



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

28 February 2018*

(Reference for a preliminary ruling — Social policy — Directive 1999/70/EC — Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Successive fixed-term employment contracts — Clause 5(1) Measures aimed at preventing the misuse of fixed-term contracts — Directive 2000/78/EC — Article 6(1) — Prohibition of discrimination on the ground of age — National legislation authorising the postponement of the end of the contract of employment fixed at the normal retirement age simply because that the worker qualified for a retirement pension)

In Case C-46/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landesarbeitsgericht Bremen (Regional Employment Court, Bremen Germany), made by decision of 23 November 2016, received at the Court on 30 January 2017, in the proceedings

Hubertus John

v

Freie Hansestadt Bremen,

THE COURT (Sixth Chamber),

composed of C.G. Fernlund, President of the Chamber, A. Arabadjiev (Rapporteur) and S. Rodin, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Mr John, by H. Buroh and J. Steinhauer, Rechtsanwälte,
- the Freie Hansestadt Bremen, by C. Darge, Rechtsanwalt,
- the German Government, by T. Henze and by K. Stranz, acting as Agents,
- the European Commission, by M. van Beek and M. Kellerbauer, acting as Agents,

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

* Language of the case: German.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Clause 5(1) of the Framework Agreement on fixed-term work concluded on 18 March 1999 ('the Framework Agreement'), 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), and Article 1, Article 2(1) and Article 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).
- 2 The request has been made in proceedings between Mr Hubertus John and his former employer, the Freie Hansestadt Bremen (Free Hanseatic City of Bremen, Germany), concerning the termination of his employment contract on the expiry of the agreed period, connected to reaching the normal retirement age, and the refusal of his request to continue working after that age.

Legal context

European Union law

The Framework Agreement

- 3 Clause 1 of the Framework Agreement indicates that its purpose is to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination and to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships.
- 4 Paragraph 1 of Clause 2 of the Framework Agreement, entitled 'Scope', provides:

'This agreement applies to fixed-term workers who have an employment contract or employment relationship as defined in law, collective agreements or practice in each Member State.'
- 5 Clause 3 of the Framework Agreement, entitled 'Definitions', provides:

'For the purpose of this agreement the term

 1. 'fixed-term worker' means 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.

...'
- 6 Clause 4 of the Framework Agreement, entitled 'Principle of non-discrimination', provides in paragraph 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.'

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.’

Directive 2000/78

- 8 It is true that, according to recital 14 thereof, Directive 2000/78 is to be without prejudice to national provisions laying down retirement ages.
- 9 According to Article 1 thereof, Directive, its purpose ‘is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment’.
- 10 Article 2 of that directive provides:
 - ‘1. For the purposes of this Directive, the “principle of equal treatment” shall mean that there shall be no direct or indirect discrimination on any of the grounds referred to in Article 1.
 2. For the purposes of paragraph 1:
 - (a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1;
 - (b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:
 - (i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary ...

...’

- 11 Article 6(1) of that directive, entitled ‘Justification of differences of treatment on grounds of age’, provides:

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

Such differences of treatment may include, among others:

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

...’

German law

- 12 The third sentence of Paragraph 41 of Book VI of the Sozialgesetzbuch (Social Security Code), entitled ‘Retirement pension and protection from dismissal’, in the version in force since 23 June 2014, provides (‘the provision at issue in the main proceedings’):

‘If an agreement provides for the termination of the employment relationship upon reaching the normal retirement age, the parties to the employment contract may postpone the termination date by agreement during the employment relationship, including on more than one occasion if necessary.’

- 13 Paragraph 44 of the collective agreement applicable to public sector employees of the Länder (‘the collective agreement’), entitled ‘Special regulations for those employed as teaching staff’, provides in subparagraph 4 relating to Part V, entitled ‘Fixed term and termination of the employment relationship’:

‘The employment relationship shall terminate without requiring notice of termination at the end of the school half-year (31 January or 31 July) in which the teacher reaches the age established by statute for receiving the standard retirement pension.’

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

- 14 Mr John, who was born on 8 July 1949, was engaged on 25 September 2001, by the Free Hanseatic City of Bremen as a contract teacher. The employment contract was subject to the collective agreement for contractual agents of the German civil service which was replaced by the collective agreement.
- 15 In accordance with the collective agreement, the employment contract had to be terminated on the date on which the teacher reached the legal qualifying age for a retirement pension. By letter of 5 February 2014, Mr John asked for permission to continue working beyond that age, until the end of the 2014/2015 school year. On 24 October 2014, the parties concluded an agreement providing that ‘the automatic termination of the contract of employment is postponed until 31 July 2015 pursuant to Paragraph 44(4) of the collective agreement’.

- 16 On 4 February 2015, Mr John asked his employer if the date of termination of the contract could be postponed until the end of the first school half-year of 2015/2016, that is, 31 January 2016. After that request was refused, he brought legal proceedings claiming that a fixed-term contract based on the provision at issue in the main proceedings is contrary to European law.
- 17 The Landesarbeitsgericht Bremen (Regional Employment Court, Bremen, Germany) is unsure whether the provision at issue in the main proceedings is consistent with Clause 5(1) of the Framework Agreement and Article 1, Article 2(1) and Article 6(1) of Directive 2000/78. The referring court considers that the employment contract at issue in the main proceedings is covered by the Framework Agreement because, pursuant to the collective agreement, it comes to an end on the date on which the teacher reaches the legal qualifying age for a retirement pension. Therefore, it considers that the extension of the contract beyond that time is to be regarded as a renewal of the fixed-term contract. It asks whether the provisions of national law, in so far as they do not provide for any limit on the possibility for the parties to postpone the date of the termination of the contract, are consistent with the requirements of the Framework Agreement aiming to avoid the misuse of a succession of fixed-term contracts and whether they infringe the provisions of Directive 2000/78 or the general principles of EU law.
- 18 In those circumstances, the Landesarbeitsgericht Bremen (Regional Employment Court, Bremen) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘(1) Is Clause 5(1) of the [Framework Agreement] to be interpreted as meaning that it precludes national legislation allowing the parties to an employment contract, without additional requirements, to agree during the employment relationship indefinitely to postpone the agreed termination of the relationship upon the worker reaching the normal retirement age, including on more than one occasion if necessary, simply because the worker has a right to a retirement pension upon reaching the normal retirement age?
- (2) If the Court answers the Question 1 in the affirmative:
- Does the incompatibility of the national legislation referred to in Question 1 with Clause 5(1) of the Framework Agreement also apply when the termination is postponed for the first time?
- (3) Are Articles 1, 2(1) and 6(1) of [Directive 2000/78] and/or the general principles of [EU] law to be interpreted as meaning that they preclude national legislation allowing the parties to an employment contract, without additional requirements, to agree during the employment relationship indefinitely to postpone the agreed termination of the relationship upon the worker reaching the normal retirement age, including on more than one occasion if necessary, simply because the worker has a right to a retirement pension upon reaching the normal retirement age?’

Consideration of the questions referred

The third question

- 19 By the third question, which it is appropriate to examine first, the referring court asks whether Article 2(2) and Article 6(1) of Directive 2000/78 must be interpreted as meaning that they preclude a national provision, such as that at issue in the main proceedings, in so far as it makes the postponement of the date of termination of the employment of workers having reached the legal qualifying age for a retirement pension subject to the consent of the employer given for a fixed term.

- 20 In that connection, it must be recalled that, in accordance with Article 2 of Directive 2000/78, the ‘principle of equal treatment’ means that there is to be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1 of the directive, which include age.
- 21 In accordance with Article 2(2)(a) of that directive, there is direct discrimination where a person, on the basis of his age, is treated less favourably than another is, has been or would be treated in a comparable situation. Under Article 2(2)(b), indirect discrimination is to be taken to occur where an apparently neutral provision, criterion or practice would put persons of a certain age at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.
- 22 Therefore, it must be examined whether an employee such as Mr John is treated less favourably than another in a comparable situation on account of his age, within the meaning of Article 2(2)(a) of Directive 2000/78, or whether the provision at issue in the main proceedings may give rise to a particular disadvantage with regard to the age category to which he belongs, within the meaning of Article 2(2)(b) thereof.
- 23 As a preliminary point, it must be recalled, first, as set out in recital 14 of Directive 2000/78, the latter is without prejudice to national provisions laying down retirement ages. Furthermore, as the European Commission observed, the age limits corresponding to the normal retirement age must take account of the impairment of performance of workers which generally occurs with age, as well as the desire and the need of older workers to use their free time as they wish.
- 24 Second, the Court has held that the automatic termination of the employment contracts of employees who meet the conditions as regards age and contributions paid for the liquidation of their pension rights has, for a long time, been a feature of employment law in many Member States and is widely used in employment relationships. It is a mechanism which is based on the balance to be struck between political, economic, social, demographic and/or budgetary considerations and the choice to be made between prolonging people’s working lives or, conversely, providing for early retirement (judgment of 12 October 2010, *Rosenbladt*, C-45/09, EU:C:2010:601, paragraph 44 and the case-law cited).
- 25 The Court, in its judgment of 12 October 2010, *Rosenbladt* (C-45/09, EU:C:2010:601), held that a provision similar to Paragraph 44 of the collective agreement does not go beyond what is necessary to reach the objectives pursued, given the wide discretion granted to the Member States and the social partners in the area of social policy and employment.
- 26 The provision challenged in the dispute in the main proceedings is not Paragraph 44 of the collective agreement relating to the principle of the automatic termination of the employment relationship at the end of the school half-year in which the worker reached the normal retirement age, but a provision which, by contrast, allows the parties to the employment contract to postpone the date of termination of the employment relationship thus fixed. In fact, as is clear from the wording of the third question itself, it enables them indefinitely to postpone that date, on more than one occasion if necessary, without any conditions.
- 27 As regards the possible unfavourable or disadvantageous effects of the provision at issue in the main proceedings, the German Government submits that it does not concern the age limit laid down for the termination of an employment relationship as such, but the option to postpone the termination of the employment relationship by common agreement, which offers workers who have reached the normal retirement age a further possibility to be involved in arranging the termination of their employment relationship.

- 28 According to the German Government, by adopting the provision at issue in the main proceedings, the national legislature sought to introduce, in accordance with the wishes of the social partners, a flexible and legally certain possibility to maintain, where required and under certain conditions, an employment relationship beyond the normal retirement age.
- 29 That interpretation is not invalidated by the referring court, which considers that the provision at issue in the main proceedings may be regarded as permitting a derogation from the principle of the automatic termination of the employment contract when the worker reaches normal retirement age. Unlike younger workers, a worker who has reached the normal retirement age may be offered the choice between continuing the employment relationship and stopping work completely.
- 30 The fact that the parties to the employment contract at issue may, without additional requirements, indefinitely postpone the date of termination of the employment relationship and on more than one occasion if necessary, cannot call that finding into question. To the contrary, such factors may render that provision more favourable and advantageous in so far as they are arrangements for continuing an employment relationship which cannot, in any event, take place without the agreement of both parties to the contract and which are made during the employment relationship.
- 31 It must be held that in principle such factors enable the worker and his employer to maintain the employment relationship only if they consider that option to be advantageous in the context of employment which continues after the worker has reached the normal retirement age. It is also clear from the documents before the Court that Mr John challenged his employer's refusal to grant his request to postpone the date of cessation of his employment a second time before the referring court.
- 32 In such circumstances, such a provision cannot be regarded as an unfavourable measure, within the meaning of Article 2(2) of Directive 2000/78, with regard to persons having reached retirement age as compared with those who have not already reached that age.
- 33 Therefore, the answer to the third question is that Article 2(2) of Directive 2000/78 must be interpreted as meaning that it does not preclude a national provision, such as that at issue in the main proceedings, to the extent that it makes the postponement of the date of cessation of employment of workers who have reached the legal qualifying age for a retirement pension subject to the agreement of the employers given for a fixed term.

The first and second questions

- 34 By its first and second questions, which it is appropriate to examine together, the referring court asks whether Clause 5(1) of the Framework Agreement must be interpreted as meaning that it precludes a national provision, such as that at issue in the main proceedings, in so far as it allows the parties to an employment contract, without additional requirements, indefinitely to postpone, by common agreement during the employment relationship, including on more than one occasion if necessary, the date of termination of the employment relationship, related to reaching the normal retirement age, simply because the worker, by reaching normal retirement age is entitled to a retirement pension.
- 35 The German Government states, as a preliminary point, that the dispute in the main proceedings does not fall within the scope of the Framework Agreement. It submits that the termination of the employment contract on the date on which the employee reaches retirement age cannot lead to the employment relationship being classified as a 'fixed-term contract'. Such a contract cannot be regarded as establishing a short-term employment relationship as a period of several decades may ensue between the conclusion of the contract of employment and the date of retirement. In the same way, the effect of postponement by the parties of the date of termination of the contract of employment is to maintain the pre-existing contract of employment and, therefore, it cannot be regarded as the conclusion of a new fixed-term contract of employment.

- 36 In that connection, the referring court considers that, since Paragraph 44(4) of the collective agreement applies to the contract at issue in the main proceedings, pursuant to which the employment relationship ends at the end of the school half-year in which the worker reaches the legal age for entitlement to a retirement pension, a fixed term is imposed.
- 37 It must be recalled, as is clear from the wording of Clause 2(1) of the Framework Agreement, that although the scope of the latter 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 practices in each Member State’, the fact remains that the definition of contracts and employment relationships to which the Framework Agreement applies is not governed by it or by EU law, but by national legislation and/or practices (judgment of 15 March 2012, *Sibilio*, C-157/11, not published, EU:C:2012:148, paragraph 42).
- 38 However, the Court may, in the framework of the judicial cooperation provided for by that article and on the basis of the material presented to it, provide the national court with an interpretation of EU law which may be useful to it in assessing the effects of one or other of its provisions (see, to that effect, judgment of 21 June 2017, *W and Others*, C-621/15, EU:C:2017:484, paragraph 40 and the case-law cited).
- 39 Thus, it should be born in mind that the Framework Agreement starts from the premiss that indefinite employment contracts are the general form of employment relationship, while acknowledging that fixed-term employment contracts are a characteristic of employment in certain sectors or for certain occupations and activities.
- 40 One of the objectives of that agreement is 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 prevent the status of employees from being insecure (judgment of 14 September 2016, *Pérez López*, C-16/15, EU:C:2016:679, paragraph 26 and the case-law cited).
- 41 Thus, the benefit of stable employment is viewed as a major element in the protection of workers, whereas it is only in certain circumstances that fixed-term employment contracts can respond to the needs of both employers and workers (judgment of 14 September 2016, *Pérez López*, C-16/15, EU:C:2016:679, paragraph 27 and the case-law cited).
- 42 As set out in paragraph 24 of the present judgment, the automatic termination of the employment contracts of employees who meet the conditions as regards age and contributions paid for the liquidation of their pension rights has, for a long time, been a feature of employment law in many Member States and is widely used in employment relationships.
- 43 Furthermore, as the German Government observes, the length of a contract of employment, such as that at issue in the main proceedings, which provides for the termination of the employment relationship only when the employee reaches normal retirement age, is likely to last several decades.
- 44 Furthermore, in essence, the automatic termination of contracts of employment of employees who have reached the normal retirement age confers on them the benefit of stable employment. As the referring court observes, an employee who reaches the normal qualifying age for a retirement pension is generally at the end of his working life.
- 45 Moreover, it is possible that the postponement provided for by the provision at issue in the main proceedings is regarded as merely the contractual postponement of the retirement age initially agreed.

- 46 Therefore, there is no evidence before the Court that such a provision is likely to encourage the successive use of fixed-term contracts or employment relationships, or that it constitutes a potential source of abuse to the detriment of workers. In any event, there is no reason to consider that the age limits corresponding to the normal retirement age lead in every case to greater insecurity of the situation of the workers concerned, for the purposes of the Framework Agreement, if the latter benefit from a full pension and, in particular, if the employer is allowed to renew the contract of employment concerned.
- 47 If, notwithstanding the findings set out in paragraphs 42 to 46 of the present judgment, the referring court took the view that the conclusion of an agreement such as that of 24 October 2014, providing for the postponement of the date of termination of a contract of employment such as that concluded on 25 September 2001, subject to a clause providing for the automatic termination of the employment relationship when the worker reached the legal qualifying age for a retirement pension, must be regarded as a use of successive fixed-term employment contracts or relationships, within the meaning of Clause 5(1) of the Framework Agreement, it must be examined whether that clause precludes a national provision, such as that at issue in the main proceedings, which allows the parties to a contract of employment, without additional requirements, to agree during the employment relationship indefinitely to postpone, and on more than one occasion if necessary, the agreed date of termination of the employment contract related to reaching the normal retirement age, simply because, by reaching the normal retirement age, the worker qualifies for a retirement pension.
- 48 It should be noted that Clause 5 of the Framework Agreement requires Member States, in paragraph 1 thereof, to adopt one or more of the measures listed 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 those successive fixed-term employment contracts or relationships, and the number of renewals of such contracts or relationships (judgment of 14 September 2016, *Martínez Andrés and Castrejana López*, C-184/15 and C-197/15, EU:C:2016:680, paragraph 35 and the case-law cited).
- 49 Although EU law does, therefore, lay down an obligation on Member States to adopt preventive measures, it does not lay down any specific sanctions where instances of abuse have been established. In such a case, 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 measures taken pursuant to the Framework Agreement are fully effective (judgment of 14 September 2016, *Martínez Andrés and Castrejana López*, C-184/15 and C-197/15, EU:C:2016:680, paragraph 36 and the case-law cited).
- 50 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 3 July 2014, *Fiamingo and Others*, C-362/13, C-363/13 and C-407/13, EU:C:2014:2044, paragraph 66, and order of 11 December 2014, *León Medialdea*, C-86/14, not published, EU:C:2014:2447, paragraph 48).
- 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 (judgments of 7 September 2006, *Marrosu and Sardino*, C-53/04, EU:C:2006:517, paragraph 56, and of 3 July 2014, *Fiamingo and Others*, C-362/13, C-363/13 and C-407/13, EU:C:2014:2044, paragraph 67 and the case-law cited).

- 52 The Court, when giving a preliminary ruling, may, however, provide clarification designed to give the referring court guidance in its assessment (judgments of 3 July 2014, *Fiamingo and Others*, C-362/13, C-363/13 and C-407/13, EU:C:2014:2044, paragraph 68 and the case-law cited, and of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13, C-63/13 and C-418/13, EU:C:2014:2401, paragraph 83).
- 53 In the present case, it must be observed that the concept of ‘objective reasons’, within the meaning of Clause 5(1)(a) of the Framework Agreement, must be understood as referring to precise and concrete circumstances characterising a given activity, which are therefore capable in that particular context of justifying the use of successive fixed-term employment contracts. Those circumstances may result, in particular, from the specific nature of the tasks for the performance of which such 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 (judgment of 26 January 2012, *Küçük*, C-586/10, EU:C:2012:39, paragraph 27).
- 54 It must be observed that, according to the referring court, an employee who reaches the standard age for receiving a statutory retirement pension differs not only in terms of social security benefits from other employees but also by the fact that he is generally at the end of his working life and with regard to the fixed term does not have the alternative of an otherwise indefinite employment relationship.
- 55 In addition, as already stated in paragraph 29 of the present judgment, the provision at issue in the main proceedings may be understood as allowing a derogation from the principle of the automatic termination of the contract of employment where the worker reaches the normal retirement age.
- 56 Furthermore, it is clear from the documents before the Court that, by virtue of that provision, the postponement of the date of termination of the employment relationship requires the actual conclusion of an agreement made during the course of that employment relationship which provides that the existing employment relationship is to continue indefinitely and pursuant to which the remainder of the contractual terms are unchanged. Such restrictions give the worker concerned a guarantee that the initial contractual terms will be maintained, while retaining the right to receive a retirement pension.
- 57 In the light of the foregoing considerations the answer to the first and second questions is that Clause 5(1) of the Framework Agreement must be interpreted as meaning that it does not preclude a national provision, such as that at issue in the main proceedings, in so far as it permits the parties to a contract of employment, without additional requirements, indefinitely to postpone, by common agreement during the course of the employment relationship, including on more than one occasion if necessary, the agreed date of termination related to reaching the normal retirement age, simply because that worker, by reaching the normal retirement age, is entitled to a retirement pension.

Costs

- 58 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 (Sixth Chamber) hereby rules:

- 1. Article 2(2) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as meaning that it does not preclude a national provision such as that at issue in the main proceedings, to the extent that it makes the postponement of the date of termination of employment of workers who have reached the legal qualifying age for a retirement pension subject to the agreement of the employers given for a fixed term.**

2. **Clause 5(1) of Framework agreement on fixed-term work concluded on 18 March 1999, 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, must be interpreted as meaning that it does not preclude a national provision, such as that at issue in the main proceedings, in so far as it permits the parties to a contract of employment, without additional requirements, indefinitely to postpone, by common agreement during the course of the employment relationship, including on more than one occasion if necessary, the agreed date of termination related to reaching the normal retirement age, simply because that worker, by reaching the normal retirement age, is entitled to a retirement pension.**

[Signatures]