Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

5 May 2022 *

(Reference for a preliminary ruling – Social policy – Part-time work – Directive 97/81/EC – Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC – Clause 4.1 – Principle of non-discrimination – Part-time academic staff – Automatic permanent appointments reserved for academic staff members holding a full-time teaching post – Calculation of the percentage of a full-time workload to which a part-time workload corresponds – No requirements)

In Case C-265/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the hof van beroep Antwerpen (Court of Appeal, Antwerp, Belgium), made by decision of 24 March 2020, received at the Court on 15 June 2020, in the proceedings

FN

v

Universiteit Antwerpen and Others,

THE COURT (Seventh Chamber),

composed of I. Ziemele, President of the Sixth Chamber, acting as President of the Seventh Chamber, T. von Danwitz and A. Kumin (Rapporteur), Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– FN, by P. Flamey and L. Cornelis, advocaten,

– Universiteit Antwerpen and Others, by H. Buyssens and J. Deridder, advocaten,

– the Belgian Government, by M. Van Regemorter, L. Van den Broeck and C. Pochet, acting as Agents,

* Language of the case: Dutch.

– the European Commission, by L. Haasbeek, D. Recchia and C. Valero, 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 4.1 of the Framework Agreement on part-time work concluded on 6 June 1997 ('the framework agreement on part-time work'), which is annexed to Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (OJ 1998 L 14, p. 9), as amended by Council Directive 98/23/EC of 7 April 1998 (OJ 1998 L 131, p. 10), and Clause 4.1 of the framework agreement on fixed-term work concluded on 18 March 1999 ('the framework agreement on fixed-term work'), 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 was made in a dispute between, of the one part, FN and, of the other part, the Universiteit Antwerpen (University of Antwerp; 'the UA'), the former vice-chancellor, the chancellor and the deans of that university, the Vlaamse Autonome Hogeschool Hogere Zeevaartschool (Flemish independent college 'Hogere Zeevaartschool'; 'the Hogeschool') and a former director of that institution, concerning the allegedly unlawful termination of FN's employment contract as a professor at the UA.

Legal context

European Union law

The framework agreement on part-time work

3 Clause 3.1 of the framework agreement on part-time work defines 'part-time worker' as 'an employee whose normal hours of work, calculated on a weekly basis or on average over a period of employment of up to one year, are less than the normal hours of work of a comparable full-time worker'.

4 Clause 4 of the framework agreement on part-time work, entitled 'Principle of non-discrimination', provides:

'1. In respect of employment conditions, part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work part time unless different treatment is justified on objective grounds.

2. Where appropriate, the principle of *pro rata temporis* shall apply.

3. The arrangements for the application of this clause shall be defined by the Member States and/or social partners, having regard to European legislation, national law, collective agreements and practice.

4. Where justified by objective reasons, Member States after consultation of the social partners in accordance with national law, collective agreements or practice and/or social partners may, where appropriate, make access to particular conditions of employment subject to a period of service, time worked or earnings qualification. Qualifications relating to access by part-time workers to particular conditions of employment should be reviewed periodically having regard to the principle of non-discrimination as expressed in Clause 4.1.'

The framework agreement on fixed-term work

5 Clause 4 of the framework agreement on fixed-term work, entitled 'Principle of non-discrimination', provides, in points 1 and 2 thereof:

'1. In respect of employment conditions, fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation unless different treatment is justified on objective grounds.

2. Where appropriate, the principle of *pro rata temporis* shall apply.'

6 Clause 5 of the framework agreement on fixed-term work, entitled 'Measures to prevent abuse', states:

'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.'

Belgian law

7 The first paragraph of Article 72 of the Decreet betreffende de universiteiten in de Vlaamse Gemeenschap (Decree concerning universities in the Flemish Community) of 12 June 1991 (*Belgisch Staatsblad*, 4 July 1991, p. 14907), in the version applicable to the main proceedings ('the Decree concerning universities'), provided:

'The university authorities shall determine for each academic staff member whether his or her position is full-time or part-time. They shall also indicate the bodies responsible for the position.'

8 The first paragraph of Article 73 of the Decree concerning universities was worded as follows:

'The university authorities shall determine, when declaring a position vacant, whether that position is full-time (and/or) part-time or whether it may lead to a full-time or part-time appointment.'

9 According to Article 76 of that decree, a part-time position for independent academic staff may consist solely of either teaching or research activities, or a combination of the two.

10 The first and second paragraphs of Article 91 of the Decree concerning universities provided:

'A member of the independent academic staff with a full-time position shall be appointed on a permanent basis.

A member of the independent academic staff with a part-time position may either be appointed on a permanent basis or employed on a temporary basis for renewable periods of a maximum of six years.'

11 Article 7 of the statuut zelfstandig academisch personeel (staff regulations of the independent academic staff of the University of Antwerp; 'the ZAP staff regulations') provides that a teaching position equating to at least 50% of a full-time position opens the possibility of a permanent appointment.

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

12 According to the request for a preliminary ruling, for an approximately 20-year period between 1990 and 2009, FN held a series of posts in the faculties of law and economics at the UA (and at the academic institutions that preceded it) as assistant, assistant lecturer, lecturer, researcher, senior lecturer and lastly part-time professor. It is apparent from the documents before the Court that, as such, FN was considered a member of the UA's 'independent' academic staff, as defined in the Decree concerning universities.

13 For each appointment, FN was offered fixed-term contracts for a period of one to three years. Those contracts were always part-time, with a teaching position corresponding to between 10% and 75% of a full-time position, depending on the contract. FN was never offered a permanent appointment.

14 When his last appointment came to be renewed for the 2009 academic year, he was offered a teaching position corresponding to 15% of a full-time position in the faculty of applied economics and 5% in the faculty of law, whereas previously his teaching positions in those faculties had corresponded to 50% and 10% respectively of a full-time position, and the number of teaching hours was cut from 165 hours to 135 hours.

15 Following that offer, FN brought an action for damages against the defendants in the main proceedings before the rechtbank van eerste aanleg Antwerpen (Court of First Instance, Antwerp, Belgium), principally relying on the defendants' non-contractual liability and, in the alternative, unfair dismissal on their part. According to FN, some of his colleagues in similar situations had been appointed permanently on a full-time basis and for an indefinite duration. In addition, FN contends that he was employed with the 'incorrect status', which was incompatible with EU law.

16 By judgment of 24 January 2018, the rechtbank van eerste aanleg Antwerpen (Court of First Instance, Antwerp) held that the action against the UA and the Hogeschool was admissible but unfounded, the action against the other defendants in the main proceedings having been declared inadmissible. FN brought an appeal against that judgment before the referring court, the hof van beroep Antwerpen (Court of Appeal, Antwerp, Belgium).

17 In those circumstances the hof van beroep Antwerpen (Court of Appeal, Antwerp) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'Must Clause 4.1 of the [framework agreement on fixed-term work] and Clause 4.1 of the [framework agreement on part-time work] be interpreted as precluding a university, on the basis of national legislation (Article 91 of the Decree concerning universities) under which independent academic staff with full-time positions are appointed on a permanent basis, and staff with part-time positions may either be appointed, or employed on a temporary basis for renewable periods of a maximum of six years, from being permitted to:

(a) employ a professor, using the justification of "freedom of policy", over a period of twenty years on the basis of some twenty consecutive, short-term and part-time employment contracts and statutory appointments of between one and three years, without any limit on the total number of renewals, while other colleagues with similar duties were appointed on a permanent and full-time basis?

(b) stipulate in its staff regulations only a general minimum limit of an appointment percentage at 50 percent in order to be eligible for a permanent appointment, but not lay down a single criterion on the basis of which the part-time staff appointed at 50 percent or greater can be appointed on a permanent or temporary basis?

(c) award appointment percentages to a part-time professor, using the justification of unlimited "freedom of policy", without laying down objective criteria, and without applying any objective workload measurement?

(d) deny a temporary and part-time professor, when his employment is not renewed, using the justification of the university's "freedom of policy", the right to invoke the allegedly abusive nature of the past employment conditions, because he had, so to speak, always accepted those conditions by carrying out the allocated work, with the result that he forfeits the protection afforded by European Union law?'

Consideration of the question referred

Admissibility

18 In their written observations, the defendants in the main proceedings argue, first of all, that the request for a preliminary ruling is inadmissible in its entirety in so far as both the relevance of, and the need for, the request are lacking. In their view, the referring court failed to state the reasons why the interpretation of certain provisions of EU law is necessary. Moreover, the question referred for a preliminary ruling is unclear, overly factual and includes a subjective presentation of the facts which is favourable to the arguments put forward by FN in his written observations.

19 The defendants in the main proceedings further submit that the question referred for a preliminary ruling bears no relation to the actual facts or the subject matter of the main proceedings. The referring court offers an insufficient explanation of the relevance of that question in the light of the subject matter of the main proceedings, in particular the claim for damages in respect of an unlawful act. Similarly, the facts relating to the dispute in the main proceedings are described only briefly in the order for reference, on the ground that they have already been set out in the judgment of 24 January 2018 of the rechtbank van eerste aanleg Antwerpen (Court of First Instance, Antwerp), whereas the question referred for a preliminary ruling essentially relates to those facts.

20 Lastly, the defendants argue that, with regard to the alleged discrimination, the order for reference makes no comparison between the working conditions of temporary part-time employees and employees with a permanent part-time appointment. Consequently, neither Clause 4.1 of the framework agreement on fixed-term work nor Clause 4.1 of the framework agreement on part-time work is applicable to the dispute in the main proceedings.

21 In that respect, it should be noted that, according to the Court's settled case-law, the procedure provided for by Article 267 TFEU is an instrument for cooperation between the Court and national courts by means of which the Court provides national courts with the criteria for the interpretation of European Union law which they need in order to decide the disputes before them (see, in particular, judgment of 1 October 2020, *Úrad špeciálnej prokuratúry*, C-603/19, EU:C:2020:774, paragraph 26 and the case-law cited).

22 In the context of that cooperation, it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (judgment of 1 October 2020, *Úrad špeciálnej prokuratúry*, C-603/19, EU:C:2020:774, paragraph 27 and the case-law cited).

23 It follows that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for this Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual

or legal material necessary to give a useful answer to the questions submitted to it (judgment of 1 October 2020, *Úrad špeciálnej prokuratúry*, C-603/19, EU:C:2020:774, paragraph 28 and the case-law cited).

24 Thus, since the order for reference serves as the basis for the procedure followed before the Court, it is essential that the national court should, in that decision, set out the factual and legislative context of the dispute in the main proceedings and give at the very least some explanation of the reasons for the choice of the EU law provisions which it seeks to have interpreted and of the link it establishes between those provisions and the national legislation applicable to the proceedings pending before it (judgment of 1 October 2020, *Úrad špeciálnej prokuratúry*, C-603/19, EU:C:2020:774, paragraph 29 and the case-law cited).

25 Those cumulative requirements concerning the content of a request for a preliminary ruling are expressly set out in Article 94 of the Rules of Procedure of the Court of Justice, which the referring court is presumed – in view of the cooperation established by Article 267 TFEU – to be familiar with and which it is required to follow to the letter. Those requirements are recalled, inter alia, in the recommendations of the Court of Justice of the European Union to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ 2019 C 380, p. 1), point 15 of which reproduces, in each of its three indents, the requirements set out in Article 94(a) to (c), respectively, of the Rules of Procedure. Furthermore, according to point 16 of those recommendations, 'the referring court or tribunal must provide the *precise references for the national provisions applicable to the facts of the dispute in the main proceedings and for the provisions of EU law* whose interpretation is sought or whose validity is challenged' (see, to that effect, order of 21 February 2022, *Leonardo*, C-550/21, not published, EU:C:2022:139, paragraph 13 and the case-law cited).

26 It must be emphasised in that regard that the information provided in orders for reference serves not only to enable the Court to give useful answers but also to ensure that governments of the Member States and other interested parties have the opportunity to submit observations in accordance with Article 23 of the Statute of the Court of Justice of the European Union. It is for the Court to ensure that that opportunity is safeguarded, given that, under that provision, only the orders for reference are notified to the interested parties, accompanied by a translation in the official language of each Member State, but excluding any case-file that may be sent to the Court by the national court (see, in particular, judgment of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 85).

27 In the present case, however, with regard to the questions specifically set out in parts (a) and (d) of the question referred for a preliminary ruling, the order for reference does not satisfy all the requirements referred to in paragraphs 21 to 26 above.

28 As regards part (a), the order for reference does not explain why Clause 4.1 of the framework agreement on fixed-term work and Clause 4.1 of the framework agreement on part-time work – namely the two provisions of those framework agreements establishing the principle of non-discrimination – would preclude national rules under which academic staff with a part-time teaching position, such as FN, may be appointed on a permanent basis or employed on a temporary basis for renewable periods of a maximum of six years, while academic staff with a full-time teaching position will be appointed on a permanent basis.

29 At most, it is clear from the order for reference that those rules made it possible to employ FN over a period of 20 years on the basis of some 20 consecutive, short-term and part-time employment contracts and statutory appointments of between 1 and 3 years, without any limit on the total number of renewals, while some of his colleagues with similar duties were appointed on a permanent and full-time basis.

30 No conclusions can be drawn from the legal and factual framework presented in the request for a preliminary ruling as to the compatibility of the national rules at issue in the main proceedings with the principle of non-discrimination referred to in Clause 4.1 of those framework agreements. The referring court merely states that the question which arises is whether Article 91 of the Decree concerning universities is compatible with those provisions of EU law. Moreover, the order for reference contains no information on the situation of academic staff holding a full-time teaching position and/or employed for an indefinite period enabling a comparison to be drawn between that group of workers and the group that FN belongs to.

31 As regards part (d) of the question referred for a preliminary ruling, also in relation to Clause 4.1 of the framework agreements on fixed-term work and part-time work, the order for reference does not explain why the national rules at issue in the main proceedings are contrary to those provisions concerning the principle of non-discrimination. It is in no way apparent from the order for reference that the national rules or the practice of the defendants in the main proceedings has the effect of preventing academic staff in a situation such as FN's from effectively relying on the allegedly unlawful nature of the previous employment conditions, on the ground that he or she had 'accepted' those conditions each time by carrying out the agreed work, thereby tacitly waiving that protection under EU law.

32 Since the Court does not have before it the factual and legal material necessary to provide a useful answer to parts (a) and (d) of the question referred, parts (a) and (d) must be found inadmissible. Conversely, parts (b) and (c) of the question referred benefit from the presumption of relevance referred to in paragraph 23 above.

Part (b) of the question

33 It should be noted as a preliminary point that, according to settled case-law, it is for the Court, in the procedure laid down by Article 267 TFEU providing for cooperation with national courts, to provide the national court with an answer which will be of use to it and enable it to decide the case before it and, to that end, the Court should, where necessary, reformulate the questions referred to it (judgment of 10 February 2022, *Bezirkshauptmannschaft Hartberg-Fürstenfeld (Limitation period)*, C-219/20, EU:C:2022:89, paragraph 33 and the case-law cited).

34 Part (b) of the question referred concerns the compatibility of Article 91 of the Decree concerning universities with the framework agreement on part-time work, in so far as that provision of national law provides that independent academic staff holding a full-time teaching position will automatically be appointed on a permanent basis, whereas independent academic staff holding a part-time teaching position may be appointed on a permanent basis or employed on a temporary basis for renewable periods of a maximum of six years. The ZAP staff regulations, which seem to supplement Article 91, provide that a teaching position corresponding to at least 50% of a full-time teaching position opens the possibility of a permanent appointment.

35 It is also apparent from part (b) of the question referred that no criterion has been established to determine in what conditions academic staff holding a part-time teaching position corresponding to at least 50% of a full-time teaching position are not appointed on a permanent basis, but employed on a temporary basis. Accordingly, it would appear that the referring court questions whether any discrimination exists between the different groups of part-time workers.

36 However, Article 91 of the Decree concerning universities raises questions of whether there is any difference in treatment between academic staff with a full-time position, who are automatically appointed on a permanent basis, and staff with a part-time teaching position, who may be appointed on a permanent basis but who may also be employed on a temporary basis, despite there being no assessment criterion.

37 Since there is such a difference in treatment under national law between full-time and part-time workers as regards working conditions, it appears that the interpretation of Clause 4.1 of the framework agreement on part-time work is likely to be useful to the referring court with a view to deciding the dispute in the main proceedings.

38 In those circumstances, by part (b) of its question, the referring court asks, in essence, whether Clause 4.1 of the framework agreement on part-time work must be interpreted as precluding national rules and practice under which academic staff holding a full-time teaching position will automatically be appointed on a permanent basis, whereas academic staff holding a part-time teaching position will either be appointed on a permanent basis or employed on a temporary basis.

39 First of all, it should be borne in mind that since the terms of Clause 4.1 of that framework agreement do not define the exact scope of the concept of 'employment conditions', it is necessary, in accordance with settled case-law, to take into consideration the context and the objectives pursued by the rules of which that clause is part (judgment of 15 April 2008, *Impact*, C-268/06, EU:C:2008:223, paragraph 110).

40 In the first place, as regards the question whether, in the present case, the provisions governing the appointment of independent academic staff constitute 'employment conditions' within the meaning of Clause 4 of the framework agreement on part-time work, it should be borne in mind that that clause must be understood as articulating a principle of EU social law which cannot be interpreted restrictively (order of 15 October 2019, *AEAT (Calculation of the length of service of vertical-cyclical part-time workers)*, C-439/18 and C-472/18, not published, EU:C:2019:858, paragraph 30 and the case-law cited).

41 It should be recalled in that regard that the framework agreement on part-time work seeks both to promote part-time work and eliminate discrimination between part-time workers and full-time workers (order of 15 October 2019, *AEAT (Calculation of the length of service of vertical-cyclical part-time workers)*, C-439/18 and C-472/18, not published, EU:C:2019:858, paragraph 27 and the case-law cited).

42 The prohibition of discrimination laid down in Clause 4.1 of that framework agreement is simply a specific expression of one of the fundamental principles of EU law, namely the general principle of equality (order of 15 October 2019, *AEAT (Calculation of the length of service of vertical-cyclical part-time workers)*, C-439/18 and C-472/18, not published, EU:C:2019:858, paragraph 29 and the case-law cited).

43 That clause provides that, in respect of employment conditions, part-time workers are not to be treated in a less favourable manner than comparable full-time workers solely because they work part-time, unless different treatment is justified on objective grounds (judgment of 10 June 2010, *Bruno and Others*, C-395/08 and C-396/08, EU:C:2010:329, paragraph 25).

44 To interpret that clause as excluding access to a permanent appointment from the concept of 'employment conditions', within the meaning of that clause, would effectively reduce – contrary to the objective attributed to that clause – the scope of the protection against discrimination for the workers concerned by introducing a distinction based on the nature of their employment conditions, which is not in any way implicit in the wording of that clause (see, to that effect, order of 15 October 2019, *AEAT (Calculation of the length of service of vertical-cyclical part-time workers)*, C-439/18 and C-472/18, not published, EU:C:2019:858, paragraph 31).

45 In the second place, it is necessary to examine whether the exclusion of independent academic staff holding a part-time teaching position from access to a permanent appointment solely because they work part-time results in them being treated in a less favourable manner than full-time workers in a comparable situation.

46 The first paragraph of Clause 3.2 of the framework agreement on part-time work defines the term 'comparable full-time worker' as a 'full-time worker in the same establishment having the same type of employment contract or relationship, who is engaged in the same or a similar work/occupation, due regard being given to other considerations which may include seniority and qualification/skills'.

47 In assessing whether workers perform the same or similar work, within the meaning of that framework agreement, a series of factors must be taken into account, such as the nature of their work, their qualifications and skills, the training conditions and the working conditions (order of 15 October 2019, *AEAT (Calculation of the length of service of vertical-cyclical part-time workers)*, C-439/18 and C-472/18, not published, EU:C:2019:858, paragraph 34 and the case-law cited).

48 In the present case, however, it cannot be determined from the factual and legal material in the documents before the Court whether or not the UA's part-time independent academic staff and full-time independent academic staff are in comparable situations, which it is in any event for the referring court to establish.

49 According to the information in the request for a preliminary ruling, Article 7 of the ZAP staff regulations provides that a part-time teaching position corresponding to at least 50% of a full-time teaching position opens the possibility of a permanent appointment, with, as noted by the referring court, no other criteria having been defined.

50 It follows that a worker holding a full-time teaching position automatically has access to a permanent appointment, whereas a worker holding a part-time teaching position has, in conditions not governed by those staff regulations, only the possibility of benefiting from a permanent appointment. This therefore amounts to a difference in treatment based solely on the fact that the worker concerned works part-time.

51 In those circumstances, subject to verification by the referring court, it seems clear from the wording of Article 91 of the Decree concerning universities, read in conjunction with Article 7 of the ZAP staff regulations, that independent academic staff holding a full-time teaching position and independent academic staff holding a part-time teaching position are treated differently as regards access to a permanent appointment.

52 However, it is clear from the wording of Clause 4.1 of the framework agreement on part-time work that such a difference in treatment may be regarded as consistent with the principle of non-discrimination if it is justified on objective grounds.

53 It should be recalled in this respect that, according to the settled case-law of the Court, the concept of 'objective grounds' must be understood as not permitting a difference in treatment between part-time workers and full-time workers to be justified on the basis that the difference is provided for by a general, abstract national norm, such as a law or collective agreement (order of 15 October 2019, *AEAT (Calculation of the length of service of vertical-cyclical part-time workers)*, C-439/18 and C-472/18, not published, EU:C:2019:858, paragraph 46 and the case-law cited).

54 That concept requires the unequal treatment found to exist to be justified by the presence of precise and concrete factors, characterising the employment condition to which it relates, in the specific context in which it occurs and on the basis of objective and transparent criteria, in order to ensure that that unequal treatment in fact responds to a genuine need, is appropriate for the purpose of attaining the objective pursued and is necessary for that purpose. Those factors may result, in particular, from the specific nature of the tasks for the performance of which the part-time contracts were concluded and from the inherent characteristics of those tasks or, as the case may be, from pursuit of a legitimate social-policy objective of a Member State (order of 15 October 2019, *AEAT (Calculation of the length of service of vertical-cyclical part-time workers)*, C-439/18 and C-472/18, not published, EU:C:2019:858, paragraph 47 and the case-law cited).

55 In the present case, subject to verification by the referring court, it appears that neither Article 91 of the Decree concerning universities nor Article 7 of the ZAP staff regulations mentions any objective justification. Similarly, it does not appear from the documents before the Court that the UA would justify the permanent appointment of members of the academic staff on objective grounds other than the fact that the worker concerned works full-time.

56 In the light of the foregoing, the answer to part (b) of the question referred for a preliminary ruling is that Clause 4.1 of the framework agreement on part-time work must be interpreted as precluding national rules and practice under which an academic staff member holding a full-time teaching post will be automatically appointed on a permanent basis, without any objective reason other than the fact that that position is held on a full-time basis, whereas an academic staff member holding a part-time teaching post will either be appointed on a permanent basis or employed on a temporary basis.

Part (c) of the question

57 By part (c) of its question, the referring court asks whether the framework agreement on part-time work must be interpreted as precluding a national practice whereby, when appointing academic staff for a part-time teaching position, the academic authorities concerned – in view of the

independence they have under national law as regards human resources management – are not required to comply with objective criteria when determining the percentage of a full-time position to which that part-time teaching position corresponds.

58 In the present case, it is apparent from the order for reference that that aspect of the question referred for a preliminary ruling appears to be linked to the fact that, during 2008, FN's part-time teaching position represented 165 teaching hours divided between two faculties of the UA, corresponding to 50% and 10% of a full-time teaching position, respectively; by contrast, the offer of employment for 2009 involved 135 teaching hours, corresponding to 15% of a full-time teaching position in the first faculty and 5% in the second. As a result, for 2008, 165 teaching hours would have represented a teaching position corresponding to 60% of a full-time teaching position, whereas for 2009, 135 teaching hours would have represented only 20% of a full-time teaching position, without the significant decrease in that percentage compared with the more relative decrease in the number of teaching hours being based on objective criteria.

59 Part (c) of the question must, therefore, be reformulated as seeking, in essence, to determine whether the framework agreement on part-time work must be interpreted as meaning that it lays down requirements for an employer hiring a part-time worker as to the method of calculating the percentage of a comparable full-time teaching position to which that part-time teaching position corresponds.

60 In that respect, it should be recalled that Clause 3.1 of the framework agreement on part-time work defines 'part-time worker' as an 'employee whose normal hours of work, calculated on a weekly basis or on average over a period of employment of up to one year, are less than the normal hours of work of a comparable full-time worker'.

61 However, neither that provision nor any other provision of the framework agreement on part-time work lays down any requirements for calculating the percentage of the workload of a comparable full-time worker to which the workload of a part-time worker corresponds.

62 As a result, the method of calculating the percentage of a full-time workload to which a part-time workload corresponds is not governed by the framework agreement on part-time work.

63 In the light of the foregoing, the answer to part (c) of the question referred is that the framework agreement on part-time work must be interpreted as meaning that it does not lay down any requirements for an employer hiring a part-time worker as to the method of calculating the percentage of a comparable full-time position to which that part-time position corresponds.

Costs

64 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 (Seventh Chamber) hereby rules:

1. **Clause 4.1 of the Framework Agreement on part-time work, concluded on 6 June 1997, annexed to Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, as amended by Council Directive 98/23/EC of 7 April 1998, must be interpreted as precluding national rules and practice under which an academic staff member holding a full-time teaching post will be automatically appointed on a permanent basis, without any objective reason other than the fact that that position is held on a full-time basis, whereas an academic staff member holding a part-time teaching post will either be appointed on a permanent basis or employed on a temporary basis.**

2. **The Framework Agreement on part-time work, concluded on 6 June 1997, annexed to Directive 97/81, as amended by Directive 98/23, must be interpreted as meaning that it does not lay down any requirements for an employer hiring a part-time worker as to the method of calculating the percentage of a comparable full-time position to which that part-time position corresponds.**

[Signatures]

Annex

List of defendants

Universiteit Antwerpen, established in Antwerp (Belgium),

Vlaamse Autonome Hogeschool Hogere Zeevaartschool, established in Antwerp,

PB, residing in Antwerp,

ZK, residing in Antwerp,

NG, residing in Antwerp,

ZN, residing in Haacht (Belgium),

UM, residing in Duffel (Belgium).