Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

3 June 2021 *

(Reference for a preliminary ruling – Social policy – Directive 1999/70/EC – Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Clause 5 – Applicability – Concept of 'successive fixed-term employment contracts or relationships' – Fixed-term employment contracts in the public sector – Measures to prevent and penalise abuse resulting from the use of successive fixed-term employment contracts or relationships – Concept of 'objective reasons' justifying such contracts – Equivalent legal measures – Obligation to interpret national law in conformity with EU law – Economic crisis)

In Case C-726/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Superior de Justicia de Madrid (High Court of Justice, Madrid, Spain), made by decision of 23 September 2019, received at the Court on 1 October 2019, in the proceedings

Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario

v

JN,

THE COURT (Seventh Chamber),

composed of A. Kumin (Rapporteur), President of the Chamber, P.G. Xuereb and I. Ziemele, Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario, by L. Santiago Lara, letrada,

– the Spanish Government, by L. Aguilera Ruiz and S. Jiménez García, acting as Agents,

* Language of the case: Spanish.

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

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Clause 5 of the framework agreement on fixed-term work, concluded on 18 March 1999 ('the Framework Agreement'), which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

2 The request has been made in proceedings between the Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario (Madrid Institute for Rural, Agricultural and Food Research and Development of the Autonomous Community of Madrid, Spain) ('IMIDRA') and JN concerning the termination of the fixed-term employment contract concluded between IMIDRA and JN in order to fill a vacant post.

Legal framework

European Union law

3 According to recital 17 of Directive 1999/70:

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

4 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. They shall forthwith inform the Commission thereof.'

5 Paragraph 7 of the general considerations in the Framework Agreement is worded as follows:

'Whereas the use of fixed-term employment contracts based on objective reasons is a way to prevent abuse'.

6 Pursuant to Clause 1 of the Framework Agreement, the purpose of that agreement is, first, to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination and, second, to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships.

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.'

Spanish law

8 Article 9(3) of the Constitución española (Spanish Constitution) provides:

'The Constitution guarantees the principle of legality, the hierarchy of legal provisions, the publicity of legal enactments, the non-retroactivity of punitive measures that are unfavourable to or restrict individual rights, the certainty that the rule of law will prevail, the accountability of the public authorities, and the prohibition against arbitrary action on the part of the latter.'

9 Article 4(1) of Real Decreto 2720/1998 por el que se desarrolla el artículo 15 del Estatuto de los Trabajadores en materia de contratos de duración determinada (Royal Decree 2720/1998 implementing Article 15 of the Workers' Statute on fixed-term contracts) of 18 December 1998 (BOE No 7 of 8 January 1999, p. 568) defines the temporary replacement contract as the contract concluded in order to replace a worker in the undertaking who has a reserved right to his or her post under a regulation, a collective agreement or an individual agreement, or to provide temporary cover for a post during the recruitment or promotion procedure to provide permanent cover for that post.

10 According to Article 4(2) of that royal decree, the contract must identify, in particular, the worker who is being replaced and the ground for replacement or the post that will be definitively covered following the recruitment or promotion procedure. The duration of the temporary replacement contract concluded in order to replace a worker in the undertaking who has a reserved right to his or her post is to correspond to the duration of that worker's absence. The duration of a temporary replacement contract concluded in order to provide temporary cover for a post during the recruitment or promotion procedure to provide permanent cover for that post is to correspond to the duration of that procedure. It may not exceed three months and a new contract having the same subject matter may not be concluded once that maximum period has expired. In recruitment procedures conducted by public authorities in order to fill posts, the duration of temporary replacement contracts is to coincide with those procedures in accordance with the provisions of their specific regulations.

11 The texto refundido de la Ley del Estatuto Básico del Empleado Público (consolidated text of the Law on the basic regulations relating to public employees), approved by Real Decreto Legislativo 5/2015 (Royal Legislative Decree 5/2015) of 30 October 2015 (BOE No 261, of 31 October 2015, p. 103105; 'the EBEP'), provides, in Article 70 thereof, entitled 'List of public sector vacancies':

'1. Human resource needs which receive a budget allocation and are to be met by appointing new members of staff shall be included on a list of public sector vacancies or filled by means of another similar instrument for managing the fulfilment of staffing needs, which involves organising the relevant recruitment procedures for the posts to be filled (up to 10% additional posts) and setting the maximum period for the publication of notices. In any event, the implementation of the list of public sector vacancies or similar instrument must take place within a non-renewable period of three years.

2. The list of public sector vacancies or similar instrument, approved annually by the governing bodies of the public administration, shall be published in the corresponding official gazette.

…'

The main proceedings and the questions referred for a preliminary ruling

12 On 23 June 2003, IMIDRA concluded a fixed-term contract with JN to fill a vacant post connected with a 2002 list of public sector vacancies. At that time, JN was working as a catering assistant.

13 During 2005, a competition was organised to fill the post occupied by JN. However, that post was not selected by any of the successful candidates in that competition, with the result that JN's temporary replacement contract was extended during 2008.

14 In 2009, the Consejería de Presidencia, Justicia e Interior de la Comunidad de Madrid (Regional Department for the Presidency, Justice and Internal Affairs of the Autonomous Community of Madrid, Spain) organised a new competition for access to contract staff posts in the professional category of catering assistant.

15 By decision of 27 July 2016, the Dirección General de la Función Pública (Directorate-General for the Civil Service, Spain) allocated those posts to the successful candidates in that competition.

16 On 3 October 2016, JN received a letter informing her that her employment contract had been terminated on the ground that the vacant post she was occupying had been allocated to a permanent worker.

17 On 24 May 2017, JN challenged her dismissal before the Juzgado de lo Social n.º 40 de Madrid (Social Court No 40, Madrid, Spain).

18 By decision of 26 September 2018, that court partially upheld JN's action. It held, in essence, that the employment relationship at issue had become a non-permanent relationship of indefinite duration, since it had exceeded the three-year period laid down in Article 70 of the EBEP for filling the vacant post which JN occupied. Accordingly, IMIDRA was ordered to pay JN compensation for dismissal of EUR 3 266.48, that is to say 20 days' wages for each year of service, in accordance with the case-law of the Tribunal Supremo (Supreme Court, Spain).

19 IMIDRA appealed against that judgment to the referring court, the Tribunal Superior de Justicia de Madrid (High Court of Justice, Madrid, Spain). According to the referring court, the temporary replacement contract at issue in the main proceedings was reclassified as a contract of indefinite duration because its date of termination was unforeseeable. However, such unforeseeability is contrary to the very nature of a temporary contract, which must, in accordance with the law, have a known termination date. Moreover, the referring court considers that there can be no acceptable justification for the delay in organising a recruitment procedure for the vacant post, which led, in the present case, to an employment relationship lasting more than 13 years.

20 Nevertheless, the referring court states that, according to the case-law of the Tribunal Supremo (Supreme Court), a temporary replacement contract, such as that at issue in the main proceedings, cannot be reclassified as a non-permanent employment relationship of indefinite duration. Neither the conclusion of successive temporary replacement contracts nor the extension of such contracts, having the effect of extending the employment relationship for a period of up to 20 years, is considered to be abusive. It follows that a worker who, having worked for many years under such contracts, loses his or her job unexpectedly because the vacant post has been filled is not entitled to any compensation.

21 Moreover, according to the referring court, although, like the Juzgado de lo Social n.º 40 de Madrid (Social Court No 40, Madrid), it is possible to interpret Article 70 of the EBEP as laying down a maximum duration for a temporary replacement contract, in so far as that provision prescribes a three-year time limit for the implementation of recruitment procedures, thereby making it possible indirectly to prevent the extension of temporary employment relationships of persons occupying vacant posts, the Tribunal Supremo (Supreme Court) has held, on numerous occasions, that this is not the case. Indeed, the Tribunal Supremo (Supreme Court) considers that the time limit provided for in Article 70 of the EBEP does not constitute an absolute guarantee and is not automatic. In particular, according to that court, that time limit could be extended *sine die* for various reasons and was so extended, inter alia, on account of the severe economic crisis of 2008.

22 It follows, according to the referring court, that a temporary replacement contract often runs for decades and that its duration is subject to the discretion of the employer, that is to say, in the present case, the administration, which may decide, without justification, whether or not to initiate the recruitment process to fill the vacant post and choose the opportune moment to initiate that process. That situation is contrary to the principle of legal certainty, as guaranteed in Article 9(3) of the Spanish Constitution.

23 In that context, the referring court has doubts as to whether the national legislation, as interpreted by the Tribunal Supremo (Supreme Court), is compatible with Clause 5 of the Framework Agreement.

24 In those circumstances, the Tribunal Superior de Justicia de Madrid (High Court of Justice, Madrid) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Can the creation of a temporary contract such as a temporary replacement contract to cover a vacant post, where the duration of the contract is left to the discretion of the employer, who decides whether or not to fill the vacant post, when to do so and how long the process lasts, be considered compatible with the practical effect of Clauses 1 and 5 of Directive 1999/70?

(2) Should the requirement established by Clause 5 of … Directive [1999/70] to introduce one or more of the measures it stipulates in order to prevent abuse of temporary contracts be considered to have been transposed into Spanish law in the case of temporary replacement contracts to cover vacant posts, given that, according to the case-law, the law does not impose a time limit on such employment relationships, it does not specify the objective reasons that justify the renewal of such relationships, and it does not stipulate how many times those relationships may be renewed?

(3) Is the objective and practical effect of the Framework Agreement undermined by the fact that, according to the case-law, Spanish law does not contain any effective measure to prevent and penalise abuse in respect of workers on temporary replacement contracts to cover vacant posts, in that: there is no limit on the maximum total duration of such contracts, which never become permanent contracts or non-permanent contracts of an indefinite duration, no matter how many years elapse; workers do not receive any compensation on the termination of their employment; the public authority is not required to justify the renewal of a temporary replacement contract where, for years, the vacant post is not included in the list of public [sector] vacancies or the selection process is delayed?

(4) Should an employment relationship be regarded as having satisfied the purpose of … Directive [1999/70] where it is not time limited, its duration, according to the case-law arising from the judgment of 5 June 2018, *Montero Mateos* (C-677/16, EU:C:2018:393), is unusually long and is entirely at the discretion of the employer, with no limit or justification, the worker is unable to predict when the contract will come to an end, and the contract may continue until the worker retires; or should such a relationship be deemed an abuse?

(5) Under the judgment of 25 October 2018, *Sciotto* (C-331/17, EU:C:2018:859), can the financial crisis of 2008 be considered to be a justification, in the abstract, for the absence of any measure to prevent the abuse of successive fixed-term employment relationships within the meaning of Clause 5(1) of the Framework Agreement, which could prevent or discourage the employment relationship between the complainant and the Community of Madrid from continuing from 2003 until 2008, at which point the relationship is renewed and subsequently continues until 2016, meaning that the replacement contract continued for 13 years?'

The questions referred

The applicability of Clause 5 of the Framework Agreement

25 IMIDRA and the Spanish Government submit, in essence, that the request for a preliminary ruling is hypothetical and therefore inadmissible, since Clause 5 of the Framework Agreement does not apply in a situation, such as that at issue in the main proceedings, which is characterised not by successive fixed-term employment contracts or relationships but by the conclusion of a single temporary replacement contract.

26 As regards the applicability of Clause 5 of the Framework Agreement in the case in the main proceedings, it should be borne in mind that the purpose of that clause is to implement one of the objectives of that agreement, namely to place limits on successive recourse to fixed-term employment contracts or relationships, regarded as a potential source of abuse to the detriment of workers, by laying down as a minimum a number of protective provisions designed to ensure that

the status of employees is not made insecure (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term employment contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 36 and the case-law cited).

27 Accordingly, Clause 5(1) of the Framework Agreement requires, with a view to preventing abuse of successive fixed-term employment contracts or relationships, the effective and binding adoption by Member States of at least one of the measures listed in that provision, where their domestic law does not already include equivalent legal measures (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term employment contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 37 and the case-law cited).

28 Therefore, it is clear from the wording of that provision of the Framework Agreement and from settled case-law that that provision is applicable solely when there are successive fixed-term employment contracts or relationships, so that a contract which is the very first and only fixed-term employment contract does not fall within its scope (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term employment contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 38 and the case-law cited).

29 Moreover, it should be pointed out that, in accordance with settled case-law, Clause 5(2)(a) of the Framework Agreement provides that it is, as a general rule, the task of the Member States and/or the social partners to determine under what conditions fixed-term employment contracts or relationships are to be regarded as 'successive' (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term employment contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 40 and the case-law cited).

30 While the reason for such a reference back to national authorities for the purpose of establishing the specific rules for application of the term 'successive' within the meaning of the Framework Agreement is the concern to preserve the diversity of the relevant national rules, it is, however, to be remembered that the margin of appreciation thereby left to the Member States is not unlimited, because it cannot in any event go so far as to compromise the objective or the practical effect of the Framework Agreement. In particular, this discretion must not be exercised by national authorities in such a way as to lead to a situation liable to give rise to abuse and thus to thwart that objective (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term employment contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 41 and the case-law cited).

31 Member States are required to guarantee the result imposed by EU law, as imposed not only by the third paragraph of Article 288 TFEU, but also by the first paragraph of Article 2 of Directive 1999/70, read in the light of recital 17 of that directive (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term employment contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 42 and the case-law cited).

32 The limits on the discretion left to the Member States, mentioned in paragraph 30 of the present judgment, are most particularly necessary in respect of a key concept, such as whether employment relationships are successive, which is determinative of the definition of the very scope of the provisions of national law designed to implement the Framework Agreement (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term employment contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 43 and the case-law cited).

33 In the present case, it is clear from the order for reference that the temporary replacement contract concluded by JN in 2003 was extended in 2008, since the post which she occupied was not selected by any successful candidate in the competition which had been organised in 2005 with a view to filling that post. Thus, it appears that there is not, *sensu stricto*, a succession of two or more employment contracts, involving the existence and formal conclusion of two or more separate contracts, each one succeeding the other, but the automatic extension of an initial fixed-term contract.

34 Moreover, the referring court states that that worker's continuation in a vacant post on the basis of a fixed-term employment contract is the consequence of the employer's failure to comply with its legal obligation to organise, within the relevant deadline, a selection procedure seeking definitively to fill that vacant post. Since the duration of that procedure was limited to three years, exceeding that duration is tantamount to a tacit renewal of the initial temporary replacement contract. Furthermore, according to the referring court, where no successful candidate from the selection procedure has chosen to occupy the vacant post and that post is the subject of a new recruitment procedure, the temporary replacement contract should be regarded as having been novated. Accordingly, in the present case, the employment relationship was implicitly extended or even novated a number of times over several years, as the appointment of a successful candidate to that post only took place in 2016.

35 The Court has held that finding an absence of successive fixed-term employment relationships, within the meaning of Clause 5 of the Framework Agreement, on the sole ground that the first fixed-term employment contract of the worker concerned had been extended automatically, without any formal conclusion in writing of one or more new fixed-term employment contracts in a situation in which, moreover, that worker's continuation in a vacant post on the basis of a fixed-term employment relationship is the consequence of the employer's failure to comply with its legal obligation to organise, within the relevant deadline, a selection procedure seeking definitively to fill that vacant post, with the result that his or her employment relationship was consequently implicitly extended for several years, risks compromising the object, the aim and the practical effect of that agreement (see, to that effect, judgments of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 61, and of 11 February 2021, *M.V. and Others (Successive fixed-term employment contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 44).

36 Such a restrictive interpretation of the concept of 'successive fixed-term employment relationships' would allow insecure employment of workers over a period of years (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term employment contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 45 and the case-law cited).

37 Further, that restrictive interpretation would be liable to have the effect not only that, in reality, a large number of fixed-term employment relationships would not qualify for the protection of workers sought by Directive 1999/70 and the Framework Agreement, because the objective pursued by that directive and that agreement would lose a large part of its substance, but also that the abuse of such relationships by employers in order to meet permanent and long-term staffing needs would be permitted (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term employment contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 46 and the case-law cited).

38 In that context, it is also clear that the concept of the 'term' of the employment relationship is an essential constituent of any fixed-term contract. In the wording of Clause 3(1) of the Framework Agreement, 'the end of the contract or of the employment relationship is determined by objective conditions such as reaching a specific date, completing a specific task or the occurrence of a specific event'. The alteration of the date for the end of a fixed-term employment contract constitutes accordingly a change in the essence of that contract, which may legitimately be treated as equivalent to the conclusion of a new fixed-term employment relationship that succeeds the preceding employment relationship, and accordingly falls within the scope of Clause 5 of the Framework Agreement (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term employment contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 47).

39 In the present case, since the automatic extension of the initial fixed-term contract may be treated as the equivalent of renewal and, consequently, as the conclusion of a separate fixed-term contract, the situation at issue in the main proceedings is characterised not by the conclusion of a single contract, but by the conclusion of contracts which may indeed be classified as 'successive' within the meaning of Clause 5 of the Framework Agreement, which it is for the referring court to determine.

40 Clause 5 of the Framework Agreement must therefore be interpreted as meaning that the expression 'successive fixed-term employment contracts or relationships' therein also covers the automatic extension of the fixed-term employment contracts of workers in the public sector, such as the temporary replacement contract at issue in the main proceedings, notwithstanding the fact that the generally prescribed formal requirement that successive contracts be concluded in writing has been disregarded.

41 There is therefore nothing to preclude the applicability of Clause 5 of the Framework Agreement to the dispute in the main proceedings, with the result that the questions raised must be answered.

The first four questions

42 By its first four questions, which should be considered together, the referring court asks, in essence, whether Clause 5 of the Framework Agreement must be interpreted as precluding national legislation, as interpreted by the national case-law, which, so far as concerns temporary replacement contracts, does not contain any indication as to the objective reasons justifying the renewal of those contracts or their maximum duration, does not specify the maximum number of times they can be renewed, does not include equivalent legal measures and does not provide for any compensation for workers in the event of dismissal.

43 As has been pointed out in paragraphs 26 and 27 of the present judgment, 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 the use of successive 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 (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term employment contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 54 and the case-law cited).

44 The Member States enjoy a certain discretion in that regard since they have the choice of relying on one or more of the measures listed in Clause 5(1)(a) to (c) of the Framework Agreement, or on existing equivalent legal measures, while taking account of the needs of specific sectors and/or categories of workers (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term employment contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 55 and the case-law cited).

45 In that way, Clause 5(1) of the Framework Agreement assigns to the Member States a general objective of preventing such abuse, while leaving to them the choice as to how to achieve it, provided that they do not compromise the objective or the practical effect of the Framework Agreement (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term employment contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 56 and the case-law cited).

46 Furthermore, where, as in the present case, EU law does not lay down any specific penalties in the event that instances of abuse are nevertheless established, 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 provisions adopted pursuant to the Framework Agreement are fully effective (judgment of 25 October 2018, *Sciotto*, C-331/17, EU:C:2018:859, paragraph 64 and the case-law cited).

47 While, in the absence of relevant EU rules, the detailed rules for implementing such provisions are a matter for the domestic legal order of the Member States, under the principle of their procedural autonomy, they 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) (judgment of 7 March 2018, *Santoro*, C-494/16, EU:C:2018:166, paragraph 30 and the case-law cited).

48 It follows that, where abuse arising 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 the first paragraph of Article 2 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' (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 88 and the case-law cited).

49 In that regard, it should be recalled that, as the Court has observed on many occasions, 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 (judgment of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraph 80 and the case-law cited).

50 In the present case, as regards the national legislation establishing the rules on temporary replacement contracts, it should be noted 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 law (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 89 and the case-law cited).

51 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, punishing the misuse of successive fixed-term employment contracts or relationships (judgment of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraph 82 and the case-law cited).

52 However, the Court, when giving a preliminary ruling, may, where appropriate, provide clarification designed to give those courts guidance in their assessment (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 91 and the case-law cited).

The existence of measures to prevent the abusive use of successive fixed-term employment contracts

53 As regards the existence of measures to prevent the use of successive fixed-term contracts, for the purposes of Clause 5(1) of the Framework Agreement, it is apparent from the documents before the Court that the national legislation at issue in the main proceedings permits the conclusion of successive temporary replacement contracts pending the organisation of a competition and, where appropriate, the recruitment of a permanent worker to the post occupied until then under those contracts, without providing for measures to limit the maximum total duration of those contracts or the number of renewals of such contracts, for the purposes of Clause 5(1)(b) and (c).

54 In those circumstances, it must be ascertained whether the renewal of such employment contracts is justified by an 'objective reason' for the purposes of Clause 5(1)(a) of the Framework Agreement, as IMIDRA claims, in essence, and, if so, whether the national measures concerning the rules on such contracts constitute 'equivalent legal measures to prevent abuse', within the meaning of that clause, as argued, in particular, by the Spanish Government.

55 As regards, in the first place, the existence in national law of objective reasons justifying the renewal of fixed-term employment contracts, for the purposes of Clause 5(1)(a) of the Framework Agreement, it should be noted that, as is stated in paragraph 7 of the general considerations in the Framework Agreement, the signatory parties to the Framework Agreement considered that the use of fixed-term employment contracts founded on 'objective reasons' is a way to prevent abuse (judgment of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraph 86 and the case-law cited).

56 Moreover, the Court has already held that the temporary replacement of a worker in order to satisfy, in essence, the employer's temporary staffing requirements may, in principle, constitute such an 'objective reason' (judgment of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraph 91 and the case-law cited).

57 It follows that national legislation which permits the renewal of fixed-term contracts in order temporarily to fill a post within the administration of the Autonomous Community of Madrid pending the outcome of recruitment procedures for a permanent staff member is not, in itself, contrary to the Framework Agreement.

58 However, as the Court has held on many occasions, the renewal of fixed-term employment contracts or relationships in order to cover needs which are, in fact, not temporary in nature but, on the contrary, fixed and permanent is not justified for the purposes of Clause 5(1)(a) of the Framework Agreement. Such use of fixed-term employment contracts or relationships conflicts directly with the premiss on which the Framework Agreement is founded, namely that employment contracts of indefinite duration are the general form of employment relationship, even though fixed-term employment contracts are a feature of employment in certain sectors or in respect of certain occupations and activities (judgment of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraph 100 and the case-law cited).

59 In order for Clause 5(1)(a) of the Framework Agreement to be complied with, it must therefore be specifically verified that the renewal of successive fixed-term employment contracts or relationships is intended to cover temporary needs (judgment of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraph 101 and the case-law cited).

60 It is necessary for that purpose to consider in each case all the circumstances at issue, taking account, in particular, of the number of successive contracts concluded with the same person or for the purposes of performing the same work, in order to ensure that fixed-term employment contracts or relationships, even those ostensibly concluded to meet a need for replacement staff, are not misused by employers (judgment of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraph 102 and the case-law cited).

61 Whilst, in accordance with the case-law referred to in paragraph 51 of this judgment, under the procedure provided for by Article 267 TFEU any assessment of the facts falls within the jurisdiction of the national courts, it must be stated that it is apparent from the documents before the Court that the national legislation, in particular Article 70 of the EBEP, prescribes a three-year time limit for the organisation of recruitment procedures. Therefore, as the referring court points out, that time limit makes it possible, indirectly, to prevent the perpetuation of temporary employment relationships of persons occupying vacant posts. Nevertheless, according to the case-law of the Tribunal Supremo (Supreme Court), that time limit may be extended for various reasons, so that it is both variable and uncertain.

62 It follows that, subject to the verifications which it is for the referring court to carry out, that national legislation, as interpreted by the national case-law, in the absence of any precise deadline for the organisation and completion of recruitment procedures definitively to fill the post until then occupied by a worker under a fixed-term contract, appears to be such as to permit, in breach of Clause 5(1)(a) of the Framework Agreement, the renewal of such fixed-term employment contracts in order to cover needs which are, in fact, not temporary in nature but, on the contrary, fixed and permanent.

63 Consequently, although that national legislation appears formally to limit the use of temporary replacement contracts, which have been concluded pending the organisation of competitive selection procedures to fill the post concerned definitively, to a single period that comes to an end when those procedures are completed, it nevertheless does not make it possible to ensure that the actual application of that objective reason is consistent with the requirements laid down in Clause 5(a) of the Framework Agreement, which it is for the referring court to determine.

64 As regards, in the second place, the existence in national law of 'equivalent legal measures to prevent abuse' within the meaning of Clause 5(1) of the Framework Agreement, the Court has held that a national measure which provides for the organisation within the relevant deadlines of selection procedures seeking definitively to fill posts occupied temporarily by fixed-term workers is capable of preventing the precarious situation of those workers from becoming entrenched, by ensuring that the posts they occupy are rapidly filled definitively (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 94).

65 Therefore, the organisation within the relevant deadlines of such procedures is, in principle, capable of preventing abuses resulting from the use of successive fixed-term employment relationships until those posts are definitively filled (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 95).

66 That being said, it is apparent from the order for reference that, as stated in paragraph 61 of the present judgment, despite the fact that there is a precise deadline in Spanish law for the implementation of recruitment procedures, that deadline, according to the case-law of the Tribunal Supremo (Supreme Court), does not constitute a fixed deadline and therefore does not appear to be observed in practice.

67 National legislation which provides for the organisation of selection procedures seeking definitively to fill posts occupied temporarily by fixed-term workers as well as a precise deadline for that purpose, but which does not allow it to be ensured that such procedures are actually organised, does not appear capable of preventing the abusive use, by the employer concerned, of successive fixed-term employment relationships (see, to that effect, judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 97).

68 Consequently, subject to the verifications which it is for the referring court to carry out, the national legislation at issue in the main proceedings, as interpreted by the national case-law, does not seem to constitute an 'equivalent legal measure' for the purpose of Clause 5(1) of the Framework Agreement.

69 Therefore, it is clear from the evidence before the Court that the national legislation at issue in the main proceedings, as interpreted by the national case-law, does not appear to include, subject to the verifications which it is for the referring court to carry out, measures to prevent the abusive use of successive fixed-term employment contracts, within the meaning of Clause 5(1) of the Framework Agreement, contrary to the requirements recalled in paragraphs 43 and 45 of the present judgment.

The existence of measures to penalise the abusive use of successive fixed-term employment contracts

70 As regards the existence of measures to penalise the misuse of successive fixed-term employment contracts or relationships, it is apparent from the documents before the Court that, in accordance with the case-law of the Tribunal Supremo (Supreme Court), the use of successive temporary replacement contracts is not treated as abusive. Accordingly, as regards those contracts, first, the employment relationship is not reclassified as a non-permanent employment relationship of indefinite duration and, second, the worker concerned is not entitled to any compensation on termination of those contracts. Therefore, such compensation is paid only on termination of fixed-term employment contracts other than temporary replacement contracts.

71 In that regard, it must be observed that the Court has stated that, in the light of the case-law cited in paragraph 48 of the present judgment, in order for national legislation which, in the public sector, prohibits a succession of fixed-term contracts from being converted into an employment contract of indefinite duration 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, punish the abuse of successive fixed-term contracts (order of 30 September 2020, *Câmara Municipal de Gondomar*, C-135/20, not published, EU:C:2020:760, paragraph 24 and the case-law cited).

72 Therefore, if the referring court were to find that, in the national law at issue in the main proceedings, there is no other effective measure to prevent and penalise abuses that may be identified in respect of public-sector workers, such a situation would be likely to undermine the purpose and practical effect of Clause 5 of the Framework Agreement and would therefore be contrary to that clause (see, to that effect, order of 30 September 2020, *Câmara Municipal de Gondomar*, C-135/20, not published, EU:C:2020:760, paragraph 25 and the case-law cited).

73 In that context, it must be observed that the Court has held that, to the extent that, in respect of staff employed in the public authorities under administrative law, there is no other equivalent and effective protective measure, which it is for the referring court to determine, the assimilation of that fixed-term staff with 'workers having non-permanent contracts of indefinite duration' could 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 (judgment of 14 September 2016, *Martínez Andrés and Castrejana López*, C-184/15 and C-197/15, EU:C:2016:680, paragraph 53).

74 As regards the fact that no compensation is awarded for termination of temporary replacement contracts, it must be recalled that the Court has held that the payment of an end-of-contract compensation did not allow the purpose of Clause 5 of the Framework Agreement, consisting in preventing abuse arising from the use of successive fixed-term contracts, to be achieved. Such a payment seems to be independent of any consideration relating to the lawful or abusive nature of the use of fixed-term contracts (see, to that effect, judgment of 21 November 2018, *de Diego Porras*, C-619/17, EU:C:2018:936, paragraph 94).

75 Such a measure therefore does not appear to be capable of duly penalising the improper use of successive fixed-term employment contracts or relationships and of removing the consequences of the infringement of EU law and, consequently, does not seem in itself to constitute a sufficiently effective and deterrent measure to ensure that the measures taken pursuant to the Framework Agreement are fully effective, within the meaning of the case-law referred to in paragraph 46 of the present judgment (see, to that effect, judgment of 21 November 2018, *de Diego Porras*, C-619/17, EU:C:2018:936, paragraph 95).

76 Moreover, the fact that that compensation is paid only on termination of fixed-term employment contracts other than temporary replacement contracts would be likely to compromise the objective and the practical effect of the Framework Agreement only if there was no other effective measure in national law for avoiding and penalising abuse with regard to workers employed under temporary replacement contracts, which it is for the referring court to ascertain (see, to that effect, judgment of 21 November 2018, *de Diego Porras*, C-619/17, EU:C:2018:936, paragraph 100).

77 Therefore, in the light of the evidence available to the Court, national legislation, as interpreted by the national case-law, which, on the one hand, prohibits both the assimilation of workers employed under successive temporary replacement contracts with 'workers having non-permanent contracts of indefinite duration' and the award of compensation to those workers and, on the other hand, provides for no other effective measure to prevent and penalise abuses that may be identified in respect of public sector employees does not, subject to the verifications which it is for the referring court to carry out, appear to be consistent with the requirements arising from the case-law referred to in paragraphs 46 to 49 of the present judgment.

78 In order to provide the referring court with a useful answer, it is necessary to clarify the national court's obligations in the event that the national legislation, as interpreted by the national case-law, is not consistent with Clause 5(1) of the Framework Agreement.

79 In that regard, it should be noted that Clause 5(1) of the Framework Agreement is not unconditional and sufficiently precise to enable it to be relied upon by an individual before the national court (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 118 and the case-law cited).

80 A provision of EU law which does not have direct effect may not be relied on, as such, in a dispute coming under EU law in order to disapply a provision of national law that conflicts with it (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 119 and the case-law cited).

81 Therefore, a national court is not required to disapply a provision of its national law which is contrary to Clause 5(1) of the Framework Agreement (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 120 and the case-law cited).

82 That being said, it must be noted that, when national courts apply domestic law they are bound to interpret that law, so far as 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 (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 121 and the case-law cited).

83 The requirement for national law to 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 (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 122 and the case-law cited).

84 Admittedly, 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* (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 123 and the case-law cited).

85 The principle that national law must be interpreted in conformity with EU law nonetheless 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 (judgment of 19 March 2020, *Sánchez Ruiz and Others*, C-103/18 and C-429/18, EU:C:2020:219, paragraph 124 and the case-law cited).

86 In that context, the Court has held that the obligation to interpret national law in conformity with EU law requires national courts to change established case-law, where necessary, if it is based on an interpretation of domestic law that is incompatible with the objectives of a directive. Consequently, a national court cannot, in particular, validly claim that it is impossible for it to interpret a provision of national law in a manner that is consistent with EU law merely because that provision has consistently been interpreted in a manner that is incompatible with EU law (see, to that effect, judgment of 6 November 2018, *Bauer and Willmeroth*, C-569/16 and C-570/16, EU:C:2018:871, paragraph 68 and the case-law cited).

87 In the present case, therefore, it will be for the referring court to ascertain whether the national legislation in question lends itself to an interpretation in conformity with Clause 5 of the Framework Agreement.

88 In the light of all the foregoing considerations, the answer to the first four questions is that Clause 5(1) of the Framework Agreement must be interpreted as precluding national legislation, as interpreted by the national case-law, which, on the one hand, allows the renewal of fixed-term contracts pending the completion of recruitment procedures undertaken in order definitively to fill vacant posts for public-sector workers, without specifying a precise deadline for the completion of those procedures and, on the other hand, prohibits both the assimilation of those workers with 'workers having non-permanent contracts of indefinite duration' and the awarding of compensation to those workers. It appears that that national legislation, subject to the verifications which it is for the referring court to carry out, does not include any measure intended to prevent and, where appropriate, to penalise the abusive use of successive fixed-term contracts.

The fifth question

89 By its fifth question, the referring court asks, in essence, whether Clause 5(1) of the Framework Agreement must be interpreted as meaning that purely economic considerations, linked to the economic crisis of 2008, can justify the absence in national law of any measure intended to prevent and to penalise the use of successive fixed-term employment contracts.

90 In the present case, IMIDRA maintains that the delay in organising the recruitment procedures was due to compliance with statutory requirements arising, inter alia, from the finance laws adopted following the economic crisis of 2008, which laid down budgetary restrictions and, in that context, prohibited, from 2009 to 2017, the implementation of the lists of public sector vacancies. Accordingly, in the case in the main proceedings, no allegation of abuse could be levelled against the administration so far as concerns its use of temporary replacement contracts.

91 In that regard, it should be noted that, according to settled case-law, whilst budgetary considerations may underlie a Member State's choice of social policy and influence the nature or scope of the measures which it wishes to adopt, they do not in themselves constitute an aim pursued by that policy and, therefore, cannot justify the lack of any measure preventing the misuse of successive fixed-term employment contracts, as referred to in Clause 5(1) of the Framework Agreement (judgment of 25 October 2018, *Sciotto*, C-331/17, EU:C:2018:859, paragraph 55 and the case-law cited).

92 It follows that, while purely economic considerations may justify the adoption of finance laws which prohibit the organisation of recruitment procedures in the public sector, they cannot restrict or even eliminate the protection afforded to fixed-term workers pursuant to Directive 1999/70 and, in particular, the minimum requirements provided for in Clause 5 of the Framework Agreement.

93 In the light of the foregoing considerations, the answer to the fifth question is that Clause 5(1) of the Framework Agreement must be interpreted as meaning that purely economic considerations, linked to the economic crisis of 2008, cannot justify the absence in national law of any measure intended to prevent and to penalise the use of successive fixed-term employment contracts.

Costs

94 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Seventh Chamber) hereby rules:

1. **Clause 5(1) of the framework agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as precluding national legislation, as interpreted by the national case-law, which, on the one hand, allows the renewal of fixed-term contracts pending the completion of recruitment procedures undertaken in order definitively to fill vacant posts for public-sector workers, without specifying a precise deadline for the completion of those procedures and, on the other hand, prohibits both the assimilation of those workers with 'workers having non-permanent contracts of indefinite duration' and the awarding of compensation to those workers. It appears that that national legislation, subject to the verifications which it is for the referring court to carry out, does not include any measure intended to prevent and, where appropriate, to penalise the abusive use of successive fixed-term contracts.**

2. **Clause 5(1) of the framework agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as meaning that purely economic considerations, linked to the economic crisis of 2008, cannot justify the absence in national law of any measure intended to prevent and to penalise the use of successive fixed-term employment contracts.**

[Signatures]