



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

8 May 2019*

(Reference for a preliminary ruling — Social policy — Fixed-term work — Contracts concluded with a public sector employer — Measures to penalise misuse of fixed-term employment contracts — Conversion of the employment relationship into a relationship of indefinite duration — Limitation on the retroactive effect of the conversion — No financial remedies)

In Case C-494/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte d'appello di Trento (Court of Appeal, Trento, Italy), made by decision of 13 July 2017, received at the Court on 14 August 2017, in the proceedings

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

v

Fabio Rossato,

Conservatorio di Musica F.A. Bonporti,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, Vice-President of the Court, acting as President of the First Chamber, A. Arabadjiev (Rapporteur), E. Regan, C.G. Fernlund and S. Rodin, Judges,

Advocate General: M. Szpunar,

Registrar: R. Schiano, Administrator,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Mr Rossato, by A. Mastrolia, avvocatessa,
- the Italian Government, by G. Palmieri, acting as Agent, and by L. Fiandaca, C. Colelli and G. D'Avanzo, avvocati dello Stato,
- the European Commission, by G. Gattinara and M. van Beek, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 December 2018,

* Language of the case: Italian.

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Clause 5(1) 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 request has been made in proceedings between the Ministero dell'Istruzione, dell'Università et della Ricerca — MUIR (Ministry of Education, Universities and Research — MUIR, Italy), the appellant in the main proceedings, and Mr Fabio Rossato and the Conservatorio di Musica F.A. Bonporti (F.A. Bonporti Music Academy, Italy) concerning compensation for the loss which Mr Rossato claims he has suffered as a result of the use of successive fixed-term employment contracts during the period from 18 November 2003 to 2 September 2015.

Legal context

European Union law

- 3 According to Article 1 of Directive 1999/70, the purpose of the directive is 'to put into effect the framework agreement ... concluded between the general cross-industry organisations [the European Trades Union Confederation (ETUC), the Union of Industrial and Employers' Confederations (UNICE) and the European Centre of Enterprises with Public Participation (CEEP)] annexed hereto'.
- 4 According to Clause 1 of the Framework Agreement, the purpose of the agreement is, first, to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination and, second, to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships.
- 5 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.'

Italian law

- 6 Article 1 of legge n. 107 — Riforma del sistema nazionale di istruzione e formazione e delega per il riordino delle disposizioni legislative vigenti (Law No 107 reforming the national education and training system and introducing delegation measures for the reorganisation of the legislative provisions in force) of 13 July 2015 (GURI No 162 of 15 July 2015; ‘Law No 107/2015’), provides, in paragraph 95 thereof, as follows:

‘For the 2015/2016 academic year, the [MUIR] shall be authorised to put into effect a special plan for the recruitment of teaching staff on an indefinite basis for public teaching establishments at all levels with a view to filling all vacant posts from the “*de jure*” table of posts which remain vacant and available at the end of the tenure-granting procedures carried out in respect of that academic year in accordance with Article 399 of the consolidated version of [decreto legislativo n. 297 — Testo unico delle disposizioni in materia di istruzione (Legislative Decree No 297 — Consolidated text laying down provisions on education) of 16 April 1994 (Ordinary Supplement to GURI No 115 of 19 May 1994) (‘Decree No 297/1994’)], at the conclusion of which the ranking lists setting out the results of competitions based on qualifications and tests before 2012 shall be withdrawn ...’

- 7 Article 1(131) of Law No 107/2015 states as follows:

‘From 1 September 2016, fixed-term employment contracts entered into with academic, teaching, administrative, technical and auxiliary staff in in State schools and educational establishments for vacant and available posts may not exceed a total duration of 36 months, even if not consecutive.’

- 8 Article 1(132) of Law No 107/2015 provides as follows:

‘The [MUIR’s] estimate of expenditure shall provide for the creation of a fund for payments to be made in execution of judicial decisions awarding compensation for damage resulting from the use of fixed-term [employment] contracts with a total duration exceeding 36 months, including where such contracts are not consecutive, for vacant and available posts, with the allocation of EUR 10 million for each of the years 2015 and 2016 ...’

- 9 Article 399 of Decree No 297/1994 provides that teaching staff are to be recruited by means of competitions and permanent ranking lists.

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

- 10 Mr Rossato was engaged as an accordion teacher by the F.A. Bonporti Music Academy under fixed-term contracts, the first of which was concluded on 18 November 2003. That employment relationship continued without interruption on the basis of 17 successive fixed-term employment contracts for the same post.
- 11 On 20 December 2011, Mr Rossato lodged claims before the Tribunale di Rovereto (District Court, Rovereto, Italy) seeking a declaration that the clauses imposing a fixed term in the various employment contracts which he concluded with his employer were unlawful and the conversion of his fixed-term employment relationship into an employment contract of indefinite duration with retroactive effect from the date on which the first contract was concluded (‘the conversion’). He is also seeking, in the alternative, compensation for the damage suffered as a result of the misuse of those fixed-term employment contracts, and claims that, pursuant to Clause 4 of the Framework Agreement, account should be taken, in calculating his remuneration, of the number of years’ service he completed under that employment relationship. The Tribunale di Rovereto (District Court,

Rovereto) granted only his claim that the period of service completed should be recognised for the purpose of calculating his remuneration. It dismissed his claims alleging misuse of successive fixed-term employment contracts.

- 12 The Corte d'appello di Trento (Appeal Court, Trento), before which an appeal was lodged against that judgment by the MIUR on 5 March 2013 and a cross-appeal lodged by Mr Rossato on 31 May 2013, stayed the proceedings on a number of occasions pending, first, the judgment of 26 November 2014, *Mascolo and Others* (C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401), and, second, decisions of the Corte costituzionale (Constitutional Court, Italy), and the Corte suprema di cassazione (Supreme Court of Cassation, Italy) concerning Law No 107/2015, which was adopted on 13 July 2015 following the judgment of 26 November 2014, *Mascolo and Others* (C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401), in order to bring national legislation into line with the obligations arising under the Framework Agreement, as established by the Court in that judgment.
- 13 On 2 September 2015, during the proceedings before the appeal court, Mr Rossato's employer granted him tenure with retroactive effect from 1 January 2014, thus making their employment relationship one of indefinite duration. The referring court has explained that the granting of tenure to Mr Rossato, pursuant to Article 399 of Decree No 297/1994, was the result of his position on the permanent ranking list, not the result of the implementation of the special recruitment plan introduced by Law No 107/2015.
- 14 The referring court observes that the Corte suprema di cassazione (Supreme Court of Cassation), following the case-law of the Corte costituzionale (Constitutional Court), found that the transitional measures set out in Article 1(95) of Law No 107/2015 on the special recruitment of teachers in a favourable position in the ranking lists implemented the rules established by the Court in the judgment of 26 November 2014, *Mascolo and Others* (C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401). It took the view, *inter alia*, that the conversion of fixed-term employment relationships provided for by that law by means of the special recruitment plan, in the same way, and with the same effect, as any other conversion of an employment relationship into one of indefinite duration, such as the granting of tenure as a result of moving up the ranking list, constituted, as regards instances of abuse before the entry into force of Law No 107/2015, measures that are proportionate, sufficiently effective and a sufficient deterrent for the purpose of penalising such abuse, so that a worker whose employment relationship has been converted, for whatever reason, was not entitled to claim any financial compensation in that connection.
- 15 The referring court nevertheless entertains doubts as to the lawfulness of that judicial interpretation in the light of the Framework Agreement and the rules established by the Court in the judgment of 26 November 2014, *Mascolo and Others* (C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401).
- 16 In those circumstances, the Corte d'appello di Trento (Appeal Court, Trento) decided to stay proceedings and to refer the following question to the Court:

'Must Clause 5(1) of the Framework Agreement ... be interpreted as precluding the application of Article 1(95), (131) and (132) of Law No 107/2015, which provide for the conversion of temporary teachers' fixed-term contracts into contracts of indefinite duration with respect to the future, without retroactive effect and without compensation for damage, as measures that are proportionate, sufficiently effective and a sufficient deterrent to ensure that the measures laid down in the Framework Agreement are fully effective as regards breach of that agreement resulting from the misuse of successive fixed-term employment contracts during the period prior to that in which the measures set out in the provisions in question are intended to have legal effect?'

Admissibility of the request for a preliminary ruling

- 17 The Italian Government contends that the request for a preliminary ruling is inadmissible. It maintains in that regard that, in so far as it relates to Article 1(95), (131) and (132) of Law No 107/2015, the question referred is hypothetical, on the ground that the legislation in question does not apply to the situation at issue in the main proceedings. It states that Mr Rossato's employment relationship was converted, not by virtue of Article 1(95) of that law, but on the basis of 'earlier selection and competition arrangements', such as those that applied before the entry into force of that law, namely, in the present case, the granting of tenure on the basis of a teacher's position on the ranking list.
- 18 Nevertheless, it is apparent from the order for reference that the Corte costituzionale (Constitutional Court) and the Corte suprema di cassazione (Supreme Court of Cassation), in their application of Law No 107/2015, which, as a general rule, does not provide for the worker concerned to be compensated where his fixed-term employment relationship has been converted into a relationship of indefinite duration, make no distinction between cases in which the employment relationship has been converted under that law, in particular as a result of the special recruitment plan provided for in Article 1(95) of that law, and those in which the relationship is converted as a result of the implementation of the selection and competition arrangements in place before the adoption of that law. The referring court observes that those courts have thus extended the scope of Law No 107/2015 to teachers, such as Mr Rossato, whose employment relationship was converted on the basis of those arrangements, with the result that such teachers are not entitled to any financial compensation either.
- 19 In this respect, it should be noted that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 4 December 2018, *Minister for Justice and Equality and Commissioner of An Garda Síochána*, C-378/17, EU:C:2018:979, paragraph 27 and the case-law cited).
- 20 In the present case, in the light of the information provided in the order for reference, the Court finds that the question submitted to it is not hypothetical and that the request for a preliminary ruling is therefore admissible.

Consideration of the question referred

- 21 It should be noted that, under the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. With that in mind, the Court may have to reformulate the questions referred to it (see, inter alia, the judgment of 27 March 2014, *Le Rayon d'Or*, C-151/13, EU:C:2014:185, paragraph 25 and the case-law cited).
- 22 In that regard, it is clear from the grounds of the order for reference that Mr Rossato's employment relationship was converted, on 2 September 2015, from one of fixed duration into one of indefinite duration, with retroactive effect from 1 January 2014.
- 23 The question referred must therefore be understood as seeking to ascertain, in essence, whether Clause 5(1) of the Framework Agreement is to be interpreted as precluding national legislation which, as applied by the national supreme courts, precludes any entitlement to financial compensation on

account of the misuse of successive fixed-term employment contracts for public sector teachers whose employment relationship has been converted from a fixed-term relationship into one of indefinite duration, with limited retroactive effect.

- 24 It should be noted as a preliminary point that 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 that provision, where their domestic law does not include equivalent legal measures (judgments of 7 March 2018, *Santoro*, C-494/16, EU:C:2018:166, paragraph 26 and the case-law cited, and of 25 October 2018, *Sciotto*, C-331/17, EU:C:2018:859, paragraph 32).
- 25 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 (judgments of 7 March 2018, *Santoro*, C-494/16, EU:C:2018:166, paragraph 27 and the case-law cited, and of 25 October 2018, *Sciotto*, C-331/17, EU:C:2018:859, paragraph 33).
- 26 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 (judgments of 7 March 2018, *Santoro*, C-494/16, EU:C:2018:166, paragraph 28 and the case-law cited, and of 25 October 2018, *Sciotto*, C-331/17, EU:C:2018:859, paragraph 34).
- 27 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 (judgment of 7 March 2018, *Santoro*, C-494/16, EU:C:2018:166, paragraph 29 and the case-law cited).
- 28 Therefore, where there has been misuse of successive fixed-term contracts or relationships, a measure offering effective and equivalent guarantees for the protection of workers must be capable of being applied in order duly to penalise that misuse and nullify the consequences of the breach of EU law (judgments of 3 July 2014, *Fiamingo and Others*, C-362/13, C-363/13 and C-407/13, EU:C:2014:2044, paragraph 64; of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraph 79; and of 7 March 2018, *Santoro*, C-494/16, EU:C:2018:166, paragraph 31).
- 29 It is not for the Court to rule on the interpretation of domestic law, since that task falls exclusively to the referring court, which must, in the present instance, determine whether the requirements set out in the previous paragraphs are met by the provisions of the relevant national legislation. However, when giving a preliminary ruling, the Court may, where appropriate, offer clarification intended to provide the national court with guidance in its assessment (see, inter alia, judgment of 7 March 2018, *Santoro*, C-494/16, EU:C:2018:166, paragraph 45).
- 30 In the first place, it should be noted that, in the judgment of 26 November 2014, *Mascolo and Others* (C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401), the Court took the view that the legislation prior to Law No 107/2015 did not impose any penalty that was sufficiently effective and a sufficient deterrent to ensure that the provisions adopted pursuant to the Framework Agreement were fully effective. In particular, the Court considered that the only way for the teachers involved in that case to have their fixed-term employment relationship converted into a relationship of indefinite duration was to be granted tenure as a result of progressing up the permanent ranking list and, therefore, that they were dependent on circumstances that had to be regarded as fortuitous and unpredictable in that tenure and progression were dictated by the overall duration of the fixed-term

employment contracts and by the posts that had in the meantime become vacant (see, to that effect, judgment of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraph 107).

- 31 The Court relied in that regard on the fact that the period required for teachers to be granted tenure was both variable and uncertain (see, to that effect, judgment of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraph 105).
- 32 In the present case, it is apparent from the documents before the Court that, in order to provide for the transition to a new system introducing measures to prevent and impose penalties in respect of misuse of fixed-term employment contracts, the national legislature adopted a special recruitment plan which provided for the conversion, during the 2015/2016 academic year, of all fixed-term employment relationships concluded with teachers whose status was ‘precarious’, by means of the gradual and definitive exhaustion of the ranking lists and classifications used by the administrative authorities to recruit teachers on a fixed-term basis.
- 33 The Italian Government also indicated that, at the same time, it was continuing with and completing ongoing procedures for the grant of tenure to teachers who are now at the top of the ranking lists. Article 1(95) of Law No 107/2015 provides, in that regard, that the special recruitment plan is to be implemented ‘with a view to filling all posts which remain vacant and available at the end of the tenure-granting procedures carried out in respect of that academic year in accordance with Article 399 of [Decree No 297/1994]’, that is to say, tenured posts granted on the basis of progression up the permanent ranking list.
- 34 It would therefore appear, subject to verifications to be carried out by the referring court, that the special recruitment arrangements and the procedures provided for in Article 399 of Decree No 297/1994, such as the procedure by which Mr Rossato was granted tenure, concern the same category of teaching staff and that, accordingly, Mr Rossato’s fixed-term employment relationship had to be converted, at the latest by the end of the 2015/2016 academic year, into an employment relationship of indefinite duration, either as a result of the completion of a tenure procedure that was already ongoing or by means of the special recruitment plan.
- 35 If that were indeed the case, it would permit the inference that, as a result of the reform introduced by Law No 107/2015, Mr Rossato’s situation is significantly different, from a factual and legal point of view, from the situation at issue in the judgment of 26 November 2014, *Mascolo and Others* (C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401).
- 36 Unlike the situation of the teachers in the case which gave rise to that judgment, the conversion of Mr Rossato’s employment relationship was not uncertain and nor was it unpredictable or fortuitous, as it was a mandatory requirement imposed by Law No 107/2015.
- 37 Accordingly, it cannot be claimed that the penalty provided for by that legislation was not sufficiently effective or a sufficient deterrent on the basis that the conversion of the employment relationship was unpredictable or fortuitous.
- 38 As regards, in the second place, the fact that no compensation is payable in the event of the conversion of such an employment relationship, it should be recalled, as is apparent from paragraphs 24 to 26 above, that the Member States enjoy a broad margin of discretion when choosing measures capable of attaining their social policy objectives.

- 39 It should also be noted that it is clear from Clause 5(2) of the Framework Agreement that Member States have the power, in the form of measures to prevent misuse of successive fixed-term employment contracts, to convert fixed-term employment relationships into relationships of indefinite duration, the stability of employment conferred by the latter being the most important aspect of the protection of workers.
- 40 It should be observed in that regard that the Court has stated, in essence, that legislation which lays down a mandatory rule that, where there is misuse of fixed-term employment contracts, such contracts are to be converted into an employment relationship of indefinite duration, is likely to comprise a measure that actually punishes such misuse (see, inter alia, judgment of 3 July 2014, *Fiamingo and Others*, C-362/13, C-363/13 and C-407/13, EU:C:2014:2044, paragraph 70 and the case-law cited), and, therefore, to meet the requirements set out in paragraphs 27 and 28 above.
- 41 However, case-law does not require more than one measure to apply concurrently (see, to that effect, judgments of 2 August 1993, *Marshall*, C-271/91, EU:C:1993:335, paragraph 25, and of 17 December 2015, *Arjona Camacho*, C-407/14, EU:C:2015:831, paragraphs 32 and 35).
- 42 Furthermore, neither the principle that the damage suffered must be made good in its entirety nor the principle of proportionality require the payment of punitive damages (see, to that effect, judgment of 17 December 2015, *Arjona Camacho*, C-407/14, EU:C:2015:831, paragraph 37).
- 43 Those principles require Member States to provide for adequate compensation, which is more than a purely nominal amount, but not more than is necessary to make good the damage in its entirety (see, to that effect, judgments of 10 April 1984, *von Colson and Kamann*, 14/83, EU:C:1984:153, paragraph 28; of 2 August 1993, *Marshall*, C-271/91, EU:C:1993:335, paragraph 26; and of 17 December 2015, *Arjona Camacho*, C-407/14, EU:C:2015:831, paragraph 33).
- 44 Moreover, in so far as Mr Rossato alleges that he was treated differently to workers who successfully brought a claim against their employer for misuse of fixed-term employment contracts before the entry into force of Law No 107/2015 and who, under the legislation previously in force, could have obtained compensation as well as the award of a contract of indefinite duration, it is sufficient to note that the different treatment of two categories of fixed-term workers resulting from a reform of the legislation applicable is not covered by the principle of non-discrimination established in Clause 4 of the Framework Agreement (judgment of 21 November 2018, *Viejobueno Ibáñez and de la Vara González*, C-245/17, EU:C:2018:934, paragraphs 50 and 51).
- 45 In the light of the foregoing, it must be found that the Framework Agreement does not require Member States to provide, for cases involving misuse of fixed-term employment contracts, a right to compensation in addition to the conversion of the fixed-term employment relationship into one of indefinite duration.
- 46 In the third place, the referring court is uncertain whether the limited retroactive effect of the conversion of Mr Rossato's employment relationship is compatible with Clause 5(1) of the Framework Agreement. It observes, in that regard, the Mr Rossato taught as a music teacher on the basis of 17 fixed-term employment contracts covering a particularly long period, from 18 November 2003 to 2 September 2015, before his employment relationship was converted, with effect from 1 January 2014, in September 2015. The referring court also notes that the conversion of such an employment relationship in the private sector as a result of the misuse of fixed-term employment contracts would have had retroactive effect from the date of the first employment contract. The effect of this for the applicant in the main proceedings would have been, inter alia, that his entire period of service under the successive fixed-term employment contracts would have been taken into account for the purpose of determining his remuneration.

- 47 It should be noted in that regard, first, that the fact that the measure adopted by the national legislature in the private sector constitutes the widest form of protection that may be granted to a worker cannot, in itself, result in a reduction of the effectiveness of the national measures applicable to workers in the public sector (judgment of 7 March 2018, *Santoro*, C-494/16, EU:C:2018:166, paragraph 51).
- 48 Second, if all the years worked under fixed-term employment contracts were taken into account when the worker concerned was granted tenure, that would amount to a full reconstruction of that worker's career, such as that reserved for civil servants who have successfully completed a competition. In that connection, it should be noted that EU law does not require Member States to treat in the same way career civil servants recruited following an open competition and those recruited on the basis of qualifications who have acquired professional experience on the basis of fixed-term contracts, as such different treatment is a result of the need (i) to take account of the qualifications required and the nature of the duties undertaken by career civil servants and (ii) to prevent reverse discrimination against the latter (see, inter alia, judgment of 20 September 2018, *Motter*, C-466/17, EU:C:2018:758, paragraphs 46 and 47 and the case-law cited).
- 49 Therefore, it cannot be ruled out that limiting the retroactive effect of the conversion of Mr Rossato's employment relationship may be justified, at least in part, by the special features of the public sector.
- 50 However, in the present case, particular attention should be drawn to the fact that the period of service taken into account for Mr Rossato was considerably less than the period actually worked under fixed-term employment contracts.
- 51 While, admittedly, 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 teaching 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 (judgment of 26 November 2014, *Mascolo and Others*, C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraph 118). Such a measure must, inter alia, as indicated in paragraph 28 above, be proportionate.
- 52 It therefore falls to the referring court to determine whether, in the light of, first, any justification for the limitation on the period of service completed under fixed-term employment contracts that may be taken into account and, second, the particularly long period of abuse suffered by Mr Rossato, the fact that retroactive account was taken of his period of service only as of 1 January 2014 constitutes a proportionate measure for duly penalising that abuse and nullifying the consequences of the breach of EU law, within the meaning of the case-law cited in paragraph 28 above.
- 53 In the light of the foregoing considerations, the answer to the question referred is that Clause 5(1) of the Framework Agreement is to be interpreted as not precluding legislation which, as applied by the national supreme courts, precludes any entitlement to financial compensation on account of the misuse of successive fixed-term employment contracts for public-sector teachers whose employment relationship has been converted from a fixed-term relationship into one of indefinite duration, with limited retroactive effect, if such conversion is neither uncertain nor unpredictable or fortuitous and the limited account taken of the period of service completed under those successive fixed-term employment contracts constitutes a measure that is proportionate for the purpose of punishing that abuse, which is a matter for the national court to determine.

Costs

- ⁵⁴ Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

Clause 5(1) 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, is to be interpreted as not precluding legislation which, as applied by the national supreme courts, precludes any entitlement to financial compensation on account of the misuse of successive fixed-term employment contracts for public-sector teachers whose employment relationship has been converted from a fixed-term relationship into one of indefinite duration, with limited retroactive effect, if such conversion is neither uncertain nor unpredictable or fortuitous and the limited account taken of the period of service completed under those successive fixed-term employment contracts constitutes a measure that is proportionate for the purpose of punishing that misuse, which is a matter for the national court to determine.

[Signatures]