



European
Social
Charter

Charte
sociale
européenne



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

31 January 2018

Case Document No. 3

Unione Nazionale Dirigenti dello Stato (UNADIS) v. Italy
Complaint No. 147/2017

SUBMISSIONS BY THE GOVERNMENT ON THE MERITS

Registered at the Secretariat on 4 January 2018

COMPLAINT NO. 147/2017

**UNIONE NAZIONALE DIRIGENTI DELLO STATO
UNADIS**

v. ITALY

**SUBMISSIONS
BY THE
ITALIAN GOVERNMENT
ON THE MERITS**

ROME, 4 JANUARY 2018



Repubblica Italiana
Ministero degli Affari Esteri
e della Cooperazione Internazionale
Ufficio dell'Agente del Governo

1. The Italian Government (referred to hereinafter as “the Government”) refers to the letter of 10 November 2017 of the European Committee of Social Rights (hereinafter “the Committee”), requesting the following submissions on the merits of the collective complaint lodged against Italy by the Unione Nazionale Dirigenti dello Stato (UNADIS) for the violation of Articles 1, 4, 5, 6, 24 and E of the European Social Charter by the Italian state.
2. The Government notes that the complaint alleges, in particular, a violation of the rights enshrined in the European Social Charter (hereinafter “the Charter”) with regard to staff of the tax authorities appointed to fixed-term directorial positions, then dismissed.
3. The Government would point out firstly that under Article 36, paragraph 5, of Legislative Decree No. 165 of 30 March 2001: *“At all events infringement of binding provisions on the recruitment or employment of workers by the public authorities cannot serve to justify the establishment of employment relationships of indefinite duration with those public authorities, without prejudice to any liability or sanction. The worker concerned is entitled to compensation for damage incurred as a result of working in breach of binding provisions. The authorities must recover any sums paid in that connection from the managers responsible, whether the infringement is intentional or the result of gross negligence. Managers who act in breach of these provisions shall also be liable under Article 21 of this decree. Such violations shall be taken into account when assessing the manager’s actions”*.
4. **As to the fixed-term employment relationships with directors**, it should be pointed out that under Article 29, paragraph 2(a) of Legislative Decree No. 81 of 15 June 2015, entitled *“Basic rules on employment contracts and revision of the legislation on positions under Article 1, paragraph 7, of Law No. 183 of 10 December 2014”* (in force from 25 June 2015), Chapter III (on fixed-term contracts) of the Decree cited above does not cover *“fixed-term contracts with directors, which may not last for more than five years, notwithstanding the right of directors to rescind their contract within the meaning of Article 2118 of the Civil Code after a period of three years”*.



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5. It should be pointed out that for fixed-term directorial positions, employment contracts may have particular features which the authorities can specify within the limits of the arrangements expressly provided for by the law. The employment relationship is in itself limited in time because of the expiry date provided for by the contract, which is set in accordance with the objectives assigned to directors and on the basis of the time limits which the law has specifically laid down for this purpose. The particular nature of the job and its temporary duration are overriding factors which take precedence over the contractual aspects of the agreement, precluding precarious employment relationships and the possibility of the staff concerned being made permanent (opinion of the Civil Service Department – No. 0009606 –25/02/2008- 1.2.3.4.).

6. Lastly, Circular No. 5 of 2013 of the Ministry for Public Administration and Simplification states as follows: “*transitional and regular special recruitment procedures do not apply to directors with a fixed-term contract under special provisions which take into account the high level of professionalism and specific profile of such persons and the limited number of posts. Such circumstances do not entail inappropriate use of fixed-term arrangements as the employment relationship shows due regard for the relevant legislation and does not create expectations for the persons concerned*”.

7. With regard to the subject of the complaint, it is most important to point out that in judgment No. 37 of 2015, the Italian Constitutional Court declared Article 8, paragraph 24, of Decree-Law No. 16/2012 unconstitutional because it had contributed to “*the indefinite duration of an allegedly temporary assignment of higher functions while failing to fill vacant directors’ posts with persons who had succeeded in an open and public competition procedure*”.

8. The Constitutional Court also stated as follows: “*the duties of directors working for a public authority must be assigned after a public competition and such competitions are also necessary where employees already in service are appointed to a new position*”.

9. It should be added that the legislation in force is always updated when this is necessary for the various categories of public sector employer (Legislative Decree No. 165/2001 was updated by Legislative Decree No. 118 of 20 July 2017 and Law No. 179 of 30 November 2017) with due regard for the rights and principles enshrined in the Charter and in all other provisions in force in this area.

CONCLUSIONS



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10. The Government therefore considers that it has not violated the Charter, as claimed by the complainant organisation.

11. Consequently, the Government hereby submits its initial observations to the Committee concerning the complaint while reserving the right to submit any further relevant information.

Rome, 4 January 2018

Government Agent

E. Spatafora

A handwritten signature in black ink, appearing to read 'E. Spatafora', written over a faint circular stamp.