



C/2024/1823

11.3.2024

Judgment of the Court (Sixth Chamber) of 25 January 2024 (request for a preliminary ruling from the Consiglio di Stato — Italy) — GC and others v Croce Rossa Italiana, Ministero della Difesa, Ministero della Salute, Ministero dell'Economia e delle Finanze, Presidenza del Consiglio dei ministri

(Case C-389/22, ⁽¹⁾ Croce Rossa Italiana and Others)

(Reference for a preliminary ruling — Article 267 TFEU — Scope of the obligation on national courts or tribunals of last instance to make a reference for a preliminary ruling — Exceptions to that obligation — Criteria — Situations in which the correct interpretation of EU law is so obvious as to leave no scope for any reasonable doubt — Condition related to the national court or tribunal of last instance being convinced that the matter would be equally obvious to the other courts or tribunals of last instance of the Member States and to the Court of Justice — Directive 1999/70/EC — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Clauses 2 and 3 — Concept of 'fixed-term worker' — Members of the military corps of the Italian Red Cross — Clause 5 — Measures seeking to prevent and, where relevant, punish abuse arising from the use of successive fixed-term employment contracts or relationships — Conversion of the status of 'fixed-term workers' into that of 'permanent workers' — Clause 4 — Principle of non-discrimination)

(C/2024/1823)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicants: GC and others

Defendants: Croce Rossa Italiana, Ministero della Difesa, Ministero della Salute, Ministero dell'Economia e delle Finanze, Presidenza del Consiglio dei ministri

Operative part of the judgment

1. Article 267 TFEU must be interpreted as meaning that a national court or tribunal against whose decisions there is no judicial remedy under national law may refrain from referring to the Court a question concerning the interpretation of EU law and take upon itself the responsibility for solving it where the correct interpretation of EU law is so obvious as to leave no scope for any reasonable doubt. The existence of such a possibility must be assessed in the light of the characteristic features of EU law, the particular difficulties to which interpretation of the latter gives rise and the risk of divergences in judicial decisions within the European Union. That national court or tribunal is not required to establish in detail that the other courts or tribunals of last instance of the Member States and the Court would give the same interpretation, but it must have obtained the conviction, according to an assessment which takes account of those factors, that the matter would be equally obvious to those other national courts or tribunals and to the Court.
2. Clause 5.1 of the Framework agreement on fixed-term work concluded on 18 March 1999, 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, must be interpreted as meaning that

— it is to apply to a relationship such as that established between the staff members of the Croce Rossa Italiana military corps (Italian Red Cross) called upon for temporary service and the Italian Red Cross, in so far as that relationship can be categorised as 'successive fixed-term employment contracts or relationships contracts' within the meaning of the framework agreement, and,

⁽¹⁾ OJ C 35, 30.1.2023.

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- in the event that that provision applies to such a relationship, it precludes national legislation which allows for the extension and renewal over several years and without interruption of the call-up orders of such staff members, in so far as that legislation includes none of the measures seeking to prevent and, where relevant, punish abuse arising from the use of successive fixed-term employment contracts listed in Clause 5.1(a) to (c), nor equivalent legal measure.
3. The principle of non-discrimination, as implemented and specifically applied by Clause 4.1 of the Framework agreement on fixed-term work concluded on 18 March 1999, in the annex to Council Directive 1999/70,
- must be interpreted as meaning that it does not preclude national legislation which, following the reorganisation of an entity such as the Italian Red Cross, which allows persons such as the staff members of the military corps thereof who are called upon to perform continuous service to continue to carry out their activity for that entity, but makes no such provision for persons such as the staff members of that military corps called upon to perform a temporary service whose activity for that entity has come to an end at the scheduled date.
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