Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

12 December 2013*

(Social policy — Directive 1999/70/EC — Framework agreement on fixed-term work — Principle of non-discrimination — Employment conditions — National legislation establishing a system of compensation for the unlawful insertion of a fixed-term clause into an employment contract which is different from that applicable to the unlawful termination of an employment contract of indefinite duration)

In Case C-361/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale di Napoli (Italy), made by decision of 13 June 2012, received at the Court on 31 July 2012, in the proceedings

Carmela Carratù

v

Poste Italiane SpA,

THE COURT (Third Chamber),

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

Advocate General: N. Wahl,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 5 June 2013,

after considering the observations submitted on behalf of:

— Ms Carratù, by A. Cinquegrana and V. De Michele, avvocati,

— Poste Italiane SpA, by R. Pessi, A. Maresca, L. Fiorillo and G. Proia, avvocati,

— the Italian Government, by G. Palmieri, acting as Agent, and C. Gerardis, avvocatessa dello Stato,

— the Polish Government, by B. Majczyna and M. Szpunar, acting as Agents,

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

after hearing the Opinion of the Advocate General at the sitting on 26 September 2013,

* Language of the case: Italian.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of clause 4 of the Framework agreement on fixed-term work of 18 March 1999 ('the framework agreement'), which can be found in the Annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43), the principle of effective judicial protection, as defined in Article 6 TEU, read in conjunction with Articles 47 and 52(3) of the Charter of Fundamental Rights of the European Union ('the Charter') and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), and general principles of European Union law such as the principle of legal certainty, the principle of equivalence and the principle of the protection of legitimate expectations.

2 The request has been made in proceedings between Ms Carratù and Poste Italiane SpA ('Poste Italiane') concerning the insertion of a fixed-term clause into the employment contract which she had concluded with that undertaking.

Legal context

European Union legislation

3 Clauses 1, 4, 5 and 8 of the framework agreement are worded as follows:

'Purpose (clause 1)

The purpose of this framework agreement is to:

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

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

…

Principle of non-discrimination (clause 4)

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.

2. Where appropriate, the principle of *pro rata temporis* shall apply.

3. The arrangements for the application of this clause shall be defined by the Member States after consultation with the social partners and/or the social partners, having regard to Community law and national law, collective agreements and practice.

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.

Measures to prevent abuse (clause 5)

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.

…

Provisions on implementation (clause 8)

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

…'

Italian law

4 Article 32, 'Time-limits and provisions relating to fixed-term employment contracts', of Law No 183 of 4 November 2010 (GURI No 262 of 9 November 2010, Ordinary Supplement) ('Law No 183/2010'), provides:

'1. Articles 6(1) and (2) of Law No 604 of 15 July 1966 [on individual dismissals, GURI No 195 of 6 August 1966, "Law No 604/1966"] shall be replaced by the following: Dismissal must be contested, on pain of being time-barred, within 60 days of receipt of written notification of the dismissal, or of notification, also in writing, of the grounds, if not contemporaneous, by any written document, including extrajudicial document, capable of communicating the intention of the employee, including through the intervention of a trade union organisation, to contest the dismissal itself. The contestation shall be ineffective if it is not followed, within a following period of 270 days, by the lodging of an action with the registry of the judicial body acting as a labour court or by the notification to the other party to the proceedings of a request for an attempt at conciliation or arbitration, without prejudice to the possibility of producing new documents drawn up after the

action was lodged. If the conciliation or arbitration requested is refused or the agreement necessary for the relevant implementation is not reached, the action must be lodged, on pain of being time-barred, within 60 days of the refusal or failure to reach agreement.

2. The provisions set out in Article 6 of [Law No 604/1966], as amended by paragraph 1 of the present article, shall apply also to all cases of invalidity of dismissal.

3. The provisions set out in Article 6 of [Law No 604/1966], as amended by paragraph 1 of the present article, shall further apply to: (a) dismissals which require the resolution of issues relating to the classification of the employment relationship or the lawfulness of the time-limit placed on the contract; … (d) an action for a declaration of nullity of the time-limit placed on the employment contract within the meaning of Articles 1, 2 and 4 of Legislative Decree No 368 of 6 September 2001 [implementing Directive 1999/70/EC concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (GURI No 235 of 9 October 2001), "Legislative Decree No 368/2001"], as subsequently amended, with time running from the date on which it expires.

4. The provisions set out in Article 6 of [Law No 604/1966], as amended by paragraph 1 of the present article, shall also apply to: (a) fixed-term employment contracts concluded in accordance with Articles 1, 2 and 4 of [Legislative Decree No 368/2001] in the course of performance on the date on which the present Law enters into force, with time running from expiry of the time-limit; (b) fixed-term employment contracts, including those concluded pursuant to the provisions in force before [Legislative Decree No 368/2001], already concluded on the date on which the present Law enters into force, with time running from the same date on which the present Law enters into force; …

5. In cases in which a fixed-term contract is converted, the court shall order the employer to compensate the employee by setting comprehensive compensation ranging from a minimum of 2.5 to a maximum of 12 months' actual overall pay, having regard to the criteria laid down in Article 8 of [Law No 604/1966].

…

7. The provisions laid down in paragraphs 5 and 6 shall apply to all legal proceedings, including those pending on the date on which the present Law enters into force. With reference to such actions, where necessary, and solely for the purposes of determining the compensation referred to in paragraphs 5 and 6, the court shall fix for the parties a period within which any additions to the application and to the pleas relating thereto are to be made and shall exercise the powers of inquiry provided for by Article 421 of the Code of Civil Procedure'.

5 It is apparent from the order for reference that, in Italy, Directive 1999/70 was implemented by Legislative Decree No 368/2001. Under Article 1(1) of that decree, the use of a fixed-term employment contract is authorised only for technical, production, organisational or worker reasons, replacement and such a contract will be ineffective unless it results, directly or indirectly, from a written document specifying those reasons. The employer must send the employee a copy of the written document within five working days from the start of work.

6 Article 18 of Law No 300 of 20 May 1970 on the status of workers (GURI No 131 of 27 May 1970) provides:

'… In the decision ordering the dismissal to be ineffective within the meaning of Article 2 of [Law No 604/1966], or annulling the dismissal in the absence of good cause or justified grounds, or declaring it void pursuant to the law itself, the court shall order the employer, whether or not an undertaking, to reinstate the employee, if more than 15 workers or more than five workers in the case of an agricultural undertaking, are employed in each workplace, establishment, subsidiary, office or department in which the dismissed took place. …

In the decision the court … shall order the employer to compensate the employee for the damage caused by the dismissal which has been declared ineffective or invalid, by means of compensation equivalent to full pay from the date of dismissal until the date of actual reinstatement, and to pay social security contributions from the time of dismissal until the time of actual reinstatement, but in no case may the compensation be less than 5 months' actual full pay.

Without prejudice to the right to compensation …, the employee shall have the option of requesting the employer, instead of reinstatement, to pay compensation equivalent to 15 months' actual full pay. If the employee has not within 30 days of receipt of the employer's invitation resumed employment, nor within 30 days of notification of the decision, requested payment of the compensation referred to above, the employment relationship is considered to be terminated on expiry of the above time-limits.

The decision of the court … is enforceable on a provisional basis.'

7 Law No 604/1966 lays downs provisions relating to individual dismissals in the context of employment contracts of indefinite duration. Article 8 of that law provides:

'Where conditions for dismissal with good cause or justified grounds are shown not to exist, the employer must reinstate the employee within 3 days or, failing that, compensate the loss by paying compensation in an amount between a minimum of 2.5 and a maximum of 6 months' actual full pay, having regard to the number of employers, the size of the undertaking, the length of service of the employee, the conduct of the parties and the conditions to which they are subject. The maximum amount of that compensation may be raised to up to 10 months' pay where the employee's length of service exceeds 10 years, and up to 14 months' pay where the employee's length of service exceeds 20 years, if the employer employs more than 15 employees.'

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

8 Ms Carratù was recruited by Poste Italiane to work at the Campania postal centre as a 'junior employee in the postal mechanisation centre' under a fixed-term employment contract for the period from 4 June to 15 September 2004. The contract, signed only by Ms Carratù on 4 June 2004, was returned to her signed by Poste Italiane on 15 June 2004.

9 Pursuant to Article 1 of Legislative Decree No 368/2001, the contract stated that the use of a fixed-term contract was justified by the need to provide for the replacement of staff absent during the summer holiday period.

10 On 21 September 2004 Ms Carratù sent Poste Italiane a letter by registered post, stating that she was available for work. Considering the time-limit placed on her employment to be unlawful and ineffective, in so far as the contract was not signed and delivered by Poste Italiane until on 15 June 2004, Ms Carratù, after unsuccessfully initiating a conciliation procedure, brought an action before the Tribunale di Napoli (Naples District Court), sitting as an employment tribunal. Ms Carratù challenges the use of a fixed-term employment contract since it is not covered by any of the cases set out in Legislative Decree No 368/2001 and, in particular, it was drawn up without identifying the employees to be replaced, or indicating either the duration of their absence or the specific reasons for absences. Consequently, Ms Carratù requests that her fixed-term contract be amended to be of indefinite duration, that she be reinstated following that amendment, and that she be paid the remuneration which has accrued in the meantime.

11 Poste Italiane claims that genuine grounds relating to the need to replace staff justify placing a time-limit on Ms Carratù's employment contract. In any event, Poste Italiane denies that Ms Carratù has a right to be paid remuneration for the period before her action was brought before the referring court, since she is entitled only to the payment of compensation.

12 By part-judgment of 25 January 2012, the referring court found that a contract of indefinite duration had subsisted between the applicant and Poste Italiane from 4 June 2004. However, the Tribunale di Napoli is still to rule on the consequences in respect of remuneration of the annulment of the fixed-term contract and to determine the amount of compensation to be paid to the employee engaged unlawfully under a fixed-term contract.

13 In that regard, the referring court notes a certain contradiction between the compensation scheme under Law No 183/2010, on the one hand, and general legal principles of redress applicable in all other areas of civil law, on the other. Article 32(5) of Law No 183/2010 provides for compensation ranging from 2.5 to 12 months' actual full pay, having regard to the criteria laid down in Article 8 of Law No 604/1966, to be paid to an employee engaged unlawfully under a fixed-term contract.

14 According to the referring court, that compensation scheme has a punitive effect on the fixed-term worker, since, irrespective of the length of the proceedings and the point at which the worker is reinstated, the worker is entitled only to compensation of a maximum of 12 months' pay. In that regard, a worker engaged unlawfully under a fixed-term contract is afforded less favourable protection than either that provided for by the principles of civil law or that afforded to an unlawfully dismissed worker employed under a contract of indefinite duration who, in the situations set out in Article 18 of Law No 300 of 20 May 1970, is entitled to compensation for the entire period from the unlawful dismissal until the date of actual reinstatement.

15 In those circumstances, the referring court is uncertain as to the compatibility of that interpretation of Article 32(5) of Law No 183/2010 with the principles of effectiveness and equivalence of protection afforded to workers engaged under a fixed-term contract, which Member States must respect pursuant to Directive 1999/70, and with the fundamental right to effective judicial protection, guaranteed by Article 47 of the Charter and Article 6 of the ECHR.

16 It is on that basis that the Tribunale di Napoli decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Is a provision of national law contrary to the principle of equivalence if, in implementing Directive 1999/70/EC, it provides, in cases where an employment contract containing a null and void fixed-term clause is unlawfully suspended, for economic consequences which are different from and considerably less favourable than those in cases where an ordinary civil law contract containing a null and void fixed-term clause is unlawfully suspended?

2. Is it consistent with European Union law that, within the scope of its implementation, the effectiveness of a penalty benefits the employer who has acted wrongfully, to the detriment of the employee who has been wronged, in such a way that the temporal and natural duration of the procedure directly damages the employee to the advantage of the employer, and the efficacy in remedial terms is inversely proportional to the length of the process, so far as almost to be cancelled out?

3. In the implementation of European Union law within the meaning of Article 51 of the [Charter], is it consistent with Article 47 of the Charter and Article 6 of the ECHR for the temporal and natural duration of the procedure directly to damage the employee to the benefit of the employer and for the efficacy in remedial terms to be inversely proportional to the length of the procedure, so far as almost to be cancelled out?

4. In the light of the explanations given in Article 3(1)(c) of [Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16)] and Article 14(1)(c) of Directive 2006/54/EC [of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation

(OJ 2006 L 204, p. 23)], does the concept of employment conditions in clause 4 of [the framework agreement] also cover the consequences ensuing from the unlawful interruption of an employment relationship?

5. In the event that [Question 4] is answered in the affirmative, is the difference between the consequences normally provided for under the national legal order in relation to the unlawful interruption of a permanent employment relationship, on the one hand, and a fixed-term employment relationship, on the other, justifiable under clause 4?

6. Must the general [European Union] law principles of legal certainty, the protection of legitimate expectations, equality of arms in proceedings, effective judicial protection, and the right to an independent tribunal and, more generally, to a fair hearing, guaranteed by Article 6(2) [EU] (as amended by Article 1(8) of the Treaty of Lisbon and to which Article 46 EU refers) – in conjunction with Article 6 of the [ECHR] and Articles 46, 47 and 52(3) of the [Charter] – be interpreted as precluding the adoption by the Italian State, after a significant length of time (9 years), of a provision such as Article 32(7) of Law No 183/2010, which modifies the consequences of ongoing proceedings directly to the detriment of the employee and to the benefit of the employer, the result being that the efficacy in remedial terms is inversely proportional to the length of the process, so far as almost to be cancelled out?

7. In the event that the Court of Justice does not recognise the above principles as having the authority of fundamental principles of European Union law for the purposes of their horizontal and general application, with the effect that a provision such as Article 32(5) to (7) of Law No 183/2010 is incompatible only with the obligations under Directive 1999/70 and the [Charter], must a company such as the defendant, with the characteristics referred to [in the order for reference] be regarded as a State body for the purposes of the direct, vertically ascending application of European Union law and, in particular, of clause 4 of [the framework agreement] and the [Charter]?'

The requests made by Ms Carratù after the closure of the oral procedure

17 By application of 14 October 2013, received at the Court Registry on 6 November 2013, Ms Carratù, following the Opinion of the Advocate General of 26 September 2013, requested, on the basis of Article 83 of the Rules of Procedure of the Court of Justice, the reopening of the oral part of the procedure, raising the possibility that the Court is not sufficiently informed, the appearance of new facts, and the probability that the case will have to be decided on the basis of arguments which have not been debated between the parties. In the alternative, Ms Carratù invites the Court, on the basis of Article 101(1) of the Rules of Procedure, to request clarification from the referring court. Lastly, in the further alternative, Ms Carratù requests that the parties in Case C-89/13 *D'Aniello and Others*, pending before the Court, be allowed to submit observations in the present case.

18 It should be recalled, first, that the Court may, of its own motion, on a proposal from the Advocate General, or at the request of the parties, order the reopening of the oral procedure under Article 83 of its Rules of Procedure, if it considers that it lacks sufficient information or that the case must be decided on the basis of an argument which has not been debated between the parties (Case C-535/11 *Novartis Pharma* [2013] ECR, paragraph 30 and the case-law cited).

19 Secondly, under the second paragraph of Article 252 TFEU, it is the duty of the Advocate General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require the Advocate General's involvement. In carrying out that task, the Advocate General may, where appropriate, analyse a request for a preliminary ruling by placing it within a context which is broader than that strictly defined by the referring court or by the parties to the main proceedings. Since the

Court is not bound either by the Advocate General's Opinion or by the reasoning on which it is based, it is not absolutely necessary to reopen the oral procedure, under Article 83 of the Rules of Procedure, each time the Advocate General raises a point of law which was not the subject of debate between the parties (*Novartis Pharma*, paragraph 31 and the case-law cited).

20 In the present case, the request for a preliminary ruling does not have to be decided on the basis of arguments which have not been debated between the parties. Moreover, the request for clarification made by Ms Carratù is irrelevant, in so far as the referring court correctly set out the national legislative framework, which is not disputed in the observations submitted to the Court. Lastly, Cases C-361/12 and C-89/13 have not been joined and the Statute of the Court and its Rules of Procedure do not provide for the possibility, when one case is being considered, of hearing the parties to another case. Thus, the Court has sufficient information to give a ruling on that request.

21 Consequently, after hearing the views of the Advocate General, the Court rejects the requests put forward by Ms Carratù, set out in paragraph 17 above.

Admissibility of the request for a preliminary ruling

22 Poste Italiane submits that the questions asked by the referring court are inadmissible because, first, the referring court failed to identify the criteria on the basis of which the Court could base its assessment and, secondly, the provision of national law at issue in the main proceedings – Article 32(5), (6) and (7) of Law No 183/2010 relating to the rules on penalties applicable to the unlawful insertion of a fixed-term clause into an employment contract – is not covered by Directive 1999/70. That directive was transposed into Italian law by Legislative Decree No 368/2001, whereas the provision at issue, which came into force only on 24 November 2010, has different aims and purposes from the need to implement of that directive, namely the rules on penalties applicable to the unlawful insertion of a fixed-term clause into an employment contract, a matter which is not covered by that directive.

23 It should be borne in mind at the outset that, according to settled case-law, the Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of European Union law that is sought bears no relation to the 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 (Case C-458/06 *Gourmet Classic* [2008] ECR I-4207, paragraph 25 and the case-law cited).

24 In the present case, it does not appear to be open to dispute that the interpretation of European Union law sought by the referring court does actually respond to an objective need inherent in the outcome of a case pending before it. First, the employment contract, in so far as it is a fixed-term contract, comes within the material scope of the framework agreement and, secondly, the case pending before the referring court concerns the comparability of the legal situation of an employee engaged for a fixed term with that of employees engaged for an indefinite duration.

25 Moreover, it should be borne in mind, as the Advocate General has noted in point 33 of his Opinion, that the question whether Law No 183/2010 was adopted for the purposes of implementing Directive 1999/70 has no bearing on the admissibility of the request for a preliminary ruling.

26 Accordingly, the request for a preliminary ruling must be held to be admissible.

Consideration of the questions referred

The seventh question

27 By its seventh question, which it is appropriate to consider first, the referring court asks, in essence, whether clause 4(1) of the framework agreement must be interpreted as meaning that it may be relied on directly against a State body such as the defendant in the main proceedings.

28 It should be noted that the Court has already had occasion to state that clause 4(1) of the framework agreement appears, so far as its subject-matter is concerned, to be unconditional and sufficiently precise for individuals to be able to rely upon it before a national court (see Case C-268/06 *Impact* [2008] ECR I-2483, paragraph 68).

29 In addition, it should be borne in mind that it is settled case-law that among the entities against which provisions of a directive capable of having direct effect may be enforced is a body which, whatever its legal form, has been made responsible, pursuant to a measure adopted by a public authority, for providing, subject to the control of that public authority, a service in the public interest and, for that purpose, enjoys exceptional powers as compared with the rules applicable to relations between individuals (see Case C-614/11 *Kuso* [2013] ECR, paragraph 32 and the case-law cited).

30 In the present case, it is apparent from the order for reference and the observations submitted to the Court that, as the Advocate General has noted in point 106 et seq. of his Opinion, Poste Italiane is a body wholly owned by the Italian State through its sole shareholder, the Minister for Economy and Finances. Moreover, it is under the supervision of the State and the Corte dei Conti (Court of Auditors), a member of which sits on its Board of Directors.

31 Consequently, the answer to the seventh question is that clause 4(1) of the framework agreement must be interpreted as meaning that it may be relied on directly against a State body such as Poste Italiane.

The fourth question

32 By its fourth question, the referring court asks, in essence, whether clause 4(1) of the framework agreement must be interpreted as meaning that the concept of 'employment conditions' covers the compensation that the employer must pay to an employee on account of the unlawful insertion of a fixed-term clause into his employment contract.

33 It should be borne in mind that, in view of the objectives pursued by the framework agreement, clause 4 must be interpreted as articulating a principle of European Union social law which cannot be interpreted restrictively (Joined Cases C-444/09 and C-456/09 *Gavieiro Gavieiro and Iglesias Torres* [2010] ECR I-14031, paragraph 49 and the case-law cited).

34 While, as the Advocate General has noted in point 37 of his Opinion, the provisions of the framework agreement do not expressly define the term 'employment conditions', the Court has previously had occasion to interpret the concept of 'employment conditions' within the meaning of clause 4(1) of the framework agreement on part-time work annexed to Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (OJ 1998 L 14, p. 9), which is worded almost identically to clause 4(1) of the framework agreement.

35 Accordingly, the Court held that the decisive criterion for determining whether a measure falls within the scope of 'employment conditions' within the meaning of clause 4(1) of the framework agreement on part-time work is, precisely, the criterion of employment, that is to say the employment relationship between a worker and his employer (see, to that effect, Joined Cases C-395/08 and C-396/08 *Bruno and Others* [2010] ECR I-5119, paragraph 46).

36 With regard to the framework agreement, that reasoning can be applied to compensation paid on account of the unlawful insertion of a fixed-term clause into an employment contract.

37 It is not disputed that such compensation is paid to a worker on account of the employment relationship between that worker and his employer. As that compensation is paid on account of employment, it falls within the scope of 'employment conditions'.

38 Therefore, the answer to the fourth question is that clause 4(1) of the framework agreement must be interpreted as meaning that the concept of 'employment conditions' covers the compensation that the employer must pay to an employee on account of the unlawful insertion of a fixed-term clause into his employment contract.

The fifth question

39 By its fifth question, the referring court asks, in essence, whether clause 4(1) of the framework agreement must be interpreted as requiring the compensation paid in respect of the unlawful insertion of a fixed-term clause into an employment relationship to be treated in the same way as that paid in respect of the unlawful termination of a permanent employment relationship.

40 It should be recalled at the outset that, according to clause 1(a) of the framework agreement, one of its objectives 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 it '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 in the preamble to Directive 1999/70 states with that in view 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 (*Gavieiro Gavieiro and Iglesias Torres*, paragraph 47).

41 The framework agreement, in particular clause 4, aims to apply that principle 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 (Case C-307/05 *Del Cerro Alonso* [2007] ECR I-7109, paragraph 37).

42 However, as is clear from the very wording of clause 4(1) of the framework agreement, the principle of equal treatment does not apply to workers with a fixed-term contract and non-comparable permanent workers.

43 Therefore, in order to assess whether the compensation paid in respect of the unlawful insertion of a fixed-term clause into an employment relationship must be determined in the same way as that paid in respect of the unlawful termination of a permanent employment relationship, it must be examined at the outset whether the persons concerned can be regarded as being in a comparable situation (see, by analogy, Joined Cases C-302/11 to C-305/11 *Valenza and Others* [2012] ECR, paragraph 42 and the case-law cited).

44 It must be stated that the situation in which one of those types of compensation is paid is significantly different from that in which the other is paid. The first type of compensation relates to workers whose employment contract was concluded unlawfully, whereas the second relates to employees who have been dismissed.

45 It follows that equal treatment between workers with a fixed-term contract and comparable permanent workers, as laid down by clause 4(1) of the framework agreement, does not apply to a dispute such as that at issue in the main proceedings.

46 It must be pointed out, however, that clause 8(1) of the framework agreement provides that 'Member States and/or the social partners can maintain or introduce more favourable provisions for workers than set out in this agreement'.

47 In particular, even if the formulation of clause 4(1) of the framework agreement does not lead to the conclusion that the compensation for the unlawful insertion of a fixed-term clause into an employment contract and that applicable to the termination of an employment contract of indefinite duration relate to workers who can be regarded as being in a comparable situation, it is apparent from a reading of clause 4(1) in conjunction with clause 8(1) that they enable Member States that so wish to introduce more favourable provisions for fixed-term workers and, therefore, to treat, in a situation such as that at issue in the main proceedings, the economic consequences of the unlawful insertion of a fixed-term clause into an employment contract in the same way as those of the unlawful termination of an employment contract of indefinite duration.

48 Consequently, the answer to the fifth question is that, while the framework agreement does not preclude Member States from granting fixed-term workers more favourable treatment than that provided for by the framework agreement, clause 4(1) of the framework agreement must be interpreted as not requiring the compensation paid in respect of the unlawful insertion of a fixed-term clause into an employment relationship to be treated in the same way as that paid in respect of the unlawful termination of a permanent employment relationship.

The first, second, third and sixth questions

49 In view of the answers given to the fourth and fifth questions, it is unnecessary to answer the first, second, third, and sixth questions.

Costs

50 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 (Third Chamber) hereby rules:

1. **Clause 4(1) of the Framework agreement on fixed-term work, 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 meaning that it may be relied on directly against a State body such as Poste Italiane SpA.**

2. **Clause 4(1) of the framework agreement on fixed-term work must be interpreted as meaning that the concept of 'employment conditions' covers the compensation that the employer must pay to an employee on account of the unlawful insertion of a fixed-term clause into his employment contract.**

3. **While that framework agreement does not preclude Member States from granting fixed-term workers more favourable treatment than that provided for by the framework agreement, clause 4(1) of the framework agreement must be interpreted as not requiring the compensation paid in respect of the unlawful insertion of a fixed-term clause into an employment relationship to be treated in the same way as that paid in respect of the unlawful termination of a permanent employment relationship.**

[Signatures]