JUDGMENT OF THE COURT (Second Chamber)

10 March 2011 *

In Case C-109/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Bundesarbeitsgericht (Germany), made by decision of 16 October 2008, received at the Court on 23 March 2009, in the proceedings

Deutsche Lufthansa AG

v

Gertraud Kumpan,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, A. Arabadjiev, A. Rosas, U. Lõhmus and P. Lindh (Rapporteur), Judges,

* Language of the case: German.

Advocate General: V. Trstenjak,
Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 6 May 2010,

after considering the observations submitted on behalf of:

— Deutsche Lufthansa AG, by K. Streichardt and A.-C. Ebener, Rechtsanwältinnen,

— Ms Kumpan, by A. Dittmann, Rechtsanwalt,

— the German Government, by M. Lumma and J. Möller, acting as Agents,

— the Belgian Government, by L. van den Broeck, acting as Agent,

— Ireland, by D. O'Hagan and N. Donnelly, acting as Agents,

— the Netherlands Government, by C. Wissels and M. de Grave, acting as Agents,

— the United Kingdom Government, by L. Seeboruth, acting as Agent, and by D. Wyatt QC,

— the European Commission, by J. Enegren and V. Kreuschitz, acting as Agents,

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

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of the principle of non-discrimination on grounds of age and 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 Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

2 The reference has been made in the course of proceedings between Deutsche Lufthansa AG ('Lufthansa') and Ms Kumpan concerning the employment contract between her and that undertaking ('the disputed contract').

Legal context

European Union legislation

3 It follows from recitals 3, 6, 7, 13 to 15 and 17 in the preamble to Directive 1999/70 and from the first three paragraphs in the preamble to the Framework Agreement on fixed-term work concluded on 18 March 1999 by the general cross-industry organisations (ETUC, UNICE and CEEP) ('the Framework Agreement'), which is annexed to that directive, and from paragraphs 3, 5 to 8 and 10 of the general considerations thereof that:

— the completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community by means of an approximation of these conditions while the improvement is being maintained, as regards in particular forms of employment other than open-ended contracts, in order to achieve a better balance between flexibility in working time and security for workers;

— those objectives cannot be sufficiently achieved by the Member States and it was therefore considered appropriate to have recourse to a legally binding Community measure, drawn up in close collaboration with the representatives of management and labour;

— the parties to the Framework Agreement recognise that contracts of indefinite duration are, and will continue to be, the general form of employment relationship, since they contribute to the quality of life of the workers concerned and

improve their performance, but that fixed-term employment contracts respond, in certain circumstances, to the needs of both employers and workers;

— the Framework Agreement sets out the general principles and minimum requirements relating to fixed-term work, establishing, in particular, a general framework designed to ensure equal treatment for fixed-term workers by protecting them against discrimination and to prevent abuse arising from the use of successive fixed-term employment relationships, while referring back to the Member States and social partners (management and labour) for the detailed arrangements for the application of those principles and requirements, in order to take account of the realities of specific national, sectoral and seasonal situations;

— the Council of the European Union thus considered the proper instrument for implementing the Framework Agreement to be a directive, since a directive binds the Member States as to the result to be achieved, but leaves them the choice of form and methods;

— as regards, more specifically, terms used in the Framework Agreement but not specifically defined therein, Directive 1999/70 leaves it to the Member States to define them in conformity with national law or practice, provided that they respect the Framework Agreement; and

— the use of fixed-term employment contracts founded on objective reasons is, according to the signatory parties to the Framework Agreement, a way to prevent abuse to the disadvantage of workers.

4 Article 1 of Directive 1999/70 states that the purpose of the directive is to put into effect the Framework Agreement.

5 The first paragraph of Article 2 of that directive provides:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 10 July 2001, or shall ensure that, by that date at the latest, management and labour have introduced the necessary measures by agreement, the Member States being required to take any necessary measures to enable them at any time to be in a position to guarantee the results imposed by this Directive. …'

6 As provided in Clause 1, the purpose of the 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.'

7 Clause 5 of the Framework Agreement 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.

…’

National legislation

The legislation on fixed-term employment

8 Directive 1999/70 was transposed into German law by the Law on part-time employment and fixed-term employment contracts (Gesetz über Teilzeitarbeit und befristete Arbeitsverträge) of 21 December 2000 (BGBl. 2000 I, p. 1966; 'the TzBfG'). That law entered into force on 1 January 2001.

9 Under Paragraph 14 of the TzBfG:

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

— the operational manpower requirements are only temporary,

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

— one employee replaces another,

— the particular nature of the work justifies the fixed term,

— the fixed term is a probationary period,

— reasons relating to the employee personally justify the fixed term,

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

— 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 of renewals or the maximum duration of the fixed term in derogation from the first sentence. Employers and workers in the sector concerned by an agreement who are not bound by it may agree to apply the agreement.

(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 objective connection with a previous employment contract of indefinite duration concluded with the same employer. Such a connection shall be presumed to exist inter alia where the interval between the 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.'

10 Paragraph 14(3) of the TzBfG was amended by the First Law on the modern supply of services on the labour market (Erstes Gesetz für moderne Dienstleistungen am Arbeitsmarkt) of 23 December 2002 (BGBl. 2002 I, p. 4607). The new version of that provision, which took effect on 1 January 2003, provided:

'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 objective connection with a previous employment contract of indefinite duration concluded with the same employer. Such a connection shall be presumed to exist inter alia where the interval between the two employment contracts is less than six months. Until 31 December 2006, the first sentence shall be applied as if it read "the age of 52" instead of "the age of 58".'

11 The Law on improving employment opportunities for older persons (Gesetz zur Verbesserung der Beschäftigungschancen älterer Menschen) was adopted on 19 April 2007. Paragraph 14(3) of the TzBfG was reworked with effect from the entry into force of that law on 1 May 2007.

The collective agreement

12 Article 19 of Framework Agreement No 1 applicable to Lufthansa cabin crew (MTV Nr. 1 Kabine; 'the collective agreement') provides:

'Termination of the employment contract due to the age limit having been reached

(1) The employment contract shall end – without any notice being required – at the end of the month in which the age of 55 is reached.

(2) Where physically and occupationally fit, a cabin staff member's employment contract may be extended beyond the age of 55 by mutual agreement.

Where a cabin staff member's employment contract is renewed, it shall end – without any notice being required – at the end of the month in which the cabin staff member's next birthday falls. Further renewal is permitted. The employment contract shall in any event end – without any notice being required – at the end of the month in which the cabin staff member reaches the age of 60.

(3) Cabin staff members may, on reaching the age limit, as long as they are still fully capable, continue to be employed in another activity within the company if a flying activity is no longer considered a possibility. In that case, however, no entitlement to continued payment of the salary paid up to then may be derived from the previous activity as a member of cabin staff. No obligation to continue the

employment exists either on the part of [Lufthansa] or on the part of the cabin staff member.'

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

13 Ms Kumpan was born on 12 April 1945. On 15 March 1971 she entered employment with PanAmerican World Airways Inc. ('PanAm') as a flight attendant.

14 According to the order for reference, as part of a purchase of the assets of PanAm, Lufthansa took over part of PanAm's staff, including Ms Kumpan. On 15 March 1991, Ms Kumpan and Lufthansa concluded an employment contract which included the provisions of the collective agreement, including Article 19 thereof concerning the age threshold applicable to cabin staff.

15 On 1 May 1991, Ms Kumpan became a member of Lufthansa's cabin staff.

16 On 12 April 2000, Ms Kumpan reached the age of 55. According to the national court, with effect from that date, each year she concluded with Lufthansa a new fixed-term employment contract of one year, in accordance with Article 19 of the collective agreement, for a post as part-time cabin staff.

17 The disputed contract was concluded on 23 January 2004, during which year Ms Kumpan was going to reach the age of 59. That contract, for one year, was to end on 30 April 2005, the last day of the month of the applicant's 60th birthday.

18 By a letter of 25 November 2004, Ms Kumpan requested, unsuccessfully, an extension to her contract beyond 30 April 2005.

19 On 13 April 2005, Ms Kumpan lodged an application at the Arbeitsgericht Frankfurt am Main (Labour Court, Frankfurt am Main), seeking the continuation of her employment by Lufthansa and submitting that the stipulation of a fixed term expiring on 30 April 2005 was invalid. In support of her action, she argued, firstly, that the age limit of 60 for cabin staff, contained in Article 19(2) of the collective agreement, was not objectively justified for the purposes of Paragraph 14(1) of the TzBfG. Secondly, she claimed that Paragraph 14(3) of the TzBfG, in the version applicable at the date on which the disputed contract was concluded, was contrary to European Union ('EU') law and thus could not be applied to her.

20 The Arbeitsgericht Frankfurt am Main dismissed the application. On appeal, the Hessisches Landesarbeitsgericht (Higher Labour Court, Hessen) overturned that judgment. Lufthansa lodged an appeal on a point of law ('Revision') before the Bundesarbeitsgericht (Federal Labour Court) seeking to have the decision reached at first instance upheld.

21 In the order for reference, the Bundesarbeitsgericht states that it held, by judgment of 31 July 2002, that a clause for the automatic termination of employment contracts when a worker reaches the age of 55, provided for in a collective agreement applicable to cabin staff, is not objectively justified. That is based on the finding that, unlike the position of cockpit staff, cases where an age-related decline in the capacities of a member of the cabin staff is likely to entail a serious risk to passengers and crew are so theoretical and improbable that they cannot justify an age limit of 55 years for that type of worker.

22 The national court takes the view that that solution can be transposed to the age limit of 60 years fixed in Article 19(2) of the collective agreement. That court considers that the risk to air safety connected with the age of cabin staff would be relevant only in the event of an emergency evacuation of an aircraft. In addition, it points out that there are no national or international rules on air safety which lay down a maximum age for cabin staff, which is not the case for cockpit staff. The court deduces therefrom that the parties to the collective agreement cannot refer to any international rule to justify their view of a possible risk due to age-related decline in the capacities of cabin staff.

23 Consequently, that court takes the view that there are no objective grounds, for the purposes of Paragraph 14(1) of the TzBfG, to justify the fixed term of the employment contract of 23 January 2004 or the age limit laid down in Article 19(2) of the collective agreement.

24 Furthermore, the Bundesarbeitsgericht considers that Paragraph 14(2) of the TzBfG does not apply to the situation at issue in the main proceedings.

25 It takes the view that the disputed contract can therefore be justified only under the first sentence of Paragraph 14(3) of the TzBfG, in the absence of any close objective connection between that contract and a previous contract of indefinite duration concluded with the same employer.

26 Having regard to the judgment in Case C-144/04 *Mangold* [2005] ECR I-9981, the national court is doubtful as to whether Paragraph 14(3) of the TzBfG complies with the provisions of EU law on discrimination on grounds of age and whether that provision is applicable to the dispute in the main proceedings.

27 That court is also doubtful as to the conformity of Paragraph 14(3) of the TzBfG with Clause 5(1) of the Framework Agreement which is intended to protect workers against abuse caused by successive fixed-term employment contracts or relationships.

28 In those circumstances the Bundesarbeitsgericht decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Are Article 1, Article 2(1) and Article 6(1) of [Directive 2000/78] and/or the general principles of Community law to be interpreted as precluding a provision of national law, which entered into force on 1 January 2001, under which fixed-term employment contracts may be agreed without further conditions with workers simply because the latter have reached the age of 58?

2. Is Clause 5(1) of the … Framework Agreement … to be interpreted to the effect that it precludes a provision of national law which, without further conditions, allows the conclusion over an indefinite period of an unlimited number of successive fixed-term employment contracts without objective grounds, simply because the worker has reached the age of 58 by the time the fixed term employment relationship begins and there is no close objective connection with a previous employment relationship of indefinite duration with the same employer?

3. If Questions 1 and/or 2 are answered in the affirmative:

Must the national courts disapply the provision of national law?'

Consideration of the questions referred

The second and third questions

29 By its second and third questions, which it is appropriate to examine together, the national 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, which authorises, for any worker aged over 58, the conclusion of an unlimited number of successive fixed-term contracts without objective grounds therefor, where there is no close objective connection with a previous contract of indefinite duration concluded with the same employer. If that is the case, the national court asks whether it is required to disapply the national rules which are contrary to EU law.

30 The Court has already held that the Framework Agreement proceeds on the premiss that employment contracts of indefinite duration are the general form of employment relationship (see Case C-212/04 *Adeneler and Others* [2006] ECR I-6057, paragraph 61). The use of fixed-term contracts as opposed to contracts of indefinite duration is therefore exceptional.

31 The Court has also held that the benefit of stable employment is viewed as a major element in the protection of workers (see *Mangold*, paragraph 64, and *Adeneler and Others*, paragraph 62). It deduced therefrom that the Framework Agreement seeks to place limits on successive use of fixed-term employment contracts, which is regarded as a potential source of abuse to the disadvantage of workers, by laying down as a minimum a number of protective provisions designed to prevent the status of employees from being insecure (see *Adeneler and Others*, paragraph 63).

32 Clause 5(1) of the Framework Agreement is intended specifically to prevent abuse arising from the use of successive fixed-term employment contracts or relationships. To this end, that clause imposes on Member States the obligation to introduce into domestic law one or more of the measures listed in Clause 5(1)(a) to (c) where equivalent legal provisions intended to prevent effectively the misuse of successive fixed-term employment contracts do not already exist in the Member State concerned (*Adeneler and Others*, paragraphs 64 and 65; Case C-53/04 *Marrosu and Sardino* [2006] ECR I-7213, paragraph 44; and Case C-180/04 *Vassallo* [2006] ECR I-7251, paragraph 35).

33 The three measures thus listed concern, respectively, objective reasons justifying the renewal of such contracts or relationships, the maximum total duration of successive fixed-term employment contracts or relationships and the number of renewals of such contracts or relationships.

34 However, Clause 5(1) of the Framework Agreement, while setting Member States a general objective consisting in the prevention of such abuses, leaves them free to choose the means of achieving that objective (see, to that effect, Case C-268/06 *Impact* [2008] ECR I-2483, paragraph 70).

35 Under that provision, it is effectively left to the discretion of the Member States to rely to that end on one or more of the measures listed in that clause, or even on existing equivalent legal measures, while taking account of the needs of specific sectors and/or categories of workers (*Impact*, paragraph 71).

36 It follows that, by virtue of that provision, the Member States have a certain discretion as to how they achieve that objective, provided nevertheless that they guarantee the result imposed by EU law, as is clear not only from the third paragraph of

Article 288 TFEU, but also from the first paragraph of Article 2 of Directive 1999/70 read in the light of recital 17 in the preamble to that directive (see, to that effect, *Adeneler and Others*, paragraph 68; order of 12 June 2008 in Case C-364/07 *Vassilakis and Others*, paragraph 87; and Joined Cases C-378/07 to C-380/07 *Angelidaki and Others* [2009] ECR I-3071, paragraph 80).

37 The discretion conferred on the Member States under Clause 5(1) of the Framework Agreement must also be exercised in compliance with EU law and, in particular, its general principles as well as the other provisions of the Framework Agreement (see, to that effect, *Mangold*, paragraphs 50 to 54 and 63 to 65, and *Angelidaki and Others*, paragraph 85).

38 It is apparent from the explanations provided by the national court and from the observations submitted to the Court that the purpose of Paragraph 14(3) of the TzBfG is to promote the vocational integration of unemployed older workers, given that they encounter considerable difficulties in finding work again.

39 It should be noted that Paragraph 14(3) of the TzBfG, as a means of implementing that legitimate employment policy objective, does not apply only to unemployed older workers, but to all workers who meet an age requirement.

40 Although designed to encourage the return to employment of older unemployed workers, Paragraph 14(3) of the TzBfG has the effect of lowering the level of social protection for all older workers by depriving them of all the protective measures set out in Clause 5(1) of the Framework Agreement intended to prevent the abusive use of successive fixed-term contracts.

41 For the persons falling within its scope, Paragraph 14(3) of the TzBfG does not provide for any of the measures set out in Clause 5(1)(a) to (c) of the Framework Agreement intended to prevent effectively the misuse of successive fixed-term employment contracts or relationships. On the contrary, Paragraph 14(3) of the TzBfG provides that the conclusion of a fixed-term employment contract with workers who have reached a certain age is not subject to there being objective grounds therefor. That provision does not contain any condition relating to the total maximum duration of successive fixed-term contracts or to the number of times they may be renewed.

42 The Court has already held that a national provision which merely authorises recourse to successive fixed-term contracts, in a general and abstract manner by a rule of statute or secondary legislation, does not accord with the requirements as stated in Clause 5(1) of the Framework Agreement (*Adeneler and Others*, paragraph 71).

43 Such a provision, which does not justify specifically the use of successive fixed-term employment contracts by the presence of objective factors relating to the particular features of the activity concerned and to the conditions under which it is carried out, carries a real risk that it will result in misuse of that type of contract and, accordingly, is not compatible with the objective of the Framework Agreement and the requirement that it have practical effect (*Adeneler and Others*, paragraph 72).

44 Nevertheless, as is apparent from the provisions of Clause 5(1) of the Framework Agreement, national legislation which allows a succession of fixed-term contracts without requiring objective grounds or laying down a maximum total duration of successive fixed-term contracts or limiting the number of renewals thereof can be regarded as complying with the Framework Agreement if the domestic legal order of the Member State concerned contains another effective equivalent measure to prevent and, where relevant, penalise the misuse of successive fixed-term contracts (see, to that effect, *Adeneler and Others*, paragraph 105; *Marrosu and Sardino*, paragraph 49; and *Vassallo*, paragraph 34).

45 In that regard, it is appropriate to note that Paragraph 14(3) of the TzBfG institutes a limit on the use of fixed-term contracts for persons who have reached the age threshold set. That provision precludes the setting of a fixed term 'where there is a close objective connection with a previous employment contract of indefinite duration concluded with the same employer' and states that '[s]uch a connection shall be presumed to exist inter alia where the interval between the two employment contracts is less than six months'.

46 That limit must be interpreted in accordance with the purpose of the Framework Agreement and such that it does not render meaningless the principle that contracts of indefinite duration are the general form of employment relationship (see, to that effect, *Adeneler and Others*, paragraph 73).

47 It is apparent from the explanations given by the national court that the limit laid down in Paragraph 14(3) of the TzBfG cannot be applied to the disputed contract. Despite the fact that the contract was concluded for an activity identical to that forming the subject-matter of the previous contracts and that it directly continues from them in time, the national court takes the view that it does not have 'a close objective connection with a previous employment contract of indefinite duration' for the purposes of Paragraph 14(3) of the TzBfG, since the applicant had been employed since 1 May 2000 on the basis of fixed-term contracts.

48 That interpretation would amount to reducing the scope of the only restriction on the possibility laid down in Paragraph 14(3) of the TzBfG of concluding an unlimited number of successive fixed-term contracts without objective grounds. That limit would be inapplicable to situations where a fixed-term employment contract has not been immediately preceded by a contract of indefinite duration concluded with the same employer and an interval of several years separates those contracts, even though, during that entire period, the initial employment relationship continued in

respect of the same activity, with the same employer, by means of an uninterrupted succession of fixed-term contracts.

49 That interpretation would also amount to endorsement of a factual situation such as that at issue in the main proceedings on the sole ground that a period of four years separates the conclusion of the disputed contract from that of the first fixed-term contract and that, despite the fact that Ms Kumpan, with a considerable length of service in her post, saw her employment relationship changed into an uninterrupted succession of five one-year contracts to perform the same work.

50 Such an interpretation is contrary to the purpose of the Framework Agreement and of Clause 5(1) thereof, which is to protect workers from instability of employment and to prevent abuses arising from the use of successive fixed-term employment contracts or relationships.

51 It should, however, be borne in mind that the Court has already held that Clause 5(1) of the Framework Agreement does not appear, so far as its subject-matter is concerned, to be unconditional and sufficiently precise for individuals to be able to rely upon it before a national court. Under Clause 5(1), it is left to the discretion of the Member States to rely, for the purposes of preventing the misuse of fixed-term employment contracts, on one or more of the measures listed in that clause, or even on existing equivalent legal measures, while taking account of the needs of specific sectors and/or categories of workers. In addition, it is not possible to determine sufficiently the minimum protection which should, on any view, be implemented pursuant to Clause 5(1) of the Framework Agreement (*Angelidaki and Others*, paragraph 196).

52 However, the Court has consistently held that, when national courts apply domestic law, they are bound to interpret it, to the fullest extent possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result

sought by the directive and consequently comply with the third paragraph of Article 288 TFEU. This obligation to interpret national law in conformity with EU law concerns all provisions of national law, whether adopted before or after the directive in question (Case C-106/89 *Marleasing* [1990] ECR I-4135, paragraph 8, and *Angelidaki and Others*, paragraph 197).

53 The requirement that national law be interpreted in conformity with EU law is inherent in the system of the FEU Treaty, since it permits national courts, for the matters within their jurisdiction, to ensure the full effectiveness of EU law when they determine the disputes before them (*Angelidaki and Others*, paragraph 198).

54 It is true that the obligation on a national court to refer to the content of a directive when interpreting and applying the relevant rules of domestic law is limited by general principles of law, particularly those of legal certainty and non-retroactivity, and that obligation cannot serve as the basis for an interpretation of national law *contra legem* (*Angelidaki and Others*, paragraph 199).

55 The principle that national law must be interpreted in conformity with EU law none the less requires national courts to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law, with a view to ensuring that the directive in question is fully effective and achieving an outcome consistent with the objective pursued by it (*Angelidaki and Others*, paragraph 200).

56 It is therefore for the national court, to the fullest extent possible, and where there has been misuse of successive fixed-term employment contracts, to interpret and apply the relevant provisions of national law in such a way that it is possible duly to penalise the abuse and to nullify the consequences of the breach of EU law.

57 Accordingly, the answer to the second and third questions is that Clause 5(1) of the Framework Agreement must be interpreted as meaning that the concept of 'a close objective connection with a previous employment contract of indefinite duration concluded with the same employer' provided for in Paragraph 14(3) of the TzBfG must be applied to situations in which a fixed-term contract has not been immediately preceded by a contract of indefinite duration concluded with the same employer and an interval of several years separates those contracts, where, for that entire period, the initial employment relationship continued for the same activity, with the same employer, by means of an uninterrupted succession of fixed-term contracts. It is for the national court, to the fullest extent possible, to interpret the relevant provisions of national law in such a way as to comply with Clause 5(1) of the Framework Agreement.

58 Having regard to the answer given to the second and third questions, it is unnecessary to answer the first question.

Costs

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

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

Clause 5(1) of the Framework Agreement on fixed-term work concluded on 18 March 1999 and 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 meaning that the concept of 'a close objective connection with a previous employment contract of indefinite duration concluded with the same employer', provided for in Paragraph 14(3) of the Law on part-time employment and fixed-term employment contracts (Gesetz über Teilzeitarbeit und befristete Arbeitsverträge) of 21 December 2000, must be applied to situations in which a fixed-term contract has not been immediately preceded by a contract of indefinite duration concluded with the same employer and an interval of several years separates those contracts, where, for that entire period, the initial employment relationship continued for the same activity, with the same employer, by means of an uninterrupted succession of fixed-term contracts. It is for the national court, to the fullest extent possible, to interpret the relevant provisions of national law in such a way as to comply with Clause 5(1) of the Framework Agreement.

[Signatures]