

EUROPEAN COMMITTEE OF SOCIAL RIGHTS COMITE EUROPEEN DES DROITS SOCIAUX

12 May 2021

Case doc No 5

CGS, Federazione GILDA-UNAMS and Sindacato Nazionale Insegnanti Di Religione Cattolica v. Italy Complaint No 192/2020

SUBMISSIONS BY THE GOVERNEMENT ON THE MERITS

Registered by the Secretariat on 26 February 2021



European Committee of Social Rights (ECSR)

<u>Collective complaint n. 192/2020</u> <u>C.G.S./F.G.U.vs Italy</u>

OBSERVATIONS OF THE ITALIAN GOVERNMENT ON THE MERITS

Roma, 26 febbraio 2021



1. With the letter dated 18 December 2020, the Secretariat of the General Directorate of the European Social Charter, requested the Italian Government to present its observations on the merits of the collective complaint n. 192/2020 ("the complaint"), submitted by "Confederazione generale Sindacale- Federazione GILDA-UNAMS"- "CGS/FGU" ("the complainant").

- I -

Articles concerned

2. The complainant seeks a declaration of infringement of Articles 1, 4, 5, 6, 24 of the revised European Social Charter, with reference to abuse in the repetition of the term contracts of teachers of religion, discriminated against in comparison with other teachers.

- II -

Subject Matter of the Complaint

3. The central point of the complaint, as stated by the complainant himself, concerns the treatment reserved by Italian law for teachers of religion who have stipulated several fixed-term contracts with the Public Administration.

4. The complainant assumes that Italian teachers of religion who have entered into more fixed-term contracts with the public administration have been treated less favourably than other teachers of other subjects and have been unduly disadvantaged.

5. The appeal is unfounded and, therefore, deserves to be rejected on the following pots of law.

- III -

Unfoundedness of the complaint

6. It should be noted that the complaint expressed by the complainant is clearly unfounded.

7. Indeed, the complainant alleges discrimination in the availability and calculation of staff vacancies; in particular, it criticises the 70% limit set for the purpose of calculating the availability of posts for the recruitment of Catholic religious education teachers.



8. The complainant's complaint is clearly unfounded.

9. In this regard, it should be noted that the legislation applicable to this case does not prescribe an unconditional and general obligation for the Administration to hold an open competition.

10. In this regard, it is necessary to point out that Article 1 of *lex specialis* no. 186 of 2003, states that: "For the purposes of teaching Catholic religion in State schools of all levels [...] two distinct regional rolls are established, divided into territorial areas corresponding to dioceses, of teaching staff and corresponding to the school cycles provided for by the regulations" (paragraph 1) and that: "to the teachers of Catholic religion included in the roles referred to in paragraph 1 apply, except as established by the present law, the rules of legal status and economic treatment provided by the Consolidated text of the legislative provisions in force in the field of education, relating to schools of every order and grade, referred to in the decree 16.4.1994, no. 297, and subsequent amendments, hereinafter referred to as "Consolidated text", and by collective bargaining" (paragraph 2).

11. The same disposition, with reference to the organic allocations of posts, establishes with the following art. 2 that:

"1. By decree of the Minister of Education, Universities and Research, in agreement with the Minister of Economy and Finance and with the Minister for the Civil Service, the consistency of the staffing of Catholic religion teachers is established, articulated on a regional basis, determined to the extent of 70% of the total teaching posts in operation.

2. The staffing levels for Catholic religious education in secondary schools shall be established by the head of the regional scholastic office, within the overall staffing level of each region, to the extent of 70% of the total number of posts in the territory of each diocese.

3. The staffing levels for the teaching of Catholic religion in pre-school and primary school are established by the head of the regional scholastic office, within the total staffing level of each region, to the extent of 70% of the posts functioning in the territory of each diocese [...]".

12. That said, as far as the recruitment system is concerned, article 3 of the aforementioned law specified that: "Access to the roles referred to in Article 1 takes place



after passing

AVVOCATURA GENERALE DELLO STATO

competitions

based on qualifications and examinations, the qualifications being those foreseen in point 4 of the Agreement referred to in Article 1, paragraph 1, for the posts annually available in the staff numbers referred to in Article 2, paragraphs 2 and 3". 2, paragraphs 2 and 3" (paragraph 1), while: "For all posts not covered by teachers with permanent employment contracts, shall be provided by fixed-term employment contracts entered into by school leaders, on the recommendation of the regional manager, in agreement with the diocesan ordinary competent for the territory" (paragraph 10).

13. It is clear, therefore, that the above-mentioned Law No 186/2003 provides that the size of the staff of religious education teachers, which is accessed with a contract of indefinite duration through competition, is determined, in each territorial area and with regard to each order and level of schools, to the extent of 70% of the total teaching posts in operation.

14. On the other hand, the remaining 30%, which does not form part of the establishment plan, is allocated by means of annual replacements without any time-limit or maximum limit on the number of contracts which may be repeated.

15. That being so, contrary to the complainant's assertions, the rules referred to above, far from being regarded as abusive, discriminatory or contrary to the principles of Community law on fixed-term contracts, fully comply with clause 5 of the framework agreement annexed to Directive 1999/70/EC.

16. In that regard, it should be noted that the area of teaching in question is a special area in relation to other school sectors. Catholic religious education is not compulsory, but is taught only to those who declare and choose to avail themselves of it. In view of an additional factor, such as the one just mentioned, which does not characterise all other types of teaching in the same way as religious instruction, it is clear that there can be no question of discrimination against other forms of teaching or of abuse of the choice made by the Italian legislature.

17. Indeed, the State needs to ensure, in this particular area of teaching, a constant adjustment between the number of teachers and the number of pupils, which in turn takes account not only, as in every school sector, of demographic trends and population mobility,



contingent

and variable

elements, but also of the individual choices of pupils, which cannot be predicted, to avail themselves or not of Catholic religious instruction.

18. This need which, as recognised by the Court of Justice of the EU in its judgment of 26/11/2014 in Joined Cases C22/13 C61/13C62/13 C63/13 C418/14 (Mascolo and Others), constitutes an 'objective reason', within the meaning of the aforementioned clause 5(1)(a) of the Framework Agreement, for recourse to a succession of fixed-term employment contracts without a time limit, in order to respond adequately, with the necessary flexibility, to the demand for Catholic religious education teachers and thus to prevent the State, the employer, from recruiting on open-ended contracts significantly more teachers than are actually needed.

19. In the light of the above, it is clear that the complaint is unfounded.

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CONCLUSIONS

In conclusion, the Italian Government requests the Committee to dismiss the compliant as unfounded in fact and in law. Roma, 26 febbraio 2021

Drafetd by

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