JUDGMENT OF THE COURT (Second Chamber)

22 December 2010 *

In Joined Cases C-444/09 and C-456/09,

REFERENCES for a preliminary ruling under Article 234 EC from the Juzgado de lo Contencioso-Administrativo No 3 de A Coruña (Spain) and the Juzgado de lo Contencioso-Administrativo No 3 de Pontevedra (Spain), made by decisions of 30 October and 12 November 2009, received at the Court on 16 and 23 November 2009, in the proceedings

Rosa María Gavieiro Gavieiro (C-444/09),

Ana María Iglesias Torres (C-456/09),

v

Consellería de Educación e Ordenación Universitaria de la Xunta de Galicia,

* Language of the case: Spanish.

THE COURT (Second Chamber),

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

Advocate General: E. Sharpston,
Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Ms Iglesias Torres, by M. Costas Otero, abogada,

— Consellería de Educación e Ordenación Universitaria de la Xunta de Galicia, by A. López Miño, acting as Agent,

— the Spanish Government, by J. Rodríguez Cárcamo, acting as Agent,

— the European Commission, by M. van Beek and G. Valero Jordana, acting as Agents,

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

gives the following

Judgment

1 These references for a preliminary ruling concern the interpretation of clause 4 of the framework agreement on fixed term work, concluded on 18 March 1999 (the 'framework agreement'), set out in the Annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43; with corrigendum OJ 1999 L 244, p. 64).

2 The references were made in two sets of proceedings brought by Ms Gavieiro Gavieiro and Ms Iglesias Torres, respectively, against the Consellería de Educación e Ordenación de la Xunta de Galicia (Ministry for education and universities in the government of the Autonomous Community of Galicia, the 'Consellería'), concerning the refusal of the Consellería to grant, with retrospective effect, three-yearly length-of-service increments.

Legal context

European Union legislation

3 According to Article 1 of Directive 1999/70, the purpose of the directive is 'to put into effect the framework agreement between the general cross-industry organisations (ETUC, UNICE and CEEP) … annexed [thereto]'.

4 The first and third paragraphs of Article 2 of Directive 1999/70 provide:

'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.

…

When Member States adopt the provisions referred to in the first paragraph, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by the Member States.'

5 Pursuant to Article 3 thereof, Directive 1999/70 entered into force on 10 July 1999, the day of its publication in the *Official Journal of the European Communities*.

6 Clause 1 of the framework agreement provides that:

'The purpose of this framework agreement is to:

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

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

7 Point 1 of clause 2 of the framework agreement is worded as follows:

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

8 A fixed-term worker is defined in point 1 of clause 3 of the framework agreement as 'a person having an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event.'

9 Clause 4 of the framework agreement, headed 'Principle of non-discrimination', provides, at points 1 and 4:

'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.

…

4. Period-of service qualifications relating to particular conditions of employment shall be the same for fixed-term workers as for permanent workers except where different length-of service qualifications are justified on objective grounds.'

National legislation

10 Article 149(1)(18) of the Spanish Constitution (the 'Constitution') confers on the Spanish State exclusive competence with regard to the bases for the legal rules applicable to public authorities and for the regulations applicable to civil servants working for those authorities.

11 Under Article 4 of the Law on State civil servants, approved by Decree No 315/1964 (Decreto 315/1964, por el que se aprueba la Ley articulada de funcionarios civiles del

Estado), of 7 February 1964, (BOE No 40, of 15 February 1964, p. 2045, the 'LFCE'), established (career) civil servants are those persons who, following an appointment meeting the conditions laid down by law, occupy permanent posts, are attached to the relevant staff group and receive pay or fixed allowances from sums earmarked for staffing in the General State Budget.

12 Article 5(2) of the LFCE provides that interim (non-established) civil servants are persons who, for reasons of necessity or urgency, occupy vacant regulated posts until such time as they are filled by established civil servants.

13 Interim civil servants received, under Article 104(3) of the LFCE, the salary corresponding to the staff group to which the vacant post belonged.

14 Article 105 of the LFCE provided that the general regulations applying to established civil servants — with the exception of the right to permanent employment, to specific levels of remuneration and to pension arrangements — applied, by analogy and in so far as consistent with the nature of their employment relationship, to interim civil servants.

15 The provisions of the LFCE were reproduced in the Finance Laws of the Autonomous Community of Galicia for the years 2003 to 2007, which provided that interim civil servants were not, unlike established civil servants, entitled to receive the three-yearly increments. The latter are increments awarded in respect of each three-year period of service completed.

16 On the basis of the exclusive competence conferred on it by Article 149(1)(18) of the Spanish Constitution, the Spanish State adopted Law 7/2007 on the basic regulations relating to public servants (Ley 7/2007 del Estatuto básico del empleado público) of 12 April 2007 (BOE No 89, of 13 April 2007, p. 16270, the 'LEBEP').

17 The LEBEP applies, in accordance with Article 2(1) thereof, to civil servants and, where appropriate, to contract staff working, inter alia, in the public authorities of the Autonomous Communities.

18 Article 8 of the LEBEP is worded as follows:

'1. Public servants are persons who carry out duties for remuneration in the public authorities in the service of the general interest;

2. Public servants are classified as:

(a) established civil servants;

(b) interim (non-established) civil servants;

(c) staff engaged under employment contracts, whether permanent, for an indefinite duration or for a fixed term; and

(d) staff appointed *ad personam*.'

19 The definition of established and interim civil servants in Articles 9 and 10 of the LEBEP is the same as that in the LFCE.

20 Article 25 of the LEBEP, entitled 'Remuneration of interim civil servants', amends the rules relating to three-yearly increments hitherto in force, stating, in paragraph 2, that 'there shall be granted three-yearly length-of-service increments corresponding to services provided before the entry into force of [the LEBEP], which shall take effect with regard to remuneration only from the entry into force of [that law]'.

21 The LEBEP, which repealed Articles 5(2), 104 and 105 of the LFCE, entered into force on 13 May 2007.

22 In application of Article 25(2) of the LEBEP, the Consellería laid down rules relating to the automatic granting of three-yearly length-of-service increments for interim teaching staff of the Autonomous Community of Galicia.

23 Article 27(1)(a) of the Law on Financial and Budgetary Rules for Galicia, approved by Legislative Decree 1/1999 (Decreto legislativo 1/1999, por el que se aprueba el texto refundido de la Ley de Régimen Financiero y presupuestario de Galicia), of 7 October 1999 (BOE No 293 of 8 December 1999, p. 42303), provides that rights which involve a monetary obligation lapse after five years.

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

Case C-444/09

24 Ms Gavieiro Gavieiro, who, when she brought her action in the main proceedings, was employed by the Consellería as a probationary civil servant, worked, between 1994 and 2007, as an interim teacher in various educational establishments in Galicia for a total period of 9 years, 2 months and 17 days.

25 Following the entry into force of the LEBEP, the Consellería recognised Ms Gavieiro Gavieiro's right to receive, with effect from 13 May 2007, the three-yearly length-of-service increments, since she then had nine years of service with the Autonomous Community of Galicia.

26 On 14 November 2008, Ms Gavieiro Gavieiro applied to the Consellería for recognition and payment of the three-yearly length-of-service increments which were not barred by limitation of time, namely those relating to the period from November 2003 until 12 May 2007. That request was based on her right to receive the non-discriminatory treatment provided for in clause 4 of the framework agreement, as interpreted by the Court in Case C-307/05 *Del Cerro Alonso* [2007] ECR I-7109.

27 By decision of 5 March 2009, the Consellería refused Ms Gavieiro Gavieiro's request, taking the view that the LEBEP grants the three-yearly length-of-service increments to interim civil servants only with effect from 13 May 2007, the date on which that law entered into force.

28 Ms Gavieiro Gavieiro brought proceedings before the referring court in respect of the decision refusing her request, seeking annulment of that decision and recognition, with retrospective effect, of the three-yearly length-of-service increments which she claims have accrued to her.

29 Taking the view that an interpretation of the framework agreement was necessary in order for it to reach a decision in the case before it, the Juzgado de lo Contencioso-Administrativo No 3 de A Coruña decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'What is the meaning of the phrase "different length-of service qualifications" in clause 4(4) of the Framework agreement [in the Annex to] Directive 1999/70/EC, and is the mere fact of the temporary nature of the employment relationship of those serving as public employees an "objective ground" which may justify a difference in treatment as regards payment of the length-of-service increment?'

Case C-456/09

30 Ms Iglesias Torres, who is now employed by the Consellería as an established civil servant belonging to the teaching staff of the Official Language Schools of the Autonomous Community of Galicia, worked for the Consellería between 1994 and 13 May 2007 as an interim teacher in various educational establishments in Galicia, for a total of 9 years.

31 Following the entry into force of the LEBEP, Ms Iglesias Torres, on 23 April 2009, requested recognition of her right to receive remuneration corresponding to the shortfall in pay which she should have received in respect of the three-yearly length-of-service increments that had accrued to her during the period preceding the entry into force of the LEBEP.

32 By decision of 13 May 2009, the Provincial Director for education and universities in Lugo, applying powers delegated to him by the Conselleiro, refused that request.

33 Ms Iglesias Torres brought proceedings before the referring court in respect of the decision refusing her request, seeking annulment of that decision and recognition, with retrospective effect, of the three-yearly length-of-service increments which she claims have accrued to her. Her action was based in that regard on clause 4 of the framework agreement, as interpreted by the Court of Justice in *Del Cerro Alonso*.

34 Since it entertained some doubts as to the interpretation of the framework agreement in the light of the case-law of the Court of Justice, the Juzgado de lo Contencioso-Administrativo No 3 de Pontevedra decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘1. Is Directive 1999/70/EC applicable to interim staff of the Autonomous Community of Galicia?

2. Is it possible to regard Article 25(2) of [the LEBEP] as a national provision transposing Directive 1999/70/EC when there is no reference to Community legislation in that Law?

3. In the event that the reply to the second question is affirmative: must Article 25(2) of the LEBEP be defined as a national provision transposing the directive, of the kind referred to in point 4 of the operative part of the judgment of the Court of Justice in Case C-268/06 *Impact* [2008] ECR I-2483, or is the Spanish State required to give retrospective effect to remuneration arising from the three-yearly length-of-service increments which it has recognised in accordance with the Directive?

4. In the event that the reply to the second question is negative: is it possible to apply Directive 1999/70/EC directly to the case in the terms set out in the judgment of the Court of Justice in *Del Cerro Alonso*?'

35 In view of the connection between the two cases in the main proceedings, it is appropriate to join them for the purposes of this judgment.

Consideration of the questions referred

The first question in Case C-456/09

36 By its first question in Case C-456/09, the referring court asks, in essence, whether a member of the interim staff of the Autonomous Community of Galicia, such as the applicant in the main proceedings, falls within the scope *ratione personae* of Directive 1999/70 and the framework agreement.

37 All the interested parties to have submitted observations to the Court maintain that that question should be answered in the affirmative.

38 In that regard, it should be recalled that the Court has already ruled that it is apparent from the wording of Directive 1999/70 and of the framework agreement, as well as from their background and purpose, that the provisions laid down apply to fixed-term employment contracts and relationships concluded with the public authorities and other public-sector bodies (Case C-212/04 *Adeneler and Others* [2006] ECR I-6057, paragraphs 54 to 57; Case C-53/04 *Marrosu and Sardino* [2006] ECR I-7213,

paragraphs 40 to 43; Case C-180/04 *Vassallo* [2006] ECR I-7251, paragraphs 32 to 35; and *Del Cerro Alonso*, paragraph 25).

39 Indeed, as is clear from clause 2(1) of the framework agreement, the personal scope of the agreement is conceived in broad terms, covering generally 'fixed-term workers who have an employment contract or employment relationship as defined in law, collective agreements or practice in each Member State' (see *Adeneler and Others*, paragraph 56; Joined Cases C-378/07 to C-380/07 *Angelidaki and Others* [2009] ECR I-3071, paragraph 114; and Case C-98/09 *Sorge* [2010] ECR I-5837, paragraph 30).

40 The definition of 'fixed-term workers' for the purposes of the framework agreement, set out in clause 3(1), encompasses all workers without drawing a distinction according to whether their employer is in the public, or private, sector (*Adeneler and Others*, paragraph 56).

41 Furthermore, having regard to the importance of the principle of equal treatment and non-discrimination, which is one of the general principles of European Union ('EU') law, the provisions set out by Directive 1999/70 and the framework agreement for the purposes of ensuring that fixed-term workers enjoy the same benefits as those enjoyed by comparable permanent workers, except where a difference in treatment is justified by objective grounds, must be deemed to be of general application since they are rules of EU social law of particular importance, from which each employee should benefit as a minimum protective requirement (*Del Cerro Alonso*, paragraph 27).

42 Accordingly, Directive 1999/70 and the framework agreement are applicable to all workers providing remunerated services in the context of a fixed-term employment relationship linking them to their employer (*Del Cerro Alonso*, paragraph 28).

43 The mere fact that a post may be classified as 'regulated' under national law or has certain characteristics typical of the civil service in the Member State in question is irrelevant in that regard. Otherwise, in reserving to Member States the ability to remove at will certain categories of persons from the protection offered by Directive 1999/70 and the framework agreement, the effectiveness of those instruments of EU law would be in jeopardy as would their uniform application in the Member States (see *Del Cerro Alonso*, paragraph 29).

44 Since it is not in dispute that Ms Iglesias Torres worked for more than 9 years as an interim civil servant in various educational establishments in the Autonomous Community of Galicia and since, moreover, the case in the main proceedings concerns the situation of established civil servants as opposed to that of interim civil servants, Ms Iglesias Torres is a person to whom Directive 1999/70 and the framework agreement apply.

45 The answer to the first question referred in Case C-456/09 is therefore that a member of the interim staff of the Autonomous Community of Galicia, such as the applicant in the main proceedings, falls within the scope *ratione personae* of Directive 1999/70 and that of the framework agreement.

The sole question raised in Case C-444/09

46 By the sole question it raises in Case C-444/09, the referring court asks how the expression 'different length-of-service qualifications' in clause 4(4) of the framework agreement is to be interpreted and whether the temporary nature of the employment of certain public servants is, in itself, an objective ground within the meaning of that

provision, justifying the difference in treatment so far as the payment of length-of-service increments is concerned.

47 It should be recalled at the outset that, according to clause 1(a) of the framework agreement, one of its objectives is to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination. Similarly, the third paragraph in the preamble to the framework agreement states that it 'illustrates the willingness of the Social Partners to establish a general framework for ensuring equal treatment for fixed-term workers by protecting them against discrimination'. Recital 14 of Directive 1999/70 states with that in view that the aim of the framework agreement is, in particular, to improve the quality of fixed-term work by setting out minimum requirements in order to ensure the application of the principle of non-discrimination.

48 The framework agreement, in particular clause 4, aims to apply that principle to fixed-term workers in order to prevent an employer using such an employment relationship to deny those workers rights which are recognised for permanent workers (*Del Cerro Alonso*, paragraph 37).

49 According to the Court, in view of the objectives pursued by the framework agreement, as recalled in the preceding two paragraphs, clause 4 thereof must be interpreted as articulating a principle of EU social law which cannot be interpreted restrictively (see *Del Cerro Alonso*, paragraph 38, and *Impact*, paragraph 114).

50 In so far as the referring court is seeking, in the context of a dispute concerning the entitlement of interim civil servants to a length-of-service increment, an interpretation of the expression 'different length-of service qualifications', in clause 4(4) of the

framework agreement, it should be noted that the Court of Justice has already ruled that a length-of-service payment identical to that at issue in the main proceedings, receipt of which was reserved under national law to the permanent regulated staff in the health service to the exclusion of temporary staff, is covered by the concept of 'employment conditions' referred to in clause 4(1) of the framework agreement (*Del Cerro Alonso*, paragraphs 47 and 48).

51 As is apparent from the orders for reference, until the entry into force of the LEBEP on 13 May 2007, the regulations applicable to staff working in the public authorities of the Autonomous Community of Galicia, adopted in accordance with the LFCE, established a difference in treatment with regard to the payment of the three-yearly increments among the members of the staff of the Autonomous Community. That difference in treatment was determined not by reference to the seniority of the staff but by reference to the duration of the employment relationship linking them to their employer. Unlike established civil servants, interim civil servants were not entitled to the increments related to three-year periods of service, regardless of the duration of the periods of service they had completed.

52 In those circumstances, as the Commission correctly asserts, a difference in treatment such as that established by the Spanish legislation at issue in the main proceedings must be analysed in the light of clause 4(1) of the framework agreement.

53 As is apparent from the case-law of the Court, so far as length-of-service increments such as those at issue in the main proceedings are concerned, fixed-term workers must not be treated less favourably than permanent workers in a comparable situation, in the absence of any objective justification (see, to that effect, *Del Cerro Alonso*, paragraphs 42 and 47, and *Impact*, paragraph 126).

54 As to the question whether the temporary nature of the employment of certain public servants may, in itself, amount to an objective ground within the meaning of clause 4 of the framework agreement, the Court has already held that the concept of objective grounds in point 1 of that clause must be understood as not permitting a difference in treatment between fixed-term workers and permanent 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 (*Del Cerro Alonso*, paragraph 57).

55 That concept requires the unequal treatment at issue to be justified by the existence 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 achieving the objective pursued and is necessary for that purpose (*Del Cerro Alonso*, paragraph 58). Those factors may result, in particular, from the specific nature of the tasks for the performance of which fixed-term contracts have been 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 (see, as regards clause 4(1) of the framework agreement, *Del Cerro Alonso*, paragraphs 53 and 58; as regards the concept of 'objective reasons' in clause 5(1)(a) of the framework agreement, *Adeneler and Others*, paragraphs 69 and 70, and the order of 24 April 2009 in Case C-519/08 *Koukou*, paragraph 45).

56 By contrast, reliance on the mere fact of the temporary nature of the employment of staff of the public authorities does not meet those requirements and is therefore not capable of constituting an 'objective ground' within the meaning of clause 4(1) of the framework agreement.

57 A difference in treatment with regard to employment conditions as between fixed-term workers and permanent workers cannot be justified on the basis of a criterion

which, in a general and abstract manner, refers precisely to the term of the employment. If the mere temporary nature of an employment relationship were held to be sufficient to justify such a difference, the objectives of Directive 1999/70 and the framework agreement, recalled at paragraphs 47 and 48 of this judgment, would be negated. Instead of improving the quality of fixed-term work and promoting the equal treatment to which both Directive 1999/70 and the framework agreement aspire, reliance on such a criterion would amount to perpetuating a situation that is disadvantageous to fixed-term workers.

58 In those circumstances, the answer to the sole question raised in Case C-444/09 is that a length-of-service increment such as that at issue in the main proceedings is, as an employment condition, covered by clause 4(1) of the framework agreement. Consequently, fixed-term workers may contest treatment which, with regard to payment of that increment, is less favourable than that which is given to permanent workers in a comparable situation and for which there is no objective justification. The temporary nature of the employment relationship of certain public servants is not, in itself, capable of constituting an objective ground within the meaning of that clause of the framework agreement.

The second question in Case C-456/09

59 By its second question in Case C-456/09, the referring court asks, in essence, whether, merely because a national measure such as Article 25(2) of the LEBEP makes no reference to Directive 1999/70, that measure may not be regarded as a measure transposing the directive.

60 The Consellería, the Spanish Government and the Commission submit, contrary to Ms Iglesias Torres, that Article 25(2) of the LEBEP should be regarded as a national measure transposing Directive 1999/70, even though the explanatory memorandum to that law makes no reference to Directive 1999/70 or to any EU legislation whatsoever.

61 It should be observed in that regard that the third paragraph of Article 2 of Directive 1999/70 provides that, when Member States adopt the laws, regulations and administrative provisions necessary to comply with that directive, these are to contain a reference to the directive or are to be accompanied by such reference at the time of their official publication.

62 When a directive expressly requires that the measures transposing the directive contain a reference to it or be accompanied by such a reference at the time of their official publication, it is in any event necessary to adopt a specific measure transposing the directive (see Case C-361/95 *Commission* v *Spain* [1997] ECR I-7351, paragraph 15, and judgment of 29 October 2009 in Case C-551/08 *Commission* v *Poland*, paragraph 23).

63 Although, admittedly, Member States would be liable, in infringement proceedings under Article 258 TFEU, to be found to have failed to fulfil their obligations under the third paragraph of Article 2 of Directive 1999/70, it does not necessarily follow, as the Commission has correctly maintained, that a national measure which fails to refer, in its explanatory memorandum, to the directive concerned cannot be regarded as a valid measure transposing the directive.

64 Since it falls to the Member States not only to bring about a formal transposition of EU directives into their legal orders but also to ensure that their obligations under those directives are fully complied with at all times, it is not inconceivable that a

Member State, which initially has sought to transpose a directive and to fulfil its obligations under EU law, may become aware — in particular as a result of cases brought before the national courts or an action brought by the Commission under Article 258 TFEU — that the provisions of its national law have failed to transpose EU law correctly or fully and must accordingly be amended.

65 In the present case, it is not in dispute that the amendment of the national legislation by the LEBEP was made when the case giving rise to the judgment in *Del Cerro Alonso*, which concerned the same three-yearly length-of-service increment as that at issue in the main proceedings, brought to the fore the difference in treatment, as regards the right to be paid such an increment, between permanent regulated staff and temporary staff employed by a body within the public authorities of a Spanish autonomous community.

66 Although it falls to the national court, which alone has jurisdiction to interpret national law, to ascertain, in this instance, whether, having regard to the wording of Article 25(2) of the LEBEP, the objective which it pursues and the circumstances of its adoption, that provision constitutes a measure transposing Directive 1999/70, the mere fact that it makes no reference to the directive does not preclude it from being regarded as such a measure.

67 In those circumstances, the answer to the second question in Case C-456/09 is that the mere fact that a national provision such as Article 25(2) of the LEBEP contains no reference to Directive 1999/70 does not preclude that provision from being regarded as a national measure transposing that directive.

The fourth question in Case C-456/09

68 Since, as is apparent from the answer to the question referred in Case C-444/09, a length-of-service increment such as that at issue in the main proceedings is, as an employment condition, covered by clause 4(1) of the framework agreement, the fourth question in Case C-456/09 should be reformulated in order to provide the referring court with a useful answer.

69 By that question, the referring court asks, in essence, whether, in a dispute such as that in the main proceedings, individuals may rely on clause 4(1) of the framework agreement before a national court in order to obtain recognition of their entitlement to three-yearly length-of-service increments in respect of the period starting with the date by which the Member States should have transposed Directive 1999/70 and ending with the entry into force of the national law transposing that directive into the domestic law of the Member State concerned.

70 Both the Consellería and the Spanish Government have laid stress, in the observations which they have submitted in Cases C-444/09 and C-456/09, on the fact that an individual may not rely on the direct effect of a provision of a directive once the latter has been transposed by a national measure into the domestic law of the Member State concerned. In the Spanish Government's submission, by the time the applicants in the main actions brought their actions, Directive 1999/70 had already been transposed into the Spanish law concerning payment of the three-yearly increments and, as a result, their rights derived from Article 25 of the LEBEP and not from the directive. Maintaining the direct effect of Directive 1999/70 in circumstances such as those of the main proceedings would amount to permanently undermining the effectiveness of those rules of the Member States which, even though they have already correctly incorporated the content of a directive into domestic law, were adopted after the period for transposition.

71 However, those arguments appear to overlook the nature of the claims made by the applicants in the main proceedings before the national courts and thus fail to appreciate the relevance, for the main proceedings, of the fourth question raised by the referring court in Case C-456/09, which relates to the direct effect of clause 4(1) of the framework agreement.

72 The Member States' obligation, arising from a directive, to achieve the result envisaged by that directive and their duty under Article 4(3) TEU to take all appropriate measures, whether general or particular, to ensure the fulfilment of that obligation is binding on all the authorities of the Member States including, for matters within their jurisdiction, the courts. Such obligations devolve on those authorities, including, where appropriate, in their capacity as a public employer (*Impact*, paragraphs 41 and 85 and the case-law cited).

73 Where they are unable to interpret and apply national law in compliance with the requirements of EU law, it is for the national courts and administrative bodies to apply EU law in its entirety and to protect rights which it confers on individuals, disapplying, if necessary, any contrary provision of domestic law (see, to that effect, Case 103/88 *Costanzo* [1989] ECR 1839, paragraph 33, and Case C-243/09 *Fuß* [2010] ECR I-9849, paragraph 63).

74 In the present case, the referring court seeks to establish whether clause 4(1) of the framework agreement has direct effect in two disputes concerning temporary teachers employed by the Autonomous Community of Galicia who, until the entry into force of the LEBEP and its amendment of the LFCE, were not entitled to the three-yearly increments paid by that Community and who are seeking recognition, with retrospective effect, of that entitlement in respect of the period starting with the date by which Member States should have transposed Directive 1999/70 and ending with

the entry into force of the LEBEP, subject to compliance with the relevant provisions of national law concerning limitation.

75 As the principle of effective legal protection is a general principle of EU law recognised, moreover, in Article 47 of the Charter of Fundamental Rights of the European Union, it is the responsibility of the national courts, in the absence of a measure correctly transposing Directive 1999/70 into Spanish law during the period concerned, to provide the legal protection which individuals derive from the rules of EU law and to ensure that those rules are fully effective (see, to that effect, *Impact*, paragraphs 42 and 43 and the case-law cited).

76 The Court has consistently held that, whenever the provisions of a directive appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise, they may be relied upon by individuals as against the State, particularly in its capacity as an employer (see, to that effect, inter alia, Case 152/84 *Marshall* [1986] ECR 723, paragraphs 46 and 49; Case C-187/00 *Kutz-Bauer* [2003] ECR I-2741, paragraphs 69 and 71; and *Impact*, paragraph 57).

77 The Court has already held that that case-law can be applied to agreements which, like the framework agreement, are the product of a dialogue, based on Article 155(1) TFEU, between management and labour at EU level and which have been implemented in accordance with Article 155(2) TFEU by a directive of the Council of the European Union, of which they are thus an integral component (*Impact*, paragraph 58).

78 Clause 4(1) of the framework agreement prohibits, in a general manner and in unequivocal terms, any difference in treatment of fixed-term workers in respect of employment conditions which is not objectively justified. Thus, its subject-matter appears therefore to be sufficiently precise to be relied upon by an individual and to be

applied by the national court (*Impact*, paragraph 60, and Case C-486/08 *Zentralbetriebsrat der Landeskrankenhäuser Tirols* [2010] ECR I-3527, paragraph 24).

79 Furthermore, the precise prohibition laid down by clause 4(1) of the framework agreement does not require the adoption of any further measure of the EU institutions and does not in any way confer on Member States the right, when transposing it into domestic law, to limit the scope of the prohibition laid down in respect of employment conditions (*Impact*, paragraph 62).

80 Admittedly, that provision includes, in relation to the principle of non-discrimination laid down therein, a qualification concerning justification on objective grounds.

81 However, the application of that qualification is subject to judicial control, although the possibility of relying on it does not preclude the view that the provision at issue confers on individuals rights which they may enforce in the national courts and which the latter must protect (*Impact*, paragraph 64).

82 It should also be recalled that, where an individual is able to rely on a directive as against the State, he may do so regardless of the capacity in which the latter is acting, whether as employer or as public authority. In either case it is necessary to prevent the State from taking advantage of its own failure to comply with EU law (see, to that effect, *Marshall*, paragraph 49, and Case C-188/89 *Foster and Others* [1990] ECR I-3313, paragraph 17).

83 It follows that clause 4(1) of the framework agreement is unconditional and sufficiently precise for individuals to be able to rely on it before a national court as against the State.

84 In the main proceedings, the Consellería also argues that the direct effect of that clause cannot be relied on against it since it was obliged to comply with the LFCE and the LEBEP, that is to say, laws of the Member State falling exclusively within the competence of the State. As regards a possible financial liability on the part of the State for infringement of Directive 1999/70, it maintains that the division operated by the Constitution between the basic State legislation and the implementing legislation adopted by the Autonomous Communities does not permit the latter to break or interrupt the causal link between the inadequate transposition of that directive by the State and the loss or damage sustained by individuals.

85 The Spanish Government also states that the Autonomous Community of Galicia is not competent either to amend the LEBEP or to refrain from applying it. If that Community had decided, in its capacity as an employer, to grant, with retrospective effect, payment of the three-yearly increments on the basis of the direct effect of Directive 1999/70, it would have blatantly infringed the State measure transposing the directive. As to the possible liability of the State for breach of Directive 1999/70, the Spanish Government maintains, in the observations it has submitted in Case C-444/09, that the conditions which the case-law of the Court of Justice imposes for a finding of a sufficiently serious breach of the directive are not met.

86 So far as those arguments are concerned, it should be observed that, as is apparent from the decisions making the reference and from the very wording of the questions referred by the national courts, the proceedings before the latter are not actions seeking to establish State liability for breach of Directive 1999/70 but claims, based directly on the directive, for payment of the three-yearly length-of-service increments

in respect of a period during which the directive had not been correctly transposed into national law.

87 Since clause 4(1) of the framework agreement is unconditional and sufficiently precise for individuals to rely on it before a national court as against the State, the applicants in the main proceedings may properly enforce their claims for payment of the three-yearly length-of-service increments to which they have a retrospective entitlement and may do so directly on the basis of that clause. At first sight, therefore, an action for damages founded on the Court's case-law relating to the liability of Member States for breaches of EU law does not seem necessary (see, to that effect, Case C-150/99 *Stockholm Lindöpark* [2001] ECR I-493, paragraph 35).

88 Furthermore, as the Spanish Government itself has recognised in its observations in Case C-444/09, the question of State liability for breach of EU law has at no time been raised by the court making the reference in that case. That is also true of Case C-456/09, in which reasoning of the referring court was based on the consequences which would follow if the relevant clause of the framework agreement were to have direct effect. As regards the questions concerning State liability, the order for reference in Case C-456/09 and the observations submitted to the Court suggest that the referring court does not have jurisdiction to rule on them.

89 In the main proceedings, which, as stated in paragraphs 86 and 87 of this judgment, concern the retrospective application of a provision of a directive which has direct effect, the consequences flowing from the Constitution's division between the basic State legislation concerning the regulations governing civil servants and the implementing rules adopted by the Autonomous Communities are a matter of domestic law.

90 In view of the foregoing, the answer to the fourth question in Case C-456/09 is that clause 4(1) of the framework agreement is unconditional and sufficiently precise for interim civil servants to be able to rely on it as against the State before a national court in order to obtain recognition of their entitlement to length-of-service increments, such as the three-yearly increments at issue in the main proceedings, in respect of the period starting with the date by which Member States should have transposed Directive 1999/70 and ending with the date of entry into force of the national law transposing that directive into the domestic law of the Member State concerned, subject to compliance with the relevant provisions of national law concerning limitation.

The third question in Case C-456/09

91 By its third question in Case C-456/09, the referring court asks, in essence, whether, given that the national legislation at issue in the main proceedings recognises the right of interim civil servants to payment of the three-yearly length-of-service increments but contains a clause that excludes the retrospective application of that right, the Spanish authorities may refuse the benefit of such a right or whether, instead, they are required, under EU law, to give that right to payment of the increments retrospective effect to the date by which the Member States should have transposed Directive 1999/70.

92 It should be observed at the outset that the wording of Article 25(2) of the LEBEP expressly excludes the possibility of that provision being given retrospective effect.

93 In those circumstances, the referring court raises a question concerning the consequences, for the case before it, of point 4 of the operative part of *Impact*, in which the Court of Justice ruled that, in so far as the applicable national law contains a rule that

precludes the retrospective application of legislation unless there is a clear and unambiguous indication to the contrary, a national court hearing a claim based on an infringement of a provision of national legislation transposing Directive 1999/70 is required, under EU law, to give that provision retrospective effect to the date by which that directive should have been transposed only if that national legislation includes an indication of that nature capable of giving that provision retrospective effect.

94 However, in the case giving rise to the judgment in *Impact*, the question was raised as to whether the court making the reference — a specialised court on which the national law transposing Directive 1999/70 had conferred the requisite jurisdiction to hear and determine claims based on that law — was required, under EU law, to hold that it also had jurisdiction to hear and determine claims based directly on that directive, where such claims related to a period after the deadline for transposing the directive, but before the date of entry into force of the national transposing legislation.

95 The Court's answer to the fourth question raised in the case giving rise to the judgment in *Impact* was based on the premiss that the referring court had jurisdiction only to rule on the complaints in the main proceedings in so far as they were based on an infringement of the national law transposing Directive 1999/70 (*Impact*, paragraph 96). It was only in that situation and in so far as the national transposing law had made it impossible for retrospective effect to be given to its provisions that the Court stated, as recalled in paragraph 93 of this judgment, that EU law, in particular the obligation to interpret national law in conformity with EU law, could not — unless the referring court were to be compelled to apply the national law *contra legem* — be interpreted as requiring that court to give the national transposing law concerned retrospective effect to the date by which Directive 1999/70 should have been transposed.

96 However, in contrast to the case giving rise to the judgment in *Impact*, it is apparent from the information provided by the referring court that, in the case before it, no difficulty arises as to the jurisdiction of that court to hear and determine the claims of the applicant in the main proceedings concerning the payment of the three-yearly length-of-service increments in so far as her claim is founded directly on Directive 1999/70.

97 Since clause 4(1) of the framework agreement has direct effect, the applicant in the main proceedings may properly enforce her claim for payment, with retrospective effect, of the length-of-service increments to which she is entitled as against the Consellería, in its capacity as her employer, and may base her claim directly on that provision.

98 In this instance, the applicant in the main proceedings was, throughout the period starting with the date by which the Member States should have transposed Directive 1999/70 and ending with the adoption of Article 25(2) of the LEBEP, subject to discrimination in that she was denied a length-of-service increment integral to her employment conditions within the meaning of clause 4(1) of the framework agreement. In those circumstances, she relies on a provision having direct effect in order to compensate for a lacuna which the incorrect transposition of Directive 1999/70 has allowed to subsist in Spanish domestic law.

99 Accordingly, the answer to the third question in Case C-456/09 is that, even though the national legislation transposing Directive 1999/70 contains a provision which, whilst recognising the right of interim civil servants to be paid the three-yearly length-of-service increments, excludes the retrospective application of that right, the competent authorities of the Member State concerned are obliged, under EU law and in relation to a provision of the framework agreement having direct effect, to give that right to payment of the increments retrospective effect to the date by which the Member States should have transposed Directive 1999/70.

Costs

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

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

1. **A member of the interim staff of the Autonomous Community of Galicia, such as the applicant in the main proceedings, falls within the scope *ratione personae* of Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, and that of the framework agreement on fixed term work, concluded on 18 March 1999, which is in the Annex to that directive.**

2. **A length-of-service increment such as that at issue in the main proceedings is, as an employment condition, covered by clause 4(1) of the framework agreement on fixed-term work annexed to Directive 1999/70. Consequently, fixed-term workers may contest treatment which, with regard to payment of that increment, is less favourable than that which is given to permanent workers in a comparable situation and for which there is no objective justification. The temporary nature of the employment relationship of certain public servants is not, in itself, capable of constituting an objective ground within the meaning of that clause of the framework agreement.**

3. **The mere fact that a national provision such as Article 25(2) of Law 7/2007 on the basic regulations relating to public servants (Ley 7/2007 del Estatuto Básico del empleado público) of 12 April 2007 contains no reference to Directive 1999/70 does not preclude that provision from being regarded as a national measure transposing the directive.**

4. **Clause 4(1) of the framework agreement on fixed-term work, annexed to Directive 1999/70, is unconditional and sufficiently precise for interim civil servants to be able to rely on it as against the State before a national court in order to obtain recognition of their entitlement to length-of-service increments, such as the three-yearly increments at issue in the main proceedings, in respect of the period starting with the date by which Member States should have transposed Directive 1999/70 and ending with the date of entry into force of the national law transposing that directive into the domestic law of the Member State concerned, subject to compliance with the relevant provisions of national law concerning limitation.**

5. **Even though the national legislation transposing Directive 1999/70 contains a provision which, whilst recognising the right of interim civil servants to be paid the three-yearly length-of-service increments, excludes the retrospective application of that right, the competent authorities of the Member State concerned are obliged, under European Union law and in relation to a provision of the framework agreement on fixed-term work, annexed to Directive 1999/70, having direct effect, to give that right to payment of the increments retrospective effect to the date by which the Member States should have transposed Directive 1999/70.**

[Signatures]