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

**16 November 2018**

**Case Document No. 7**

***Confederazione Generale Sindacale (CGS) v. Italy***  
Complaint No. 144/2017

**RESPONSE FROM CGS  
TO THE QUESTIONS OF THE COMMITTEE**

**Registered at the Secretariat on 16 October 2018**



**CONFEDERAZIONE GENERALE SINDACALE CGS**

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Alla cortese attenzione del Segretario Esecutivo del Comitato Europeo dei Diritti  
Sociali, che agisce in nome e per conto del Segretario Generale del Consiglio  
d'Europa

**Compliant nr. 144/2017**

**Notes to the request for information of 19 September 2018**

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In response to the request for information dated 19 September 2018, the CGS answers:

a) the information referred to in point a) is confirmed;

b) the information referred to in point b) is confirmed; the Santoro judgment of the Court of Justice of 7 March 2018 in Case C-494/16 stated that the burden of proof for the loss of a stable job opportunity should be borne by the public employer and not by the worker, but no national judge applies this principle, so the position of the Supreme Court in its sentence n.5072 / 2016 remains confirmed;

c) the information referred to in point c) is partially confirmed, because, according to judgments nos.22552 / 2016, 22553/2016, 22554/2016 of 7 November 2016 of the Court of Cassation, compensation for damages up to 12 months is recognized only when the worker in the public sector of the school has worked for four temporary substitutes (for the whole school year, from 1 September to 31 August of the following year) and only if he has not been employed, after abusive use of fixed-term contracts to an extent not less than four substitutes, indefinitely employed by the public school administration.

Roma 16 ottobre 2018

*Avv. Tommaso de Grandis*



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



**Strasbourg, 18 September 2018**

***Confederazione Generale Sindacale CGS v. Italy***  
Complaint No. 144/2017

**Questions to the parties**

For the purpose of the examination of the Complaint No. 144/2017, the European Committee of Social Rights would like to invite the parties to confirm or correct the following information, concerning the situation resulting from the legislative and case-law developments which have occurred after the submission of the latest observations:

- a) in the private sector, fixed-term contracts can be concluded initially for a maximum term of 12 months, any subsequent renewal – up to four - must be justified by exceptional and temporary needs and the overall length of the contract cannot exceed 24 months. In case of abuse, the fixed-term contract can be converted into an indeterminate duration contract (*Article 19 of Leg. Decree No. 81/2015, as amended by Art. 1 of Leg. Decree No. 87/2018, in force as of 14 July 2018, converted with amendments by Law No. 96/2018 of 9 August 2018, OJ No. 186 of 11 August 2018*);
- b) in the public administration, fixed-term contracts can be concluded only in case of exceptional and temporary need and can be renewed up to five times, for a maximum overall length of 36 months (*Article 1§3 of Leg. Decree No. 87/2018, mentioned above; Article 29§4 of Leg. Decree No. 81/2015*). In case of abuse, the worker is entitled to up to 12 months' salary compensation. A further unlimited compensation for loss of opportunity can be granted, provided the worker can prove it. (*Article 36§5 of Legislative Decree 165/2001 of 30 March 2001, as amended, as interpreted by the Court of Cassation in its judgment No. 5072/2016 of 15 March 2016 with reference to Art. 32 of Law No. 183/2010*).
- c) in the public school sector, no limits apply to the overall length of fixed-term contracts (*Article 4bis of Leg. Decree No. 87/2018, mentioned above, abrogating Art. 1§131 of Law 107/2015 of 13 July 2015*). A compensation of up to 12 months' salary can be granted, if the worker can prove that the recourse to successive fixed-term contracts (other than annual supply contracts) was not justified by exceptional and temporary needs (*Court of Cassation judgments Nos. 22552/2016, 22553/2016, 22554/2016 of 7 November 2016*).