ECLI:EU:C:2022:985

Provisional text

JUDGMENT OF THE COURT (Sixth Chamber)

15 December 2022 (*)

(References for a preliminary ruling – Social policy – Fixed-term work – Directive 1999/70/EC – Framework agreement – Principle of non-discrimination – Measures to prevent abuse of successive fixed-term employment contracts – Public-law fixed-term employment relationship – University researchers)

In Joined Cases C-40/20 and C-173/20,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Council of State, Italy), made by decisions of 10 January 2020, received at the Court on 27 January 2020 and 23 April 2020, in the proceedings

AQ,

BO,

CP (C-40/20),

AZ,

BY,

CX,

DW,

EV,

FU,

GJ (C-173/20),

v

Presidenza del Consiglio dei Ministri,

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

Università degli studi di Perugia,

intervening parties:

Federazione Lavoratori della Conoscenza Cgil,

Confederazione Generale Italiana del Lavoro (CGIL),

Cipur – Coordinamento Intersedi Professori Universitari di Ruolo,

Anief – Associazione Professionale e Sindacale (C-40/20),

HS,

IR,

JQ,

KP,

LO,

MN,

NM,

OZ,

PK,

QJ,

RI,

SH,

TG,

UF,

WE,

XC,

YD (C-173/20),

THE COURT (Sixth Chamber),

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

Advocate General: N. Emiliou,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– AQ, BO, CP, AZ, BY, CX, DW, EV, FU, GJ, HS, IR, JQ, LO, MN, NM, OZ, PK, QJ, RI, SH, TG, UF, XC and YD, by F. Dinelli and G. Grüner, avvocati,

– Federazione Lavoratori della Conoscenza Cgil and Confederazione Generale Italiana del Lavoro (CGIL), by F. Americo, A. Andreoni and I. Barsanti Mauceri, avvocati,

– Cipur – Coordinamento Intersedi Professori Universitari di Ruolo, by F. Dinelli and G. Grüner, avvocati,

– Anief – Associazione Professionale e Sindacale, by V. De Michele, S. Galleano and W. Miceli, avvocati,

– the Italian Government, by G. Palmieri, acting as Agent, by A. Berti Suman, procuratore dello Stato, and by C. Colelli and L. Fiandaca, avvocati dello Stato,

– the European Commission, by N. Ruiz García and A. Spina, acting as Agents,

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

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Clause 5 of the framework agreement on fixed-term work, concluded on 18 March 1999 (‘the Framework Agreement’), which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

2 The requests have been made in two sets of proceedings between (i) AQ, BO and CP (Case C-40/20) and (ii) AZ, BY, CX, DW, EV, FU and GJ (Case C-173/20), university researchers, on the one hand, and the Presidenza del Consiglio dei Ministri (Presidency of the Council of Ministers, Italy), the Ministero dell’Istruzione, dell’Università e della Ricerca – MIUR (Ministry of Education, Universities and Research, Italy) and the Università degli studi di Perugia (University of Perugia, Italy), on the other, concerning a refusal to transform those researchers’ fixed-term contracts into contracts of indefinite duration or to allow them to undergo appraisal so that they may be added to the list of associate professors.

Legal context

European Union law

3 Recital 14 of Directive 1999/70 is worded 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 second paragraph of the preamble to the Framework Agreement states that the parties thereto ‘recognise that contracts of an indefinite duration are, and will continue to be, the general form of employment relationship between employers and workers [and that] fixed-term employment contracts respond, in certain circumstances, to the needs of both employers and workers’.

5 Under Clause 1 of the Framework Agreement:

‘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 3 of the Framework Agreement, entitled ‘Definitions’, provides:

‘1. For the purpose of this agreement the term “fixed-term worker” means a person having an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event.

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.’

7 Clause 4 of the Framework Agreement, entitled ‘Principle of non-discrimination’, provides, in paragraph 1 thereof:

‘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.’

8 Clause 5 of the Framework Agreement, entitled ‘Measures to prevent abuse’, states:

‘1. To prevent abuse arising from the use of successive fixed-term employment contracts or relationships, Member States, after consultation with social partners in accordance with national law, collective agreements or practice, and/or the social partners, shall, where there are no equivalent legal measures to prevent abuse, introduce in a manner which takes account of the needs of specific sectors and/or categories of workers, one or more of the following measures:

(a) objective reasons justifying the renewal of such contracts or relationships;

(b) the maximum total duration of successive fixed-term employment contracts or relationships;

(c) the number of renewals of such contracts or relationships.

2. Member States after consultation with the social partners and/or the social partners shall, where appropriate, determine under what conditions fixed-term employment contracts or relationships:

(a) shall be regarded as “successive”[;]

(b) shall be deemed to be contracts or relationships of indefinite duration.’

9 Clause 8 of the Framework Agreement, entitled ‘Provisions on implementation’, is worded as follows:

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

…’

Italian law

10 Article 22 of legge n. 240 – Norme in materia di organizzazione delle università, di personale accademico e reclutamento, nonché delega al Governo per incentivare la qualità e l’efficienza del sistema universitario (Law No 240 of 30 December 2010 laying down rules on the organisation of universities, academic staff and recruitment and delegating powers to the Government to enhance the quality and efficiency of the university system) (Ordinary Supplement to GURI No 10 of 14 January 2011), in the version applicable to the facts in the main proceedings (‘Law No 240/2010’), entitled ‘Research grants’, provides, in paragraph 9 thereof:

‘The total duration of employment relationships established with the recipients of the grants provided for in this Article and of the contracts referred to in Article 24, including those with different, public, private or online universities, as well as with the bodies referred to in paragraph 1 of this Article, with the same person, may not in any event exceed 12 years, whether continuous or otherwise. For the purpose of calculating the duration of those employment relationships, periods of maternity leave or periods of absence on health grounds in accordance with the legislation in force shall not be taken into account.’

11 Article 24 of that law, entitled ‘Fixed-term researchers’, provides:

‘1. Depending on the programming resources available, in order to carry out research, teaching, supplementary teaching and student service activities, universities may draw up fixed-term employment contracts. The contract shall establish, on the basis of the university’s regulations, the

arrangements for carrying out teaching, supplementary teaching and student service activities, as well as research activities.

2. Addressees shall be chosen by means of public selection procedures organised by universities using a regulation within the meaning of [legge n. 168 – Istituzione del Ministero dell'Università e della Ricerca Scientifica e Tecnologica (Law No 168 of 9 May 1989 establishing the Ministry of Universities and Scientific and Technological Research)], in compliance with the principles set out in the European Charter for Researchers annexed to the [Commission Recommendation of 11 March 2005 on the European Charter for Researchers and on a Code of Conduct for the Recruitment of Researchers (2005/251/EC)] …

3. Contracts shall have the following features:

(a) three-year contracts which may be extended once only for a period of two years, subject to a favourable assessment of the teaching and research activities carried out, on the basis of the arrangements, criteria and parameters defined by [decree of the Minister for Education, Universities and Research]; those contracts may also be drawn up between the same person and different institutions;

(b) three-year contracts, reserved for candidates who have been employed under contracts of the type referred to in point (a), who have obtained the national academic qualification for the position of first-level or second-level professor referred to in Article 16 of this Law, who hold a specialised medical diploma, or who, for at least three years, whether continuously or otherwise, have received the research grants referred to in Article 51(6) of [Legge n. 449 – Misure per la stabilizzazione della finanza pubblica (Law No 449 of 27 December 1997 laying down measures for stabilising public finances), as amended], the research grants referred to in Article 22 of this Law, or the postdoctoral fellowships referred to in Article 4 of [Legge n. 398 – Norme in materia di borse di studio universitarie (Law No 398 of 30 November 1989 laying down rules regarding university scholarships)], or who have similar contracts, grants, fellowships or scholarships with foreign universities.

…

5. Depending on the programming resources available, in the third year of the contract referred to in point (b) of paragraph 3, the university shall assess the holder of the contract who has obtained the academic qualification referred to in Article 16 with a view to adding that person to the list of associate professors referred to in Article 18(1)(e). In the event of a positive appraisal, the holder of the contract, at the end of that contract, shall be added to the list of associate professors. The appraisal shall be carried out in accordance with the quality standards recognised at international level pursuant to a special regulation of the university within the framework of the criteria set by [decree of the Minister for Education, Universities and Research]. The programming referred to in Article 18(2) shall ensure that the necessary resources are available in the event that the outcome of the assessment procedure is positive. The procedure shall be publicised on the university's website.

6. Depending on the programming resources available, and without prejudice to the provisions of Article 18(2), from the date of entry into force of this Law until 31 December of the eighth year following that date, the procedure referred to in paragraph 5 may be used in order to add second-level professors and permanent researchers at that university who have obtained the academic qualification referred to in Article 16 to the list of first-level and second-level professors. To that end, universities may use up to half of the resources equivalent to those necessary to cover available

full professor posts. From the ninth year, the university may use resources corresponding to half of the available full professor posts in respect of the additions referred to in paragraph 5.

…

8. The salary payable to holders of the contracts referred to in point (a) of paragraph 3 shall be equal to the starting salary of an experienced researcher, depending on the employment regime. For holders of the contracts referred to in point (b) of paragraph 3, the overall gross annual salary shall be equal to the starting salary of a full-time experienced researcher and may be increased by up to 30%.

9. The contracts referred to in this Article shall not give rise to rights regarding access to posts. Performance of the contract referred to in points (a) and (b) of paragraph 3 shall be considered an advantage in competitive selection procedures for employment with public authorities.'

12 Legge n. 124 – Deleghe al Governo in materia di riorganizzazione delle amministrazioni pubbliche (Law No 124 of 7 August 2015 delegating powers to the Government concerning the reorganisation of public authorities) (GURI No 187 of 13 August 2015) ('Law No 124/2015'), which lays down, inter alia, rules on legislative delegation concerning the reorganisation of the labour law applicable to persons working for public authorities, provides, in Article 17(1) thereof:

'Legislative decrees concerning the reorganisation of the legislation in the field of employment within public authorities and the associated administrative organisation profiles shall be adopted, following consultation with the most representative trade unions, within 18 months of the date of entry into force of this Law, in accordance with the following principles and criteria, in addition to those referred to in Article 16:

(a) [the] implementation, in public competitive selection procedures, of assessment mechanisms intended to capitalise on the professional experience acquired by those who have had flexible employment relationships with public authorities …

…

(o) [the] organisation of flexible forms of work, by identifying a limited and exhaustive list of situations that are characterised by their compatibility with the specific nature of the employment relationships of those who work for public authorities and with the organisational and operational requirements of those authorities, with a view to avoiding job insecurity;

…'

13 Article 20 of decreto legislativo n. 75 – Modifiche e integrazioni al decreto legislativo 30 marzo 2001, n° 165, ai sensi degli articoli 16, commi 1, lettera a), e 2, lettere b), c), d) ed e) e 17, comma 1, lettere a), c), e), f), g), h), l) m), n), o), q), r), s) e z), della legge 7 agosto 2015, n. 124, in materia di riorganizzazione delle amministrazioni pubbliche (Legislative Decree No 75 of 25 May 2017 amending and supplementing Legislative Decree No 165 of 30 March 2001 in accordance with Article 16(1)(a) and Article 16(2)(b), (c), (d) and (e) of Law No 124 of 7 August 2015 delegating powers to the Government concerning the reorganisation of public authorities, as well as Article 17(1)(a), (c), (e), (f), (g), (h), (l), (m), (n), (o), (q), (r), (s) and (z) thereof) (GURI No 130 of 7 June 2017) ('Legislative Decree No 75/2017'), entitled 'Overcoming job insecurity in employment with public authorities', states:

‘1. Authorities, in order to overcome job insecurity in employment, to reduce the use of fixed-term contracts and to capitalise on the level of professionalism acquired by staff through fixed-term employment relationships, may, in the three-year period from 2018 to 2020 inclusive, in line with the three-year specifications referred to in Article 6(2), and indicating the financial cover therefor, recruit, for a period of indefinite duration, non-managerial staff who:

(a) are, after the date of entry into force of [Law No 124/2015], in the service of the authority carrying out the recruitment procedure under fixed-term contracts, or, in the case of municipal authorities who operate as an association, are in the service of authorities whose services are associated;

(b) have been recruited on a fixed-term basis, in relation to the same activities, by means of competitive selection procedures, including those completed in relation to public authorities other than the authority carrying out the recruitment procedure;

(c) have completed, as of 31 December 2017, at least three years in the service of the authority carrying out the recruitment procedure, whether continuous or otherwise, during the previous eight years.

2. Within that same three-year period from 2018 to 2020 inclusive, authorities may organise, in line with the three-year specifications referred to in Article 6(2), and without prejudice to the guarantee of adequate external access, having indicated the financial cover therefor, competitive selection procedures in which not more than 50% of the available posts are reserved for non-managerial staff who:

(a) hold, after the date of entry into force of [Law No 124/2015], a flexible employment contract with the authority which is organising the competitive selection procedure;

(b) have completed, as of 31 December 2017, at least three years of a contract with the authority which is organising the competitive selection procedure, whether continuous or otherwise, during the previous eight years.

…

8. Authorities may extend the relevant flexible employment relationships with persons participating in the procedures referred to in paragraphs 1 and 2 pending completion of those procedures, within the limits of the resources available as referred to in Article 9(28) of [Decreto-Legge n. 78 convertito con modificazioni dalla Legge n. 122 – Conversione in legge, con modificazioni, del decreto-legge 31 maggio 2010, n. 78, recante misure urgenti in materia di stabilizzazione finanziaria e di competitività economica (Decree-Law No 78 of 31 May 2010 laying down urgent measures concerning financial stabilisation and economic competitiveness, converted, with amendments, by Law No 122 of 30 July 2010)].

9. This Article shall not apply to the recruitment of teaching staff and administrative, technical and auxiliary (ATA) staff in State school and educational establishments. … This Article shall also not apply to contracts relating to work performed for public authorities by supply staff.’

14 Article 5(4-bis) of decreto legislativo n. 368 – Attuazione della direttiva 1999/70/CE relativa all’accordo quadro sul lavoro a tempo determinato concluso dall’UNICE, dal CEEP e dal CES (Legislative Decree No 368 of 6 September 2001 implementing Directive 1999/70/EC concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP) (GURI

No 235 of 9 October 2001) (‘Legislative Decree No 368/2001’), which transposed Directive 1999/70 into the Italian legal order, stated:

‘Without prejudice to the system of successive contracts as provided for in the preceding paragraphs, where, as a result of successive fixed-term contracts for the performance of equivalent tasks, the total duration of the employment relationship between the same employer and the same employee, including extensions and renewals, is more than 36 months, regardless of any breaks between contracts, the employment relationship shall be regarded as an employment relationship of indefinite duration pursuant to paragraph 2 …’

15 That provision has been reproduced, in essence, and maintained in force by Article 19 of decreto legislativo n. 81 – Disciplina organica dei contratti di lavoro e revisione della normativa in tema di mansioni, a norma dell’articolo 1, comma 7, della [legge n. 183 – Deleghe al Governo in materia di riforma degli ammortizzatori sociali, dei servizi per il lavoro e delle politiche attive, nonché in materia di riordino della disciplina dei rapporti di lavoro e dell’attività ispettiva e di tutela e conciliazione delle esigenze di cura, di vita e di lavoro] (Legislative Decree No 81 of 15 June 2015 on the systematic regulation of employment contracts and amendment of the legislation on employment-related duties, in accordance with Article 1(7) of [Law No 183 of 10 December 2014 delegating powers to the Government concerning the reform of social safety nets, employment services and active policies, as well as the reorganisation of the rules governing employment relationships and inspection activities and the protection and balancing of care, life and work needs]) (Ordinary Supplement to GURI No 144 of 24 June 2015) (‘Legislative Decree No 81/2015’), entitled ‘Setting of the term and maximum duration’, in force since 25 June 2015. Under that provision, once the limit of 36 months has been exceeded, whether by a single contract or by successive contracts concluded for the performance of duties at the same level and having the same legal status, ‘the contract shall be transformed into a contract of indefinite duration from the date on which that limit is exceeded’.

16 However, according to Article 10(4-bis) of Legislative Decree No 368/2001, Article 5(4-bis) thereof is not to apply in certain situations. The contracts at issue in the cases in the main proceedings are covered by those situations by virtue of Article 29(2)(d) of Legislative Decree No 81/2015, as that provision expressly states that fixed-term contracts concluded under Law No 240/2010 are among those excluded from the scope of Article 5(4-bis) of Legislative Decree No 368/2001.

17 In addition, Article 29(4) of Legislative Decree No 81/2015 provides that the provisions of Article 36 of decreto legislativo n. 165 – Norme generali sull’ordinamento del lavoro alle dipendenze delle amministrazioni pubbliche (Legislative Decree No 165 of 30 March 2001 laying down general rules concerning the organisation of employment within public authorities) (Ordinary Supplement to GURI No 106 of 9 May 2001) (‘Legislative Decree No 165/2001’) are to remain unchanged.

18 Article 36 of Legislative Decree No 165/2001, as amended by Legislative Decree No 75/2017, entitled ‘Fixed-term staff or staff recruited under flexible employment relationships’, provides:

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

…

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

…

5-quater. Fixed-term employment contracts concluded in breach of this Article shall be null and void and shall trigger the liability of the authorities. Managers who act in breach of the provisions of this Article shall also be liable within the meaning of Article 21. No performance bonus may be awarded to a manager who has made unlawful use of flexible work.'

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

19 The appellants in the main proceedings in Cases C-40/20 and C-173/20 each concluded a researcher contract for a period of three years with the University of Perugia under Article 24(3)(a) of Law No 240/2010. Their contracts were extended for a period of two years.

20 The appellants in the main proceedings, who were already in post when Law No 124/2015 entered into force, requested, relying on Article 20(1) of Legislative Decree No 75/2017, that the University of Perugia initiate the recruitment procedure for the purposes of recruiting them for an indefinite period.

21 The University of Perugia refused those requests by memoranda of 11 and 19 April 2018, on the ground that, under Circolare n. 3 della Presidenza del Consiglio dei Ministri di 23 novembre 2017 per la semplificazione e la pubblica amministrazione, in materia di 'Indirizzi operativi in materia di valorizzazione dell'esperienza professionale del personale con contratto di lavoro flessibile e superamento del precariato' (Circular No 3 of the Presidency of the Council of Ministers of 23 November 2017 for simplification and public administration in the field of 'Operational guidelines regarding capitalising on the professional experience of staff on flexible employment contracts and overcoming job insecurity') ('Circular No 3/2017'), the rules contained in Article 20 of Legislative Decree No 75/2017 in no way altered the employment relationship of university researchers and professors whose public-law contracts were not subject to procedures for stabilising insecure jobs.

22 The appellants in the main proceedings brought actions before the Tribunale Amministrativo Regionale per l'Umbria (Regional Administrative Court, Umbria, Italy) to contest those decisions and Circular No 3/2017. They argued, inter alia, that Article 20 of Legislative Decree No 75/2017 did not exclude university researchers under fixed-term contracts from the procedure for stabilising insecure jobs, because otherwise that provision would have to be regarded as unconstitutional and contrary to EU law, in particular the Framework Agreement.

23 After having joined the actions brought by the appellants in the main proceedings in their respective cases (Case C-40/20 and Case C-173/20) as to the substance, the Tribunale Amministrativo Regionale per l'Umbria (Regional Administrative Court, Umbria) dismissed those actions on the ground that the procedure referred to in Article 20(1) of Legislative Decree No 75/2017 constituted, even in the light of the opinion of the Consiglio di Stato (Council of State, Italy) of 11 April 2017, a notable exception to the rule of the public competitive selection procedure, the mandatory nature of which had always been enshrined by the Corte costituzionale (Constitutional Court, Italy) and by social and administrative case-law. That procedure should

therefore be analysed as an exceptional mechanism, to the point where it would be subject not only to the principles of reason and proportionality, but also to the programming and financing limits applicable to the whole of the civil service.

24 In any event, even though university researchers who have concluded a fixed-term contract would not be expressly excluded from its addressees, that procedure would be inapplicable to that category of workers, whose relationships would be governed by the rules specific to universities and academic research.

25 The appellants in the main proceedings brought an appeal before the Consiglio di Stato (Council of State).

26 That court considers that the solution to be applied to the disputes in the main proceedings requires that, beforehand, a decision be reached regarding the issue of the compatibility with EU law of the system for recruiting university researchers.

27 In that regard, that court recalls, as a preliminary point, that the essential purpose of the Framework Agreement and the protection mechanisms provided for therein is not to exclude fixed-term contracts, but the abuse thereof. In addition, it expresses reservations as regards an automatic application of those mechanisms in the fields of public authorities in general and academic research in particular, since those fields are regulated, in the national legal order, on the basis of constitutional principles.

28 The referring court emphasises that, in view of the particular features of academic research at universities, a fixed-term employment relationship, even if consecutive or close to an earlier relationship between the same parties, whether it is generally linked to issues of academic research, or it extends beyond the maximum duration referred to in Article 19(1) of Legislative Decree No 81/2015, is not necessarily a straightforward concealed and abusive extension of the initial employment relationship.

29 Thus, the objective justification for the recruitment of staff assigned to academic research at universities on the basis of fixed-term contracts is the a priori unforeseeability of the nature and number of lines of research which might be put in place, as well as the type, duration and content of that teaching activity. In both cases, the needs would in fact be temporary, not permanent, and would be included in periods which are not necessarily closed or likely to extend over a fairly long period.

30 However, the referring court questions whether the legislation at issue in the main proceedings might be at odds with EU law.

31 As a preliminary point, it considers that the continuation of the two statuses of researchers under fixed-term contracts referred to in Article 24(3) of Law No 240/2010 could come into conflict with Clause 5(1) of the Framework Agreement. In its view, the ‘objective and transparent’ criteria required by that provision do not appear in Article 24(1) of that law, which requires only that the fixed-term contract be compatible with the ‘programming resources available’. However, it is apparent from the case-law, and in particular from the judgment of 26 November 2014, *Mascolo and Others* (C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401), that, whilst budgetary considerations which mean there is a tendency to refuse to maintain employment may underlie a Member State’s choice of social policy and influence the nature or scope of the measures which it wishes to adopt, they do not in themselves constitute an aim pursued by that policy and, therefore,

cannot justify the lack of any measure preventing the abuse of successive fixed-term employment contracts as referred to in Clause 5(1) of the Framework Agreement.

32 In addition, the act of making any renewal for two years subject to a simple 'favourable assessment of the teaching and research activities carried out' cannot be regarded as meeting the requirement for the university to define and apply objective and transparent criteria for the purpose of verifying whether the renewal of such contracts actually meets a genuine need and is capable of attaining the objective pursued.

33 Lastly, any breach of the principles of EU law as a result of the conclusion of an initial fixed-term contract would also affect the renewal of that contract.

34 Accordingly, Article 24(3) of Law No 240/2010 could comprise a real risk of abuse of fixed-term contracts and, if that were the case, would not be compatible with the objective and the practical effect of the Framework Agreement.

35 In those circumstances, the Consiglio di Stato (Council of State) decided to stay the proceedings and to refer the following questions, common to Cases C-40/20 and C-173/20, to the Court of Justice for a preliminary ruling:

'(1) Does Clause 5 of [the Framework Agreement], entitled "Measures to prevent abuse", read in conjunction with recitals 6 and 7 [of Directive 1999/70] and Clause 4 of that agreement ("Principle of non-discrimination"), and in the light of the principles of equivalence, effectiveness and practical effect of [European Union] law, preclude national legislation, specifically Article 24(3)(a) and Article 22(9) of Law No 240/2010, which allows universities to make unlimited use of fixed-term three-year contracts for researchers which may be extended for a further two years, without making the conclusion and extension of such contracts contingent on there being an objective reason connected with the temporary or exceptional requirements of the university offering such contracts, and which only stipulates, as the sole limit on the use of multiple fixed-term contracts with the same person, a maximum duration of 12 years, continuous or otherwise?

(2) Does Clause 5 of the Framework Agreement, read in conjunction with recitals 6 and 7 of [Directive 1999/70] and Clause 4 of [that agreement], and in the light of the practical effect of [European Union] law, preclude national legislation (specifically [Article 24 and Article 29(1)] of Law No 240/2010), in so far as it allows universities to recruit researchers on a fixed-term basis only – without making the decision to employ such researchers contingent on the existence of temporary or exceptional requirements and without imposing any limit on this practice – through the potentially indefinite succession of fixed-term contracts, to cover the ordinary teaching and research requirements of those universities?

(3) Does Clause 4 of [the Framework Agreement] preclude national legislation, such as Article 20(1) of Legislative Decree No 75/2017 (as interpreted by [Circular No 3/2017]), which – while recognising that researchers on fixed-term contracts with public research bodies may be made permanent members of staff, provided that they have been employed for at least three years prior to 31 December 2017, – does not permit this for university researchers on fixed-term contracts solely because Article 22(16) of Legislative Decree No 75/2017 applies the "public-law regime" to the employment relationship – even though, as a matter of law, that relationship is based on a contract of employment – and despite the fact that Article 22(9) of Law No 240/2010 imposes the same rule on researchers at research bodies and at universities regarding the maximum duration of fixed-term employment relationships with universities and research bodies, whether in the form of the

contracts referred to in Article 24 of that law or the research projects referred to in Article 22 [thereof]?

(4) Do the principles of equivalence, effectiveness and practical effect of [European Union] law, with regard to the Framework Agreement, and the principle of non-discrimination enshrined in Clause 4 thereof, preclude national legislation (Article 24(3)(a) of Law No 240/2010 and Article 29(2)(d) and (4) of Legislative Decree No 81/2015) which – notwithstanding the existence of rules applicable to all public-sector and private-sector workers recently set out in [Legislative Decree No 81/2015] which establish (from 2018) that the maximum duration of a fixed-term relationship is 24 months (including extensions and renewals) and make the use of such relationships by the public authorities contingent on the existence of "temporary and exceptional requirements" – allows universities to hire researchers on a three-year fixed-term contract, which may be extended for two years in the event of a favourable assessment of the research and teaching activities carried out during those three years, without making either the conclusion of the initial contract or its extension conditional on the university having such temporary or exceptional requirements, and even allowing it, at the end of the five-year period, to enter into another fixed-term contract of the same type with the same individuals or with other individuals, in order to cover the same teaching and research requirements as those of the earlier contract?

(5) Does Clause 5 of the Framework Agreement, in the light of the principles of effectiveness and equivalence and Clause 4 of that agreement, preclude national legislation (Article 29(2)(d) and (4) of Legislative Decree No 81/2015 and Article 36(2) and (5) of Legislative Decree No 165/2001) which prevents university researchers hired on a three-year fixed-term contract, which may be extended for a further two years (pursuant to Article 24(3)(a) of Law No 240/2010), from subsequently establishing a relationship of indefinite duration, there being no other measures within the Italian legal system which can prevent and penalise the misuse of successive fixed-term contracts by universities?'

36 On 23 April 2020, the Consiglio di Stato (Council of State) raised, in Case C-40/20, a sixth question worded as follows:

'(6) Does Clause 4 of [the Framework Agreement], headed "Principle of non-discrimination", read in conjunction with Articles 20 and 21 of the Charter of Fundamental Rights of the European Union, and also in the light of the principles of equivalence and effectiveness, preclude national legislation, such as that set out in [Article] 24(5) and (6) of Law No 240/2010, which grants fixed-term researchers referred to in Article 24(3)(b) who have obtained the national academic qualification referred to in Article 16 of that law, and permanent researchers who have also obtained that qualification, respectively, the right and the opportunity (implemented by the allocation of special funds) to undergo – the former on expiry of the contract and the latter until 31 December 2021 – a special appraisal procedure for appointment to the post of associate professor, whilst no similar right or opportunity is granted to fixed-term researchers referred to in Article 24(3)[(a)] who hold the relevant national academic qualification, despite the fact that they are workers who are required to perform identical duties, without distinction?'

37 By decision of 27 April 2020, the President of the Court joined Cases C-40/20 and C-173/20 for the purposes of the written and oral procedures and of the judgment.

Consideration of the questions referred

Preliminary observations

38 In the first, fourth, fifth and sixth questions, the referring court questions whether provisions of national law are in line with, inter alia, the principles of effectiveness and equivalence. However, given that those provisions of national law lay down substantive requirements and not procedural rules, those principles are not relevant for the purpose of answering those questions. Indeed, those principles apply only in connection with the safeguarding of the rights which individuals derive from EU law and, accordingly, do not concern the material scope of those rights, but only the procedural rules governing the exercise of those rights, those rules being governed by national law (see, to that effect, judgment of 30 June 2016, *Câmpean*, C-200/14, EU:C:2016:494, paragraphs 46 and 47).

The second question and the first part of the first question

39 By its second question and the first part of its first question, the referring court asks, in essence, whether Clause 5 of the Framework Agreement precludes a piece of national legislation which permits universities to conclude three-year fixed-term contracts with researchers, which can be extended for a maximum of two years, without making the conclusion or extension of those contracts conditional upon there being objective reasons connected with temporary or exceptional requirements.

40 It should be borne in mind that Article 24(3) of Law No 240/2010 provides for two types of contract for university researchers, thereby replacing the previous rules which granted those persons a permanent post after the successful completion of an initial probationary period of three years, namely (i) the contracts referred to in point (a) of that provision ('Type A Contracts') and (ii) the contracts referred to in point (b) thereof ('Type B Contracts'), with both types being concluded for a three-year period.

41 Although the selection procedure thus leads, for both those categories of university researchers, to the conclusion of a three-year fixed-term contract, it is apparent from the requests for a preliminary ruling that there are differences between those types of contract.

42 The conclusion of a Type A Contract depends on there being resources available to carry out research, teaching, supplementary teaching and student service activities. Such a contract may be extended only once, for a period of two years, following a favourable assessment of the academic activity carried out by the person concerned. By contrast, a Type B Contract cannot be extended, but the researcher concerned has the possibility, at the end of that period and on the basis of the result of a suitable appraisal, of being offered a post as an associate professor; a post which involves a contract of indefinite duration.

43 The conditions for accessing each of those contracts are also different. For Type A Contracts, it is sufficient to hold a doctorate, an equivalent academic qualification, or a specialised medical diploma. By contrast, for Type B Contracts, it is necessary to have worked as a researcher under Article 24(3)(a) of Law No 240/2010, to have obtained the qualification for the position of first-level or second-level professor, to have completed a period of medical training, or to have spent at least three years in various universities as a recipient of research grants or student scholarships.

44 Accordingly, the fact of having concluded a Type A Contract enables a person to access a Type B Contract. A university researcher may thus pursue his or her academic career by moving from a Type A Contract to a Type B Contract, which will then give him or her the possibility of being appointed as an associate professor. Such an appointment depends, however, on the result of a suitable appraisal and is not therefore automatic.

45 It follows that the difference between the two categories of university researchers consists, first, in the separate sets of conditions under which it is permissible to conclude a contract and, next, in the fact that researchers who have a Type A Contract do not have direct access, in their career, to the post of associate professor, whereas those who have a Type B Contract have direct access thereto.

46 In this instance, the appellants in the main proceedings were recruited as successful candidates following a selection procedure organised under Article 24 of Law No 240/2010 and thus following a favourable assessment, as required by point (a) of paragraph 3 of that article, taking account of the 'programming resources available, in order to carry out research, teaching, supplementary teaching and student service activities'.

47 It should be borne in mind that, 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.

48 To that end, in order to prevent any abuse arising from the use of successive fixed-term employment contracts or relationships, Clause 5 of the Framework Agreement lays down, in paragraph 1 thereof, the measures which the Member States are to introduce when there are no equivalent legal measures to prevent abuse.

49 It is apparent from the wording of Clause 5 of that agreement that that clause is applicable solely when there are successive fixed-term employment contracts or relationships, so that a contract which is the first or only fixed-term employment contract does not fall within the scope of paragraph 1 thereof. Thus, the Framework Agreement does not require Member States to adopt a measure requiring every first or single fixed-term employment contract to be justified by an objective reason (judgment of 3 June 2021, *Ministero dell'Istruzione, dell'Università e della Ricerca - MIUR and Others (University researchers)*, C-326/19, EU:C:2021:438, paragraph 52 and the case-law cited).

50 Accordingly, the conclusion of a fixed-term contract, such as the Type A Contract, is not, as such, covered by Clause 5(1) of the Framework Agreement and thus does not fall within the scope of that provision.

51 By contrast, that provision is applicable where a Type A Contract is extended for a maximum period of two years, as provided for in Article 24(3)(a) of Law No 240/2010, since in that case there are two successive fixed-term contracts.

52 In that regard, it should be borne in mind that the purpose of Clause 5(1) of the Framework Agreement is to implement one of the objectives of that agreement, namely to place limits on the successive use of fixed-term employment contracts or relationships, regarded as a potential source of abuse to the detriment of workers, by laying down as a minimum a number of protective provisions designed to prevent the status of employees from being insecure (judgment of 3 June 2021, *Ministero dell'Istruzione, dell'Università e della Ricerca - MIUR and Others (University researchers)*, C-326/19, EU:C:2021:438, paragraph 55 and the case-law cited).

53 Therefore, Clause 5(1) of the Framework Agreement requires, with a view to preventing abuse of successive fixed-term employment contracts or relationships, the effective and binding adoption by Member States of at least one of the measures listed in that provision, where their domestic law does not already include equivalent legal measures. The measures listed in

Clause 5(1)(a) to (c), of which there are three, relate, respectively, to objective reasons justifying the renewal of such employment contracts or relationships, the maximum total duration of successive fixed-term employment contracts or relationships, and the number of renewals of such contracts or relationships (judgment of 3 June 2021, *Ministero dell'Istruzione, dell'Università e della Ricerca - MIUR and Others (University researchers)*, C-326/19, EU:C:2021:438, paragraph 56 and the case-law cited).

54 The Member States enjoy a certain discretion in that regard since they have the choice of relying on one or more of the measures listed in Clause 5(1)(a) to (c) of the Framework Agreement, or on existing equivalent legal measures, while taking account of the needs of specific sectors and/or categories of workers (judgment of 3 June 2021, *Ministero dell'Istruzione, dell'Università e della Ricerca - MIUR and Others (University researchers)*, C-326/19, EU:C:2021:438, paragraph 57 and the case-law cited).

55 In this way, Clause 5(1) of the Framework Agreement assigns to the Member States the general objective of preventing such abuse, while leaving to them the choice as to how to achieve it, provided that they do not compromise the objective or the practical effect of the Framework Agreement (judgment of 3 June 2021, *Ministero dell'Istruzione, dell'Università e della Ricerca - MIUR and Others (University researchers)*, C-326/19, EU:C:2021:438, paragraph 58 and the case-law cited).

56 In this instance, Article 24(3)(a) of Law No 240/2010 establishes a limit concerning not only the maximum duration of Type A Contracts, such as those concluded by the appellants in the main proceedings, but also the possible number of renewals of those contracts. More specifically, that provision sets the maximum duration of those contracts at three years and authorises only one extension, the duration of which is limited to two years.

57 Accordingly, Article 24(3)(a) of Law No 240/2010 contains two of the measures indicated in Clause 5(1) of the Framework Agreement, namely (i) a measure concerning the total maximum duration of fixed-term contracts and (ii) a measure concerning the number of possible renewals. In addition, the referring court has not indicated any evidence which could suggest that those measures would not be sufficient effectively to prevent the abuse of fixed-term contracts in respect of Type A Contracts.

58 It is true that the referring court remarks, relying on, inter alia, the judgment of 25 October 2018, *Sciotto* (C-331/17, EU:C:2018:859), that the national legislation at issue in the main proceedings does not contain objective and transparent criteria which make it possible to determine, first, whether the conclusion and extension of Type A Contracts are justified by genuine needs of a temporary nature and, second, whether they are such as to satisfy those needs and are implemented in a proportionate manner.

59 However, in the first place, whereas, in the case which gave rise to that judgment, the question whether the renewal of the fixed-term contracts in question was justified by objective reasons for the purposes of Clause 5(1)(a) of the Framework Agreement, including the need to respond to genuine, temporary needs, arose because of the lack of measures in the nature of those referred to in Clause 5(1)(b) and (c) of the Framework Agreement, the national legislation at issue in the main proceedings contains, as has been noted in paragraph 57 of the present judgment, measures of that nature. Accordingly, the fact, relied on by the referring court, that that legislation does not contain details as to the genuine and temporary nature of the needs to be met by the use of fixed-term contracts is irrelevant.

60 In the second place, in the case which gave rise to the judgment of 25 October 2018, *Sciotto* (C-331/17, EU:C:2018:859), the workers concerned were faced with complete uncertainty as to the duration of their employment relationship. By contrast, persons who conclude a Type A Contract, such as those concluded by the appellants in the main proceedings, are informed, even before signing the contract, that the employment relationship cannot last more than five years.

61 As regards the benefit of stability of employment for a worker, this is, of course, as can be seen from the second paragraph of the preamble to the Framework Agreement, conceived as a major element of protection for workers, whereas only in certain circumstances are fixed-term employment contracts likely to meet the needs of both employers and workers (judgment of 3 June 2021, *Ministero dell'Istruzione, dell'Università e della Ricerca - MIUR and Others (University researchers)*, C-326/19, EU:C:2021:438, paragraph 65 and the case-law cited).

62 However, the termination of the effects of a fixed-term researcher's contract, such as that concluded by the appellants in the main proceedings, who were recruited under a Type A Contract, does not necessarily lead to job instability, in so far as it enables the worker concerned to acquire the necessary qualifications to obtain a Type B Contract, which may, in turn, lead to an employment relationship of indefinite duration as an associate professor.

63 In the third place, the fact that universities have a permanent need to employ academic researchers, as seems to be apparent from the national legislation at issue in the main proceedings, does not mean that that need could not be met by using fixed-term employment contracts (judgment of 3 June 2021, *Ministero dell'Istruzione, dell'Università e della Ricerca - MIUR and Others (University researchers)*, C-326/19, EU:C:2021:438, paragraph 67 and the case-law cited).

64 Indeed, the post of researcher appears to be intended as the first step in an academic's career, the researcher being destined, in any case, to move on to another position, namely a teaching position, first as an associate professor and then as a full professor (judgment of 3 June 2021, *Ministero dell'Istruzione, dell'Università e della Ricerca - MIUR and Others (University researchers)*, C-326/19, EU:C:2021:438, paragraph 68 and the case-law cited).

65 Regarding, in addition, the fact that the two-year extension of Type A Contracts is conditional upon a favourable assessment of the teaching and research activities carried out, the 'particular needs' of the sector concerned may reasonably consist, in the field of academic research, in the need to ensure the career development of individual researchers on the basis of their respective merits, which must therefore be evaluated. Accordingly, a provision which would oblige a university to conclude a contract of indefinite duration with a researcher, irrespective of the evaluation of the results of his or her academic activities, would not meet such requirements (judgment of 3 June 2021, *Ministero dell'Istruzione, dell'Università e della Ricerca - MIUR and Others (University researchers)*, C-326/19, EU:C:2021:438, paragraph 69 and the case-law cited).

66 Having regard to all of the foregoing, the answer to the second question and to the first part of the first question is that Clause 5 of the Framework Agreement must be interpreted as not precluding a piece of national legislation which permits universities to conclude three-year fixed-term contracts with researchers, which can be extended for a maximum of two years, without making the conclusion or extension of those contracts conditional upon there being objective reasons connected with temporary or exceptional requirements, in order to cover the everyday permanent needs of the university concerned.

The second part of the first question

67 By the second part of its first question, the referring court asks, in essence, whether Clause 5 of the Framework Agreement precludes a piece of national legislation, such as Article 22(9) of Law No 240/2010, which sets the total duration of the employment contracts that may be concluded by a single researcher, including with different universities and institutes, whether continuous or otherwise, at 12 years.

68 In that regard, it should be stated, as a preliminary point, that the purpose of Article 22(9) of that law is not to limit the duration of the individual fixed-term employment contract, but to limit the total duration of all the different possible forms of fixed-term employment relationships in the field of research – whether they be Type A Contracts, Type B Contracts, or other forms of employment relationships – that may be concluded by a single person, including with different universities and institutes.

69 It should be borne in mind that the objective of Clause 5 of the Framework Agreement consists in implementing one of the objectives of that agreement, namely to avoid job insecurity arising in relation to employees from the successive use of fixed-term employment contracts or relationships, which is regarded as a possible source of abuse to the detriment of workers (see, to that effect, judgment of 3 June 2021, *Ministero dell'Istruzione, dell'Università e della Ricerca - MIUR and Others (University researchers)*, C-326/19, EU:C:2021:438, paragraph 55 and the case-law cited).

70 In this instance, Article 22(9) of Law No 240/2010 sets the total duration of all the fixed-term contracts, including Type A Contracts, which a single university researcher may conclude with one or more universities at 12 years.

71 Accordingly, like Article 24(3) of Law No 240/2010, Article 22(9) of that law contains one of the measures referred to in Clause 5(1) of the Framework Agreement, namely the measure concerning the total maximum duration of all the fixed-term contracts concluded by a single researcher. Besides the fact that Clause 5(1)(b) of the Framework Agreement concerns only a situation where there is only one employer, so that that clause is relevant only in the case of successive fixed-term contracts concluded by a researcher within a single university, the referring court has not indicated any evidence which could suggest that that measure would not be sufficient effectively to prevent the abuse of fixed-term contracts with regard to Type A Contracts.

72 Thus, the fact, relied on by the referring court, that the national legislation at issue in the main proceedings does not contain any details as to the genuine and temporary nature of the needs to be met by the use of fixed-term contracts is irrelevant, for the same reasons as those referred to in paragraph 59 of the present judgment (see, by analogy, judgment of 3 June 2021, *Ministero dell'Istruzione, dell'Università e della Ricerca - MIUR and Others (University researchers)*, C-326/19, EU:C:2021:438, paragraph 63).

73 Even assuming that such a measure is not sufficient effectively to prevent such abuse and that there are situations in which, despite the existence of a safeguard rule concerning, as in this instance, the total maximum duration of successive fixed-term contracts, a Member State may disregard the requirements of Clause 5 of the Framework Agreement by using fixed-term employment contracts to respond to permanent and lasting needs, such use of those fixed-term employment relationships would be, in a situation such as those in the main proceedings, justified by objective reasons under Clause 5(1)(a) of the Framework Agreement.

74 In the first place, and as has already been noted by the referring court in its requests for a preliminary ruling, the nature of university research could justify the temporary nature of the recruitment of university researchers.

75 In that regard, the frequently limited nature of the duration of a researcher's tasks is linked to the type of services he or she must perform, which consist, inter alia, in the analysis of specific subjects, and in the carrying out of studies and research, the results of which are published at a later stage. Thus, for a university, the nature and number of fields of research, as well as the type, duration and content of research activities that may be chosen, are largely unforeseeable.

76 In the second place, as has been stated in paragraphs 63 to 65 of the present judgment, the fact that universities have a permanent need to employ academic researchers, as seems to be apparent from the national legislation at issue in the main proceedings, does not mean that that need could not be met by using fixed-term employment contracts (judgment of 3 June 2021, *Ministero dell'Istruzione, dell'Università e della Ricerca - MIUR and Others (University researchers)*, C-326/19, EU:C:2021:438, paragraph 67 and the case-law cited).

77 Indeed, the post of researcher appears to be intended as the first step in an academic's career, the researcher being destined, in any case, to move on to another position, namely a teaching position, first as an associate professor and then as a full professor (judgment of 3 June 2021, *Ministero dell'Istruzione, dell'Università e della Ricerca - MIUR and Others (University researchers)*, C-326/19, EU:C:2021:438, paragraph 68 and the case-law cited).

78 Besides, it is not apparent from the orders for reference that universities would use fixed-term contracts to meet everyday permanent research and teaching needs, which it is, however, for the national court to verify.

79 Regarding, in addition, the fact that the two-year extension of Type A Contracts is conditional upon a favourable assessment of the teaching and research activities carried out, the 'particular needs' of the sector concerned may reasonably consist, in the field of academic research, in the need to ensure the career development of various researchers on the basis of their respective merits, which must therefore be evaluated.

80 In the third place, as has already been emphasised in paragraph 65 of the present judgment, a maximum total duration of 12 years, such as that at issue in the main proceedings, may be justified by the need to ensure the career development of various researchers on the basis of their respective merits and is thus not incompatible with the idea of university career progression (see, by analogy, judgment of 3 June 2021, *Ministero dell'Istruzione, dell'Università e della Ricerca - MIUR and Others (University researchers)*, C-326/19, EU:C:2021:438, paragraph 69 and the case-law cited).

81 In addition, a researcher who has a Type A Contract does not appear to be prevented from taking part in competitive selection procedures in order to obtain another type of fixed-term contract, such as a Type B Contract, which may then lead to professional stabilisation as a professor at the same university institution or at another institution. The Type A Contract therefore appears to enable a researcher to acquire additional university and academic qualifications in order to obtain a Type B Contract or, after obtaining an academic qualification, to take part in competitive selection procedures in order to obtain an employment contract of indefinite duration as a professor.

82 In that context, it is for the national court to assess, in each individual case, all the factual circumstances of the cases before it, taking into account, inter alia, the number of contracts concluded by the same university with the same researcher or for the purpose of carrying out the

same work, and also examining the types of selection procedure and the interval between each procedure, in order to avoid the abuse by the employer of a series of fixed-term contracts (see, by analogy, judgment of 13 January 2022, *MIUR and Ufficio Scolastico Regionale per la Campania*, C-282/19, EU:C:2022:3, paragraph 107).

83 Having regard to the foregoing considerations, the answer to the second part of the first question is that Clause 5 of the Framework Agreement must be interpreted as not precluding a piece of national legislation which sets the total duration of the employment contracts that may be concluded by a single researcher, including with different universities and institutes, whether continuous or otherwise, at 12 years.

The fifth question

84 By its fifth question, the referring court asks, in essence, whether Clause 5 of the Framework Agreement precludes a piece of national legislation which does not permit three-year fixed-term contracts concluded by university researchers, which may be extended for a maximum of two years, to be transformed into contracts of indefinite duration, where there is no other measure in the national legal order which can be used to avoid or penalise any abuse, by universities, of fixed-term contracts.

85 As is apparent from the answers given to the first and second questions and subject to verification by the referring court, Clause 5 of the Framework Agreement does not preclude a piece of national legislation such as that at issue in the main proceedings, as that piece of national legislation does not give rise to a risk of abuse of fixed-term contracts. There is therefore no need to answer the fifth question.

The third question

86 By its third question, the referring court asks, in essence, whether Clause 4 of the Framework Agreement precludes a piece of national legislation which provides for the possibility, under certain conditions, of stabilising the employment of researchers for public research bodies who have concluded a fixed-term contract but which denies that possibility to university researchers who have concluded a fixed-term contract.

87 In that regard, it should be borne in mind that, according to settled case-law, as the principle of non-discrimination has been put into effect and specifically applied by the Framework Agreement solely as regards differences in treatment as between fixed-term workers and permanent workers in a comparable situation, any differences in treatment between specific categories of fixed-term staff are not covered by the principle of non-discrimination established by that agreement (judgment of 13 January 2022, *MIUR and Ufficio Scolastico Regionale per la Campania*, C-282/19, EU:C:2022:3, paragraph 72 and the case-law cited).

88 More specifically, Clause 4 of the Framework Agreement seeks to apply the principle of non-discrimination to fixed-term workers in order to prevent an employer from using such an employment relationship to deny those workers rights which are recognised for permanent workers (judgment of 13 January 2022, *MIUR and Ufficio Scolastico Regionale per la Campania*, C-282/19, EU:C:2022:3, paragraph 73 and the case-law cited).

89 The fact that certain fixed-term workers, such as university researchers, may not have their job stabilised, whereas researchers for public research bodies who have concluded a fixed-term

contract may do so, constitutes a difference in treatment between two categories of fixed-term workers.

90 Therefore, the answer to the third question is that Clause 4 of the Framework Agreement must be interpreted as not precluding a piece of national legislation which provides for the possibility, under certain conditions, of stabilising the employment of researchers for public research bodies who have concluded a fixed-term contract but which denies that possibility to university researchers who have concluded a fixed-term contract.

The fourth question

91 By its fourth question, the referring court asks, in essence, whether Clause 4 of the Framework Agreement precludes a piece of national legislation which, by derogating, first, from the general rule applicable to all workers in the public and private sectors according to which, as from 2018, the maximum duration of a fixed-term relationship is set at 24 months, including extensions and renewals, and, second, from the rule applicable to public authority employees according to which the use of that type of relationship is conditional upon the existence of 'temporary and exceptional requirements', permits universities to conclude with researchers three-year fixed-term contracts, which may be extended for a maximum of two years, without making the conclusion or extension of those contracts conditional upon the existence of temporary or exceptional requirements on the part of the university, and which also permits, at the end of the five-year period, the conclusion, with the same person or with other persons, of another fixed-term contract of the same type in order to meet the same teaching and research needs as those connected with the previous contract.

92 In that regard, it has been noted in paragraphs 87 and 88 of the present judgment that, as the principle of non-discrimination has been put into effect and specifically applied by the Framework Agreement solely as regards differences in treatment as between fixed-term workers and permanent workers in a comparable situation, any differences in treatment between specific categories of fixed-term staff are not covered by the principle of non-discrimination established by that agreement. More specifically, Clause 4 of the Framework Agreement seeks to apply the principle of non-discrimination to fixed-term workers in order to prevent an employer from using such an employment relationship to deny those workers rights which are recognised for permanent workers.

93 In addition, as the referring court does not indicate precisely with which category of permanent workers researchers who have concluded a Type A Contract should be compared, the question seems rather to concern the conclusion of successive fixed-term contracts, abuse of which is penalised by Clause 5 of the Framework Agreement, and not discrimination against fixed-term researchers in relation to comparable permanent workers.

94 Accordingly, the answer to the fourth question is that Clause 4 of the Framework Agreement must be interpreted as not precluding a piece of national legislation which, by derogating, first, from the general rule applicable to all workers in the public and private sectors according to which, as from 2018, the maximum duration of a fixed-term relationship is set at 24 months, including extensions and renewals, and, second, from the rule applicable to public authority employees according to which the use of that type of relationship is conditional upon the existence of temporary and exceptional requirements, permits universities to conclude with researchers three-year fixed-term contracts, which may be extended for a maximum of two years, without making the conclusion or extension of those contracts conditional upon the existence of temporary or exceptional requirements on the part of the university in question, and which also permits, at the end of the five-year period, the conclusion, with the same person or with other persons, of another

fixed-term contract of the same type in order to meet the same teaching and research needs as those connected with the previous contract.

The sixth question

95 By its sixth question, which has been raised only in connection with Case C-40/20, the referring court asks, in essence, whether Clause 4(1) of the Framework Agreement precludes a piece of national legislation pursuant to which only researchers who have concluded a fixed-term contract of a certain type or a contract of indefinite duration have the possibility, once they have obtained the national academic qualification, of undergoing a specific appraisal procedure in order that they may be added to the list of associate professors, whereas that possibility is denied to researchers who have concluded a fixed-term contract of another type once they have also obtained the national academic qualification, in a situation where the last group carries out the same professional activities and provides the same teaching services to students as the first two categories of researchers.

96 In that regard, it is apparent from the answers given to the third and fourth questions that Clause 4 of the Framework Agreement concerns only instances of discrimination between workers who have concluded fixed-term employment contracts and those who work in the same sector and have concluded employment contracts of indefinite duration. Any unequal treatment of two categories of fixed-term workers and thus, as in the cases in the main proceedings, of researchers who have concluded Type A Contracts and those who have concluded Type B Contracts are not covered by Clause 4 of that agreement.

97 By contrast, any unequal treatment of researchers who have concluded contracts of indefinite duration and researchers who have concluded Type A Contracts, the latter group not being entitled to access the appraisal procedure for the purpose of becoming established as a professor under Article 24(6) of Law No 240/2010, falls within the scope of that clause.

98 In that regard, although it is, in principle, for the referring court to determine the nature and objectives of the measures in question, it follows from the documents before the Court and from the settled case-law in that regard that the conditions of professional career development must be regarded as ‘employment conditions’ for the purposes of Clause 4(1) of the Framework Agreement (see, to that effect, order of 22 March 2018, *Centeno Meléndez*, C-315/17, not published, EU:C:2018:207, paragraphs 46 to 48 and the case-law cited).

99 That being said, according to settled case-law, the principle of non-discrimination, of which Clause 4(1) of the Framework Agreement is a specific expression, requires that comparable situations should not be treated differently and different situations should not be treated alike, unless such treatment is objectively justified (judgment of 16 July 2020, *Governo della Repubblica italiana (Status of Italian magistrates)*, C-658/18, EU:C:2020:572, paragraph 141 and the case-law cited).

100 Thus, the principle of non-discrimination has been implemented and specifically applied by the Framework Agreement solely as regards differences in treatment as between fixed-term workers and permanent workers in a comparable situation (judgment of 16 July 2020, *Governo della Repubblica italiana (Status of Italian magistrates)*, C-658/18, EU:C:2020:572, paragraph 142 and the case-law cited).

101 According to settled case-law, in order to assess whether persons are engaged in the same or similar work for the purposes of the Framework Agreement, it must be determined, in accordance

with Clause 3(2) and Clause 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 16 July 2020, *Governo della Repubblica italiana (Status of Italian magistrates)*, C-658/18, EU:C:2020:572, paragraph 143 and the case-law cited).

102 Where it is established that, when they were employed, those fixed-term workers carried out the same duties as workers employed by the same employer for an indefinite period or held the same post as them, it is necessary, in principle, to regard the situations of those two categories of workers as being comparable (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).

103 In this instance, it is solely for the national court to determine whether researchers who have concluded a Type A Contract are in a situation comparable to that of researchers who have concluded a contract of indefinite duration, having regard to all the factors referred to in paragraph 101 of the present judgment.

104 In that regard, it is apparent from the request for a preliminary ruling that the referring court appears to consider that the tasks assigned to the different categories of researchers are identical.

105 Regarding a possible objective reason justifying the unequal treatment of the two categories of researchers, it should be borne in mind that, according to settled case-law, the concept of 'objective grounds', within the meaning of Clause 4(1) 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 different treatment is provided for by a general or abstract measure, such as a law or a collective agreement (judgment of 17 March 2021, *Consulmarketing*, C-652/19, EU:C:2021:208, paragraph 59 and the case-law cited).

106 On the contrary, 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 fixed-term contracts have been concluded and from the inherent characteristics of those tasks or, as the case may be, from pursuit of a legitimate social policy objective of a Member State (judgment of 17 March 2021, *Consulmarketing*, C-652/19, EU:C:2021:208, paragraph 60 and the case-law cited).

107 However, in this instance, the referring court does not indicate any objective reason that could justify the unequal treatment which it appears to have found to exist and which would consist in the possibility granted to researchers who have concluded a contract of indefinite duration, and denied to researchers who have concluded a Type A Contract, to undergo a specific appraisal procedure for the purpose of being added to the list of associate professors. Thus, and subject to verification by that court, it appears that there is unequal treatment of researchers who have concluded a contract of indefinite duration and those who have concluded a Type A Contract, in breach of Clause 4 of the Framework Agreement.

108 Accordingly, the answer to the sixth question is that Clause 4(1) of the Framework Agreement must be interpreted as precluding a piece of national legislation pursuant to which researchers who have concluded a contract of indefinite duration have the possibility, once they

have obtained the national academic qualification, of undergoing a specific appraisal procedure in order that they may be added to the list of associate professors, whereas that possibility is denied to researchers who have concluded a fixed-term contract, even once they have also obtained the national academic qualification, in a situation where those researchers carry out the same professional activities and provide the same teaching services to students as researchers who have concluded a contract of indefinite duration.

Costs

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

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

1. **Clause 5 of the framework agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as not precluding a piece of national legislation which permits universities to conclude three-year fixed-term contracts with researchers, which can be extended for a maximum of two years, without making the conclusion or extension of those contracts conditional upon there being objective reasons connected with temporary or exceptional requirements, in order to cover the everyday permanent needs of the university concerned.**

2. **Clause 5 of the framework agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as not precluding a piece of national legislation which sets the total duration of the employment contracts that may be concluded by a single researcher, including with different universities and institutes, whether continuous or otherwise, at 12 years.**

3. **Clause 4 of the framework agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as not precluding a piece of national legislation which provides for the possibility, under certain conditions, of stabilising the employment of researchers for public research bodies who have concluded a fixed-term contract but which denies that possibility to university researchers who have concluded a fixed-term contract.**

4. **Clause 4 of the framework agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as not precluding a piece of national legislation which, by derogating, first, from the general rule applicable to all workers in the public and private sectors according to which, as from 2018, the maximum duration of a fixed-term relationship is set at 24 months, including extensions and renewals, and, second, from the rule applicable to public authority employees according to which the use of that type of relationship is conditional upon the existence of temporary and exceptional requirements, permits universities to conclude with researchers three-year fixed-term contracts, which may be extended for a maximum of two years, without making the conclusion or extension of those contracts conditional upon the existence of temporary or exceptional requirements on the part of the university in question, and which also permits, at the end of the five-year period, the conclusion, with the same person or with other persons, of another fixed-term contract of the same type in order to meet the same teaching and research needs as those connected with the previous contract.**

5. **Clause 4(1) of the framework agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as precluding a piece of national legislation pursuant to which researchers who have concluded a contract of indefinite duration have the possibility, once they have obtained the national academic qualification, of undergoing a specific appraisal procedure in order that they may be added to the list of associate professors, whereas that possibility is denied to researchers who have concluded a fixed-term contract, even once they have also obtained the national academic qualification, in a situation where those researchers carry out the same professional activities and provide the same teaching services to students as researchers who have concluded a contract of indefinite duration.**

[Signatures]

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* Language of the case: Italian.