Provisional text

JUDGMENT OF THE COURT (Sixth Chamber)

19 September 2024 (*)

(Reference for a preliminary ruling – Social policy – Directive 1999/70/EC – Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Clause 4 – Principle of non-discrimination – Recruitment of a fixed-term worker as a permanent worker – Determination of length of service – Failure to take into account periods of employment completed under fixed-term employment contracts concluded before the expiry of the deadline for the transposition of Directive 1999/70 – Immediate application to the future effects of a situation which arose under the old rule)

In Case C-439/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale civile di Padova (Civil District Court, Padua, Italy), made by decision of 22 June 2023, received at the Court on 13 July 2023, in the proceedings

KV

v

Consiglio Nazionale delle Ricerche (CNR),

THE COURT (Sixth Chamber),

composed of T. von Danwitz, President of the Chamber, A. Arabadjiev (Rapporteur), President of the First Chamber, and P.G. Xuereb, Judge,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– KV, by F. Americo, avvocato,

– the Italian Government, by G. Palmieri, acting as Agent, and by L. Fiandaca and M.T. Lubrano Lobianco, avvocati dello stato,

– the European Commission, by D. Recchia and F. van Schaik, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of clause 4.1 of the framework agreement on fixed-term work concluded on 18 March 1999 ('the framework agreement'), which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

2 The request has been made in proceedings between KV and the Consiglio Nazionale delle Ricerche (National Research Council, Italy) ('the CNR') concerning the calculation of the length of service completed by the former at the time of his concluding an employment contract of indefinite duration with the latter.

Legal context

European Union law

3 It is apparent from recital 14 of Directive 1999/70, which is based on Article 139(2) EC, that the signatory parties to the framework agreement wished, by concluding such a framework agreement, 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 Under Article 1 of Directive 1999/70, the purpose of that directive is 'to put into effect [the framework agreement] concluded … between the general cross-industry organisations (ETUC, UNICE and CEEP) annexed hereto'.

5 The first and third paragraphs of Article 2 of that directive provide:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 10 July 2001, or shall ensure that, by that date at the latest, management and labour have introduced the necessary measures by agreement, the Member States being required to take any necessary measures to enable them at any time to be in a position to guarantee the results imposed by this Directive. They shall forthwith inform the [European] Commission thereof.

…

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

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

7 Under clause 1 of the framework agreement, the purpose of that 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.'

8 Clause 2.1 of the framework agreement is worded as follows:

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

9 Clause 4 of the framework agreement provides:

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

…

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

Italian law

10 Article 6(1) 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 [Directive 1999/70]) of 6 September 2001 (GURI No 235 of 9 October 2001, p. 4), which transposed Directive 1999/70 into Italian law, provides:

'A worker with a fixed-term contract is entitled, in proportion to the period of employment completed, to paid leave and a Christmas bonus or a thirteenth-month bonus, as well as to end-of-contract compensation and any other benefits granted within the undertaking to comparable workers with contracts of indefinite duration, that is to say, those who are classified in the same category in accordance with classification criteria laid down by collective agreement, provided that this is not objectively incompatible with the nature of the fixed-term contract.'

11 Article 36 of legge n. 70 – Disposizioni sul riordinamento degli enti pubblici e del rapporto di lavoro del personale dipendente (Law No 70 laying down provisions concerning the reorganisation of public bodies and labour relations with staff) of 20 March 1975 (GURI No 87 of 2 April 1975), in the version applicable to the dispute in the main proceedings, provides:

'In order to meet the specific needs of scientific research, [the CNR] may recruit advanced research staff, including foreign nationals, under a fixed-term contract with a term not exceeding five years. In the context of individual research programmes and for the entire duration of the programme, the contractual recruitment of research staff and highly specialised technical staff is also permitted.'

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

12 The applicant in the main proceedings – KV – was employed by the CNR, which is a legal person governed by public law, under three fixed-term employment contracts during the periods from 2 November 1993 to 31 March 1995, from 1 August 1995 to 1 August 2000, and from 4 September 2000 to 30 September 2001, respectively, in order to carry out the tasks of a technologist and a researcher.

13 After passing a public competition, he was recruited by the CNR from 1 October 2001 under an employment contract of indefinite duration, in order to carry out the same tasks. At the time of that recruitment, the CNR did not recognise, for the purpose of determining the length of service and the remuneration of the applicant in the main proceedings, any length of service in respect of the salaried work

completed by him under the fixed-term employment contracts concluded before the expiry of the deadline laid down for the transposition of Directive 1999/70 by the Member States, namely – in accordance with the first paragraph of Article 2 of that directive – 10 July 2001.

14 On 8 February 2022, the applicant in the main proceedings brought an action before the referring court, the Tribunale civile di Padova (Civil District Court, Padua, Italy), seeking, inter alia, a declaration, pursuant to clause 4 of the framework agreement, of his right to recognition of the length of service accrued in respect of that salaried work and of the salary increases acquired as a result.

15 Before that court, the CNR has contended that that action should be dismissed, alleging, in particular, that Directive 1999/70 does not have retroactive effect.

16 According to the referring court, for the purposes of the request for a preliminary ruling, the only relevant issue is the temporal application of that directive.

17 In that regard, that court states, in the first place, that the employment relationship of the applicant in the main proceedings which lasted from 2 November 1993 to 31 March 1995 was performed in full before that directive entered into force, in the second place, that his employment relationship which lasted from 1 August 1995 to 1 August 2000 arose on a date prior to the entry into force of that directive and came to an end on a date after the entry into force of the directive but prior to the expiry of the deadline set for its transposition and, in the third place, that the employment relationship of the applicant in the main proceedings which began on 4 September 2000, and which ended prematurely on 30 September 2001 because he had passed a public competition, arose and was performed almost in full during the period between the entry into force of Directive 1999/70 and the expiry of that deadline. The Italian Republic transposed that directive into national law a few months after the expiry of that deadline, namely on 24 October 2001, the date on which Legislative Decree No 368 of 6 September 2001 entered into force.

18 According to the referring court, the fixed-term employment contracts at issue in the main proceedings do not constitute extensions of an initial fixed-term employment relationship but are acts establishing *ex novo* successive and independent fixed-term employment relationships.

19 The referring court states that if the periods of employment at issue had been completed under employment contracts of indefinite duration, they would have been taken into account in calculating the overall length of service accrued by the applicant in the main proceedings.

20 That court refers to the existence, in the Italian legal system, of two divergent lines of case-law concerning the scope *ratione temporis* of clause 4.1 of the framework agreement. According to the first line of case-law, the principle of the non-retroactivity of EU law, according to which substantive rules apply only to situations that have arisen after the entry into force of those rules, excludes the application of that clause to fixed-term employment relationships performed in full before the expiry of the deadline for the transposition of Directive 1999/70. According to the second line of case-law, the principle that a new rule applies, unless there is a derogation, immediately to the future effects of situations that have arisen under the old law, makes it possible also to take into account, for the purpose of calculating the overall length of service of a permanent worker, periods of fixed-term employment definitively completed before the entry into force of that directive.

21 The referring court considers that that second principle must be interpreted in accordance with the first line of case-law: it applies to situations that have arisen before the entry into force of the new rule and which persist, with substantial continuity, during the subsequent period, and not to situations that have not only arisen before the entry into force of that new rule but have also come to an end before that entry into force.

22 It argues that that interpretation is consistent with the principles of legal certainty and the protection of legitimate expectations, which preclude substantive rules of EU law from being applied retroactively to legal relationships established before the entry into force of those rules, unless it is clear from their wording, objectives or scheme that such an effect must be attributed to them.

23 Taking the view that that interpretation is also supported by the case-law of the Court of Justice, the referring court considers that clause 4.1 of the framework agreement, interpreted in the light of that case-law, must be understood as not covering fixed-term employment relationships such as those which existed between the parties to the main proceedings from 2 November 1993 to 31 March 1995 and from 1 August 1995 to 1 August 2000, given that the effects of each of those relationships were fully exhausted before the expiry of the deadline for the transposition of Directive 1999/70.

24 On the other hand, it is of the view that that clause may cover the fixed-term employment relationship which ran from 4 September 2000 to 30 September 2001, as that relationship was ongoing on the date of expiry of that deadline.

25 In those circumstances, the Tribunale civile di Padova (Civil District Court, Padua) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Should [clause 4.1] of [the framework agreement] be applied

– *ratione temporis* to fixed-term employment relationships established and concluded as a result of the expiry of the contractual term prior to the entry into force of [Directive 1999/70] (10 July 1999);

– *ratione temporis* to fixed-term employment relationships established on the basis of an individual employment contract entered into before the entry into force of [Directive 1999/70] (10 July 1999) and concluded as a result of the expiry of the contractual term on a date between the entry into force of [that directive] and the expiry of the deadline given to the Member States for its transposition (10 July 2001); or

– *ratione temporis* to fixed-term employment relationships established on the basis of an individual employment contract entered into in the period between the entry into force of [Directive 1999/70] (10 July 1999) and the expiry of the deadline given to Member States for its transposition (10 July 2001), and concluded as a result of the expiry of the contractual term after that latter date?’

Consideration of the question referred

Admissibility

26 The Italian Government argues that the question referred for a preliminary ruling is inadmissible on the ground that the interpretation of clause 4.1 of the framework agreement is of no use in answering that question. In its view, that question does not concern the treatment of the applicant in the main proceedings during his fixed-term employment relationships but the recognition, for the purpose of determining his remuneration for the period following the conversion of his employment relationship into one of indefinite duration, of the service which he provided in the context of those employment relationships – an issue which is governed by clause 4.4 of the framework agreement and not by clause 4.1 thereof.

27 In so far as that argument concerns the determination of the provision of EU law applicable to the dispute in the main proceedings, it relates to the substance of the question referred for a preliminary ruling and not to the admissibility of that question, with the result that the argument should be examined in the context of the examination of the substance of that question (see, by analogy, judgment of 18 January 2024, *Lietuvos notarų rūmai and Others*, C-128/21, EU:C:2024:49, paragraph 43 and the case-law cited).

28 Therefore, the question referred for a preliminary ruling must be declared admissible.

Substance

29 By its question, the referring court asks, in essence, whether clause 4.1 of the framework agreement is to be interpreted as precluding the length of service accrued by a worker under fixed-term employment contracts which were performed in full or in part before the date of expiry of the deadline for the transposition of Directive 1999/70 not being taken into account for the purpose of determining that worker's remuneration upon his or her recruitment on a permanent basis after that date.

30 In the context of the procedure established by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. The Court has a duty to interpret all provisions of EU law which national courts require in order to decide the actions pending before them, even if those provisions are not expressly indicated in the questions referred to the Court by those courts (judgment of 21 December 2021, *Skarb Państwa (Motor insurance cover)*, C-428/20, EU:C:2021:1043, paragraph 24).

31 In that regard, it should be borne in mind that clause 4.1 of the framework agreement prohibits, with regard to employment conditions, less favourable treatment of fixed-term workers as compared with permanent workers, solely because they are employed for a fixed term, unless different treatment is justified on objective grounds. Clause 4.4 of the framework agreement lays down the same prohibition as regards period-of-service qualifications relating to particular conditions of employment (judgments of 18 October 2012, *Valenza and Others*, C-302/11 to C-305/11, EU:C:2012:646, paragraph 39 and the case-law cited; of 20 September 2018, *Motter*, C-466/17, EU:C:2018:758, paragraph 26; and of 30 November 2023, *Ministero dell'Istruzione and INPS*, C-270/22, EU:C:2023:933, paragraphs 52 and 53).

32 It is common ground that the dispute in the main proceedings, which concerns the calculation of the length of service of the applicant in the main proceedings at the time when his employment contract of indefinite duration was concluded, relates to such qualifications.

33 In those circumstances, it is necessary, in order to provide a useful answer to the referring court, also to interpret clause 4.4 of the framework agreement.

34 In that regard, it should be borne in mind that the Court has previously held that clause 4 of the framework agreement must be understood as precluding national legislation which completely prohibits periods of service completed by a fixed-term worker for a public authority being taken into account in order to determine the length of service of that worker upon his or her recruitment on a permanent basis by that authority, unless that prohibition is justified on 'objective grounds' for the purposes of clause 4.1 and/or clause 4.4. The mere fact that the fixed-term worker completed those periods of service on the basis of a fixed-term employment contract or relationship does not constitute such an objective ground (see, to that effect, judgment of 18 October 2012, *Valenza and Others*, C-302/11 to C-305/11, EU:C:2012:646, paragraph 71).

35 In the present case, it is apparent from the information provided by the referring court that the applicant in the main proceedings, when he was carrying out his duties at the CNR under fixed-term employment contracts, was in a situation comparable to that of workers recruited on a permanent basis by that body, given that he was performing tasks which could be performed by permanent workers.

36 As regards the less favourable treatment of fixed-term workers at issue in the main proceedings, the referring court states that, if the work completed by the applicant in the main proceedings under his fixed-term employment contracts had been completed under an employment contract of indefinite duration, it would have been taken into account in the calculation of his overall length of service.

37 The Court has held that national rules, such as those at issue in the main proceedings, concerning periods of service to be completed in order to be classified in a salary grade are covered by the concept of

‘employment conditions’ within the meaning of clause 4 of the framework agreement (judgment of 30 November 2023, *Ministero dell’Istruzione and INPS*, C-270/22, EU:C:2023:933, paragraph 55 and the case-law cited).

38 The mere fact that a worker has obtained the status of permanent worker does not mean that, in certain circumstances, he or she cannot rely on the principle of non-discrimination laid down in clause 4 of the framework agreement (judgment of 18 October 2012, *Valenza and Others*, C-302/11 to C-305/11, EU:C:2012:646, paragraph 34 and the case-law cited).

39 As regards the temporal applicability of that clause, it should be borne in mind that, in principle, a new rule of law applies from the entry into force of the act introducing it. While it does not apply to legal situations that have arisen and become definitive under the old law, it applies to the future effects of a situation which arose under the old rule, as well as to new legal situations. It is otherwise – subject to the principle of the non-retroactivity of legal acts – only if the new rule is accompanied by special provisions which specifically lay down its conditions of temporal application (judgment of 22 June 2022, *Volvo and DAF Trucks*, C-267/20, EU:C:2022:494, paragraph 32 and the case-law cited).

40 Accordingly, the measures taken to transpose a directive must apply to the future effects of situations which arose under the old rule, as from the date on which the period for transposing that directive expired, unless the directive provides otherwise (judgment of 21 December 2021, *Skarb Państwa (Motor insurance cover)*, C-428/20, EU:C:2021:1043, paragraph 32).

41 It must be pointed out that neither Directive 1999/70 nor the framework agreement contains special provisions which specifically lay down their conditions of temporal application.

42 It is therefore necessary to determine whether the legal situation at issue in the main proceedings constitutes a situation existing before the date of expiry of the deadline for the transposition of Directive 1999/70.

43 In that regard, it should be noted that that situation concerns the recognition of the length of service of the applicant in the main proceedings, accrued under fixed-term employment contracts until 1 October 2001, for the purpose of determining his remuneration from that date.

44 Although that length of service was primarily accrued before the expiry of the deadline for the transposition of Directive 1999/70, that situation concerns determining the implications of that length of service for the remuneration that he receives under his employment contract of indefinite duration – concluded after that date – and therefore for the application of clause 4 of the framework agreement after that date.

45 As has been noted, in essence, by the Commission, the legal situation at issue in the main proceedings is similar to that of the calculation of the period of service required to qualify for a retirement pension, at issue in the cases which gave rise to the judgments of 10 June 2010, *Bruno and Others* (C-395/08 and C-396/08, EU:C:2010:329), and of 7 November 2018, *O’Brien* (C-432/17, EU:C:2018:879), which raised the question of taking into account periods prior to the expiry of the deadline for the transposition of Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (OJ 1998 L 14, p. 9).

46 In paragraph 35 of the judgment in *O’Brien*, the Court noted that it cannot be concluded from the fact that a right to a pension is definitively acquired at the end of a corresponding period of service that the legal situation of the worker concerned must be considered definitive, as it is only subsequently and by taking into account relevant periods of service that the worker can effectively avail him- or herself of that right with a view to payment of his or her retirement pension. The Court concluded, in paragraph 36 of that judgment, that when the accrual of pension entitlement extends over periods both prior to and after the

deadline for the transposition of Directive 97/81, it should be considered that the calculation of those rights is governed by the provisions of that directive, including with regard to the periods of service prior to its entry into force.

47 Those considerations also apply *mutatis mutandis* with regard to Directive 1999/70 and the right to remuneration claimed by the applicant in the main proceedings in respect of the length of service accrued under his fixed-term employment contracts, as it is only subsequently and by taking into account relevant periods of service that he can effectively avail himself of that right.

48 The fact, highlighted by the referring court and by the Italian Government, that his length of service was accrued, inter alia, under fixed-term employment contracts which came to an end before the date of expiry of the deadline for the transposition of Directive 1999/70 cannot lead to a different conclusion.

49 A worker accrues length of service progressively, even if it is accrued under employment contracts that have come to an end, and his or her situation continues to be characterised by that length of service after that date. Thus, the duration of each employment relationship and the date on which it ended are irrelevant to the calculation of a worker's length of service, which, in principle, involves determining the total duration of his or her periods of employment.

50 Furthermore, the dispute in the main proceedings concerns the applicability of clause 4 of the framework agreement after the date of expiry of the deadline for the transposition of Directive 1999/70 in the context of taking into account the length of service resulting from those fixed-term contracts and not the applicability of that clause to those employment contracts themselves before that date. As has been emphasised, in essence, by the Commission, given that the action brought by the applicant in the main proceedings does not seek to call into question the conditions of performance of those employment contracts, it does not concern the retroactive application of that clause.

51 In those circumstances, the legal situation at issue in the main proceedings cannot be considered to have become definitive on the date of expiry of the deadline for the transposition of Directive 1999/70.

52 That conclusion is not called into question by paragraphs 99 to 104 of the judgment of 22 June 2022, *Volvo and DAF Trucks* (C-267/20, EU:C:2022:494), cited by the referring court and by the Italian Government, in which the Court ruled, in essence, that it must be held that the rebuttable presumption which is established in Article 17(2) of Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union (OJ 2014 L 349, p. 1) – that cartel infringements cause harm – cannot be applicable *ratione temporis* to an action for damages which, although brought after the entry into force of the national provisions belatedly transposing that directive into national law, pertains to an infringement of competition law which ceased before the date of expiry of the time limit for the transposition of that directive.

53 As is apparent from paragraphs 100 to 102 of that judgment, that solution was justified by the particular nature and arrangements regarding the operation of that provision of Directive 2014/104, the temporal application of which requires the existence of an ongoing cartel.

54 That situation has no equivalent as regards clause 4 of the framework agreement.

55 In the light of all the foregoing considerations, the answer to the question raised is that clause 4.1 and clause 4.4 of the framework agreement must be interpreted as precluding the length of service accrued by a worker under fixed-term employment contracts which were performed in full or in part before the date of expiry of the deadline for the transposition of Directive 1999/70 not being taken into account for the purpose of determining that worker's remuneration upon his or her recruitment on a permanent basis after that date, unless that exclusion is justified on objective grounds.

Costs

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

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

Clause 4.1 and clause 4.4 of the framework agreement on fixed-term work concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP,

must be interpreted as precluding the length of service accrued by a worker under fixed-term employment contracts which were performed in full or in part before the date of expiry of the deadline for the transposition of that directive not being taken into account for the purpose of determining that worker's remuneration upon his or her recruitment on a permanent basis after that date, unless that exclusion is justified on objective grounds.

[Signatures]

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* Language of the case: Italian.