Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

17 March 2021 *

(Reference for a preliminary ruling – Social policy – Directive 1999/70/EC – Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Clause 4 – Principle of non-discrimination – Objective reasons justifying different treatment of fixed-term workers – Directive 98/59/EC – Collective redundancy – National legislation on the protection to be afforded to a worker dismissed as part of an unlawful collective redundancy – Application of a less advantageous protection system to fixed-term contracts concluded before its entry into force and converted into contracts of an indefinite duration after that date)

In Case C-652/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale di Milano (District Court, Milan, Italy), made by decision of 5 August 2019, received at the Court on 2 September 2019, in the proceedings

KO

v

Consulmarketing SpA, in liquidation,

interveners:

Filcams CGIL,

Confederazione Generale Italiana del Lavoro (CGIL),

THE COURT (Second Chamber),

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

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: Italian.

after considering the observations submitted on behalf of:

– KO, Filcams CGIL and Confederazione Generale Italiana del Lavoro (CGIL), by C. De Marchis Gòmez, avvocato,

– the Italian Government, by G. Palmieri, acting as Agent, and by G. Aiello and E. Manzo, avvocati dello Stato,

– the European Commission, initially by B.-R. Killmann, A. Spina and M. van Beek, and subsequently by B.-R. Killmann and A. Spina, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ 1998 L 225, p. 16), of Clause 4 of the framework agreement on fixed-term work concluded on 18 March 1999 ('the Framework Agreement') and 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), and of Articles 20 and 30 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between KO and Consulmarketing SpA, in liquidation, concerning the legal protection to be granted to KO following her dismissal by Consulmarketing as part of an unlawful collective redundancy.

Legal context

EU law

Directive 98/59

3 Recitals 2 and 6 of Directive 98/59 read as follows:

'(2) Whereas it is important that greater protection should be afforded to workers in the event of collective redundancies while taking into account the need for balanced economic and social development within the Community;

…

(6) Whereas the Community Charter of the fundamental social rights of workers, adopted at the European Council meeting held in Strasbourg on 9 December 1989 by the Heads of State or Government of 11 Member States, states, inter alia, in point 7 … [that] "the completion of the internal market must lead to an improvement in the living and working conditions of workers in the European Community (…)."'

4 Article 1(2)(a) of that directive provides that the directive does not apply, inter alia, to 'collective redundancies effected under contracts of employment concluded for limited periods of time or for specific tasks except where such redundancies take place prior to the date of expiry or the completion of such contracts'.

Directive 1999/70 and the Framework Agreement

5 As stated in recital 14 of Directive 1999/70, 'the signatory parties wished to conclude a framework agreement on fixed-term work setting out the general principles and minimum requirements for fixed-term employment contracts and employment relationships; they have demonstrated their desire to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination, and to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships'.

6 The second paragraph of the preamble to the Framework Agreement states that the parties to the agreement 'recognise that contracts of an indefinite duration are, and will continue to be, the general form of employment relationship between employers and workers [and that] fixed-term employment contracts respond, in certain circumstances, to the needs of both employers and workers'.

7 Clause 1 of the Framework Agreement, entitled 'Purpose', provides:

'The purpose of this framework agreement is to:

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

…'

8 Under Clause 2(1) of the Framework Agreement:

'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, entitled 'Definitions', provides:

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

2. For the purpose of this agreement the term "comparable permanent worker" means a worker with an employment contract or relationship of indefinite duration, in the same establishment, engaged in the same or similar work/occupation, due regard being given to qualifications/skills. Where there is no comparable permanent worker in the same establishment, the comparison shall be made by reference to the applicable collective agreement, or where there is no applicable collective agreement, in accordance with national law, collective agreements or practice.'

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.'

Italian law

11 Legge n. 223 – Norme in materia di cassa integrazione, mobilità, trattamenti di disoccupazione, attuazione di direttive della Comunità europea, avviamento al lavoro ed altre disposizioni in materia di mercato del lavoro (Law No 233 relating to provisions on technical lay-offs, mobility, unemployment benefit, implementation of Community directives, employment services and other provisions relating to the employment market) of 23 July 1991 (Ordinary Supplement to GURI No 175 of 27 July 1991), as amended by legge n. 92 – Disposizioni in materia di riforma del mercato del lavoro in una prospettiva di crescita (Law No 92 relating to provisions for the reform of the labour market with a view to achieving growth) of 28 June 2012 (Ordinary Supplement to GURI No 153 of 3 July 2012) ('Law No 223/1991'), sets out the legal framework applicable to collective redundancy procedures, including, inter alia, the provisions transposing Directive 98/59 into Italian law. It is apparent from the order for reference that Article 5(1) of Law No 223/1991 provides the criteria on the basis of which the employer is required to determine, in the event of collective redundancies, which workers will be dismissed.

12 Article 5(3) of Law No 223/1991 provides:

'… In the event of non-compliance with the selection criteria [for choosing the workers to be dismissed] provided for in paragraph 1, the system referred to in the fourth paragraph of Article 18 of [legge n. 300 – Norme sulla tutela della libertà e dignità dei lavoratori, della libertà sindacale e dell'attività sindacale, nei luoghi di lavoro e norme sul collocamento (Law No 300 relating to rules on the protection of the freedom and dignity of workers, freedom of association and trade union activity in the workplace, as well as regulations on employment) of 20 May 1970 (GURI No 131 of 27 May 1970),] shall apply …'

13 Article 18(1) and (4) of Law No 300 of 20 May 1970 provides, in the version applicable to the facts at issue in the main proceedings:

'The court, in the decision declaring the dismissal null and void for being discriminatory … because it can be linked to other cases of nullity provided for by law or because it is determined by a decisive unlawful reason within the meaning of Article 1345 of the Civil Code, shall order the employer … to reinstate the worker to his or her post, regardless of the formal reason relied on and regardless of the number of workers employed by the employer. … Where reinstatement has been ordered, the employment relationship shall be deemed to be terminated if the worker has not returned to work within thirty days of being invited to do so by the employer, except in the case that the worker has requested the compensation referred to in the third paragraph of this Article. The system referred to in this Article shall also apply to dismissal declared ineffective on the grounds that it was effected orally.

…

The court, where it finds that the justified objective grounds or just cause adduced by the employer do not exist, … shall annul the dismissal and order the employer to proceed with the reinstatement referred to in the first paragraph and to pay compensation commensurate with the worker's last actual overall salary from the date of dismissal until the date of actual reinstatement, minus any amounts the worker received from other professional activities during the period of exclusion and the amounts that he or she could have received by diligently seeking a new job. … The employer shall also be ordered to pay social security contributions from the day of dismissal until the day of actual reinstatement, together with interest at the legal rate without application of penalties for non-payment or late-payment of contributions, in an amount equal to the difference between the contributions which would have been paid under the employment contract that was terminated by the unfair dismissal and the contributions paid to the worker in connection with the performance of other professional activities. …'

14 Article 1(1) and (2) of decreto legislativo n. 23 – Disposizioni in materia di contratto di lavoro a tempo indeterminato a tutele crescenti, in attuazione della legge 10 dicembre 2014, n. 183 (Legislative Decree No 23 on provisions relating to employment contracts of indefinite duration offering increasing protection and implementing Law No 183 of 10 December 2014) of 4 March 2015 (GURI No 54 of 6 March 2015) ('Legislative Decree No 23/2015'), provides:

'1. For workers classified as workers, employees or executives, hired under an employment contract of indefinite duration as from the date of entry into force of this Decree, the protection system in the event of unlawful dismissal shall be governed by the provisions of this Decree.

2. The provisions of this Decree shall also apply in the event of conversion, after the entry into force of this Decree, of a fixed-term contract or an apprenticeship contract into a contract of indefinite duration.'

15 Article 3(1) of Legislative Decree No 23/2015 provides that, in the event of unjustified collective redundancy, the court is to declare the end of the employment relationship and 'order the employer to pay compensation, not subject to social security contributions, the amount of which shall be equivalent to 2 months' worth of the last reference salary for the purpose of calculating severance pay in respect of each year of service, such indemnity being in any event not less than 4 months' remuneration and not more than 24 months' remuneration.' Under decreto legge

n. 87 – Disposizioni urgenti per la dignità dei lavoratori e delle imprese (Decree-Law No 87 on the establishment of urgent provisions for the dignity of workers and enterprises) of 12 July 2018 (GURI No 161 of 13 July 2018), that range is between 6 and 36 months' of salary.

16 Article 10(1) of Legislative Decree No 23/2015 is worded as follows:

'1. In the event that … the selection criteria referred to in Article 5(1) of Law [No 223/1991] are not complied with, the system referred to in Article 3(1) shall apply.'

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

17 The applicant in the main proceedings was recruited by Consulmarketing, as from 14 January 2013, under a fixed-term employment contract.

18 On 31 March 2015, that fixed-term contract was converted into a contract of indefinite duration.

19 On 19 January 2017, Consulmarketing initiated collective redundancy proceedings involving 350 workers, including the applicant, at the end of which all those workers were dismissed.

20 The dismissed workers brought an action before the referring court, the Tribunale di Milano (District Court, Milan, Italy), arguing, inter alia, that Consulmarketing had failed to observe the criteria on the basis of which the employer is required to determine, in the event of collective redundancies, which workers will be dismissed.

21 The referring court found that the collective redundancy was unlawful, ordering the payment of damages, and it also ordered reinstatement within the undertaking of all the workers concerned, except for the applicant. That court considered that the applicant could not benefit from the same protection system as the other workers who had been made redundant, on the ground that her fixed-term employment contract had been converted into a contract of indefinite duration after 7 March 2015, the date of entry into force of Legislative Decree No 23/2015.

22 In the context of the proceedings brought against that decision, which constitute the main proceedings, the applicant submits, inter alia, (i) that the applicable national legislation does not comply with EU law and (ii) infringement of the principle of equal treatment. It should also be noted that, in the course of those proceedings, first, Consulmarketing was declared insolvent and, secondly, Filcams CGIL and Confederazione Generale Italiana del Lavoro (CGIL) voluntarily entered an appearance in support of the forms of order sought by the applicant, in their capacity as trade union organisations.

23 It follows from the order for reference that, in the event of unlawful dismissal of a worker who was hired under an employment contract of indefinite duration before 7 March 2015, the employer must, first, reinstate the worker concerned to his or her post and, secondly, pay that worker compensation corresponding to the actual total remuneration covering the period between the day of dismissal and that of actual reinstatement, in addition to the payment of social security contributions corresponding to that same period, within a limit of 12 months' remuneration. Workers engaged for an indefinite period after 7 March 2015 would not be entitled to such reinstatement, but only to compensation which does not give rise to the payment of social security contributions. The amount of that compensation would depend, inter alia, on the worker's length

of service and correspond, as appropriate, to a minimum of 4 months' remuneration and a maximum of 24 months' remuneration. Since 2018, that range has been increased to 6 and 36 months, respectively.

24 In the present case, even though the applicant took up her duties before 7 March 2015, her fixed-term contract was converted into a contract of indefinite duration after that date. The conversion of a fixed-term contract into a contract of indefinite duration would, for the purposes of determining the protection system in the event of unlawful collective redundancy, be treated like a new recruitment. In that respect the applicant cannot, under national law, claim reinstatement to her post or damages, but only compensation.

25 The referring court questions whether that situation is compatible with Directive 98/59 and Clause 4 of the Framework Agreement, read in the light of Articles 20 and 30 of the Charter.

26 In the first place, according to the referring court, the compensation to which the applicant in the main proceedings is entitled does not constitute adequate compensation for unlawful collective redundancy for the purposes of Article 30 of the Charter. Indeed, it would appear from the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17) that Article 30 of the Charter should be interpreted in the light of Article 24 of the European Social Charter, signed in Turin on 18 October 1961. This in turn has, it is stated, been interpreted by the European Committee of Social Rights to the effect that a penalty arising from unlawful collective redundancy is considered adequate where it provides for (i) the reimbursement of the financial losses suffered by the worker concerned between the date of his or her dismissal and the decision ordering the employer to reimburse him or her, (ii) the possibility of reinstating that worker in the company and (iii) compensation in an amount high enough to deter the employer and to compensate for the damage suffered by the worker concerned.

27 In the second place, the referring court notes a difference in treatment between, on the one hand, the applicant in the main proceedings, a worker who took up employment before 7 March 2015 under a fixed-term employment contract, which was converted into a contract of indefinite duration after that date, and, on the other, all the other workers dismissed by Consulmarketing, who were recruited under employment contracts of indefinite duration entered into before that date. That difference in treatment stems from treating the conversion of a fixed-term employment contract into an employment contract of indefinite duration in the same way as a new recruitment.

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

'(1) Do the principles of equal treatment and non-discrimination enshrined in Clause 4 of [the Framework Agreement] on employment conditions preclude the legal provisions of Article 1(2) and Article 10 of [Legislative Decree No 23/2015] which, with regard to collective redundancies that are unlawful due to non-compliance with the selection criteria, provide for a dual and differentiated system of protection whereby, in the same procedure, appropriate, effective and dissuasive protection is provided in respect of employment relationships of indefinite duration created prior to 7 March 2015 – for which reinstatement and the payment of employer's contributions are envisaged as possible remedies – yet limited compensation only, between maximum and minimum amounts, is offered in respect of

fixed-term employment relationships having the same length of service, in that they were created prior to that date but converted to an open-ended contract after 7 March 2015, which is a less effective and dissuasive form of protection?

(2) Do the provisions contained in Articles 20 and 30 of the [Charter] and in Directive [98/59] preclude a legal provision such as Article 10 of [Legislative Decree No 23/2015] which introduces exclusively for workers hired (or whose fixed-term contract was converted) for an indefinite duration after 7 March 2015 an arrangement whereby, in the event of collective redundancies that are unlawful due to non-compliance with the selection criteria, reinstatement is not an option – unlike for the other similar employment relationships established beforehand and involved in the same procedure – and which instead introduces a concurrent system of compensation only which is insufficient to make good the financial consequences resulting from the loss of employment and which is inferior to the other coexisting model, applied to other workers whose relationships have the same characteristics with the sole exception of the date of conversion or creation?'

Consideration of the questions referred

Preliminary observations

29 It is apparent from the documents available to the Court that the main proceedings concern two successive systems for the protection of workers in the event of unlawful collective redundancies. On the one hand, a permanent worker employed under a contract entered into before 7 March 2015 may, under Law No 223/1991, claim reinstatement in the company. On the other hand, a permanent worker employed under a contract concluded after that date may claim only capped compensation under Legislative Decree No 23/2015.

30 Article 1(2) of Legislative Decree No 23/2015 states that the protection system which that legislative decree provides for applies to fixed-term contracts which are converted into contracts of indefinite duration after the legislative decree's entry into force. As the applicant in the main proceedings is in such a situation she can claim only compensation under that legislative decree, unlike all her colleagues who were dismissed at the same time as her but who were reinstated in the company under Law No 223/1991 since they were permanent workers recruited before 7 March 2015.

31 The referring court asks the Court whether the new system introduced by Legislative Decree No 23/2015 is compatible with the Framework Agreement, Directive 98/59 and Articles 20 and 30 of the Charter.

32 It should be borne in mind from the outset that the system of cooperation established by Article 267 TFEU is based on a clear division of responsibilities between the national courts and the Court of Justice. In proceedings brought on the basis of that article, the interpretation of provisions of national law is a matter for the courts of the Member States, not for the Court of Justice, and the Court has no jurisdiction to rule on the compatibility of rules of national law with EU law. However, the Court does have jurisdiction to provide the national court with all the guidance as to the interpretation of EU law necessary to enable that court to determine whether those national rules are compatible with EU law (judgment of 30 April 2020, *CTT – Correios de Portugal*, C-661/18, EU:C:2020:335, paragraph 28).

33 Although it is true that, on a literal reading of the referring court's questions, the Court is being asked to rule on the compatibility of provisions of national law with EU law, there is nothing to prevent the Court from giving an answer that will be of use to the national court, by providing the latter with guidance as to the interpretation of EU law which will enable that court to rule itself on the compatibility of national rules with EU law (judgment of 30 April 2020, *CTT – Correios de Portugal*, C-661/18, EU:C:2020:335, paragraph 29).

34 Moreover, the provisions of the Charter apply, pursuant to Article 51(1) thereof, to the Member States only when they are implementing Union law. Article 6(1) TEU and Article 51(2) of the Charter make it clear that the Charter does not extend the field of application of Union law beyond the powers of the European Union, and does not establish any new power or task for the European Union, or modify powers and tasks as defined in the Treaties. The Court is, therefore, called upon to interpret, in the light of the Charter, the law of the European Union within the limits of the powers conferred on it (order of 4 June 2020, *Balga*, C-32/20, not published, EU:C:2020:441, paragraph 34 and the case-law cited).

35 It is, therefore, appropriate to reformulate the questions referred for a preliminary ruling as seeking the interpretation of Clause 4 of the Framework Agreement, on the one hand, and Directive 98/59, read in the light of Articles 20 and 30 of the Charter, on the other.

The second question

36 By its second question, which it is appropriate to examine first, the referring court asks, in essence, whether Directive 98/59 and Articles 20 and 30 of the Charter must be interpreted as precluding national legislation which provides for the concurrent application, in the course of one and the same collective redundancy procedure, of two different systems for the protection of permanent workers in the event of a collective redundancy carried out in breach of the criteria for determining which workers will be dismissed under that procedure.

37 Contrary to what the referring court implies, it is not sufficient, for the purpose of finding that the provisions of Italian law at issue in the main proceedings implement Directive 98/59, that those provisions form part of broader national legislation, certain other provisions of which were adopted in order to transpose that directive into national law. In order for it to be found that Directive 98/59 and, consequently, the Charter, are applicable to the main proceedings, that directive must impose a specific obligation in respect of the situation at issue in those proceedings, which has been implemented by the provisions of Italian law concerned (see, by analogy, order of 4 June 2020, *Balga*, C-32/20, not published, EU:C:2020:441, paragraph 27).

38 It is not apparent from the order for reference that any obligation imposed by Directive 98/59 is at issue in the main proceedings (see, by analogy, order of 4 June 2020, *Balga*, C-32/20, not published, EU:C:2020:441, paragraph 28).

39 First, it should be noted that recital 2 of Directive 98/59, to which the referring court makes reference and from which it is apparent that that directive aims to strengthen the protection of workers in the event of collective redundancies, cannot impose a specific obligation with regard to a situation such as that of the applicant in the main proceedings (see, by analogy, order of 4 June 2020, *Balga*, C-32/20, not published, EU:C:2020:441, paragraph 29).

40 Secondly, such an obligation is not apparent from the provisions of Directive 98/59. The main objective of that directive is to make collective redundancies subject to prior consultation with the workers' representatives and prior notification to the competent public authority. Under Article 2(2) of that directive, consultations are to cover ways and means of avoiding collective redundancies or reducing the number of workers affected, and of mitigating the consequences by recourse to accompanying social measures aimed, inter alia, at aid for redeploying or retraining workers made redundant. Pursuant to Articles 2(3) and 3(1) of the same directive, the employer must notify the competent public authority of projected collective redundancies and provide it with the elements and information mentioned in those provisions (order of 4 June 2020, *Balga*, C-32/20, not published, EU:C:2020:441, paragraph 30 and the case-law cited).

41 Accordingly, Directive 98/59 provides for only a partial harmonisation of the rules for the protection of workers in the event of collective redundancies, that is to say, harmonisation of the procedure to be followed when such redundancies are to be made. Thus, the Court has already had occasion to state that that directive does not seek to establish a mechanism of general financial compensation at Union level in the event of loss of employment and nor does it harmonise the detailed rules governing the definitive termination of an undertaking's activities (order of 4 June 2020, *Balga*, C-32/20, not published, EU:C:2020:441, point 31 and the case-law cited).

42 The means of protection to be afforded to a worker who has been unlawfully dismissed as part of a collective redundancy, following a failure to comply with the criteria on the basis of which the employer is required to determine the workers to be dismissed, are manifestly unrelated to the notification and consultation obligations arising from Directive 98/59. Neither those means nor those selection criteria fall within the scope of that directive. Consequently, they remain within the Member States' competence (see, to that effect, order of 4 June 2020, *Balga*, C-32/20, not published, EU:C:2020:441, paragraph 32).

43 It should also be borne in mind that, under Article 6 of Directive 98/59, Member States must ensure that judicial and/or administrative procedures for the enforcement of obligations under that directive are available to the workers' representatives and/or workers. Article 6 does not require Member States to adopt a specific measure in the event of a failure to comply with the obligations laid down in Directive 98/59, but leaves them free to choose between the different solutions suitable for achieving the objective pursued by that directive, depending on the different situations which may arise. As the referring court pointed out, in essence, those measures must, however, ensure real and effective judicial protection under Article 47 of the Charter and have a real deterrent effect (order of 4 June 2020, *Balga*, C-32/20, not published, EU:C:2020:441, paragraph 33 and the case-law cited).

44 However, Article 6 of Directive 98/59 and that case-law apply only to procedures aimed at enforcing the obligations laid down in that directive. Since it is clear from the order for reference that the second question referred does not concern the infringement of an obligation laid down by that directive, but rather the non-compliance with the criteria laid down by national law on the basis of which the employer is required to determine, in the event of a collective redundancy, which workers will be dismissed under that procedure, with those criteria being within the competence of the Member States, Article 6 of that directive and that case-law cannot apply in the present case (see, by analogy, order of 4 June 2020, *Balga*, C-32/20, not published, EU:C:2020:441, paragraph 34).

45 Furthermore, since national legislation providing for the concurrent application, in the course of one and the same collective redundancy procedure, of two different systems for the protection of permanent workers in the event of an unlawful collective redundancy does not come within the scope of Directive 98/59, that national legislation cannot be regarded as implementing EU law within the meaning of Article 51(1) of the Charter and, consequently, cannot be examined in the light of the guarantees of the Charter and, in particular, of Articles 20 and 30 thereof.

46 It follows from all the foregoing considerations that national legislation which provides for the concurrent application, in the course of one and the same collective redundancy procedure, of two different systems for the protection of permanent workers in the event of a collective redundancy carried out in breach of the criteria for determining which workers will be dismissed under that procedure does not come within the scope of Directive 98/59 and cannot, therefore, be examined in the light of the fundamental rights guaranteed by the Charter and, in particular, Articles 20 and 30 thereof.

The first question

47 By its first question, which it is appropriate to examine second, the referring court asks, in essence, whether Clause 4 of the Framework Agreement must be interpreted as precluding national legislation which extends a new system for the protection of permanent workers in the event of unlawful collective redundancies to workers whose fixed-term contracts, entered into before the date of entry into force of that legislation, are converted into contracts of indefinite duration after that date.

48 According to Clause 1(a) of the Framework Agreement, one of the objectives of that agreement is to improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination. Similarly, the third paragraph in the preamble to the Framework Agreement states that that agreement 'illustrates the willingness of the Social Partners to establish a general framework for ensuring equal treatment for fixed-term workers by protecting them against discrimination'. Recital 14 of Directive 1999/70 states, to that effect, that the aim of the Framework Agreement is, in particular, to improve the quality of fixed-term work by setting out minimum requirements in order to ensure the application of the principle of non-discrimination (judgment of 25 July 2018, *Vernaza Ayovi*, C-96/17, EU:C:2018:603, paragraph 21).

49 The Framework Agreement, in particular Clause 4 thereof, seeks to apply the principle of non-discrimination to fixed-term workers in order to prevent an employer using such an employment relationship to deny those workers rights which are recognised for permanent workers (judgment of 25 July 2018, *Vernaza Ayovi*, C-96/17, EU:C:2018:603, paragraph 22).

50 Having regard to the objectives pursued by the Framework Agreement, Clause 4 thereof must be understood as expressing a principle of EU social law which cannot be interpreted restrictively (judgment of 25 July 2018, *Vernaza Ayovi*, C-96/17, EU:C:2018:603, paragraph 23).

51 It should be borne in mind that Clause 4(1) of the Framework Agreement prohibits, in respect of employment conditions, less favourable treatment of fixed-term workers than comparable permanent workers solely because they have a fixed-term contract or relation, 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.

52 In the first place, the Court has already held that the protection afforded to a worker in the event of unlawful dismissal comes within the concept of 'employment conditions' within the meaning of Clause 4(1) of the Framework Agreement (see, to that effect, judgment of 25 July 2018, *Vernaza Ayovi*, C-96/17, EU:C:2018:603, paragraphs 28 to 30).

53 In the second place, according to the Court's settled case-law, in order to assess whether the persons concerned are engaged in the same or similar work for the purposes of the Framework Agreement, it is necessary to determine, in accordance with Clause 3(2) and Clause 4(1) of the Framework 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 (see, to that effect, judgment of 25 July 2018, *Vernaza Ayovi*, C-96/17, EU:C:2018:603, paragraph 34 and the case-law cited).

54 It is for the referring court, which alone has jurisdiction to assess the facts, to determine whether the applicant in the main proceedings was in a situation comparable to that of workers taken on for an indefinite period by the same employer during the same period (see, by analogy, judgment of 25 July 2018, *Vernaza Ayovi*, C-96/17, EU:C:2018:603, paragraph 35). In that regard, it is apparent, a priori, from the file submitted to the Court that, prior to the conversion of her fixed-term contract into a contract of indefinite duration, the applicant in the main proceedings was a fixed-term worker who was in a situation comparable to that of her colleagues hired for an indefinite period.

55 In the third place, as regards the existence of a difference in treatment, the referring court states that if account were to be taken of the date of conclusion of her fixed-term employment contract, the applicant in the main proceedings could claim reinstatement in the undertaking under Law No 223/1991, which is more advantageous than the compensation to which she is entitled under Legislative Decree No 23/2015. The applicant has, therefore, been treated less favourably than her colleagues who were hired for an indefinite period before 7 March 2015, the date of entry into force of that legislative decree.

56 The fact that the applicant acquired the status of permanent worker after that date does not mean that, in certain circumstances, she cannot rely on the principle of non-discrimination laid down in Clause 4 of the Framework Agreement (see, to that effect, judgment of 18 October 2012, *Valenza and Others*, C-302/11 to C-305/11, EU:C:2012:646, paragraph 34). It is sufficient in that regard to find that the difference in treatment, of which the applicant argues she is the victim, results from the fact that she was initially recruited on a fixed-term basis.

57 However, in so far as it is necessary to understand the reference to the applicant's length of service, made by the referring court in the written response to the Court's questions, as referring to Clause 4(4) of the Framework Agreement, the applicability of that provision must be excluded from the outset. That provision states 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 length-of-service qualifications are justified on objective grounds. The fact that the applicant was treated less favourably than her colleagues who were dismissed as part of the same collective redundancy is not, however, due to the length-of-service criteria for the determination of protection in the event of unlawful collective redundancies. Rather, the difference in treatment results from the transitional system established by Article 1(2) of that legislative decree, which extends the application of that legislative decree to fixed-term contracts

that were entered into before the date of its entry into force and converted into contracts of indefinite duration after that date. Such a difference in treatment must be examined in the light of Clause 4(1) of the Framework Agreement.

58 Accordingly, subject to the referring court's definitive assessment of the comparability of the situation of a fixed-term worker, such as the applicant, and that of a permanent worker in the light of all the relevant factors, it is necessary to ascertain whether there is an objective reason justifying that difference in treatment (see, by analogy, judgment of 25 July 2018, *Vernaza Ayovi*, C-96/17, EU:C:2018:603, paragraph 37).

59 In that regard, it should be borne in mind that, according to the Court's settled case-law, the concept of 'objective grounds', within the meaning of Clause 4(1) of the Framework Agreement, must be understood as not permitting a difference in treatment between fixed-term workers and permanent workers to be justified on the basis that the different treatment is provided for by a general or abstract measure, such as a law or a collective agreement (judgment of 25 July 2018, *Vernaza Ayovi*, C-96/17, EU:C:2018:603, paragraph 38).

60 According to equally settled case-law, that concept requires the unequal treatment found to exist to be justified by the presence of precise and specific factors, characterising the employment condition to which it relates, in the specific context in which it occurs and on the basis of objective and transparent criteria, in order to ensure that that unequal treatment in fact responds to a genuine need, is appropriate for the purpose of attaining the objective pursued and is necessary for that purpose. Those factors may be apparent, in particular, from the specific nature of the tasks for the performance of which fixed-term contracts have been concluded and from the inherent characteristics of those tasks or, as the case may be, from pursuit of a legitimate social policy objective of a Member State (judgment of 25 July 2018, *Vernaza Ayovi*, C-96/17, EU:C:2018:603, paragraph 39).

61 In that regard, it is apparent from the documents available to the Court and from the replies to the Court's questions that the Italian Government considers that the less favourable treatment of a worker in the situation of the applicant in the main proceedings is justified by the social policy objective pursued by Legislative Decree No 23/2015, which is to encourage employers to employ workers on a permanent basis. Treating the conversion of a fixed-term contract into a contract of indefinite duration like a new recruitment is, it is argued, justified in the light of the fact that the worker concerned obtains, in exchange, a form of stability of employment.

62 It should be noted that enhancing employment stability by promoting the conversion of fixed-term contracts into contracts of indefinite duration is a legitimate objective of social law and, moreover, an objective pursued by the Framework Agreement. The Court has already held that the encouragement of recruitment undoubtedly constitutes a legitimate objective of Member States' social or employment policy (see, to that effect, judgment of 19 July 2017, *Abercrombie & Fitch Italia*, C-143/16, EU:C:2017:566, paragraph 37). In addition, the second paragraph of the preamble to the Framework Agreement states that the parties to the Framework Agreement recognise that contracts of indefinite duration are, and will continue to be, the general form of employment relations between employers and workers. Consequently, the benefit of stable employment is viewed as a major element of worker protection (see, to that effect, judgment of 15 April 2008, *Impact*, C-268/06, EU:C:2008:223, paragraph 87).

63 As to whether the measure is appropriate and necessary for the purpose of attaining that objective, it must be borne in mind that the Member States enjoy broad discretion in their choice, not only to pursue a particular aim in the field of social and employment policy, but also in the definition of measures capable of achieving it (see, to that effect, judgment of 19 July 2017, *Abercrombie & Fitch Italia*, C-143/16, EU:C:2017:566, paragraph 31).

64 As regards, first of all, whether it is appropriate to treat the conversion of a fixed-term contract into a contract of indefinite duration like a new recruitment, the effect of such treatment is that, in the case of unlawful collective redundancy, the worker concerned is not entitled to reinstatement in the undertaking under Law No 223/1991, but only to the capped and less favourable compensation provided for by Legislative Decree No 23/2015. As the Italian Government stated in its written observations, such a measure treating the conversion of an employment contract like a new recruitment appears likely to encourage employers to convert fixed-term employment contracts into contracts of indefinite duration, a matter which is, however, for the referring court to verify.

65 With regard, next, to whether that measure is necessary, account must be taken of the broad discretion accorded to the Member States, as noted in paragraph 63 above. The measure forms part of a reform of Italian social law which aims to promote the creation, through recruitment or through the conversion of a fixed-term contract, of employment relationships of indefinite duration. If the new protection system introduced by Legislative Decree No 23/2015 did not apply to converted contracts, any incentive effect to convert fixed-term contracts in force on 7 March 2015 into contracts of indefinite duration would be excluded from the outset.

66 Lastly, the fact that Legislative Decree No 23/2015 reduces the level of protection for permanent workers is not, in itself, covered by the prohibition of discrimination set out in Clause 4 of the Framework Agreement. It is sufficient in that regard to note that the principle of non-discrimination has been implemented and specifically applied by the Framework Agreement solely as regards differences in treatment as between fixed-term and permanent workers who are in a comparable situation. Consequently, any differences in treatment between specific categories of permanent staff are not covered by the principle of non-discrimination established by that framework agreement (see, by analogy, judgment of 21 November 2018, *Viejobueno Ibáñez and de la Vara González*, C-245/17, EU:C:2018:934, paragraph 51).

67 Subject to the verifications to be carried out by the referring court, which alone has jurisdiction to interpret national law, it is apparent from the foregoing considerations that treating the conversion of a fixed-term employment contract into a contract of indefinite duration like a new recruitment is part of a wider reform of Italian social law, the aim of which is to promote permanent recruitment. In those circumstances, such a measure treating the conversion of an employment contract like a new recruitment forms part of a specific context, from both a factual and legal point of view, exceptionally justifying the difference in treatment.

68 It follows from all the foregoing considerations that the answer to the first question is that Clause 4 of the Framework Agreement must be interpreted as not precluding national legislation which extends a new system for the protection of permanent workers in the event of unlawful collective redundancies to workers whose fixed-term contracts, which were entered into before the date of entry into force of that legislation, are converted into contracts of indefinite duration after that date.

Costs

69 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 (Second Chamber) hereby rules:

1. **National legislation which provides for the concurrent application, in the course of one and the same collective redundancy procedure, of two different systems for the protection of permanent workers in the event of a collective redundancy carried out in breach of the criteria for determining which workers will be dismissed under that procedure does not come within the scope of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies and cannot, therefore, be examined in the light of the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union and, in particular, Articles 20 and 30 thereof.**

2. **Clause 4 of the framework agreement on fixed-term work, concluded on 18 March 1999, annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP must be interpreted as not precluding national legislation which extends a new system for the protection of permanent workers in the event of unlawful collective redundancies to workers whose fixed-term contracts, which were entered into before the date of entry into force of that legislation, are converted into contracts of indefinite duration after that date.**

[Signatures]