Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

7 April 2022 *

(Reference for a preliminary ruling – Social policy – Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Clauses 2 and 4 – Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC – Clause 4 – Principle of non-discrimination – Equal treatment in employment and occupation – Magistrates and ordinary judges – Clause 5 – Measures intended to penalise improper use of fixed-term contracts – Directive 2003/88/EC – Article 7 – Paid annual leave)

In Case C-236/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale amministrativo regionale per l'Emilia Romagna (Regional Administrative Court, Emilia Romagna, Italy), made by decision of 27 May 2020, received at the Court on 4 June 2020, in the proceedings

PG

v

Ministero della Giustizia,

CSM – Consiglio Superiore della Magistratura,

Presidenza del Consiglio dei Ministri,

intervening parties:

Unione Nazionale Giudici di Pace (Unagipa),

TR,

PV,

Associazione Nazionale Giudici di Pace – ANGDP,

RF,

GA,

GOT Non Possiamo Più Tacere,

* Language of the case: Italian.

Unione Nazionale Italiana Magistrati Onorari – UNIMO,

THE COURT (First Chamber),

composed of A. Arabadjiev (Rapporteur), President of the Chamber, I. Ziemele, T. von Danwitz, P.G. Xuereb and A. Kumin, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– PG, by L. Serino, E. Lizza and G. Romano, avvocati,

– PV and Associazione Nazionale Giudici di Pace – ANGDP, by G. Guida and V. De Michele, avvocati,

– Unione Nazionale Giudici di Pace (Unagipa) and TR, by G. Guida, V. De Michele and F. Visco, avvocati,

– RF, by B. Nascimbene and F. Rossi Dal Pozzo, avvocati,

– the Italian Government, by G. Palmieri, acting as Agent, and by F. Sclafani and A. Vitale, avvocati dello Stato,

– the European Commission, by B.-R. Killmann 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 (i) the interpretation of Articles 20, 21, 31, 33, 34 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), (ii) Clause 4 of the framework agreement on part-time work, concluded on 6 June 1997 ('the framework agreement on part-time work'), which is annexed to Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC (OJ 1998 L 14, p. 9), as amended by Council Directive 98/23/EC of 7 April 1998 (OJ 1998 L 131, p. 10) ('Directive 97/81'), (iii) Clauses 2, 4 and 5 of the framework agreement on fixed-term work concluded on 18 March 1999 ('the framework agreement on fixed-term work'), which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43), (iv) Articles 1 and 2 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000

L 303, p. 16), and (v) 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).

2 The request has been made in proceedings between PG, *Giudice di pace* (Magistrate), and the Ministero della Giustizia (Ministry of Justice, Italy), the Consiglio Superiore della Magistratura (Supreme Council of the Judiciary, Italy) and the Presidenza del Consiglio dei Ministri (Prime Minister's Office, Italy) concerning the refusal to find that there is a full-time or part-time employment relationship in the public sector between PG and the Ministry of Justice.

Legal context

European Union law

The framework agreement on part-time work

3 Clause 2 of the framework agreement on part-time work, entitled 'Scope', provides:

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

…'.

4 Clause 4(1) and (2) of the framework agreement on part-time work provides:

'1. In respect of employment conditions, part-time workers shall not be treated in a less favourable manner than comparable full-time workers solely because they work part time unless different treatment is justified on objective grounds.

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

The framework agreement on fixed-term work

5 Clause 2 of the framework agreement on fixed-term work, entitled 'Scope', provides:

'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.

…'

6 Clause 4 of the framework agreement on fixed-term work, entitled 'Principle of non-discrimination', provides:

'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.

…'

7 Clause 5 of the framework agreement on fixed-term work, headed 'Measures to prevent abuse', states:

'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

8 Article 7 of Directive 2003/88, entitled 'Annual leave', provides:

'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. The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.'

Italian law

9 Article 106 of the Italian Constitution contains basic provisions on access to judicial office:

'Judges shall be selected by means of competition.

The law governing the judicial system may provide for the appointment, including by election, of honorary judges for the performance of all functions carried out by a single judge.

…'

10 Legge n. 374 – Istituzione del giudice di pace (Law No 374 establishing the office of magistrate) of 21 November 1991 (Ordinary Supplement to GURI No 278 of 27 November 1991, p. 5) provides, in the version applicable to the main proceedings ('Law No 374/1991'):

'Article 1

Establishment of the office and duties 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 judiciary.

…

Article 4

Appointment to office

1. The "honorary" judges called on to serve as magistrates are appointed by decree of the President of the Republic, following deliberation in the Supreme Council of the Judiciary, on a proposal of the judicial council with territorial jurisdiction, assisted by five representatives designated, by common agreement, by the Councils of the Bar Association for the appeal court district.

…

Article 10

Duties of magistrates

1. Magistrates are subject to the duties of ordinary judges. …

…

Article 11

Compensation paid to magistrates

1. The office of magistrate is "honorary".

2. The honorary judges who carry out the duties of magistrate shall receive compensation of 70 000 [Italian lire (ITL) (approximately EUR 35)] for each civil or criminal hearing, even when there is no oral hearing, and for apostilling documents, as well as ITL 110 000 [(approximately EUR 55)] for any other procedure allocated which is closed or removed from the register.

3. They shall further receive compensation of ITL 500 000 [(approximately EUR 250)] for each month of actual service by way of reimbursement of training fees, retraining costs and costs related to the general services of the office.

…

4a. The compensation provided for in the present article may be received concurrently with pensions and retirement benefits, irrespective of how they are designated.

4b. The compensation provided for in the present article may not, in any event, exceed EUR 72 000 gross per annum.'

The main proceedings and the questions referred for a preliminary ruling

11 PG held the office of *Giudice di pace* (magistrate) continuously from 3 July 2002 to 31 May 2016.

12 In the dispute in the main proceedings, PG, arguing that magistrates and ordinary judges carry out identical tasks, seeks a declaration that he is entitled to the legal status of a public sector employee, on a full-time or part-time basis, within the judiciary. PG also seeks an order for reinstatement of his financial, social security and pension rights.

13 The referring court points out that, in accordance with national legislation, and by contrast to the position of ordinary judges, the employment of magistrates does not have the typical characteristics of an employment relationship in the public sector. It follows that magistrates do not enjoy any kind of protection for pension and social security purposes, including in matters relating to health, maternity and family, or the right to leave.

14 According to the referring court, magistrates nonetheless carry out judicial duties comparable to those of ordinary judges and, in any event, to those of other civil servants. The fact that the remuneration paid to magistrates is defined formally as an 'emolument' is irrelevant. The undue and unjustified renewals of fixed-term contracts and the systematic extension of the periods of service of magistrates would lead to a certain 'perpetuation' of an employment relationship characterised under Italian law as honorary, in respect of which there is no effective penalty that might have a dissuasive effect.

15 In those circumstances, the Tribunale amministrativo regionale per l'Emilia Romagna (Regional Administrative Court, Emilia Romagna, Italy) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Do Articles 20, 21, 31, 33 and 34 of the [Charter], [Clauses 2 and 4 of the framework agreement on fixed-term work annexed to Directive 1999/70], [Clause 4 of the framework agreement on part-time work annexed to Directive 97/81], Article 7 of Directive [2003/88] and Articles 1 and 2(2)(a) of Directive [2000/78] preclude the application of national legislation, such as the Italian legislation set out in [Law No 374/1991] and Legislative Decree 92/2016, as consistently interpreted in the case-law, under which *giudici di pace*

(magistrates), as lay judges, in addition to not being treated in the same way as *giudici togati* [(ordinary judges)] as regards emoluments and pension and social security entitlements, are completely excluded from all forms of pension and social security protection afforded to employees in the public sector?

(2) Do EU principles relating to the autonomy and independence of the judiciary, in particular Article 47 of the [Charter], preclude the application of national legislation, such as the Italian legislation under which *giudici di pace*, as lay judges, in addition to not being treated in the same way as *giudici togati* [(ordinary judges)] as regards emoluments and pension and social security entitlements, are completely excluded from all forms of pension and social security protection afforded to employees in the public sector?

(3) Does Clause 5 of the [framework agreement on fixed-term work] preclude the application of national legislation, such as the Italian legislation under which the fixed period of service of *giudici di pace*, as lay judges, originally set at eight years (four plus four years), may be systematically renewed for a further four years without any provision for effective and dissuasive penalties, instead of the employment relationship being converted into one of indefinite duration?'

16 Following the delivery of the judgment of 16 July 2020, *Governo della Repubblica italiana (Status of Italian magistrates)* (C-658/18, EU:C:2020:572), the Court asked the Tribunale amministrativo regionale per la Emilia Romagna (Regional Administrative Court, Emilia Romagna) whether, in the light of that judgment, it wished to maintain its request for a preliminary ruling.

17 On 28 October 2020, the referring court stated that it was maintaining that request on the ground that the Court had not ruled on all the incompatibilities between EU law and the domestic legislation at issue. That court clarified that it was important that the Court examine in detail the duties performed by magistrates in the Italian judicial order, otherwise there was a risk that national courts could enjoy too broad a discretion.

Consideration of the questions referred

Admissibility of the questions

18 It must be borne in mind that, according to the Court's 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).

19 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).

20 In this respect, 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 of Justice requires, inter alia, 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.

21 As regards the first question, the order for reference does not meet those requirements.

22 The order for reference does not make it possible to understand the reasons why Articles 33 and 34 of the Charter and the provisions of Directive 2000/78 preclude national legislation, as interpreted by national case-law and according to which magistrates as honorary judges are not included in the same remuneration, social security and pension scheme as ordinary judges and are thereby completely excluded from all forms of pension and social security protection afforded to public sector workers.

23 As for the second question, the referring court does not set out the reasons why it is uncertain as to the compatibility of the legislation in question in the light of the principles of autonomy and of the independence of the judicial duties carried out by magistrates. The referring court merely states that the impartiality and independence of judges require that all judges be recognised as enjoying fundamental rights, namely continuity of service, appropriate emoluments and respect for the rights of the defence in disciplinary and paradisciplinary proceedings.

24 It follows that the Court does not have before it the factual or legal material necessary to give a useful answer to part of the first question and to the second question.

25 It follows that the first question referred, as it relates to the interpretation of Articles 33 and 34 of the Charter and Directive 2000/78 and the second question referred in its entirety must be declared to be inadmissible.

The first question

26 As a preliminary matter, the first question of the referring court must be understood as not requesting an autonomous interpretation of Articles 20, 21 and 31 of the Charter, since those articles are referred to only in support of the request for interpretation of Directive 2003/88, of the framework agreement on part-time work and of the framework agreement on fixed-term work.

27 Accordingly, by that question, the referring court asks, in essence, whether Article 7 of Directive 2003/88, Clause 4 of the framework agreement on part-time work and Clause 4 of the framework agreement on fixed-term work must be interpreted as precluding national legislation which makes no provision for an entitlement on the part of magistrates to 30 days' paid annual leave or to a social security and pension scheme consequent on the employment relationship, such as that provided for ordinary judges.

28 As already noted in paragraph 13 of the present judgment, the referring court specifies that the employment relationship of ordinary judges is a public sector employment relationship, which is not the case of that for lay magistrates, defined as 'honorary' by the legislation at issue. In those circumstances, magistrates, like PG, are deprived of any entitlement to paid leave or of any kind of protection for pension and social security purposes, including in matters relating to health, maternity and family.

29 It is apparent, in that regard, from the case file before the Court that the employment relationship of magistrates differs from that of ordinary judges in respect of several essential matters, namely recruitment, position within the organisational system of the public administration, rules on conflicts with and exclusivity of the office held, remuneration, duration of the relationship and the full and exclusive nature of the duties.

30 It must be borne in mind from the outset that, in its judgment of 16 July 2020, *Governo della Repubblica italiana (Status of Italian magistrates)* (C-658/18, EU:C:2020:572), the Court held, in essence, that the concept of 'fixed-term worker' referred to in Clause 2(1) of the framework agreement on fixed-term work, must be interpreted as encompassing a magistrate appointed for a limited period, who, in the context of his or her duties, performs real and genuine services which are neither purely marginal nor ancillary, and for which he or she receives compensation representing remuneration, which is, however, for the referring court to verify.

31 It follows, in the present case, that it is ultimately for the referring court to determine whether PG is a 'fixed-term worker' within the meaning of the framework agreement on fixed-term work and/or a 'part-time worker' within the meaning of the framework agreement on part-time work.

32 In that regard, it should be recalled that Clause 4(1) of the framework agreement on fixed-term work 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 16 July 2020, *Governo della Repubblica italiana (Status of Italian magistrates)*, C-658/18, EU:C:2020:572, paragraph 136).

33 Similarly, in accordance with the objective of eliminating discrimination between part-time workers and full-time workers, Clause 4 of the framework agreement on part-time work, regarding employment conditions, precludes part-time workers from being treated in a less favourable manner than comparable full-time workers solely because they work part time unless different treatment is justified on objective grounds.

34 As the wording of Clause 4(1) and (2) of the framework agreement on part-term work and that of Clause 4(1) and (2) of the framework agreement on fixed-term work are, in essence, identical, it must be stated that considerations set out in respect of one of those provisions also apply *mutatis mutandis* to the other.

35 The Court has held that Clause 4(1) of the framework agreement on fixed-term work aims to apply the principle of non-discrimination to fixed-term workers in order to prevent an employer using such an employment relationship to deny those workers rights which are recognised for permanent workers (judgment of 16 July 2020, *Governo della Repubblica italiana (Status of Italian magistrates)*, C-658/18, EU:C:2020:572, paragraph 137).

36 As regards the 'employment conditions' referred to in Clause 4 of that framework agreement, the Court has previously held that those conditions encompass conditions relating to remuneration and to pensions which are consequent on the employment relationship, to the exclusion of conditions relating to pensions arising under a statutory social security scheme (judgment of 15 April 2008, *Impact*, C-268/06, EU:C:2008:223, paragraph 134).

37 It falls to the referring court to determine whether the social security and pension scheme at issue in the main proceedings is covered by Clause 4 of that framework agreement.

38 Further, given that 'employment conditions' within the meaning of Clause 4(1) of the framework agreement on fixed-term work cover the constituent parts of remuneration, including the level of those constituent parts, the right to paid annual leave and the conditions relating to retirement pensions which derive from the employment relationship, it is for the referring court to ascertain whether, having regard to all factors such as the nature of the employment, training and working conditions, the judicial activity of PG when carrying out his duties as a magistrate is comparable to that of an ordinary judge (see, to that effect, judgment of 16 July 2020, *Governo della Repubblica italiana (Status of Italian magistrates)*, C-658/18, EU:C:2020:572, paragraphs 143 to 147).

39 If it is established that a magistrate such as PG is, in the light of Clause 4 of the framework agreement on fixed-term work, in a comparable situation to that of ordinary judges, it must still be verified whether there is an objective ground justifying a difference in treatment.

40 In that regard, it should be noted that, according to settled case-law, the concept of 'objective grounds', within the meaning of Clause 4(1) of the framework agreement, must be understood as not permitting a difference in treatment between fixed-term workers and permanent workers to be justified on the basis that the different treatment is provided for by a general or abstract measure, such as a law or a collective agreement (judgment of 16 July 2020, *Governo della Repubblica italiana (Status of Italian magistrates)*, C-658/18, EU:C:2020:572, paragraph 150 and the case-law cited).

41 That concept requires, according to equally settled case-law, the unequal treatment found to exist to be justified by the presence of precise and specific factors, characterising the employment condition to which it relates, in the specific context in which it occurs and, on the basis of objective and transparent criteria, in order to ensure that that unequal treatment in fact responds to a genuine need, is appropriate for the purpose of attaining the objective pursued and is necessary for that purpose. Those factors may be apparent, in particular, from the specific nature of the tasks for the performance of which fixed-term contracts have been concluded and from the inherent characteristics of those tasks or, as the case may be, from pursuit of a legitimate social-policy objective of a Member State (judgment of 16 July 2020, *Governo della Repubblica italiana (Status of Italian magistrates)*, C-658/18, EU:C:2020:572, paragraph 151).

42 The Court ruled, in paragraph 156 of the judgment of 16 July 2020, *Governo della Repubblica italiana (Status of Italian magistrates)* (C-658/18, EU:C:2020:572), regarding the justification for the existence of an entrance competition specifically designed for ordinary judges to enter the judiciary, which is not required for the appointment of magistrates, that, in the light of the discretion enjoyed by Member States as regards the organisation of their own public administrations, those States can, in principle, without acting contrary to Directive 1999/70 or the framework agreement on fixed-term work, lay down conditions for entering the judiciary and conditions of employment applicable to both ordinary judges and magistrates.

43 However, that discretion notwithstanding, the criteria which the Member States lay down must be applied in a transparent manner and must be open to review in order to prevent any unfavourable treatment of fixed-term workers solely on the basis of the duration of contracts or employment relationships which attest to their length of service and professional experience (judgment of 16 July 2020, *Governo della Repubblica italiana (Status of Italian magistrates)*, C-658/18, EU:C:2020:572, paragraph 157).

44 Where such a difference in treatment arises from the need to take account of objective requirements relating to the post which the recruitment procedure is intended to fill and which are unrelated to the fixed-term nature of the worker's employment relationship, that difference in treatment may be justified for the purposes of Clause 4(1) and/or (4) of the framework agreement on fixed-term work. In that regard, it must be taken into account that some differences in treatment between permanent workers recruited following a competition and fixed-term workers recruited following a procedure that is different from the one provided for permanent workers, may, in principle, be justified by differences in the qualifications required and the nature of the duties undertaken (judgment of 16 July 2020, *Governo della Repubblica italiana (Status of Italian magistrates)*, C-658/18, EU:C:2020:572, paragraphs 158 and 159).

45 The Court has held that the objectives, put forward by the Italian Government, of reflecting the differences in professional practice between magistrates and ordinary judges may, therefore, be considered to constitute an 'objective reason' within the meaning of Clause 4(1) and/or (4) of the framework agreement on fixed-term work, provided that they respond to a genuine need, are appropriate for the purpose of attaining the objectives pursued and are necessary for that purpose (judgment of 16 July 2020, *Governo della Repubblica italiana (Status of Italian magistrates)*, C-658/18, EU:C:2020:572, paragraph 160).

46 In that connection, the Court considered that the differences between the recruitment procedures for magistrates and ordinary judges, notably the special importance attributed within the national judicial order, and, more particularly, by the first paragraph of Article 106 of the Italian Constitution, to the competitions specifically designed for the recruitment of ordinary judges, appear to indicate that the tasks that the latter must carry out are of a particular nature and the qualifications required for the performance of those tasks are of a different level. In any event, it is for the referring court to assess, to that end, the available qualitative and quantitative evidence concerning the duties carried out by magistrates and professional judges, their work schedules and the constraints to which they are subject and, in general, all relevant circumstances and facts (see, to that effect, judgment of 16 July 2020, *Governo della Repubblica italiana (Status of Italian magistrates)*, C-658/18, EU:C:2020:572, paragraph 161).

47 Accordingly, it follows from that case-law that the existence of an entrance competition specifically designed for ordinary judges to enter the judiciary, which is not intrinsic to the appointment of magistrates, allows the latter to be excluded from entitlement to the benefit of all the rights afforded to ordinary judges.

48 However, it must be stated that, having regard to that case-law and, more specifically, to the verifications which are exclusively for the referring court to carry out, according to the judgment of 16 July 2020, *Governo della Repubblica italiana (Status of Italian magistrates)* (C-658/18, EU:C:2020:572, paragraph 161), and recalled in paragraph 46 of the present judgment, the referring court observed, in essence, that the difference between the conditions of access to

judicial office applicable to those two categories of workers cannot justify honorary magistrates being completely excluded from entitlement to paid annual leave or to a social security and pension scheme to which ordinary judges in a comparable situation are entitled.

49 As concerns, more specifically, the right to leave, it must be borne in mind that, in accordance with Article 7(1) of Directive 2003/88, 'Member States shall take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks'.

50 In addition, it is clear from the terms of Directive 2003/88 and the Court's case-law that, although it is for the Member States to lay down the conditions for the exercise and implementation of the right to paid annual leave, they must not make the very existence of that right, which derives directly from that directive, subject to any preconditions whatsoever (judgment of 25 June 2020, *Varhoven kasatsionen sad na Republika Bulgaria and Iccrea Banca*, C-762/18 and C-37/19, EU:C:2020:504, paragraph 56 and the case-law cited).

51 Moreover, it should be borne in mind that, in accordance with Clause 4(2) of the framework agreement on part-time work that, where appropriate, the *pro rata temporis* principle applies.

52 Thus, the Court has held that, in the case of part-time employment, EU law does not preclude a retirement pension being calculated *pro rata temporis* (see, to that effect, judgment of 23 October 2003, *Schönheit and Becker*, C-4/02 and C-5/02, EU:C:2003:583, paragraphs 90 and 91), nor does it preclude paid annual leave from being calculated in accordance with the same principle (see, to that effect, judgments of 22 April 2010, *Zentralbetriebsrat der Landeskrankenhäuser Tirols*, C-486/08, EU:C:2010:215, paragraph 33, and of 8 November 2012, *Heimann and Toltschin*, C-229/11 and C-230/11, EU:C:2012:693, paragraph 36). In the cases giving rise to those judgments, taking account of the reduced working time as compared with that of a full-time worker constituted an objective criterion allowing a proportionate reduction of the rights of the workers concerned (judgment of 5 November 2014, *Österreichischer Gewerkschaftsbund*, C-476/12, EU:C:2014:2332, paragraphs 23 and 24).

53 Therefore, subject to the verifications which are exclusively for the national court to carry out, it must be considered that, although certain differences in treatment may be justified by the differences in the qualifications required and the nature of the duties entrusted to ordinary judges, complete exclusion of magistrates from any right to leave and from all forms of pension and social security protection cannot be accepted in the light of Clause 4 of the framework agreement on fixed-term work or Clause 4 of the framework agreement on part-time work.

54 Having regard to the foregoing considerations, the answer to the first question is that Article 7 of Directive 2003/88, Clause 4 of the framework agreement on part-time work and Clause 4 of the framework agreement on fixed-term work must be interpreted as precluding national legislation which does not provide for an entitlement for magistrates to 30 days' paid annual leave or to a social security and pension scheme deriving from the employment relationship, such as that provided for ordinary judges, if that magistrate comes within the definition of 'part-time worker' within the meaning of the framework agreement on part-time work and/or 'fixed-term worker' within the meaning of the framework agreement on fixed-term work and is in a comparable situation to that of an ordinary judge.

The third question

55 By its third question, the referring court asks, in essence, whether Clause 5 of the framework agreement on fixed-term work must be interpreted as precluding national legislation pursuant to which a fixed-term employment relationship can be renewed a maximum of three times successively, each renewal being for a duration of 4 years and for a total duration that does not exceed 16 years, and which does not provide for the possibility of penalising in an effective and dissuasive way the abusive continuance of the employment relationship.

56 In the first place, it must be borne in mind that Clause 5 of the framework agreement on fixed-term work provides that Member States are to introduce measures relating to the number of successive renewals of fixed-term employment contracts or relationships and/or the maximum total duration of such contracts or relationships.

57 It must be observed that the Italian legislation applicable to the main proceedings does indeed provide for a limit to the number of successive renewals and the maximum duration of those fixed-term contracts.

58 In that connection, it is settled case-law that, although Member States have discretion regarding measures to prevent abuse, they cannot, however, compromise the objective or the practical effect of the framework agreement on fixed-term work (see, to that effect, judgment of 11 February 2021, *M.V. and Others (Successive fixed-term contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 56).

59 In the second place, it must be examined whether the penalty for any such abuse fulfils the requirements of Clause 5 of the framework agreement on fixed-term work, in the event that Italian legislation does not allow the employment relationship to be converted into a contract of indefinite duration.

60 It follows from settled case-law that Clause 5 of the framework agreement on fixed-term work 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 (order of 12 December 2013, *Papalia*, C-50/13, not published, EU:C:2013:873, paragraph 16), nor does it lay down any specific penalties where instances of abuse have been established (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 57).

61 It is therefore for the national authorities to adopt proportionate, effective and dissuasive measures to ensure that the rules adopted pursuant to the framework agreement on fixed-term work, which can provide, for that purpose, for the conversion of fixed-term contracts into contracts of indefinite duration, are fully effective. However, where the improper use of successive fixed-term employment relationships has taken place, a measure must be capable of being applied in order to penalise duly that abuse and to nullify the consequences of the breach (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraphs 57 to 59).

62 However, in order for national legislation such as that at issue in the main proceedings – which, in the public sector only, prohibits a succession of fixed-term contracts from being converted into an employment contract of indefinite duration – to be regarded as compatible with the framework agreement on fixed-term work, the domestic law of the Member State concerned must include,

in that sector, another effective measure to prevent and, where relevant, punish the abuse of successive fixed-term contracts (judgment of 7 March 2018, *Santoro*, C-494/16, EU:C:2018:166, paragraph 34 and the case-law cited).

63 Given that it is not for the Court to rule on the interpretation of provisions of domestic law, it is for the referring court to determine to what extent the conditions for application and effective implementation of the relevant provisions of domestic law are sufficient to prevent and, where relevant, penalise the abuse of successive fixed-term employment contracts or relationships (judgment of 11 February 2021, *M.V. and Others (Successive fixed-term contracts in the public sector)*, C-760/18, EU:C:2021:113, paragraph 61).

64 In the present case, it is apparent from the information provided by the referring court that no provision of Italian law makes it possible to punish in an effective and dissuasive way the improper renewal of fixed-term employment relationships within the meaning of Clause 5 of the framework agreement on fixed-term work.

65 The absence of any penalty appears to be incapable of preventing and, where relevant, punishing the abuse of successive fixed-term employment contracts or relationships.

66 Having regard to the foregoing considerations, the answer to the third question is that Clause 5(1) of the framework agreement on fixed-term work must be interpreted as precluding national legislation pursuant to which a fixed-term employment relationship can be renewed a maximum of three times successively, each renewal being for a duration of 4 years, for a total duration that does not exceed 16 years, and which does not provide for the possibility of penalising in an effective and dissuasive way the abusive continuance of the employment relationship.

Costs

67 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (First Chamber) hereby rules:

1. **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, Clause 4 of the framework agreement on part-time work, concluded on 6 June 1997 and which is annexed to Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, as amended by Council Directive 98/23/EC of 7 April 1998, and Clause 4 of the framework agreement on fixed-term work, concluded on 18 March 1999 and which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP must be interpreted as precluding national legislation which does not provide for an entitlement for magistrates to 30 days' paid annual leave or to a social security and pension scheme deriving from the employment relationship, such as that provided for ordinary judges, if that magistrate comes within the definition of 'part-time worker' within the meaning of the framework**

agreement on part-time work and/or 'fixed-term worker' within the meaning of the framework agreement on fixed-term work and is in a comparable situation to that of an ordinary judge.

2. **Clause 5(1) of the framework agreement on fixed-term work concluded on 18 March 1999, which is annexed to Directive 1999/70, must be interpreted as precluding national legislation pursuant to which a fixed-term employment relationship can be renewed a maximum of three times successively, each renewal being for a duration of 4 years, for a total duration that does not exceed 16 years, and which does not provide for the possibility of penalising in an effective and dissuasive way the abusive continuance of the employment relationship.**

[Signatures]