Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 23 January 2020[1]

Case C-658/18

UX
v
Governo della Repubblica italiana

(Request for a preliminary ruling from the Giudice di pace di Bologna (Magistrates' Court, Bologna, Italy))

(Request for a preliminary ruling — Admissibility — External and internal independence of the courts — Social policy — Directive 2003/88/EC — Working time — Article 7 — Paid annual leave — Magistrates — Directive 1999/70/EC — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Clause 4 — Prohibition on discrimination — Liability of the Member States for infringements of EU law)

I. Introduction

1. Are Italian *giudici di pace* (magistrates) workers and are they therefore entitled to paid leave?

2. This is the question requiring clarification in the present case. The Italian Republic and its higher courts take the view that magistrates hold an honorary office, for which they receive compensation for expenses. However, the magistrate who brought the action in the main proceedings, who, in the year preceding the period of leave at issue in the present case, concluded approximately 1 800 sets of proceedings and presided over 2 days of hearings a week, takes the view that she is a worker and seeks paid leave. She has claimed the refused compensation for leave in an order for payment procedure before another magistrate.

3. The request for a preliminary ruling resulting from that procedure raises questions concerning, in particular, the Working Time Directive[2] and the framework agreement on fixed-term work.[3] However, the very admissibility of the application is also disputed, because the Italian Republic and the Commission allege that the national court has a conflict of interests.

1 Original language: German.

2 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) ('the Working Time Directive').

3 Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43) ('the framework agreement on fixed-term work').

II. Legal context

A. EU law

1. The Working Time Directive

4. Article 1 of the Working Time Directive governs the purpose and scope of the directive:

'1. This Directive lays down minimum safety and health requirements for the organisation of working time.

2. This Directive applies to:

(a) minimum periods of daily rest, weekly rest and annual leave, to breaks and maximum weekly working time …

…

3. This Directive shall apply to all sectors of activity, both public and private, within the meaning of Article 2 of Directive 89/391/EEC, without prejudice to Articles 14, 17, 18 and 19 of this Directive.

…'

5. Article 7 of the Working Time Directive regulates the minimum amount of leave to which workers are entitled:

'1. 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.

…'

2. Directive 89/391/EEC

6. Article 2 of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work[4] defines the sectors of activity covered by the directive:

'1. This Directive shall apply to all sectors of activity, both public and private (industrial, agricultural, commercial, administrative, service, educational, cultural, leisure, etc.).

2. This Directive shall not be applicable where characteristics peculiar to certain specific public service activities, such as the armed forces or the police, or to certain specific activities in the civil protection services inevitably conflict with it.

In that event, the safety and health of workers must be ensured as far as possible in the light of the objectives of this Directive.'

4 OJ 1989 L 183, p. 1. The subsequent amendments to that directive are not relevant to the present proceedings.

3. The framework agreement on fixed-term work

7. The framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP was made binding by Directive 1999/70.

8. Clause 2 of the framework agreement on fixed-term work governs its scope:

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

…'

9. Clause 3 of the framework agreement on fixed-term work defines various terms:

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

2. For the purpose of this agreement, the term "comparable permanent worker" means a worker with an employment contract or relationship of indefinite duration, in the same establishment, engaged in the same or similar work/occupation, due regard being given to qualifications/skills.

…'

10. Clause 4 of the framework agreement on fixed-term work lays down the principle of non-discrimination against fixed-term workers:

'1. In respect of employment conditions, fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation unless different treatment is justified on objective grounds.

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

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

4. Period-of service qualifications relating to particular conditions of employment shall be the same for fixed-term workers as for permanent workers except where different length-of service qualifications are justified on objective grounds.'

B. Italian law

11. Article 106 of the Italian Constitution contains basic provisions on access to judicial offices:

'Judges shall be selected and appointed by means of competition.

The law governing the judicial system shall provide for the appointment, including by election, of *magistrati onorari* [honorary judges] for the performance of all functions carried out by individual judges.

…'

12. Article 1 of legge 21 novembre 1991, n. 374, Istituzione del giudice di pace (Law No 374 of 21 November 1991 establishing the office of magistrate), contains basic provisions on the status and functions of magistrates:

'1. The office of magistrate is hereby created. A magistrate shall exercise jurisdiction in civil and criminal matters and shall conduct settlement procedures in civil matters in accordance with the provisions laid down by this law.

2. The office of magistrate shall be held by an honorary judge who is a member of the judicial order.'

13. According to the request for a preliminary ruling, Law No 374 provides for a selection procedure governing access to this office which is subject to Articles 4, 4a and 5 and takes place in three stages: (a) determination of a provisional classification based on qualifications for admission to the probationary period; (b) carrying out the probationary period for a period of 6 months; (c) determination of the final classification and appointment as a magistrate following aptitude tests by the judicial councils and the Consiglio Superiore della Magistratura (High Council of the Judiciary, Italy).[5] The Italian Republic states that the actual appointment is made by the Minister of Justice.

14. The Italian Republic also states that magistrates are appointed for 4 years and may be reappointed for a further 4 years at the most. This information is probably based on Article 18(1) and (2) of decreto legislativo 13 luglio 2017, n. 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 of 13 July 2017 amending the rules applicable to honorary judges and laying down other provisions applicable to magistrates, and transitional regulations for serving honorary judges, in compliance with Law No 57 of 28 April 2016). Earlier provisions apparently allowed for a longer period of activity.

15. The applicant's competence as a magistrate in criminal matters is governed by decreto legislativo 28 agosto 2000, n. 274, Disposizioni sulla competenza penale del giudice di pace, a norma dell'articolo 14 della legge 24 novembre 1999, n. 468 (Legislative Decree No 274 of 28 August 2000 on the jurisdiction of magistrates in criminal matters, under Article 14 of Law No 468 of 24 November 1999) and by the Criminal Code. Article 4 of Legislative Decree No 274 provides for, inter alia, the material jurisdiction of magistrates for certain offences under the Criminal Code and for certain offences, or the attempted commission of certain offences, and infringements specified in certain special laws. In addition, magistrates also have jurisdiction for certain immigration-related offences and for reviewing certain measures under the law relating to foreign nationals.

16. According to the request for a preliminary ruling, the remuneration of magistrates is made up of several components. They receive a basic amount of EUR 258.63 for each month during which they serve as a magistrate. They also receive payments for hearings and for concluding each set of proceedings brought before them. Magistrates do not receive remuneration during the court holiday period in August, however.

17. This remuneration scheme differs from that applicable to professional judges. The latter receive a monthly salary and 30 days' paid annual leave.

18. Although magistrates may engage in other professional activities, certain activities are prohibited. In particular, they may not practice law in the jurisdiction in which they exercise their functions.

5 Paragraph 85 of the request for a preliminary ruling.

19. According to the request for a preliminary ruling, the remuneration of Italian magistrates is subject to the same taxes as the remuneration of other employees. Social security contributions are not levied, but magistrates do not benefit from corresponding social security cover. [6]

20. Finally, magistrates are subject to similar disciplinary requirements as professional judges. These are enforced by the High Council of the Judiciary together with the Minister of Justice.

III. Facts and request for a preliminary ruling

21. Since 26 March 2002, the applicant in the main proceedings ('the applicant') has worked as a magistrate.

22. According to the referring court, during the period from 1 July 2017 to 30 June 2018, the applicant, in her capacity as a criminal judge, filed 478 judgments and 1 326 orders that no further action be taken. She also presided over two hearings a week, except during the holiday period in August 2018.

23. On 8 October 2018, the applicant made an application to the Giudice di pace di Bologna (Magistrates' Court, Bologna, Italy) for an order directing the Italian Government to pay remuneration payable for the month of August 2018 on the basis of a state liability claim. She seeks EUR 4 500, which corresponds to the salary of a professional judge who has completed 14 years of service, or at least, in the alternative, the sum of her net salary in the month of July 2018 of EUR 3 039.76.

24. The applicant claimed that payment by way of damages for manifest infringement by the Italian State of clauses 2 and 4(1), (2) and (4) of the framework agreement on fixed-term work, read in conjunction with Articles 1(3) and 7 of Directive 2003/88 and Article 31(2) of the Charter of Fundamental Rights of the European Union ('the Charter').

25. The Giudice di pace di Bologna (Magistrates' Court, Bologna) initially addressed five questions to the Court from these proceedings, [7] but subsequently dispensed with two of them. The following three questions therefore remain:

'(1) Does a magistrate, when making a request for a preliminary ruling, meet the definition of an ordinary European court having jurisdiction to make a request for a preliminary ruling pursuant to Article 267 TFEU, even though — in breach of the guarantees of the independence and impartiality of ordinary European courts referred to by the Court of Justice in its judgments of 19 September 2006, *Wilson* (C-506/04, EU:C:2006:587, paragraphs 47 to 53); of 27 February 2018, *Associação Sindical dos Juízes Portugueses* (C-64/16, EU:C:2018:117, paragraphs 32 and 41 to 45); and of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)* (C-216/18 PPU, EU:C:2018:586, paragraphs 50 to 54) — under national law, magistrates do not, because of their job insecurity, enjoy working conditions equivalent to those of professional judges, even though they perform the same judicial functions and are included in the national judicial system?

(2) If question 1 is answered in the affirmative, is the work carried out by the applicant magistrate covered by the term "fixed-term worker" for the purpose of Articles 1(3) and 7 of Directive 2003/88, read in conjunction with clause 2 of the framework agreement on fixed-term work implemented by Directive 1999/70 and Article 31(2) of [the Charter], as interpreted by the Court of Justice in its judgments of 1 March 2012, *O'Brien* (C-393/10, EU:C:2012:110), and of 29 November 2017, *King* (C-214/16, EU:C:2017:914) and, if so, may an ordinary or professional

6 In that regard, paragraph 102 of the request for a preliminary ruling.

7 OJ 2019 C 25, p. 19.

judge be regarded as a permanent worker indistinguishable from a magistrate working for a fixed term, for the purposes of the application of the same working conditions as referred to in clause 4 of the framework agreement on fixed-term work implemented by Directive 1999/70?

(3) If questions 1 and 2 are answered in the affirmative, is Article 47 of [the Charter], read in conjunction with Article 267 TFEU and in the light of the case-law of the Court of Justice of the European Union concerning the liability of the Italian State for manifest infringement of Community law by courts adjudicating at last instance in the judgments of 30 September 2003, *Köbler* (C-224/01, EU:C:2003:513); of 13 June 2006, *Traghetti del Mediterraneo* (C-173/03, EU:C:2006:391); and of 24 November 2011, *Commission* v *Italy* (C-379/10, not published, EU:C:2011:775), inconsistent with Article 2(3) and (3a) of legge 13 aprile 1988, n. 117, Risarcimento dei danni cagionati nell'esercizio delle funzioni giudiziarie e responsabilità civile dei magistrati (Law No 117 of 13 April 1988 on the reparation of damage caused in the exercise of judicial functions and the civil liability of judges), which provides for judicial liability for intentional fault or serious misconduct 'in the event of manifest infringement of the law or of European Union law' and which presents national courts with the choice — which, however it is made, gives rise to civil liability and liability to disciplinary action in relation to the State in cases in which the public authority itself is a substantive party, and in particular where the adjudicator of the case is a magistrate working for a fixed term and without effective legal, economic and social security protection — as in the present case, of either infringing national legislation, by disapplying it and applying EU law, as interpreted by the Court of Justice, or of infringing EU law and applying national legislation which precludes protection and is incompatible with Articles 1(3) and 7 of Directive 2003/88, clauses 2 and 4 of the framework agreement on fixed-term work implemented by Directive 1999/70, and Article 31(2) of [the Charter]?'

26. The applicant, the Italian Republic and the European Commission submitted written observations and presented oral argument at the hearing on 28 November 2019.

IV. Legal assessment

27. I will firstly examine the admissibility of the request for a preliminary ruling and, in doing so, will address the first question at the same time. I will then answer the second and third questions.

A. Admissibility

28. Both the Italian Republic and the Commission have doubts as to the admissibility of the request for a preliminary ruling, and these doubts overlap with the first question put by the Giudice di pace di Bologna (Magistrates' Court, Bologna).

1. The need for a request for a preliminary ruling

29. The Commission claims, firstly, that the referring court itself states that a request for a preliminary ruling is not required. In that regard, however, the Commission fails to recognise that the cited section of the request for a preliminary ruling [8] merely reproduces the applicant's arguments.

30. The Commission also takes the view that the referring court does not provide a sufficiently clear explanation of why a ruling from the Court is required. Thus, it alleges an infringement of Article 94(c) of the Rules of Procedure of the Court of Justice. According to that provision, the request for a preliminary ruling is to contain a statement of the reasons which prompted the referring

8 Paragraph 22 of the request for a preliminary ruling.

court or tribunal to inquire about the interpretation of certain provisions of European Union law, and the relationship between those provisions and the national legislation applicable to the main proceedings. According to the Commission, the request for a preliminary ruling does not meet those requirements.

31. In response to this, however, it must be pointed out that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to give a ruling on a question referred by a national court only where it is quite obvious that the interpretation of a rule 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. [9]

32. By those standards, the second question is material to the decision to be given, since it is at the core of the dispute before the national court. The reason for this is that in order to determine whether the applicant may claim compensation for the refusal to grant paid leave, it must be clarified whether Italian magistrates are workers within the meaning of the Working Time Directive.

33. However, Article 7 of the Working Time Directive provides for a minimum amount of leave of only 4 weeks, whereas the month of August 2018 contained additional working days. In addition, it does not follow from the Working Time Directive that Italian magistrates are to be paid during leave in the same way as professional judges. Clarification is therefore also required as to whether the prohibition on discrimination contained in the framework agreement on fixed-term work requires that Italian magistrates be granted the same number of days of leave as Italian professional judges and be paid the same salary for that leave.

34. The fact that magistrates are undoubtedly workers according to the High Council of the Judiciary and the referring court itself does not mean that the second question is irrelevant, contrary to the view taken by the Commission. This is because, according to the request for a preliminary ruling, the Corte suprema di cassazione (Supreme Court of Cassation, Italy) and the Consiglio di Stato (Council of State, Italy), which are the courts competent to adjudicate on the matter at last instance, refuse to grant the status of worker to magistrates or to treat them as professional judges. [10] In addition, it is a concept of EU law that must be interpreted autonomously. [11] This question therefore requires clarification.

35. The first question, concerning the national court's entitlement to make a request for a preliminary ruling and the doubts as to its independence, is also important for the further examination of the admissibility of the request for a preliminary ruling, since it is closely linked to objections raised by the Italian Republic and the Commission to the admissibility of the request for a preliminary ruling. Furthermore, in cases of doubt, the spirit of cooperation which must guide all relations between national courts and the Court requires that questions regarding the entitlement of national courts to make a request for a preliminary ruling be answered, provided that those questions are connected with disputes that have been brought before them. [12]

9 Judgments of 22 June 2010, *Melki and Abdeli* (C-188/10 and C-189/10, EU:C:2010:363, paragraph 27); of 19 December 2013, *Fish Legal and Shirley* (C-279/12, EU:C:2013:853, paragraph 30); of 10 December 2018, *Wightman and Others* (C-621/18, EU:C:2018:999, paragraph 27); and of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)* (C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 98).

10 Paragraph 14 of the request for a preliminary ruling mentions, in particular, the judgment of the Consiglio di Stato (Council of State) of 18 July 2017 (No 3556) and the judgments of the Corte di Cassazione (Court of Cassation) of 31 May 2017 (No 13721, IT:CASS:2017:13721CIV); of 16 November 2017 (No 27198, IT:CASS:2017:27198CIV); and of 4 January 2018 (No 99, IT:CASS:2018:99CIV).

11 Judgments of 14 October 2010, *Union syndicale Solidaires Isère* (C-428/09, EU:C:2010:612, paragraph 28), and of 20 November 2018, *Sindicatul Familia Constanța and Others* (C-147/17, EU:C:2018:926, paragraph 41).

12 Judgment of 16 December 2008, *Cartesio* (C-210/06, EU:C:2008:723, paragraphs 68 to 70).

36. The relevance of the third question to the decision to be given is the most difficult to assess. By that question, the referring court seeks to ascertain whether the Italian legislation on the personal liability of judges for intentional fault or serious misconduct 'in the event of manifest infringement of the law or of European Union law' is compatible with the requirements of EU law.

37. This question is not directly relevant to the decision in the main proceedings, as it does not concern the personal liability of judges. It is indirectly relevant, however, since the referring judge understands it to mean that he is personally liable to the State if he applies national provisions that are incompatible with EU law, but also if he applies EU law and therefore disapplies national provisions. Such a dilemma could prevent the court from granting the applicant effective legal protection. This question is therefore also relevant to the decision to be given.

2. Independence of the referring court as a condition of entitlement to make a reference to the Court

38. In principle, the Court has already recognised the power of Italian magistrates to request a preliminary ruling and thus their status as a 'court or tribunal' within the meaning of Article 267 TFEU.[13] However, the Commission and the Italian Republic as well as the referring magistrate himself doubt the independence of the magistrate who has requested a preliminary ruling from the Court in the present case.

39. Although I am not convinced by these doubts, they need to be examined nevertheless.

40. It should firstly be noted that independence is one of the requirements imposed by the Court on a 'court or tribunal' within the meaning of Article 267 TFEU in settled case-law.[14]

41. The independence of national courts and tribunals is, in particular, essential to the proper working of the judicial cooperation system. For that reason, the Court has established the principle that the preliminary ruling mechanism may be activated only by a body responsible for applying EU law which satisfies, inter alia, that criterion of independence.[15]

42. According to the case-law, the requirement for a body making a reference to be independent is comprised of two aspects: objective, 'external' independence and subjective, 'internal' independence.

(a) Objective independence

43. Objective independence presumes that the court exercises its functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever.[16] It is thus protected against external intervention or pressure liable to jeopardise the independent judgment of its members as regards proceedings before them.[17]

13 See, for example, judgment of 2 December 2010, *Jakubowska* (C-225/09, EU:C:2010:729), and orders of 19 January 2012, *Patriciello* (C-496/10, not published, EU:C:2012:24), and of 21 March 2013, *Mbaye* (C-522/11, not published, EU:C:2013:190).

14 Judgments of 14 June 2011, *Miles and Others* (C-196/09, EU:C:2011:388, paragraph 37); of 17 July 2014, *Torresi* (C-58/13 and C-59/13, EU:C:2014:2088, paragraph 17); and of 16 February 2017, *Margarit Panicello* (C-503/15, EU:C:2017:126, paragraph 27). Further criteria include the factors of whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is *inter partes* and whether it applies rules of law.

15 Judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses* (C-64/16, EU:C:2018:117, paragraph 43).

16 Judgments of 17 July 2014, *Torresi* (C-58/13 and C-59/13, EU:C:2014:2088, paragraph 22); of 6 October 2015, *Consorci Sanitari del Maresme* (C-203/14, EU:C:2015:664, paragraph 19); and of 16 February 2017, *Margarit Panicello* (C-503/15, EU:C:2017:126, paragraph 37).

17 Judgments of 9 October 2014, *TDC* (C-222/13, EU:C:2014:2265, paragraph 30); of 6 October 2015, *Consorci Sanitari del Maresme* (C-203/14, EU:C:2015:664, paragraph 19); and of 16 February 2017, *Margarit Panicello* (C-503/15, EU:C:2017:126, paragraph 37).

44. By its first question, the referring court raises doubts as to its own objective independence, which are connected with the working conditions of Italian magistrates. Specifically, these conditions relate, in particular, to the remuneration of magistrates, including entitlement to paid leave, but also to the limitation of the duration of their activities to 4 years with the possibility of an extension for a further 4 years.

45. The remuneration of judges and the limitation of the duration of their activities are in fact relevant to the objective independence of courts, particularly in the light of the most recent case-law of the Court on the remuneration of judges in Portugal [18] and the independence of the Polish courts. [19] In this regard, it also follows from the case-law that the independence understood in this way is a prerequisite for the entitlement of a body to make a request for a preliminary ruling under Article 267 TFEU. [20]

46. However, the admissibility of a request for a preliminary ruling is not called into question solely by doubts surrounding the adequacy of the remuneration of the judges concerned or the length of their terms of office, or the arrangements for a possible extension of their terms of office. As with the question of the relevance of a request for a preliminary ruling, the Court should instead proceed on the basis of the presumption that the courts of the Member States have sufficient objective independence. This presumption is already required by the mutual trust in the justice systems of the Member States, [21] which must also be adopted by the Court.

47. Such a presumption of the objective independence of a referring court may be rebutted, but there is nothing in the present case to indicate that the objective independence of the referring court is impaired. The fact that the third question does not lead to that conclusion either is explained in the answer to it. [22]

48. The answer to the first question should therefore be that the Giudice di pace di Bologna (Magistrates' Court, Bologna) is a court or tribunal within the meaning of Article 267 TFEU.

(b) Subjective independence

49. Subjective independence is linked to impartiality and seeks to ensure a level playing field for the parties to the proceedings and their respective interests with regard to the subject matter of those proceedings. That aspect requires objectivity and the absence of any interest in the outcome of the proceedings apart from the strict application of the rule of law. [23]

50. The Italian Republic and the Commission call into question this internal independence of the magistrate who has requested a preliminary ruling from the Court in the present case. Since the status and rights of magistrates are involved, he inevitably has a personal interest in the decision in the main proceedings.

18 Judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses* (C-64/16, EU:C:2018:117, paragraphs 43 and 45).

19 Judgment of 24 June 2019, *Commission* v *Poland (Independence of the Supreme Court)* (C-619/18, EU:C:2019:531, paragraphs 45, 71 and 72, and 108 et seq.).

20 Judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses* (C-64/16, EU:C:2018:117, paragraph 43).

21 See judgments of 11 February 2003, *Gözütok and Brügge* (C-187/01 and C-385/01, EU:C:2003:87, paragraph 33); of 10 February 2009, *Allianz and Generali Assicurazioni Generali* (C-185/07, EU:C:2009:69, paragraph 30); and of 5 September 2019, *AH and Others (Presumption of innocence)* (C-377/18, EU:C:2019:670, paragraph 39); and Opinions 1/03 (New Lugano Convention) of 7 February 2006 (EU:C:2006:81, paragraph 163), and 2/13 (Accession of the European Union to the ECHR) of 18 December 2014 (EU:C:2014:2454, paragraph 168).

22 Below, point 113 et seq.

23 Judgments of 9 October 2014, *TDC* (C-222/13, EU:C:2014:2265, paragraph 31), and of 16 February 2017, *Margarit Panicello* (C-503/15, EU:C:2017:126, paragraph 38).

51. The Court has however already answered a number of requests for preliminary rulings concerning the status of judges, without casting doubt on the independence of the referring courts. [24]

52. However, there are circumstances in the present case which, at first glance, could give rise to doubts as to the subjective independence of the referring magistrate. This is because the crux of the arguments put forward by the Italian Republic and the Commission is that the applicant and the magistrate responsible for the request for a preliminary ruling improperly asserted the competence of the magistrate for the dispute in the main proceedings.

53. The Italian Republic and the Commission argue firstly that the claims asserted are based on a dispute under labour law as to whether magistrates are workers. In previous requests for a preliminary ruling on the working conditions of Italian magistrates, the referring magistrates expressly acknowledged that they do not have competence to adjudicate on the dispute. The Court therefore rejected those requests as inadmissible. [25]

54. However, the present case does not concern claims under labour law, but rather a state liability claim. The Italian Republic and the Commission do not cast doubt on the fact that magistrates are competent to rule on such claims. That circumstance distinguishes the present request for a preliminary ruling from the inadmissible requests cited in footnote 25.

55. The Italian Republic also submits that the jurisdiction of the magistrate was based on a division of the applicant's claims against the Italian State which was impermissible under Italian law. Were she to assert all her claims, the limit of the value in dispute prescribed for magistrates would be exceeded. She would therefore have to bring her action before the general civil courts. The professional judges competent in those courts would have no personal interest in the status of magistrates.

56. However, it is not for the Court to determine whether a decision whereby a matter is brought before it was taken in accordance with the rules of national law governing the organisation of the courts and their procedure, [26] as already expressly found by it specifically in relation to the argument regarding the division of claims in other cases. [27] Rather, even in the event that there are doubts surrounding the application of national procedural law, the Court is bound by a decision of a court or tribunal of a Member State referring a matter to it, in so far as that decision has not been rescinded on the basis of a means of redress provided for by national law. [28]

57. In addition, in the case of a request for a preliminary ruling, the national judges involved in that request merely initiate the procedure before the Court. The Court gives its answer under its own responsibility, however, meaning that the outcome of the preliminary ruling procedure cannot be influenced by any bias on the part of the referring judge.

58. Any doubts as to the jurisdiction of the referring court and as to its subjective independence must therefore be raised first and foremost by means of remedies under national law.

24 Judgments of 13 June 2017, *Florescu and Others* (C-258/14, EU:C:2017:448, in particular paragraph 61 et seq.); of 27 February 2018, *Associação Sindical dos Juízes Portugueses* (C-64/16, EU:C:2018:117); of 7 February 2019, *Escribano Vindel* (C-49/18, EU:C:2019:106); and of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)* (C-585/18, C-624/18 and C-625/18, EU:C:2019:982).

25 Orders of 6 September 2018, *Di Girolamo* (C-472/17, not published, EU:C:2018:684, paragraph 30); of 17 January 2019, *Rossi and Others* (C-626/17, not published, EU:C:2019:28, paragraph 26); and of 17 January 2019, *Cipollone* (C-600/17, not published, EU:C:2019:29, paragraph 26).

26 Judgments of 14 January 1982, *Reina* (65/81, EU:C:1982:6, paragraph 7); of 11 April 2000, *Deliège* (C-51/96 and C-191/97, EU:C:2000:199, paragraph 29); of 16 June 2015, *Gauweiler and Others* (C-62/14, EU:C:2015:400, paragraph 26); and of 10 December 2018, *Wightman and Others* (C-621/18, EU:C:2018:999, paragraph 30).

27 Orders of 6 September 2018, *Di Girolamo* (C-472/17, not published, EU:C:2018:684, paragraphs 24 and 30), and of 17 January 2019, *Rossi and Others* (C-626/17, not published, EU:C:2019:28, paragraphs 22 and 26).

28 Judgments of 14 January 1982, *Reina* (65/81, EU:C:1982:6, paragraph 7); of 20 October 1993, *Balocchi* (C-10/92, EU:C:1993:846, paragraph 16); of 11 July 1996, *SFEI and Others* (C-39/94, EU:C:1996:285, paragraph 24); and of 7 July 2016, *Genentech* (C-567/14, EU:C:2016:526, paragraph 23).

59. Consequently, the doubts expressed by the Italian Republic and the Commission as to the jurisdiction of the referring court in the main proceedings do not preclude its entitlement to request a preliminary ruling from the Court.

3. Use of the order for payment procedure

60. Further objections by the Italian Republic and the Commission to the admissibility of the request for a preliminary ruling are linked to the fact that the main proceedings are being conducted as an order for payment procedure, and the other party, the Italian State, has not yet had the opportunity to submit its observations in that procedure.

61. The Commission concludes from this that the latter is not an *inter partes* procedure, which, however, is a characteristic entitling a court or tribunal to request a preliminary ruling within the meaning of Article 267 TFEU.

62. It is true that, as a general rule, it is appropriate for the other party be given the opportunity to be heard, and this is also required by the principle of the right to be heard. However, the Court has already held that a request for a preliminary ruling arising from proceedings that are not *inter partes* in nature,[29] in particular from the Italian order for payment procedure,[30] can also be submitted to the Court without it being necessary for the other party to have been heard beforehand.[31] Rather, the decisive factor is whether the referring court it is called upon to give judgment in proceedings intended to lead to a decision of a judicial nature.[32] This is in fact the case here.

B. Entitlement to leave of the magistrate (Question 2)

63. In order to determine whether and to what extent the applicant may claim compensation for the refusal to grant paid leave, it must be clarified whether Italian magistrates are workers within the meaning of the Working Time Directive. Since, moreover, the month of August lasts longer than the minimum leave of 4 weeks under Article 7 of the Working Time Directive, it is also necessary to assess whether prohibition of discrimination in the framework agreement on fixed-term work requires that Italian magistrates be granted the same number of days of leave and the same amount of holiday pay as Italian professional judges.

1. Working Time Directive

64. Pursuant to Article 7(1) of the Working Time Directive, Member States are to take the measures necessary to ensure that every worker is entitled to paid annual leave of at least 4 weeks.

65. It is therefore necessary to clarify whether the Working Time Directive applies to Italian magistrates (see (a)) and whether Italian magistrates are workers within the meaning of that provision (see (b)).

29 Judgments of 27 April 2006, *Standesamt Stadt Niebüll* (C-96/04, EU:C:2006:254, paragraph 13), and of 25 June 2009, *Roda Golf & Beach Resort* (C-14/08, EU:C:2009:395, paragraph 33).

30 Judgments of 14 December 1971, *Politi* (43/71, EU:C:1971:122, paragraphs 4 and 5), and of 18 June 1998, *Corsica Ferries France* (C-266/96, EU:C:1998:306, paragraph 23).

31 Judgments of 28 June 1978, *Simmenthal* (70/77, EU:C:1978:139, paragraphs 10 and 11); of 20 October 1993, *Balocchi* (C-10/92, EU:C:1993:846, paragraph 14); and of 3 March 1994, *Eurico Italia and Others* (C-332/92, C-333/92 and C-335/92, EU:C:1994:79, paragraph 11).

32 Judgment of 16 December 2008, *Cartesio* (C-210/06, EU:C:2008:723, paragraph 56).

(a) Scope of the Working Time Directive

66. Article 1(3) of the Working Time Directive defines the scope of that directive by reference to Article 2 of Directive 89/391.

67. Pursuant to Article 2(1) of Directive 89/391, that directive applies to 'all sectors of activity, both public and private'.

68. Although the judicial activity of the Italian magistrate is not explicitly mentioned in the examples cited, it is also a public sector of activity. It therefore falls, in principle, within the scope of the two directives.

69. However, as is clear from the first subparagraph of Article 2(2) of Directive 89/391, that directive is not applicable where characteristics peculiar to certain specific public service activities, inter alia the armed forces or the police, or to certain specific activities in the civil protection services, inevitably conflict with it.

70. The criterion used in the first subparagraph of Article 2(2) of Directive 89/391 to exclude certain activities from the scope of that directive and, indirectly, from that of the Working Time Directive is based not on the fact that workers belong to one of the sectors of the public service referred to in that provision, taken as a whole, but exclusively on the specific nature of certain particular tasks performed by workers in the sectors referred to in that provision, which justify an exception to the rule on the protection of the safety and health of workers, on account of the absolute necessity to guarantee effective protection of the community at large.[33]

71. However, there is no apparent reason for Italian magistrates to be sweepingly excluded from the scope of the two directives. In particular, the leave scheme could clearly be applied to Italian magistrates without any major problems, since Italian professional judges benefit from paid leave.

72. The Working Time Directive is therefore applicable to Italian magistrates.

(b) Concept of 'worker' in the Working Time Directive

73. It must therefore be clarified whether Italian magistrates are workers within the meaning of Article 7 of the Working Time Directive.

74. For the purpose of applying the Working Time Directive, the concept of 'worker' may not be interpreted differently according to the law of Member States but has an autonomous meaning specific to EU law.[34] Therefore, contrary to the view taken by the Italian Government, the fact that the activity of magistrates is regarded as an honorary office under national law cannot be decisive.

33 Order of 14 July 2005, *Personalrat der Feuerwehr Hamburg* (C-52/04, EU:C:2005:467, paragraph 51); and judgments of 12 January 2006, *Commission* v *Spain* (C-132/04, not published, EU:C:2006:18, paragraph 24), and of 20 November 2018, *Sindicatul Familia Constanța and Others* (C-147/17, EU:C:2018:926, paragraph 55).

34 Judgments of 14 October 2010, *Union syndicale Solidaires Isère* (C-428/09, EU:C:2010:612, paragraph 28), and of 20 November 2018, *Sindicatul Familia Constanța and Others* (C-147/17, EU:C:2018:926, paragraph 41).

75. Rather, EU law defines the concept of a 'worker' in accordance with objective criteria which distinguish the employment relationship by reference to the rights and duties of the persons concerned. The essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person, in return for which he receives remuneration. [35] However, activities on such a small scale as to be regarded as purely marginal and ancillary are excluded from this. [36]

76. According to the referring court, the applicant has provided significant services for the Italian judiciary. During the period from 1 July 2017 to 30 June 2018, the applicant, in her capacity as a criminal judge, filed 478 judgments and 1 326 orders that no further action be taken. She also presided over two hearings a week, except during the holiday period in August 2018. In return, she received remuneration which amounted to approximately EUR 3 000 net in July 2018.

77. Contrary to the view taken by the Italian Republic, the fact that this remuneration was composed of several components does not preclude the assumption of an employment relationship, since the Court has already ruled on the question of how remuneration in respect of leave is to be calculated in such cases. [37]

78. The condition of remuneration might be assessed differently if the remuneration had the character of an expense allowance or compensation for loss of earnings.

79. However, this is ruled out in the present case solely on account of the duration of the applicant's activity. Given that the applicant presided over 2 trial days a week and dealt with approximately 1 800 cases a year, there is no room for any other activity whose earnings could be replaced. Therefore, the remuneration cannot be limited to an expense allowance, but must at least cover living expenses and guarantee the objective independence of the magistrates.

80. This need for remuneration also follows from the far-reaching rules on the incompatibility of the office of a magistrate with certain other professional activities. [38] They practically rule out the possibility of earning a living in any other way. In particular, they cannot engage in advocacy — an activity which comes naturally to mind on account of the legal qualifications required of magistrates — at least not in the judicial district in which they perform their duties. [39]

81. Moreover, according to the request for a preliminary ruling, the remuneration of Italian magistrates is subject to the same taxes as the remuneration of other workers. By contrast, the fact that social security contributions are not levied would appear to be of less importance, particularly given that magistrates also do not appear to benefit from corresponding social security cover. [40]

82. However, an employment relationship implies the existence of a hierarchical relationship between the worker and his or her employer. Whether such a relationship exists must, in each particular case, be assessed on the basis of all the factors and circumstances characterising the relationship between the parties. [41]

35 Judgments of 14 October 2010, *Union syndicale Solidaires Isère* (C-428/09, EU:C:2010:612, paragraph 28), and of 20 November 2018, *Sindicatul Familia Constanța and Others* (C-147/17, EU:C:2018:926, paragraph 41).

36 Judgments of 3 May 2012, *Neidel* (C-337/10, EU:C:2012:263, paragraph 23), and of 26 March 2015, *Fenoll* (C-316/13, EU:C:2015:200, paragraph 27).

37 Judgments of 15 September 2011, *Williams and Others* (C-155/10, EU:C:2011:588, paragraphs 22 to 29), and of 22 May 2014, *Lock* (C-539/12, EU:C:2014:351, paragraphs 27 to 34).

38 Paragraphs 87 and 97 of the request for a preliminary ruling.

39 Paragraph 87 of the request for a preliminary ruling.

40 In that regard, see paragraph 102 of the request for a preliminary ruling.

41 Judgments of 14 October 2010, *Union syndicale Solidaires Isère* (C-428/09, EU:C:2010:612, paragraph 29); of 26 March 2015, *Fenoll* (C-316/13, EU:C:2015:200, paragraph 29); and of 20 November 2018, *Sindicatul Familia Constanța and Others* (C-147/17, EU:C:2018:926, paragraph 42).

83. It is true that, by their very nature, judges cannot be subject to any directions in the context of their judicial decisions — this would be incompatible with their required objective independence.[42] However, that does not preclude them from being regarded as workers.[43] Not only are they generally bound by the law, they are also subject to special obligations and even instructions on account of their activities — for example, with regard to holding trials at certain places or at certain times. Accordingly, the Court also regards judges as workers with regard to disadvantages in the context of retirement and retirement pensions.[44]

84. Italian magistrates specifically are subject to similar disciplinary requirements as professional judges. These are enforced by the High Council of the Judiciary together with the Minister of Justice.[45]

85. However, an employment relationship would have to be ruled out if magistrates were free to decide which cases they handled. Like lawyers, they would then be able to determine the scale and duration of their activities freely to a large extent. However, it would not be detrimental if magistrates could specify in advance that they intend to take on fewer cases during a certain period of time. Provided that this did not make the activity purely marginal and ancillary in terms of its scale, it would still be an externally determined employment relationship. Since the request for a preliminary ruling and the arguments of the parties do not contain any indications in that regard, it is for the national court to examine that question.

86. Accordingly, Article 7 of the Working Time Directive is to be interpreted as meaning that an Italian magistrate whose remuneration is made up of a small basic sum and payments for settled cases and trials must be regarded as a worker within the meaning of Article 7 of the Working Time Directive and is therefore entitled to at least 4 weeks' paid annual leave if he or she carries out a significant number of judicial functions, cannot decide for him or herself which cases he or she handles and is subject to the disciplinary obligations of professional judges.

2. Framework agreement on fixed-term work

87. However, it is still necessary to clarify whether, in addition to the minimum leave provided under Article 7 of the Working Time Directive, Italian magistrates are entitled to the same right to paid leave and the same payment for leave as Italian professional judges. Such a right could arise from the prohibition on discrimination pursuant to clause 4 of the framework agreement on fixed-term work.

(a) Italian magistrates as fixed-term workers

88. It is firstly necessary to discuss whether Italian magistrates should also be regarded as workers within the meaning of the framework agreement on fixed-term work or whether the Italian Republic is correct — at least as far as the framework agreement on fixed-term work is concerned — in its view that it is an honorary office.

42 See judgment of 1 March 2012, *O'Brien* (C-393/10, EU:C:2012:110, paragraph 48), and point 43 above.

43 See, in this respect, judgment of 1 March 2012, *O'Brien* (C-393/10, EU:C:2012:110, paragraph 47).

44 Judgment of 5 November 2019, *Commission* v *Poland (Independence of the ordinary courts)* (C-192/18, EU:C:2019:924, paragraph 61). See, also, judgment of 6 November 2012, *Commission* v *Hungary* (C-286/12, EU:C:2012:687).

45 Paragraph 90 et seq. of the request for a preliminary ruling.

89. At first glance, it appears that the Italian Republic could therefore rely on the wording of clause 2(1) of the framework agreement on fixed-term work. According to that clause, the 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*. This could be understood as meaning that the Italian classification of the activities performed by a magistrate as an honorary office excludes the application of the framework agreement on fixed-term work.

90. However, the Court has inferred from that wording that the scope of the framework agreement on fixed-term work is conceived in broad terms. [46]

91. Consequently, it is settled case-law that the definition of 'fixed-term workers' for the purposes of the framework agreement on fixed-term work, set out in clause 3(1), encompasses all workers without drawing a distinction according to whether their employer is in the public, or private, sector and — above all — regardless of the classification of their contract under domestic law. [47]

92. The Court bases this conclusion, in particular, on the importance of the principles of equal treatment and non-discrimination, which are among the general principles of EU law. Therefore, the provisions set out in that regard by the framework agreement on fixed-term work for the purpose of ensuring that fixed-term workers enjoy the same benefits as those enjoyed by comparable permanent workers, except where a difference in treatment is justified on objective grounds, must be deemed to be of general application. They are rules of EU social law of particular importance, from which each employee should benefit as a minimum protective requirement. [48]

93. If Member States were permitted to remove at will certain categories of persons from the protection offered by the framework agreement, the effectiveness of that EU instrument would be in jeopardy, as would its uniform application in the Member States. [49] The Court has therefore refused to exclude certain categories of workers, such as 'non-permanent staff' [50] or 'regulated workers', [51] from the scope of the framework agreement on fixed-term work.

94. Rather, the framework agreement on fixed-term work applies to all workers providing remunerated services in the context of a fixed-term employment relationship linking them to their employer. [52]

95. As explained above, Italian magistrates are in an employment relationship with the Ministry of Justice. [53] The end of that relationship is determined by the fact that they are appointed for 4 years and can now only be reappointed once after that. The applicant, on the other hand, has been a magistrate for over 17 years, but also on the basis of fixed-term appointments.

96. Therefore, Italian magistrates are workers within the meaning of the framework agreement on fixed-term work, at least if the scale of their activity is similar to that of the applicant.

46 Judgments of 4 July 2006, *Adeneler and Others* (C-212/04, EU:C:2006:443, paragraph 56), and of 9 July 2015, *Regojo Dans* (C-177/14, EU:C:2015:450, paragraph 30).

47 Judgments of 4 July 2006, *Adeneler and Others* (C-212/04, EU:C:2006:443, paragraph 56), and of 9 July 2015, *Regojo Dans* (C-177/14, EU:C:2015:450, paragraph 31).

48 Judgments of 13 September 2007, *Del Cerro Alonso* (C-307/05, EU:C:2007:509, paragraph 27), and of 9 July 2015, *Regojo Dans* (C-177/14, EU:C:2015:450, paragraph 32).

49 Judgments of 13 September 2007, *Del Cerro Alonso* (C-307/05, EU:C:2007:509, paragraph 29), and of 9 July 2015, *Regojo Dans* (C-177/14, EU:C:2015:450, paragraph 34).

50 Judgment of 9 July 2015, Regojo Dans (C-177/14, EU:C:2015:450, paragraph 34).

51 Judgment of 13 September 2007, *Del Cerro Alonso* (C-307/05, EU:C:2007:509, paragraph 29).

52 Judgments of 13 September 2007, *Del Cerro Alonso* (C-307/05, EU:C:2007:509, paragraph 28), and of 9 July 2015, *Regojo Dans* (C-177/14, EU:C:2015:450, paragraph 33).

53 See points 73 to 86 above.

(b) The different working conditions of magistrates and professional judges

97. Accordingly, it is necessary to examine whether the differences in the working conditions of Italian magistrates and professional judges are permissible, particularly with regard to their leave entitlement and remuneration.

98. Clause 4(1) of the framework agreement on fixed-term work prohibits, with regard to employment conditions, less favourable treatment of fixed-term workers as compared with permanent workers solely because they have a fixed-term contract or relationship unless different treatment is justified on objective grounds.

99. The starting point for the task, incumbent on the referring court, of considering whether fixed-term workers and permanent workers are in comparable situations is, in accordance with the definition of the term 'comparable permanent worker' in the first subparagraph of clause 3(2) of the framework agreement on fixed-term work, whether both categories of worker are engaged in the same or similar work or occupation in the establishment in question. This must be determined in the light of a number of factors such as the nature of the work, training requirements and working conditions. [54]

100. At first glance, Italian magistrates and professional judges carry out similar work, in that they hold the office of judge. It has not been demonstrated that there are any differences in training. However, the importance and difficulty of the cases handled are likely to differ. Under Article 106(2) of the Italian Constitution, magistrates may be appointed only as single judges and therefore not in collegiate courts. In addition, magistrates at first instance handle cases of lesser importance, while professional judges at higher instances handle cases of greater importance.

101. There is also a key difference with regard to access to judicial offices. Italian professional judges are appointed on the basis of a formal selection procedure, that is to say a competition between various qualified candidates involving specific tests. The appointment of magistrates, on the other hand, does not require such a competition, but is based on their titles, that is to say their professional qualifications. However, the Court has not attached any importance to such a difference in selection, at least with regard to the recognition of the professional experience of secondary school teachers. [55]

102. Nevertheless, it cannot be ruled out that the method of selecting workers justifies differences in other working conditions, such as the nature of the job, remuneration or career prospects.

103. The Court's ruling on the recognition of the professional experience of secondary school teachers therefore confirms my view that the crucial factor is whether fixed-term workers and permanent workers are in a comparable situation also and especially *with regard to the working conditions at issue*. [56]

104. As is otherwise the case when examining discrimination, the comparability of the situations must be determined and assessed in particular in the light of the subject matter and purpose of the measure in question. The principles and the objectives of the field to which the act relates must also be taken into account. [57]

54 Judgments of 8 September 2011, *Rosado Santana* (C-177/10, EU:C:2011:557, paragraph 66), and of 13 March 2014, *Nierodzik* (C-38/13, EU:C:2014:152, paragraph 31); and orders of 18 March 2011, *Montoya Medina* (C-273/10, not published, EU:C:2011:167, paragraph 37), and of 9 February 2017, *Rodrigo Sanz* (C-443/16, EU:C:2017:109, paragraph 38); to the same effect, see judgment of 31 May 1995, *Royal Copenhagen* (C-400/93, EU:C:1995:155, paragraph 33).

55 Judgment of 20 September 2018, *Motter* (C-466/17, EU:C:2018:758, paragraphs 33 and 34).

56 My Opinions in *Montero Mateos* (C-677/16, EU:C:2017:1021, point 44); *Grupo Norte Facility* (C-574/16, EU:C:2017:1022, point 49); and *Vernaza Ayovi* (C-96/17, EU:C:2018:43, point 71).

57 Judgments of 16 December 2008, *Arcelor Atlantique et Lorraine and Others* (C-127/07, EU:C:2008:728, paragraph 26); of 11 July 2013, *Ziegler* v *Commission* (C-439/11 P, EU:C:2013:513, paragraph 167); and of 26 July 2017, *Persidera* (C-112/16, EU:C:2017:597, paragraph 46).

105. The criteria for comparing the various benefits granted by the employer to which fixed-term workers, on the one hand, and permanent workers, on the other, are entitled by employment contract or by law necessarily also include the factual and legal situation in which the relevant benefits granted by the employer are to be claimed. [58]

106. In the light of these considerations, there is comparability with regard to the duration of the leave entitlement. Owing to their similar activities, Italian magistrates and professional judges have a comparable need to rest and enjoy their leisure time.

107. Nor is there any objective reason which would justify discriminating against Italian magistrates compared with professional judges in that regard.

108. On the other hand, the two groups are not comparable as regards the level of pay during leave, because their work is remunerated differently. Italian professional judges receive a fixed salary, whereas the payment of magistrates consists of a basic monthly amount and further payments for trial days and settling cases. If the Court were to assume comparability nevertheless, those differences in the nature of remuneration would at least constitute an objective reason for the difference in treatment between Italian magistrates and professional judges as regards pay for leave.

109. Therefore, the salary of a professional judge cannot be used to calculate the pay for leave of Italian magistrates. Rather, that pay is to be calculated on the basis of the normal remuneration of the magistrate outside the period of leave. [59]

110. In the event that the Court were to use the present case as an opportunity to also examine the compatibility of the different remuneration of Italian magistrates and professional judges with clause 4 of the framework agreement on fixed-term work, I would like to note briefly that I do not consider Italian magistrates and professional judges to be comparable as regards remuneration on the basis of the information available.

111. The access to those judicial offices and the different nature of the cases handled are of crucial importance in that comparison. Due to the practice of selecting the best candidates, which is inherent in the formal selection procedure consisting of special tests, and the associated career prospects, it is to be assumed that professional judges will be better qualified than magistrates, despite similar training requirements. Moreover, if it is true that magistrates at first instance handle cases of lesser importance, while professional judges perform their duties in higher courts and handle cases of greater importance, the two groups are hardly comparable in terms of remuneration; at the least, differences in remuneration are justified.

(c) Interim conclusion

112. Consequently, such a magistrate who has been appointed only for a fixed period of time is comparable to Italian professional judges as regards the duration of the paid annual leave, meaning that he or she may request the same amount of leave as professional judges pursuant to clause 4 of the framework agreement on fixed-term work. Remuneration during leave must be calculated on the basis of their normal remuneration during their judicial service.

58 See, to that effect, judgment of 12 December 2013, *Carratù* (C-361/12, EU:C:2013:830, paragraphs 44 and 45), and of 5 June 2018, *Montero Mateos* (C-677/16, EU:C:2018:393, paragraph 59).

59 See, in that regard, the references in footnote 37 and judgment of 11 November 2015, *Greenfield* (C-219/14, EU:C:2015:745, paragraphs 54 to 56).

C. Liability risks of Italian judges (Question 3)

113. By the third question, the referring court seeks to ascertain whether it is compatible with the requirements of EU law if the national legislation makes provision for the personal liability of the adjudicating judges for intentional fault or serious misconduct 'in the event of manifest infringement of the law or of European Union law'. It understands that legislation to mean that it incurs liability if it applies national law in breach of EU law, but also if it applies EU law with primacy and thus disapplies national law.

114. From the perspective of EU law, it should be noted that the threat of a penalty for applying EU law while simultaneously disapplying incompatible national law would be contrary to the primacy of EU law, the principle of sincere cooperation laid down in Article 4(3) TEU, and the right to effective judicial protection in accordance with Article 47 of the Charter. At the same time, it would be doubtful whether a judge could still apply that law independently in the light of a threat of liability for the primacy of application of EU law.

115. Therefore, legislation on the personal liability of judges for intentional fault or serious misconduct 'in the event of manifest infringement of the law or of European Union law' must be interpreted as meaning that the application of EU law with primacy does not give rise to judicial liability. Moreover, this is the interpretation given to the relevant provisions by the Italian Republic before the Court.

116. If such an interpretation is not possible, the legislation cannot be applied. Under no circumstances may the judge concerned be subject to a penalty for the correct application of EU law.

V. Conclusion

117. I therefore propose that the Court give the following ruling:

(1) The Giudice di pace di Bologna (Magistrates' Court, Bologna, Italy) is a court or tribunal within the meaning of Article 267 TFEU.

(2) 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 is to be interpreted as meaning that an Italian magistrate whose remuneration is made up of a small basic sum and payments for settled cases and trials must be regarded as a worker within the meaning of Article 7 of the Working Time Directive and is therefore entitled to at least 4 weeks' paid annual leave if he or she carries out a significant number of judicial functions, cannot decide for him or herself which cases he or she handles and is subject to the disciplinary obligations of professional judges.

Such a magistrate who has been appointed only for a fixed period of time is comparable to Italian professional judges as regards the duration of the paid annual leave. He or she may therefore request the same amount of leave as professional judges pursuant to clause 4 of Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP. Remuneration during leave must be calculated on the basis of his or her normal remuneration during his or her judicial service.

(3) Legislation on the personal liability of judges for intentional fault or serious misconduct 'in the event of manifest infringement of the law or of European Union law' must, for its part, be interpreted in the light of EU law, to the effect that the application of EU law with primacy does not give rise to judicial liability. If such an interpretation is not possible, the legislation cannot be applied.