Reports of Cases

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 6 December 2018 [1]

Case C-494/17

Ministero dell'Istruzione, dell'Università e della Ricerca — MIUR
v
Fabio Rossato,
Conservatorio di Musica F.A. Bonporti

(Request for a preliminary ruling from the Corte d'appello di Trento (Court of Appeal, Trento, Italy))

(Reference for a preliminary ruling — Social policy — Fixed-term work — Contracts concluded with public sector employers — Measures to punish the misuse of fixed-term contracts — No right to compensation for damage — Principle of effectiveness)

I. Introduction

1. As in the case giving rise to the judgment in *Mascolo and Others*, [2] the Court is once again asked to rule on a dispute concerning the protection of workers employed for a fixed-term in the Italian State school sector, in particular, in music academies. The issue in this case, however, does not concern so much the content of Law No 107/2015, [3] introduced by the Italian legislature to comply with the Court's ruling in that case, as the interpretation of that law by the Corte costituzionale (Constitutional Court, Italy) and the Corte suprema di cassazione (Supreme Court of Cassation, Italy). In fact, it is apparent from that interpretation that the scope of Law No 107/2015 was extended to teaching staff whose fixed-term employment relationship was converted into an employment relationship of indefinite duration on the basis of 'the earlier selection and competition arrangements', as applied before the entry into force of that law.

2. The practical effect of that interpretation was to 'wipe out', that is to say, exclude any compensation for damage caused by the misuse of successive fixed-term employment contracts in breach of the Framework Agreement on fixed-term work [4] during the 14-year period preceding the entry into force of Law No 107/2015, without extending to those workers the statutory measures provided for by that law to prevent and punish abuse resulting from the use of successive fixed-term employment contracts or relationships.

3. That is the issue raised by the question referred for a preliminary ruling in this case.

1 Original language: French.

2 Judgment of 26 November 2014 (C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401).

3 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').

4 Framework Agreement on fixed-term work, concluded on 18 March 1999 ('the Framework Agreement'), 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).

II. Legal context

A. EU law

4. Under Clause 5 of the Framework Agreement, entitled 'Measures to prevent abuse':

'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 contracts or relationships;

(c) the number of renewals of such contracts or relationships.

2. The Member States after consultation with the social partners and/or the social partners shall, where appropriate, determine under what conditions fixed-term contracts or relationships:

(a) shall be regarded as 'successive';

(b) shall be deemed to be contracts or relationships of indefinite duration.'

B. Italian law

5. Under Article 1(95) of Law No 107/2015:

'For the 2015/2016 academic year, the [Ministero dell'Istruzione, dell'Università e della Ricerca (Ministry for Education, Universities and Research, ('the Ministry)] 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 (Legislative Decree No 297/1994)] [5] of 16 April 1994, at the conclusion of which the ranking lists setting out the results of competitions conducted based on qualifications and tests published before 2012 shall be withdrawn. For the academic year 2015/2016, the [Ministry] shall also be authorised to fill the other posts listed in Table 1 in the annex hereto, to be allocated between primary schools and secondary schools and among the various types of posts referred to in that table, and the various regions, on a proportionate basis, for each level, to pupils in schools administered by the State, taking into account the existence of mountainous areas or small islands, inland areas which are sparsely populated or have high levels of immigration and areas characterised by high school dropout rates. The posts listed in Table 1 shall be filled for the purposes referred to in paragraphs 7 and 85. The posts referred to in Table 1 shall be allocated among the various categories of competitions by decree of relevant official of the Ufficio scolastico regionale (Regional Office for Education, Italy), on the basis of the needs expressed by the educational establishments themselves, within the limits of the ranking lists referred to in paragraph 96. As from the academic year

5 Decreto legislativo n. 297 — Testo unico delle disposizioni legislative in materia di istruzione, relative alle scuole di ogni ordine et grado (Legislative Decree No 297 laying down the consolidated text of the provisions on education and concerning all types and levels of schools), of 16 April 1994 (Ordinary Supplement to GURI No 115 of 19 May 1994) ('Legislative Decree No 297/1994').

2016/2017, the posts listed in Table 1 shall form part of the staff of the individual establishment concerned and shall serve to bolster the number of those staff. As from the academic year 2015/2016, the posts intended to bolster the number of staff cannot be occupied by staff engaged on temporary replacement contracts or on an occasional basis. During the academic year 2015/2016 only, those posts cannot be allocated to the supply staff referred to in Article 40(9) of Law No 449 of 27 December 1997 [6] and shall not be available for the purposes of mobility, utilisation or temporary assignment.'

6. According to Article 1(131) of Law No 107/2015:

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

7. Article 1(132) of Law No 107/2015 provides:

'The [Ministry'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 successive fixed-term 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 …'

III. Facts, the question referred and the procedure before the Court

8. Mr Fabio Rossato was recruited under successive fixed-term employment contracts as an accordion teacher with the Conservatorio Statale di Musica di Trento F. A. Bonporti (F. A. Bonporti State Music Academy, Trento, Italy) from 18 November 2003. In accordance with those contracts, he worked continuously for his employer for a period of eleven years and two months under seventeen contracts concluded with the Ministry. [7]

9. Considering that the clauses fixing a term in the various, successive, fixed-term contracts were unlawful, Mr Rossato brought proceedings on 20 December 2011 before the Tribunale di Rovereto (District Court, Rovereto, Italy) seeking, principally, a declaration that such clauses were unlawful and the conversion of his employment relationship into an employment relationship of indefinite duration or, in the alternative, compensation for damage resulting from the misuse of fixed-term contracts in breach of the Framework Agreement, as well as the recognition of his length of service in the calculation of his remuneration, in accordance with Clause 4 of the Framework Agreement.

10. The Tribunale di Rovereto (District Court, Rovereto) upheld only the claim for recognition of length of service for the purposes of remuneration. It rejected the claims alleging misuse of fixed-term contracts, in accordance with the principles established by the Corte suprema di cassazione (Supreme Court of Cassation) in judgment No 10127/12. [8]

6 Legge n. 449 — Misure per la stabilizzazione della finanza pubblica (Law No 449 introducing measures to stabilise public finances) of 27 December 1997 (GURI No 302 of 30 December 1997, Ordinary Supplement No 255).

7 Those contracts were concluded on the basis of Article 2(6) of Legge No 508 — Riforma delle Accademie di belle arti, dell'Accademia nazionale di danza, dell'Accademia nazionale di arte drammatica, degli Istituti superiori per le industrie artistiche, dei Conservatori di musica e degli Istituti musicali pareggiati (Law No 508 reforming the academies of fine arts, the national dance academy, the national academy of dramatic arts, institutes of higher education for arts subjects, music academies and related music institutes), of 21 December 1999 (GURI No 2, of 4 January 2000) ('Law No 508/1999').

8 Judgment concerning the special 'body' of rules governing supply teaching in the school sector, laid down by Article 399 of Legislative Decree No 297/1994 and Article 4 of Legge No 124, recante disposizioni urgenti in materia di personale scolastico (Law No 124 laying down urgent measures concerning school staff), of 3 May 1999 (GURI No 107, of 10 May 1999) ('Law No 124/1999'). Concerning that judgment and those articles, see 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, paragraphs 18, 20 to 22 and 27 to 32).

11. On 5 March 2013, the Ministry lodged an appeal with the Corte d'appello di Trento (Court of Appeal, Trento, Italy) against that part of the judgment recognising the period of service completed under fixed-term contracts. On 31 May 2013, Mr Rossato brought a cross-appeal before the referring court against that part of the judgment which found that successive fixed-term contracts did not constitute abuse and rejected his claim that his employment relationship should be converted into one of indefinite duration, as well as his claim for compensation.

12. The referring court points out that it deferred the proceedings on a number of occasions pending the rulings of the Corte costituzionale (Constitutional Court) and of the Corte suprema di cassazione (Supreme Court of Cassation), following the judgment of the Court of 26 November 2014 in *Mascolo and Others*[9]. The referring court states that, following that judgment, Law No 107/2015, the purpose of which is stated to be 'to bring national law in line with European law in order to prevent the misuse of successive fixed-term contracts for teaching and non-teaching staff in State schools…following [the judgment in *Mascolo and Others*]', was enacted.

13. On 2 September 2015, in the course of the proceedings, Mr Rossato's employment relationship was converted into one of indefinite duration, first, by the conclusion of a contract of indefinite duration[10] and, subsequently, through the grant of tenure. This conversion occurred as a result of his progression up the permanent ranking list on the basis of Ministerial Memoranda No 36913/15 and No 8893/15 of the Ministero delle Finanze (Ministry of Finance) and the Ministero dell'Istruzione, dell'Università e della Ricerca (Ministry for Education, Universities and Research), respectively, which authorised recruitment on contracts of indefinite duration under Article 19 of decreto legge n. 104 (Decree Law No 104/2013),[11] Article 2bis of decreto legge n. 97/2004,[12] Article 2 of Law No 508/1999 and Article 270 of Legislative Decree No 297/1994.

14. According to the referring court, the Corte suprema di cassazione (Supreme Court of Cassation),[13] in applying the principles established by the Corte constituzionale (Constitutional Court),[14] took the view that, for teaching staff the conversion of the employment relationship into one of indefinite duration was a compensatory measure which was 'proportionate, efficient, sufficiently effective' and appropriate for the purpose of penalising the misuse of fixed-term contracts as well as 'nullifying the consequences of the breach of EU law', so that the worker in question could not claim any loss in respect of such misuse.

15. The referring court noted that the 'transformation' of the employment relationship into a contract of indefinite duration to which the judgments of these superior courts refer operates only in respect of the future and must be distinguished from the 'conversion' of an employment relationship into one of indefinite duration, which is the penalty imposed — in addition to the payment of compensation — in

9 C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401.

10 With effect from 1 January 2014.

11 Decreto legge n. 104 — Misure urgenti in materia di istruzione, università e ricerca (Decree Law No 104/2013 adopting urgent measures concerning education, universities and research), of 12 December 2013 (GURI No 214 of 12 September 2013), converted into law, with amendments, by Law No 128 of 8 November 2013 (GURI No 264 of 11 November 2013).

12 Decreto legge n. 97 — Disposizioni urgenti per assicurare l'ordinato avvio dell'anno scolastico 2004-2005, nonché in materia di esami di Stato e di Università (Decree Law No 97 laying down urgent measures to ensure an orderly beginning to the 2004-2005 academic year and measures concerning state and university exams) of 7 April 2004 (GURI No 88 of 15 April 2004), converted into law, with amendments, by Law No 143 of 4 June 2004 (GURI No 130 of 5 June 2004).

13 Judgments of 30 December 2016 Nos 27566/16, 27565/16, 27562/16, 27561/16 and 27560/16.

14 Judgment No 187/2016 of 17 May 2016.

the private sector and has retroactive effect.[15] The referring court considers that Mr Rossato is not, under national law, as amended following the judgment of the Corte costituzionale (Constitutional Court) and interpreted by the Corte di cassazione (Supreme Court of Cassation), entitled to conversion of his fixed-term contracts into one of indefinite duration, which does not apply to the public sector, or to compensation for damage as his employment relationship was converted in a contract of indefinite duration by virtue of his position on the permanent ranking list on the basis of 'earlier selection and competition arrangements', as applied before the entry into force of Law No 107/2015.

16. Those circumstances lead the referring court to question the legality of such a consequence of the interpretation of the Corte costituzionale (Constitutional Court) and the Corte suprema di cassazione (Supreme Court of Cassation), in light of the Framework Agreement and the principles established by the Court in its judgment in *Mascolo and Others*.[16]

17. It was against this background that the Corte d'appello di Trento (Court of Appeal, Trento), by order of 13 July 2017, received at the Court Registry on 14 August 2017, decided to stay proceedings and refer the following question to the Court for a preliminary ruling:

'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 provides 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 the 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?'

18. Written observations were submitted by the applicant in the main proceedings, the Italian Government and the European Commission. Those parties were represented at the hearing on 27 September 2018.

IV. Analysis

A. Admissibility

19. In its written observations, the Italian Government contends that the question referred is inadmissible. First, it argues that the question is hypothetical. It alleges that the referring court started from the premiss that Article 1(95), (131) and (132) of Law No 107/2015 was not applicable to the proceedings, which it claims are governed by Articles 270 and 485 of Legislative Decree No 297/1994. In this regard, the Italian Government claims that the employment relationship was converted into a contract of indefinite duration as a result of the conversion procedure provided for in Article 270 of Legislative Decree No 297/1994, not pursuant to Article 95(1) of Law No 107/2015. Consequently, the

15 See Article 5(4) bis Decreto legislativo n. 368 — Attuazione della direttiva 1999/70/CE relativa all'accordo quadro sul lavoro a tempo determinato concluso dall'UNICE, dal CEEP e dal CES (Legislative Decree No 368 transposing Directive 1999/70/EC concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP) of 6 September 2001 (GURI No 235 of 9 October 2001). I note that this provision was in issue in the cases giving rise to the judgment of 7 March 2018, *Santoro* (C-494/16, EU:C:2018:166, paragraph 7). It is clear from the case file in that case that this provision was repealed and replaced by a provision that was essentially the same, namely, Article 19 of Decreto legislativo n. 81– Disciplina organica dei contratti di lavoro e revisione della normativa in tema di mansioni, a norma dell'articolo 1, comma 7, della legge 10 dicembre 2014, n. 183 (Legislative Decree No 81 on the systematic regulation of contracts of employment and the amendment of the legislation on professional obligations, in accordance with Article 1(7) of Law No 183 of 10 December 2014) of 15 June 2015, (GURI No 144 of 24 June 2015, Ordinary Supplement). Pursuant to the latter provision, once the maximum period of 36 months has been exceeded, whether in respect of one single contract or successive contracts, for the performance of tasks at the same level and of the same status, 'the contract shall be converted into a contract of indefinite duration from the date on which that period is exceeded'.

16 Judgment of 26 November 2014, (C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401).

referring court is asking the Court to provide an advisory opinion on the compatibility with Clause 5(1) of the Framework Agreement with the retroactive application of Law No 107/2015. Second, the Italian Government contends that the referring court has not provided start or end dates for the fixed-term contracts concluded by the parties to the main proceedings, which means that it is not possible to determine whether there was abuse as a result of having recourse to that type of contract.

20. In my view, those arguments must be rejected.

21. First, contrary to the Italian Government's claim, it is clear from the order for reference that Law No 107/2015, as interpreted by the Corte costituzionale (Constitutional Court) and the Corte suprema di cassazione (Supreme Court of Cassation), also applies to all teaching staff whose employment relationship was converted into one of indefinite duration on the basis of 'the earlier selection and competition arrangements'. Thus, the issue raised by this case is not hypothetical.

22. Second, the argument that it is not possible to determine whether the fixed-term contracts concluded by the parties may be classified as 'misuse' because, inter alia, the end dates for those contracts have not been provided, is irrelevant. The referring court itself considered, as it was entitled to do, that Mr Rossato taught 'continuously' from 18 November 2003 until 2 September 2015, the date of conversion of his employment relationship.

23. In those circumstances, the request for a preliminary ruling is, in my view, admissible.

B. Substance

1. Preliminary remarks

24. As in the cases which gave rise to the judgment in *Mascolo and Others*,[17] in which I also provided an Opinion, the legal context in this case is complex and, once again, raises the question of interpretation of the Framework Agreement and its application to the national system for the replacement of teaching staff in the State school sector, in particular, music academies. In order to gain a better understanding of the issues underlying this request for a preliminary ruling, it seems appropriate, at this point, to begin my analysis by setting out the essential components of that national system, as described in the order for reference. I will then proceed to examine the questions referred in the light of the case-law, in particular the judgment in *Mascolo and Others*.[18]

25. First, the referring court explains, in essence, that the provisions of national law which applied at the time proceedings were lodged at first instance were Article 2(6) of Law 508/1999 and Article 4(1) of Law No 124/1999[19], in so far as Mr Rossato concluded the fixed-term contracts at issue with his employer after having been appointed to a senior teaching post at the Trento Music Academy by the

17 Judgment of 26 November 2015 (C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401)

18 Judgment of 26 November 2014 (C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401).

19 According to the referring court, Article 2(6) of Law No 508/1999 is similar to Article 4 of Law No 124/1999, which was at issue in the cases giving rise to 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 which the Court held to be incompatible with Clause 5(1) of the Framework Agreement. As regards the wording of Article 4(1) of Law No 124/1999, see the judgment of 26 November 2014, *Mascolo and Others* of (C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraph 18).

Ministry on the basis of the permanent ranking lists.[20] Indeed, according to the particulars provided by the referring court, Law No 508/1999 provided for the conclusion of fixed-term contracts for music academies and institutes teaching arts subjects to cover teaching posts and senior teaching posts which were vacant and available, pending the completion of competitive selection procedures for the recruitment of tenured teaching staff. That court added that those provisions did not provide for mandatory time limits or penalties in the event of breach of the purely indicative terms set or for penalties for the consequent renewal of fixed-term contracts to meet and long-term requirements of the public authorities.

26. In the present case, as noted by the referring court, Mr Rossato's fixed-term employment relationship was converted as part of the procedure for the conversion of employment relationships into contracts of indefinite duration provided for by Article 270 of Legislative Decree No 297/1994. The referring court notes that that provision provides that teaching staff are to be recruited for half the posts available each school year by way of competition on the basis of tests and qualifications, and, for the other half, by recourse to the permanent ranking lists.[21]

27. Second, it is apparent from the request for a preliminary ruling that, following the judgment in *Mascolo and Others*,[22] that system was amended by Law No 107/2015. That law provided that posts available in the list of staff were to be filled and that, as regards those posts, in the *future* there could no longer be misuse of fixed-term contracts. In that regard, the referring court states that the measures provided for by the legislation at issue consist, on the one hand, in limiting the duration of fixed-term employment contracts for filling vacant and available teaching posts to a total of 36 months, including where such contracts are not consecutive (Article 1(131)) and, on the other hand, in providing for the establishment of a fund for the payment of compensation for damage resulting from the use of successive fixed-term contracts with a total duration exceeding the 36-month limit, including where such contracts are not consecutive, with a fixed amount being set for each of the years 2015 and 2016 (Article 1(132)).[23] The referring court also notes that the same law confirmed, in Article 1(95), that competitions were to be held every three years and also provided, in respect of the academic year 2015/2016, for a special recruitment plan for permanent teaching staff in order to cover vacant posts from the '*de jure*' table of staff, by means of a simplified competition, following the granting of tenure to teachers in a favourable position in the ranking lists.[24]

20 In this regard, I note that, in the cases which gave rise to the judgment in *Mascolo and Others*, in which, as I have already mentioned in footnote 19, the questions referred to the Court concerned, inter alia, Article 4(1) of Law No 124/1999, the Court pointed out that it was apparent from the orders for reference and the explanations provided at the hearing that 'under the national legislation at issue in the main proceedings, as laid down by Law No 124/1999, staff are recruited in schools administered by the State either permanently by means of the grant of tenure or for a fixed period by way of temporary replacement. Tenure is granted under the "dual channel" system, that is to say, for half of the vacant posts each school year, by way of competition on the basis of tests and qualifications and, for the other half, by recourse to the permanent ranking lists which include teachers who have passed such a competition, without, however, obtaining a tenured post, and those who have attended courses leading to certification run by specialist teacher-training colleges. Appointments by way of temporary replacement are made by means of recourse to the same lists; a series of such replacements on the part of the same teacher results in his moving up the list and may lead to the grant of tenure.' (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 89).

21 According to the referring court, Article 270 of Legislative Decree No 297/1994 is similar to Article 399(1) of that Legislative Decree, which was at issue in the cases giving rise to 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, paragraphs 21 and 22). See also my Opinion in those cases (EU:C:2014:2103, paragraph 49). As regards the ranking lists, see footnote 20.

22 Judgment of 26 November 2014 (C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401).

23 See point 7 of this Opinion.

24 I note that it is apparent from the hearing that, at the date of the hearing, no competition had been organised.

28. Third, it is apparent from the order for reference and the particulars provided at the hearing that Mr Rossato's employment relationship was not converted into one of indefinite duration under the special recruitment plan provided for by Law No 107/2015. Nevertheless, in this case, the effect of the interpretation of that law by the Corte costituzionale (Constitutional Court) and the Corte suprema di cassazione (Supreme Court of Cassation) was to prevent Mr Rossato from seeking compensation for the damage caused as a result of the misuse of successive fixed-term contracts before the entry into force of Law No 107/2015.[25]

29. That is the context of the main proceedings.

2. Consideration of the question referred

30. The question referred, as formulated by the referring court, concerns the compatibility of the provisions of Law No 107/2015 adopted following the judgment in *Mascolo and Others*,[26] with Clause 5(1) of the Framework Agreement. The interpretation of that law by the Corte costituzionale (Constitutional Court) and the Corte suprema di cassazione (Supreme Court of Cassation) prevents a teacher, such as the applicant in the main proceedings — employed by the Ministry under 17 successive fixed-term contracts over a continuous period of eleven years and two months, and then granted tenure — from obtaining 'conversion' of his entire employment relationship into a contract of indefinite duration with retroactive effect and compensation for the damage resulting from the misuse of fixed-term contracts.

31. I would point out, at the outset, 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 Court of Justice 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 this in mind, the Court may have to reformulate the questions submitted to it.[27]

32. In this case, I am of the view that, by its question, the Corte d'appello di Trento (Court of Appeal, Trento) is, in essence, asking whether Clause 5(1) of the Framework Agreement must be interpreted as precluding a judicial interpretation of provisions of national law governing measures intended to prevent the misuse of successive fixed-term contracts, such as those at issue in the main proceedings, according to which any compensation for damage resulting from the misuse of successive fixed-term contracts during the period prior to the entry into force of those provisions is prohibited.

(a) Scope of the Framework Agreement and interpretation of Clause 5(1)

33. It should be recalled that it is clear from Clause 1 of the Framework Agreement that its purpose is to implement one of the objectives of that agreement, namely to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships. That framework lays down as a minimum a number of protective provisions designed to prevent the status of employees from being insecure[28] and thus from being undermined as a result of the use of

25 According to the referring court, those higher courts based that conclusion on, first, the discretion that Member States enjoy in determining the measures to impose penalties for the misuse of fixed-term contracts and, second, the decision by the European Commission to discontinue the infringements proceedings opened against the Italian Republic for infringement of Directive 1999/70, on account of the new law adopted by that republic.

26 Judgment of 26 November 2014 (C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401).

27 Judgment of 22 June 2017, *Federatie Nederlandse Vakvereniging and Others* (C-126/16, EU:C:2017:489, paragraph 36).

28 Judgments of 4 July 2006, *Adeneler and Others* (C-212/04, EU:C:2006:443, paragraph 63); of 26 January 2012, *Kücük* (C-586/10, EU:C:2012:39, paragraph 25), and 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 72).

fixed-term contracts over an extended period of time.[29] Indeed, temporary employees are in danger, during a substantial part of their working lives, of being excluded from the benefit of stable employment which, however, as the Framework Agreement makes clear,[30] constitutes a major element in the protection of workers.[31]

34. To achieve this objective, that framework comprises two types of measures.[32] First, Clause 5(1) of the Framework Agreement imposes an obligation on Member States to introduce one or more measures for the prevention of such abuse, listed in Clause 5(1)(a) to (c), where there are no equivalent legal measures under national law.[33] In that way, 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 they do not compromise the objective or the practical effect of the Framework Agreement.[34] Second, Clause 5 of the Framework Agreement, in particular paragraph (2)(b), requires Member States and/or the social partners to adopt measures to penalise abuse.[35]

35. In the present case, it is common ground, as noted by the referring court, that such misuse of successive fixed-term contracts occurred. Indeed, Mr Rossato taught 'continuously' during the period from 18 November 2003 to 2 September 2015, the date on which his employment relationship was converted as a result of the conclusion of a contract of indefinite duration, with retroactive effect, from January 2014. Consequently, a worker such as the applicant in the main proceedings, who was recruited as a supply teacher in the music academies administered by the State under successive fixed-term contracts for a continuous period of eleven years and two months, for no objective reason, falls within the scope of the Framework Agreement, under Clauses 2 and 5 thereof.[36]

36. It must be made clear, at this point, that the referring court raises two problematic issues: first, the fact that only part of Mr Rossato's period of service was taken into account at the time he was granted tenure, pursuant to the legislation preceding Law No 107/2015 and, second, the consequences of the interpretation of that law by the Corte costituzionale (Constitutional Court) and the Corte suprema di cassazione (Supreme Court of Cassation), namely, the prohibition of any compensation for damage resulting from the misuse of successive fixed-term contracts for teachers whose employment relationship was converted into one of indefinite duration pursuant to the legislation preceding that law.

29 See my Opinion in *Mascolo and Others* (C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2103, point 60).

30 See the second paragraph of the preamble to the Framework Agreement and paragraphs 6 to 8 of the general considerations set out in that Framework Agreement.

31 See judgments of 22 November 2005, *Mangold* (C-144/04, EU:C:2005:709, paragraph 64); of 4 July 2006, *Adeneler and Others* (C-212/04, EU:C:2006:443, point 63); of 26 January 2012, *Kücük* (C-586/10, EU:C:2012:39, paragraph 25); of 3 July 2014, *Fiamingo and Others* (C-362/13, C-363/13 and C-407/13, EU:C:2014:2044, paragraph 54), and of 25 October 2018, *Sciotto* (C-331/17, EU:C:2018:859, paragraph 31).

32 As Advocate-General Poiares Maduro previously pointed out in his Opinion in *Marrosu and Sardino* (C-53/04, EU:C:2005:569, points 29 and 30).

33 Indeed, the Member States, after consultation with the social partners, and/or the social partners are obliged, pursuant to Clause 5(1) of the Framework Agreement to adopt, in a manner that is *effective and binding*, measures to prevent the misuse of fixed-term contracts. Judgments of 15 April 2008, *Impact* (C-268/06, EU:C:2008:223, paragraph 69); of 23 April 2009, *Angelidaki and Others* (C-378/07 to C-380/07, EU:C:2009:250, paragraph 74), and 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 74).

34 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 76).

35 See, in that regard, judgment of 7 September 2006, *Marrosu et Sardino* (C-53/04, EU:C:2006:517, and the case-law cited). See also the Opinion of Advocate General Poiares Maduro in the case of *Marrosu and Sardino* (C-53/04, EU:C:2005:569, points 29 and 30).

36 As regards the scope *ratione personae* of the Framework Agreement, the Court has previously held that it does not exclude any particular sector and therefore applies to staff recruited in the teaching sector. Judgments of 3 July 2014, *Fiamingo and Others* (C-362/13, C-363/13 and C-407/13, EU:C:2014:2044, paragraph 38), and 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 69).

(b) The partial account taken of length of service

37. The referring court notes that part of Mr Rossato's period of service was taken into account when he was granted tenure under the legislation preceding Law No 107/2015, namely, from January 2014.

38. It is apparent from the observations of the Italian Government that Article 485 of Legislative Decree No 297/1994, applicable when Mr Rossato was granted tenure, established a special procedure for teachers in the school system enabling them to be granted tenure with partial reconstruction of their career. According to the Italian Government, that reconstruction was conducted using weightings and adjustments which took account of the teacher's previous career, distinguishing the position of such a teacher from that of a teacher who had successfully completed a competition on the same date without first having worked on a fixed-term basis for the education authority. The Italian Government claims that those adjustments, under which those periods are only partially taken into account, constituted a lawful application of the principle of pro rata temporis referred to in Clause 4(2) of the framework agreement.

39. Subject to verification of those claims by the referring court, it seems to me that EU law does not require, in the case of misuse of fixed-term contracts, conversion of the entire fixed-term employment relationship into one of indefinite duration with retroactive effect. I note, in this regard, that the Court has previously ruled that, in view of the discretion enjoyed by Member States regarding the organisation of their own public authorities, they can, in principle, without acting contrary to Directive 1999/70 or the Framework Agreement, lay down conditions for becoming career civil servants and conditions of employment for those civil servants, in particular where those civil servants were previously employed by those authorities under fixed-term employment contracts.[37] The Court has also conceded that some differences of treatment between career civil servants recruited following an open competition and those recruited after having acquired professional experience on the basis of fixed-term contracts may, in principle, be justified by differences in the qualifications required and the nature of the duties undertaken.[38]

40. In particular, it should be pointed out that Article 485 of Legislative Decree No 297/1994[39] was at issue in the case giving rise to the recent judgment in *Motter*.[40] In that case, the referring court questioned whether Italian law, by providing, in the aforementioned provision, a gradually decreasing formula for calculating years of service completed under fixed-term contracts in an effort to avoid reverse discrimination against civil servants who have passed a competition was compatible with Clause 4 of the Framework Agreement. The Court ruled that Clause 4 of the Framework Agreement must be interpreted as not precluding, in principle, a provision which, for the purposes of classifying a worker in a salary grade at the time of his recruitment on the basis of qualifications as a career civil servant, takes full account only of the first four years of service completed under fixed-term contracts, only two thirds of subsequent periods of service being taken into consideration.[41]

37 Judgments of 8 September 2011, *Rosado Santana* (C-177/10, EU:C:2011:557, paragraph 76); of 18 October 2012, *Valenza and Others* (C-302/11 to C-305/11, EU:C:2012:646, paragraph 57), and of 20 September 2018, *Motter* (C-466/17, EU:C:2018:758, paragraph 43).

38 Judgments of 8 September 2011, *Rosado Santana* (C-177/10, EU:C:2011:557, paragraph 78); of 18 October 2012, *Valenza and Others* (C-302/11 to C-305/11, EU:C:2012:646, paragraph 60), and of 20 September 2018, *Motter* (C-466/17, EU:C:2018:758, paragraph 46).

39 Article 485 of Legislative Decree No 297/1994 provides: 'The periods of service completed by teaching staff at State and equivalent secondary schools and arts institutes, including those located abroad, shall be recognised as periods of permanent employment for legal and salary purposes, in full for the first four years and at a rate of two thirds for any period thereafter, and at a rate of the remaining one-third solely for salary purposes. The financial rights stemming from such recognition shall be preserved and taken into account in all pay grades subsequent to the grade assigned at the time of that recognition.'

40 Judgment of 20 September 2018 (C-466/17, EU:C:2018:758).

41 Judgment of 20 September 2018, *Motter* (C-466/17, EU:C:2018:758, paragraph 54).

41. In the light of the foregoing, the question referred should be understood as addressing solely the fact referred to by the referring court that absolutely no provision is made for compensation for damage resulting from the misuse of successive fixed-term contracts for teachers who were granted tenure under the legislation which preceded Law No 107/2015 and who, as a result, were deprived of their right to compensation as a form of penalty within the meaning of the Framework Agreement and the case-law of the Court.

(c) The consequence of the judicial interpretation of Law No 107/2015

42. The referring court, having clearly established that there was abuse, seeks to ascertain whether the consequence of the judicial interpretation of Law No 107/2015, namely the prohibition of any compensation for damage resulting from the misuse of successive fixed-term contracts during the period prior to the entry into force of that Law, constitutes an appropriate measure for the purpose of penalising such misuse.

43. It is settled case-law that, where, as in the present case, 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 which 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.[42] Moreover, as the Court has repeatedly held, where abuse of successive fixed-term employment contracts or relationships has taken place, a measure offering effective and equivalent guarantees for the protection of workers must be capable of being applied in order to duly punish that abuse and nullify the consequences of the breach of EU law.[43]

44. It is clear from that case-law that the Member States are obliged to achieve the result imposed by Directive 1999/70 and the Framework Agreement and thus, its effectiveness (*effet utile*). In any event, the principle of effectiveness and — if an appropriate comparison can be found in domestic law — the principle of equivalence must be guaranteed.[44]

45. In view of the interpretation given by the Corte costituzionale (Constitutional Court) and the Corte suprema di cassazione (Supreme Court of Cassation) of the legislation at issue in the main proceedings, the referring court questions whether that interpretation respects the principle of effectiveness.

46. Admittedly, as the Court has indicated on a number of occasions, the Framework Agreement does not lay down a general obligation on the Member States to provide for the conversion of fixed-term employment contracts into contracts of indefinite duration. Indeed, Clause 5(2) of the Framework Agreement leaves it, in principle, to the Member States to determine the conditions under which fixed-term employment contracts or relationships are to be regarded as contracts or relationships of indefinite duration. It follows that the Framework Agreement does not specify the conditions under which contracts of indefinite duration may be used.[45]

42 Judgments of 4 July 2006, *Adeneler and Others* (C-212/04, EU:C:2006:443, paragraph 94); of 23 April 2009, *Angelidaki and Others* (C-378/07 to C-380/07, EU:C:2009:250, paragraph 158); of 3 July 2014, *Fiamingo and Others* (C-362/13, C-363/13 and C-407/13, EU:C:2014:2044, paragraph 62), and 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 77).

43 Judgments of 23 April 2009, *Angelidaki and Others* (C-378/07 to C-380/07, EU:C:2009:250, paragraph 160); 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).

44 See, in this respect, my Opinion in *Santoro* (C-494/16, EU:C:2017:822, points 50 to 52). See also, 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 78 and the case-law cited).

45 Judgments of 8 March 2012, *Huet* (C-251/11, EU:C:2012:133, paragraphs 38 to 40); 3 July 2014, *Fiamingo and Others* (C-362/13, C-363/13 and C-407/13, EU:C:2014:2044, paragraph 65), and 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 80).

47. It is apparent from the order for reference that the Italian legislature chose to make provision, in Law No 107/2015, as measures to implement the Framework Agreement, inter alia, a special recruitment plan for permanent teaching staff as well as compensation for damage resulting from the misuse of successive fixed-term employments contracts with a total duration exceeding 36 months.[46] The interpretation of that law by the Corte costituzionale (Constitutional Court) and the Corte di cassazione (Supreme Court of Cassation) resulted in the extension of the scope of that law to teachers, such as the applicant in the main proceedings, only in so far as it excluded them from the benefit of those measures. In particular, as regards the conversion of successive fixed-term employment contracts into contracts of indefinite duration under the legislation preceding Law No 107/2015, the judicial interpretation of that law strictly prohibits any compensation for damage caused by the misuse of fixed-term contracts during the 14-year period preceding its entry into force.

48. Against that background, the question arises as to whether such a judicial interpretation can deprive of any retroactive effect a measure adopted by the national legislature to comply with Directive 1999/70 and the Framework Agreement and which is intended to penalise the misuse of successive fixed-term employment contracts. A further question then arises: does such a measure, the application of which is prohibited by judicial interpretation, constitute a penalty that is sufficiently effective and a sufficient deterrent?

49. I think not.

50. First, in accordance with settled case-law, the Member States' obligation arising from a directive to achieve the result envisaged by that directive and their duty, under Article 4 TEU, to take all appropriate measures, whether general or specific, to ensure the fulfilment of that obligation is binding on all the authorities of the Member States including, for matters within their jurisdiction, the courts.[47]

51. Second, even though I agree that, in principle, Law No 107/2015 establishes measures to prevent and penalise the misuse of successive fixed-term employment contracts for teaching staff in the public sector,[48] it is common ground that that Law introduces those measures *only for the future* and the judicial interpretation of that law has the result of prohibiting any compensation for damage arising as a result of abuse which occurred before its entry into force, that is to say, during the 14-year period which preceded it.[49]

52. Third, it should be noted that, as is apparent from the order for reference, the conversion of the fixed-term employment contracts of the applicant in the main proceedings into a contract of indefinite duration resulted purely from his progression up the permanent ranking list under the legislation preceding Law No 107/2015.[50]

46 See Article 1(95) and (132) of Law No 107/2015.

47 Judgments of 23 April 2009, *Angelidaki and Others* (C-378/07 to C-380/07, EU:C:2009:250, paragraph 106), of 14 September 2016, *Martínez Andrés and Castrejana López* (C-184/15 and C-197/15, EU:C:2016:680, paragraph 50), and of 25 October 2018, *Sciotto* (C-331/17, EU:C:2018:859, paragraph 67).

48 That said, I must admit that I find it somewhat difficult to conclude that a 'special' recruitment plan can completely eliminate the 'fortuitous' or 'unpredictable' nature — within the meaning set out in points 52 to 53 of this Opinion — of the conversion of a fixed-term employment relationship into one of indefinite duration for teachers who have been granted tenure under the law preceding Law No 107/2016. Nevertheless, since the question referred is not so much about the content of the provisions of that law as about the consequences of the interpretation thereof by the Corte costituzionale (Constitutional Court) and the Corte suprema di cassazione (Supreme Court of Cassation), I shall refrain from expressing a view on that point.

49 It is for the referring court to determine to what extent the conditions for application and the actual implementation of the relevant provisions of national law render the provision in question an appropriate measure for preventing and, where necessary, punishing the misuse of successive fixed-term employment contracts. However, the Court, when giving a preliminary ruling, may, where appropriate, provide clarifications designed to give the national court guidance in its assessment. See, inter alia, 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, paragraphs 82 and 83).

50 In particular, Article 4 of Law No 124/1999. See point 25 of this Opinion and footnotes 19 and 20.

53. In this regard, it should be noted that, in the judgment in *Mascolo and Others*,[51] the Court found incompatible with EU law the national legislation which preceded Law No 107/2015, in so far as it excluded any right to compensation for the damage suffered as a result of the misuse of successive fixed-term employment contracts in the education sector. According to the Court, since the legislation at issue in that case, similarly, did not permit successive fixed-term employment contracts to be converted into employment contracts or relationships of indefinite duration, the only possibility for a worker who has acted by way of temporary replacement under Article 4 of Law No 124/1999 in a school administered by the State to have his successive fixed-term employment contracts converted into an employment contract or relationship of indefinite duration was to be granted tenure as a result of progressing up the ranking list.[52] Nevertheless, the Court considered that 'since such a possibility is dependent on chance, it cannot be regarded as a penalty that is sufficiently effective and a sufficient deterrent to ensure that the provisions adopted pursuant to the Framework Agreement are fully effective.' The Court also considered that the period required for teachers to be granted tenure under the regime applicable prior to the entry into force of Law No 107/2015 was 'both variable and uncertain'.[53]

54. It seems clear to me that Mr Rossato is in a similar position to that of the applicants in the cases which gave rise to the judgment in *Mascolo and Others*.[54] Indeed, Mr Rossato was granted tenure not through the special recruitment procedure provided for by Law No 107/2015, but as a result of his progression up the permanent ranking list under the rules in force preceding Law No 107/2015, namely, under Article 2(6) of Law No 508/1999, which is similar to Article 4(1) of Law 124/1999.[55] It follows not only that the granting of tenure to the applicant in the main proceedings depended, as in the cases which gave rise to the judgment in *Mascolo and Others*, on fortuitous and unpredictable circumstances,[56] but also that the interpretation of Law No 107/2015 by the Corte costituzionale (Constitutional Court) and the Corte suprema di cassazione (Supreme Court of Cassation) excluded 'any possibility, for those teachers … of obtaining compensation for any damage suffered' on account of the misuse of successive fixed-term contracts.[57] In such a situation, compensation for the damage suffered as a result of the misuse of successive fixed-term contracts is the only form of penalty that can guarantee that the measures adopted under the Framework Agreement are fully effective.

55. In the present case, one thing is clear: the conversion of the employment relationship of the applicant in the main proceedings was not the result of the penalty provided for by the legislation at issue. The conversion of teachers' fixed-term employment contracts or relationships into contracts or relationships of indefinite duration which took place because of their progression up the ranking lists under the regime applicable prior to the entry into force of Law No 107/2015 should not, therefore, be confused with the conversion which took place under the special recruitment plan provided for by the Italian legislature in order to comply with Directive 1999/70 and the Framework Agreement.

56. In this regard, I note that, according to the Court, whilst it is true that a Member State is entitled, when implementing Clause 5(1) of the Framework Agreement, to take account of the needs of a specific sector, such as the education sector, that right cannot be understood as permitting it to dispense with observance of the obligation to lay down an appropriate measure for duly punishing the misuse of successive fixed-term employment contracts.[58] Thus, the fact that Mr Rossato's employment

51 Judgment of 26 November 2014 (C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401).

52 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, paragraphs 114 to 116).

53 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, paragraphs 105 to 107, 116 and 117).

54 Judgment of 26 November 2014, (C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401, paragraphs 105 to 115).

55 See, to that effect, point 25 of this Opinion.

56 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).

57 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 120).

58 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, paragraphs 70, 95 and 118).

relationship was converted into one of indefinite duration after a period of eleven years and two months under the rules in force prior to Law No 107/2015 does not dispense the Member State of its obligation to penalise the breach which persisted throughout that period. Such a conversion of the employment relationship under which, as a result of judicial interpretation, the worker concerned is denied any possibility of obtaining compensation for any damage arising from the misuse of successive fixed-term contracts, is not sufficiently effective or a sufficient deterrent to ensure that the provisions adopted pursuant to the Framework Agreement are fully effective.

57. Fourth, it should be recalled that it is settled case-law that, where a Member State chooses to penalise a breach of EU law by means of compensation for damage, such compensation must be effective and have a deterrent effect in that it allows full and adequate compensation for the damage suffered. [59]

58. It seems to me that, as the Commission rightly points out, those conditions have not been met in this case. No measures to penalise the misuse, over 14 years, of fixed-term contracts concluded prior to the adoption of Law No 107/2015 were taken, leaving aside, as the referring court observes, the number of contracts concluded and the number of years during which the abuse was perpetuated. The inadequacy of the judicial interpretation of Law No 107/2015 as regards the punishment of past abuse is all the more obvious when one considers that Article 1(132) of that law provides for the establishment of a fund for the payment in the future of possible compensation for damage where a fixed-term contract exceeds 36 months. On the other hand, no compensation is payable to a person, such as the applicant in the main proceedings, who has worked for more than 11 consecutive years under unfairly renewed fixed-term contracts concluded to cover needs which are fixed and permanent and, as such, do not justify recourse to that type of contract for the purpose of Clause 5(1) of the Framework Agreement. [60]

59. Thus, it is clear from the foregoing that a judicial interpretation of national legislation such as that at issue in the main proceedings does not appear, subject to the checks to be carried out by the referring court, to comply with the requirements arising from the judgment in *Mascolo and Others*. [61]

60. Finally, one last element is, in my opinion, important for the interpretation of Clause 5(1) of the Framework Agreement. It is apparent from the order for reference that the Corte costituzionale (Constitutional Court) and the Corte suprema di cassazione (Supreme Court of Cassation) indicated that a worker may claim compensation for damage and provide proof thereof only where there has been a specific loss which is different to the loss directly connected to the misuse of successive fixed-term contracts.

61. In that respect, I must point out that the damage conferring entitlement to compensation to which the Framework Agreement and the case-law of the Court refers relates to the specific damage connected to the misuse of successive fixed-term contracts during a substantial part of a person's working life, denying him stability of employment, which is viewed, as is apparent from the second paragraph of the preamble to the Framework Agreement and paragraphs 6 to 8 of the general considerations set out in the agreement, as a major element in the protection of workers. [62] Compensation for such damage is a specific penalty for breach of the Framework Agreement. Thus, the fact that such a worker can, under national law, claim compensation for other types of damage which may be related to or incidental to the main damage (such as damage to health or

59 See 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).

60 See, to this 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 100 and the case-law cited).

61 See, to this 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, paragraphs 77 to 79). See also points 53 and 54 of this Opinion.

62 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 73).

non-pecuniary loss) but which are not directly connected to the breach of EU law, does not affect my Opinion, namely that a penalty which does not apply to teachers, such as the applicant in the main proceedings, who were granted tenure under the legislation preceding Law No 107/2015, is not sufficiently effective or a sufficient deterrent.

62. One of consequences of Law No 107/2015, enacted by the Italian legislature to comply with EU law, has been an improvement in the situation of teachers whose fixed-term employment relationship has been or will be converted into a relationship of indefinite duration following its entry into force. On the other hand, the judicial interpretation of that Law has brought about a deterioration in the situation of teachers, such as the applicant in the main proceedings, whose employment relationships was converted into one of indefinite duration on the basis of ranking lists prior to the entry into force of that law, notwithstanding the requirements laid down in *Mascolo and Others*.[63] Thus, such a measure is not such as to duly punish the misuse of successive fixed-term contracts or to nullify the consequences of the breach of EU law,[64] which is a matter for the referring court to verify.

V. Conclusion

63. In light of all the foregoing considerations, I propose that the Court answer the question referred by the Corte d'appello di Trento (Court of Appeal, Trento, Italy) as follows:

Clause 5(1) of the Framework Agreement on fixed-term work, concluded on 18 March 1999 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, must be interpreted as precluding a judicial interpretation of provisions of national law governing measures to prevent the misuse of successive fixed-term contracts, such as those at issue in the main proceedings, according to which any compensation for damage arising as a result of the misuse of successive fixed-term contracts during the period prior to the entry into force of those provisions is prohibited, which is a matter for the referring court to verify.

63 Judgment of 26 November 2014, C-22/13, C-61/13 to C-63/13 and C-418/13, EU:C:2014:2401.

64 Judgments of 23 April 2009, *Angelidaki and Others* (C-378/07 to C-380/07, EU:C:2009:250, paragraph 160); 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).