the purposes of the application of clause 5(1) of the framework agreement, or whether there are differences between them, such as the contractual nature of the relationship in one case and the administrative nature of the other, or principles such as the power of the public authorities to organise the way they function, which lead to the conclusion that they are not similar situations and that they therefore justify a difference in the effects arising from a finding of irregular use of fixed term contracts by the authorities.

31 Furthermore, the referring court asks whether, under the principle of effectiveness, the appropriate penalty must be determined in the present proceedings or whether that principle does not preclude the parties being referred to new administrative proceedings.

32 In those circumstances, the Tribunal Superior de Justicia del País Vasco (High Court of Justice of the Basque Country) decided to stay the proceedings and to refer the following questions to the Court of Justice, the third of which was asked in Case C-197/15 only:

‘1. Must clause 5(1) of the framework agreement be interpreted as precluding national legislation which, in a situation of abuse resulting from the use of fixed-term employment contracts, does not confer on auxiliary temporary regulated staff (Case C-184/15)/non-established state employees (Case C-197/15), as opposed to staff who are in precisely the same position but who are employed by the public authority under an employment contract, a general right to remain in post on an indefinite but non-permanent basis, in other words, to hold the temporary post until it is filled in the manner prescribed by law or abolished in accordance with legally established procedures?

2. If the previous question is answered in the negative, must the principle of equivalence be interpreted as meaning that the national court may regard the situation of staff who are employed by a public authority under a fixed-term contract and that of auxiliary temporary regulated staff (Case C-184/15)/non-established state employees (Case C-197/15), are similar where there has been misuse of fixed-term employment contracts, or must the national court, when assessing similarity, consider factors other than the fact that the employer is the same, the services provided are the same or similar and the contract of employment has a fixed term, such as the precise nature of the employee’s relationship, whether contractual or administrative, or the power of the public authorities to organise the way they function, which justify treating the two situations differently?

3. If the previous questions are answered in the negative, must the principle of effectiveness be interpreted in such a way that the issue of the appropriate penalty is to be heard and determined within the same proceedings as those in which the misuse of fixed-term employment contracts is established, through interlocutory proceedings in which the parties may request, claim and prove what they deem to be appropriate in that regard, or, on the contrary, is it permissible for the injured party to be referred, for that purpose, to new administrative or, as the case may be, judicial proceedings?’

33 By decision of the President of the Court of 4 June 2015, Cases C-184/15 and C-197/15 were joined for the purposes of the written procedure and the judgment.

Consideration of the questions referred

The first and second questions

34 By its first and second questions, which should be considered together, the referring court asks, in essence, whether clause 5(1) of the framework agreement must be interpreted as precluding national legislation, such as that at issue in the main proceedings, from being applied by the national courts of the Member State concerned in such a manner that, in the event of misuse of successive fixed-term employment contracts, a right to maintain the employment relationship is granted to persons employed by the authorities under an employment contract governed by the rules of employment law, but that right is not conferred, in general, on staff employed by those authorities under administrative law.

35 At the outset, it should be noted that clause 5 of the framework agreement, the purpose of which is to implement one of the objectives of that agreement, namely to place limits on successive recourse to fixed-term employment contracts or relationships, requires Member States, in paragraph 1 thereof, to adopt one or more of the measures listed in a manner that is effective and binding, where domestic law does not include equivalent legal measures. The measures listed in Clause 5(1)(a) to (c), of which there are three, relate, respectively, to objective reasons justifying the renewal of such employment 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, to that effect, judgments of 23 April 2009, *Angelidaki and Others*, C-378/07 to C-380/07, EU:C:2009:250, paragraphs 73 and 74; of 3 July 2014, *Fiamingo and Others*, C-362/13, C-363/13 and C-407/13, EU:C:2014:2044, paragraphs 54 and 56, and of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13, C-63/13 and C-418/13, EU:C:2014:2401, paragraphs 72 and 74).

36 Although EU law does, therefore, lay down an obligation on Member States to adopt preventive measures, it does not lay down any specific sanctions where instances of abuse have been established. In such a case, it is incumbent on the national authorities to adopt measures that are not only proportionate, but also sufficiently effective and a sufficient deterrent to ensure that the measures taken pursuant to the framework agreement are fully effective (see, to that effect, judgments of 4 July 2006, *Adeneler and Others*, C-212/04, EU:C:2006:443, paragraph 94; of 7 September 2006, *Marrosu and Sardino*, C-53/04, EU:C:2006:517, paragraph 51; of 7 September 2006, *Vassallo*, C-180/04, EU:C:2006:518, paragraph 36; of 3 July 2014, *Fiamingo and Others*, C-362/13, C-363/13 and C-407/13, EU:C:2014:2044, paragraph 62, and the order of 11 December 2014, *León Medialdea*, C-86/14, not published, EU:C:2014:2447, paragraph 44).

37 In the absence of relevant EU rules, the detailed rules for implementing such measures, which are a matter for the domestic legal order of the Member States under the principle of their procedural autonomy, must not, however, be less favourable than those governing similar domestic situations (principle of equivalence) or render impossible in practice or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness) (judgments of 4 July 2006, *Adeneler and Others*, C-212/04, EU:C:2006:443, paragraph 95; of 7 September 2006, *Vassallo*, C-180/04, EU:C:2006:518, paragraph 37; of 3 July 2014, *Fiamingo and Others*, C-362/13, C-363/13 and C-407/13, EU:C:2014:2044, paragraph 63, and order of 11 December 2014, *León Medialdea*, C-86/14, not published, EU:C:2014:2447, paragraph 45).

38 Therefore, where abuse resulting from the use of successive fixed-term employment contracts or relationships has taken place, a measure offering effective and equivalent guarantees for the protection of workers must be capable of being applied in order duly to penalise that abuse and nullify the consequences of the breach of EU law. According to the very wording of Article 2(1) of Directive 1999/70, Member States must 'take any necessary measures to enable them at any time to be in a position to guarantee the results imposed by [that] directive' (see judgments of 4 July 2006, *Adeneler and Others*, C-212/04, EU:C:2006:443, paragraph 102; of 7 September 2006, *Vassallo*, C-180/04, EU:C:2006:518, paragraph 38, and of 3 July 2014, *Fiamingo and Others*, C-362/13, C-363/13 and C-407/13, EU:C:2014:2044, paragraph 64).

39 In that respect, it should be clarified that clause 5 of 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. 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. It follows that the framework agreement does not specify the conditions under which contracts of indefinite duration may be used (see, to that effect, judgments of 4 July 2006, *Adeneler and Others*, C-212/04, EU:C:2006:443, paragraph 91; of 7 September 2006, *Marrosu and Sardino*, C-53/04, EU:C:2006:517, paragraph 47; of 23 April 2009, *Angelidaki and Others*, C-378/07 to C-380/07, EU:C:2009:250, paragraphs 145 and 183; of 3 July 2014, *Fiamingo and Others*, C-362/13, C-363/13 and C-407/13, EU:C:2014:2044, paragraph 65, and the order of 11 December 2014, *León Medialdea*, C-86/14, not published, EU:C:2014:2447, paragraph 47).

40 It follows that clause 5 of the framework agreement does not preclude, as such, a Member State from treating abuse of successive fixed-term employment contracts or relationships differently according to whether those contracts or relationships were entered into with a private-sector or public-sector employer (judgments of 7 September 2006, *Marrosu and Sardino*, C-53/04, EU:C:2006:517, paragraph 48, and of 7 September 2006, *Vassallo*, C-180/04, EU:C:2006:518, paragraph 33).

41 However, in order for legislation, which, in the public sector, prohibits absolutely the conversion into a contract of indefinite duration of a succession of fixed-term

employment contracts, to be regarded as compatible with the framework agreement, the domestic law of the Member State concerned must include, in that sector, another effective measure to prevent and, where relevant, penalise the misuse of successive fixed-term employment contracts (judgments of 4 July 2006, *Adeneler and Others*, C-212/04, EU:C:2006:443, paragraph 105; of 7 September 2006, *Marrosu and Sardino*, C-53/04, EU:C:2006:517, paragraph 49; of 7 September 2006, *Vassallo*, C-180/04, EU:C:2006:518, paragraph 34, and of 23 April 2009, *Adeneler and Others*, C-378/07 to C-380/07, EU:C:2009:250, paragraphs 161 and 184).

42 Furthermore, it must be pointed out that it is not for the Court to rule on the interpretation of provisions of national law, that being exclusively for the national courts having jurisdiction, which must determine whether the requirements set out in clause 5 of the framework agreement are met by the provisions of the applicable national legislation (judgments of 7 September 2006, *Vassallo*, C-180/04, EU:C:2006:518, paragraph 39; of 3 July 2014, *Fiamingo and Others*, C-362/13, C-363/13 and C-407/13, EU:C:2014:2044, paragraph 66, and order of 11 December 2014, *León Medialdea*, C-86/14, not published, EU:C:2014:2447, paragraph 48).

43 It is therefore for the referring court to determine to what extent the conditions for application and the actual implementation of the relevant provisions of national law render the latter an appropriate measure for preventing and, where necessary, penalising the misuse of successive fixed-term employment contracts or relationships (judgments of 7 September 2006, *Marrosu and Sardino*, C-53/04, EU:C:2006:517, paragraph 56; of 7 September 2006, *Vassallo*, C-180/04, EU:C:2006:518, paragraph 41; of 3 July 2014, *Fiamingo and Others*, C-362/13, C-363/13 and C-407/13, EU:C:2014:2044, paragraph 67 and the case-law cited, and order of 11 December 2014, *León Medialdea*, C-86/14, not published, EU:C:2014:2447, paragraph 49).

44 The Court, when giving a preliminary ruling, may, however, provide clarification designed to give the referring court guidance in its assessment (judgments of 3 July 2014, *Fiamingo and Others*, C-362/13, C-363/13 and C-407/13, EU:C:2014:2044, paragraph 68 and the case-law cited, and of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13, C-63/13 and C-418/13, EU:C:2014:2401, paragraph 83).

45 In the present case, insofar as the national court has already found misuse, within the meaning of the framework agreement, of successive fixed-term contracts in both cases in the main proceedings, it is necessary to rule only on whether the measures provided for under national law as penalties for the established abuse are adequate and sufficiently effective.

46 In that regard, the referring court considers that there is an effective measure against misuse of fixed-term contracts or employment relationships with regard to workers subject to the rules of ordinary employment law, in so far as the case-law of the Tribunal Supremo (Supreme Court) established the concept of a ‘worker having a non-permanent contract of indefinite duration’, with all the resulting consequences for national law and, in particular, the right of the worker to remain in post.

47 However, as that concept is not applicable to staff employed by the public authorities under administrative law provisions, there is, it is claimed, no effective measure to prevent and, where appropriate, penalise the misuse of successive fixed-term employment contracts with regard to those workers.

48 According to the case-law referred to in paragraphs 40 and 41 of the present judgment, clause 5 of the framework agreement clause does not preclude, in principle, treating misuse of successive fixed-term employment contracts or relationships differently according to the sector or category applicable to the staff in question, provided that the law of the Member State concerned provides, in that sector or with respect to that category of staff, another effective measure to prevent and penalise abuses.

49 Therefore, if the referring court were to find that, in Spanish law, there is no other effective measure to prevent and penalise abuses in respect of staff employed in public authorities under administrative law, such a situation would be likely to undermine the purpose and practical effect of the framework agreement.

50 In accordance with settled case-law, the Member States' obligation, arising from a directive, to achieve the result envisaged by that directive, and their duty under Article 4 TEU to take all appropriate measures, whether general or particular, to ensure fulfilment of that obligation, is binding on all the authorities of Member States including, for matters within their jurisdiction, the courts (see, in particular, judgment of 23 April 2009, *Angelidaki and Others*, C-378/07 to C-380/07, EU:C:2009:250, paragraph 106 and the case-law cited).

51 Accordingly, it is for all the authorities of the Member State concerned to ensure that clause 5(1) of the framework agreement is complied with, by ensuring that workers who have experienced abuse resulting from the use of successive fixed-term employment contracts are not deterred, in the hope of continued public sector employment, from asserting before the national authorities, including the courts, the rights conferred upon them under national law which arise from the implementation by that law of all the preventive measures set out in clause 5(1) of the framework agreement (judgment of 23 April 2009, *Angelidaki and Others*, C-378/07 to C-380/07, EU:C:2009:250, paragraph165).

52 In particular, the national court hearing the case must satisfy itself that the penalties provided for by the national legislation can be applied to employers of all 'fixed-term' workers within the meaning of clause 3(1) of the framework agreement if those workers experience abuse arising from the use of successive contracts, regardless of how their contract is classified under domestic law (judgment of 23 April 2009, *Angelidaki and Others*, C-378/07 to C-380/07, EU:C:2009:250, paragraph 166).

53 To the extent that, in the cases at issue in the main proceedings, and in respect of staff employed in the public authorities under administrative law, there is no other equivalent and effective protective measure, the assimilation of that fixed-term staff with 'workers having non-permanent contracts of indefinite duration', in accordance with the

existing national case-law, could therefore constitute a measure capable of penalising abuse resulting from use of fixed-term employment contracts and eliminating the consequences of infringement of the provisions of the framework agreement.

54 In the light of all the foregoing considerations, the answer to the first and second questions is that clause 5(1) of the framework agreement must be interpreted as precluding national legislation, such as that at issue in the main proceedings, from being applied by the national courts of the Member State concerned in such a manner that, in the event of abuse resulting from the use of successive fixed-term employment contracts, a right to maintain the employment relationship is granted to persons employed by the authorities under an employment contract governed by the rules of employment law, but that right is not conferred, in general, on staff employed by those authorities under administrative law, unless there is another effective measure in the national law to penalise such abuse with regard to the latter staff, which it is for the national court to determine.

The third question

55 By its third question, the referring court asks, in essence, whether the provisions of the framework agreement, read in conjunction with the principle of effectiveness, must be interpreted as precluding national procedural rules which require a fixed-term worker to bring a new action in order to determine the appropriate penalty where misuse of successive fixed-term employment contracts has been established, rather than being able to claim compensation for the damage suffered by means of an interlocutory application in the course of the proceedings in which there has been a finding of such misuse.

56 It must be noted that, under clause 8(5) of the framework agreement, the prevention and also the settlement of disputes and grievances arising from the application of that agreement are to be dealt with in accordance with national law, collective agreements and practice (judgments of 15 April 2008, *Impact*, C-268/06, EU:C:2008:223, paragraph 39, and of 23 April 2009, *Angelidaki and Others*, C-378/07 to C-380/07, EU:C:2009:250, paragraph 172, and orders of 12 June 2008, *Vassilakis and Others*, C-364/07, not published, EU:C:2008:346, paragraph 140, and of 24 April 2009, *Koukou*, C-519/08, not published, EU:C:2009:269, paragraph 95).

57 In the absence of EU rules on the matter, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law (judgments of 15 April 2008, *Impact*, C-268/06, EU:C:2008:223, paragraph 44, and of 8 September 2011, *Rosado Santana*, C-177/10, EU:C:2011:557, paragraph 87, and orders of 12 June 2008, *Vassilakis and Others*, C-364/07, not published, EU:C:2008:346, paragraph 141, and of 24 April 2009, *Koukou*, C-519/08, not published, EU:C:2009:269, paragraph 96).

58 As is apparent from paragraph 37 of this judgment, it is incumbent on the national authorities to adopt appropriate measures to ensure that the measures taken pursuant to

the framework agreement are fully effective. The detailed rules for implementing those measures must be consistent with the principles of equivalence and effectiveness (judgment of 23 April 2009, *Angelidaki and Others*, C-378/07 to C-380/07, EU:C:2009:250, paragraph 174, and orders of 12 June 2008, *Vassilakis and Others*, C-364/07, not published, EU:C:2008:346, paragraph 142, and of 24 April 2009, *Koukou*, C-519/08, not published, EU:C:2009:269, paragraph 97).

59 Those requirements of equivalence and effectiveness, which embody the general obligation on the Member States to ensure judicial protection of an individual's rights under EU law, apply equally to the designation of the courts having jurisdiction to hear and determine actions based on EU law. A failure to comply with those requirements at EU level is — just like a failure to comply with them as regards the definition of detailed procedural rules — liable to undermine the principle of effective judicial protection (judgment of 15 April 2008, *Impact*, C-268/06, EU:C:2008:223, paragraphs 47 and 48, and order of 24 April 2009, *Koukou*, C-519/08, not published, EU:C:2009:269, paragraph 98).

60 However, it is for the referring court, not the Court of Justice, to ascertain that the Member State concerned has taken all necessary steps enabling it to be in a position at any time to guarantee the right to effective judicial protection in compliance with the principles of equivalence and effectiveness (see, to that effect, inter alia, judgments of 15 April 2008, *Impact*, C-268/06, EU:C:2008:223, paragraphs 43 to 55, and of 23 April 2009, *Angelidaki and Others*, C-378/07 to C-380/07, EU:C:2009:250, paragraph 176, and orders of 12 June 2008, *Vassilakis and Others*, C-364/07, not published, EU:C:2008:346, paragraph 149, and of 24 April 2009, *Koukou*, C-519/08, not published, EU:C:2009:269, paragraph 101).

61 As regards, in particular, the principle of effectiveness, it must be noted that the national procedural provisions at issue must be analysed by reference to the role of that provision in the procedure as a whole and to the progress and special features of that procedure before the various national bodies. In that context, it is necessary to take into consideration, where relevant, the principles which lie at the basis of the national legal system, such as the protection of the rights of the defence, the principle of legal certainty and the proper conduct of the proceedings (see, to that effect, judgment of 8 September 2011, *Rosado Santana*, C-177/10, EU:C:2011:557, paragraph 92).

62 In the present case, it appears that the national court hearing the case relating to the misuse of successive fixed-term contracts may not be in a position, under the applicable national procedural rules, to rule on any claim for damages suffered by the worker in question.

63 Even if the Court has already held, in that context, that national legislation which provides that an independent administrative body is competent to reclassify where appropriate fixed-term employment contracts as contracts of indefinite duration appears, prima facie, to satisfy those requirements (judgment of 23 April 2009, *Angelidaki and Others*, C-378/07 to C-380/07, EU:C:2009:250, paragraph 175, and order of 12 June

2008, *Vassilakis and Others*, C-364/07, not published, EU:C:2008:346, paragraph 144), the fact remains that requiring a fixed-term worker to bring a new action, where appropriate before a different court, in order to determine the appropriate penalty where misuse of successive fixed-term employment contracts has been established by a judicial authority, does not comply with the principle of effectiveness in so far as it results in procedural disadvantages for that worker, in terms, inter alia, of cost, duration and the rules of representation.

64 The answer to the third question referred, therefore, is that the provisions of the framework agreement, read in conjunction with the principle of effectiveness, must be interpreted as precluding national procedural rules which require a fixed-term worker to bring a new action in order to determine the appropriate penalty where abuse resulting from the use of successive fixed-term employment contracts has been established by a judicial authority, to the extent that it results in procedural disadvantages for that worker, in terms, inter alia, of cost, duration and the rules of representation, liable to render excessively difficult the exercise of the rights conferred on him by EU law.

Costs

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

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

1. **Clause 5(1) 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 precluding national legislation, such as that at issue in the main proceedings, from being applied by the national courts of the Member State concerned in such a manner that, in the event of abuse resulting from the use of successive fixed-term employment contracts, a right to maintain the employment relationship is granted to persons employed by the authorities under an employment contract governed by the rules of employment law, but that right is not conferred, in general, on staff employed by those authorities under administrative law, unless there is another effective measure in the national law to penalise such abuses with regard to the latter staff, which it is for the national court to determine.**

2. **The provisions of the framework agreement on fixed-term work which is set out in the annex to Directive 1999/70, read in conjunction with the principle of effectiveness, must be interpreted as precluding national procedural rules which require a fixed-term worker to bring a new action in order to determine the appropriate penalty where abuse resulting from the use of successive fixed-term employment contracts has been established by a judicial authority, to the extent that**

it results in procedural disadvantages for that worker, in terms, inter alia, of cost, duration and the rules of representation, liable to render excessively difficult the exercise of the rights conferred on him by EU law.

[Signatures]

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* Language of the case: Spanish.