

Ministero della Giustizia

v

NZ

(Request for a preliminary ruling from the Corte d'appello di L'Aquila)

Judgment of the Court (Fourth Chamber) of 4 September 2025

(Reference for a preliminary ruling – Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Clause 4 – Principle of non-discrimination – Equal treatment in employment and occupation – Honorary and ordinary members of the judiciary – Clause 5 – Measures intended to prevent and penalise misuse of successive fixed-term contracts – Directive 2003/88/EC – Article 7 – Right to paid annual leave – Article 31 of the Charter of Fundamental Rights of the European Union – Assessment procedure in order to be permanently confirmed as an honorary member of the judiciary – Waiver, by operation of law, of claims arising from service as an honorary member of the judiciary prior to the assessment procedure – Loss of a right to paid annual leave conferred by EU law)

Social policy – Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP – Directive 1999/70 – Measures intended to prevent misuse of successive fixed-term contracts – Penalisation of such abuse – Assessment procedure prior to permanent confirmation as an honorary member of the judiciary – Right to paid annual leave – National legislation requiring the waiver of the right to paid annual leave arising from previous service as an honorary member of the judiciary – Not permissible

(Charter of Fundamental Rights of the European Union, Art. 31(2); European Parliament and Council Directive 2003/88, Art. 7; Council Directive 1999/70, Annex, Clauses 4(1) and 5(1))

(see paragraphs 50-60, 67-79, operative part)

Résumé

Hearing a request for a preliminary ruling from the Corte d'appello di L'Aquila (Court of Appeal, L'Aquila, Italy), the Court of Justice clarifies the relationship between the right to paid annual leave as guaranteed by EU law and the protection offered by the framework agreement on fixed-term work, ([1](#)) in the case of national legislation which requires honorary members of the judiciary wishing to convert their successive fixed-term employment relationships into an employment relationship of indefinite duration to waive certain rights, including the right to paid annual leave.

That case is part of a series of Italian preliminary ruling cases on equal treatment between honorary and ordinary members of the judiciary. ([2](#)) The Italian legislature introduced, in 2021, for honorary members of the judiciary already in service, the possibility of being confirmed until the age of 70, subject to passing an assessment procedure, while establishing a requirement to waive any other claim arising from their previous honorary employment relationship. ([3](#)) That procedure is intended to implement the obligation, arising from Clause 5(1) of the Framework Agreement, to adopt effective measures to prevent and penalise the misuse of successive fixed-term contracts.

NZ has served, since 14 February 2001, alongside her profession as a lawyer, as an honorary member of the judiciary at the Tribunale di Vasto (District Court, Vasto, Italy). As an honorary member of the judiciary, she did not receive any allowance during the judicial vacation period, unlike ordinary members of the judiciary who were entitled to paid leave. NZ's appointment as an honorary member of the judiciary was extended and renewed every four years, until 13 December 2022, the date of her permanent confirmation.

Claiming to be the victim of an unlawful difference in treatment concerning the remuneration for her service before that confirmation, NZ brought an action against her employer, the Ministero della Giustizia (Ministry of Justice), seeking recognition of economic and legal treatment equivalent to that of workers performing comparable duties in the service of that ministry, including in so far as it relates to annual leave. The court of first instance upheld that action in part. The Ministry of Justice brought an appeal against that decision before the Corte d'appello di L'Aquila (Court of Appeal, L'Aquila), which is the referring court, maintaining, inter alia, that the dispute had become devoid of purpose, since NZ's confirmation at the end of the assessment procedure entails the waiver of any other claim arising from her previous honorary employment relationship.

In those circumstances, the referring court questions the compatibility of that waiver by operation of law with Clauses 4 and 5 of the Framework Agreement, Article 7 of Directive 2003/88 ([4](#)) and Article 31 of the Charter of Fundamental Rights of the European Union ('the Charter'), as regards, in particular, the right to paid annual leave.

Findings of the Court

After recalling its case-law on measures aimed at penalising the misuse of fixed-term employment contracts, ([5](#)) the Court finds that the request to participate in the assessment procedure entails waiving the right to paid annual leave for the period prior to permanent confirmation, guaranteed by Article 7 of Directive 2003/88 and Article 31(2) of the Charter. The waiver of that right constitutes, according to the Italian Government, appropriate consideration for confirmation as an honorary member of the judiciary, given that passing the assessment procedure does not create a mere opportunity to have the previous employment relationship made permanent, but results in the effective conversion of that employment relationship to a permanent status. Moreover, that requirement makes it possible to avoid reverse discrimination against ordinary members of the judiciary to whom the principles of competitive appointment and the exclusivity of the judicial service fully apply.

It is true that the existence of a method of recruitment by means of a competition reserved solely for positions of ordinary members of the judiciary for the purposes of access to the judiciary, which does not apply to the recruitment of honorary members of the judiciary, allows the latter to be excluded from entitlement to the benefit of all the rights afforded to ordinary members of the judiciary. However, although certain differences in treatment may be justified by the differences in the qualifications required and by the nature of the duties entrusted to ordinary members of the judiciary, complete exclusion of honorary members of the judiciary from any right to paid leave cannot be accepted in the light of Clause 4 of the Framework Agreement.

That right is contained in Article 7(1) of Directive 2003/88. Furthermore, the right to a period of paid annual leave, enshrined in Article 31(2) of the Charter, is both mandatory and unconditional in nature, as that provision does not need to be given concrete expression by the provisions of EU or national law. It follows that that provision may be relied on in a dispute between workers and their employer in a field covered by EU law and therefore falling within the scope of the Charter.

Thus, Clause 4 of the Framework Agreement, Article 7 of Directive 2003/88 and Article 31(2) of the Charter preclude national legislation which, in contrast to what it provides in respect of ordinary members of the judiciary, does not give honorary members of the judiciary in a comparable situation any entitlement to remuneration during the vacation period when judicial activity is suspended.

It follows that, first, in order to satisfy the conditions laid down in Clause 5(1) of the Framework Agreement, national legislation must provide, where there is misuse of successive fixed-term employment contracts, effective guarantees to penalise that abuse and to nullify its consequences, since the conversion of the fixed-term employment relationship into an employment relationship of indefinite duration constitutes, in principle, an effective penalty for such abuse. Second, the right to a period of paid annual leave constitutes an individual right of each worker, which is granted to that worker in a mandatory and unconditional manner by EU law.

In the light of those factors, the Framework Agreement cannot be interpreted as meaning that the application of measures taken by a Member State to penalise the misuse of successive fixed-term employment contracts and to nullify the consequences thereof could be conditional on a requirement, for the worker concerned, to waive a right conferred on him or her by EU law pursuant to Clause 4 of that agreement.

(¹) The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

(¹) Framework agreement set out 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 ([OJ 1999 L 175, p. 43](#); ‘the Framework Agreement’).

(²) See judgments of 16 July 2020, *Governo della Repubblica italiana* (Status of Italian magistrates) ([C-658/18, EU:C:2020:572](#)), and of 7 April 2022, *Ministero della Giustizia and Others* (Status of Italian magistrates) ([C-236/20, EU:C:2022:263](#)), and of 27 June 2024, *Peigli* ([C-41/23, EU:C:2024:554](#)).

(³) By Article 29 of decreto legislativo 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 on the organic reform of the honorary judiciary and other provisions relating to magistrates, and transitional provisions relating to serving honorary members of the judiciary, in accordance with Law No 57 of 28 April 2016) of 13 July 2017 (GURI No 177 of 31 July 2017, p. 1), as amended by legge n. 234 – Bilancio di previsione dello Stato per l’anno finanziario 2022 e bilancio pluriennale per il triennio 2022-2024 (Law No 234 on the State Budget for the 2022 financial year and multiannual accounts for the three-year period 2022-2024) of 30 December 2021 (GURI No 310 of 31 December 2021, p. 1).

(⁴) 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](#)).

(⁵) See, in particular, judgment of 8 May 2019, *Rossato and Conservatorio di Musica F.A. Bonporti* ([C-494/17, EU:C:2019:387](#), paragraphs [39](#) to [43](#) and [45](#)).