

**Case C-282/19**

**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice**

**Date lodged:**

3 April 2019

**Referring court:**

Tribunale di Napoli (District Court, Naples, Italy)

**Date of the decision to refer:**

13 February 2019

**Applicants:**

YT and Others

**Defendants:**

Ministero dell'Istruzione, dell'Università e della Ricerca  
Ufficio Scolastico Regionale per la Campania

**Intervener:**

Federazione GILDA-UNAMS

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**Subject of the action in the main proceedings**

Action brought before the Tribunale di Napoli (III Sezione Lavoro) (District Court, Naples, Employment Division III) for the purpose of obtaining the conversion of the fixed-term contracts held by the applicants — concluded between the applicants and the Ministero dell'Istruzione, dell'Università e della Ricerca (Ministry for Education, University and Research) — into contracts of indefinite duration and, in the alternative, compensation for damage.

**Subject-matter and legal basis of the reference**

Compatibility of the Italian legislation implementing Directive 1999/70/EC with Clause 5 of the framework agreement laid down in that Directive and with

Article 21 of the Charter of Fundamental Rights of the European Union and Directive 2000/78/EC, in relation to the different treatment accorded to Catholic religious education teachers compared to other teachers.

### Questions referred

(1) Does the different treatment accorded only to Catholic religious education teachers, such as the applicants, constitute discrimination on grounds of religion, within the meaning of Article 21 of the Charter of Fundamental Rights of the European Union and Directive 2000/78/EC, or does the fact that the certificate attesting to their suitability issued to these workers can be revoked constitute an adequate reason why only Catholic religious education teachers, such as the applicants, are treated differently from other teachers and are not covered by any measure precluding such treatment, as required under Clause 5 of the framework agreement on fixed-term work concluded on 18 March 1999 and 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?;

(2) If direct discrimination is taken to have occurred, within the meaning of Article 2(2)(a) of Directive 2000/78/EC, on grounds of religion (Article 1), and the Charter of Fundamental Rights of the European Union, the Court is requested to consider what instruments are available to the referring court to eliminate the effects of such discrimination, bearing in mind that all teachers other than Catholic religious education teachers are now covered by the special recruitment plan laid down in Law No 107/15, being granted tenure and consequently given employment contracts of indefinite duration. Should this court therefore impose an employment relationship of indefinite duration with the defendant public authorities?;

(3) Must Clause 5 of the framework agreement laid down in Directive 1999/70/EC be interpreted as precluding a national legal provision, such as the provision at issue, under which the rules of ordinary law governing employment relationships and intended to penalise the misuse of successive fixed-term employment contracts by the automatic conversion of a fixed-term contract into a contract of indefinite duration where the employment relationship continues for more than a certain period of time, do not apply to the schools sector — specifically to Catholic religious education teachers — and therefore permit successive fixed-term employment contracts for an indefinite period of time? In particular, can the requirement to obtain the approval of the diocesan ordinary constitute an objective reason within the meaning of Clause 5(1)(a) of the framework agreement, or, instead, should such treatment be regarded as discrimination prohibited under Article 21 of the Charter of Fundamental Rights of the European Union?;

(4) If the answer to question 3 is in the affirmative, do Article 21 of the Charter of Fundamental Rights of the European Union, Clause 4 of the framework

agreement laid down in Directive 1999/70/EC and/or Article 1 of Directive 2000/78/EC permit the disapplication of provisions that preclude the automatic conversion of a fixed-term employment contract into an employment contract of indefinite duration where the employment relationship continues for more than a certain period of time?

### **Provisions of EU law relied on**

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) ('Directive 1999/70'), in particular Clauses 4 and 5 of the framework agreement laid down in that directive.

Article 21 of the Charter of Fundamental Rights of the European Union (the 'Charter').

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) ('Directive 2000/78'), and in particular Article 1 and Article 2(2)(a) of that directive.

### **Provisions of national law relied on**

Decreto legislativo del 6 settembre 2001, n. 368 — Attuazione della direttiva 1999/70/CE relativa all'accordo quadro sul lavoro a tempo determinato concluso dall'UNICE, dal CEEP e dal CES (Legislative Decree No 368 of 6 September 2001 implementing Council Directive 1999/70/EC concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP) ('Legislative Decree No 368/01'), and in particular Article 5(4-bis), which states that '... where, as a result of a series of fixed term contracts for equivalent tasks, an employment relationship between the same employee and the same worker continues for an overall period of more than 36 months, including any extensions and renewals, disregarding any breaks between one contract and another, the employment relationship shall be regarded as one of indefinite duration for the purpose of paragraph 2', and Article 10(4-bis), which excludes application of that legislative decree, in particular Article 5(4-bis) thereof, to fixed-term contracts concluded in order to fill temporary vacancies in view of the need to ensure the continuity of provision of teaching and education services.

Decreto legislativo del 15 giugno 2015, n. 81 — Disciplina organica dei contratti di lavoro (Legislative Decree No 81 of 15 June 2015 laying down provisions governing employment contracts) ('Legislative Decree No 81/15'), and in particular Article 19 and Article 29(2), the content of which is essentially the same as that of Article 5(4-bis) and Article 10(4-bis), respectively, of Legislative Decree No 368/01.

Decreto legislativo del 30 marzo 2001, n. 165 — Norme generali sull'ordinamento del lavoro alle dipendenze delle amministrazioni pubbliche (Legislative Decree No 165 of 30 March 2001 laying down general rules concerning the organisation of employment in public administrations) ('Legislative Decree No 165/01'), and in particular Article 36, which provides that public administrations are to recruit as a general rule solely on the basis of employment contracts of indefinite duration, but may make use of flexible contractual recruitment arrangements provided by law to meet temporary or exceptional requirements. Paragraph 5 of that article states that 'in any event, infringement of binding provisions on the recruitment or employment of workers by public administrations cannot lead to the establishment of employment contracts of indefinite duration with those public administrations, without prejudice to any liability or penalty that those administrations might incur. The worker concerned shall be entitled to compensation for damage suffered as a result of working in breach of binding provisions. ...'

Decreto legislativo del 16 aprile 1994, n. 297 — Approvazione del testo unico delle disposizioni legislative vigenti in materia di istruzione, relative alle scuole di ogni ordine e grado (Legislative Decree No 297 of 16 April 1994 approving the consolidated text of the applicable legislative provisions on education relating to schools of all types and levels ('Legislative Decree No 297/94'), and in particular Article 309, on 'Catholic religious education', which provides that in public non-university schools of all types and levels, Catholic religious education is governed by the agreement between the Italian Republic and the Holy See and the associated additional protocol, and, in relation to that education, 'the head of the educational establishment concerned shall appoint teaching staff on an annual, fixed-term basis in consultation with the diocesan ordinary.'

CCNL (Contratto collettivo nazionale di lavoro) Scuola (National Collective Employment Agreement for Schools (CCNL)) of 27 November 2007. Under Article 40 of the CCNL 'Catholic religious education teachers shall be recruited on the basis of the provisions laid down in Article 309 of decreto legislativo n. 297 del 1994 (Legislative Decree No 297/1994) by means of annual employment contracts that shall be deemed to be confirmed where the conditions and requirements laid down by the applicable legal provisions continue to be met.'

Legge del 18 luglio 2003, n. 186 — Norme sullo stato giuridico degli insegnanti di religione cattolica degli istituti e delle scuole di ogni ordine e grado (Law No 186 of 18 July 2003 laying down provisions governing the legal status of Catholic religious education teachers in establishments and schools of all types and levels) ('Law No 186/03'), and in particular Article 3. That article states that candidates in the open competitions launched at the time to grant tenure to Catholic religious education teachers were required to have a certificate attesting to their suitability issued by the diocesan ordinary with jurisdiction for the area concerned, and that the successful candidates in the competition were to be recruited, under contracts of indefinite duration, by the regional director in consultation with the diocesan ordinary. Paragraph 9 of that article expressly

states that revocation of the certificate by the diocesan ordinary constitutes grounds for termination of the employment relationship.

Intesa tra l'autorità scolastica italiana e la Conferenza episcopale italiana per l'insegnamento della religione cattolica nelle scuole pubbliche (Agreement between the Italian Education Authority and the Italian Bishops' Conference on Catholic religious education in State schools), signed on 14 December 1985, and in particular Article 2(5). That provision states that 'Catholic religious education shall be provided by teachers in possession of certificates attesting to their suitability issued by the diocesan ordinary, provided that they have not been revoked by the diocesan ordinary, and who have been appointed, in consultation with the diocesan ordinary, by the competent education authorities in accordance with the national legislation. [...]'

### **Succinct presentation of the facts and the main proceedings**

- 1 YT and Others, the applicants, are Catholic religious education teachers recruited by the defendant Ministry on the basis of fixed-term employment contracts. In particular, the employment relationship between the applicants and the defendant is based on annual appointments, which are automatically reconfirmed, in accordance with Article 40(5) of the CCNL of 29 November 2007. The applicants have certificates attesting to their suitability issued by the diocesan ordinary, which have not been revoked.
- 2 The applicants were recruited on the basis of regional ranking lists established for each diocese, and appointed by the education authority on the basis of a proposal from the diocesan ordinary. All of the fixed-term contracts in question have a total duration of more than 36 months, in some cases exceeding 20 years.
- 3 On 31 July 2015, the applicants brought an action before the District Court, Naples (Employment Division III), claiming that their fixed-term employment contracts should be converted into contracts of indefinite duration and, in the alternative, compensation for damage. The Federazione GILDA-UNAMS (GILDA-UNAMS Federation), the trade union that was a signatory to the CCNL of 29 November 2007, also made an appearance in the proceedings.
- 4 The defendant Ministry objected to the action on the grounds that it was inadmissible and without foundation.

### **Succinct presentation of the reasons for the request for a preliminary ruling**

- 5 Directive 1999/70 was transposed into Italian law by Legislative Decree No 368/01. Article 5(4-bis) of the version in force at the time when the events covered by the main proceedings occurred provided, in particular, for the conversion of a fixed-term employment relationship into one of indefinite duration where that relationship has exceeded a total period of 36 months as a result of a

succession of fixed-term contracts between the same employer and the same worker. The abovementioned provision was substantially reproduced in Article 19 of the subsequent Legislative Decree No 81/15.

- 6 However, the requirements imposed by the provisions cited in the preceding paragraph, in particular the requirement for conversion of a contract into one of indefinite duration, are not applicable to public sector workers. For those workers, Article 36 of Legislative Decree No 165/01 states, in particular, that public authorities may recruit staff, using fixed-term contracts, only to meet temporary or exceptional requirements, and that, in any event, any breach of binding provisions in that regard cannot entail the creation of employment relationships of indefinite duration. In such a situation, workers are entitled to compensation for damage. The only penalty applicable to the public authorities is therefore payment of compensation for the damage suffered by the worker.
- 7 However, Legislative Decree No 165/01 does not apply to fixed-term contracts concluded in the school sector to fill temporary vacancies for teaching staff and administrative, technical and auxiliary (ATA) staff, as stated in Article 10(4-bis) of that decree, introduced by decreto-legge del 13 maggio 2011, n. 70 (Decree-Law No 70 of 13 May 2011), and confirmed by Article 29(2) of Legislative Decree No 81/15.
- 8 The prohibitions and penalties associated with repeated use of fixed-term contracts laid down by Italian law do not therefore apply to the school sector.
- 9 With regard to Catholic religious education teachers, such as the applicants, the referring court notes that their employment relationships are totally insecure and unprotected. Indeed, Article 309 of Legislative Decree No 297/94 stipulates that the heads of educational establishments are to be responsible for appointing staff on an annual basis for Catholic religious education in consultation with the diocesan ordinary in accordance with the provisions laid down in the agreement between the Italian Republic and the Holy See and the agreements between the Italian Education Authority and the Italian Bishops' Conference on Catholic religious education in State schools. The agreements in question provide that Catholic religious education teachers must be in possession of a certificate attesting to their suitability, which has not been revoked, issued by the diocesan ordinary, and that they must be appointed, in consultation with the diocesan ordinary, by the competent school authorities.
- 10 With reference to Catholic religious education teachers recruited following the only open competition ever held, the referring court also indicates that, for those teachers, revocation of the certificate by the competent diocesan ordinary constitutes grounds for termination of the employment relationship, under Article 3(9) of Law No 186/03 on Catholic religious education.
- 11 The referring court also refers to a conflict between the case-law resulting from the judgment of the Court of Justice of the European Union in *Sciotto* (C-331/17)

in relation to the interpretation of Clause 5 of the framework agreement on fixed-term work and the Italian Constitutional Court, which held, in Judgment No 248/18, that ‘it can only be reiterated that it is impossible, for the entire public sector, for a fixed-term relationship to be converted into one of indefinite duration — in accordance with established EU and Italian case-law’. It therefore follows that a national court cannot ever impose employment relationships of indefinite duration in the various sectors of the public administration, even where there is no measure precluding this for the purpose of Clause 5 of the framework agreement on fixed-term work.

- 12 The referring court therefore has doubts as to the compatibility of the Italian legislation implementing directive 1999/70 with Clause 5 of the framework agreement laid down in that directive, and with Article 21 of the Charter and Directive 2000/78/EC, as regards the different treatment accorded to Catholic religious education teachers compared to that accorded to other teachers.
- 13 By the first question referred, the referring court is asking whether the different treatment accorded to Catholic religious education teachers constitutes discrimination on grounds of religion, within the meaning of Article 21 of the Charter and Directive 2000/78/EC, or whether the fact that the certificate attesting to their suitability issued to Catholic religious education teachers can be revoked constitutes an appropriate justification for such different treatment.
- 14 By the second question referred, which is contingent on the Court finding that discrimination can be taken to have occurred for the purpose of the provisions cited in the first question, the referring court is asking which instruments it has available to eliminate the effects of such discrimination and whether it should find that an employment relationship of indefinite duration exists with the defendant administration, bearing in mind that all teachers other than Catholic religious education teachers have been granted tenure, that is to say, they have been given permanent employment by the administration and consequently now have contracts of indefinite duration, under the special recruitment plan introduced by Law No 107 of 13 July 2015.
- 15 The third question referred asks whether Clause 5 of the framework agreement precludes the absence — for the school sector, and in particular for Catholic religious education teachers — of measures intended to prevent the misuse of successive fixed-term employment contracts and whether the requirement for approval by the diocesan ordinary may constitute an objective reason within the meaning of Clause 5(1)(a) of the framework agreement.
- 16 Lastly, by the fourth question referred, the referring court asks whether, if the Court were to establish that a breach of Clause 5 of the framework agreement had occurred, it is possible, on the basis of Article 21 of the Charter, Clause 4 of the framework agreement and Article 1 of Directive 2000/78, to disapply the national provisions that preclude the automatic conversion of a fixed-term contract into a

contract of indefinite duration if the employment relationship exceeds a certain period of time.

WORKING DOCUMENT