JUDGMENT OF THE COURT (Third Chamber)

26 November 2014 (*)

(References for a preliminary ruling — Social policy — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Successive fixed-term employment contracts — Education — Public sector — Temporary replacements in respect of posts that are vacant and unfilled, pending the completion of competitive selection procedures — Clause 5(1) — Measures to prevent the misuse of fixed-term contracts — Concept of 'objective reasons' justifying such contracts — Penalties — Prohibition of conversion into an employment relationship of indefinite duration — No right to compensation for damage)

In Joined Cases C−22/13, C−61/13 to C−63/13 and C−418/13,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Tribunale di Napoli (Italy), made by decisions of 2, 15 and 29 January 2013, received at the Court on 17 January 2013 (C−22/13) and 7 February 2013 (C−61/13 to C−63/13), and from the Corte costituzionale (Italy), made by decision of 3 July 2013, received at the Court on 23 July 2013 (C−418/13), in the proceedings

Raffaella Mascolo (C−22/13),

Alba Forni (C−61/13),

Immacolata Racca (C−62/13)

v

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

interveners:

Federazione Gilda-Unams,

Federazione Lavoratori della Conoscenza (FLC CGIL),

Confederazione Generale Italiana del Lavoro (CGIL),

and

Fortuna Russo

v

Comune di Napoli (C−63/13),

and

Carla Napolitano,

Salvatore Perrella,

Gaetano Romano,

Donatella Cittadino,

Gemma Zangari

v

Ministero dell'Istruzione, dell'Università e della Ricerca (C-418/13),

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, A. Ó Caoimh (Rapporteur), C. Toader, E. Jarašiūnas and C.G. Fernlund, Judges,

Advocate General: M. Szpunar,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 27 March 2014,

after considering the observations submitted on behalf of:

– Ms Mascolo, by M. Ambron, P. Ambron, L. Martino, V. De Michele, S. Galleano and N. Zampieri, avvocati (C-22/13),

– Ms Forni, by M. Ambron, P. Ambron, L. Martino, M. Miscione, F. Visco and R. Garofalo, avvocati (C-61/13),

– Ms Racca, by M. Ambron, P. Ambron, L. Martino, R. Cosio, R. Ruocco and F. Chietera, avvocati (C-62/13),

– Ms Russo, by P. Esposito, avvocatessa (C-63/13),

– Ms Napolitano, Mr Perrella and Mr Romano, by D. Balbi and A. Coppola, avvocati (C-418/13),

– Ms Cittadino and Ms Zangari, by T. de Grandis and E. Squillaci, avvocati (C-418/13),

– Federazione Gilda-Unams, by T. de Grandis, avvocato (C-62/13),

– Federazione Lavoratori della Conoscenza (FLC CGIL), by V. Angiolini, F. Americo and I. Barsanti Mauceri, avvocati (C-62/13),

– Confederazione Generale Italiana del Lavoro (CGIL), by A. Andreoni, avvocato (C-62/13),

– Comune di Napoli, by F.M. Ferrari and R. Squeglia, avvocati (C-63/13),

– the Italian Government, by G. Palmieri, acting as Agent, C. Gerardis and S. Varone, avvocati dello Stato,

– the Greek Government, by D. Tsagaraki and M. Tassopoulou, acting as Agents (C-418/13),

– the Polish Government, by B. Majczyna, acting as Agent (C-22/13 and C-61/13 to C-63/13),

– the European Commission, by C. Cattabriga, D. Martin and J. Enegren, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 July 2014,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of clauses 4 and 5(1) of the framework agreement on fixed-term work concluded on 18 March 1999 ('the Framework Agreement'), which is set out in the annex 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), of Article 2(1) and (2) of Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ 1991 L 288, p. 32), of the principle of sincere cooperation laid down in Article 4(3) TEU, and of the general principles of EU law relating to legal certainty, the protection of legitimate expectations, equality of arms in proceedings, effective judicial protection, the right to an independent court or tribunal and a fair hearing which are guaranteed by Article 6(2) TEU, read in conjunction with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), and with Articles 46, 47 and 52(3) of the Charter of Fundamental Rights of the European Union.

2 The requests have been made in proceedings brought by Ms Mascolo and eight other workers, all members of staff of publicly-maintained schools, against their employers, namely, in the case of eight of them, the Ministero dell'Istruzione, dell'Università e della Ricerca (Ministry for Education, Universities and Research; 'the Ministry') and, in the case of the remaining one, the Comune di Napoli (Municipality of Naples), concerning the classification of the employment contracts which they had with their employers.

Legal context

EU law

Directive 1999/70

3 Directive 1999/70 is founded on Article 139(2) EC and its purpose, as provided in Article 1, is 'to put into effect the framework agreement … concluded … between the general cross-industry organisations [European Trade Union Confederation (ETUC), Union of Industrial and Employers' Confederations of Europe (UNICE), European Centre of Enterprises with Public Participation (CEEP)] annexed [thereto]'.

4 Clause 1 of the Framework Agreement states:

'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.'

5 Clause 2 of the Framework Agreement, entitled 'Scope', provides:

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

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

(a) initial vocational training relationships and apprenticeship schemes;

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

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.

…'

7 Clause 4 of the Framework Agreement, entitled 'Principle of non-discrimination', provides in paragraph 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.'

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.'

Directive 91/533

9 Article 2(1) of Directive 91/533 is worded as follows:

'An employer shall be obliged to notify an employee to whom this Directive applies, hereinafter referred to as "the employee", of the essential aspects of the contract or employment relationship.'

10 By virtue of Article 2(2)(e) of Directive 91/533, the information provided to the employee in the case of a temporary contract or employment relationship is to cover, inter alia, 'the expected duration thereof'.

Italian law

11 The first paragraph of Article 117 of the Constitution of the Italian Republic provides that '[l]egislative power shall be exercised by the State and the Regions in compliance with the

Constitution and with the constraints deriving from [EU] law and international obligations'.

12 In Italy, recourse to fixed-term contracts in the public sector is governed by Legislative Decree No 165 laying down general rules concerning the organisation of employment in public authorities (Decreto legislativo n. 165 — Norme generali sull'ordinamento del lavoro alle dipendenze delle amministrazioni pubbliche) of 30 March 2001 (Ordinary Supplement to GURI No 106 of 9 May 2001; 'Legislative Decree No 165/2001').

13 Article 36(5) of Legislative Decree No 165/2001, as amended by Law No 102 converting into law, after amendment, Decree-Law No 78 of 1 July 2009 on crisis measures, the extension of time frames and the extension of Italy's participation in international programmes (Legge n. 102 — Conversione in legge, con modificazioni, del decreto-legge 1° luglio 2009, n. 78, recante provvidimenti anticrisi, nonché proroga di termini e della partecipazione italiana a missioni internazionali), of 3 August 2009 (Ordinary Supplement to GURI No 179 of 4 August 2009), provides, under the title 'Flexible forms of contract for the recruitment and employment of staff':

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

14 According to the orders for reference, fixed-term work with public authorities is also subject to Legislative Decree No 368 implementing Directive 1999/70/EC concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (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) of 6 September 2001 (GURI No 235 of 9 October 2001; 'Legislative Decree No 368/2001').

15 Article 5(4a) of Legislative Decree No 368/2001 is worded as follows:

'Without prejudice to the rules on successive contracts set out in the preceding paragraphs and without prejudice to various provisions of the collective agreements concluded nationally, regionally or by individual undertakings with the most representative national trade union organisations, where, as a result of a series of fixed-term contracts for equivalent tasks, an employment relationship between the same employer and the same worker continues for an overall period of more than 36 months, including any extensions and renewals, disregarding any breaks between one contract and another, the employment relationship shall be regarded as being a relationship of indefinite duration …'

16 As provided in Article 10(4a) of Legislative Decree No 368/2001, as amended by Article 9(18) of Decree-Law No 70 of 13 May 2011 ('Decree-Law No 70/2011') converted by Law No 106 of 12 July 2011 (GURI No 160 of 12 July 2011):

'… also excluded from the application of the present decree are fixed-term contracts concluded in order to fill temporary vacancies for teaching and ATA [administrative, technical and auxiliary] staff, given the need to ensure the continuity of provision of teaching and educational services, including where teaching and ATA staff with permanent or fixed-term employment relationships are temporarily absent or unavailable. Article 5(4a) of the present decree shall not in any event apply'.

17 The rules governing the fixed-term employment relationships of teaching staff and administrative, technical and auxiliary staff are set out in Article 4 of Law No 124 on urgent measures concerning school staff (Legge n. 124 — Disposizioni urgenti in materia di personale scolastico) of 3 May 1999 (GURI No 107 of 10 May 1999), as amended by Decree-Law No 134 of 25 September 2009, converted, after amendment, by Law No 167 of 24 November 2009 (GURI No 274 of 24 November 1999) ('Law No 124/1999'). According to the referring court in Cases C-22/13 and C-61/13 to C-63/13, it is undisputed that that law is applicable only to schools administered by the State. It does not apply, on the other hand, to municipal schools, which remain subject to Legislative Decrees No 165/2001 and No 368/2001.

18 Article 4 of Law No 124/1999 provides:

‘1. In order to fill teaching posts and senior teaching posts which are in fact vacant and are not filled by 31 December and which are expected to remain so for the entire school year, where it is not possible to fill the posts with a teacher from the provincial staff allocation list for tenured teaching staff or by calling upon surplus staff and provided that no tenured teaching staff have in any way been assigned to the posts, supply teaching posts of one year shall be created, pending the completion of competitive selection procedures for the recruitment of tenured teaching staff.

2. In order to fill non-vacant teaching posts and senior teaching posts which become *de facto* available by 31 December and up to the end of the school year, temporary supply teaching posts lasting until the end of teaching activities shall be created. Provision shall also be made to create temporary supply teaching posts until the end of teaching activities in order to cover teaching hours which are not included in the calculation of the official weekly teaching schedule of tenured staff.

3. In cases other than those provided for in paragraphs 1 and 2, temporary supply teaching posts shall be created.

…

6. For the annual supply teaching posts and the temporary supply teaching posts until the end of teaching activities, the permanent ranking list referred to in Article 401 of the consolidated text, as replaced by Article 1(6) of this Law, shall be used.

...

11. The provisions of the preceding paragraphs shall apply also to administrative, technical and auxiliary (ATA) staff …

…

14a. Fixed-term contracts concluded for the supply teaching posts referred to in paragraphs 1, 2 and 3, in so far as they are necessary in order to ensure the continuity of provision of teaching and educational services, may be converted into employment relationships of indefinite duration only upon the grant of tenure in accordance with prevailing provisions and on the basis of the ranking lists …’

19 As provided in Article 1 of Decree No 131 of the Ministry of Education (Decreto del Ministero della pubblica istruzione, n. 131) of 13 June 2007 (‘Decree No 131/2007), the tasks assigned to teachers and administrative, technical and auxiliary staff of schools administered by the State thus fall into three categories:

– annual appointments to vacant, unfilled posts, that is to say, posts not filled by tenured staff;

– temporary appointments, lasting until the end of the teaching activities, to posts that are not vacant but are unfilled too; and

– temporary appointments for any other purposes or short-term appointments.

20 The grant of tenure referred to in Article 4(14a) of Law No 124/1999 is governed by Articles 399 and 401 of Legislative Decree No 297 laying down the consolidated text of the provisions regulating teaching (Decreto legislativo n. 297 — Testo unico delle disposizioni legislative in materia di istruzione) of 16 April 1994 (Ordinary Supplement to GURI No 115 of 19 May 1994; ‘Legislative Decree No 297/1994’).

21 Article 399(1) of Legislative Decree No 297/1994 states:

‘Teaching staff for nursery, primary and secondary schools, including arts academies and

institutes of art, shall be recruited, as to 50% of the posts available each school year, by way of competition on the basis of tests and qualifications and, as to the remaining 50%, from the permanent ranking lists referred to in Article 401.'

22 Article 401(1) and (2) of Legislative Decree No 297/1994 provides:

'1. The ranking lists relating to competitions organised solely on the basis of qualifications for teaching staff in nursery, primary and secondary schools, including arts academies and institutes of art, shall become permanent ranking lists which are to be used for the purposes of the grant of tenure, as referred to in Article 399(1).

2. The permanent ranking lists referred to in paragraph 1 shall be supplemented periodically by the inclusion of teachers who have been successful in the most recent regional competition conducted on the basis of qualifications and tests, in respect of the same category of competition and the same post, and by the inclusion of teachers who have applied for the transfer of their place on the corresponding permanent ranking list of another province. At the same time as new candidates are included in the lists, the ranking order of candidates already included on the permanent lists shall be updated.'

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

Cases C-22/13 and C-61/13 to C-63/13

23 Ms Mascolo, Ms Forni, Ms Racca and Ms Russo were recruited under successive fixed-term employment contracts, Ms Mascolo, Ms Forni and Ms Racca as teachers in the employment of the Ministry and Ms Russo as a crèche and nursery school teacher in the employment of the Comune di Napoli. Under those contracts, they worked for their respective employers for the following periods: 71 months over a period of nine years (between 2003 and 2012) in the case of Ms Mascolo, 50 months and 27 days over a period of five years (between 2006 and 2011) in the case of Ms Forni, 60 months over a period of five years (between 2007 and 2012) in the case of Ms Racca, and 45 months and 15 days over a period of five years (between 2006 and 2011) in the case of Ms Russo.

24 Taking the view that those successive fixed-term employment contracts were unlawful, the applicants in the main proceedings brought actions before the Tribunale di Napoli (District Court, Naples) seeking, by their main claim, the conversion of the contracts into employment relationships of indefinite duration and, consequently, their establishment as tenured staff, together with payment of the salaries corresponding to the periods during which their employment was interrupted between the end of one fixed-term contract and the commencement of the next and, in the alternative, compensation for the damage suffered.

25 Since Ms Racca was granted tenure during the course of the proceedings by virtue of her progression up the permanent ranking list, she amended her initial application so as to seek full recognition of the length of her service and compensation for the damage suffered.

26 According to the Ministry and the Comune di Napoli, on the other hand, Article 36(5) of Legislative Decree No 165/2001 prevents any conversion of employment relationships. In their submission, Article 5(4a) of Legislative Decree No 368/2001 is not applicable, in view of Article 10(4a) of that decree, inserted by Article 9(18) of Decree-Law No 70/2011. Nor do the applicants in the main proceedings have a right to damages, given that the recruitment procedures were lawful and the constituent elements of an unlawful act were, in any event, not present. Lastly, given that there was no connection between the various fixed-term contracts and that the subsequent contracts did not, therefore, constitute the continuation or extension of previous contracts, there was no abuse.

27 The Tribunale di Napoli, before which the legal proceedings have been brought, states, first, that contrary to what the Corte suprema di cassazione (Supreme Court of Cassation) held in judgment No 10127/12, the national legislation at issue in the main proceedings infringes clause 5 of the Framework Agreement.

28 According to the Tribunale di Napoli, that legislation does not contain any preventive measure for the purposes of clause 5(1)(a) of the Framework Agreement, since the legislation does not enable it to be verified specifically, in an objective and transparent manner, whether there is a genuine need for temporary replacement and, as Article 4(1) of Law No 124/1999 expressly provides, authorises the renewal of fixed-term employment contracts in order to fill actual vacant posts. Nor does that legislation contain any preventive measures for the purposes of clause 5(1)(b) of the Framework Agreement. Article 10(4a) of Legislative Decree No 368/2001 henceforth excludes the application to schools administered by the State of Article 5(4a) of that decree, which provides that fixed-term employment contracts exceeding a duration of 36 months are converted into employment contracts of indefinite duration. Moreover, that legislation does not contain preventive measures for the purposes of clause 5(1)(c) of the Framework Agreement.

29 Furthermore, no measure imposing a penalty is prescribed, since under Article 4(14a) of Law No 124/1999 fixed-term employment contracts can be converted into employment contracts of indefinite duration only where tenure is granted on the basis of the ranking lists. In addition, the right to compensation for the damage caused by a series of fixed-term employment contracts is excluded too since, according to judgment No 10127/12 of the Corte suprema di cassazione, Article 36(5) of Legislative Decree No 165/2001, which provides, in principle, for such a right in the public sector, is not applicable where successive fixed-term employment contracts have exceeded the limit of a maximum of 36 months laid down in Article 5(4a) of Legislative Decree No 368/2001.

30 Second, the referring court observes that only schools administered by the State are entitled to recruit fixed-term staff without being subject to the limits laid down by Legislative Decree No 368/2001, thereby resulting in a distortion of competition to the disadvantage of private schools, and is uncertain whether schools administered by the State fall within the concept of 'specific sectors and/or categories of workers' within the meaning of Article 5 of the Framework Agreement, justifying a separate prevention and penalty regime for wrongful use of a series of fixed-term employment contracts.

31 Third, the referring court raises the question whether clause 4 of the Framework Agreement is complied with by the national legislation at issue in that it provides that a public sector worker unlawfully recruited for a fixed period, unlike a worker recruited for a period of indefinite duration whose employment relationship is unlawfully terminated, does not have a right to compensation for damage suffered.

32 Fourth, the referring court, taking the view that in the case which gave rise to the order in *Affatato* (C−3/10, EU:C:2010:574) the Italian Government contended that Article 5(4a) of Legislative Decree No 368/2001 is applicable to the public sector whereas the Corte suprema di cassazione held the contrary in judgment No 10127/12, is uncertain whether, in the light of the principle of sincere cooperation, that incorrect interpretation of national law by the government should henceforth be binding on national courts, thereby reinforcing their obligation to provide an interpretation consistent with EU law.

33 Fifth, the referring court is unsure whether the possibility, provided for in Article 5(4a) of Legislative Decree No 368/2001, of converting a fixed-term employment contract into an employment contract of indefinite duration falls within the information referred to in Article 2(1) and (2)(e) of Directive 91/533 of which the employer is required to notify the employee and, if so, whether the retroactive exclusion, by Decree-Law No 70/2011, of the application of Article 5(4a) of Legislative Decree No 368/2001 to schools administered by the State is consistent with that directive.

34 Sixth and last, the referring court is uncertain whether such a retroactive amendment of national legislation, which had the effect of removing from the staff of schools administered by the State a right which they enjoyed at the time of their recruitment, is compatible with general principles of EU law.

35 In those circumstances, the Tribunale di Napoli decided to stay proceedings and refer the following questions to the Court for a preliminary ruling, the seventh of which was asked only

in Cases C−61/13 and C−62/13, whilst in Case C−63/13 it asked only the second to fourth questions, which constitute the first to third questions in that case:

‘1. Does the regulatory framework for the schools sector, as described, constitute an equivalent measure within the meaning of clause 5 of [the Framework Agreement set out in the annex to] Directive [1999/70]?

2. When is an employment relationship to be regarded as being for the public service of the “State”, for the purposes of clause 5 of [the Framework Agreement set out in the annex to] Directive [1999/70] and, in particular, for the purposes of the expression “specific sectors and/or categories of workers”, and thus capable of justifying results that are different from those which ensue from employment relationships in the private sector?

3. Having regard to the details contained in Article 3(1)(c) of [Council] Directive 2000/78/EC [of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16)] and in Article 14(1)(c) of Directive 2006/54/EC [of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ 2006 L 204, p. 23], does the notion of employment conditions contained in clause 4 of [the Framework Agreement set out in the annex to] Directive [1999/70] also include the consequences of the unlawful interruption of an employment relationship? If the answer to the preceding question is in the affirmative, is the difference between the consequences normally provided for in national law for the unlawful interruption of employment relationships of indefinite duration and for the unlawful interruption of fixed-term employment relationships justifiable under clause 4?

4. By virtue of the principle of sincere cooperation, is a State precluded from presenting to the Court of Justice ... in a request for a preliminary ruling on interpretation a deliberately untrue description of a national legislative framework and are the national courts obliged, in the absence of any alternative interpretation of national law that also satisfies the obligations deriving from membership of the European Union, to interpret, where possible, national law in accordance with the interpretation given by the State?

5. Is a statement of the circumstances in which a fixed-term employment contract may be converted into a permanent contract one of the conditions applicable to the contract or employment relationship contemplated by Directive [91/533], in particular, by Article 2(1) and (2)(e) thereof?

6. If the answer to the preceding question is in the affirmative, is a retroactive amendment to the legislative framework which does not guarantee that employees can claim the rights conferred on them by [Directive 91/533], that is to say, that the conditions of employment specified in the document under which they were engaged will be observed, contrary to Article 8(1) of Directive [91/533] and to the objectives of that directive, in particular those mentioned in the second recital of the preamble thereto?

7. Must the general principles of [EU] law presently in force concerning legal certainty, the protection of legitimate expectations, equality of arms in proceedings, effective judicial protection, the right to an independent court or tribunal and, more generally, the right to a fair hearing, which are guaranteed by [Article 6 TEU], … read in conjunction with Article 6 of the [ECHR], and with Articles 46, 47 and 52(3) of the Charter of Fundamental Rights of the European Union …, be interpreted as precluding, within the scope of Directive [1999/70], the adoption by the Italian State, after a significant period of time (three and a half years), of a legislative provision — such as Article 9 of Decree-Law No 70[/2011], converted by Law No 106 of 12 July 2011, which added to Article 10 of Legislative Decree No 368/2001 a paragraph 4a — which is liable to alter the consequences of ongoing proceedings by placing the worker directly at a disadvantage and benefiting the State in its capacity as employer, and by eliminating the possibility conferred by the national legal system of penalising the abusive repeated renewal of fixed-term contracts?’

36 By order of the President of the Court of 8 March 2013, Cases C−22/13 and C−61/13 to C−63/13 were joined for the purposes of the written procedure, the oral procedure and the judgment.

Case C−418/13

37 Ms Napolitano, Ms Cittadino, Ms Zangari, Mr Perrella and Mr Romano were recruited by the Ministry under successive fixed-term employment contracts, four of them as teachers and Mr Romano as an administrator. It is apparent from the information provided to the Court that under those contracts they worked for their respective employers for the following periods: 55 months over a period of six years (between 2005 and 2010) in the case of Ms Napolitano, 100 months over a period of 10 years (between 2002 and 2012) in the case of Ms Cittadino, 113 months over a period of 11 years (between 2001 and 2012) in the case of Ms Zangari, 81 months over a period of seven years (between 2003 and 2010) in the case of Mr Perrella, and 47 months over a period of four years (between 2007 and 2011) in the case of Mr Romano.

38 Since the applicants in the main proceedings took the view that those successive fixed-term appointments were unlawful, they brought proceedings before the Tribunale di Roma (District Court, Rome) and the Tribunale di Lamezia Terme (District Court, Lamezia Terme) respectively, seeking the conversion of their contracts into employment contracts of indefinite duration and, consequently, their inclusion as members of the permanent staff and payment of the remuneration corresponding to the periods during which their employment was interrupted between the end of one fixed-term contract and the commencement of the next. In the alternative, they claimed compensation for the damage suffered.

39 In the cases brought before them, the Tribunale di Roma and the Tribunale di Lamezia Terme questioned the compatibility of Article 4(1) and (11) of Law No 124/1999 with clause 5 of the Framework Agreement, inasmuch as that national provision enables the authorities to recruit, without limit, teaching, technical and administrative staff for a fixed term in order to fill vacant posts in a school's table of staff. Since those courts considered that this issue could not be settled either by means of interpretation in conformity with EU law, as the wording of that national provision is unequivocal, or by non-application of the latter, as clause 5 of the Framework Agreement does not have direct effect, they referred a preliminary issue to the Corte Costituzionale (Constitutional Court) by way of proceedings for review of the constitutional legality of Article 4(1) and (11) of Law No 124/1999, on the basis of infringement of the first paragraph of Article 117 of the Constitution of the Italian Republic, read in conjunction with clause 5 of the Framework Agreement.

40 In its order for reference, the Corte costituzionale notes that the national legislation applicable to schools administered by the State does not prescribe for staff appointed for a fixed term a maximum total duration of successive fixed-term employment contracts or specify the maximum number of times that they may be renewed, within the meaning of clause 5(1)(b) and (c) of the Framework Agreement. It nevertheless wonders whether that legislation might be justified by an 'objective reason' within the meaning of clause 5(1)(a).

41 According to the referring court, the national legislation at issue in the main proceedings is, at least in principle, structured in such a way that the employment of staff under fixed-term contracts might be consonant with an objective reason of that kind. The school service is 'activated on demand', in the sense that the fundamental right to education laid down by the Constitution of the Italian Republic means that the State cannot refuse to provide that service and, consequently, that it is obliged to organise the service in such a way that it can constantly adapt it to changes in the school population. This inherent requirement for flexibility makes it essential to recruit a high number of teachers and members of staff of schools administered by the State on fixed-term employment contracts. Furthermore, the system of permanent ranking lists, combined with the system of open competitions, ensures that objective criteria are complied with when staff are recruited on such fixed-term employment contracts and enables them to have reasonable prospects of tenure in a permanent post.

42 The Corte costituzionale nevertheless observes that, whilst Article 4(1) of Law No 124/1999 does not make provision for the repeated renewal of fixed-term employment contracts and does

not exclude the right to compensation for damage, it permits the creation of supply teaching posts of one year in respect of posts that are vacant and unfilled, 'pending the completion of competitive selection procedures for the recruitment of tenured teaching staff'. The competitive selection procedures were broken off between 2000 and 2011. That provision thus raises the possibility of fixed-term contracts being renewed without a definite period having been set for carrying out the competitive selection procedures. This fact, combined with the lack of a provision conferring the right to compensation for damage on the staff of schools administered by the State who have been improperly subjected to a series of fixed-term employment contracts, could render that provision contrary to clause 5(1) of the Framework Agreement.

43 In those circumstances, the Corte costituzionale decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'1. Must clause 5(1) of the Framework Agreement … be interpreted as precluding the application of Article 4(1) *in fine* and (11) of [Law No 124/1999], which, after laying down rules on the creation of supply teaching posts of one year for "posts which are in fact vacant and not filled by 31 December", goes on to provide that this is to be done by creating such annual posts "pending the completion of competitive selection procedures for the recruitment of tenured teaching staff" — a provision that permits fixed-term contracts to be used without a definite period being fixed for completing the competitive selection procedures, and in a clause that provides no right to compensation for damage?

2. Do the requirements of the organisation of the Italian school system set out above constitute objective reasons within the meaning of clause 5(1) of [the Framework Agreement], of such a kind as to render compatible with EU law legislation, such as the Italian legislation, that does not provide a right to compensation for damage in respect of the appointment of school staff on fixed-term contracts?'

44 By decision of the Court of 11 February 2014, Cases C−22/13, C−61/13 to C−63/13 and C−418/13 were joined for the purposes of the written procedure, the oral procedure and the judgment.

Consideration of the questions referred

45 By their questions, the referring courts ask the Court about the interpretation of clause 5(1) of the Framework Agreement (first and second questions in Cases C−22/13, C−61/13 and C−62/13, first question in Case C−63/13 and first and second questions in Case C−418/13), of clause 4 of that agreement (third question in Cases C−22/13, C−61/13 and C−62/13 and second question in Case C−63/13), of the principle of sincere cooperation (fourth question in Cases C−22/13, C−61/13 and C−62/13 and third question in Case C−63/13), of Directive 91/533 (fifth and sixth questions in Cases C−22/13, C−61/13 and C−62/13) and of a number of general principles of EU law (seventh question in Cases C−61/13 and C−62/13).

Admissibility

46 The Comune di Napoli contends that the interpretation of EU law sought by the Tribunale di Napoli in Case C−63/13 is not necessary to decide the main proceedings and that, therefore, the request for a preliminary ruling in that case is inadmissible in its entirety. In the Comune di Napoli's submission, the Tribunale di Napoli states itself in its order for reference that it considers that, having regard to the Court's case-law relating to the Framework Agreement, the measures adopted by the national legislature to transpose the Framework Agreement are inadequate. It is therefore incumbent upon the Tribunale di Napoli to decide the main proceedings by means of the interpretation of national law in conformity with EU law.

47 It should, however, be recalled that it is settled case-law that, in the context of the cooperation between the Court and national courts under Article 267 TFEU, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case

both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court (judgment in *Rosado Santana*, C−177/10, EU:C:2011:557, paragraph 32 and the case-law cited).

48 As the Court has repeatedly held, national courts have the widest discretion in referring matters to it if they consider that a case pending before them raises questions involving interpretation of provisions of EU law (see, inter alia, judgments in *Križan and Others*, C−416/10, EU:C:2013:8, paragraph 64, and *Ogieriakhi*, C−244/13, EU:C:2014:2068, paragraph 52).

49 It follows that, whilst the existence of settled case-law on a point of EU law may prompt the Court to make an order under Article 99 of its Rules of Procedure, it cannot in any way affect the admissibility of a reference for a preliminary ruling if a national court decides, in the exercise of its discretion, to bring a matter before the Court under Article 267 TFEU.

50 None the less, it should also be recalled that, in accordance with settled case-law, the Court may refuse to rule on a question referred for a preliminary ruling by a national court where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, judgment in *Érsekcsanádi Mezőgazdasági*, C−56/13, EU:C:2014:352, paragraph 36 and the case-law cited).

51 In the present instance, it is to be observed that in Case C−63/13 the national court refers three questions to the Court for a preliminary ruling, which are identical to the second to fourth questions already asked in Cases C−22/13, C−61/13 and C−62/13.

52 However, it is apparent from the order for reference in Case C−63/13 that both the factual and the legislative context of that case differ from those in the other three cases since, according to the referring court, Ms Russo, as a teacher employed in a municipal crèche and a municipal nursery school, does not, unlike Ms Mascolo, Ms Forni and Ms Racca — and, indeed, the applicants in the main proceedings in Case C−418/13 — fall within the scope of the national legislation applicable to schools administered by the State resulting from Law No 124/1999, but remains subject to the general legislation laid down, inter alia, by Legislative Decree No 368/2001.

53 That being so, it is apparent that the first question asked in Case C−63/13, which is designed to ascertain, as in Cases C−22/13, C−61/13 and C−62/13, whether the national legislation laid down by Law No 124/1999 is consistent with clause 5 of the Framework Agreement, inasmuch as Law No 124/1999 allows the State, for the schools administered by it, to recruit staff on fixed-term employment contracts, without being subject, unlike private schools, to the limits enacted by Legislative Decree No 368/2001, is irrelevant for deciding the main proceedings in Case C−63/13 and is therefore hypothetical.

54 The same is true of the second question asked in that case, which is designed, in essence, to ascertain whether the national legislation at issue, as resulting in particular from Article 36(5) of Legislative Decree No 165/2001, is consistent with clause 4 of the Framework Agreement, inasmuch as that legislation excludes any right in the public sector to compensation for damage in the event of misuse of successive fixed-term employment contracts.

55 The Tribunale di Napoli itself finds, in its order for reference in Case C−63/13, that the applicant in the main proceedings, unlike the applicants in the main proceedings in Cases C−22/13, C−61/13 and C−62/13, can benefit from Article 5(4a) of Legislative Decree No 368/2001, which provides for the conversion of successive fixed-term contracts exceeding a duration of 36 months into an employment contract of indefinite duration and which is correctly referred to by that court as constituting a measure which is consistent with the requirements resulting from EU law in that it prevents the misuse of such contracts and results in definitive elimination of the consequences of the misuse (see, inter alia, judgment in *Fiamingo and Others*, C−362/13, C−363/13 and C−407/13, EU:C:2014:2044, paragraphs 69 and 70 and the

case-law cited).

56 The Tribunale di Napoli does not explain at all how, in such circumstances, its second question in Case C−63/13 remains relevant for ruling, in the main proceedings, on whether the national legislation at issue is consistent with EU law.

57 In any event, it is not apparent at all from the order for reference how a worker benefiting from such a conversion, whose claim for damages is, moreover, put forward in the alternative, would, like workers who are in the situation of the applicants in the main proceedings in Cases C−22/13, C−61/13 and C−62/13 and are thus excluded from the application of Article 5(4a) of Legislative Decree No 368/2001, suffer damage conferring entitlement to compensation.

58 Accordingly, the second question asked in Case C−63/13 must also be held to be hypothetical.

59 Furthermore, the Comune di Napoli, the Italian Government and the European Commission call into question the admissibility of the fourth question in Cases C−22/13, C−61/13 and C−62/13 and the third question in Case C−63/13, essentially on the ground that the answer to those questions is, in whole or in part, not relevant to the disputes in the main proceedings.

60 Those questions, whose wording is identical, are, as has already been stated in paragraph 32 of this judgment, based on the premiss that the interpretation of national law put forward by the Italian Government in the case which gave rise to the order in *Affatato* (EU:C:2010:574, paragraph 48), to the effect that Article 5(4a) of Legislative Decree No 368/2001 is applicable to the public sector, is incorrect and therefore amounts to an infringement by the Member State concerned of the principle of sincere cooperation.

61 As is apparent from paragraphs 14 and 15 of this judgment, that interpretation corresponds, however, in all respects to the interpretation which has been presented in this instance by the Tribunale di Napoli and in the light of which — in accordance with settled case-law — the Court must consider the present references for a preliminary ruling (see, inter alia, judgment in *Pontin*, C−63/08, EU:C:2009:666, paragraph 38). The Tribunale di Napoli in fact states explicitly in its orders for reference that, in its view, the national legislature did not intend to exclude application of Article 5(4a) of Legislative Decree No 368/2001 to the public sector.

62 Furthermore, as is apparent from paragraph 28 of this judgment, the referring court itself considers, in the exercise of its exclusive jurisdiction in that regard, that although Article 5(4a) of Legislative Decree No 368/2001 applies to the public sector, it is not applicable to schools administered by the State, so that it has no bearing on the outcome of the disputes in the main proceedings in Cases C−22/13, C−61/13 and C−62/13.

63 It follows that the fourth question in Cases C−22/13, C−61/13 and C−62/13 and the third question in Case C−63/13 are hypothetical.

64 In the light of all of the foregoing considerations, it must be held that, in accordance with the case-law recalled in paragraph 50 of this judgment, the entire request for a preliminary ruling in Case C−63/13 and the fourth question in Cases C−22/13, C−61/13 and C−62/13 are inadmissible.

Substance

65 By the first question in Cases C−22/13, C−61/13 and C−62/13 and the two questions in Case C−418/13, which it is appropriate to examine together, the referring courts seek, in essence, to ascertain whether clause 5(1) of the Framework Agreement must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which, pending the completion of competitive selection procedures for the recruitment of tenured staff of schools administered by the State, authorises the renewal of fixed-term employment contracts to fill posts of teachers and administrative, technical and auxiliary staff that are vacant and unfilled without stating a definite period for the completion of those procedures and while excluding any possibility, for those teachers and staff, of obtaining compensation for any damage suffered on

account of such a renewal.

Scope of the Framework Agreement

66 The Greek Government contends that it is not appropriate for the education sector to be subject to the provisions of the Framework Agreement that relate to misuse of successive fixed-term employment contracts. In its submission, that sector is characterised by the existence of specific needs for the purposes of clause 5(1) of the Framework Agreement, since teaching is intended to ensure compliance with the right to education and is essential for the proper operation of the education system.

67 It should be recalled that it is apparent from the very wording of clause 2(1) of the Framework Agreement that the scope of that agreement is conceived in broad terms, as it covers generally 'fixed-term workers who have an employment contract or employment relationship as defined in law, collective agreements or practice in each Member State'. In addition, the definition of 'fixed-term workers' for the purposes of the Framework Agreement, set out in clause 3(1), encompasses all workers without drawing a distinction according to whether their employer is in the public, or private, sector and regardless of the classification of their contract under domestic law (see judgment in *Fiamingo and Others*, EU:C:2014:2044, paragraphs 28 and 29 and the case-law cited).

68 The Framework Agreement therefore applies to all workers providing remunerated services in the context of a fixed-term employment relationship linking them with their employer, in so far as they are linked by an employment contract within the meaning of national law, subject to the sole provisos of the margin of discretion conferred on Member States by clause 2(2) of the Framework Agreement as to the application of the latter to certain categories of employment contracts or relationships and of the exclusion, in accordance with the fourth paragraph of the preamble to the Framework Agreement, of temporary agency workers (see judgment in *Fiamingo and Others*, EU:C:2014:2044, paragraphs 30 to 33 and the case-law cited).

69 It follows that the Framework Agreement does not exclude any particular sector from its scope and that it is therefore applicable to staff recruited in the education sector (see, to this effect, judgment in *Fiamingo and Others*, EU:C:2014:2044, paragraph 38).

70 This conclusion is borne out by the contents of clause 5(1) of the Framework Agreement, which, in conformity with the third paragraph of its preamble and paragraphs 8 and 10 of its general considerations, makes it possible for Member States, when implementing the agreement, to take account of the particular needs of the specific sectors and/or categories of workers involved, provided that that is justified on objective grounds (judgment in *Fiamingo and Others*, EU:C:2014:2044, paragraph 39).

71 It follows that workers in the situation of the applicants in the main proceedings, who have been recruited as a teacher or administrator to act by way of replacement on an annual basis in schools administered by the State under employment contracts within the meaning of national law, and who indisputably do not fall within the employment relationships capable of being excluded from the scope of the Framework Agreement, are covered by the provisions of that agreement, including clause 5 thereof (see, by analogy, judgment in *Márquez Samohano*, C−190/13, EU:C:2014:146, paragraph 39).

Interpretation of clause 5(1) of the Framework Agreement

72 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 successive recourse to fixed-term employment contracts or relationships, regarded as a potential source of abuse to the detriment of workers, by laying down as a minimum a number of protective provisions designed to prevent the status of employees from being insecure (see, inter alia, judgments in *Adeneler and Others*, C−212/04, EU:C:2006:443, paragraph 63; *Kücük*, C−586/10, EU:C:2012:39, paragraph 25; and *Fiamingo and Others*, EU:C:2014:2044, paragraph 54).

73 As is apparent from the second paragraph of the preamble to the Framework Agreement and

from paragraphs 6 and 8 of its general considerations, the benefit of stable employment is viewed as a major element in the protection of workers, whereas it is only in certain circumstances that fixed-term employment contracts are liable to respond to the needs of both employers and workers (judgments in *Adeneler and Others*, EU:C:2006:443, paragraph 62, and *Fiamingo and Others*, EU:C:2014:2044, paragraph 55).

74 Thus, clause 5(1) of the Framework Agreement requires Member States, in order to prevent the misuse of successive fixed-term employment contracts or relationships, to adopt one or more of the measures listed in a manner that is effective and binding, where domestic law does not include equivalent legal measures. The measures listed in clause 5(1)(a) to (c), of which there are three, relate, respectively, to objective reasons justifying the renewal of such 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 (see, inter alia, judgments in *Kücük*, EU:C:2012:39, paragraph 26, and *Fiamingo and Others*, EU:C:2014:2044, paragraph 56).

75 The Member States enjoy a certain discretion in this 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 (see judgment in *Fiamingo and Others*, EU:C:2014:2044, paragraph 59 and the case-law cited.

76 In that 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 in *Fiamingo and Others*, EU:C:2014:2044, paragraph 60).

77 Furthermore, where, as in the present instance, EU law does not lay down any specific penalties in the event that instances of abuse are nevertheless established, it is incumbent on the national authorities to adopt measures that are not only proportionate, but also sufficiently effective and a sufficient deterrent to ensure that the provisions adopted pursuant to the Framework Agreement are fully effective (see, inter alia, judgment in *Fiamingo and Others*, EU:C:2014:2044, paragraph 62 and the case-law cited).

78 While, in the absence of relevant EU rules, the detailed rules for implementing such provisions are a matter for the domestic legal order of the Member States, under the principle of their procedural autonomy, they must not, however, be less favourable than those governing similar domestic situations (principle of equivalence) or render impossible in practice or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness) (see, inter alia, judgment in *Fiamingo and Others*, EU:C:2014:2044, paragraph 63 and the case-law cited).

79 Therefore, where abuse of successive fixed-term employment contracts or relationships has taken place, a measure offering effective and equivalent guarantees for the protection of workers must be capable of being applied in order duly to punish that abuse and nullify the consequences of the breach of EU law (judgment in *Fiamingo and Others*, EU:C:2014:2044, paragraph 64 and the case-law cited).

80 In this respect, it should be recalled that, as the Court has observed on many occasions, the Framework Agreement does not lay down a general obligation on the Member States to provide for the conversion of fixed-term employment contracts into contracts of indefinite duration. Indeed, clause 5(2) of the Framework Agreement in principle leaves it to the Member States to determine the conditions under which fixed-term employment contracts or relationships are to be regarded as contracts or relationships of indefinite duration. It follows that the Framework Agreement does not specify the conditions under which contracts of indefinite duration may be used (see, inter alia, judgment in *Fiamingo and Others*, EU:C:2014:2044, paragraph 65 and the case-law cited).

81 In the present instance, as regards the national legislation at issue in the main proceedings, it must be recalled that it is not for the Court to rule on the interpretation of provisions of national law, that being exclusively for the referring court or, as the case may be, the national courts having jurisdiction, which must determine whether the requirements set out in paragraphs 74 to

79 of this judgment are met by the provisions of the applicable national legislation (see, inter alia, judgment in *Fiamingo and Others*, EU:C:2014:2044, paragraph 66 and the case-law cited).

82 It is therefore for the referring court to determine to what extent the conditions for application and the actual implementation of the relevant provisions of national law render the latter an appropriate measure for preventing and, where necessary, punishing the misuse of successive fixed-term employment contracts or relationships (see judgment in *Fiamingo and Others*, EU:C:2014:2044, paragraph 67 and the case-law cited).

83 However, the Court, when giving a preliminary ruling, may, where appropriate, provide clarification designed to give the national court guidance in its assessment (see, inter alia, judgment in *Fiamingo and Others*, EU:C:2014:2044, paragraph 68 and the case-law cited).

– Existence of measures preventing the misuse of successive fixed-term employment contracts

84 So far as concerns the existence of measures preventing the misuse of successive fixed-term employment contracts as referred to in clause 5(1) of the Framework Agreement, it is common ground that the national legislation at issue in the main proceedings enables teachers to be recruited under successive fixed-term employment contracts in order to provide temporary replacements, without laying down any measure limiting the maximum total duration, or the number of renewals, of those contracts, within the meaning of clause 5(1)(b) and (c). In particular, the Tribunale di Napoli states in that regard, as is apparent from paragraph 28 of this judgment, that Article 10(4a) of Legislative Decree No 368/2001 excludes the application to schools administered by the State of Article 5(4a) of that decree, which provides that fixed-term employment contracts exceeding a duration of 36 months are converted into employment contracts of indefinite duration, thus permitting an unlimited number of renewals of such contracts. Nor is it in dispute that the national legislation at issue in the main proceedings does not contain any measure equivalent to those set out in clause 5(1) of the Framework Agreement.

85 In those circumstances, it is necessary for the renewal of such contracts to be justified by an 'objective reason' within the meaning of clause 5(1)(a) of the Framework Agreement.

86 As is stated in paragraph 7 of the general considerations in the Framework Agreement, and as is clear from paragraph 74 of this judgment, the signatory parties to the Framework Agreement considered that the use of fixed-term employment contracts founded on objective reasons is a way to prevent abuse (see judgments in *Adeneler and Others*, EU:C:2006:443, paragraph 67, and *Fiamingo and Others*, EU:C:2014:2044, paragraph 58).

87 This concept of 'objective reasons' in clause 5(1)(a) of the Framework Agreement must, as the Court has already held, be understood as referring to precise and concrete circumstances characterising a given activity, which are therefore capable, in that particular context, of justifying the use of successive fixed-term employment contracts. Those circumstances may result, in particular, from the specific nature of the tasks for the performance of which such contracts have been concluded and from the inherent characteristics of those tasks or, as the case may be, from pursuit of a legitimate social-policy objective of a Member State (judgment in *Kücük*, EU:C:2012:39, paragraph 27 and the case-law cited).

88 On the other hand, a national provision which merely authorises recourse to successive fixed-term employment contracts in a general and abstract manner by a rule of statute or secondary legislation does not accord with the requirements as stated in the previous paragraph. Such a provision, which is of a purely formal nature, does not permit objective and transparent criteria to be identified in order to verify whether the renewal of such contracts actually responds to a genuine need, is capable of achieving the objective pursued and is necessary for that purpose. Such a provision therefore carries a real risk that it will result in misuse of that type of contract and, accordingly, is not compatible with the objective of the Framework Agreement and the requirement that it have practical effect (judgment in *Kücük*, EU:C:2012:39, paragraphs 28 and 29 and the case-law cited).

89 In the present instance, a preliminary point to be noted is that it is apparent from the orders for reference and the explanations provided at the hearing that under the national legislation at issue

in the main proceedings, as laid down by Law No 124/1999, staff are recruited in schools administered by the State either permanently by means of the grant of tenure or for a fixed period by way of temporary replacement. Tenure is granted under the 'dual channel' system, that is to say, for half of the vacant posts each school year, by way of competition on the basis of tests and qualifications and, for the other half, by recourse to the permanent ranking lists which include teachers who have passed such a competition, without however obtaining a tenured post, and those who have attended courses leading to certification run by specialist teacher-training colleges. Appointments by way of temporary replacement are made by means of recourse to the same lists; a series of such replacements on the part of the same teacher results in his moving up the list and may lead to the grant of tenure.

90 It is apparent from the orders for reference that the national legislation at issue, as resulting from Article 4 of Law No 124/1999, read in conjunction with Article 1 of Decree No 131/2007, provides for three types of temporary replacement: (i) annual replacements in respect of the '*de jure*' table of staff which occur pending the completion of competitive selection procedures for the recruitment of tenured staff, to fill posts that are unfilled and vacant, that is to say, without a holder, and which terminate at the end of the school year, namely 31 August; (ii) temporary replacements in respect of the '*de facto*' table of staff, to fill posts that are not vacant but are unfilled, terminating at the end of teaching activities, namely 30 June; and (iii) temporary or short-term replacements in other situations, which terminate when the circumstances which made them necessary no longer exist.

91 National legislation which allows the renewal of fixed-term employment contracts for the purpose of replacing, first, staff of schools administered by the State pending the outcome of competitive selection procedures for the recruitment of tenured staff and, second, staff of those schools who are momentarily unable to perform their tasks is not per se contrary to the Framework Agreement. The temporary replacement of a worker in order to satisfy, in essence, the employer's temporary staffing requirements may, in principle, constitute an 'objective reason' within the meaning of clause 5(1)(a) of the Framework Agreement (see, to this effect, judgments in *Angelidaki and Others*, C−378/07 to C−380/07, EU:C:2009:250, paragraphs 101 and 102, and *Kücük*, EU:C:2012:39, paragraph 30).

92 In this connection, it should first of all be borne in mind that, in a sector of the public services with a large workforce, such as the education sector, it is inevitable that temporary replacements will frequently be necessary due to, inter alia, the unavailability of members of staff on sick, maternity, parental or other leave. The temporary replacement of workers in those circumstances may constitute an objective reason within the meaning of clause 5(1)(a) of the Framework Agreement, justifying fixed-term contracts being concluded with the replacement staff and the renewal of those contracts as the need arises, subject to compliance with the relevant requirements laid down in the Framework Agreement (see, to this effect, judgment in *Kücük*, EU:C:2012:39, paragraph 31).

93 This conclusion is all the more compelling where the national legislation justifying the renewal of fixed-term contracts in cases of temporary replacement also pursues objectives recognised as being legitimate social policy objectives. As is clear from paragraph 87 of this judgment, the concept of 'objective reason' in clause 5(1)(a) of the Framework Agreement encompasses the pursuit of such objectives. Measures intended, inter alia, to offer protection for pregnancy and maternity and to enable men and women to reconcile their professional and family obligations pursue legitimate social policy objectives (see judgment in *Kücük*, EU:C:2012:39, paragraphs 32 and 33 and the case-law cited).

94 Second, it should be noted that, as is clear, in particular, from the order for reference in Case C−418/13, education is a fundamental right guaranteed by the Constitution of the Italian Republic which obliges that State to organise the school service in such a way as to ensure that teacher-pupil ratios are constantly appropriate. It cannot be denied that their appropriateness depends on a multitude of factors, some of which may, to a certain extent, be difficult to control or predict, such as, in particular, external and internal migration flows or pupils' subject choices.

95 It must be acknowledged that such factors show that, in the education sector at issue in the main proceedings, there is a particular need for flexibility which, in accordance with the case-law

recalled in paragraph 70 of this judgment, is capable, in that specific sector, of providing an objective justification under clause 5(1)(a) of the Framework Agreement for recourse to successive fixed-term employment contracts in order to meet demand in schools in an appropriate manner and to avoid exposing the State, as employer in that sector, to the risk of having to grant tenure to a significantly greater number of teachers than is actually necessary for it to fulfil its obligations in this regard.

96 Finally, it must be stated that where, in the schools administered by it, a Member State grants access to permanent employment — by means of the grant of tenure — only to staff who have passed a competition, it may also be objectively justified, under that provision, for the posts that are to be filled to be covered by successive fixed-term employment contracts pending the completion of the competitions.

97 The applicants in the main proceedings contend, however, that the national legislation at issue in the main proceedings, as resulting from Article 4(1) of Law No 124/1999, which permits the very renewal of fixed-term employment contracts in order to fill, by annual replacements, posts that are vacant and unfilled 'pending the completion of competitive selection procedures for the recruitment of tenured teaching staff', leads, in practice, to misuse of successive fixed-term employment contracts, since there is no certainty regarding the date on which those competitive selection procedures must be organised. In their submission, the renewal of such fixed-term employment contracts thus enables the satisfaction of fixed and permanent needs in schools administered by the State that result from a structural shortage of tenured staff.

98 The Italian Government contends that the dual channel system, as described in paragraph 89 of this judgment, enables fixed-term staff of schools administered by the State to be placed on a path leading to the grant of tenure, since such staff may not only take part in open competitions but also, by progressing up the ranking lists as a result of a series of appointments by way of replacement, record a sufficient number of periods of fixed-time work to be granted tenure. Those lists must be 'used until exhaustion', in the sense that, when a certain number of teachers are entered on them, additions can no longer be made to them. The lists thus constitute an instrument designed to counter job insecurity. Irrespective of any particular factual situation, the national legislation at issue must therefore be considered consistent with clause 5(1)(a) of the Framework Agreement.

99 As to those submissions, whilst national legislation permitting the renewal of successive fixed-term employment contracts in order to replace staff pending the outcome of competitive selection procedures is capable of being justified by an objective reason, the actual application of that reason must be consistent with the requirements of the Framework Agreement, having regard to the particular features of the activity concerned and to the conditions under which it is carried out. When applying the relevant provision of national law, the competent authorities must therefore be in a position to identify objective and transparent criteria in order to verify whether the renewal of such contracts actually responds to a genuine need, is capable of achieving the objective pursued and is necessary for that purpose (see, to this effect, judgment in *Kücük*, EU:C:2012:39, paragraph 34 and the case-law cited).

100 As the Court has already held on many occasions, the renewal of fixed-term employment contracts or relationships in order to cover needs which are, in fact, not temporary in nature but, on the contrary, fixed and permanent is not justified for the purposes of clause 5(1)(a) of the Framework Agreement. Such use of fixed-term employment contracts or relationships conflicts directly with the premiss on which the Framework Agreement is founded, namely that employment contracts of indefinite duration are the general form of employment relationship, even though fixed-term employment contracts are a feature of employment in certain sectors or in respect of certain occupations and activities (judgment in *Kücük*, EU:C:2012:39, paragraphs 36 and 37 and the case-law cited).

101 In order for clause 5(1)(a) of the Framework Agreement to be complied with, it must therefore be specifically verified that the renewal of successive fixed-term employment contracts or relationships is intended to cover temporary needs and that a national provision such as Article 4(1) of Law No 124/1999, read in conjunction with Article 1 of Decree No 131/2007 is not, in fact, being used to meet fixed and permanent staffing needs of the employer (see, to this effect, judgment in *Kücük*, EU:C:2012:39, paragraph 39 and the case-law cited).

102 It is necessary for that purpose to consider in each case all the circumstances at issue, taking account, in particular, of the number of successive contracts concluded with the same person or for the purposes of performing the same work, in order to ensure that fixed-term employment contracts or relationships, even those ostensibly concluded to meet a need for replacement staff, are not misused by employers (see, to this effect, judgment in *Kücük*, EU:C:2012:39, paragraph 40 and the case-law cited).

103 The existence of an 'objective reason' within the meaning of clause 5(1)(a) of the Framework Agreement thus precludes, in principle, the existence of abuse, except where an overall assessment of the circumstances surrounding the renewal of the relevant fixed-term employment contracts or relationships reveals that the services required of the worker do not meet merely a temporary need (judgment in *Kücük*, EU:C:2012:39, paragraph 51).

104 Consequently, contrary to the Italian Government's submissions, the mere fact that the national legislation at issue in the main proceedings may be justified by an 'objective reason' within the meaning of clause 5(1)(a) of the Framework Agreement cannot be sufficient to render it consistent with that provision if it is apparent that the actual application of the legislation leads, in practice, to misuse of successive fixed-term employment contracts.

105 In this regard, whilst, in accordance with the case-law recalled in paragraphs 81 and 82 of this judgment, under the procedure provided for by Article 267 TFEU any assessment of the facts falls within the jurisdiction of the national courts, it must be stated that it is clear from the information provided to the Court in the present cases that, as the Italian Government itself moreover acknowledges, the period required for teachers to be granted tenure under that regime is both variable and uncertain.

106 First, it is undisputed, as is apparent from the very wording of the first question in Case C-418/13, that the national legislation at issue in the main proceedings does not set any definite period so far as concerns organisation of the competitive selection procedures, which is dependent upon the State's financial capacity and the authorities' discretion. Thus, according to the findings of the Corte costituzionale itself in the order for reference in that case, no competitive selection procedure was organised between 2000 and 2011.

107 Second, it is apparent from the explanations of the Italian Government that, since the grant of tenure as a result of teachers' progressing up the ranking list is dictated by the overall duration of the fixed-term employment contracts and by the posts that have in the meantime become vacant, such grant depends, as the Commission has correctly asserted, on fortuitous and unpredictable circumstances.

108 It follows that, although, under national legislation such as that at issue in the main proceedings, recourse to fixed-term employment contracts for the purpose of filling by way of replacement on an annual basis posts that are vacant and unfilled in schools administered by the State is expressly limited to just a temporary period that comes to an end when the competitive selection procedures are completed, such legislation does not make it possible to be sure that the actual application of that objective reason, having regard to the particular features of the activity concerned and to the conditions under which it is carried out, is consistent with the requirements of the Framework Agreement.

109 In the absence of any specific date for the organisation and completion of competitive selection procedures bringing replacement to an end and, therefore, of a genuine limit on the number of times the same worker acts by way of replacement on an annual basis for the purpose of filling the same vacant post, legislation of that kind is such as to permit, in breach of clause 5(1)(a) of the Framework Agreement, the renewal of fixed-term employment contracts in order to cover needs which are, in fact, not temporary in nature but, on the contrary, fixed and permanent, because of the structural shortage of posts for tenured staff in the Member State concerned. Such a finding appears to be borne out not only by the situation of the applicants in the main proceedings, as described in paragraphs 23 and 37 of this judgment, but also, more generally, by the data provided to the Court in the context of the present cases. It appears that, depending on the year and source, approximately 30%, or even, according to the Tribunale di Napoli, 61%, of the administrative, technical and auxiliary staff of schools administered by the State are employed under fixed-term employment contracts and that between 2006 and 2011 the teaching

staff of those schools who had such contracts accounted for between 13% and 18% of the total teaching staff.

110 In this connection, it should be borne in mind that, whilst budgetary considerations may underlie a Member State's choice of social policy and influence the nature or scope of the measures which it wishes to adopt, they do not in themselves constitute an aim pursued by that policy and, therefore, cannot justify the lack of any measure preventing the misuse of successive fixed-term employment contracts as referred to in clause 5(1) of the Framework Agreement (see, by analogy, judgment in *Thiele Meneses*, C−220/12, EU:C:2013:683, paragraph 43 and the case-law cited).

111 In any event, it should be noted that, as is clear from paragraph 89 of this judgment, national legislation such as that at issue in the main proceedings does not grant access to permanent employment in schools administered by the State only to staff who have passed a competition, since under the dual channel system it also permits tenure to be granted to teachers who have only attended courses leading to certification. Accordingly, as the Commission submitted at the hearing, it is in no way self-evident — a matter which it is, however, for the referring courts to determine — that it may be regarded as objectively justified, under clause 5(1)(a) of the Framework Agreement, to have recourse, in this instance, to successive fixed-term employment contracts in order to fill posts in those schools that are vacant and unfilled on the basis that completion of competitive selection procedures is awaited.

112 In this regard, it should be pointed out, as the Commission has done, that, for the purposes of implementation of clause 5(1) of the Framework Agreement, a Member State can legitimately choose not to adopt the measure referred to in clause 5(1)(a). It may, on the contrary, prefer to adopt one or both of the measures referred to in clause 5(1)(b) and (c), which deal, respectively, with the maximum total duration of successive fixed-term employment contracts or relationships and the number of renewals of such contracts or relationships, provided that, whatever the measure thus chosen, the effective prevention of the misuse of fixed-term employment contracts or relationships is assured (see, to this effect, judgment in *Fiamingo and Others*, EU:C:2014:2044, paragraph 61).

113 It must therefore be held that it is clear from the information provided to the Court in the context of the present cases that national legislation such as that at issue in the main proceedings appears, subject to the checks to be carried out by the referring courts, not to contain any measure preventing the misuse of successive fixed-term employment contracts as referred to in clause 5(1) of the Framework Agreement, contrary to the requirements recalled in paragraphs 74 and 76 of this judgment.

– Existence of measures punishing the misuse of successive fixed-term employment contracts

114 So far as concerns the existence of measures intended to punish the misuse of successive fixed-term employment contracts or relationships, it should be noted first of all that it is clear from the orders for reference that, as the Corte costituzionale expressly states in the second question referred by it in Case C−418/13, the national legislation at issue in the main proceedings excludes any right to compensation for the damage suffered on account of the misuse of successive fixed-term employment contracts in the education sector. In particular, it is common ground that the regime laid down in Article 36(5) of Legislative Decree No 165/2001 for misuse of fixed-term employment contracts in the public sector cannot confer such a right in the main proceedings.

115 Nor is it in dispute, as paragraphs 28 and 84 of this judgment make clear, that the national legislation at issue in the main proceedings likewise does not permit the successive fixed-term employment contracts to be converted into an employment contract or relationship of indefinite duration, as application of Article 5(4a) of Legislative Decree No 368/2001 to schools administered by the State is precluded.

116 It follows that, as is clear from the orders for reference and the Italian Government's observations, the only possibility for a worker who has acted by way of temporary replacement

under Article 4 of Law No 124/1999 in a school administered by the State to have his successive fixed-term employment contracts converted into an employment contract or relationship of indefinite duration is constituted by the grant of tenure as a result of progressing up the ranking list.

117 However, since such a possibility, as is clear from paragraphs 105 to 107 of this judgment, is dependent on chance, it cannot be regarded as a penalty that is sufficiently effective and a sufficient deterrent to ensure that the provisions adopted pursuant to the Framework Agreement are fully effective.

118 Whilst it is true that, as has already been pointed out in paragraphs 70 and 95 of this judgment, a Member State is entitled, when implementing clause 5(1) of the Framework Agreement, to take account of the needs of a specific sector, such as the education sector, that right cannot be understood as permitting it to dispense with observance of the obligation to lay down an appropriate measure for duly punishing the misuse of successive fixed-term employment contracts.

119 It must therefore be held that it is clear from the information provided to the Court in the context of the present cases that national legislation such as that at issue in the main proceedings appears, subject to the checks to be carried out by the referring courts, not to be consistent with the requirements flowing from the case-law recalled in paragraphs 77 to 80 of this judgment.

120 Consequently, the answer to be given to the referring courts is that clause 5(1) of the Framework Agreement must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which, pending the completion of competitive selection procedures for the recruitment of tenured staff of schools administered by the State, authorises the renewal of fixed-term employment contracts to fill posts of teachers and administrative, technical and auxiliary staff that are vacant and unfilled without stating a definite period for the completion of those procedures and while excluding any possibility, for those teachers and staff, of obtaining compensation for any damage suffered on account of such a renewal. It appears, subject to the checks to be carried out by the referring courts, that such legislation, first, does not permit objective and transparent criteria to be identified in order to verify whether the renewal of those contracts actually responds to a genuine need, is capable of achieving the objective pursued and is necessary for that purpose, and second, does not contain any other measure intended to prevent and punish the misuse of successive fixed-term employment contracts.

121 Accordingly, there is no need to answer the other questions asked by the Tribunale di Napoli in Cases C−22/13, C−61/13 and C−62/13.

Costs

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

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

Clause 5(1) of the framework agreement on fixed-term work concluded on 18 March 1999, which is set out in the annex 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, such as that at issue in the main proceedings, which, pending the completion of competitive selection procedures for the recruitment of tenured staff of schools administered by the State, authorises the renewal of fixed-term employment contracts to fill posts of teachers and administrative, technical and auxiliary staff that are vacant and unfilled without stating a definite period for the completion of those procedures and while excluding any possibility, for those teachers and staff, of obtaining compensation for any damage suffered on account of such a renewal. It appears, subject to the checks to be carried out by the referring courts, that such

legislation, first, does not permit objective and transparent criteria to be identified in order to verify whether the renewal of those contracts actually responds to a genuine need, is capable of achieving the objective pursued and is necessary for that purpose, and second, does not contain any other measure intended to prevent and punish the misuse of successive fixed-term employment contracts.

[Signatures]

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* Language of the case: Italian.