JUDGMENT OF THE COURT (Sixth Chamber)

18 October 2012 (*)

(Social policy – Directive 1999/70/EC – Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Clause 4 – Fixed-term employment contracts in the public sector – National Competition Authority – Stabilisation procedure – Recruitment of workers employed for a fixed term as career civil servants without a public competition – Determination of length of service – Complete disregard of periods of service completed under fixed-term employment contracts – Principle of non-discrimination)

In Joined Cases C-302/11 to C-305/11,

REFERENCES for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Italy), made by decisions of 29 April 2011, received at the Court on 17 June 2011, in the proceedings

Rosanna Valenza (C-302/11 and C-304/11)**,**

Maria Laura Altavista (C-303/11)**,**

Laura Marsella,

Simonetta Schettini,

Sabrina Tomassini (C-305/11)

v

Autorità Garante della Concorrenza e del Mercato,

THE COURT (Sixth Chamber),

composed of U. Lõhmus, acting as President of the Sixth Chamber, A. Arabadjiev and C.G. Fernlund (Rapporteur), Judges,

Advocate General: E. Sharpston,

Registrar: A. Impellizzeri, Administrator,

– Mesdames Valenza and Altavista, by G. Pafundi, avvocato,

– Mesdames Marsella, Schettini and Tomassini, by G. Arrigo and G. Patrizi, avvocati,

– the Italian Government, by G. Palmieri, acting as Agent, assisted by S. Varone, avvocato dello Stato,

– the European Commission, by M. van Beek and C. Cattabriga, acting as Agents,

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

gives the following

Judgment

1 These references for a preliminary ruling concern the interpretation of clauses 4 and 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 references have been made in proceedings between Mesdames Valenza, Altavista, Marsella, Schettini and Tomassini and the Autorità Garante della Concorrenza e del Mercato (National Competition Authority) ('the AGCM') concerning the latter's refusal to take into account, in order to determine the applicants' length of service upon their recruitment on a permanent basis as career civil servants, under a stabilisation procedure specific to their employment relationship, periods of service previously completed with that same public authority under fixed-term employment contracts.

Legal context

European Union legislation

3 It is apparent from recital 14 in the preamble to Directive 1999/70, based on Article 139(2) EC, that the signatory parties to the framework agreement wished, by concluding that agreement, to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination, and to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts

4 According to Article 1 of Directive 1999/70, the purpose of that directive is 'to put into effect the framework agreement … concluded … between the general cross-industry organisations (ETUC, UNICE and CEEP) annexed hereto'.

5 Under the first and third paragraphs of Article 2 of that directive:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 10 July 1999, or shall ensure that, by that date at the latest, management and labour have introduced the necessary measures by agreement, the Member States being required to take any necessary measures to enable them at any time to be in a position to guarantee the results imposed by this Directive. They shall forthwith inform the Commission thereof.

…

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

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

7 Clause 1 of the framework agreement provides that the purpose of that agreement is to:

'(a) improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination;

(b) establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships.'

8 Clause 2(1) of the framework agreement is worded as follows:

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

9 Clause 3 of the framework agreement provides:

'1. For the purpose of this agreement, the term "fixed-term worker"

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 purposes 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.'

10 Clause 4 of the framework agreement, entitled 'Principle of non-discrimination', provides:

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

…

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

11 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;

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.'

Italian legislation

12 Article 3 of the Constitution of the Italian Republic sets out the principle of equal treatment.

13 Under Article 97 of that Constitution:

'Access to posts in the public authorities shall be by competition, save as otherwise provided by law'.

14 Article 1(519) of Law No 296 of 27 December 2006 relating to the provisions for drawing up the annual and pluriannual budget of the State (Finance Law for 2007) (legge n. 296, disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge finanziaria 2007)) (Ordinary Supplement to GURI No 299 of 27 December 2006) ('Law No 296/2006') provides as follows:

'For the year 2007, a sum equivalent to 20% of the fund referred to in paragraph 513 shall be used for employment stabilisation effected at the request of non-managerial staff who have been employed on fixed-term contracts for at least three years, including where this was not a continuous period of employment, or who satisfy that requirement on the basis of contracts entered into before 29 September 2006, or have been employed for at least three years, including where this was not a continuous period of employment, during the five years prior to the entry into force of the law, provided that they were recruited by means of a competitive public selection procedure or in accordance with statutory procedures. Stabilisation of members of staff who have been employed on fixed-term contracts shall be carried out, using various procedures, by the selective tests organisation …'

15 It is apparent from the information supplied to the Court by the Italian Government that such stabilisation, being achieved by means of an administrative measure adopted following a procedure laid down by statute, confers on its beneficiary the status of civil servant, which thus distinguishes that beneficiary from 'workers employed by a public authority' on the basis of a private-law contract.

urgenti per lo sviluppo economico, la semplificazione, la competitività, la stabilizzazione della finanza pubblica e la perequazione tributaria) (Ordinary Supplement to GURI No 147 of 25 June 2008) is worded as follows:

'In the case of independent public authorities, the remuneration of staff already affected by the procedures referred to in Article 1(519) of Law [No 296/2006] shall be set at the starting rate, with no account to be taken of the length of service accrued under fixed-term or specialist contracts; no extra cost shall be entailed and personal salary compensation shall be awarded which can be absorbed by future pay rises and is not subject to revalorisation, and which corresponds to any discrepancy between the remuneration obtained and the remuneration due at the time when the employee moved over to the permanent staff.'

17 Article 36 of Legislative Decree No 165 of 30 March 2001 laying down general rules concerning the organisation of employment in public administrations (decreto-legislativo n. 165 norme generali sull'ordinamento del lavoro alle dipendenze delle amministrazioni pubbliche) (Ordinary Supplement to GURI No 106 of 9 May 2001) provides:

'1. For requirements connected with their everyday needs, public administrations shall recruit exclusively by means of permanent employment contracts following the recruitment procedures laid down in Article 35.

2. To meet temporary and exceptional requirements, public administrations may make use of the flexible forms of contract for the recruitment and employment of staff provided for in the Civil Code and the laws on employment relationships in undertakings, in accordance with existing recruitment procedures. Without prejudice to the competence of those administrations as regards defining their organisational needs in accordance with the existing legislation, fixed-term employment contracts shall be regulated by national collective agreements. …

…

5. In any event, infringement of binding provisions on the recruitment or employment of workers by public administrations cannot lead to the establishment of employment contracts of indefinite duration with those public administrations, without prejudice to any liability or sanction which those administrations may incur. The worker concerned shall be entitled to compensation for damage suffered as a result of working in breach of binding provisions. The administrations must recover any sums paid in that connection from the managers responsible, whether the infringement is intentional or the result of gross negligence …

18 Following their stabilisation application, submitted on 27 January 2007 pursuant to Law No 296/2006, the applicants in the main proceedings, who all worked for the AGCM under successive fixed-term employment contracts, began working for, and were placed on the permanent staff of, that authority under an employment relationship of indefinite duration as of 17 May 2007.

19 By decision of 17 July 2008, the AGCM placed the applicants in the main proceedings, with retroactive effect from 17 May 2007, at the starting level of the pay scale category which they were in at the time their earlier fixed-term contracts were terminated, in disregard of the length of service accrued under those contracts, and accorded them personal salary compensation equivalent to the discrepancy between the remuneration paid to them on 17 May 2007 and the remuneration resulting from their stabilisation.

20 The Tribunale Amministrativo Regionale Lazio - Roma (Lazio - Roma Regional Administrative Court) dismissed the action brought by the applicants in the main proceedings against that decision on the ground, inter alia, that the stabilisation procedure, although it permits derogation from the general competition rule, does not permit the length of service accrued in fixed-term employment to be taken into account.

21 The applicants in the main proceedings brought an appeal against that decision before the Consiglio di Stato (Council of State). In that regard, they allege infringement of clause 4 of the framework agreement, in that the stabilisation system established by Law No 296/2006 sets at nought the length of service accrued in the course of fixed-term employment, even though the same duties continue to be performed and the use of successive fixed-term employment contracts was unlawful.

22 The Consiglio di Stato notes that the national legislation at issue in the main proceedings made it possible to recruit persons in precarious employment directly, in derogation from the general competition rule for obtaining a post in the public sector, but with those persons being placed on the permanent staff at the starting level of the pay scale category, without account being taken of the length of service accrued in fixed-term employment.

23 According to that court, the national legislature did not intend, through that legislation, retroactively to validate unlawful fixed-term recruitment by converting a series of fixed-term employment contracts into an employment relationship of indefinite duration, due to an abuse of those contracts in breach of clause 5 of the framework agreement. Instead, that legislature viewed the length of service accrued in fixed-term employment as a qualification which justifies establishing an employment relationship of indefinite duration, in derogation from the general competition rule for joining the public authority's permanent staff. In that context,

beneficiaries of stabilisation could maintain their length of service, they would replace those of workers with a shorter length of service.

24 The Consiglio di Stato also points out that the rule prohibiting the conversion of a fixed-term employment contract into an employment contract of indefinite duration applies within the public sector. In its order of 1 October 2010 in Case C-3/10 *Affatato*, the Court of Justice upheld the lawfulness of that prohibition.

25 Lastly, the Consiglio di Stato emphasises that, in its own judgment No 1138 of 23 February 2011, it also ruled that the legislation at issue in the main proceedings was not incompatible with the framework agreement, on the ground that the framework agreement only prohibits less favourable treatment of a fixed-term worker with respect to a permanent worker during the fixed-term employment relationship. By contrast, that framework agreement does not prevent the fixed-term employment relationship from being terminated on expiry of the term laid down and, thereafter, a new permanent employment relationship being established, in which it will not be possible to take account of the length of service previously accrued, as this is a new employment relationship. Therefore, the framework agreement is not applicable. Moreover, the prohibition on discriminating against a fixed-term worker cannot justify reverse discrimination against a permanent worker. Accordingly, it had to be held that applying different criteria to fixed-term workers and permanent workers was justified on objective grounds for the purposes of clause 4(4) of the framework agreement.

26 However, the Consiglio di Stato notes that the Tribunale del lavoro di Torino (Labour Court, Turin) found, in its judgment No 4148 of 9 November 2009, that compliance with clause 4(4) of the framework agreement requires that the length of service accrued must be maintained when converting a fixed-term employment relationship into an employment relationship of indefinite duration. As a result, although that judgment concerned different circumstances from those involved in the present case, there are differing interpretations of that provision. Therefore there is some doubt as to the compatibility with European Union law of the national law at issue in the main proceedings.

27 In those circumstances, the Consiglio di Stato decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does [c]lause 4(4) of the [framework agreement], under which “[t]he period-of-service qualifications relating to particular conditions of employment shall be the same for fixed-term workers as for permanent workers except where different length-of-service qualifications are justified on objective grounds”, read in conjunction with [c]lause 5 [of that agreement], as interpreted by the Court of Justice to the effect that the Italian rules which prohibit, in the context of the public service,

possible, in derogation from the rule requiring a public selection procedure, to recruit directly, under contracts of unlimited duration, workers who have already been recruited on fixed-term contracts but with the length of service accrued under those fixed-term contracts being set at nought; or does the loss of length of service, as provided for by the national legislature, fall within the ambit of the derogation relating to 'objective grounds', given the need to prevent workers in precarious employment from being admitted to the permanent staff to the detriment of workers already on the permanent staff, which would be the position if it were possible for workers in precarious employment to have the length of service accrued taken into account?

(2) Does [c]lause 4(4) of the [framework agreement], under which '[t]he period-of-service qualifications relating to particular conditions of employment shall be the same for fixed-term workers as for permanent workers except where different length-of-service qualifications are justified on objective grounds', read in conjunction with [c]lause 5 [of that agreement], as interpreted by the Court of Justice to the effect that the Italian rules which prohibit, in the context of the public service, the conversion of a fixed-term contract into a contract of unlimited duration are lawful, preclude the national rules under which, without prejudice to the accrual of length of service for the period of the fixed-term contract, the fixed-term contract is to be terminated and a new contract of unlimited duration established, which is different from the previous contract and under which the length of service accrued is not to be maintained (Article 1(519) of Law No 296/2006)?'

28 By order of the President of the Court of 20 July 2011, Cases C-302/11 to C-305/11 were joined for the purposes of the written and oral procedures and of the judgment.

Consideration of the questions referred

29 By its questions, which must be considered together, the referring court asks, in essence, whether clause 4 of the framework agreement, read in conjunction with clause 5 thereof, is to be interpreted as precluding national legislation, such as that at issue in the main proceedings, which completely prohibits periods of service completed by a fixed-term worker for a public authority being taken into account in order to determine the length of service of that worker upon his recruitment on a permanent basis by that same authority as a career civil servant under a stabilisation procedure specific to his employment relationship.

Applicability of clause 4 of the framework agreement

30 The Italian Government submits that clause 4 of the framework agreement is not applicable to the disputes in the main proceedings. That provision prohibits only

workers, since the earlier fixed-term employment contracts are perceived by the national legislation at issue in the main proceedings as qualifications which justify obtaining an employment contract of indefinite duration, in derogation from the general competition rule for joining a public authority's permanent staff. Those fixed-term employment contracts thus constitute only a condition for admission to the special procedure for autonomous recruitment into a relationship of indefinite duration which is completely separate from the previous relationship. The stabilisation procedure thus has the effect not of transforming or converting fixed-term employment contracts drawn up unlawfully in breach of clause 5 of the framework agreement into an employment relationship of indefinite duration, but of establishing a new employment relationship which includes an obligation to complete a period of training. At the same time, that stabilisation terminates the fixed-term employment relationship, obliging the employer to tie up all the loose ends and, in particular, to pay the settlement salary for ending the relationship together with compensation for leave not taken.

31 By that line of argument, which essentially mirrors the assessment made by the Consiglio di Stato in both its judgment No 1138 of 23 February 2011 and the orders for reference, the Italian Government thus claims, in essence, that clause 4 of the framework agreement is not applicable to situations such as those at issue in the main proceedings, since the difference in treatment invoked by the applicants in the main proceedings, who, as of 17 May 2007, are employed by the AGCM under an employment contract of indefinite duration, arises with respect to other permanent workers.

32 In that regard, it should be borne in mind that, under clause 2(1) of the framework agreement, the 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 (Case C-177/10 *Rosado Santana* [2011] ECR I-0000, paragraph 39).

33 The Court has held that Directive 1999/70 and the framework agreement are applicable to all workers providing remunerated services in the context of a fixed-term employment relationship linking them to their employer (Case C-307/05 *Del Cerro Alonso* [2007] ECR I-7109, paragraph 28, and *Rosado Santana*, paragraph 40).

34 The mere fact that the applicants in the main proceedings obtained the status of permanent workers does not mean that, in certain circumstances, they cannot rely on the principle of non-discrimination laid down in clause 4 of the framework agreement (see *Rosado Santana*, paragraph 41, and see, to that effect, Case C-251/11 *Huet* [2012] ECR I-0000, paragraph 37).

for the purposes of a recruitment procedure at the end of which they became career civil servants. Periods of service as permanent workers were taken into account in order to determine seniority and thus to determine the level of remuneration, whereas periods of service as fixed-term workers were not, without – according to the applicants – the nature of the duties performed or their inherent characteristics being considered. Since the discrimination contrary to clause 4 of the framework agreement, of which the applicants allege that they are victims, concerns periods of service completed as fixed-term workers, the fact that they meanwhile became permanent workers is irrelevant (see, to that effect, *Rosado Santana*, paragraph 42).

36 In addition, it should be pointed out that clause 4(4) of the framework agreement provides that period-of-service qualifications relating to particular conditions of employment are to be the same for fixed-term workers as for permanent workers, except where different period-of-service qualifications are justified on objective grounds. It does not follow either from the wording of clause 4(4) of the framework agreement or from the context in which it is placed that that provision ceases to be applicable once the worker concerned has become a permanent worker. The objectives pursued by Directive 1999/70 and the framework agreement, which are intended both to prohibit discrimination and to prevent abuse resulting from the use of successive employment contracts or relationships, suggest the contrary (*Rosado Santana*, paragraph 43).

37 To exclude automatically application of the framework agreement in situations such as those in the cases before the referring court would, in disregard of the objective attributed to clause 4, effectively reduce the scope of the protection against discrimination for the workers concerned and would give rise to an unduly restrictive interpretation of that clause, contrary to the case-law of the Court (*Rosado Santana*, paragraph 44 and the case-law cited).

38 In the light of the foregoing, it must be held that – contrary to the interpretation argued for by the Italian Government – there is no reason why clause 4 of the framework agreement should not apply to the dispute in the main proceedings.

Interpretation of clause 4 of the framework agreement

39 It should be borne in mind that clause 4(1) of the framework agreement prohibits, with regard to employment conditions, less favourable treatment of fixed-term workers as compared with permanent workers, solely because they are employed for a fixed term, unless different treatment is justified on objective grounds. Clause 4(4) lays down the same prohibition as regards period-of-service qualifications relating to particular conditions of employment (*Rosado Santana*, paragraph 64).

not be treated alike unless such treatment is objectively justified (*Rosado Santana*, paragraph 65 and the case-law cited).

41 Accordingly, the Court must first examine the comparability of the situations in question and then subsequently examine whether any objective justification exists.

Comparability of the situations in question

42 In order to assess whether the persons concerned are engaged in the same or similar work for the purposes of the framework agreement, it must first be determined, in accordance with clauses 3(2) and 4(1) of that agreement, whether, in the light of a number of factors, such as the nature of the work, training requirements and working conditions, those persons can be regarded as being in a comparable situation (order of 18 March 2011 in Case C-273/10 *Montoya Medina*, paragraph 37; *Rosado Santana*, paragraph 66; and order of 9 February 2012 in Case C-556/11 *Lorenzo Martínez*, paragraph 43).

43 In principle, it is for the national court to determine whether the applicants in the main proceedings, when they were working for the AGCM under fixed-term employment contracts, were in a situation comparable to that of career civil servants employed on a permanent basis by that authority (see *Rosado Santana*, paragraph 67, and order in *Lorenzo Martínez*, paragraph 44).

44 The nature of the duties performed by the applicants in the main proceedings in the years during which they worked for the AGCM under fixed-term employment contracts and the quality of the experience which they thereby acquired are not merely one of the factors which could objectively justify different treatment as compared with career civil servants. They are also among the criteria which make it possible to determine whether they are in a situation comparable with that of career civil servants (see, to that effect, *Rosado Santana*, paragraph 69).

45 In the present case, it is apparent that, unlike career civil servants, the applicants in the main proceedings, beneficiaries of the stabilisation procedure, have not passed the general competition for obtaining a post in the public sector. However, as the Commission rightly submitted, that fact does not mean that the applicants are in a different situation, given that the conditions for stabilisation set by the national legislature in the legislation at issue in the main proceedings, concerning the duration of the fixed-term employment relationship and the requirement to have been recruited on that basis through a selection procedure in the form of a competition or following a procedure laid down by statute, are specifically intended to enable the stabilisation of only those fixed-term workers whose situation may be viewed in the same way as that of career civil servants.

performed by the applicants in the main proceedings were during the years in which they worked for the AGCM under fixed-term employment contracts, nor is it clear what connection there was between those duties and the duties allotted to those applicants as career civil servants.

47 However, in their written observations submitted to the Court, the applicants in the main proceedings claim, as the Commission also argues, that the duties performed by the applicants as career civil servants following the stabilisation procedure are the same as those performed previously under the fixed-term employment contracts. Moreover, it is clear from the Italian Government's own explanations on the subject of the purpose of the national legislation at issue in the main proceedings that that legislation, in ensuring that workers previously employed on a fixed-term basis are employed on a permanent basis, is intended to promote the experience accrued by those workers within the AGCM. Nonetheless, it is for the referring court to carry out the necessary verifications in that regard.

48 In the event that the duties performed by the applicants in the main proceedings for the AGCM under fixed-term employment contracts did not correspond to those performed by a career civil servant belonging to the relevant category of that authority, the alleged difference in treatment concerning periods of service being taken into account upon the recruitment of the applicants in the main proceedings as career civil servants would not be contrary to clause 4 of the framework agreement, as that difference in treatment would relate to differing situations (see, by analogy, *Rosado Santana*, paragraph 68).

49 By contrast, in the event that the duties performed by the applicants in the main proceedings for the AGCM under fixed-term employment contracts did correspond to those performed by a career civil servant belonging to the relevant category of that authority, it would have to be ascertained whether there was an objective ground justifying the complete failure to take account of the periods of service completed under the fixed-term employment contracts upon the recruitment of the applicants in the main proceedings as career civil servants and, thus, their being placed on the permanent staff (see, to that effect, *Rosado Santana*, paragraph 71).

Whether or not any objective justification exists

50 According to the settled case-law of the Court, the concept of 'objective grounds' for the purposes of clause 4(1) and/or (4) of the framework agreement must be understood as not permitting a difference in treatment between fixed-term workers and permanent workers to be justified on the basis that the difference is provided for by a general, abstract national norm, such as a law or collective agreement (*Del Cerro Alonso*, paragraph 57; Joined Cases C-444/09 and C-456/09

51 That concept requires the unequal treatment found to exist to be justified by the existence of precise and specific factors, characterising the employment condition to which it relates, in the particular context in which it occurs and on the basis of objective and transparent criteria in order to ensure that that unequal treatment in fact meets a genuine need, is appropriate for achieving the objective pursued and is necessary for that purpose. Those factors may result, in particular, from the specific nature of the tasks for the performance of which fixed-term contracts have been concluded and from the inherent characteristics of those tasks or, as the case may be, from pursuit of a legitimate social-policy objective of a Member State (see, inter alia, *Del Cerro Alonso*, paragraphs 53 and 58; *Gavieiro Gavieiro and Iglesias Torres*, paragraph 55; order in *Montoya Medina*, paragraph 41; *Rosado Santana*, paragraph 73; and order in *Lorenzo Martínez*, paragraph 48).

52 Reliance on the mere temporary nature of the employment of staff of the public authorities does not meet those requirements and is therefore not capable of constituting an 'objective ground' for the purposes of clause 4(1) and/or (4) of the framework agreement. If the mere temporary nature of an employment relationship were held to be sufficient to justify a difference in treatment as between fixed-term workers and permanent workers, the objectives of Directive 1999/70 and the framework agreement would be rendered meaningless and it would be tantamount to perpetuating a situation that is disadvantageous to fixed-term workers (*Gavieiro Gavieiro and Iglesias Torres*, paragraphs 56 and 57; order in *Montoya Medina*, paragraphs 42 and 43; *Rosado Santana*, paragraph 74; and order in *Lorenzo Martínez*, paragraphs 49 and 50).

53 In the present case, in order to justify the difference in treatment alleged in the cases in the main proceedings, the Italian Government invokes the existence of a number of objective differences between career civil servants and fixed-term workers subsequently recruited as career civil servants.

54 First of all, it points out that such a recruitment under the 'stabilisation' legislation takes place under a procedure which does not have the characteristics typical of the competition procedure and which, consequently, as a derogation from the normal recruitment procedures, cannot constitute a valid reason for granting better treatment than that stated for the starting level of the pay scale category applicable to career civil servants.

55 Next, the Italian Government argues that that legislation, by specifying the length of service accrued under fixed-term employment contracts as a condition for benefiting from stabilisation and not as an element which may be taken into account in the context of a new permanent employment relationship, is motivated by the need to prevent reverse discrimination to the detriment of the career civil servants who are already members of the permanent staff. Indeed, if the stabilised workers

service. Those workers would find themselves placed on the permanent staff at a lower level than that of workers benefiting from stabilisation.

56 Lastly, the Italian Government points out that taking into account the length of service accrued under previous fixed-term employment contracts would be contrary, first, to Article 3 of the Constitution of the Italian Republic, read as meaning that unfavourable treatment may not be applied to situations of higher merit and, second, to Article 97 of that Constitution, which provides that the general competition, as an impartial mechanism for the technical and neutral selection of the most competent people on the basis of their merits, is to constitute the general form of recruitment for public authorities in order to meet the requirements for impartiality and efficiency of administrative action.

57 In that regard, it should be borne in mind that, in view of the discretion enjoyed by Member States as regards the organisation of their own public administrations, those States can, in principle, without acting contrary to Directive 1999/70 or the framework agreement, lay down conditions for becoming career civil servants together with conditions of employment for those civil servants, in particular where those civil servants were previously employed by those authorities under fixed-term employment contracts (see, to that effect, *Rosado Santana*, paragraph 76).

58 Thus, as the Commission pointed out during the hearing, the professional experience of fixed-term workers, reflected by the periods of service completed by those workers for the public authority under fixed-term employment contracts, may constitute, as provided for in the legislation at issue in the main proceedings, which makes stabilisation conditional, inter alia, upon completing a period of service of three years under fixed-term employment contracts, a selection criterion for a career civil servant recruitment procedure.

59 However, that discretion notwithstanding, the criteria which the Member States lay down must be applied in a transparent manner and must be open to review in order to prevent any unfavourable treatment of fixed-term workers solely on the basis of the duration of the contracts or employment relationships which attest to their length of service and professional experience (see *Rosado Santana*, paragraph 77).

60 In that regard, it must be conceded that some of the differences raised by the Italian Government relating to the manner in which fixed-term workers are recruited under stabilisation procedures such as those at issue in the main proceedings with respect to career civil servants recruited following a general competition, the qualifications required and the nature of the duties undertaken could, in principle, justify different treatment as regards their conditions of employment (see, to that

61 Where such a difference in treatment flows from the need to take account of objective requirements relating to the post which the recruitment procedure is intended to fill and which are unrelated to the fixed-term nature of the worker's employment relationship, it is capable of being justified for the purposes of clause 4(1) and/or (4) of the framework agreement (see, to that effect, *Rosado Santana*, paragraph 79).

62 In the present case, regarding the alleged objective of preventing reverse discrimination against career civil servants recruited after passing a general competition, it should be observed that, although that objective may constitute an 'objective ground' for the purposes of clause 4(1) and/or (4) of the framework agreement, it cannot, in any event, justify disproportionate national legislation such as that at issue in the main proceedings which completely and in all circumstances prohibits all periods of service completed by workers under fixed-term employment contracts being taken into account in order to determine the length of service of those workers upon their recruitment on a permanent basis and, thus, their level of remuneration. Such a complete and absolute prohibition is essentially based on the general premiss that the permanent nature of the employment relationship of certain public officials in itself justifies a difference in treatment with respect to public officials employed on a fixed-term basis, thereby rendering the objectives of Directive 1999/70 and of the framework agreement meaningless.

63 As regards the fact, reiterated by the Italian Government during the hearing, that the stabilisation procedure gives rise, in national law, to a new employment relationship, it should be borne in mind that the framework agreement does not specify the conditions under which employment contracts of indefinite duration may be used and is not intended to harmonise all national rules relating to fixed-term employment contracts. That framework agreement simply aims, by determining general principles and minimum requirements, to establish a general framework for ensuring equal treatment for fixed-term workers by protecting them against discrimination and to prevent abuse arising from the use of successive fixed-term work agreements or contracts (see *Huet*, paragraphs 40 and 41 and the case-law cited).

64 However, the power of the Member States to determine the content of their national laws relating to employment contracts cannot go so far as to allow them to compromise the objective or the practical effect of the framework agreement (see, to that effect, *Huet*, paragraph 43 and the case-law cited).

65 The principle of non-discrimination set out in clause 4 of the framework agreement would be devoid of all content if, under national law, the new nature alone of an employment relationship were able to constitute an 'objective ground' for the purposes of that clause capable of justifying a difference in treatment, such as

term workers, the length of service accrued by those workers for that authority under their fixed-term employment contracts.

66 By contrast, it is important to have regard to the specific nature of the duties performed by the applicants in the main proceedings.

67 In that regard, it must be conceded that, if it were established, as the applicants in the main proceedings have claimed, as is apparent from paragraph 47 of this judgment, under the present procedure, that the duties performed by the applicants as career civil servants are identical to the duties they were previously performing under fixed-term employment contracts, and if, as the Italian Government argued in its written observations, the national legislation at issue is intended to promote the experience accrued by interim civil servants within the AGCM, those elements could suggest that disregard for periods of service completed by fixed-term workers is, in fact, justified by the length of their employment contracts alone and, thus, that the difference in treatment at issue in the main proceedings is not based on reasons linked to the objective requirements of those posts subject to the stabilisation procedure which could be classified as 'objective grounds' for the purposes of clause 4(1) and/or (4) of the framework agreement.

68 However, it is for the national court in the cases in the main proceedings to ascertain, on the one hand, whether the situation of the applicants in the main proceedings was, as regards the periods of service which they completed under fixed-term employment contracts, comparable with that of another employee of the AGCM who had completed his periods of service as a career civil servant in the relevant permanent staff categories and, on the other hand, to assess, in the light of the case-law referred to in paragraphs 50 to 52 above, whether some of the arguments put forward before it by the AGCM constitute 'objective grounds' for the purposes of clause 4(1) and/or (4) of the framework agreement (*Rosado Santana*, paragraph 83).

69 Since clause 5 of the framework agreement is irrelevant in that regard, and since, in addition, the orders for reference do not contain any specific and precise information regarding a possible abuse of successive fixed-term employment contracts, there is no need, as the applicants in the main proceedings have argued, to rule on the interpretation of that clause.

70 Lastly, it should be borne in mind that clause 4 of the framework agreement is unconditional and sufficiently precise for individuals to be able to rely on it before a national court as against the State from the date of expiry of the period within which the Member States should have transposed Directive 1999/70 (see, to that effect, *Gavieiro Gavieiro and Iglesias Torres*, paragraphs 78 to 83, 97 and 98; order in *Montoya Medina*, paragraph 46; and *Rosado Santana*, paragraph 56).

understood as precluding national legislation, such as that at issue in the main proceedings, which completely prohibits periods of service completed by a fixed-term worker for a public authority being taken into account in order to determine the length of service of that worker upon his recruitment on a permanent basis by that same authority as a career civil servant under a stabilisation procedure specific to his employment relationship, unless that prohibition is justified on 'objective grounds' for the purposes of clause 4(1) and/or (4). The mere fact that the fixed-term worker completed those periods of service on the basis of a fixed-term employment contract or relationship does not constitute such an objective ground.

Costs

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

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

Clause 4 of the framework agreement on fixed-term work concluded on 18 March 1999, 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 understood as precluding national legislation, such as that at issue in the main proceedings, which completely prohibits periods of service completed by a fixed-term worker for a public authority being taken into account in order to determine the length of service of that worker upon his recruitment on a permanent basis by that same authority as a career civil servant under a stabilisation procedure specific to his employment relationship, unless that prohibition is justified on 'objective grounds' for the purposes of clause 4(1) and/or (4). The mere fact that the fixed-term worker completed those periods of service on the basis of a fixed-term employment contract or relationship does not constitute such an objective ground.

[Signatures]