ECLI:EU:C:2018:758

JUDGMENT OF THE COURT (Sixth Chamber)

20 September 2018 (*)

(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 — Public sector — Secondary school teachers — Employment of fixed-term workers as career civil servants through recruitment based on qualification — Determination of the period of service deemed accrued — Account taken only in part of periods of service completed under fixed-term contracts)

In Case C-466/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale di Trento (District Court, Trento, Italy), made by decision of 18 July 2017, received at the Court on 3 August 2017, in the proceedings

Chiara Motter

v

Provincia autonoma di Trento,

THE COURT (Sixth Chamber),

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

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Ms Motter by W. Miceli, F. Ganci, V. De Michele, E. De Nisco, S. Galleano and G. Rinaldi, avvocati,

– the Provincia autonoma di Trento, by N. Pedrazzoli, L. Bobbio, A. Pizzoferrato, M. Dalla Serra and M. Velardo, avvocati,

– the Italian Government, by G. Palmieri, acting as Agent, and by L. Fiandaca, C. Colelli and G. D'Avanzo, avvocati dello Stato,

– the European Commission, by M. van Beek and G. Gattinara, 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 relates to the interpretation of clause 4 of the framework agreement on fixed-term work, concluded on 18 March 1999 ('the framework agreement'), 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 Ms Chiara Motter and the Provincia autonoma di Trento (Autonomous Province of Trento, Italy) concerning the calculation of the period of service completed at the time she concluded an indefinite employment contract with the latter.

Legal context

EU law

3 According to clause 1 of the framework agreement, the purpose of that agreement is, first, to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination and, second, to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships.

4 Clause 2 of the framework agreement provides:

'1. 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.

2. Member States after consultation with the social partners and/or the social partners may provide that this agreement does not apply to:

(a) initial vocational training relationships and apprenticeship schemes;

(b) employment contracts and relationships which have been concluded within the framework of a specific public or publicly-supported training, integration and vocational retraining programme.'

5 Clause 3 of the framework agreement is worded as follows:

‘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.

2. For the purpose of this agreement, the term “comparable permanent worker” means a worker with an employment contract or relationship of indefinite duration, in the same establishment, engaged in the same or similar work/occupation, due regard being given to qualifications/skills. Where there is no comparable permanent worker in the same establishment, the comparison shall be made by reference to the applicable collective agreement, or where there is no applicable collective agreement, in accordance with national law, collective agreements or practice.’

6 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.

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

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

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

7 Article 485(1) of decreto legislativo no. 290, ‘testo unico delle disposizioni legislative vigenti in materia di istruzione, relative alle scuole di ogni ordine e grado’ (Legislative Decree No 297 ‘Consolidated Law incorporating legislative provisions on education relating to schools of every type and level’) of 16 April 1994 (ordinary supplement to GURI No 115 of 19 May 1994), provides:

‘The periods of service completed by teaching staff under fixed-term contracts at state and equivalent secondary and art schools, including those located abroad, shall be recognised as periods of permanent employment for legal and salary purposes, in full for the first four years and at a rate of two thirds for any period thereafter, and at a rate of the remaining one-third solely for salary purposes. The financial rights stemming from such recognition shall be preserved and taken into account in all pay grades subsequent to the grade assigned at the time of recognition.’

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

8 During 2003, Ms Motter was recruited as a secondary school teacher by the Autonomous Province of Trento under a fixed-term contract for the academic year 2003/2004. She subsequently continued to be employed in that capacity without interruption under seven further successive contracts, each for a fixed-term corresponding to the academic year.

9 Since 1 September 2011, Ms Motter has been employed under a permanent employment contract. She was established in her post on 1 September 2012.

10 On 8 September 2014, the Autonomous Province of Trento reconstructed Ms Motter's career for the purposes of her classification in grade in accordance with legislation applicable from 1 January 2012. Pursuant to Article 485(1) of Legislative Decree No 297 of 16 April 1994, Ms Motter was recognised as having completed, for that purpose, 80 months out of the 96 months actually worked. The first four years had been taken into account in full and the following four at the rate of just two thirds, namely 32 months out of 48. She was classified in Grade 1.

11 On 2 December 2016, Ms Motter brought proceedings before the Tribunale di Trento (District Court, Trento, Italy) seeking an order that the Autonomous Province of Trento take into account in full the period of service completed before the conclusion of her indefinite contract performing the same duties under the eight fixed-term contracts successively concluded for the academic years 2003/2004 to 2010/2011.

12 In support of her action, Ms Motter claims infringement of clause 4 of the framework agreement and asks that Article 485 of Legislative Decree No 297 of 16 April 1994 be disapplied to the extent that it provides for only the first four years of services completed under fixed-term contracts to be taken into account in full, only two thirds of subsequent periods of service being taken into consideration.

13 The referring court considers that, for the purposes of applying the principle of non-discrimination in clause 4 of the framework agreement, it is necessary to verify that comparable situations are not being treated differently. In order to carry out such verification, Ms Motter's situation should be compared to a teacher doing a similar job who, after having been recruited by way of competition for an indefinite period, has the same seniority as Ms Motter.

14 In that regard, Ms Motter has established, without being challenged on this point by the opposing party, that she performed tasks identical to those performed by teachers recruited by way of competition under permanent contracts. However, the referring court is uncertain whether there is a difference between those two situations. Since the permanent teaching staff passed a competition, it could be argued that the quality of their work is superior to that of the fixed-term teachers. If that were the case, it would not be appropriate to follow the reasoning set out in paragraph 45 of the judgment of 18 October 2012, *Valenza and Others* (C-302/11 to C-305/11, EU:C:2012:646), by which the court rejected the view that employees performing the same tasks could be regarded as being in different situations according to whether they had passed a competition for obtaining a post in the public sector.

15 The referring court notes that the opinions of the Italian courts are divided on this point. The Corte suprema di cassazione (Supreme Court of Cassation, Italy) found that, for teachers, clause 4 of the framework agreement requires the length of service completed under earlier fixed-term contracts to be taken into consideration in order to ensure equal treatment with teachers on permanent contracts. By contrast, several lower courts have taken the opposite view.

16 In the light of the above, the referring court is uncertain whether the fact of not having passed a competition to obtain a post in the public sector can justify a difference in treatment to the detriment of fixed-term employees.

17 The referring court notes, in addition, that, in its judgment of 18 October 2012, *Valenza and Others* (C-302/11 to C-305/11, EU:C:2012:646, paragraphs 23, 55 and 62), the Court found that

taking into account in full the length of service completed under fixed-term contracts by employees admitted to the permanent staff of the civil service could give rise to reverse discrimination to the detriment of those employed under a permanent contract after passing a competition.

18 These issues lead the referring court to question whether Italian law, by providing, in Article 485 of Legislative Decree No 297 of 16 April 1994, a degressive formula for calculating years of service completed under fixed-term contracts in an effort to avoid reverse discrimination against civil servants who have passed a competition, is compatible with clause 4 of the framework agreement.

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

‘(1) For the purposes of applying the principle of non-discrimination pursuant to clause 4 of the framework agreement, is the requirement to pass an initial objective test of professional skills in a public selection procedure a factor that can be said to relate to the training requirements that the national court must take into account in order to determine whether the situation of a permanent worker and that of a fixed-term worker are comparable and in order to decide whether there is an objective ground capable of justifying a difference in treatment between permanent workers and fixed-term workers?

(2) Does the principle of non-discrimination under clause 4 of the framework agreement preclude a national provision (such as that contained in Article 485(1) of Legislative Decree No 297 of 16 April 1994) which lays down that, in order to determine length of service at the time of admittance to the permanent staff under an employment contract of indefinite duration, the first four years of service completed on a fixed-term basis are counted in full but subsequent periods are reduced by one third for legal purposes and by two thirds for salary purposes, on the ground that, for the purposes of fixed-term employment, there is no requirement to pass an initial objective test of professional skills in a public selection procedure?

(3) Does the principle of non-discrimination under clause 4 of the framework agreement preclude a national provision (such as that contained in Article 485(1) of Legislative Decree No 297 of 16 April 1994) which lays down that, in order to determine length of service at the time of admittance to the permanent staff under an employment contract of indefinite duration, the first four years of service completed on a fixed-term basis are counted in full but subsequent periods are reduced by one-third for legal purposes and by two thirds for salary purposes, with the objective of preventing reverse discrimination against career civil servants recruited after passing an open competition?’

Admissibility of the request for a preliminary ruling

20 The Italian Government claims that the request for a preliminary ruling is inadmissible on account of its lack of precision. It claims that as the referring court has not set out the facts adequately or to a sufficiently precise degree, it is not possible to assess the comparability of the situation of the applicant in the main proceedings with that of civil servants in a similar position and to answer the questions referred for a preliminary ruling.

21 In that regard, it must be borne in mind that, in the context of the cooperation between the Court and the national courts established in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need

of a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 19 and the case-law cited).

22 It follows that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for this Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 26 July 2017, *Persidera*, C-112/16, EU:C:2017:597, paragraph 24 and the case-law cited).

23 In the present case, however, the request for a preliminary ruling contains a description of the factual and legal background of the dispute that is sufficient to enable the Court to give a useful answer to the questions referred. Those questions, which concern the interpretation of clause 4 of the framework agreement, have arisen in proceedings concerning the conditions under which periods of service completed by fixed-term workers are taken into account for the purpose of determining their classification in grade at the time they are recruited as career civil servants. They thus bear a direct relation to the purpose of the main action and are not hypothetical. Furthermore, Ms Motter, the Autonomous Province of Trento, the Italian Government and the European Commission have all had the opportunity to submit observations on the questions referred by the referring court.

24 It follows from the foregoing that the request for a preliminary ruling is admissible.

Consideration of the questions referred

25 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether clause 4 of the framework agreement must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which, for the purpose of classifying a worker in a salary grade at the time of his recruitment on the basis of qualifications as a career civil servant, takes full account of only the first four years of service completed under fixed-term contracts, only two thirds of subsequent periods of service being taken into consideration.

26 In order to answer this question, 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) lays down the same prohibition as regards period-of-service qualifications relating to particular conditions of employment (judgment of 18 October 2012, *Valenza and Others*, C-302/11 to C-305/11, EU:C:2012:646, paragraph 39). In addition, the Court has already stated that national rules 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(1) of the framework agreement (judgment of 8 September 2011, *Rosado Santana*, C-177/10, EU:C:2011:557, paragraphs 46 and 47).

27 It is clear from the information provided to the Court in these proceedings that, unlike permanent teachers recruited by way of competition, fixed-term teachers who are admitted to the civil service on the basis of qualifications can, for the purposes of classification in a salary grade,

have their length of service taken into account in full as regards only their first four years of service, two thirds of subsequent years being taken into consideration. Application of the national legislation at issue has therefore resulted in the authorities recognising only 80 of the 96 months actually completed by the applicant in the main proceedings under fixed-term contracts, namely 83% of her period of service.

28 As is clear from the very wording of clause 4(1) of the framework agreement, the principle of equal treatment applies only between fixed-term workers and comparable permanent workers. Therefore, in order to assess whether that difference in treatment amounts to discrimination prohibited by that clause, it is necessary, first, to assess whether the situations in question are comparable and then, second, to assess whether there is any objective justification.

Comparability of the situations in question

29 In order to assess whether the persons concerned are engaged in the same or similar work for the purposes of the framework agreement, it must first be determined, in accordance with clauses 3(2) and 4(1) of that agreement, whether, in the light of a number of factors, such as the nature of the work, training requirements and working conditions, those persons can be regarded as being in a comparable situation (judgment of 5 June 2018, *Montero Mateos*, C-677/16, EU:C:2018:393, paragraph 51 and the case-law cited).

30 The nature of the duties performed by the applicant in the main proceedings in the years during which she worked as a teacher under fixed-term employment contracts and the quality of the experience which she thereby acquired are some of the criteria which make it possible to determine whether she is in a situation comparable with that of a civil servant recruited by way of a competition and having completed the same period of service (see, to that effect, judgment of 18 October 2012, *Valenza and Others*, C-302/11 to C-305/11, EU:C:2012:646, paragraph 44).

31 In the present case, it is clear from the information provided by the referring court that the duties undertaken by the applicant in the main proceedings during the years in which she worked under fixed-term contracts were identical to those which she was expected to perform as a career civil servant.

32 However, it is clear that the applicant in the main proceedings did not pass an open competition for obtaining a post as a career civil servant. The referring court is uncertain whether such an objective factor implies inferior professional skills likely to result, particularly during the initial periods of teaching, in a lower quality of work as compared to that of career civil servants recruited by way of competition.

33 However, it should be held that the fact that she did not pass an administrative competition does not mean that the applicant in the main proceedings was, at the time she was hired permanently, not in a comparable situation to that of career civil servants, given that the conditions set by the national procedure for recruitment based on qualifications are specifically intended to enable fixed-term workers, whose professional experience is such that their situation may be viewed in the same way as that of career civil servants, to be admitted to the permanent staff of the civil service (see, to that effect, judgment of 18 October 2012, *Valenza and Others*, C-302/11 to C-305/11, EU:C:2012:646, paragraph 45).

34 Furthermore, the assumption that the quality of the work performed by teachers newly hired on a fixed-term basis will be inferior to that of those who passed a competition does not appear reconcilable with the decision of the national legislator to recognise in full the period of service

completed by fixed-term teachers during the first four years of professional practice. In addition, such an assumption, if proven correct, would require the national authorities to organise sufficiently frequent competitions to meet recruitment needs. However, that does not appear to be the case since it is clear from the observations presented to the Court by the applicant in the main proceedings that recruitment competitions are organised only sporadically, the most recent ones having taken place in 1999, 2012 and 2016. Such a situation, which is for the referring court to verify, hardly seems compatible with the view put forward by the Italian Government that the services provided by fixed-term teachers are inferior to those provided by permanent teachers recruited by way of competition.

35 It is clear from the foregoing that the situations in question are comparable, subject to the factual verifications which must be carried out by the referring court. It is necessary, therefore, to determine whether there is an objective reason for not taking full account of periods of service exceeding four years performed under fixed-term employment contracts when classifying in a salary grade civil servants employed as teachers in secondary schools who were recruited on the basis of qualifications.

Whether or not any objective justification exists

36 According to the settled case-law of the Court, the concept of 'objective grounds' within the meaning of clause 4(1) and/or (4) of the framework agreement must be understood as not permitting a difference in treatment between fixed-term workers and permanent workers to be justified on the basis that the difference is provided for by a general or abstract national measure, such as a law or collective agreement (judgment of 5 June 2018, *Montero Mateos*, C-677/16, EU:C:2018:393, paragraph 56 and the case-law cited).

37 That concept requires the unequal treatment found to exist to be justified by the presence of precise and specific factors, characterising the employment condition to which it relates, in the specific context in which it occurs and on the basis of objective and transparent criteria, in order to ensure that that unequal treatment in fact responds to a genuine need, is appropriate for the purpose of attaining the objective pursued and is necessary for that purpose. Those factors may be apparent, in particular, from the specific nature of the tasks for the performance of which the fixed-term contracts were concluded and from the inherent characteristics of those tasks or, as the case may be, from pursuit of a legitimate social-policy objective of a Member State (judgment of 5 June 2018, *Montero Mateos*, C-677/16, EU:C:2018:393, paragraph 57 and the case-law cited).

38 Reliance on the mere temporary nature of the employment of staff of the public authorities does not, therefore, meet those requirements and cannot constitute an 'objective ground' within the meaning of clause 4(1) and/or (4) of the framework agreement. If the mere temporary nature of an employment relationship were considered to be enough to justify a difference in treatment as between fixed-term workers and permanent workers, the objectives of Directive 1999/70 and the framework agreement would be rendered meaningless and it would be tantamount to perpetuating a situation disadvantageous to fixed-term workers (judgment of 18 October 2012, *Valenza and Others*, C-302/11 to C-305/11, EU:C:2012:646, paragraph 52).

39 The Court has accordingly previously held that clause 4 of the framework agreement must be interpreted as precluding national legislation which absolutely prohibits periods of service completed by a fixed-term worker for a public authority being taken into account in determining the period of service deemed completed by that worker upon his recruitment on a permanent basis by that same authority as a career civil servant under a stabilisation procedure specific to his employment relationship, unless that prohibition is justified on 'objective grounds' within the

meaning of clause 4(1) and/or (4) of the framework agreement. 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 (judgment of 18 October 2012, *Valenza and Others*, C-302/11 to C-305/11, EU:C:2012:646, paragraph 71).

40 In the present case, in order to justify the alleged difference in treatment in the main proceedings, the Italian Government claims that the measure at issue in the main proceedings, unlike that at issue in the case giving rise to the judgment of 18 October 2012, *Valenza and Others* (C-302/11 to C-305/11, EU:C:2012:646), recognises in full the work done by fixed-term workers when they are recruited as career civil servants.

41 It is true that the national legislation at issue in the main proceedings recognises that work in full. However, it does not do so uniformly since only two thirds of the period of service completed beyond the first four years is taken into account.

42 In that regard, the Italian Government explains such a reduction by the need to reflect the fact that the experience of fixed-term teachers cannot be fully equated with that of their colleagues who are career civil servants recruited by way of competition. Unlike the latter, fixed-term teachers are frequently called upon to act as supply teachers and to teach a variety of subjects. In addition, the latter are subject to a system for calculating time worked that is different from that applicable to career civil servants. In the light of those differences, both from a quantitative and qualitative perspective, and in order to prevent any reverse discrimination to the detriment of career civil servants recruited by way of competition, the Italian Government considers that there is a justification for the application of a reduction coefficient when taking into account the length of service completed under fixed-term contracts.

43 It should be borne in mind that, in view of the discretion enjoyed by Member States as regards the organisation of their own public authorities, those States can, in principle, without acting contrary to Directive 1999/70 or the framework agreement, lay down conditions for becoming career civil servants and conditions of employment for those civil servants, in particular where those civil servants were previously employed by those authorities under fixed-term employment contracts (judgment of 18 October 2012, *Valenza and Others*, C-302/11 to C-305/11, EU:C:2012:646, paragraph 57).

44 However, that discretion notwithstanding, the criteria which the Member States lay down must be applied in a transparent manner and must be open to review in order to prevent any unfavourable treatment of fixed-term workers solely on the basis of the duration of contracts or employment relationships which attest to their length of service and professional experience (judgment of 18 October 2012, *Valenza and Others*, C-302/11 to C-305/11, EU:C:2012:646, paragraph 59).

45 Where such a difference in treatment arises from the need to take account of objective requirements relating to the post which the recruitment procedure is intended to fill and which are unrelated to the fixed-term nature of the worker's employment relationship, it may be justified for the purposes of clause 4(1) and/or (4) of the framework agreement (see, to that effect, judgment of 8 September 2011, *Rosado Santana*, C-177/10, EU:C:2011:557, paragraph 79).

46 In that regard, the Court has previously accepted that some differences of treatment between career civil servants recruited following an open competition and those recruited having acquired professional experience on the basis of fixed-term contracts may, in principle, be justified by

differences in the qualifications required and the nature of the duties undertaken (judgment of 18 October 2012, *Valenza and Others*, C-302/11 to C-305/11, EU:C:2012:646, paragraph 60).

47 The objectives claimed by the Italian Government, first, of reflecting the differences in professional practice between the two categories of worker in question and, second, of preventing reverse discrimination against career civil servants recruited after passing an open competition, can therefore be considered to constitute an 'objective reason' within the meaning of clause 4(1) and/or (4) of the framework agreement, provided they respond to a genuine need, are appropriate for the purpose of attaining the objectives pursued and are necessary for that purpose (see, to that effect, judgment of 18 October 2012, *Valenza and Others*, C-302/11 to C-305/11, EU:C:2012:646, paragraph 62).

48 Subject to verifications which fall exclusively within the jurisdiction of the referring court, it must be accepted that the objectives relied on by the Italian Government in the present case may properly be regarded as corresponding to a genuine need.

49 It is clear from the observations of that government that the national legislation at issue in the main proceedings aims, in part, to reflect the differences between the experience acquired by teachers recruited by way of competition and those recruited on the basis of qualification, on account of the different range of subjects the latter must teach, the conditions under which they must work and the hours worked, particularly when replacing other teachers. The Italian Government states that, owing to the heterogeneous nature of those situations, the services provided by fixed-term teachers over a period of up to 180 days per year, that is approximately two thirds of an academic year, are treated by national legislation as equivalent to a whole academic year's service. Subject to verification of the above by the referring court, such an objective appears to conform to the principle of pro rata temporis, to which clause 4(2) of the framework agreement explicitly refers.

50 In addition, it must be noted that the lack of initial verification of the requisite skills by means of a competition and the risk of devaluing those professional skills does not necessarily mean that part of the period of service completed under fixed-term contracts must be disregarded. Nevertheless, justifications of this kind may, in certain circumstances, be regarded as pursuing a legitimate objective. In that regard it is pertinent to note that it is clear from the observations of the Italian Government that the national legal system places particular importance on administrative competitions. Indeed, for the purposes of ensuring the impartiality and efficiency of the administration, the Italian Constitution provides, in Article 97, that access to employment with the public administrative authorities is by way of competition, unless otherwise provided for by law.

51 In the light of the above, national legislation such as that at issue in the main proceedings, which takes account of only two thirds of any period of service completed under fixed-term contracts that exceeds four years, cannot be considered to go beyond what is necessary to attain the objectives referred to above and to strike a balance between the legitimate interests of fixed-term workers and those of permanent workers, having due regard for meritocratic values and considerations relating to the impartiality and efficiency of the administrative authorities on which recruitment by way of competition is based.

52 That being so, in order to provide a useful answer to the referring court, it must be noted that it is clear from the information put before the Court that the harm suffered by the applicant in the main proceedings as a result of the alleged discrimination, as compared with permanent workers, appears to relate to the fact that her salary grade was calculated not on the basis of the national legislation applicable on the date she was hired permanently, namely 1 September 2011, but on the

basis of subsequent provisions in force on the date of the authority's decision to reconstruct her career, namely 8 September 2014. Despite the fact that the applicant, at the date she was engaged on a permanent basis, had completed a period of service of more than three years, making her eligible for classification in Grade 2 of the pay scale in force at the time, she did not benefit from application of the transitional provisions relating to the amendment of that pay scale as from 1 January 2012, despite the fact that those transitional provisions were intended to ensure that workers in Grade 2 at that date maintained that grade. Since the referring court did not question the Court on that point, it is for the former to verify, if appropriate, whether such retroactive application of the new pay scale complies with the principles of legal certainty and protection of legitimate expectations.

53 It follows that, subject to verifications which must be carried out by the referring court, the factors relied on by the Italian Government to justify the difference in treatment between fixed-term workers and permanent workers constitute an 'objective reason' within the meaning of clause 4(1) and/or (4) of the framework agreement.

54 In the light of the foregoing, the answer to the questions referred is that clause 4 of the framework agreement must be interpreted as not precluding, in principle, national legislation, such as that at issue in the main proceedings, which for the purpose of classifying a worker in a salary grade at the time of his recruitment on the basis of qualifications as a career civil servant, takes full account only of the first four years of service completed under fixed-term contracts, only two thirds of subsequent periods of service being taken into consideration.

Costs

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

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

Clause 4 of the framework agreement on fixed-term work, concluded on 18 March 1999, 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 not precluding, in principle, national legislation, such as that at issue in the main proceedings, which for the purpose of classifying a worker in a salary grade at the time of his recruitment on the basis of qualifications as a career civil servant, takes full account only of the first four years of service completed under fixed-term contracts, only two thirds of subsequent periods of service taken into consideration.

[Signatures]

* Language of the case: Italian.