2. If Question 1 above is answered in the affirmative, may an ordinary or *'togato'* judge [a career judge engaged on a permanent basis and salaried] be regarded as a comparable permanent worker in respect of a '*Giudice di Pace*' fixed-term worker for the purposes of the application of Clause 4 of the framework agreement on fixed-term work implemented by Directive 1999/70?

3. If Question 2 above is answered in the affirmative, do the differences between the procedure for the permanent recruitment of ordinary judges and the selection procedures, laid down by statute, for the fixed-term recruitment of *Giudici di Pace* constitute an objective ground, within the meaning of Clause 4(1) and/or (4) of the framework agreement on fixed-term work implemented by Directive 1999/70, justifying a refusal to apply: (1) — as in the recent interpretation of 'vital law' by the Combined Chambers of the Corte di cassazione (Court of Cassation) in judgment No 13721/2017 and by the Consiglio di Stato (Council of State) in Opinion No 464/2017 of 8 April 2017 — to *Giudici di Pace*, such as the applicant fixed-term worker, the same employment conditions as those applied to comparable permanent ordinary judges; and (2) preventive measures and measures imposing penalties in respect of abusive use of fixed-term contracts, as referred to in Clause 5 of the framework agreement implemented by Directive 1999/70 and the national implementing laws, in the absence of rules in the Italian legal or constitutional system that could justify either discrimination as regards employment conditions or an absolute prohibition on converting employment contracts of *Giudici di Pace* into permanent contracts, also taking into account previous national legislation (Law No 217/1974), which had already provided that the employment conditions of honorary judges (specifically '*vice pretori onorari*') should be equivalent to those of ordinary judges?

4. In any event, in a situation such as that in the main proceedings, is it contrary to the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union and to the EU-law concept of an independent and impartial tribunal for a *Giudice di Pace*, having an abstract interest in the case being resolved in favour of the applicant, who, as her sole form of employment, performs the same judicial functions, to stand in the place of the Italian courts with jurisdiction to hear employment disputes in general, or disputes of the ordinary magistrates, as a result of a refusal by the court of last instance (the Combined Chambers of the Court of Cassation) to grant protection for the rights claimed and protected by EU law, thus obliging the court naturally having jurisdiction (the Tribunale del lavoro (Labour Court) or the Tribunale amministrativo regionale (T.A.R.) (Regional Administrative Court)) to decline jurisdiction, when requested, despite the fact that that right — payment for annual leave, as sought in the action — is founded in EU law, which is binding and takes precedence within the legal order of the Italian State? In the event that the Court of Justice should find that there is an infringement of Article 47 of the Charter, what domestic remedies are available in order to avoid a situation in which infringement of a provision of primary EU law also involves an absolute refusal under domestic law to protect fundamental rights guaranteed by EU law in the particular circumstances of the case?

([1]) 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).
([2]) 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).

Request for a preliminary ruling from the Tribunal de première instance de Liège (Belgium) lodged on 19 October 2017 — Benoît Sauvage, Kristel Lejeune v État belge

(Case C-602/17)

(2017/C 437/28)

Language of the case: French

Referring court

Tribunal de première instance de Liège

Parties to the main proceedings

Applicants: Benoît Sauvage, Kristel Lejeune

Defendant: État belge

Question referred

Does Article 15(1) of the Convention to prevent double taxation between Belgium and the Grand Duchy of Luxembourg signed on 17 September 1970, interpreted as allowing a restriction on the power of taxation of the source State in respect of the remuneration of an employee residing in Belgium and performing his activity for a Luxembourgish employer in proportion to the activity performed on Luxembourgish territory, interpreted as allowing a power of taxation to be attributed to the State of residence in respect of the amount of remuneration relating to the activity performed outside Luxembourgish territory, interpreted as requiring the employee to be permanently and every day physically present at the seat of his employer when it is not disputed that he regularly travels there as the result of a judicial assessment, conducted with flexibility, on the basis of objective and verifiable evidence and interpreted as requiring courts and tribunals to evaluate the existence and relevance of the services provided there and elsewhere, day by day, with a view to establishing a proportion over 220 business days, infringe Article 45 of the Treaty on the Functioning of the European Union in that it constitutes a tax hindrance which discourages activities across borders and breaches the general principle of legal certainty in that it does not provide for a stable and secure regime of exemption of the entirety of the remuneration received by a Belgian resident employed by an employer whose actual seat is situated in the Grand Duchy of Luxembourg and places him at risk of double taxation of all or part of his income and subjects him to an unpredictable legally uncertain regime?

Reference for a preliminary ruling from the Supreme Court of the United Kingdom made on 20 October 2017 — Peter Bosworth, Colin Hurley v Arcadia Petroleum Limited and others

(Case C-603/17)

(2017/C 437/29)

Language of the case: English

Referring court

Supreme Court of the United Kingdom

Parties to the main proceedings

Applicants: Peter Bosworth, Colin Hurley

Defendants: Arcadia Petroleum Limited and others

Questions referred

1. What is the correct test for determining whether a claim advanced by an employer against an employee or former employee ('an employee') constitutes a 'matter relating to' an individual contract of employment within the meaning of Section 5 to Title II (Articles 18-21) of the Lugano Convention?

   (1) Is it sufficient for a claim advanced by an employer against an employee to fall within Articles 18-21 that the conduct complained of could also have been pleaded by the employer as a breach of the employee's individual contract of employment — even if the claim actually advanced by the employer does not rely on, complain of, or plead any breach of that contract, but is (for example) advanced on one or more of the different bases indicated in paragraphs 26 and 27 of the Statement of Facts and Issues?

   (2) Alternatively, is the correct test that a claim advanced by an employer against an employee falls within Articles 18-21 only if the obligation on which the claim is actually based is an obligation in the contract of employment? If this is the correct test, does it follow that a claim which is based only on breach of an obligation which arose independently of the contract of employment (and, if relevant, is not an obligation which was 'freely consented to' by the employee) does not fall within Section 5?

   (3) If neither of the above is the correct test, what is the correct test?