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Provisional text

JUDGMENT OF THE COURT (First Chamber)

30 November 2023 (*)

(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 – Teachers – Employment of fixed-term workers as career civil servants through recruitment based on qualifications – Determination of the period of service deemed accrued)

In Case C-270/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale ordinario di Ravenna (District Court, Ravenna, Italy) by decision of 21 April 2022, received at the Court on 22 April 2022, in the proceedings

G.D.,

A.R.,

C.M.

v

Ministero dell'Istruzione,

Istituto nazionale della previdenza sociale (INPS),

THE COURT (First Chamber),

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

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– G.D., A.R. and C.M., by D. Naso, avvocato,

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

– the European Commission, by D. Recchia and N. Ruiz García, acting as Agents,

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

gives the following

Judgment

1 The 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, 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 This request has been made in proceedings between, on the one hand, G.D., A.R. and C.M. ('the applicants in the main proceedings') and, on the other hand, the Ministero dell'Istruzione (Ministry of Education, Italy) and the Istituto nazionale della previdenza sociale (INPS) (National Social Security Institute, Italy), concerning the calculation of their length of service at the time of their appointment on a permanent basis by that ministry.

Legal context

European Union law

3 Recital 14 of Directive 1999/70 states as follows:

'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'.

4 The third paragraph of the preamble to the framework agreement states:

'[The framework agreement] sets out the general principles and minimum requirements relating to fixed-term work, recognising that their detailed application needs to take account of the realities of specific national, sectoral and seasonal situations. It illustrates the willingness of the Social Partners to establish a general framework for ensuring equal treatment for fixed-term workers by protecting them against discrimination and for using fixed-term employment contracts on a basis acceptable to employers and workers.'

5 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.’

6 Clause 2 of that framework agreement states:

‘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.’

7 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.’

8 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

9 Article 4(3) of the decreto del Presidente della Repubblica n. 399 – Norme risultanti dalla disciplina prevista dall'accordo per il triennio 1988-1990 del 9 giugno 1988 relativo al personale del comparto scuola (Decree No 399 of the President of the Republic concerning rules derived from the 1988-1990 agreement of 9 June 1988 concerning school staff) of 23 August 1988 (GURI No 213, of 10 September 1988, Ordinary Supplement No 85) ('Presidential Decree No 399/1988') provides:

'On completion of the 16th year of service for university-educated teachers of higher secondary school, and on completion of the 18th year for administrative coordinators, nursery and primary school teachers, middle school teachers and for teachers of higher secondary schools who have a secondary school diploma, on completion of the 20th year for auxiliary staff and assistants, and on completion of the 24th year for teachers in music conservatories and academies, the length of service for salary purposes alone shall be fully valid for the assignment of subsequent pay grades.'

10 Article 485 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 incorporating the legislative provisions on education relating to schools of every type and level) of 16 April 1994 (GURI No 115, of 19 May 1994, Ordinary Supplement No 79) ('Legislative Decree No 297/1994'), provides:

'1. 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.

2. For the same purposes and to the same extent as set out in paragraph 1, the periods of service completed in state schools for the education of young girls and the periods of service completed by teachers under permanent and fixed-term contracts in state or accredited primary schools, including the abovementioned girls' schools and schools located abroad, and in [so-called] schools for adult education and state-funded schools run by private individuals or entities, shall be recognised in respect of the staff referred to in that same paragraph.

3. For the same purposes and within the same limits as set out in paragraph 1, the period of service completed as a teacher under a fixed-term contract in state primary schools or in state institutions or accredited institutions for the education of young girls, in state secondary and art schools, in [so-called] schools for adult education and state-funded schools run by private individuals or entities, and the periods of service completed as a teacher under a permanent or fixed-term contract in state or community primary schools shall be recognised in respect of primary school teaching staff.'

11 Article 489 of Legislative Decree No 297/1994 provides:

'1. For the purposes of the recognition referred to in the preceding articles, teaching service shall be deemed to have been completed during an entire academic year if it has been of the duration set

out for the purposes of the validity of the year by the educational system in force at the time of its completion.

2. Periods of paid annual leave and maternity leave shall be included in the calculation of the period to be taken into account.'

12 Article 11(14) of legge n. 124 – Disposizioni urgenti in materia di personale scolastico (Law No 124 incorporating urgent provisions concerning school staff') of 3 May 1999 (GURI No 107, of 10 May 1999) ('Law No 124/1999') provides:

'Article 489(1) of [Legislative Decree No 297/1994] must be interpreted as meaning that service completed by teaching staff under fixed-term contracts starting from 1974-1975 is regarded as having been provided for a full academic year if its duration was at least 180 days or if the service has been completed in an uninterrupted manner beginning on 1 February until the final assessment of the pupils.'

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

13 The applicants in the main proceedings worked as teachers under several fixed-terms contracts of varying types and duration before being made permanent further to a competition procedure on the basis of qualifications, on 1 September 2015 for G.D. and C.M., nursery school teachers, and on 1 September 2011 for A.R., a qualified upper secondary school teacher.

14 In the context of the recognition of length of service acquired under previous fixed-term contracts, the Ministry of Education reconstructed the careers of the applicants in the main proceedings in accordance with Article 485 of Legislative Decree No 297/1994, based on lengths of service of, respectively, 5 years and 4 months for G.D., of 8 years and 8 months for C.M., and of 13 years and 4 months for A.R.

15 The applicants in the main proceedings, taking the view that the Ministry had calculated lengths of service below their actual lengths of service, in breach of clause 4 of the framework agreement, brought proceedings before the referring court, the Tribunale ordinario di Ravenna (District Court, Ravenna, Italy) seeking recognition of their lengths of service as, respectively, 5 years, 11 months and 8 days for G.D., 10 years, 5 months and 18 days for C.M., and 18 years, 6 months and 1 day for A.R., as well as wage supplements and adjustments of the corresponding social security contributions and deductions.

16 In support of their action, the applicants in the main proceedings claim that, for the purposes of the calculation of their lengths of service, each day worked should be counted, as it is to be treated in the same way as a day worked by a permanent teacher, relying on the application of the case-law resulting from judgment No 31149 of the Corte suprema di cassazione (Supreme Court of Cassation, Italy) of 28 November 2019.

17 The referring court states that, in that judgment, on the basis of the judgment of 20 September 2018, *Motter* (C-466/17, EU:C:2018:758) the Corte supreme di cassazione (Supreme Court of Cassation) found that Article 485 of Legislative Decree No 297/1994 was contrary to clause 4 of the framework agreement and that consequently that article should not be applied in the case where the length of service of teachers on fixed-term contracts who had become permanent, resulting from the combined application of the criteria referred to in Article 485 and Article 489 of that legislative decree, as supplemented by Article 11(14) of Law No 124/1999, is less than that which a comparable teacher employed on a permanent basis from the outset would be recognised as having.

18 The referring court adds, first, that that case-law of the Corte suprema di cassazione (Supreme Court of Cassation) has given rise to divergent domestic case-law and, second, that, in its view, in the judgment of 20 September 2018, *Motter* (C-466/17, EU:C:2018:758), the Court definitively recognised the compatibility of Article 485 with clause 4 of the framework agreement, Article 485 having been at issue in the case that led to that judgment, although certain paragraphs of that judgment can be read in another way and not all aspects of the national legislation concerned in that case had been taken into account by the Court.

19 If that was not the case, the referring court takes the view, first, that the national regime concerning the reconstruction of teachers' careers at issue in the main proceedings has made it possible to achieve a difficult balance between the conflicting interests of permanent and temporary teachers and different categories of temporary teachers, and that that regime does not lead, conclusively, to discriminatory results. In particular, the resumption of the length of service which that regime would allow, after a certain period of time, namely 16 years for A.R. and18 years for G.D. and C.M., would very often prove to be, ultimately, favourable to teachers on fixed-term contracts who have become permanent.

20 Next, that court is uncertain about the comparable nature, on the one hand, of teaching services completed on a permanent basis, or indeed on a fixed-term basis but over a long period implying pedagogical continuity and, on the other hand, teaching services completed on a piecemeal fixed-term basis, in connection with short-term and ad hoc supply teaching jobs meeting any need, like some of the tasks carried out by the applicants in the main proceedings during their time before becoming permanent, which would not allow them to acquire, according to that court, the same experience.

21 It is also necessary, in the view of the referring court, to examine the relevance of such factors in order to assess whether any unfavourable treatment, within the meaning of clause 4 of the framework agreement, is liable to be justified on 'objective grounds', such as those referred to in that clause.

22 Lastly, since the Italian legislature made the choice not to take into account the hours of work for the purposes of calculating the length of service relating to an academic year, the referring court is uncertain as to the effect of the *pro rata temporis* principle provided for in that clause on that favourable aspect of the national legislation at issue in the main proceedings.

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

'(1) Does the judgment [of 20 September 2018] in *Motter* [(C-466/17, EU:C:2018:758)] require Italy's national rules on the reconstruction of teachers' careers to be disapplied where, "in fact", they are not more favourable for a teacher who was previously employed on a fixed-term basis than the career reconstruction carried out pursuant to Article 485 of Legislative Decree No 297/1994 and related rules? Or has the judgment [of 20 September 2018] in *Motter* [(C-466/17, EU:C:2018:758)] established in general and abstract terms – and thus in a way that applies to each individual case – that career reconstruction under national rules is compatible with clause 4 [of the framework agreement], as a result of which the national court is not to disapply Article 485 of Legislative Decree No 297/1994 and related rules since they are compatible with EU law in that respect?

(2) In the alternative (that is to say, only if it were to be held that a selective disapplication of Article 485 [of Legislative Decree No 297/1994] was required under EU law, which should

therefore be considered to be a "greater benefit" rule), is clause 4 [of the framework agreement] to be interpreted as requiring national legislation to recognise – for the purpose of calculating the length of service accrued under fixed-term contracts of a teacher who subsequently became permanent – the work carried out by a teacher under fixed-term contracts without there being any minimum threshold as regards the number of days to have been worked in each academic year? Or, on the contrary, is a national rule compatible with clause 4 if it disregards the temporary work carried out by teachers (short-term and ad hoc supply teaching jobs) unless such work was carried out for at least 180 days in each academic year, or from 1 February until the end of the final grading process [(Article 11(14) of Law No 124/1999)]?

(3) In the further alternative (that is to say, only if it were to be held that a selective disapplication of Article 485 [of Legislative Decree No 297/1994] was required under EU law, which should therefore be considered to be a "greater benefit" rule): does clause 4 require fixed-term work carried out for a number of hours that is below the standard hours for permanent posts to be given equal value when calculating length of service once the teacher has become permanent? If not, the Court of Justice is asked to give its opinion on the minimum number of hours (for example part-time for an indefinite period) after which [the abovementioned] clause 4 would require such recognition in national law?

From another point of view, is a national law compatible with the abovementioned clause 4 if it disregards – for the purpose of recognition of the temporary period of service completed by a teacher who subsequently becomes permanent – work carried out on an hourly basis which is below the minimum weekly threshold for the number of hours worked part-time by a teacher in a comparable situation?

In the further alternative to the last sub-question: is a national law compatible with the abovementioned clause 4 if – for the purpose of recognition of the temporary period of service completed by a teacher who subsequently becomes permanent – it provides for weight to be given on a pro-rata basis to work carried out on an hourly basis which is below the minimum weekly threshold for the number of hours worked part-time by a teacher in a comparable situation?'

The request for an expedited procedure

24 The referring court has requested that the case be dealt with under the expedited procedure, pursuant to Article 105(1) of the Rules of Procedure of the Court of Justice.

25 In support of its request, that court referred to the existing legal uncertainty concerning the scope of the interpretation of EU law following judgment No 31149 of the Corte suprema di cassazione (Supreme Court of Cassation) of 28 November 2019, as well as to the risk of undermining the requirements for uniformity of interpretation of that law and the large number of cases before the Italian courts dealing with the questions referred.

26 In that regard, Article 105(1) of the Rules of Procedure provides that, at the request of the referring court or tribunal or, exceptionally, of his own motion, the President of the Court may, where the nature of the case requires that it be dealt with within a short time, after hearing the Judge-Rapporteur and the Advocate General, decide that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure.

27 As regards, first, the existing legal uncertainty concerning the scope of EU law pending the response of the Court to the questions referred, it must be noted that the expedited procedure referred to in that Article 105(1) constitutes a procedural instrument intended to respond to a

situation of extraordinary urgency (orders of the President of the Court of 31 August 2010, *UEFA and British Sky Broadcasting*, C-228/10, EU:C:2010:474, paragraph 6; of 20 December 2017, *M.A. and Others*, C-661/17, EU:C:2017:1024, paragraph 17; and of 18 January 2019, *Adusbef and Others*, C-686/18, EU:C:2019:68, paragraph 11).

28 The mere interest of those subject to EU law in having the scope of their rights under EU law determined as quickly as possible, while legitimate, is also not such as to establish the existence of exceptional circumstances, within the meaning of the abovementioned Article 105(1) (order of the President of the Court of 8 March 2018, *Vitali*, C-63/18, EU:C:2018:199, paragraph 18 and the case-law cited).

29 Next, as regards the risk of undermining the requirement that EU law be interpreted in a uniform manner, it is clear from the case-law of the Court that the importance of ensuring the uniform application of provisions of EU law, which are part of the legal order, is inherent in every request made in accordance with Article 267 TFEU and is not enough, in itself, to show that the situation is so urgent that the request for a preliminary ruling should be placed under the expedited procedure) (see to that effect, order of the President of the Court of 17 September 2018, *Lexitor*, C-383/18, EU:C:2018:769, paragraph 16 and the case-law cited).

30 Finally, as regards the fact that the issues raised are the subject of extensive litigation in Italy, it must be noted that the large number of individuals or legal situations which may be affected by the question referred does not, as such, constitute an exceptional circumstance justifying the application of the expedited procedure (order of the President of the Court of 17 September 2018, *Lexitor* C-383/18, EU:C:2018:769, paragraph 15 and the case-law cited).

31 In these circumstances, on 30 June 2022, the President of the Court decided, after hearing the Judge-Rapporteur and the Advocate General, not to grant that request.

Consideration of the questions referred

Admissibility

32 The Italian Government submits that the questions referred for a preliminary ruling are inadmissible. That government claims that the problem raised in the first question is hypothetical, in so far as the only doubt that the referring court has regarding the interpretation of the principle laid down in the judgment of 20 September 2018, *Motter* (C-466/17, EU:C:2018:758), results from the case-law of the Corte suprema di cassazione (Supreme Court of Cassation) and, therefore, from a divergence in national case-law that there would be ways to overcome domestically. That government adds that the second and third questions need be analysed only if the answer to that first question involves ‘going beyond’ that principle. Consequently, in its view, the second and third questions also raise a hypothetical problem. Lastly, the second question concerns, moreover, an issue of discrimination, not between the teachers on fixed-term contracts and permanent teachers, but between two categories of teachers on fixed-term contracts, depending on whether or not they have reached the thresholds laid down by the national legislation at issue in the main proceedings.

33 In that regard, it must be noted that, in the context of the cooperation between the Court and the national courts established in Article 267 TFEU, it is for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, alone to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver its 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 19 December 2019, *Darie*, C-592/18, EU:C:2019:1140, paragraph 24 and the case-law cited).

34 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, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a request for a preliminary ruling referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated 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 19 December 2019, *Darie*, C-592/18, EU:C:2019:1140, paragraph 25 and the case-law cited).

35 In the present case, the referring court explains, in the request for a preliminary ruling, that, despite the interpretation of clause 4 of the framework agreement provided by the Court in the judgment of 20 September 2018, *Motter* (C-466/17, EU:C:2018:758), there is a divergence between the judicial decisions of the national courts regarding the conformity of that clause with the national legislation at issue in the main proceedings. The referring court adds that, in that judgment, the Court did not take into account all the aspects of that national legislation and that doubts remain regarding the interpretation to be given to that clause in situations such as those of the applicants in the main proceedings, which is why an answer to the first question is necessary in order to resolve the proceedings before it and, as appropriate, an answer to the second and third questions referred in the alternative.

36 The problem raised by the questions referred is therefore not hypothetical.

37 The interpretation of clause 4 sought in the context of the second question relates, further, to the actual facts of the main action or its purpose. Indeed, it concerns the challenge, by the applicants in the main proceedings, to the method of calculating length of service which was applied to them at the time of their establishment in the civil service for the period during which they worked as teachers under fixed-term contracts in comparison with what they would have received had they been recruited on a permanent basis from the outset. Furthermore, the request for a preliminary ruling includes the elements of fact and law necessary for a response to that question.

38 Accordingly, the questions referred for a preliminary ruling are admissible.

Substance

39 At the outset, as the referring court observes, Article 485 of Legislative Decree No 297/1994, applicable to the applicants in the main proceedings and which they claim disregards clause 4 of the framework agreement, was at issue in the case that gave rise to the judgment of 20 September 2018, *Motter* (C-466/17, EU:C:2018:758).

40 In that judgment, the Court held that clause 4 does not, in principle, preclude national legislation which, for the purpose of classifying a worker in a salary grade at the time of his or her recruitment on the basis of qualifications as a career civil servant, takes full account of the first four years of service completed under fixed-term contracts, with partial account amounting to two thirds of subsequent periods of service being taken into consideration thereafter.

41 The referring court notes that the Court did not have all of the information concerning the national legislation at issue in the main proceedings in the case which led to the delivery of the judgment of 20 September 2018, *Motter* (C-466/17, EU:C:2018:758). In this context, the order for

reference refers to the realignment mechanism provided for in Article 4(3) of Presidential Decree No 399/1988 and to the rule laid down in Article 489 of Legislative Decree No 297/1994, as supplemented by Article 11(14) of Law No 124/1999, according to which periods of teaching carried out by a teacher under a fixed-term contract which are shorter than one academic year are not treated, for the purposes of calculating length of service, as a full academic year of service, unless those periods are at least 180 days or have been carried out continuously between 1 February and the end of the final assessment of the pupils.

42 Furthermore, in so far as that court is unsure whether, in that judgment, the Court carried out a definitive assessment of the compatibility of that national legislation with clause 4 of the framework agreement, with the result that a national court could no longer find, in a specific case, that it may be incompatible with that clause, nor, if necessary, disapply that national legislation, such an approach must be rejected.

43 In the context of proceedings brought on the basis of Article 267 TFEU, the interpretation of provisions of national law is a matter not for the Court but for the courts of the Member States, and the Court has no jurisdiction to rule on the compatibility of rules of national law with EU law. The Court has jurisdiction only to supply the national court with all the guidance as to the interpretation of EU law necessary to enable that court to rule on the compatibility of the national rules with the provisions of EU law (see, to that effect, judgment of 21 June 2022, *Ligue des droits humains*, C-817/19, EU:C:2022:491, paragraph 240 and the case-law cited).

44 Moreover, the principle of primacy requires a national court which is called upon, within the exercise of its jurisdiction, to apply provisions of EU law, where it is unable to interpret national legislation in compliance with the requirements of EU law, to give full effect to the requirements of that law in the dispute before it, if necessary disapplying of its own motion any national legislation or practice, even if adopted subsequently, which is contrary to a directly effective provision of EU law (see, to that effect, judgment of 8 March 2022, *Bezirkshauptmannschaft Hartberg-Fürstenfeld (Direct effect)*, C-205/20, EU:C:2022:168, paragraph 37 and the case-law cited).

45 In the light of the division of functions between the national courts and the Court of Justice, the latter merely confined itself to providing guidance on the interpretation of clause 4 of the framework agreement to the referring court in the case that gave rise to the judgment of 20 September 2018, *Motter* (C-466/17, EU:C:2018:758), in the light of the legislative and factual context described by that court and subject to the checks which fall solely within the jurisdiction of that court, as recalled in paragraphs 35, 48, 49 and 53 of that judgment. The Court also used the words ‘in principle’ in the operative part of that judgment.

46 That said, it is apparent from the information provided by the referring court that some of the periods of service which the applicants in the main proceedings completed on a fixed-term basis did not reach the thresholds laid down by the national legislation referred to in paragraph 41 of the present judgment, namely to attain 180 days per school year or to have been carried out continuously between 1 February and the end of the final assessment of the pupils, unlike the applicant in the case which gave rise to the judgment of 20 September 2018, *Motter* (C-466/17, EU:C:2018:758), who had completed fixed-term contracts of one year during the period prior to her permanent employment as a career civil servant, as indicated in paragraph 8 of that judgment.

47 The referring court states that, under that legislation, if the services provided by teachers on fixed-term contracts reach those thresholds, those services are treated as equivalent to a period of service of a full academic year, irrespective of the actual number of hours worked and even if the number of weekly hours worked is less than the weekly working hours under the full-time or part-

time work system. By contrast, work that does not meet those thresholds is not to be taken into account and, under Article 485 of Legislative Decree No 297/1994, work reaching the same thresholds is taken into account in full only until the fourth year, then, beyond that, up to two thirds, the remaining third being reserved for a certain number of years and then reinstated after that period has elapsed.

48 In those circumstances, in order to provide the referring court with a useful answer, the view should be taken that, by its questions, which it is appropriate to examine together, the referring court is asking, in essence, whether clause 4 of the framework agreement must be interpreted as precluding national legislation which, for the purposes of recognising the length of service of a worker upon his or her employment as a career civil servant, excludes periods of service completed under fixed-term employment contracts that do not amount to 180 days per academic year or are not carried out continuously between 1 February and the end of the final assessment of the pupils, irrespective of the actual number of hours worked, and limits to two thirds periods of service reaching those thresholds beyond four years, subject to the reinstatement of the remaining third after a certain number of years of service.

49 It should be recalled, in this regard, that, according to clause 1(a) of the framework agreement, one of the objectives of that agreement is to improve the quality of fixed-term work by ensuring compliance with the principle of non-discrimination. Similarly, the third paragraph in the preamble to the framework agreement states that it 'illustrates the willingness of the Social Partners to establish a general framework for ensuring equal treatment for fixed-term workers by protecting them against discrimination'. Recital 14 of Directive 1999/70 states, to this end, that the aim of the framework agreement is, inter alia, to improve the quality of fixed-term work by setting out minimum requirements in order to ensure the application of the principle of non-discrimination (judgment of 5 June 2018, *Montero Mateos*, C-677/16, EU:C:2018:393, paragraph 39 and the case-law cited).

50 The framework agreement, in particular clause 4 thereof, aims to apply that principle to fixed-term workers in order to prevent an employer using such an employment relationship to deny those workers rights which are recognised for permanent workers (judgment of 5 June 2018, *Montero Mateos*, C-677/16, EU:C:2018:393, paragraph 40 and the case-law cited).

51 In view of the objectives pursued by the framework agreement, as set out in the preceding two paragraphs, clause 4 of that agreement must be interpreted as articulating a principle of EU social law, which cannot be interpreted restrictively (judgment of 5 June 2018, *Montero Mateos*, C-677/16, EU:C:2018:393, paragraph 41 and the case-law cited).

52 Further, it is important to note that clause 4(1) of the framework agreement, which has direct effect, 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' (see, to that effect, judgments of 8 September 2011, *Rosado Santana*, C-177/10, EU:C:2011:557, paragraphs 56 and 64, and of 5 June 2018, *Montero Mateos*, C-677/16, EU:C:2018:393, paragraph 42 and the case-law cited).

53 Clause 4(4) of the framework agreement lays down the same prohibition as regards period-of-service qualifications relating to particular conditions of employment (see, to that effect, judgment of 8 September 2011, *Rosado Santana*, C-177/10, EU:C:2011:557, paragraph 64 and the case-law cited).

54 Furthermore, it follows from the wording and the objective of clause 4 of that agreement that it does not relate to the actual choice of concluding fixed-term employment contracts instead of employment contracts of indefinite duration, but to the employment conditions of workers who have entered into a fixed-term contract when compared with those of workers employed under a permanent contract, the concept of 'employment conditions' involving measures relating to the employment relationship between a worker and his or her employer (see, to that effect, judgment of 8 October 2020, *Universitatea 'Lucian Blaga' Sibiu and Others*, C-644/19, EU:C:2020:810, paragraph 39 and the case-law cited).

55 In that regard, the Court has already held that national rules, such as those at issue in the main proceedings, concerning periods of service to be completed in order to make possible classification 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 20 September 2018, *Motter*, C-466/17, EU:C:2018:758, paragraph 26 and the case-law cited).

56 Therefore, in accordance with what is stated in paragraphs 52 and 53 of the present judgment, and in order to reply to the referring court, it is necessary to examine whether the legislation at issue in the main proceedings leads to a difference in treatment concerning comparable situations, before determining, if necessary, whether such a difference may be justified on 'objective grounds'.

57 It is common ground between the parties to the present proceedings, and is, moreover, apparent from paragraph 27 of the judgment of 20 September 2018, *Motter* (C-466/17, EU:C:2018:758), that permanent teachers recruited by way of competition can, for the purposes of classification in a salary grade, have their length of service taken into account in full. In particular, it appears that those teachers are entitled, for the purposes of calculating their length of service, to have each day's experience taken into account, irrespective, subject to verification by the referring court, of the hours or the amount of work actually carried out. Moreover, that court does not state that periods of leave or absences, for example because of illness, would be excluded from such a calculation.

58 By contrast, it is apparent from the request for a preliminary ruling that the periods of service completed on a fixed-term basis in one academic year by the applicants in the main proceedings, in their capacity as teachers on fixed-term contracts who join the civil service by way of a competition based on qualifications, and who do not reach the thresholds laid down in Article 489 of Legislative Decree No 297/1994, as supplemented by Article 11(14) of Law No 124/1999, are not taken into account for the purposes of the recognition of their length of service. In addition, periods reaching those thresholds are taken into account in full for only four years, with that account then being limited to two thirds in the subsequent years, in accordance with Article 485 of that legislative decree.

59 In this regard, the referring court points out that a third of the length of service not taken into account beyond the first four years and reserved may, where appropriate, after a certain period, be reinstated for the purposes of the subsequent classification of teachers on fixed-term contracts established permanently in the civil service in the salary scale under Article 4(3) of Presidential Decree No 399/1988. That said, such reinstatement can take place only after a particularly long period, namely between the 16th and the 24th year of service depending on the teachers concerned and, in particular, 16 years of service for A.R. and 18 years of service for G.D. and C.M., if they still form part of the staff of the Ministry of Education.

60 It follows that national legislation such as that at issue in the main proceedings establishes a difference in treatment to the detriment of teachers on fixed-term contracts in comparison with

teachers recruited on a permanent basis through open competitions, who are not subject to those limitations.

61 In order for such a difference in treatment to constitute discrimination prohibited by clause 4 of the framework agreement, it must concern comparable situations and must not be justified on objective grounds (see, to that effect, judgment of 20 September 2018, *Motter*, C-466/17, EU:C:2018:758, paragraph 28).

62 First, as regards the comparability of the situations concerned, in order to assess whether workers are engaged in the same or similar work, for the purposes of the framework agreement, it is necessary to determine, 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 workers can be regarded as being in comparable situations (judgments of 20 September 2018, *Motter*, C-466/17, EU:C:2018:758, paragraph 29, and of 30 June 2022, *Comunidad de Castilla y León*, C-192/21, EU:C:2022:513, paragraph 34 and the case-law cited).

63 If it is established that, when they are employed, fixed-term workers perform the same duties as workers employed by the same employer on a permanent basis or occupy the same post as those workers, the situations of those two categories of workers must, in principle, be regarded as being comparable (see, to that effect, judgment of 16 July 2020, *Governo della Repubblica italiana* (*Status of Italian magistrates)*, C-658/18, EU:C:2020:572, paragraph 144 and the case-law cited).

64 It is apparent from the request for a preliminary ruling that the applicants in the main proceedings carried out various teaching assignments, some of which were of short duration and involved a small number of hours, before becoming permanent. Such assignments are intended to meet various supply needs owing to the lack of permanent teachers highlighted by the Italian Government.

65 It is apparent, in particular, from that request that G.D., a nursery school teacher, worked many days in isolation and that C.M., also a nursery school teacher, worked, in the first year, five months and four days corresponding to 62 different contracts with an average of two days worked per contract in different schools. A.R., a secondary school teacher, did not provide evidence of the number of hours worked, but many of the contracts used to indicate that number of hours related to a fraction of a full-time post with a very small number of hours, for example, five hours per week for a series of contracts in 2003.

66 However, it appears to follow from that request that, at the time of those various assignments, the applicants in the main proceedings carried out the same duties and occupied the same posts, with the same employer, as the permanent teachers whom they were asked to replace. In that regard, the referring court does not state that those applicants were assigned substantially different duties from those of the permanent teachers. It is thus apparent that, in the light of the nature and the conditions of employment, those applicants may be regarded as being in a situation comparable to that of the permanent teachers whom they were asked to replace.

67 Subject to verifications which it is for the referring court to conduct, the duties carried out by the applicants in the main proceedings before their employment was made permanent must therefore, in principle, be regarded as comparable to those of permanent teachers, given that the fact of not having passed an administrative competition does not call into question the comparability of the situations of fixed-term and permanent teachers (see, to that effect, judgment of 20 September 2018, *Motter*, C-466/17, EU:C:2018:758, paragraph 33 to 35).

68 As regards the short and discontinuous nature of some of the assignments which the applicants in the main proceedings carried out in that context, first, there is nothing to indicate that those assignments are capable of substantially altering the duties performed or the posts occupied, or even the nature or conditions of the work carried out. Second, there is nothing in the file submitted to the Court to show that the short and discontinuous nature of some of the work carried out, as the case may be, by a permanent teacher would mean that the experience thus acquired would not be taken into account for the purposes of calculating his or her length of service. It is, however, for the referring court, which alone has all the relevant information, to carry out an assessment in that regard.

69 Second, as regards the question of whether the difference in treatment, referred to in paragraph 60 of the present judgment, between the comparable situations identified in paragraph 67 of this judgment, may be justified on 'objective grounds', within the meaning of clause 4 of the framework agreement, it has to be borne in mind that that concept must be understood as not permitting a difference in treatment between fixed-term workers and permanent workers to be justified on the sole ground that it is provided for by a general, abstract national norm. That concept requires that the unequal treatment found to exist be justified by the existence of precise and specific factors, characterising the employment condition concerned, in the particular context in which it occurs (see, to that effect, judgments of 20 September 2018, *Motter*, C-466/17, EU:C:2018:758, paragraphs 36 and 37, and of 30 June 2022, *Comunidad de Castilla y León*, C-192/21, EU:C:2022:513, paragraphs 41 and 42 and the case-law cited).

70 On the basis of objective and transparent criteria, it must be possible to verify that that unequal treatment responds to a genuine need, that it is appropriate for attaining the objective pursued and that it is necessary for that purpose. Those circumstances may result, in particular, from the specific nature of the tasks for the performance of which fixed-term contracts have been concluded and from the inherent characteristics of those tasks, or as the case may be, from the pursuit of a legitimate social-policy objective of a Member State (see, to that effect, judgments of 20 September 2018, *Motter*, C-466/17, EU:C:2018:758, paragraph 37, and of 30 June 2022, *Comunidad de Castilla y León*, C-192/21, EU:C:2022:513, paragraph 41 and the case-law cited).

71 Further, reliance on the mere temporary nature of the employment of staff of the public authorities does not meet those requirements and cannot therefore constitute an 'objective ground' within the meaning of clause 4 of the framework agreement (see, to that effect, judgments of 20 September 2018, *Motter*, C-466/17, EU:C:2018:758, paragraph 38, and of 30 June 2022, *Comunidad de Castilla y León*, C-192/21, EU:C:2022:513, paragraph 43 and the case-law cited).

72 In the present case, in order to justify the difference in treatment at issue in the main proceedings, the referring court and the Italian Government refer to the need, first, to reflect the differences in professional practice between permanent teachers recruited from the outset through open competitions, to which the Costituzione della Repubblica Italiana (Constitution of the Italian Republic) attaches particular importance, and teachers made permanent after having acquired professional experience on the basis of fixed-term employment contracts, and, second, to avoid the emergence of reverse discrimination against the former. They refer, in particular, to the diversity of the subjects, the conditions and the timetables under which the latter are required to work and the absence of any initial verification of their skills by means of a competition.

73 According to the case-law of the Court, each of those objectives may constitute an 'objective reason' within the meaning of clause 4(1) and/or (4) of the framework agreement (see, to that effect, judgment of 20 September 2018, *Motter*, C-466/17, EU:C:2018:758, paragraphs 47 and 51 and the case-law cited).

74 That said, it is also common ground that preventing the emergence of reverse discrimination cannot constitute such an objective ground where the national legislation concerned excludes completely and in all circumstances the taking into account of all periods of service completed by workers under fixed-term employment contracts in order to determine the length of service of those workers upon their recruitment on a permanent basis and, thus, their level of remuneration (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, and order of 4 September 2014, *Bertazzi and Others*, C-152/14, EU:C:2014:2181, paragraph 16).

75 In the present case, as regards the objectives relied on by the referring court and the Italian Government, the Court has accepted that they could legitimately be regarded as seeking to respond to a genuine need, this being a matter, however, which it is for the referring court to determine (see, to that effect, judgment of 20 September 2018, *Motter*, C-466/17, EU:C:2018:758, paragraphs 48 and 51).

76 The national legislation at issue in the main proceedings, in so far as it limits the taking into account of the length of service, upon recruitment on a permanent basis, completed in the context of temporary, disparate and discontinuous teaching services, and without initial verification of skills by means of a competition, may, in principle, be regarded as appropriate for attaining those objectives.

77 As to whether that national legislation is necessary in order to attain the objectives pursued, it is apparent from the information set out in the request for a preliminary ruling that the rule laid down in Article 489 of Legislative Decree No 297/1994, as supplemented by Article 11(14) of Law No 124/1999, operates automatically either in a favourable manner or in a manner unfavourable to the fixed-term teachers concerned.

78 As the referring court and the Italian Government state, the services provided by fixed-term teachers over a period of up to 180 days per year, that is to say, approximately two thirds of an academic year, are treated as equivalent to a full academic year’s service. This also applies if that service was carried out from 1 February until the end of the final assessment of the pupils.

79 By contrast, if those services do not reach that duration or are not provided continuously between 1 February and that date, they are not taken into account, even to a limited extent. Moreover, that exclusion rule is in addition to the rule that periods counted are counted only for the first four years and up to a maximum of two thirds thereafter, in accordance with Article 485 of Legislative Decree No 297/1994.

80 In that regard, the Court has, admittedly, accepted that 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 (judgment of 20 September 2018, *Motter*, C-466/17, EU:C:2018:758, paragraph 51).

81 However, the limitation to two thirds of the length of service of more than four years acquired under fixed-term contracts, combined with such an exclusion, resulting in a fixed-term teacher being deprived entirely of his or her length of service where that length of service is below the relevant thresholds identified by the Italian legislature, exceeds what is necessary to reflect the

differences between the experience acquired by teachers recruited on the basis of competitions and those recruited on the basis of qualifications and to avoid reverse discrimination against teachers recruited on the basis of competitions.

82 The fact that the actual number of hours worked by fixed-term teachers, which may be shorter and less than the weekly full-time or even part-time working hours, is not taken into account for the purposes of calculating their length of service, is not capable of calling that finding into question.

83 As has been stated in paragraphs 57 and 68 of the present judgment, the length of service of fixed-term teachers also does not appear to depend on the amount of work actually carried out by them and the teaching services they provide may also not be continuous. The criterion established by the national legislation at issue in the main proceedings, for the purposes of calculating the length of service of teachers, does not therefore appear to be based on the number of hours they actually worked, but on the duration of the employment relationship between the teacher concerned and his or her employer, including for permanent teachers, this being a matter which it is for the referring court to ascertain.

84 Having regard to all the foregoing considerations, the answer to the questions referred is that clause 4 of the framework agreement must be interpreted as precluding national legislation which, for the purposes of recognising the length of service of a worker upon his or her establishment in employment as a career civil servant, excludes periods of service completed under fixed-term employment contracts that do not amount to 180 days per academic year or that are not carried out continuously between 1 February and the end of the final assessment of the pupils, irrespective of the actual number of hours worked, and which limits to two thirds the taking into account of periods of service reaching those thresholds beyond four years, subject to reinstatement of the remaining third after a certain number of years of service.

Costs

85 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 (First Chamber) hereby rules:

Clause 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 national legislation which, for the purposes of recognising the length of service of a worker upon his or her establishment in employment as a career civil servant, excludes periods of service completed under fixed-term employment contracts that do not amount to 180 days per academic year or that are not carried out continuously between 1 February and the end of the final assessment of the pupils, irrespective of the actual number of hours worked, and which limits to two thirds the taking into account of periods of service reaching those thresholds beyond four years, subject to reinstatement of the remaining third after a certain number of years of service.

[Signatures]

* Language of the case: Italian.