
Recommendation CM/RecChS(2021)17 *Confederazione Generale Sindacale (CGS)* against Italy Complaint No. 144/2017

(Adopted by the Committee of Ministers on 16 June 2021
at the 1407th meeting of the Ministers' Deputies)

The Committee of Ministers,¹

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint introduced on 7 March 2017 by *Confederazione Generale Sindacale (CGS)* against Italy;

Having regard to the report transmitted by the European Committee of Social Rights (ECSR);

Having noted that the Committee, in its decision on the merits, found that the situation in Italy is in violation of the following provision of the European Social Charter:

Article 1§2 of the Charter (the right of workers to earn their living in an occupation freely entered upon) due to:

- **the absence of effective preventive and remedial safeguards against abuse arising from the undue recourse to successive fixed-term contracts, combined with the legal uncertainty, resulting from the repeated changes to domestic legislation and case law and the limited chances of obtaining indefinite duration contracts regardless of actual competences and working experience.**

The ECSR noted that no limits apply in practice to the number of successive fixed-term contracts for public education staff not registered on the eligibility ranking lists to be drawn upon until exhaustion (hereafter "ERE lists") or to their overall length. In addition, no other measures exist to prevent undue recourse to this type of contracts and no effective remedy, including a right to compensation, is available as it is for the worker concerned to prove that the recourse to fixed-term contracts was not justified each time by exceptional and temporary needs.

The ECSR held that the manifestly inadequate ratio between the staffing needs and the budgetary provisions aimed at covering them, the failure to organise regular recruitment competitions for excessively long periods of time (notably from 1999 to 2012) and the frequent legislative and case law changes affecting the recruitment of public education staff contributed to create and maintain a situation of precariousness for an increasing number of staff recruited in the public education sector.

¹ In conformity with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints, the Deputies in their composition restricted to the Representatives of States Parties to the European Social Charter or the Revised European Social Charter participated in the vote.

The ECSR also held that an adequate balance must be struck between the needs for flexibility in the public education sector and the rights of workers to earn their living in an occupation freely entered upon. It stressed that there must be adequate legal safeguards preventing abuse arising from the use of successive fixed-term contracts, as well as adequate, proportionate and dissuasive remedies effectively available in law and in practice should such abuse occur. The ECSR further considered that where the work performed under fixed-term contracts fulfils the quality standards required and is equivalent to that performed by staff recruited under indefinite duration contracts, the experience accrued through successive contracts, even with interruptions, should be taken into account, *inter alia*, as a relevant criterion for recruitment under public competitions.

Having regard to the response provided by Italy (cf. DD(2021)89) in which the government states that the use of fixed-term contracts for public education staff is motivated both by the economic grounds as laid down by Articles 1 and 6 of Legislative Decree No. 165/2001 and by objective technical reasons related to the unforeseeable need to cope with any staff shortages in pursuit of the objective of continuity in the provision of public education services. The government further states that in the light of the ECSR's decision, it will, when proceeding to recruitment in the public education sector, underline the opportunity to recruit staff from the ERE lists whenever possible and seek to avoid the systematic and successive reiteration of fixed-term contracts for staff not included in the ERE lists.

Recommends that Italy:

- pursue the work already initiated and take all necessary legislative measures to progressively reduce the number of successive fixed-term contracts in the public education sector;
- consider measures to launch recruitment competitions open to workers who are not registered on the ERE lists but have accumulated significant work experience and competence resulting from their employment on successive fixed-term contracts;
- indicate the decisions and actions taken to comply with this recommendation in the next report on follow-up to decisions in collective complaints.