JUDGMENT OF THE COURT (Grand Chamber)

22 November 2005 *

In Case C-144/04,

REFERENCE for a preliminary ruling under Article 234 EC from the Arbeitsgericht München (Germany), made by decision of 26 February 2004, registered at the Court on 17 March 2004, in the proceedings

Werner Mangold

v

Rüdiger Helm,

THE COURT (Grand Chamber),

composed of P. Jann, President of the First Chamber, acting as President, C.W.A. Timmermans, A. Rosas and K. Schiemann, Presidents of Chambers, R. Schintgen (Rapporteur), S. von Bahr, J.N. Cunha Rodrigues, R. Silva de Lapuerta, K. Lenaerts, E. Juhász, G. Arestis, A. Borg Barthet and M. Ilešič, Judges,

* Language of the case: German

Advocate General: A. Tizzano,
Registrar: K. Sztranc, Administrator,

having regard to the written procedure and further to the hearing on 26 April 2005,

after considering the observations submitted on behalf of:

— Mr Mangold, by D. Hummel and B. Karthaus, Rechtsanwälte,

— Mr Helm, by himself, Rechtsanwalt,

— the German Government, by M. Lumma, acting as Agent,

— the Commission of the European Communities, by N. Yerrell and S. Grünheid and by D. Martin and H. Kreppel, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 June 2005,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Clauses 2, 5 and 8 of the Framework Agreement on fixed-term contracts concluded on 18 March

1999 ('the Framework Agreement'), put into effect by 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), and of Article 6 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).

2 The reference has been made in the course of proceedings brought by Mr Mangold against Mr Helm concerning a fixed-term contract by which the former was employed by the latter ('the contract').

Legal context

The relevant provisions of Community law

The Framework Agreement

3 According to Clause 1, '[t]he purpose of this Framework Agreement is to:

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

(b) establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships'.

4 Clause 2(1) of the Framework Agreement provides:

'This agreement applies to fixed-term workers who have an employment contract or employment relationship as defined in law, collective agreements or practice in each Member State.'

5 Under Clause 5(1) of the Framework Agreement:

'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.'

6 Clause 8(3) of the Framework Agreement provides that:

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

Directive 2000/78

7 Directive 2000/78 was adopted on the basis of Article 13 EC. The 1st, 4th, 8th and 25th recitals in the preamble to that directive are worded as follows:

'(1) In accordance with Article 6 of the Treaty on European Union, the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to all Member States and it respects fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

...

(4) The right of all persons to equality before the law and protection against discrimination constitutes a universal right recognised by the Universal Declaration of Human Rights, the United Nations Convention on the

Elimination of All Forms of Discrimination against Women, United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, to which all Member States are signatories. Convention No 111 of the International Labour Organisation (ILO) prohibits discrimination in the field of employment and occupation.

...

(8) The Employment Guidelines for 2000 agreed by the European Council at Helsinki on 10 and 11 December 1999 stress the need to foster a labour market favourable to social integration by formulating a coherent set of policies aimed at combating discrimination against groups such as persons with disability. They also emphasise the need to pay particular attention to supporting older workers, in order to increase their participation in the labour force.

...

(25) The prohibition of age discrimination is an essential part of meeting the aims set out in the Employment Guidelines and encouraging diversity in the workforce. However, differences in treatment in connection with age may be justified under certain circumstances and therefore require specific provisions which may vary in accordance with the situation in Member States. It is therefore essential to distinguish between differences in treatment which are justified, in particular by legitimate employment policy, labour market and vocational training objectives, and discrimination which must be prohibited.'

8 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'.

9 Article 2 of Directive 2000/78, headed 'Concept of discrimination', states in subparagraphs 1 and 2(a) that:

'(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.'

10 Article 3 of Directive 2000/78, headed 'Scope', provides in subparagraph 1:

'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:

(a) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;

...

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

...'.

11 Article 6(1) of Directive 2000/78 provides:

'Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

Such differences of treatment may include, among others:

(a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;

(b) the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;

(c) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.'

12 In accordance with the first paragraph of Article 18 of Directive 2000/78, the Member States were to adopt the laws, regulations and administrative provisions necessary to comply with that directive by 2 December 2003 at the latest. However, under the second paragraph of that article:

'In order to take account of particular conditions, Member States may, if necessary, have an additional period of three years from 2 December 2003, that is to say a total of six years, to implement the provisions of this Directive on age and disability discrimination. In that event they shall inform the Commission forthwith. Any Member State which chooses to use this additional period shall report annually to

the Commission on the steps it is taking to tackle age and disability discrimination and on the progress it is making towards implementation. The Commission shall report annually to the Council.'

13 The Federal Republic of Germany having requested such an additional period for the implementation of the directive, so far as that Member State is concerned the period allowed will not expire until 2 December 2006.

The relevant provisions of national law

14 Paragraph 1 of the Beschäftigungsförderungsgesetz (Law to promote employment), as amended by the law of 25 September 1996 (BGBl. 1996 I, p. 1476) ('the BeschFG 1996'), provided:

'(1) Fixed-term employment contracts shall be authorised for a maximum term of two years. Within that maximum limit of two years a fixed-term contract may be renewed three times at most.

(2) Fixed-term employment contracts shall be authorised exempt from the condition set out in paragraph 1 if the employee has reached the age of 60 when the fixed-term employment contract begins.

(3) Employment contracts within the meaning of paragraphs 1 and 2 shall not be authorised where there is a close connection with a previous employment contract of indefinite duration or with a previous fixed-term employment

contract within the meaning of paragraph 1 concluded with the same employer. Such close connection shall be presumed to exist where the interval between two employment contracts is less than four months.

(4) The possibility of limiting the term of employment contracts for other reasons shall remain unaltered.

...'.

15 By virtue of Paragraph 1(6) of the BeschFG 1996, those rules were applicable until 31 December 2000.

16 Directive 1999/70 implementing the Framework Agreement was transposed into German law by the Law on part-time working and fixed-term contracts amending and repealing provisions of employment law (Gesetz über Teilzeitarbeit und befristete Arbeitsverträge und zur Änderung und Aufhebung arbeitsrechtlicher Bestimmungen) of 21 December 2000 (BGBl. 2000 I, p. 1966, 'the TzBfG'). That law entered into force on 1 January 2001.

17 Paragraph 1 of the TzBfG, headed 'Objective', provides that:

'This law is intended to encourage part-time working, to fix the conditions in which fixed-term contracts may be concluded and to prevent discrimination

against workers employed part-time and workers employed under a fixed-term contract.'

18 Paragraph 14 of the TzBfG, which regulates fixed-term contracts, provides that:

'(1) A fixed-term employment contract may be concluded if there are objective grounds for doing so. Objective grounds exist in particular where:

1. the operational manpower requirements are only temporary,

2. the fixed term follows a period of training or study in order to facilitate the employee's entry into subsequent employment,

3. one employee replaces another,

4. the particular nature of the work justifies the fixed term,

5. the fixed term is a probationary period,

6. reasons relating to the employee personally justify the fixed term,

7. the employee is paid out of budgetary funds provided for fixed-term employment and he is employed on that basis, or

8. the term is fixed by common agreement before a court.

(2) The term of an employment contract may be limited in the absence of objective reasons for a maximum period of two years. Within that maximum period a fixed-term contract may be renewed three times at most. The conclusion of a fixed-term employment contract within the meaning of the first sentence shall not be authorised if that contract is immediately preceded by an employment relationship of fixed or indefinite duration with the same employer. A collective agreement may fix the number or renewals or the maximum duration of the fixed term in derogation from the first sentence.

(3) The conclusion of a fixed-term employment contract shall not require objective justification if the worker has reached the age of 58 by the time the fixed-term employment relationship begins. A fixed term shall not be permitted where there is a close connection with a previous employment contract of indefinite duration concluded with the same employer. Such close connection shall be presumed to exist where the interval between two employment contracts is less than six months.

(4) The limitation of the term of an employment contract must be fixed in writing in order to be enforceable.'

19 Paragraph 14(3) of the TzBfG has been amended by the First Law for the provision of modern services on the labour market of 23 December 2002 (BGBl. 2002 I,

p. 14607, 'the Law of 2002'). The new version of that provision, which took effect on 1 January 2003, is henceforth worded as follows:

'A fixed-term employment contract shall not require objective justification if when starting the fixed-term employment relationship the employee has reached the age of 58. It shall not be permissible to set a fixed term where there is a close connection with a previous employment contract of indefinite duration concluded with the same employer. Such close connection shall be presumed to exist where the interval between two employment contracts is less than six months. Until 31 December 2006 the first sentence shall be read as referring to the age of 52 instead of 58.'

The main proceedings and the questions referred for a preliminary ruling

20 On 26 June 2003 Mr Mangold, then 56 years old, concluded with Mr Helm, who practises as a lawyer, a contract that took effect on 1 July 2003.

21 Article 5 of that contract provided that:

'1. The employment relationship shall start on 1 July 2003 and last until 28 February 2004.

2. The duration of the contract shall be based on the statutory provision which is intended to make it easier to conclude fixed-term contracts of employment with older workers (the provisions of the fourth sentence, in conjunction with those of the fourth sentence, of Paragraph 14(3) of the TzBfG ...), since the employee is more than 52 years old.

3. The parties have agreed that there is no reason for the fixed term of this contract other than that set out in paragraph 2 above. All other grounds for limiting the term of employment accepted in principle by the legislature are expressly excluded from this agreement.'

22 According to Mr Mangold, paragraph 5, inasmuch as it limits the term of his contract, is, although such a limitation is in keeping with Paragraph 14(3) of the TzBfG, incompatible with the Framework Agreement and with Directive 2000/78.

23 Mr Helm argues that Clause 5 of the Framework Agreement requires the Member States to introduce measures to prevent abuse arising from the use of successive fixed-term contracts of employment, in particular, by requiring objective reasons justifying the renewal of such contracts, or by fixing the maximum total duration of such fixed-term employment relationships or contracts, or by limiting the number of renewals of such contracts or relationships.

24 He takes the view that even if the fourth sentence of Paragraph 14(3) of the TzBfG does not expressly lay down such restrictions in respect of older workers, there is in fact an objective reason, within the meaning of Clause 5(1)(a) of the Framework Agreement, that justifies the conclusion of a fixed-term contract of employment, which is the difficulty those workers have in finding work having regard to the features of the labour market.

25 The Arbeitsgericht München is doubtful whether the first sentence of Paragraph 14 (3) of the TzBfG is compatible with Community law.

26 First, that court considers that that provision is contrary to the prohibition of 'regression' (reduction of protection) laid down in Clause 8(3) of the Framework Agreement in that, on the transposition into national law of Directive 1999/70, that provision lowered from 60 to 58 the age of persons excluded from protection against the use of fixed-term contracts of employment where that use is not justified by an objective reason and, in consequence, the general level of protection enjoyed by that class of workers. Such a provision is also, in its opinion, contrary to Clause 5 of the Framework Agreement which seeks to prevent abuse of such contracts, in that it lays down no restriction on the conclusion of such contracts by many workers falling into a class categorised by age only.

27 Second, the national court is uncertain whether rules such as those contained in Paragraph 14(3) of the TzBfG are compatible with Article 6 of Directive 2000/78, in that the lowering, by the Law of 2002, from 58 to 52 of the age at which it is authorised to conclude fixed-term contracts, with no objective justification, does not guarantee the protection of older persons in work. Nor is the principle of proportionality observed.

28 It is true that the national court finds that, on the date of the conclusion of the contract, namely, 26 June 2003, the period prescribed for transposition of Directive 2000/78 into national law had not yet expired. None the less, it notes that, in accordance with paragraph 45 of the judgment in Case C-129/96 *Inter-Environnement Wallonie* [1997] ECR I-7411, a Member State to which a directive is addressed may not, during the period prescribed for transposition, adopt measures that may seriously compromise the attainment of the result prescribed by the directive.

29 Now, in the case in the main proceedings, the Law of 2002's amendment of Paragraph 14(3) of the TzBfG came into force on 1 January 2003, that is to say, after Directive 2000/78 was published in the *Official Journal of the European Communities,* but before the period allowed by Article 18 of that directive for its transposition had expired.

30 Third, the Arbeitsgericht München raises the question whether the national court is bound, in proceedings between individuals, to set aside rules of domestic law incompatible with Community law. In this respect it considers that the primacy of Community law must lead the court to find that Paragraph 14(3) of the TzBfG is inapplicable in its entirety and that, therefore, it is necessary to apply the fundamental rule laid down in Paragraph 14(1), in accordance with which there must be some objective reason for the conclusion of a fixed-term contract of employment.

31 Those were the circumstances in which the Arbeitsgericht München decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1 (a) Is Clause 8(3) of the Framework Agreement ... to be interpreted, when transposed into domestic law, as prohibiting a reduction of protection following from the lowering of the age limit from 60 to 58?

(b) Is Clause 5(1) of the Framework Agreement ... to be interpreted as precluding a provision of national law which — like the provision at issue in this case — does not contain any of the three restrictions set out in paragraph 1 of that clause?

2. Is Article 6 of ... Directive 2000/78 ... to be interpreted as precluding a provision of national law which, like the provision at issue in this case, authorises the conclusion of fixed-term employment contracts, without any objective reason, with workers aged 52 and over, contrary to the principle requiring justification on objective grounds?

3. If one of those three questions is answered in the affirmative: must the national court refuse to apply the provision of domestic law which is contrary to Community law and apply the general principle of internal law, under which fixed terms of employment are permissible only if they are justified on objective grounds?'

Admissibility of the reference for a preliminary ruling

32 At the hearing the admissibility of the reference for a preliminary ruling was challenged by the Federal Republic of Germany, on the grounds that the dispute in the main proceedings was fictitious or contrived. Indeed, in the past Mr Helm has publicly argued a case identical to Mr Mangold's, to the effect that Paragraph 14(3) of the TzBfG is unlawful.

33 It is first of all to be noted in that respect that, pursuant to Article 234 EC, where a question on the interpretation of the Treaty or of subordinate acts of the institutions of the Community is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon (see, inter alia, Case C-451/99 *Cura Anlagen* [2002] ECR I-3193, paragraph 22).

34 In the context of that procedure for making a reference, the national court, which alone has direct knowledge of the facts of the case, is in the best position to assess, with full knowledge of the matter before it, the need for a preliminary ruling to enable it to give judgment (Case C-83/91 *Meilicke* [1992] ECR I-4871, paragraph 23; C-146/93 *McLachlan* [1994] ECR I-3229, paragraph 20; Case C-412/93 *Leclerc-Siplec* [1995] ECR I-179, paragraph 10; and C-167/01 *Inspire Art* [2003] ECR I-10155, paragraph 43.

35 Consequently, where the question submitted by the national court concerns the interpretation of Community law, the Court of Justice is, in principle, bound to give a ruling (Case C-231/89 *Gmurzynska-Bscher* [1990] ECR I-4003, paragraph 20; *Leclerc-Siplec*, paragraph 11; Joined Cases C-358/93 and C-416/93 *Bordessa and Others* [1995] ECR I-361, paragraph 10; and *Inspire Art*, paragraph 44).

36 Nevertheless, the Court considers that it may, if need be, examine the circumstances in which the case was referred to it by the national court, in order to assess whether it has jurisdiction. The spirit of cooperation which must prevail in preliminary ruling proceedings requires the national court for its part to have regard to the function entrusted to the Court of Justice, which is to contribute to the administration of justice in the Member States and not to give opinions on general or hypothetical questions (Case 149/82 *Robards* [1983] ECR 171, paragraph 19; *Meilicke*, paragraph 25; and *Inspire Art*, paragraph 45).

37 It is in the light of that function that the Court has considered that it has no jurisdiction to give a preliminary ruling on a question raised before a national court where the interpretation of Community law has no connection whatever with the circumstances or purpose of the main proceedings.

38 However, in the case in the main proceedings, it hardly seems arguable that the interpretation of Community law sought by the national court does actually respond to an objective need inherent in the outcome of a case pending before it. In fact, it is common ground that the contract has actually been performed and that its application raises a question of interpretation of Community law. The fact that the parties to the dispute in the main proceedings are at one in their interpretation of Paragraph 14(3) of the TzBfG cannot affect the reality of that dispute.

39 The order for reference must, therefore, be regarded as admissible.

Concerning the questions referred for a preliminary ruling

On Question 1(b)

40 In Question 1(b), which it is appropriate to consider first, the national court asks whether, on a proper construction of Clause 5 of the Framework Agreement, it is contrary to that provision for rules of domestic law such as those at issue in the main proceedings to contain none of the restrictions provided for by that clause in respect of the use of fixed-term contracts of employment.

41 Here it is to be noted that Clause 5(1) of the Framework Agreement is supposed to 'prevent abuse arising from the use of successive fixed-term employment contracts or relationships'.

42 Now, as the parties to the main proceedings confirmed at the hearing, the contract is the one and only contract concluded between them.

43 In those circumstances, interpretation of Clause 5(1) of the Framework Agreement is obviously irrelevant to the outcome of the dispute before the national court and, accordingly, there is no need to answer Question 1(b).

On Question 1(a)

44 By Question 1(a), the national court seeks to ascertain whether on a proper construction of Clause 8(3) of the Framework Agreement, domestic legislation such as that at issue in the main proceedings which, on transposing Directive 1999/70, lowered from 60 to 58 the age above which fixed-term contracts of employment may be concluded without restrictions, is contrary to that provision.

45 As a preliminary point, it is to be noted that, in the case in the main proceedings, the contract was concluded on 26 June 2003, that is to say, when the TzBfG, as amended by the Law of 2002 which lowered the age above which it is permissible to conclude fixed-term contracts of employment from 58 to 52, was in force. In the instant case, it is common ground that Mr Mangold was engaged by Mr Helm at the age of 56.

46 Nevertheless, the national court considers that an interpretation of Clause 8(3) would be helpful to it in assessing the validity of the lawfulness of Paragraph 14(3) of the TzBfG, in its original version, in so far as, if that latter provision should not be in keeping with Community law, the result would be that its amendment by the Law of 2002 would be invalid.

47 In any case, it is to be declared that the German legislature had already, when Directive 1999/70 was transposed into domestic law, lowered from 60 to 58 the age at which fixed-term contracts of employment might be concluded.

48 According to Mr Mangold, that reduction of protection, like that under the Law of 2002, is contrary to Clause 8(3) of the Framework Agreement.

49 In contrast, the German Government takes the view that that lowering of the relevant age was offset by giving workers bound by a fixed-term contract new social guarantees, such as the laying down of a general prohibition of discrimination and the extending to small businesses, and to short-term employment relationships, of the restrictions provided for in respect of recourse to that kind of contract.

50 In this connection, it appears from the very wording of Clause 8(3) of the Framework Agreement that implementation of the agreement cannot provide the Member States with valid grounds for reducing the general level of protection for workers previously guaranteed in the domestic legal order in the sphere covered by that agreement.

51 The term 'implementation', used without any further precision in Clause 8(3) of the Framework Agreement, does not refer only to the original transposition of Directive 1999/70 and especially of the Annex thereto containing the Framework Agreement, but must also cover all domestic measures intended to ensure that the objective pursued by the directive may be attained, including those which, after transposition in the strict sense, add to or amend domestic rules previously adopted.

52 In contrast, reduction of the protection which workers are guaranteed in the sphere of fixed-term contracts is not prohibited as such by the Framework Agreement where it is in no way connected to the implementation of that agreement.

53 Now, it is clear from both the order for reference and the observations submitted by the German Government at the hearing that, as the Advocate General has noted in paragraphs 75 to 77 of his Opinion, the successive reductions of the age above which the conclusion of a fixed-term contract is permissible without restrictions are

justified, not by the need to put the Framework Agreement into effect but by the need to encourage the employment of older persons in Germany.

54 In those circumstances, the reply to be given to Question 1(a) is that on a proper construction of Clause 8(3) of the Framework Agreement, domestic legislation such as that at issue in the main proceedings which, for reasons connected with the need to encourage employment and irrespective of the implementation of that agreement, has lowered the age above which fixed-term contracts of employment may be concluded without restrictions, is not contrary to that provision.

On the second and third questions

55 By its second and third questions, which may appropriately be considered together, the national court seeks in essence to ascertain whether Article 6(1) of Directive 2000/78 must be interpreted as precluding a provision of domestic law such as that at issue in the main proceedings which authorises, without restriction, unless there is a close connection with an earlier contract of employment of indefinite duration concluded with the same employer, the conclusion of fixed-term contracts of employment once the worker has reached the age of 52. If so, the national court asks what conclusions it must draw from that interpretation.

56 In this regard, it is to be noted that, in accordance with Article 1, the purpose of Directive 2000/78 is to lay down a general framework for combating discrimination on any of the grounds referred to in that article, which include age, as regards employment and occupation.

57 Paragraph 14(3) of the TzBfG, however, by permitting employers to conclude without restriction fixed-term contracts of employment with workers over the age of 52, introduces a difference of treatment on the grounds directly of age.

58 Specifically with regard to differences of treatment on grounds of age, Article 6(1) of Directive 2000/78 provides that the Member States may provide that such differences of treatment 'shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary'. According to subparagraph (a) of the second paragraph of Article 6(1), those differences may include inter alia 'the setting of special conditions on access to employment and vocational training, employment and occupation ... for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection' and, under subparagraphs (b) and (c), the fixing of conditions of age in certain special circumstances.

59 As is clear from the documents sent to the Court by the national court, the purpose of that legislation is plainly to promote the vocational integration of unemployed older workers, in so far as they encounter considerable difficulties in finding work.

60 The legitimacy of such a public-interest objective cannot reasonably be thrown in doubt, as indeed the Commission itself has admitted.

61 An objective of that kind must as a rule, therefore, be regarded as justifying, 'objectively and reasonably', as provided for by the first subparagraph of Article 6(1) of Directive 2000/78, a difference of treatment on grounds of age laid down by Member States.

62 It still remains to be established whether, according to the actual wording of that provision, the means used to achieve that legitimate objective are 'appropriate and necessary'.

63 In this respect the Member States unarguably enjoy broad discretion in their choice of the measures capable of attaining their objectives in the field of social and employment policy.

64 However, as the national court has pointed out, application of national legislation such as that at issue in the main proceedings leads to a situation in which all workers who have reached the age of 52, without distinction, whether or not they were unemployed before the contract was concluded and whatever the duration of any period of unemployment, may lawfully, until the age at which they may claim their entitlement to a retirement pension, be offered fixed-term contracts of employment which may be renewed an indefinite number of times. This significant body of workers, determined solely on the basis of age, is thus in danger, during a substantial part of its members' working life, of being excluded from the benefit of stable employment which, however, as the Framework Agreement makes clear, constitutes a major element in the protection of workers.

65 In so far as such legislation takes the age of the worker concerned as the only criterion for the application of a fixed-term contract of employment, when it has not been shown that fixing an age threshold, as such, regardless of any other consideration linked to the structure of the labour market in question or the personal situation of the person concerned, is objectively necessary to the attainment of the objective which is the vocational integration of unemployed older workers, it must be considered to go beyond what is appropriate and necessary in order to attain the objective pursued. Observance of the principle of proportionality requires every derogation from an individual right to reconcile, so far as is possible, the requirements of the principle of equal treatment with those of the aim pursued (see, to that effect, Case C-476/99 *Lommers* [2002] ECR I-2891,

paragraph 39). Such national legislation cannot, therefore, be justified under Article 6(1) of Directive 2000/78.

66 The fact that, when the contract was concluded, the period prescribed for the transposition into domestic law of Directive 2000/78 had not yet expired cannot call that finding into question.

67 First, the Court has already held that, during the period prescribed for transposition of a directive, the Member States must refrain from taking any measures liable seriously to compromise the attainment of the result prescribed by that directive (*Inter-Environnement Wallonie*, paragraph 45).

68 In this connection it is immaterial whether or not the rule of domestic law in question, adopted after the directive entered into force, is concerned with the transposition of the directive (see, to that effect, Case C-14/02 *ATRAL* [2003] ECR I-4431, paragraphs 58 and 59).

69 In the case in the main proceedings the lowering, pursuant to Paragraph 14(3) of the TzBfG, of the age above which it is permissible to conclude fixed-term contracts from 58 to 52 took place in December 2002 and that measure was to apply until 31 December 2006.

70 The mere fact that, in the circumstances of the case, that provision is to expire on 31 December 2006, just a few weeks after the date by which the Member State must have transposed the directive, is not in itself decisive.

71 On the one hand, it is apparent from the very wording of the second subparagraph of Article 18 of Directive 2000/78 that where a Member State, like the Federal Republic of Germany in this case, chooses to have recourse to an additional period of three years from 2 December 2003 in order to transpose the directive, that Member State 'shall report annually to the Commission on the steps it is taking to tackle age ... discrimination and on the progress it is making towards implementation'.

72 That provision implies, therefore, that the Member State, which thus exceptionally enjoys an extended period for transposition, is progressively to take concrete measures for the purpose of there and then approximating its legislation to the result prescribed by that directive. Now, that obligation would be rendered redundant if the Member State were to be permitted, during the period allowed for implementation of the directive, to adopt measures incompatible with the objectives pursued by that act.

73 On the other hand, as the Advocate General has observed in point 96 of his Opinion, on 31 December 2006 a significant proportion of the workers covered by the legislation at issue in the main proceedings, including Mr Mangold, will already have reached the age of 58 and will therefore still fall within the specific rules laid down by Paragraph 14(3) of the TzBfG, with the result that that class of persons becomes definitively liable to be excluded from the safeguard of stable employment by the use of a fixed-term contract of employment, regardless of the fact that the age condition fixed at 52 will cease to apply at the end of 2006.

74 In the second place and above all, Directive 2000/78 does not itself lay down the principle of equal treatment in the field of employment and occupation. Indeed, in accordance with Article 1 thereof, the sole purpose of the directive is 'to lay down a

general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation', the source of the actual principle underlying the prohibition of those forms of discrimination being found, as is clear from the third and fourth recitals in the preamble to the directive, in various international instruments and in the constitutional traditions common to the Member States.

75 The principle of non-discrimination on grounds of age must thus be regarded as a general principle of Community law. Where national rules fall within the scope of Community law, which is the case with Paragraph 14(3) of the TzBfG, as amended by the Law of 2002, as being a measure implementing Directive 1999/70 (see also, in this respect, paragraphs 51 and 64 above), and reference is made to the Court for a preliminary ruling, the Court must provide all the criteria of interpretation needed by the national court to determine whether those rules are compatible with such a principle (Case C-442/00 *Rodríguez Caballero* [2002] ECR I-11915, paragraphs 30 to 32).

76 Consequently, observance of the general principle of equal treatment, in particular in respect of age, cannot as such be conditional upon the expiry of the period allowed the Member States for the transposition of a directive intended to lay down a general framework for combating discrimination on the grounds of age, in particular so far as the organisation of appropriate legal remedies, the burden of proof, protection against victimisation, social dialogue, affirmative action and other specific measures to implement such a directive are concerned.

77 In those circumstances it is the responsibility of the national court, hearing a dispute involving the principle of non-discrimination in respect of age, to provide, in a case within its jurisdiction, the legal protection which individuals derive from the rules of Community law and to ensure that those rules are fully effective, setting aside any

provision of national law which may conflict with that law (see, to that effect, Case 106/77 *Simmenthal* [1978] ECR 629, paragraph 21, and Case C-347/96 *Solred* [1998] ECR I-937, paragraph 30).

78 Having regard to all the foregoing, the reply to be given to the second and third questions must be that Community law and, more particularly, Article 6(1) of Directive 2000/78, must be interpreted as precluding a provision of domestic law such as that at issue in the main proceedings which authorises, without restriction, unless there is a close connection with an earlier contract of employment of indefinite duration concluded with the same employer, the conclusion of fixed-term contracts of employment once the worker has reached the age of 52.

It is the responsibility of the national court to guarantee the full effectiveness of the general principle of non-discrimination in respect of age, setting aside any provision of national law which may conflict with Community law, even where the period prescribed for transposition of that directive has not yet expired.

Costs

79 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 (Grand Chamber) hereby rules:

1. **On a proper construction of Clause 8(3) of the Framework Agreement on fixed-term contracts concluded on 18 March 1999, put into effect by Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, domestic legislation such as that at issue in the main proceedings, which for reasons connected with the need to encourage employment and irrespective of the implementation of that agreement, has lowered the age above which fixed-term contracts of employment may be concluded without restrictions, is not contrary to that provision.**

2. **Community law and, more particularly, Article 6(1) 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 precluding a provision of domestic law such as that at issue in the main proceedings which authorises, without restriction, unless there is a close connection with an earlier contract of employment of indefinite duration concluded with the same employer, the conclusion of fixed-term contracts of employment once the worker has reached the age of 52.**

It is the responsibility of the national court to guarantee the full effectiveness of the general principle of non-discrimination in respect of age, setting aside any provision of national law which may conflict with Community law, even where the period prescribed for transposition of that directive has not yet expired.

[Signatures]