Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

4 September 2025 *

(Reference for a preliminary ruling – Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Clause 4 – Principle of non-discrimination – Equal treatment in employment and occupation – Honorary and ordinary members of the judiciary – Clause 5 – Measures intended to prevent and penalise misuse of successive fixed-term contracts – Directive 2003/88/EC – Article 7 – Right to paid annual leave – Article 31 of the Charter of Fundamental Rights of the European Union – Assessment procedure in order to be permanently confirmed as an honorary member of the judiciary – Waiver, by operation of law, of claims arising from service as an honorary member of the judiciary prior to the assessment procedure – Loss of a right to paid annual leave conferred by EU law)

In Case C-253/24 [Pelavi] [i],

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte d'appello di L'Aquila (Court of Appeal, L'Aquila, Italy), made by decision of 4 April 2024, received at the Court on 9 April 2024, in the proceedings

Ministero della Giustizia

v

NZ,

interested party:

Istituto nazionale della previdenza sociale (INPS),

THE COURT (Fourth Chamber),

composed of I. Jarukaitis, President of the Chamber, K. Lenaerts, President of the Court, acting as Judge of the Fourth Chamber, N. Jääskinen, A. Arabadjiev (Rapporteur) and R. Frendo, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: Italian.

[i] The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

after considering the observations submitted on behalf of:

– NZ, by P. Perna, avvocata,

– the Italian Government, by G. Palmieri, acting as Agent, and by L. Fiandaca and G. Santini, avvocati dello Stato,

– the European Commission, by S. Delaude and D. Recchia, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299 p. 9), Clauses 4 and 5 of the framework agreement on fixed-term work, concluded on 18 March 1999 ('the Framework Agreement'), set out 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), and Articles 31 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings between the Ministero della Giustizia (Ministry of Justice, Italy), the employer, and NZ, an honorary member of the judiciary, concerning the consequences arising from her participation in an assessment procedure in order to be permanently confirmed.

Legal context

European Union law

The Framework Agreement

3 Clause 2 of the Framework Agreement, entitled 'Scope', provides, in paragraph 1 thereof:

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

4 Clause 4 of the Framework Agreement, entitled 'Principle of non-discrimination', provides, in paragraph 1 thereof:

'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.'

5 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 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.'

Directive 2003/88

6 Article 7 of Directive 2003/88, entitled 'Annual leave', provides in paragraph 1 thereof:

'Member States shall take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and/or practice.'

Italian law

7 Article 29 of Legislative Decree No 116 – Riforma organica della magistratura onoraria e altre disposizioni sui giudici di pace, nonché disciplina transitoria relativa ai magistrati onorari in servizio, a norma della legge 28 aprile 2016, n. 57 (Legislative Decree No 116 on the organic reform of the honorary judiciary and other provisions relating to magistrates, and transitional provisions relating to serving honorary members of the judiciary, in accordance with Law No 57 of 28 April 2016) of 13 July 2017 (GURI No 177 of 31 July 2017, p. 1), as amended by legge n. 234 – Bilancio di previsione dello Stato per l'anno finanziario 2022 e bilancio pluriennale per il triennio 2022-2024 (Law No 234 on the State Budget for the 2022 financial year and multiannual accounts for the three-year period 2022-2024) of 30 December 2021 (GURI No 310 of 31 December 2021, p. 1) ('Legislative Decree No 116/2017') provides, in paragraphs 1 to 3, 5 and 9:

'1. Honorary members of the judiciary in service on the date on which this legislative decree enters into force may be confirmed upon application until the age of 70.

2. Honorary members of the judiciary in service on the date on which this legislative decree enters into force who do not qualify for confirmation, either because they did not submit an application or because they did not pass the assessment procedure referred to in paragraph 3,

shall be entitled, subject to their right of refusal, to an indemnity of EUR 2 500 before tax for each year of service during which the member of the judiciary has been engaged in hearings for at least 80 days, and to an indemnity of EUR 1 500 before tax for each year of service during which the member of the judiciary has been engaged in hearings for fewer than 80 days, and in any case up to a total per capita limit of EUR 50 000 before tax. For the purpose of calculating the indemnity due under the preceding sentence, service for periods exceeding six months shall be deemed equal to one year. Receipt of the indemnity entails a waiver of all further claims of any nature whatsoever arising from the cessation of service of the honorary member of the judiciary.

3. For the purposes of the confirmation referred to in paragraph 1, the Consiglio superiore della magistratura (Supreme Council of the Judiciary) shall, by decision, organise three separate assessment procedures to be carried out annually during the three-year period 2022-2024. Respectively, they shall concern serving honorary members of the judiciary who, on the date on which this decree enters into force, have completed:

(a) more than 16 years of service;

(b) between 12 and 16 years of service;

(c) less than 12 years of service.

…

5. The application to participate in the assessment procedures referred to in paragraph 3 entails the waiver of all further claims of any nature whatsoever arising from previous service as an honorary member of the judiciary, without prejudice to the right to the indemnity referred to in paragraph 2 in the event of non-confirmation.

…

9. Honorary members of the judiciary in service on the date on which this legislative decree enters into force shall cease to be in service if they do not submit an application to participate in the assessment procedure referred to in paragraph 3.’

8 That provision entered into force on 1 January 2022.

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

9 NZ has served as an honorary member of the judiciary at the Tribunale di Vasto (District Court, Vasto, Italy) since 14 February 2001. Initially appointed for a period of three years, her appointment was extended and renewed every four years, until 13 December 2022. On that date, she was permanently confirmed up to the age of 70, pursuant to Article 29 of Legislative Decree No 116/2017, which introduces the possibility, for honorary members of the judiciary in service on 1 January 2022, to apply to participate in an assessment procedure for the purposes of their permanent confirmation.

10 Between 14 February 2001 and 13 December 2022, NZ received allowances calculated, inter alia, on the basis of the number of hearings held.

11 NZ did not sit during the judicial vacation periods laid down by national legislation, between 1 and 31 August each year. During those periods, she did not therefore receive any allowances.

12 Also registered with the Bar Association, NZ was able to continue to practise, in parallel, until 13 December 2022, as a lawyer outside the territorial jurisdiction of the court to which she was assigned.

13 As a lawyer, she was covered by the mandatory social security scheme managed by the Cassa Nazionale Forense (National Social Security Fund for Lawyers, Italy). In that respect, she was required to pay a contribution, the amount of which depended on the income from her activity as a lawyer and on the allowance arising from her service as an honorary member of the judiciary.

14 Claiming to be the victim of an unlawful difference in treatment concerning the remuneration for her service before the entry into force of Article 29 of Legislative Decree No 116/2017 and the permanent confirmation as an honorary member of the judiciary, NZ brought an action before the court of first instance seeking recognition, in respect of the service as an honorary member of the judiciary, of the status of 'employee', within the meaning of Italian law, or that of 'worker', within the meaning of EU law, and therefore the right to receive economic and legal treatment equivalent to that of workers performing comparable duties in the service of the Ministry of Justice, including in so far as it relates to public holidays, annual leave, maternity and sick leave, sickness and accident benefits, severance pay, social security and insurance. She also sought compensation for the damage suffered as a result of the alleged failure to comply with the obligations laid down by EU law on leave, maternity leave and any other protection. In addition, NZ requested that the court of first instance find that the ministry had, abusively, repeated the renewal of fixed-term employment contracts in her regard, and that that ministry be ordered to pay compensation for the resulting damage to NZ.

15 By judgment of 14 March 2022, the court of first instance upheld that action in part. It held that, in the performance of her duties as an honorary member of the judiciary, NZ had to be classified as a 'worker' within the meaning of EU law and was entitled to receive the same remuneration as that paid to an ordinary member of the judiciary. However, the court of first instance held that that classification was not such as to confer on her the right to be affiliated with the Istituto Nazionale della Previdenza Sociale (INPS) (National Social Security Institute, Italy), under the civil servants' social security scheme, in the absence of a public employment relationship. Consequently, that court ordered the Ministry of Justice to pay NZ the remuneration due for the period prior to her action, subject to the limitation period of five years. In addition, the court held that NZ's fixed-term employment relationship had been abusively repeated and ordered that ministry to pay compensation for the damage suffered by NZ to the extent of nine monthly instalments of the remuneration paid to an ordinary member of the judiciary.

16 The Ministry of Justice brought an appeal against that decision before the Corte d'appello di L'Aquila (Court of Appeal, L'Aquila, Italy), which is the referring court, disputing both the comparability of the duties of honorary and ordinary members of the judiciary and the misuse of fixed-term contracts.

17 NZ brought a cross-appeal, challenging (i) the classification of her claims as a claim for remuneration, and not for compensation, which had been upheld by the court of first instance, and (ii) the application of the limitation period of 5 years, and not 10 years, which had resulted from that classification. She also disputes the fact that her classification as a 'worker', within the meaning of EU law, did not entitle her to be affiliated with the INPS.

18 While the appeal proceedings were pending, NZ successfully completed the procedure which provided for the possibility, for honorary members of the judiciary in service on 1 January 2022, to apply to participate in an assessment procedure referred to in Article 29(3) of Legislative Decree No 116/2017.

19 As an honorary member of the judiciary thus confirmed, NZ has been receiving, since 13 December 2022, a fixed remuneration, calculated on the basis of the salary of a civil servant employed by the Ministry of Justice, a judicial allowance and a meal voucher. That remuneration is also paid during the judicial vacation period, during which she does not carry out any activities. In addition, NZ, having opted for the exclusive regime of honorary service, was removed from the Bar Association and the National Social Security Fund for Lawyers and was affiliated to the INPS.

20 In view of NZ's participation in the assessment procedure referred to in Article 29(3) of Legislative Decree No 116/2017 and the fact that Article 29(5) provides that such a participation entails, for honorary members of the judiciary confirmed at the end of that procedure, the waiver by operation of law of any other claim arising from their previous honorary employment relationship, the Ministry of Justice considers that the dispute in the main proceedings has become devoid of purpose.

21 NZ opposes that application for a decision that there is no need to adjudicate and asks the referring court to raise a question as to the constitutional legality of Article 29 of Legislative Decree No 116/2017, in particular of that waiver by operation of law provided for in paragraph 5 of that article.

22 The referring court questions the compatibility of Article 29(5) of Legislative Decree No 116/2017 with Clause 4 of the Framework Agreement, Article 7 of Directive 2003/88 and Articles 31 and 47 of the Charter, in particular in so far as that waiver by operation of law affects the right to remuneration for leave equivalent to the leave enjoyed by ordinary members of the judiciary. The court considers it appropriate to make a reference to the Court of Justice for a preliminary ruling in that regard, in view of the direct effect of those provisions and the subsequent power the Court of Justice has to disapply national legislation which is contrary to a rule having such an effect.

23 In addition, the referring court is uncertain whether Article 29(5) of Legislative Decree No 116/2017 meets the requirements arising from Clause 5(1) of the Framework Agreement. It considers that it is appropriate also to refer to the Court of Justice in that regard, in so far as an answer on the part of the Court to that second question would make it easier to assess the need to refer the question of the constitutionality of the national provision at issue to the Corte costituzionale (Constitutional Court, Italy).

24 In those circumstances, the Corte d'appello di L'Aquila (Court of Appeal, L'Aquila) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Do [Article 31(1) and Article 47] of the [Charter], Article 7 of [Directive 2003/88] and clause 4 of the [Framework Agreement] preclude national legislation which provides that an honorary [member of the judiciary], who may be classified as a "worker" and a "fixed-term worker" and who is confirmed … until the age of 70, [loses] the right to paid leave for the period prior to the confirmation?

(2) Does clause 5(1) of the [Framework Agreement] preclude national legislation which, as a measure aimed at penalising the misuse use of fixed-term contracts, provides for the confirmation … of the honorary [member of the judiciary] until the age of 70, after passing a non-competitive assessment procedure, and – in the event of failing the assessment procedure – provides for [a monetary award], in both cases requiring a waiver of any rights previously accrued?'

The admissibility of the request for a preliminary ruling

25 The Italian Government contends that the request for a preliminary ruling is inadmissible.

26 It submits, in the first place, that the Giudice di pace di Fondi (Justice of the Peace, Fondi, Italy) has already referred a request for a preliminary ruling to the Court of Justice, registered under number C-548/22, raising questions which are identical and relating to the same national provisions as those at issue in the main proceedings. That government considers, for reasons relating, in essence, to procedural economy, that the present reference for a preliminary ruling is of no use and that the case in the main proceedings should have been stayed pending the Court's reply in Case C-548/22.

27 In the second place, the referring court does not establish any link between the principles of EU law to which it refers and the national legislation applicable to the dispute in the main proceedings.

28 Lastly, in the third place, the second question is hypothetical, since it concerns a situation other than that of the applicant in the main proceedings, in so far as she passed the oral tests in the assessment procedure and did not therefore receive the monetary award in the event of failure in that procedure, referred to in that question.

29 It must be borne in mind that, according to settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle required to give a ruling (judgment of 17 September 2020, *Burgo Group*, C-92/19, EU:C:2020:733, paragraph 39 and the case-law cited).

30 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 17 September 2020, *Burgo Group*, C-92/19, EU:C:2020:733, paragraph 40 and the case-law cited).

31 In that regard, in order to allow the Court to provide an interpretation of EU law that will be of assistance to the national court, Article 94(c) of the Rules of Procedure of the Court requires that the request for a preliminary ruling contain a statement of the reasons which prompted the

referring court or tribunal to inquire about the interpretation or validity of certain provisions of EU law, and the relationship between those provisions and the national legislation applicable to the main proceedings (judgment of 27 April 2023, *AxFina Hungary*, C-705/21, EU:C:2023:352, paragraph 26).

32 In the first place, it should be noted that, although the circumstances of the case which gave rise to the judgment of 12 September 2024, *Presidenza del Consiglio dei ministri and Others (Remuneration of honorary judges and Public Prosecutors)* (C-548/22, EU:C:2024:730), by which the Court, moreover, declared the request for a preliminary ruling inadmissible, are similar to those of the case in the main proceedings, and that those two cases raise similar questions, the fact remains that, in the light, in particular, of the settled case-law cited in paragraphs 29 and 30 above, subject to compliance with the requirements arising therefrom, the national court remains free to make a reference for a preliminary ruling on the interpretation of the provisions of EU law relevant to the resolution of the dispute before it. Although the existence of settled case-law on a point of EU law may prompt the Court to make an order under Article 99 of its Rules of Procedure, it cannot in any way affect the admissibility of a reference for a preliminary ruling if a national court decides, in the exercise of its discretion, to bring a matter before the Court under Article 267 TFEU (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 49).

33 In the second place, by setting out, in a reasoned manner, its doubts, first, as to whether, in the light of Clause 4 of the Framework Agreement, Article 7 of Directive 2003/88 and Article 31 of the Charter, the applicant in the main proceedings is likely to be deprived of the right to paid leave enjoyed by any worker and, second, as to the compatibility of the assessment procedure at issue in the main proceedings with Clause 5(1) of the Framework Agreement, the referring court sufficiently sets out the link which it establishes between the provisions of EU law which it seeks to have interpreted and the national legislation applicable to the dispute in the main proceedings.

34 However, as regards Article 47 of the Charter, it should be noted that the referring court has not explained in a sufficiently specific manner how an interpretation of that provision is necessary for it to give a ruling on the dispute pending before it, or described the link that exists between that provision and the national legislation applicable to that dispute, having regard, in particular, to the fact that, first, that dispute concerns the exercise of the right of the applicant in the main proceedings to compensation for paid annual leave and the lawfulness of the mechanism for preventing and penalising the misuse of successive fixed-term employment relationships, and, second, the applicant in the main proceedings brought an action before the national courts having jurisdiction in order to obtain protection of those rights.

35 As regards, in the third place, the allegedly hypothetical nature of the second question, as is unequivocally apparent from the order for reference, the referring court questions the compatibility with EU law of the measure requiring honorary members of the judiciary, applying to participate in assessment procedures, to waive any right in respect of the period prior to those procedures and, in particular, the right to paid annual leave. Given that the applicant in the main proceedings was bound, by the national legislation concerned, to waive that right, upon applying to participate in that procedure, the relationship between the interpretation of EU law sought and the subject matter of the dispute in the main proceedings is quite obvious and that second question is not hypothetical as regards the loss of that right.

36 However, it is common ground that the applicant in the main proceedings successfully completed the assessment procedure and was permanently confirmed as an honorary member of the judiciary. Therefore, the referring court's questions on the detailed rules for the organisation of that procedure and on the national legislation providing for a monetary award in the event of failure in that procedure are not at issue in the main proceedings. Thus, the second question is hypothetical in so far as it concerns those two questions.

37 It follows that the request for a preliminary ruling is admissible, with the exception of the second question, in so far as it concerns the detailed rules for the organisation of the assessment procedure for honorary members of the judiciary with a view to their permanent confirmation and the monetary award in the event of failure in that procedure.

Consideration of the questions referred

Preliminary observations

38 According to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it (judgment of 30 April 2025, *Genzyński*, C-278/24, EU:C:2025:299, paragraph 41 and the case-law cited).

39 In the present case, it appears that there is a close link between the two questions put by the referring court. Those questions relate to the rights which honorary members of the judiciary who were confirmed at the end of the assessment procedure can accordingly no longer claim. Thus, the first question relates to the interpretation of Clause 4 of the Framework Agreement, Article 7 of Directive 2003/88 and Article 31 of the Charter and concerns, in particular, the loss of the right to paid leave for the period prior to that confirmation, whereas the second question relates to the interpretation of Clause 5 of the Framework Agreement and refers, more broadly, to the waiver of any right relating to that earlier period.

40 As regards, in the first place, the provisions relied on in the questions raised, the referring court notes that the assessment procedure constitutes a measure adopted to respond to the European Commission's requests and to the judgment of 16 July 2020, *Governo della Repubblica italiana (Status of Italian magistrates)* (C-658/18, EU:C:2020:572). From that point of view, that procedure is intended to implement the obligation, arising from Clause 5(1) of the Framework Agreement, to adopt effective measures to prevent and penalise the misuse of successive fixed-term contracts.

41 That court wonders whether the assessment procedure is sufficiently dissuasive to be classified as a measure penalising the misuse of such contracts, for the purposes of that Clause 5(1), and consequently, whether it complies with the requirements of that provision, as interpreted by the Court.

42 That court notes, in that regard, that the legislation at issue in the main proceedings enabled NZ to obtain conversion to a permanent position and guarantees for the period following that conversion, in the same way as the reforms examined in the context of the judgments 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 of 8 May 2019, *Rossato and Conservatorio di Musica F.A. Bonporti* (C-494/17, EU:C:2019:387). However, unlike those reforms, that legislation provides that the application to participate in assessment procedures entails, for honorary members of the judiciary, waiving any other claim arising from the previous honorary employment relationship and, therefore, waiving the right to rely on the principle of non-discrimination laid down in Clause 4 of the Framework Agreement in support of their claims.

43 The referring court therefore questions, in essence, whether that legislation is compatible with the provision which it intends to implement, namely Clause 5 of the Framework Agreement, intended to prevent and penalise the misuse of successive fixed-term employment contracts, read in conjunction with Clause 4 of that agreement, and with Article 7 of Directive 2003/88, which gives concrete expression to the right to paid annual leave, enshrined in Article 31(2) of the Charter, on which a worker may rely against his or her employer (see, to that effect, judgment of 9 November 2023, *Keolis Agen*, C-271/22 to C-275/22, EU:C:2023:834, paragraph 28). It therefore appears appropriate to examine the questions referred together.

44 In that regard, it should also be noted that, even though the referring court mentions, in the wording of the first question referred, Article 31(1) of the Charter, which enshrines the right of every worker to working conditions which respect his or her health, safety and dignity, it is apparent from the order for reference, and from the context of that question, that that court is in fact referring to Article 31(2).

45 In the second place, it should be noted that, although it follows from the wording of the questions referred that the referring court's doubts concern Article 29(5) of Legislative Decree No 116/2017, which requires honorary members of the judiciary, when applying to participate in the assessment procedure at issue, to waive any rights arising from the previous honorary relationship, that court however specifically refers, in the reasoning of the order for reference, to the waiver of the right to paid annual leave, a right which honorary members of the judiciary do not enjoy during judicial vacation periods, unlike ordinary members of the judiciary.

46 As regards that right, the referring court considers that the applicant in the main proceedings is in a situation comparable to that of an ordinary member of the judiciary. That court observes, in that regard, that, before the entry into force of the legislation at issue in the main proceedings, that applicant, as a 'worker' and 'fixed-term worker', should have had her claim for remuneration for judicial vacation period upheld, without prejudice to the application of the relevant limitation rules.

47 As regards, on the other hand, the right to social protection, the referring court considers that the situation of honorary and that of ordinary members of the judiciary is not comparable and, in any event, that any difference in treatment would be justified.

48 In the light of those preliminary considerations, it is therefore necessary to examine only one of the aspects of the legislation at issue in the main proceedings, highlighted by the referring court in its decision, namely the requirement to waive the right to paid annual leave for the period prior to the assessment procedure.

49 Consequently, it must be held that, by its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Clause 5(1) of the Framework Agreement, read in conjunction with Clause 4 of that agreement, Article 7 of Directive 2003/88 and Article 31(2) of the Charter must be interpreted as precluding national legislation, intended to penalise the

misuse of successive fixed-term employment contracts, which makes the application, for serving honorary members of the judiciary, to participate in an assessment procedure in order to be confirmed until the age of 70, subject to the requirement to waive the right to paid annual leave arising from EU law, relating to their previous honorary employment relationship.

Substance

50 Clause 5(1) of the Framework Agreement requires Member States, in order to prevent the misuse of successive fixed-term employment contracts or relationships, to adopt one or more of the measures listed in that provision, where their domestic law does not include equivalent legal measures (judgment of 8 May 2019, *Rossato and Conservatorio di Musica F.A. Bonporti*, C-494/17, EU:C:2019:387, paragraph 24 and the case-law cited).

51 In that way, Clause 5(1) of the Framework Agreement assigns to the Member States the general objective of preventing such abuse, while leaving to them the choice as to how to achieve it, provided that they do not compromise the objective or the practical effect of the Framework Agreement (judgment of 8 May 2019, *Rossato and Conservatorio di Musica F.A. Bonporti*, C-494/17, EU:C:2019:387, paragraph 26 and the case-law cited).

52 Furthermore, where, as in the present case, EU law does not lay down any specific penalties where instances of abuse have nevertheless been established, it is incumbent on the national authorities to adopt measures that are not only proportionate, but also are sufficiently effective and act as sufficient deterrent to ensure that the measures taken pursuant to the Framework Agreement are fully effective (see, to that effect, judgment of 13 June 2024, *DG de la Función Pública, Generalitat de Catalunya and Departamento de Justicia de la Generalitat de Catalunya*, C-331/22 and C-332/22, EU:C:2024:496, paragraph 67 and the case-law cited).

53 Therefore, where there has been misuse of successive fixed-term contracts or relationships, a measure offering effective and equivalent guarantees for the protection of workers must be capable of being applied in order duly to penalise that misuse and nullify the consequences of the breach of EU law (judgment of 8 May 2019, *Rossato and Conservatorio di Musica F.A. Bonporti*, C-494/17, EU:C:2019:387, paragraph 28 and the case-law cited).

54 It must be recalled that it is not for the Court to rule on the interpretation of provisions of national law, that being exclusively for the referring court or, as the case may be, the national courts having jurisdiction, which must determine whether the requirements set out in paragraphs 50 to 53 of the present judgment are met by the provisions of the applicable national legislation (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 81).

55 It is therefore for the referring court to assess to what extent the conditions for application and the actual implementation of the relevant provisions of national law render the latter an appropriate measure for penalising the misuse of successive fixed-term employment contracts or relationships and for nullifying the consequences. However, the Court, when giving a preliminary ruling, may, where appropriate, provide clarification designed to give the referring court guidance in its assessment (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, paragraphs 82 and 83 and the case-law cited).

56 In this respect, it should be recalled that, as the Court has observed, 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 in principle leaves it 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 (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 80 and the case-law cited).

57 It is clear from that provision that Member States have the power, in the form of measures to prevent or to penalise misuse of successive fixed-term employment contracts, to convert fixed-term employment relationships into relationships of indefinite duration, the stability of employment conferred by the latter being the most important aspect of the protection of workers (see, to that effect, judgment of 8 May 2019, *Rossato and Conservatorio di Musica F.A. Bonporti*, C-494/17, EU:C:2019:387, paragraph 39).

58 Thus, the Court has stated, in essence, that legislation laying down, in a mandatory manner, that, where there is misuse of fixed-term employment contracts, such contracts are to be converted into an employment relationship of indefinite duration, to the exclusion of any monetary award, is likely to comprise a measure that actually penalises such abuse (see, to that effect, judgment of 8 May 2019, *Rossato and Conservatorio di Musica F.A. Bonporti*, C-494/17, EU:C:2019:387, paragraph 40 and the case-law cited).

59 Therefore, case-law does not require more than one measure to apply concurrently. Furthermore, neither the principle that the damage suffered must be made good in its entirety nor the principle of proportionality require the payment of punitive damages. Those principles require Member States to provide for adequate compensation, which is more than a purely nominal amount, but not more than is necessary to make good the damage in its entirety (judgment of 8 May 2019, *Rossato and Conservatorio di Musica F.A. Bonporti*, C-494/17, EU:C:2019:387, paragraphs 41 to 43 and the case-law cited).

60 The Framework Agreement does not therefore require Member States to provide, for cases involving misuse of fixed-term employment contracts, a right to compensation in addition to the conversion of the fixed-term employment relationship into one of indefinite duration (judgment of 8 May 2019, *Rossato and Conservatorio di Musica F.A. Bonporti*, C-494/17, EU:C:2019:387, paragraph 45).

61 In the present case, the Italian Government notes that the objective of the legislation at issue in the main proceedings is to grant serving honorary members of the judiciary all the guarantees enjoyed by an employee, by providing for the possibility of remaining in service until the age of 70, subject to passing the assessment procedure, aimed at verifying that the conditions required for the performance of judicial duties are still satisfied, in accordance with the case-law of the Corte costituzionale (Constitutional Court).

62 It is apparent from the order for reference that, first, the applicant in the main proceedings passed the assessment procedure with a view to her permanent confirmation as an honorary member of the judiciary provided for by that legislation.

63 Second, before her permanent confirmation, the applicant in the main proceedings did not hold hearings during the annual judicial vacation periods of the court in which she performs the duties of honorary member of the judiciary, and did not receive remuneration in respect of those periods.

64 Third, the application to participate in the assessment procedure entails waiving the right to paid annual leave for the period prior to that final confirmation guaranteed by Article 7 of Directive 2003/88 and Article 31(2) of the Charter.

65 According to the Italian Government, the fact of waiving 'all further claims' and therefore the right to paid annual leave relating to a previous period, constitutes appropriate consideration for confirmation as an honorary member of the judiciary, given that passing the assessment procedure does not create a mere opportunity to have the previous employment relationship made permanent, but results in the effective conversion of that employment relationship to a permanent status. The fact of waiving previous claims is thus the direct consequence of the 'restitution in kind' granted to honorary members of the judiciary who have been confirmed.

66 That government also argues that reverse discrimination should be avoided against ordinary members of the judiciary to whom the principles of competitive appointment and the exclusivity of the judicial service fully apply.

67 In that regard, it should be recalled that Clause 4(1) of the Framework Agreement prohibits, in respect of employment conditions, fixed-term workers being treated in a less favourable manner than comparable permanent workers, on the sole ground that they are employed on a fixed-term contract, unless different treatment is justified on objective grounds (judgment of 27 June 2024, *Peigli*, C-41/23, EU:C:2024:554, paragraph 38 and the case-law cited).

68 If it is established that honorary members of the judiciary such as the applicant in the main proceedings, are in a situation comparable to that of ordinary members of the judiciary, which it is for the referring court to assess, it is necessary to ascertain whether there are objective reasons justifying such difference in treatment (judgment of 27 June 2024, *Peigli*, C-41/23, EU:C:2024:554, paragraph 50).

69 In that regard, it should be noted that, according to that court, there is no justification for not granting any days of paid leave to honorary members of the judiciary.

70 In addition, the Court of Justice has already held that the existence of a detailed method of recruitment by means of a competition reserved solely for positions of ordinary members of the judiciary for the purposes of access to the judiciary, which therefore does not apply to the recruitment of honorary members of the judiciary, allows the latter to be excluded from entitlement to the benefit of all the rights afforded to ordinary members of the judiciary. However, although certain differences in treatment may be justified by the differences in the qualifications required and by the nature of the duties entrusted to ordinary members of the judiciary, complete exclusion of honorary members of the judiciary from any right to paid leave cannot be accepted in the light of Clause 4 of the Framework Agreement (see, to that effect, judgment of 27 June 2024, *Peigli*, C-41/23, EU:C:2024:554, paragraphs 53 and 54 and the case-law cited).

71 That right is contained in Article 7(1) of Directive 2003/88, under which 'Member States shall take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks'.

72 It is settled case-law that that provision reflects and gives concrete expression to the fundamental right to an annual period of paid leave, enshrined in Article 31(2) of the Charter (judgment of 9 November 2023, *Keolis Agen*, C-271/22 to C-275/22, EU:C:2023:834, paragraph 18 and the case-law cited).

73 Furthermore, the right to a period of paid annual leave, affirmed for every worker by Article 31(2) of the Charter, is, as regards its very existence, both mandatory and unconditional in nature, as that provision does not need to be given concrete expression by the provisions of EU or national law, which are only required to specify the exact duration of annual leave and, where appropriate, certain conditions for the exercise of that right. It follows that that provision is sufficient in itself to confer on workers a right that they may actually rely on in disputes between them and their employer in a field covered by EU law and therefore falling within the scope of the Charter (see, to that effect, judgment of 6 November 2018, *Max-Planck-Gesellschaft zur Förderung der Wissenschaften*, C-684/16, EU:C:2018:874, paragraph 74).

74 Thus, Clause 4 of the Framework Agreement, Article 7 of Directive 2003/88 and Article 31(2) of the Charter preclude national legislation which, in contrast to what it provides in respect of ordinary members of the judiciary, does not give honorary members of the judiciary in a comparable situation any entitlement to remuneration during the vacation period when judicial activity is suspended (see, to that effect, judgment of 27 June 2024, *Peigli*, C-41/23, EU:C:2024:554, paragraph 59).

75 It follows that, first, as is apparent from the case-law referred to in paragraphs 53 and 57 above, in order to satisfy the conditions laid down in Clause 5(1) of the Framework Agreement, national legislation must provide, where there is misuse of successive fixed-term employment contracts, effective guarantees to penalise that abuse and to nullify its consequences, since the conversion of the fixed-term employment relationship into an employment relationship of indefinite duration constitutes, in principle, an effective penalty for such abuse.

76 Second, as is apparent from paragraph 73 above, the right to a period of paid annual leave constitutes an individual right of each worker, which is granted to that worker in a mandatory and unconditional manner by EU law.

77 Therefore, Clause 5(1) of the Framework Agreement cannot be interpreted as meaning that the application of measures taken by a Member State to penalise the misuse of successive fixed-term employment contracts and to nullify the consequences thereof could be conditional on a requirement, for the worker concerned, to waive a right conferred on him or her by EU law pursuant to Clause 4 of that agreement. Clause 5(1) and Clause 4 of the Framework Agreement have independent scopes, designed to penalise such abuse and to ensure equivalent treatment of workers when they work on the basis of a fixed-term employment relationship, respectively.

78 Thus, the national legislation which penalises the misuse of successive fixed-term employment relationships by providing for the possibility for an honorary member of the judiciary to have his or her relationships converted into an employment relationship of indefinite duration cannot be conditional on a requirement, for that member of the judiciary, to waive the rights conferred on him or her by EU law.

79 In the light of the foregoing considerations, the answer to the questions referred is that Clause 5(1) of the Framework Agreement, read in conjunction with Clause 4 of that agreement, Article 7 of Directive 2003/88 and Article 31(2) of the Charter must be interpreted as precluding national legislation, intended to penalise the misuse of successive fixed-term employment contracts, which makes the application, for serving honorary members of the judiciary, to participate in an assessment procedure in order to be confirmed up to the age of 70, subject to the requirement to waive the right to paid annual leave arising from EU law, relating to their previous honorary employment relationship.

Costs

80 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Fourth Chamber) hereby rules:

Clause 5(1) of the Framework Agreement on fixed-term work, concluded on 18 March 1999, set out 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, read in conjunction with Clause 4 of that agreement, Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, and Article 31(2) of the Charter of Fundamental Rights of the European Union,

must be interpreted as precluding national legislation, intended to penalise the misuse of successive fixed-term employment contracts, which makes the application, for serving honorary members of the judiciary, to participate in an assessment procedure in order to be confirmed up to the age of 70, subject to the requirement to waive the right to paid annual leave arising from EU law, relating to their previous honorary employment relationship.

[Signatures]