

Case C-163/23, Fixed-term Work

Governo Italiano – v – UX, reference lodged by the Giudice di pace di Bologna (Italy) on 14 March 2023

1. Does the case-law of the highest ordinary and administrative courts cited below – more specifically, Order No 13973/2022 of 3 May 2022 of the Corte di Cassazione (Supreme Court of Cassation), which denies honorary fixed-term magistrates, such as the magistrate in the main proceedings, any rights linked to the status of worker with working conditions comparable to those of a permanent professional judge – commit a specific breach of EU law by preventing effective recourse to judicial protection of those rights before an independent national court if, and in so far as, the Court should find that that case-law of the ordinary court of last instance had infringed Article 31(2) of the Charter of Fundamental Rights of the European Union ..., 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 ..., clauses 2 and 4 of the framework agreement between ETUC, UNICE and CEEP on fixed-term work concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 ..., as interpreted by the Court of Justice of the European Union in its judgments of 16 July 2020, *Governo della Repubblica italiana (Status of Italian Magistrates)* (‘the judgment in UX’), C-658/18, EU:C:2020:572 ... and of 7 April 2022, *Ministero della Giustizia and Others (Status of Italian Magistrates)* (‘the judgment in PG’), C-236/20, EU:C:2022:263 ..., and Article 47(1) and (2) of the Charter?
2. Do Article 31(2) of the Charter, Article 7 of Directive 2003/88/EC, clauses 2 and 4 of the framework agreement on fixed-term work transposed by Directive 1999/70/EC, as interpreted by the Court of Justice of the European Union in the judgment in UX and the judgment in PG, and Article 47(1) and (2) of the Charter preclude national legislation, such as Article 29(5) of decreto legislativo (Legislative Decree) No 116/2017, introduced by Article 1(629) of Law No 234/2021, in so far as the national rule provides for the automatic ex lege waiver of any claim arising from EU law, and, in the main proceedings, the waiver of the right to paid leave accruing to the magistrate who lodged the appeal, where the magistrate who lodged the appeal had submitted an application for the competitive procedure that would confirm him or her in his or her role indefinitely until he or she reached the age of 70, with an employment relationship with the Ministry of Justice on the salary for administrative officers with judicial functions, and had successfully completed the competitive procedure?
3. Does the choice that this referring court intends to make (once all the checks that have been entrusted, according to the case-law of the Court referred to above, to the national court regarding the comparability of working conditions between the magistrate who lodged the appeal and the equivalent permanent ordinary judge have been successfully carried out) regarding the appellant’s right to damages for non-payment in respect of holiday leave – that choice being to apply, as a parameter for calculating the damages due, the salary paid to ordinary court judges at level HH03, while simultaneously complying with the different recruitment procedures for honorary magistrates and permanent professional judges, with only the latter (ordinary judges) having the right to progress financially and professionally through higher qualifications and not only by seniority through salary grades and steps – comply with the statements of the Court of Justice of the European Union in the judgment in UX and the judgment in PG?
4. Lastly, do Article 47 of the Charter and the conditions of judicial independence set out by the Court in paragraphs 45 to 49 of the judgment in UX preclude national legislation, such as Article 21 of Legislative Decree No 116/2017, which provides for the possible application of the measure of revoking the judicial appointment of the magistrate who has made the reference for a preliminary ruling, at the complete discretion of the Consiglio superiore della magistratura (Supreme Council of the Judiciary), without any graduation of disciplinary sanctions, even where that national magistrate seeks to apply case-law of the Court of Justice in the main proceedings, thereby running counter to the national legislation applicable to the case in the main proceedings and the case-law referred to above of the highest ordinary and administrative courts?