ECLI:EU:C:2022:3

Provisional text

JUDGMENT OF THE COURT (Second Chamber)

13 January 2022 (*)

(Reference for a preliminary ruling – Social policy – Directive 1999/70/EC – Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Clauses 4 and 5 – Fixed-term employment contracts in the public sector – Catholic religious education teachers – Concept of 'objective reasons' justifying the renewal of such contracts – Permanent need for replacement staff)

In Case C-282/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale di Napoli (District Court, Naples, Italy), made by decision of 13 February 2019, received at the Court on 3 April 2019, in the proceedings

YT,

ZU,

AW,

BY,

CX,

DZ,

EA,

FB,

GC,

IE,

JF,

KG,

LH,

MI,

NY,

PL,

HD,

OK

v

Ministero dell’Istruzione, dell’Università e della Ricerca – MIUR,

Ufficio Scolastico Regionale per la Campania,

intervener:

Federazione GILDA-UNAMS,

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the First Chamber, acting as President of the Second Chamber, I. Ziemele, T. von Danwitz, P.G. Xuereb and A. Kumin (Rapporteur), Judges,

Advocate General: E. Tanchev,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– YT, ZU, AW, BY, CX, DZ, EA, FB, GC, IE, JF, KG, LH, MI, NY and PL, by S. Tramontano, avvocato,

– HD, by F. Sorrentino, avvocata,

– OK, by V. De Michele, avvocato,

– Federazione GILDA-UNAMS, by T. de Grandis, avvocato,

– the Italian Government, by G. Palmieri, acting as Agent, and by L. Fiandaca and P. Gentili, avvocati dello Stato,

– the European Commission, by G. Gattinara, M. van Beek and C. Valero, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 18 March 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Clauses 4 and 5 of the framework agreement on fixed-term work, concluded on 18 March 1999 ('the framework agreement'), which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43), and Articles 1 and 2(2)(a) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) and Article 21 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between YT, ZU, AW, BY, CX, DZ, EA, FB, GC, IE, JF, KG, LH, MI, NY, PL, HD and OK ('the applicants in the main proceedings'), who are Catholic religious education teachers in public education establishments, and the Ministero dell'Istruzione dell'Università e della Ricerca – MIUR (Ministry of Education, Universities and Research – MIUR, Italy) and the Ufficio Scolastico Regionale per la Campania (Regional Office for Education, Campania, Italy), concerning the applicants' request that their fixed-term employment contracts be reclassified as contracts of indefinite duration.

Legal context

European Union law

Directive 1999/70

3 Recital 14 of Directive 1999/70 states:

'The signatory parties wished to conclude a framework agreement on fixed-term work setting out the general principles and minimum requirements for fixed-term employment contracts and employment relationships; they have demonstrated their desire 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'.

The framework agreement

4 The second paragraph of the preamble to the framework agreement states that the parties to the agreement 'recognise that contracts of an indefinite duration are, and will continue to be, the general form of employment relationship between employers and workers [and that] fixed-term employment contracts respond, in certain circumstances, to the needs of both employers and workers'.

5 Paragraphs 6 to 8 and 10 of the general considerations of the framework agreement are worded as follows:

‘6. Whereas employment contracts of an indefinite duration are the general form of employment relationships and contribute to the quality of life of the workers concerned and improve performance;

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

8. Whereas fixed-term employment contracts are a feature of employment in certain sectors, occupations and activities which can suit both employers and workers;

…

10. Whereas this agreement refers back to Member States and social partners for the arrangements for the application of its general principles, minimum requirements and provisions, in order to take account of the situation in each Member State and the circumstances of particular sectors and occupations, including the activities of a seasonal nature’.

6 Clause 1 of the framework agreement provides:

‘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 Clause 2(1) of the framework agreement, that clause being 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.’

8 Clause 3 of the framework agreement, entitled ‘Definitions’, provides:

‘1. For the purpose of this agreement the term “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.

…’

9 Clause 4(1) of the framework agreement, that clause being entitled ‘Principle of non-discrimination’, provides:

‘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.’

10 Clause 5 of the framework agreement, 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 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.’

11 Clause 8 of the framework agreement, headed ‘Provisions on implementation’, provides:

‘1. Member States and/or the social partners can maintain or introduce more favourable provisions for workers than set out in this [framework agreement].

…’

Directive 2000/78

12 Recital 24 of Directive 2000/78 states:

‘The European Union in its Declaration No 11 on the status of churches and non-confessional organisations, annexed to the Final Act of the Amsterdam Treaty, has explicitly recognised that it respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States and that it equally respects the status of philosophical and non-confessional organisations. With this in view, Member States may maintain or lay down specific provisions on genuine, legitimate and justified occupational requirements which might be required for carrying out an occupational activity.’

13 Article 1 of the directive provides that its purpose is to lay down a general framework for combating discrimination on the grounds of, inter alia, religion or belief as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.

14 Article 2(1) and (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 whatsoever 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, …

…'

Italian law

15 Article 3(4), (7), (8) and (9) of legge n. 186 – Norme sullo stato giuridico degli insegnanti di religione cattolica degli istituti e delle scuole di ogni ordine e grado (Law No 186 laying down provisions governing the legal status of Catholic religious education teachers in establishments and schools of all types and levels) of 18 July 2003 (GURI No 170 of 24 July 2003) provides:

'4. Every candidate in the open competition must have a certificate attesting to his or her suitability … issued by the diocesan ordinary with jurisdiction for the area concerned and may apply only for the positions available within the diocese.

…

7. The committees shall draw up the list of the successful candidates, taking account of, in addition to the results of the tests, the certificates exclusively … The regional director shall approve the list and send to the diocesan ordinary with jurisdiction for the area concerned the names of the persons in a favourable position to fill the positions for tenured teaching staff … The regional director shall draw from the list of the names of the successful candidates in order to send to the diocesan ordinary the necessary names to fill the tenured teaching staff positions that may become vacant during the validity period of the competition.

8. Recruitment under contracts of indefinite duration shall be done by the regional director in consultation with the diocesan ordinary with jurisdiction for the area concerned …

9. Grounds for termination of the employment relationship shall include the revocation of the suitability certificate by the diocesan ordinary with jurisdiction for the area concerned, once it becomes enforceable pursuant to canon law …'

16 Article 36(1), (2) and (5) of decreto legislativo n. 165 – Norme generali sull'ordinamento del lavoro alle dipendenze delle amministrazioni pubbliche (Legislative Decree No 165 laying down general rules concerning the organisation of employment in public administrations) of 30 March 2001 (Ordinary Supplement to GURI No 106 of 9 May 2001), in the version applicable to the main proceedings ('Legislative Decree No 165/2001'), provided:

'1. For requirements connected with their everyday needs, public authorities shall recruit exclusively by means of employment contracts of indefinite duration …

2. To meet temporary and exceptional requirements only, public authorities may make use of the flexible forms of contract for the recruitment and employment of staff provided for in the Civil Code and the laws on employment relationships in undertakings, in accordance with existing recruitment procedures.

…

5. In any event, infringement of mandatory provisions on the recruitment or employment of workers by public authorities cannot lead to the creation of employment contracts of indefinite duration with those public authorities, without prejudice to any liability or sanction which those authorities may incur. The worker concerned shall be entitled to compensation for damage suffered as a result of working in breach of mandatory provisions.'

17 Article 5(2) and (4-*bis*) of decreto legislativo n. 368 – Attuazione della direttiva 1999/70/CE relativa all'accordo quadro sul lavoro a tempo determinato concluso dall'UNICE, dal CEEP e dal CES (Legislative Decree No 368 implementing Council Directive 1999/70/EC concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP) of 6 September 2001 (GURI No 235 of 9 October 2001), in the version applicable to the main proceedings ('Legislative Decree No 368/2001'), provided:

'2. Should the employment relationship continue beyond the thirtieth day, where the duration of the contract is less than six months and where the overall period set out in paragraph 4-*bis* has elapsed, or beyond the fiftieth day in other circumstances, the contract is deemed to be of indefinite duration from that date.

…

4-*bis*. … where, as a result of a succession of fixed-term contracts for the performance of equivalent tasks, an employment relationship between the same employer and the same worker continues for an overall period of more than 36 months, including any extensions and renewals, disregarding any breaks between one contract and another, the employment relationship shall be regarded as being a relationship of indefinite duration pursuant to paragraph 2 …'

18 Article 10(4-*bis*) of Legislative Decree No 368/2001 provided:

'… excluded from the application of the present decree are fixed-term contracts concluded in order to fill temporary vacancies for teaching and administrative, technical and auxiliary staff, given the need to ensure the continuity of provision of teaching and educational services, including where teaching and administrative, technical and auxiliary staff with permanent or fixed-term employment relationships are temporarily absent or unavailable. …'

19 Decreto legislativo n. 81 – Disciplina organica dei contratti di lavoro e revisione della normativa in tema di mansioni, a norma dell'articolo 1, comma 7, della legge 10 dicembre 2014, n. 183 (Legislative Decree No 81 – Systematic regulation of employment contracts and revision of the legislation on employment obligations, pursuant to Article 1(7) of Law No 183 of 10 December 2014) of 15 June 2015 (Ordinary Supplement to GURI No 144 of 24 June 2015; 'Legislative Decree No 81/2015'), which repealed and replaced Legislative Decree No 368/2001 reproduced, in essence, in Article 19 thereof, the same provision as that contained in Article 5(4-*bis*) of the latter legislative decree. That Article 19 was worded as follows:

'1. An employment contract may be concluded for a term not exceeding 36 months.

2. Without prejudice to the provisions in collective agreements, … the duration of an employment relationship between the same employer and the same worker as a result of a succession of fixed-term contracts for the performance of equivalent tasks in the same legal category, disregarding any breaks between one contract and another, shall not exceed 36 months. … When the 36-month limit is exceeded, following a single contract or a succession of contracts, the contract shall be converted to a contract of indefinite duration.'

20 Article 29(2)(c) of Legislative Decree No 81/2015 reproduces, in essence, the content of Article 10(4-*bis*) of Legislative Decree No 368/2001, in that it provides that fixed-term contracts concluded with teaching and administrative, technical and auxiliary staff in order to fill replacement staff positions are also excluded from the scope of Chapter III of Legislative Decree No 81/2015 relating to fixed-term employment.

21 Article 309 of decreto legislativo n. 297 – Approvazione del testo unico delle disposizioni legislative vigenti in materia di istruzione, relative alle scuole di ogni ordine e grado (Legislative Decree No 297 approving the consolidated text of the applicable legislative provisions on education relating to schools of all types and levels) of 16 April 1994 (Ordinary Supplement to GURI No 115 of 19 May 1994; 'Legislative Decree No 297/1994'), provides:

'1. In public non-university schools of all types and levels, Catholic religious education is governed by the agreement between the Italian Republic and the Holy See, and its additional protocol … and by the agreements foreseen by that protocol under its point 5(b).

2. For the teaching of Catholic religious education, the head of the education establishment concerned shall appoint teaching staff on an annual, fixed-term basis in consultation with the diocesan ordinary, according to the provisions set out in paragraph 1.'

22 Article 399 of that legislative decree provides that teaching staff for nursery, primary and secondary schools, including arts academies and institutes of art, shall be recruited, as to 50% of the positions available each school year, by way of a competition on the basis of qualifications and tests and, as to the remaining 50%, from the permanent ranking lists referred to in Article 401. Should the ranking list of a competition on the basis of qualifications and tests be exhausted and should there remain available positions to fill in accordance with that competition, the latter should be added to the positions attributed to the corresponding permanent ranking list. Those posts are to be re-integrated during the following competition procedure.

23 Article 1(95) of legge n. 107 – Riforma del sistema nazionale di istruzione e formazione e delega per il riordino delle disposizioni legislative vigenti (Law No 107 reforming the national education and training system and introducing delegation measures for the reorganisation of the legislative provisions in force) of 13 July 2015 (GURI No 162 of 15 July 2015; 'Law No 107/2015'), provides that, for the 2015/16 school year, MIUR is authorised to put in place a special plan for the recruitment of permanent teaching staff in public education establishments at all levels, with a view to filling all vacant posts from the '*de jure*' table of posts which remain vacant and available at the end of the tenure-granting procedures carried out in respect of that academic year in accordance with Article 399 of Legislative Decree No 297/1994, at the conclusion of which the ranking lists setting out the results of competitions conducted based on qualifications and tests published before 2012 are to be withdrawn.

24 Article 40(1) and (5) of the national collective agreement of the teaching sector of 29 November 2007, supplemented by the national collective employment agreement of 19 April

2018 (Ordinary Supplement No 274 to GURI No 292 of 17 December 2007; ‘the CCNL’), provides:

‘1. The provisions of Article 25(2), (3) and (4) apply to the staff referred to in the present article.

…

5. Catholic religious education teachers shall be recruited on the basis of the provisions laid down in Article 309 of Legislative Decree No 297/1994 by means of annual employment contracts that shall be deemed to be confirmed where the conditions and requirements laid down by the applicable legal provisions continue to be met.’

25 Paragraph 25(3) of the CCNL provides:

‘Individual employment relationships, whether fixed-term or of indefinite duration, of the teaching and academic staff of public establishments and schools of all types and levels are established and governed by individual contracts, in compliance with the law, EU legislation and the national collective agreement in force.’

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

26 The applicants in the main proceedings are Catholic religious education teachers who have been recruited by MIUR and employed in public education establishments for many years under successive fixed-term contracts.

27 The applicants in the main proceedings are of the view that that succession of fixed-term contracts is illegal and they observe that they were not eligible for tenure under the mechanism laid down in Article 399 of Legislative Decree No 297/1994; they argue therefore that they are victims of discrimination as compared with teachers of other subjects. Accordingly, they brought an action before the referring court with a view to obtaining, pursuant to Article 5(2) and (4-*bis*) of Legislative Decree No 368/2001, the transformation of their current contracts into contracts of indefinite duration or, in the alternative, compensation for the damage suffered on account of the conclusion of successive fixed-term contracts.

28 The Federazione GILDA-UNAMS (GILDA-UNAMS Federation), a teachers’ union and professional association, which intervened in the main proceedings as a signatory trade union of the CCNL, submits, inter alia, that Catholic religious education teachers are being discriminated against on account of the fact that it is impossible for their fixed-term contracts to be converted into employment relationships of indefinite duration, even though they hold the same certificate attesting to their suitability to teach as the other teachers.

29 The referring court considers that none of the claims made by the applicants in the main proceedings can be upheld under Italian law.

30 In that regard, it specifies, first of all, that, on the date when the applicants in the main proceedings brought their action, the cumulative length of each of their respective employment contracts exceeded 36 months. Although, in those circumstances and in principle, Legislative Decree No 368/2001 provides for successive fixed-term contracts to be transformed into a contract of indefinite duration, the referring court states that Article 36(5) of Legislative Decree No 165/2001 precludes expressly, in the civil service sector, such transformation.

31 It goes on to note that, although a continuous succession of fixed-term employment contracts beyond 36 months can also, pursuant to Article 36(5) of Legislative Decree No 165/2001, be penalised by compensation for the damage suffered by the worker on account of such succession, Article 10(4-*bis*) of Legislative Decree No 368/2001 precludes such a possibility in the teaching sector, as confirmed subsequently by Article 29(2) of Legislative Decree No 81/2015.

32 Moreover, the referring court stresses that the applicants in the main proceedings were not eligible for tenure pursuant to Article 399 of Legislative Decree No 297/1994 or pursuant to Law No 107/2015, which resulted in the general regularisation of auxiliary teaching staff by authorising the conclusion of contracts of indefinite duration.

33 It is apparent from those statements that Italian law does not provide for any measure preventing the misuse of successive fixed-term contracts, for the purposes of Clause 5 of the framework agreement, for Catholic religious education teachers working in public establishments. The referring court is therefore uncertain whether Italian law is consistent with EU law.

34 In that regard, it states that, according to the settled case-law of the Corte suprema di cassazione (Supreme Court of Cassation, Italy), Article 10(4-*bis*) of Legislative Decree No 368/2001, which is a *lex specialis*, precludes, in the teaching sector, the transformation of fixed-term contracts concluded in order to provide temporary replacements into contracts of indefinite duration.

35 The referring court also notes that, according to the Corte costituzionale (Constitutional Court, Italy), which carried out a judicial review of Article 10(4-*bis*) of Legislative Decree No 368/2001 and Article 36(5) of Legislative Decree No 165/2001, it is impossible, in the civil service sector, to transform a fixed-term employment relationship into an employment relationship of indefinite duration.

36 According to the referring court, that case-law runs counter to that resulting from the judgment of 25 October 2018, *Sciotto* (C-331/17, EU:C:2018:859), by which the Court held that Clause 5 of the framework agreement must be interpreted as precluding national legislation pursuant to which the common law rules governing employment relationships and intended to penalise the misuse of successive fixed-term contracts by the automatic transformation of the fixed-term contract into a contract of indefinite duration if the employment relationship continues beyond a specific period of time are not applicable to the sector of activity of operatic and orchestral foundations, where there is no other effective measure in the domestic legal system penalising abuses identified in that sector.

37 Last, the referring court recalls that Catholic religious education can be taught only where the diocesan ordinary has issued a certificate attesting to the teacher's suitability (the 'suitability certificate') and that certificate has not been revoked. The revocation of that suitability certificate is therefore a valid ground for dismissal, which is also an indication of the fact that the employment relationship of a Catholic religious education teacher is insecure.

38 In those circumstances, the Tribunale di Napoli (District Court, Naples, Italy) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does the different treatment accorded only to Catholic religious education teachers, such as the applicants [in the main proceedings], constitute discrimination on grounds of religion, within the meaning of Article 21 of the Charter … and Directive [2000/78], or does the fact that the certificate attesting to their suitability issued to these workers can be revoked constitute an adequate reason

why only Catholic religious education teachers, such as the applicants [in the main proceedings], are treated differently from other teachers and are not covered by any measure precluding such treatment, as required under Clause 5 of the framework agreement …?

(2) If direct discrimination is taken to have occurred, within the meaning of Article 2(2)(a) of Directive [2000/78], on grounds of religion (Article 1), and the [Charter], the Court is requested to consider what instruments are available to the referring court to eliminate the effects of such discrimination, bearing in mind that all teachers other than Catholic religious education teachers are now covered by the special recruitment plan laid down in Law No 107/2015, being granted tenure and consequently given employment contracts of indefinite duration. Should this court therefore impose an employment relationship of indefinite duration with the defendant public authorities [in the main proceedings]?

(3) Must Clause 5 of the framework agreement … be interpreted as precluding a national legal provision, such as the provision at issue, under which the rules of ordinary law governing employment relationships and intended to penalise the misuse of successive fixed-term employment contracts by the automatic [transformation] of a fixed-term contract into a contract of indefinite duration where the employment relationship continues for more than a certain period of time, do not apply to the schools sector – specifically to Catholic religious education teachers – and therefore permit successive fixed-term employment contracts for an indefinite period of time? In particular, can the requirement to obtain the approval of the diocesan ordinary constitute an "objective reason" within the meaning of Clause 5(1)(a) of the framework agreement, or, instead, should such treatment be regarded as discrimination prohibited under Article 21 of the [Charter]?

(4) If the answer to question 3 is in the affirmative, do Article 21 of the [Charter], Clause 4 of the framework agreement … and/or Article 1 of Directive [2000/78] permit the disapplication of provisions that preclude the automatic [transformation] of a fixed-term employment contract into an employment contract of indefinite duration where the employment relationship continues for more than a certain period of time?'

The jurisdiction of the Court

39 The Italian Government, relying on Article 17(1) TFEU, submits that the Court does not have jurisdiction to answer the questions referred by the national court, on the ground that those questions concern the relationship between the legal system of the Italian Republic and a faith-based legal system, in the present case the legal system of the Catholic Church, and that relationship is governed by national law alone.

40 According to that government, Article 17(1) TFEU imposes an obligation to respect the status that, inter alia, churches, enjoy under national law, which results in the absence of interference in strictly religious matters, affirmed by the European Court of Human Rights (ECtHR) in its judgment of 15 May 2012, *Fernández Martínez v. Spain* (CE:ECHR:2012:0515JUD005603007).

41 In the present case, the employment relationship between the educational establishment concerned and the Catholic religious education teachers is governed by the agreement amending the concordat concluded on 18 February 1984 between the Italian Republic and the Holy See ('the concordat') and by its additional protocol. Under point 5 of that protocol, Catholic religious education is to be provided by teachers recognised as suitable by the ecclesiastical authority, and appointed, in consultation with that authority, by the education authorities.

42 Under Canon 804(2) of the Code of Canon Law, the diocesan ordinary is to ensure that those who are designated teachers of religious instruction in schools, even in non-Catholic ones, are outstanding in correct doctrine, the witness of a Christian life, and teaching skills. It is therefore not disputed that there is a connection between the suitability certificate, on the one hand, and the recruitment and continuation of the employment relationship of Catholic religious education teachers, on the other hand.

43 It follows that a finding that Catholic religious education teachers in public education establishments have been discriminated against within the meaning of Directive 2000/78 cannot be made without leading to an infringement of the obligation of non-interference enshrined expressly in Article 17 TFEU.

44 In that connection, the Italian Government stresses that Catholic religious education is optional, as is apparent from, inter alia, Article 9(2) of the concordat, which has, moreover, been confirmed by the Corte costituzionale (Constitutional Court). The fact that it is optional necessarily has repercussions on the regime applicable to the employment relationship of Catholic religious education teachers. The 'demand' for that subject is, inter alia, unpredictable and extremely volatile over time, even in the short term, as it depends entirely on the choice of that subject by students and/or their parents. The Italian Government infers therefrom that the employment relationship of Catholic religious education teachers has to be particularly flexible and lead to approximately 30% of Catholic religious education teachers concluding a fixed-term contract.

45 Moreover, the Italian Government recalls that Article 351 TFEU provides that the rights and obligations arising from agreements concluded before 1 January 1958 between one or more Member States on the one hand, and one or more third countries on the other, are not to be affected by the provisions of the Treaties. The 1984 agreement revised that of 1929, Article 36 of which already provided that Catholic religious education had to be entrusted to persons who had received the approval of the ecclesiastical authority or, in any event, who held a suitability certificate issued by the diocesan ordinary; the revocation of that certificate was a sufficient ground for denying a teacher's suitability to teach.

46 In that regard, it should be noted, in the first place, that Article 17(1) TFEU provides that the European Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.

47 However, the Court has held that such a provision does not mean that a difference in treatment under national legislation concerning the grant to certain employees of a public holiday for the celebration of a religious festival is excluded from the scope of Directive 2000/78, nor that the determination of whether such a difference in treatment is compatible with that directive is not subject to effective judicial review (judgment of 22 January 2019, *Cresco Investigation*, C-193/17, EU:C:2019:43, paragraph 31).

48 Similarly, that provision cannot mean that any difference in treatment under national legislation concerning penalties in the event of misuse of successive fixed-term contracts in public education establishments between the Catholic religious education teachers in those establishments and the other teachers is excluded from the scope of that directive or of the framework agreement.

49 First, the wording of Article 17 TFEU corresponds, in essence, to that of Declaration No 11 on the status of churches and non-confessional organisations, annexed to the Final Act of the Treaty of Amsterdam. The fact that Declaration No 11 is expressly mentioned in recital 24 of Directive 2000/78 shows that the EU legislature must have taken that declaration into account when adopting

the directive (judgment of 22 January 2019, *Cresco Investigation*, C-193/17, EU:C:2019:43, paragraph 32 and the case-law cited).

50 Second, it is true that Article 17 TFEU expresses the neutrality of the European Union towards the organisation by the Member States of their relations with churches and religious associations and communities (judgments of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, paragraph 58; of 11 September 2018, *IR*, C-68/17, EU:C:2018:696, paragraph 48; and of 22 January 2019, *Cresco Investigation*, C-193/17, EU:C:2019:43, paragraph 33).

51 However, it must be stated that the national provisions at issue in the main proceedings do not seek to organise the relations between a Member State and churches, in the present case the Catholic Church, but relate to the working conditions of Catholic religious education teachers in public establishments (see, by analogy, judgment of 22 January 2019, *Cresco Investigation*, C-193/17, EU:C:2019:43, paragraph 33).

52 Admittedly, as the Italian Republic argues, there is a connection between the suitability certificate issued to Catholic religious education teachers, on the one hand, and the recruitment and continuation of the employment relationship of those teachers, on the other hand. However, not only are the issue and revocation of that certificate and any ensuing consequences connected to the recruitment and continuation of the employment relationship of those teachers, but, moreover, the powers of the diocesan ordinary are not called into question by the questions referred for a preliminary ruling and will remain, whether the applicants in the main proceedings succeed in having their fixed-term contracts transformed into a contract of indefinite duration. In addition, the application of the framework agreement to the facts in the main proceedings does not mean that the Court is to rule on the optional nature of Catholic religious education.

53 It follows that the case in the main proceedings does not relate to the 'status' under Italian law of the churches referred to in Article 17(1) TFEU such as, in the present case, the Catholic Church.

54 The Court's jurisdiction in the present case cannot be called into question either by the first paragraph of Article 351 TFEU, which provides that 'the rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of the Treaties'.

55 It must be borne in mind in that regard that the purpose of that provision is to permit the Member States to respect the rights which third States derive, in accordance with international law, from those earlier agreements (Opinion 2/15 (EU-Singapore Free Trade Agreement) of 16 May 2017, EU:C:2017:376, paragraph 254 and the case-law cited).

56 As observed by the Advocate General in point 43 of his Opinion, that provision is not relevant to the dispute in the main proceedings in so far as agreements with the Holy See or linked to it concern the powers of the diocesan ordinaries to issue and revoke certificates relating to the suitability to teach Catholic religious education; those powers are not affected, as is apparent from paragraph 52 above, by the provisions that are the subject of the questions referred for a preliminary ruling, Clause 5 of the framework agreement in particular.

57 In those circumstances, it must be held that the Court has jurisdiction to rule on the request for a preliminary ruling.

Consideration of the questions referred

58 By its questions, which should be considered together, the referring court asks, in essence, first, whether the prohibition of discrimination on grounds of religion within the meaning of Directive 2000/78 and Article 21 of the Charter as well as Clause 5 of the framework agreement, must be interpreted as precluding national legislation excluding Catholic religious education teachers in public education establishments from the scope of the rules intended to penalise abuse arising from the use of successive fixed-term contracts, and, second, whether that clause must be interpreted as meaning that the requirement to hold a suitability certificate issued by an ecclesiastical authority for the purposes of allowing those teachers to provide Catholic religious education constitutes an 'objective reason' within the meaning of Clause 5(1)(a) of that agreement.

59 It should be borne in mind from the outset that, in accordance with Article 1 of Directive 2000/78, and as is clear from the title thereof, and preamble thereto, as well as from its content and purpose, that directive is intended to establish a general framework for combating discrimination on the grounds, inter alia, of religion as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment, by providing everyone with effective protection against discrimination based, in particular, on that ground (see, to that effect, judgment of 26 January 2021, *Szpital Kliniczny im. dra J. Babińskiego Samodzielny Publiczny Zakład Opieki Zdrowotnej w Krakowie*, C-16/19, EU:C:2021:64, paragraph 32).

60 That directive is thus a specific expression, within the field that it covers, of the general principle of non-discrimination now enshrined in Article 21 of the Charter (judgment of 26 January 2021, *Szpital Kliniczny im. dra J. Babińskiego Samodzielny Publiczny Zakład Opieki Zdrowotnej w Krakowie*, C-16/19, EU:C:2021:64, paragraph 33).

61 It follows that, when it is ruling on a request for a preliminary ruling concerning the interpretation of the general principle of non-discrimination on grounds of religion, as enshrined in Article 21 of the Charter, and the provisions of Directive 2000/78 – which implement that article and contribute to the achievement of its objectives – in proceedings involving an individual and a public administrative body, the Court examines the question in the light of that directive (see, to that effect, judgment of 13 November 2014, *Vital Pérez*, C-416/13, EU:C:2014:2371, paragraph 25 and the case-law cited).

62 Under Article 2(1) of Directive 2000/78, the 'principle of equal treatment' is defined as meaning that there is to be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1 of that directive. Article 2(2)(a) of the directive specifies that direct discrimination is taken to occur where one person is treated less favourably than another is treated in a comparable situation, on any of the grounds referred to in Article 1 of the directive, which include religion. According to Article 2(2)(b) of the directive, indirect discrimination is taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion at a particular disadvantage compared with other persons.

63 Moreover, according to the Court's case-law inasmuch as the ECtHR, in its judgment of 15 May 2012, *Fernández Martínez v. Spain* (CE:ECHR:2012:0515JUD005603007), and, subsequently, the Charter use the term 'religion' in a broad sense, in that they include in it the freedom of persons to manifest their religion, the EU legislature must be considered to have intended to take the same approach when adopting Directive 2000/78, and therefore the concept of 'religion' in Article 1 of that directive should be interpreted as covering both the *forum internum*, that is the fact of having a belief, and the *forum externum*, that is the manifestation of religious faith

in public (judgment of 14 March 2017, *G4S Secure Solutions*, C-157/15, EU:C:2017:203, paragraph 28).

64 In the present case, it is apparent from the request for a preliminary ruling that the national legislation at issue in the main proceedings deprives Catholic religious education teachers in public education establishments, such as the applicants in the main proceedings, of the possibility of transforming their fixed-term contracts into a contract of indefinite duration and/or obtaining compensation for the damage suffered on account of the succession of fixed-term contracts not on the ground of their religion but, similarly to the other teachers in those establishments, because they come under the public education sector. In addition, although, unlike those other teachers, they did not benefit from the applicable procedures pursuant to Article 399 of Legislative Decree No 297/1994 or from the special recruitment plan laid down in Law No 107/2015, it is not on that ground but on account of the fact that their contracts lasted one year, which did not make it possible for them to be included on the permanent ranking lists, whereas that inclusion was necessary for tenure to be granted on that basis. Last, the length of their contract is entirely unrelated to the issuing of a suitability certificate and the declaration of faith necessary to teach Catholic religious education, and to the possibility of revoking that certificate, as such requirements apply also to Catholic religious education teachers recruited permanently.

65 Thus, assuming that Catholic religious education teachers in public education establishments are in a situation comparable to that of teachers of other subjects in those same establishments, employed under a fixed-term contract and having benefitted from that Article 399 or from that plan, such difference in treatment is not based on religion, but relates only to the regime applicable to the employment relationship.

66 Last, the referring court did not question whether there was any indirect discrimination, within the meaning of Article 2(2)(b) of Directive 2000/78, and the request for a preliminary ruling does not contain any information that would lead to a finding that the apparently neutral criterion in the legislation at issue in the main proceedings results, in fact, in persons belonging to a particular religion being put at a particular disadvantage.

67 By contrast, as noted by the Commission, the damage claimed by the applicants in the main proceedings, being the exclusive result of the fact that it is impossible for them to rely on the protection mechanisms provided for by national law which penalise the misuse of fixed-term contracts, is the subject of specific EU legislation, namely that provided for by the framework agreement.

68 In those circumstances, in order to provide the referring court with a helpful answer in order to resolve the dispute before it, the questions referred must be reworded exclusively in the light of the relevant provisions of the framework agreement and it must be stated that, by its questions, that court asks, in essence, whether Clause 5 of the framework agreement must be interpreted as precluding national legislation which excludes Catholic religious education teachers from the application of rules intended to penalise the misuse of successive fixed-term contracts and whether the requirement to hold a suitability certificate issued by an ecclesiastical authority constitutes an ‘objective reason’ within the meaning of Clause 5(1)(a) of the framework agreement. Should national legislation not provide for any measure to prevent, within the meaning of Clause 5(1) of the framework agreement, or penalise misuse arising from the use of successive fixed-term employment relationships or contracts, that court is uncertain whether Clause 4 of the framework agreement allows the rules preventing a fixed-term contract from being transformed automatically into a contract of indefinite duration to remain unapplied where the employment relationship continues beyond a certain period of time.

69 It should be recalled as a preliminary point that it is apparent from the very wording of Clause 2(1) of the framework agreement that the scope of that agreement is conceived in broad terms, as it covers generally 'fixed-term workers who have an employment contract or employment relationship as defined in law, collective agreements or practice in each Member State'. Moreover, 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 (order of 21 September 2016, *Popescu*, C-614/15, EU:C:2016:726, paragraph 33).

70 Inasmuch as the framework agreement does not exclude any particular sector from its scope, it is therefore also applicable to staff recruited in the sector of education provided in public establishments (see, to that effect, judgment of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraph 69).

71 It follows that workers such as the applicants in the main proceedings, employed by MIUR and whose employment contracts have been concluded for a fixed term, are covered by the framework agreement.

72 Regarding Clause 4 of the framework agreement, it should be borne in mind that, according to settled case-law, as the principle of non-discrimination has been put into effect and specifically applied by the framework agreement solely as regards differences in treatment as between fixed-term workers and permanent workers in a comparable situation, any differences in treatment between specific categories of fixed-term staff are not covered by the principle of non-discrimination established by that framework agreement (see, to that effect, judgment of 21 November 2018, *Viejobueno Ibáñez and de la Vara González*, C-245/17, EU:C:2018:934, paragraph 51 and the case-law cited).

73 More specifically, Clause 4 of the framework agreement seeks to apply the principle of non-discrimination to fixed-term workers in order to prevent an employer from using such an employment relationship to deny those workers rights which are recognised for permanent workers (judgment of 17 March 2021, *Consulmarketing*, C-652/19, EU:C:2021:208, paragraph 49 and the case-law cited).

74 The fact that certain fixed-term workers, such as the applicants in the main proceedings, cannot benefit from the reclassification of their employment contract as a contract of indefinite duration although other workers teaching other subjects in public education in a comparable situation could, constitutes precisely a difference in treatment between two categories of fixed-term workers.

75 It follows that, in such a situation, the referring court cannot refrain from applying the national rules preventing, in the case of Catholic religious education teachers in public education establishments, the automatic transformation of a fixed-term contract into a contract of indefinite duration where the employment relationship continues beyond a certain period of time on the basis of Clause 4 of the framework agreement, because that situation is not covered by that clause.

76 Regarding Clause 5 of the framework agreement, it should be borne in mind that its purpose is to implement one of the objectives of that agreement, namely to place limits on successive recourse to fixed-term employment contracts or relationships, regarded as a potential source of abuse to the detriment of workers, by laying down as a minimum a number of protective provisions designed to ensure that the status of employees is not made insecure (judgment of 3 June 2021,

Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario, C-726/19, EU:C:2021:439, paragraph 26 and the case-law cited).

77 As is apparent from the second paragraph of the preamble to the framework agreement and from paragraphs 6 to 8 of its general considerations, the benefit of stability of employment is conceived as a major element of protection for workers, whereas only in certain circumstances are fixed-term employment contracts likely to meet the needs of both employers and workers (see, to that effect, judgment of 3 June 2021, *Ministero dell'Istruzione, dell'Università e della Ricerca - MIUR and Others (University researchers)*, C-326/19, EU:C:2021:438, paragraph 65 and the case-law cited).

78 Accordingly, Clause 5(1) of the framework agreement requires, with a view to preventing misuse of successive fixed-term employment contracts or relationships, Member States to adopt one or more of the measures listed in a manner that is effective and binding, where domestic law does not include equivalent legal measures. The measures thus 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 employment contracts or relationships, and the maximum number of renewals of those contracts or relationships (judgment of 24 June 2021, *Obras y Servicios Públicos and Acciona Agua*, C-550/19, EU:C:2021:514, paragraph 45 and the case-law cited).

79 The Member States enjoy a certain discretion in that regard since they have the choice of relying on one or more of the measures listed in Clause 5(1)(a) to (c) of the framework agreement, or on existing equivalent legal measures. In that way, Clause 5(1) of the framework agreement assigns to the Member States a general objective of preventing such abuse, while leaving to them the choice as to how to achieve it, provided that they do not compromise the objective or the practical effect of the framework agreement (judgment of 24 June 2021, *Obras y Servicios Públicos and Acciona Agua*, C-550/19, EU:C:2021:514, paragraph 46 and the case-law cited).

80 Clause 5(1) of the framework agreement, the third paragraph of its preamble and paragraphs 8 and 10 of its general considerations give Member States the discretion, when implementing the agreement, to take account of the particular needs of the specific sectors and/or categories of workers involved, provided that that is justified on objective grounds (judgment of 25 October 2018, *Sciotto*, C-331/17, EU:C:2018:859, paragraph 35 and the case-law cited).

81 Moreover, Clause 5 of the framework agreement does not lay down any specific penalties where instances of misuse have nonetheless been established. In that case, it is incumbent on the national authorities to adopt measures that are not only proportionate, but also are sufficiently effective and act as sufficient deterrent to ensure that the measures taken pursuant to the framework agreement are fully effective (see, to that effect, judgment of 24 June 2021, *Obras y Servicios Públicos and Acciona Agua*, C-550/19, EU:C:2021:514, paragraph 47 and the case-law cited).

82 Accordingly, Clause 5 of the framework agreement does not lay down a general obligation on the Member States to provide for the transformation of fixed-term employment contracts into a contract of indefinite duration. Indeed, Clause 5(2) of the framework agreement leaves it, in principle, to the Member States to determine the conditions under which fixed-term employment contracts or relationships are to be regarded as contracts or relationships of indefinite duration. It follows that the framework agreement does not specify the conditions under which contracts of indefinite duration may be used (judgment of 3 June 2021, *Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario*, C-726/19, EU:C:2021:439, paragraph 49 and the case-law cited).

83 However, in order for such national legislation to be regarded as compatible with the framework agreement, the domestic law of the Member State concerned must nonetheless contain another measure that is effective to prevent and, where relevant, penalise the abuse arising from the use of successive fixed-term employment contracts (judgment of 24 June 2021, *Obras y Servicios Públicos and Acciona Agua*, C-550/19, EU:C:2021:514, paragraph 48 and the case-law cited).

84 It follows that, where the improper use of successive fixed-term employment contracts or relationships has taken place, a measure offering effective and equivalent safeguards for the protection of workers must be capable of being applied in order duly to penalise that abuse and to nullify the consequences of the breach of EU law. According to the very wording of the first paragraph of Article 2 of Directive 1999/70, Member States must 'take any necessary measures to enable them at any time to be in a position to guarantee the results imposed by [that] Directive' (judgment of 24 June 2021, *Obras y Servicios Públicos and Acciona Agua*, C-550/19, EU:C:2021:514, paragraph 49 and the case-law cited).

85 Therefore, it must be stated that, in the present case, if it were the case, in the national legislation at issue in the main proceedings, that there is no other effective measure to prevent and penalise misuse that may have been identified in respect of staff in the sector of public Catholic religious education, such a situation would be likely to undermine the purpose and practical effect of Clause 5 of the framework agreement.

86 In that connection, it should be borne in mind that it is not for the Court to give a ruling on the interpretation of provisions of national law, that being exclusively for the national courts which have 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 legislation (judgment of 24 June 2021, *Obras y Servicios Públicos and Acciona Agua*, C-550/19, EU:C:2021:514, paragraph 50 and the case-law cited).

87 It is therefore, in this instance, for the referring court to determine to what extent the conditions for application and effective implementation of the relevant provisions of domestic law constitute a measure that is adequate to prevent and, where relevant, penalise the abuse arising from the use of successive fixed-term employment contracts or relationships (judgment of 24 June 2021, *Obras y Servicios Públicos and Acciona Agua*, C-550/19, EU:C:2021:514, paragraph 51 and the case-law cited).

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

89 It is apparent from the order for reference that, first, the national legislation at issue in the main proceedings allows for the recruitment, in the sector of public Catholic religious education, of a high number of teachers by way of successive fixed-term contracts without providing for any of the limits referred to in Clause 5(1)(b) and (c) of the framework agreement as to the maximum total duration of those contracts or the maximum number of renewals of those contracts and, second, that the fixed-term contracts concluded in that sector are excluded expressly from the scope of the national provisions which make it possible for such contracts concluded successively beyond a certain period of time to be reclassified as contracts of indefinite duration and, where necessary, compensation for the damage suffered on account of that successive use to be granted.

90 In addition, according to the information provided by the referring court, nor are the applicants in the main proceedings covered by the applicable procedures provided for in Article 399

of Decree No 297/1994 or by the special plan for the recruitment of permanent teachers implemented by MIUR, which were considered by the Court to amount to a type of transformation of fixed-term contracts into contracts of indefinite duration (judgment of 8 May 2019, *Rossato and Conservatorio di Musica F.A. Bonporti*, C-494/17, EU:C:2019:387, paragraphs 32 to 36).

91 In those circumstances, it must be ascertained whether use, in the sector of public Catholic religious education, of successive fixed-term contracts can be justified by the existence in national law of objective reasons within the meaning of Clause 5(1)(a) of the framework agreement and, more specifically, whether the issuing of a suitability certificate by the diocesan ordinary in order to allow a Catholic religious education teacher to teach that subject could constitute such an objective reason.

92 It must be noted that, as stated in paragraph 7 of the general considerations in the framework agreement, the signatory parties thereto considered that the use of fixed-term employment contracts founded on 'objective reasons' is a way to prevent abuse (judgment of 3 June 2021, *Instituto Madrileño de Investigación y Desarrollo Rural, Agrario y Alimentario*, C-726/19, EU:C:2021:439, paragraph 55 and the case-law cited).

93 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 24 June 2021, *Obras y Servicios Públicos and Acciona Agua*, C-550/19, EU:C:2021:514, paragraph 59 and the case-law cited).

94 By contrast, a national provision which merely authorises recourse to successive fixed-term contracts, in a general and abstract manner, by a rule of statute or secondary legislation, is not compatible with the requirements stated in the previous paragraph. Such a purely formal provision does not permit objective and transparent criteria to be identified in order to verify whether the renewal of such contracts actually responds to a genuine need, is capable of achieving the objective pursued and is necessary for that purpose. That provision therefore carries a real risk that it will result in misuse of that type of contract and, accordingly, is not compatible with the objective of the framework agreement and the requirement that it have practical effect (judgment of 24 June 2021, *Obras y Servicios Públicos and Acciona Agua*, C-550/19, EU:C:2021:514, paragraphs 60 and 61 and the case-law cited).

95 The Italian Government raises several arguments seeking to show that there are, in the present case, precise and concrete circumstances justifying recourse to successive fixed-term employment contracts for Catholic religious education teachers in public establishments, resulting mainly from the relations between the Italian Republic and the Holy See and from the organisational flexibility required in relation to Catholic religious education.

96 Regarding the first argument, the Italian Government states, first of all, that Catholic religious education in public schools is a particular feature of the Italian educational system. The special relationship of confidence that has to exist between the teacher of that subject and the diocesan ordinary means that the person applying to teach Catholic religious education must be assessed by the bishop himself in order to prevent that subject from running counter to the provisions of the agreement between the Italian Republic and the Holy See, by giving the diocesan bishop the possibility of assessing, year on year, the suitability of each teacher.

97 That government goes on to observe that a Catholic religious education teacher can teach that subject only once he or she has been issued with a suitability certificate by the diocesan bishop, which assesses whether the teacher concerned fulfils the conditions provided for by canon law and whether that certificate can be maintained. In that connection, the Italian Government states that the 'objective reason' within the meaning of Clause 5(1)(a) of the framework agreement does not result from the potential revocation of such a certificate, but from the need to comply with the concordat and to provide Catholic religious education which is consistent with its principles, with a view in particular to satisfying the expectations of students and their parents.

98 In addition, by contributing, in accordance with the concordat, with complete independence to, inter alia, determining the profiles of the teachers, recognising their suitability and appointing them, the Catholic Church takes on the responsibilities connected to the faith-based aspects of an education to which the State remains open and available, without, however, participating in it. According to the Italian Government, that State recognises the value of religious culture and takes account of the fact that the principles of Catholicism are part of Italian history, while keeping the appropriate distance for a secular and pluralist State which does not identify with any religious denomination.

99 In relation to the second argument, the Italian Government states that the high number of fixed-term contracts in the sector of Catholic religious education ensures flexibility on account of the optional nature of that education, which enables the necessary number of teachers to be adapted simply by not renewing a certain number of annual contracts rather than terminating contracts of indefinite duration. According to the Italian Government, that approach, which therefore makes it possible to respond appropriately to the fluctuation of the demand for Catholic religious education on account of its optional nature, has been approved by the Corte costituzionale (Constitutional Court) and constitutes, in addition, an expression of the preservation of the financial and organisational interests of the State.

100 Regarding, in the first place, the argument alleging a special relationship of mutual trust that has to exist between a Catholic religious education teacher and the diocesan bishop, it is sufficient to note that that relationship concerns teachers with contracts of indefinite duration as well as those with fixed-term contracts, with the result that that argument cannot be relied on in order to justify misuse of fixed-term contracts.

101 Regarding, in the second place, the preservation of religious culture and Italian historical heritage it must be noted that, even if that objective may be regarded as worthy of constitutional protection, the Italian Government does not, however, explain how the pursuit of that objective can justify the fact that 30% of Catholic religious education teachers are employed under fixed-term contracts (see, to that effect, judgment of 25 October 2018, *Sciotto*, C-331/17, EU:C:2018:859, paragraph 45).

102 In that context, it must nonetheless be stated, in the third place, that it is possible for the sector of public Catholic religious education to require the number of workers employed in that sector to be in constant keeping with the number of potential users, as emphasised by the Italian Government, which leads to temporary recruitment needs for the employer. Thus, the temporary employment of a worker in order to satisfy the employer's temporary and specific staffing requirements may, in principle, constitute an 'objective reason' within the meaning of Clause 5(1)(a) of the framework agreement (judgment of 25 October 2018, *Sciotto*, C-331/17, EU:C:2018:859, paragraph 47).

103 In that regard, the provision of teaching services must be organised in such a way that the number of teachers is in constant keeping with the number of students. It cannot be denied that their appropriateness depends on a multitude of factors, some of which may, to a certain extent, be difficult to control or predict, such as, in particular, external and internal migration flows or students' subject choices (see, to that effect, judgment of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraph 94).

104 Such factors show that, in the education sector at issue in the main proceedings, there is a particular need for flexibility which, as set out in in paragraph 102 above, is capable, in that specific sector, of providing an objective justification under Clause 5(1)(a) of the framework agreement for recourse to successive fixed-term employment contracts in order to meet demand in schools in an appropriate manner and to avoid exposing the State, as employer in that sector, to the risk of having to grant tenure to a significantly greater number of teachers than is actually necessary for it to fulfil its obligations in this regard (judgment of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraph 95).

105 By contrast, it cannot be accepted that fixed-term employment contracts may be renewed for the purpose of the performance, in a fixed and permanent manner, of tasks which normally come under the activity of the education sector. As the Court has repeatedly held, the renewal of fixed-term employment contracts or relationships in order to cover needs which, in fact, are not temporary in nature but, on the contrary, fixed and permanent is not justified for the purposes of Clause 5(1)(a) of the framework agreement, in so far as such use of fixed-term employment contracts or relationships conflicts directly with the premiss on which the framework agreement is founded, namely that employment contracts of indefinite duration are the general form of employment relationship, even though fixed-term employment contracts are a feature of employment in certain sectors or in respect of certain occupations and activities (judgment of 24 June 2021, *Obras y Servicios Públicos and Acciona Agua*, C-550/19, EU:C:2021:514, paragraph 62 and the case-law cited).

106 In order for Clause 5(1)(a) of the framework agreement to be complied with, it must therefore be specifically verified that the successive renewal of fixed-term employment contracts or relationships is intended to cover temporary needs and that a national provision such as that at issue in the main proceedings is not, in fact, being used to meet fixed and permanent staffing needs of the employer (judgment of 24 June 2021, *Obras y Servicios Públicos and Acciona Agua*, C-550/19, EU:C:2021:514, paragraph 63 and the case-law cited).

107 It is necessary for that purpose to consider in each case all the circumstances at issue, taking account, in particular, of the number of successive contracts concluded with the same person or for the purposes of performing the same work, in order to ensure that fixed-term employment contracts or relationships, even those ostensibly concluded to meet a need for replacement staff, are not misused by employers (judgment of 24 June 2021, *Obras y Servicios Públicos and Acciona Agua*, C-550/19, EU:C:2021:514, paragraph 64 and the case-law cited).

108 The existence of an 'objective reason' within the meaning of Clause 5(1)(a) of the framework agreement thus precludes, in principle, the existence of abuse, except where an overall assessment of the circumstances surrounding the renewal of the relevant fixed-term employment contracts or relationships reveals that the services required of the worker do not meet merely a temporary need (judgment of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraph 103).

109 Consequently, the mere fact that the national legislation at issue in the main proceedings may be justified by an ‘objective reason’ within the meaning of that clause cannot be sufficient to render it consistent with that provision if it is apparent that the actual application of the legislation leads, in practice, to misuse of successive fixed-term employment contracts (judgment of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraph 104).

110 However, the national legislation at issue in the main proceedings does not provide any condition of that nature for the derogation, introduced by it, from the common law rules applicable to employment contracts and intended to penalise abuse arising from the use of successive fixed-term contracts. Moreover, the conclusion of the successive employment contracts at issue in the main proceedings does not appear to meet merely a temporary need of the employer, but it appears instead to relate to the employer’s usual management needs. In addition, the various fixed-term employment contracts by which the applicants in the main proceedings were employed gave rise to the performance of similar or even identical tasks over several years, with the result that that employment relationship can be regarded as having satisfied a need which was not temporary but, rather, long-term; this, however, is for the referring court to verify.

111 Regarding, in the fourth place, the argument relating to the financial interests of the State, it must be borne in mind that the Court has previously held that, whilst budget considerations may underlie a Member State’s choice of social policy and influence the nature or scope of the measures which it wishes to adopt, they do not in themselves constitute an aim pursued by that policy and, therefore, cannot justify the lack of any measure preventing the misuse of successive fixed-term employment contracts as referred to in Clause 5(1) of the framework agreement (judgment of 25 October 2018, *Sciotto*, C-331/17, EU:C:2018:859, paragraph 55).

112 Regarding, in the fifth place, the question whether the requirement to hold a suitability certificate, which Catholic religious education teachers must have in order to teach that subject, constitutes an ‘objective reason’ within the meaning of Clause 5(1)(a) of the framework agreement, it must be noted that, according to the file before the Court, that certificate is issued once, at the time when the school authority submits its list of candidates, irrespective of the length of the contract given to the Catholic religious education teacher concerned. The fact that the certificate is issued to all Catholic religious education teachers, whether they have concluded a fixed-term contract or a contract of indefinite duration therefore constitutes, as previously set out in paragraph 64 above, a factor which is independent of the length of the contracts given to Catholic religious education teachers.

113 Similarly, the revocation of the suitability certificate constitutes a reason for the revocation of the employment relationship both for permanent Catholic religious education teachers and for those which, like the applicants in the main proceedings, have only a fixed-term contract, and is therefore not an ‘objective reason’ within the meaning of Clause 5(1)(a) of the framework agreement.

114 Last, inasmuch as the issue of a suitability certificate is not connected with the implementation of measures recognised as pursuing legitimate social policy objectives such as those, for example, relating to the protection of pregnancy and maternity, or intended to reconcile professional and family obligations, it cannot be regarded as pursuing a social policy objective, because the definition of ‘objective reason’ in Clause 5(1)(a) of the framework agreement includes, as is apparent from the case-law recalled in paragraph 93 above, the pursuit of such an objective (see, to that effect, judgment of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraphs 92 and 93 and the case-law cited).

115 It follows that the suitability certificate is not an ‘objective reason’ within the meaning of Clause 5(1)(a) of the framework agreement.

116 Accordingly, subject to there being no ‘equivalent legal measures to prevent abuse’ within the meaning of Clause 5(1) of the framework agreement, which it is for the referring court to ascertain, national legislation such as that at issue in the main proceedings in the sector of public Catholic religious education is not such as to prevent or penalise abuse arising from the use of successive fixed-term employment contracts or relationships.

117 In that regard, it is for the courts of the Member State concerned to ensure that Clause 5(1) of the framework agreement is complied with, by ensuring that workers who have experienced abuse arising from the use of successive fixed-term employment contracts are not deterred, in the hope of continued employment in the particular sector, from asserting before the national authorities, including the courts, the rights which arise from the implementation by national law of all the preventive measures set out in Clause 5(1) of the framework agreement (judgment of 25 October 2018, *Sciotto*, C-331/17, EU:C:2018:859, paragraph 68 and the case-law cited).

118 More specifically, it is for the court hearing the action, to the fullest extent possible where abuse arising from the use of successive fixed-term employment contracts has occurred, to interpret and apply the relevant provisions of national law in such a way that it is possible duly to penalise the abuse and to nullify the consequences of the breach of EU law (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 69 and the case-law cited).

119 In this case, given that the national legislation at issue in the main proceedings contains rules applicable to common law employment contracts which are intended to penalise abuse arising from the use of successive fixed-term contracts, by providing for the automatic transformation of a fixed-term contract into a contract of indefinite duration where the employment relationship continues beyond a certain period of time, the application of such rules in the case in the main proceedings could therefore constitute a measure preventing such misuse, as provided for in Clause 5 of the framework agreement.

120 In that connection, it should, however, be noted that the Court has held that Clause 5(1) of the framework agreement is not unconditional and sufficiently precise to enable it to be relied upon by an individual before the national courts. Thus, such a provision of EU law which does not have direct effect may not be relied on, as such, in a dispute coming under EU law in order to disapply a provision of national law that conflicts with it. Therefore, a national court is not required to disapply a provision of its national law which is contrary to Clause 5(1) of the framework agreement (judgment of 24 June 2021, *Obras y Servicios Públicos and Acciona Agua*, C-550/19, EU:C:2021:514, paragraph 75 and the case-law cited).

121 That being said, it should be recalled that, when national courts apply domestic law they are bound to interpret that law, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by the directive and, consequently, comply with the third paragraph of Article 288 TFEU (judgment of 24 June 2021, *Obras y Servicios Públicos and Acciona Agua*, C-550/19, EU:C:2021:514, paragraph 76 and the case-law cited).

122 The requirement for national law to be interpreted in conformity with EU law is inherent in the system of the FEU Treaty, since it permits national courts, for the matters within their jurisdiction, to ensure the full effectiveness of EU law when they determine the disputes before

them (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 66 and the case-law cited).

123 Admittedly, the obligation on a national court to refer to the content of a directive when interpreting and applying the relevant rules of domestic law is limited by general principles of law, particularly those of legal certainty and non-retroactivity, and that obligation cannot serve as the basis for an interpretation of national law *contra legem* (judgment of 24 June 2021, *Obras y Servicios Públicos and Acciona Agua*, C-550/19, EU:C:2021:514, paragraph 77 and the case-law cited).

124 The principle that national law must be interpreted in conformity with EU law nonetheless requires national courts to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law, with a view to ensuring that the directive in question is fully effective and achieving an outcome consistent with the objective pursued by it (judgment of 24 June 2021, *Obras y Servicios Públicos and Acciona Agua*, C-550/19, EU:C:2021:514, paragraph 78 and the case-law cited). It is therefore for the referring court to verify whether such a consistent interpretation of the national provisions is possible.

125 Having regard to all the foregoing considerations, the answer to the questions referred is that Clause 5 of the framework agreement must be interpreted, first, as precluding national legislation excluding Catholic religious education teachers in public education establishments from the scope of the rules intended to penalise abuse arising from the use of successive fixed-term contracts where there is no other effective measure in the domestic legal system penalising that abuse and, second, as meaning that the requirement to hold a suitability certificate issued by an ecclesiastical authority for the purposes of allowing those teachers to provide Catholic religious education does not constitute an 'objective reason' within the meaning of Clause 5(1)(a) of the framework agreement, because that certificate is issued once and not before each school year leading to the conclusion of a fixed-term employment contract.

Costs

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

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

Clause 5 of the framework agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted, first, as precluding national legislation excluding Catholic religious education teachers in public education establishments from the scope of the rules intended to penalise abuse arising from the use of successive fixed-term contracts where there is no other effective measure in the domestic legal system penalising that abuse and, second, as meaning that the requirement to hold a suitability certificate issued by an ecclesiastical authority for the purposes of allowing those teachers to provide Catholic religious education does not constitute an 'objective reason' within the meaning of Clause 5(1)(a) of the framework agreement, because that certificate is issued once and not before each school year leading to the conclusion of a fixed-term employment contract.

[Signatures]

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* Language of the case: Italian.