

Case C-543/23 [Gnattai]ⁱ**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:**

28 August 2023

Referring court:

Tribunale civile di Padova (Italy)

Date of the decision to refer:

14 August 2023

Applicant:

AR

Defendant:

Ministero dell'Istruzione, dell'Università e della Ricerca (now known as the Ministero dell'Istruzione e del Merito) (MIUR)

Subject matter of the main proceedings

Application in the area of employment – Assessment of the entitlement of teaching staff who are civil servants to have services provided under fixed-term employment contracts at *scuole paritarie* (State-equivalent schools) taken into account when assessing what rights they have accrued during their career

Subject matter and legal basis of the request

Request for interpretation of EU law, within the meaning of Article 267 TFEU, in particular clause 4 of the framework agreement on fixed-term work, annexed to Directive 1999/70, and the general principles of equality, equal treatment and non-discrimination in the area of employment conditions

ⁱ The name of the present case is fictitious. It does not correspond to the real name of any of the parties to the proceedings.

Questions referred for a preliminary ruling

‘1. Must clause 4(1) of the framework agreement on fixed-term work concluded on 18 March 1999 annexed to Council Directive 1999/70/EC of 28 June 1999 and the general principle under [EU] law as it currently stands of non-discrimination in the area of employment conditions, read in the light of Article 21 of the Charter of Fundamental Rights of the European Union (‘the Charter’), be interpreted as precluding national legislation, such as that contained in Article 485 of Decreto legislativo n. 297/94 (Legislative Decree No 297/94), which, according to the interpretation given by the Suprema Corte di Cassazione (Supreme Court of Cassation, Italy) (see Cass. S.L. judgments No 32386/2019, No 33134/2019 and No 33137 of 2019), provides that the fixed-term employees of scuole paritarie (State-equivalent schools) referred to in Legge n. 62/2000 (Law No 62/2000) are to be treated less favourably, when assessing what rights they have accrued during their career, than permanent employees of the Ministero dell’Istruzione e del Merito (Ministry of Education and Merit, Italy), solely due to the fact that they have not passed a public selection process or have taught as an employee of a legally recognised scuola paritaria (State-equivalent school), notwithstanding the fact that fixed-term teaching staff at scuole paritarie (State-equivalent schools) are in a situation comparable to that of permanent teaching staff at State schools, with regard to the type of work and training and employment conditions, in so far as they perform the same tasks, have the same disciplinary, pedagogic, methodological-didactic, organisational-relational and research skills, gained through teaching experience, as acknowledged by that national law as being identical for the purposes of recruitment under a contract of indefinite duration by referring to the permanent ranking lists, which are now closed (see Article 2(2) of Decreto-legge n. 255/2001 (Decree-law No 255/2001))?’

2. In the context of the application of Directive 1999/70, must the general principles under [EU] law as it currently stands of equality, equal treatment and non-discrimination in the area of employment, as also enshrined in Articles 20 and 21 of the Charter, in Article 14 of the European Convention on Human Rights (which is relevant pursuant to Article 52 of the Charter), in the European Social Charter approved on 18 June 1961, in Article 157 TFEU and in Directives 2000/43/EC and 2000/78/EC, be interpreted as precluding legislation, such as that contained in Article 485 of Legislative Decree No 297/94, which stipulates that only the teaching services of an employee of the Ministry or of a scuola parificata (State-accredited primary school), a scuola pareggiata (State-equivalent secondary school), a scuola sussidiata o sussidiaria (small State-funded school run by private individuals or entities), a scuola popolare (school for adult education) or an educando (girls’ school run by a religious body) are to be taken into account for salary purposes, when assessing what rights have been accrued during a career, thereby treating fixed-term teaching staff at scuole paritarie (State-equivalent schools) less favourably and discriminating against them when assessing what rights they have accrued during their career (such assessment being carried out after recruitment under a contract of indefinite duration by the Ministry of Education and Merit), failing to acknowledge their right to the

supplementary pay connected with length of service, which is, however, paid to fixed-term teaching staff at State and municipal schools, scuole parificate (State-accredited primary schools), scuole pareggiate (State-equivalent secondary schools), scuole sussidiate e sussidiarie (small State-funded schools run by private individuals or entities), and scuole popolari (schools for adult education) and educandati (girls' schools run by religious bodies), who are in a situation comparable with that of teaching staff at scuole paritarie (State-equivalent schools) with regard to the type of work, duties, services and professional obligations, as well as the training and working conditions with respect to the teaching staff at the scuole paritarie (State-equivalent schools) referred to in Law No 62/2000, in so far as they perform the same tasks and gain, through the teaching experience they acquire, the same disciplinary, pedagogic, methodological-didactic, organisational-relational and research skills as teaching staff at scuole paritarie (State-equivalent schools)?

3. *Must the concept of 'comparable permanent worker' referred to in clause 4(1) of the framework agreement on fixed-term work concluded on 18 March 1999, annexed to Directive 1999/70, and the general principles under EU law as it currently stands of equality, equal treatment and non-discrimination in the area of employment, enshrined in Articles 20 and 21 of the Charter, be interpreted as meaning that, in the context of the recognition of years of service accrued, the services provided as a temporary employee in scuole paritarie (State-equivalent schools) must be treated in the same way as those provided in State schools, scuole parificate (State-accredited primary schools), scuole pareggiate (State-equivalent secondary schools), scuole popolari (schools for adult education), scuole sussidiate e sussidiarie (small State-funded schools run by private individuals or entities), and educandati (girls' schools run by religious bodies), in so far as those teachers perform the same tasks, have the same professional obligations and possess the same disciplinary, pedagogic, methodological-didactic, organisational-relational and research skills?*

4. *If Article 485 of Legislative Decree No 297/94 is incompatible with the [EU] law, does the Charter oblige the national court to disapply the incompatible piece of national legislation?'*

Provisions of European Union law and principal case-law relied on

Clause 4 of the ETUC-UNICE-CEEP framework agreement on fixed-term work, concluded on 18 March 1999, annexed to Council Directive 1999/70/EC of 28 June 1999 ('the framework agreement on fixed-term work')

Articles 20 and 21 of the Charter of Fundamental Rights of the European Union ('the Charter') (general principles of equality, equal treatment and non-discrimination in the area of employment conditions)

Judgment of 8 November 2011, *Rosado Santana* (C-177/10, EU:C:2011:557)

Judgment of 18 October 2012, *Valenza and Others* (C-302/2011, EU:C:2012:646)

Order of 7 March 2013, *Bertazzi and Others* (C-393/11, EU:C:2013:143)

Order of 4 September 2014, *Bertazzi and Others* (C-152/14, EU:C:2014:2181)

Judgment of 20 September 2018, *Motter* (C-466/17, EU:C:2018:758)

Judgment of 20 June 2019, *Ustariz Aróstegui* (C-72/18, EU:C:2019:191)

Provisions of national law relied on

Decreto legislativo 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 approving the consolidated text of the applicable legislative provisions on education relating to schools of all types and levels) of 16 April 1994 (GURI No 115 of 19 May 1994, S.O. No 79):

Article 485: ‘(1) Periods of service completed at secondary schools, art schools and *scuole pareggiate* (State-equivalent secondary schools) by secondary school teaching staff and art school teaching staff ..., including those located abroad, under fixed-term contracts shall be recognised as periods of permanent employment for legal and salary purposes, (2) For the same purposes and to the same extent as referred to in paragraph 1, the teaching staff referred to therein shall be recognised as having completed periods of service at State *educandati* (girls’ schools run by religious bodies), periods of service as primary school teachers under fixed-term or permanent contracts at State primary schools or *scuole parificate* (State-accredited primary schools), including schools of the aforementioned *educandati* (girls’ schools run by religious bodies) and schools located abroad, and periods of service at *scuole popolari* (schools for adult education) and *scuole sussidiate e sussidiarie* (small State-funded schools run by private individuals or entities). (3) For the same purposes and subject to the same limitations referred to in paragraph 1, periods of service completed by primary school teaching staff shall be recognised as having completed periods of service under fixed-term contracts in State primary schools, State *educandati* (girls’ schools run by religious bodies), *scuole parificate* (State-accredited primary schools), State secondary schools, State art schools and *scuole pareggiate* (State-equivalent secondary schools), *scuole popolari* (schools for adult education) and *scuole sussidiate e sussidiarie* (small State-funded schools run by private individuals or entities)’

Legge del 10 marzo 2000, n. 62 – Norme per la parità scolastica e disposizioni sul diritto allo studio e all’istruzione (Law No 62 of 10 March 2000 – Rules relating to school equality and provisions on the right to study and education) (GURI No 167 of 21 March 2000):

Article 1(2) and (4): ‘(2) For the purposes of all regulations currently in force, in particular with regard to the qualification as a teacher making it possible to award education qualifications with legal status, *scuole paritarie* (State-equivalent schools) shall mean non-State schools, including those run by local authorities, which, from nursery school, comply with general education regulations, are consistent with the teaching demands of families, and satisfy the quality and efficiency requirements referred to in paragraphs 4, 5 and 6. ... (4) Schools ... meeting the following requirements shall be recognised as being *scuole paritarie* (State-equivalent schools) ... (g) teaching staff must hold a certificate of qualification as a teacher; (h) individual employment contracts for managerial and teaching staff must comply with the national collective agreements in the sector. ...’

Decreto-legge del 3 luglio 2001, n. 255 – Disposizioni urgenti per assicurare l’ordinato avvio dell’anno scolastico 2001/2002, convertito con modificazioni dalla Legge del 20 agosto 2001, n. 333 (Decree-Law No 255 of 3 July 2001 – Urgent provisions to ensure the orderly start to the academic year 2001/2002, as amended by Law No 333 of 20 August 2001) (GURI No 193 of 21 August 2001):

Paragraph 2 of Article 2: ‘... Teaching services provided from 1 September 2000 in *scuole paritarie* (State-equivalent schools) referred to in Law [No 62/2000] shall be assessed in the same way as services provided in State schools. ...’

Succinct presentation of the facts and procedure in the main proceedings

- 1 The applicant was employed at a *scuola paritaria* (State-equivalent school) under five fixed-term contracts entered into from the academic year 2002/2003 up to 31 August 2007.
- 2 On 1 September 2008, he was recruited as a permanent member of staff by the Ministero dell’Istruzione (Ministry of Education), via a closed ranking list. When his salary level was assessed, the years he had worked in the *scuola paritaria* (State-equivalent school) were not taken into account when calculating his length of service, since Article 485 of Legislative Decree No 297/94 states that, for the purpose of assessing what rights he had accrued and of determining his initial salary band, only those services completed in State schools and in *scuole parificate* (State-accredited primary schools), *scuole pareggiate* (State-equivalent secondary schools), *scuole sussidiarie e sussidiate* (small State-funded schools run by private individuals or entities), *scuole popolari* (schools for adult education) and *educandati* (girls’ schools run by religious bodies) are to be taken into account.
- 3 The applicant argues, before the referring court, that Legislative Decree No 297/94 is inconsistent with clause 4 of the framework agreement on fixed-term work and Articles 20 and 21 of the Charter on the basis that it is allegedly discriminatory and entails an unjustified inequality of treatment.

The essential arguments of the parties in the main proceedings

- 4 The applicant claims that he is entitled to have the period of service between 2002 and 2007 taken into account in so far as he taught in the *scuola paritaria* (State-equivalent school) from 16 September 2002, that is to say at a time when, according to Law No 62/2000, *scuole parificate* (State-accredited primary schools) and *scuole pareggiate* (State-equivalent secondary schools) had been merged into the single category of *scuole paritarie* (State-equivalent schools), which the legislator considered to be comparable with each other and with State schools. The reference contained in Article 485 of Legislative Decree No 297/94 to periods of service as an employee of *scuole parificate* (State-accredited primary schools) and *scuole pareggiate* (State-equivalent secondary schools) – which had by then been abolished – being taken into account should therefore apply to schools now referred to as *scuole paritarie* (State-equivalent schools).
- 5 According to the applicant, Article 2 of the subsequent Legislative Decree No 255/2001 attests to the fact that Article 485 of Legislative Decree No 297/94 is ‘obsolete’. The failure to update Article 485 of Legislative Decree No 297/94 in fact means that teaching services provided in *scuole paritarie* (State-equivalent schools) are to be considered to be identical to services provided by fixed-term employees in State schools for the purpose of recruitment under a contract of indefinite duration (without a public selection process) by the Ministry of Education, but are in no way comparable, on the other hand, when assessing the salary band at the time that employee is awarded a permanent contract by the Ministry of Education.
- 6 However, according to the applicant, in order to teach at a *scuola paritaria* (State-equivalent school), the employee requires additional qualifications as compared with employees at State schools or the other schools referred to in Legislative Decree No 297/94, in so far as, in order to teach on a fixed-term basis at what are now referred to as *scuole paritarie* (State-equivalent schools), on the basis of Article 1(4) of Law No 62/2000, it is essential that a teacher also hold a qualification as a teacher, whilst a teacher recruited on a fixed-term basis at State schools or in a private *scuola parificata* (State-accredited primary school), *scuola sussidiaria o sussidiata* (small State-funded school run by private individuals or entities) or *scuola popolare* (school for adult education) need only be in possession of a secondary school diploma. The increased knowledge and professional skills of the teacher, which justifies that teacher receiving the additional years of service in question, is therefore all the more relevant for the teaching staff of a *scuola paritaria* (State-equivalent school), who are nevertheless unable to reap the benefit of that knowledge and those skills, even in part.
- 7 The Ministry of Education does not contest the fact that the services provided by teaching staff at *scuole paritarie* (State-equivalent schools) are identical to those provided in State schools and the other categories of school mentioned. However, it argues that Article 485 of Legislative Decree No 297/94 has not been brought into line with Law No 62/2000; for the purpose of the former it is still the case

that only services provided when employed at a *scuola parificata* (State-accredited primary school) or a *scuola pareggiata* (State-equivalent secondary school) are to be taken into account, whilst services provided at the new *scuole paritarie* (State-equivalent schools) – a category created only in 2000 and which subsumed *scuole parificate* (State-accredited primary schools) and *scuole pareggiate* (State-equivalent secondary schools) – are not to be taken into account. That absence of correlation does not make it possible, as the law currently stands, to accrue years of service at a *scuola paritaria* (State-equivalent school) for services performed before becoming a permanent member of staff, as compared with teaching staff who have provided the same service (and therefore gained the same working experience) but have immediately been awarded permanent contracts at State schools, having passed a public selection process, or fixed-term contracts in former *scuole parificate* (State-accredited primary schools) or *scuole pareggiate* (State-equivalent secondary schools) or in *scuole sussidiarie e sussidiate* (small State-funded schools run by private individuals or entities), *scuole popolari* (schools for adult education) or *educandati* (girls' schools run by religious bodies).

Succinct presentation of the reasoning in the request for a preliminary ruling

- 8 The Supreme Court of Cassation acknowledged that a *scuola paritaria* (State-equivalent school) is treated in every sense as a State school, yet it is nevertheless not to be taken into account, according to its interpretation of Article 485 of Legislative Decree No 297/94, when calculating what services had been provided before the grant of a permanent contract, on the ground that the dissimilar recruitment procedures make it clear that the legal status of the respective teachers is not the same (Cass. No 32386/2019, Cass. No 33137/2019 and Cass. No 33134/2019).

Moreover, the Court did not find any breach of the principle of non-discrimination provided for in clause 4 of the framework agreement on fixed-term work, 'because relationships are not comparable where they arise in the context of different employers and where they are subject to different regulations with regard to the establishment and management of those relationships' (Cass. n. 25226/2020). The Corte Costituzionale (Constitutional Court, Italy) has also made findings to the same effect (Corte Cost. n. 18/2001).

- 9 The Court of Justice has observed previously that the prohibition of discrimination, provided for in clause 4 of the framework agreement on fixed-term work, proscribes any unequal treatment of fixed-term workers that is not justified on objective grounds by precise, concrete distinguishing factors relating to the inherent characteristics of the tasks and duties performed.

The issue therefore arises as to whether Article 485 of Legislative Decree No 297/94, as interpreted by the Supreme Court of Cassation, is consistent with EU law, in so far as it is evident in the present case that there is no difference

between the duties, training, services and professional obligations of a permanent member of the teaching staff at a State school and those of a teacher on a fixed-term contract at a *scuola paritaria* (State-equivalent school), as in the case of the applicant.

- 10 In fact, the Ministry of Education does not dispute the fact that the teaching services provided by the applicant, as part of a fixed-term working relationship at the *scuola paritaria* (State-equivalent school) in question, involved tasks and contractual obligations that were identical to those provided by his equivalents working as permanent members of staff at State schools.
- 11 This also rules out the conclusion that the situations being assessed are incomparable, in so far as it is the same Italian legislator that acknowledges the equivalence of the services provided by teaching staff at *scuole paritarie* (State-equivalent schools), under Article 1 of Law No 62/2000, with regard not only to the academic qualification awarded, but also the quality of the teaching service provided, and the absolute relevance of the experience accrued in those schools for the purposes of entering or moving forward in permanent ranking lists (Article 2 of Legislative Decree No 255/2001).
- 12 The private nature of the previous employer, with which the teaching experience was accrued, is equally irrelevant. If the superior professional skills resulting from length of service, which justifies the accrual of years of service in question, had something to do with the legal status of the employer, namely it being a State or public employer – for example if Article 485 of Legislative Decree No 297/94 had aimed at securing the loyalty of employees of the Ministry of Education, Universities and Research or at attaching importance to the distinctive features of the State school sector – the regulation would have taken into consideration only services provided when employed by the Ministry or at a State school.
- 13 In the same way, the alleged requirement that only the services provided by those who have been successful in a public selection process be taken into consideration does not appear to be consistent with the decision of the Italian legislator to take into account years of service accrued by teaching staff on fixed-term contracts at State schools, who, in order to teach as substitute teachers, need simply request that they be included in the ranking lists, for which they need not pass the public selection process or possess any particular qualification as a teacher.

Furthermore, teaching staff at *educandati* (girls' schools run by religious bodies), *scuole parificate* (State-accredited primary schools), *scuole sussidiarie e sussidiate* (small State-funded schools run by private individuals or entities) and *scuole popolari* (schools for adult education) are also recruited without having to pass any type of selection process.

- 14 Nor can the mere intention to avoid increased public spending justify discrimination as compared with permanent employees of the State.

15 The referring court therefore takes the view that the question of the interpretation of EU law must be referred for a preliminary ruling, pursuant to Article 267 TFEU, in order to establish whether or not EU law precludes national legislation such as that contained in Article 485 of Legislative Decree No 297/94, which discriminates against teaching staff at *scuole paritarie* (State-equivalent schools) on fixed-term contracts as compared with permanent teaching staff at State schools, when assessing what rights they have accrued, despite the fact that superior professional skills resulting from length of service are completely unrelated to how the employee was recruited or, moreover, with the legal status, whether public or private, of the previous employer, as also demonstrated by the fact that the same legislator takes into account any teaching services provided at *educandati* (girls' schools run by religious bodies) and private *scuole parificate* (State-accredited primary schools), *scuole pareggiate* (State-equivalent secondary schools), *scuole sussidiate e sussidiarie* (small State-funded schools run by private individuals or entities) and *scuole popolari* (schools for adult education) before the award of a permanent contract.

16 This dispute, concerning the salary conditions applied to teaching staff who have been on fixed-term contracts when they are subsequently recruited as State employees, undoubtedly falls within the scope of 'implementation of Union law' within the meaning of Article 51(1) of the Charter.

The question as to whether or not Article 485 of Legislative Decree No 297/94 is consistent with the general principles of equal treatment, equality and non-discrimination in the area of employment conditions, now laid down in Articles 20 and 21 of the Charter, must therefore also be examined, because the legislative decree precludes the taking into account, including only in part, of years of service solely in the case of workers on fixed-term contracts at *scuole paritarie* (State-equivalent schools).

17 The teaching experience gained with other employers before becoming a civil servant is identical for workers at *scuole paritarie* (State-equivalent schools), if not in fact superior to that earned in other private schools, in so far as only '(g) teaching staff [holding] a certificate of qualification as a teacher; [with] (h) individual employment contracts for managerial and teaching staff [that] comply with the national collective agreements in the sector' can work there. Article 485 of Legislative Decree No 297/94, on the other hand, attaches importance only to services provided at schools of a 'lesser' rank than that of *scuole paritarie* (State-equivalent schools), seeing that, of all the schools it refers to, only *scuole paritarie* (State-equivalent schools) require their teaching staff to be in possession of a qualification as a teacher.

18 In these circumstances, the referring court takes the view that it is necessary for the Court of Justice to make a ruling on interpretation. It can in fact uphold the applicant's requests only if the interpretation of EU law precludes the national law at issue.