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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX**

7 September 2021

**Case Document No. 5**

***Unione sindacale di base – settore pubblico impiego (USB) v. Italy***  
Complaint No. 153/2017

**REPLY FROM THE GOVERNMENT  
TO THE QUESTIONS OF THE COMMITTEE**

**Registered at the Secretariat on 2 September 2021**



*Ufficio dell' Agente del Governo  
davanti alla Corte europea dei diritti dell'uomo*

**AVVOCATURA GENERALE DELLO STATO**

**European Committee of Social Rights (ECSR)**

*Collective complaint n. 153/2017*

*Unione Sindacale di Base (USB) vs Italy*

**REPLIES OF THE  
ITALIAN GOVERNMENT**

Ct 26745/21  
Proc. Andrea Lipari



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**I. Introduction**

1. With the letter dated 8<sup>th</sup> July 2021, the European Committee of Social Rights invited the parties to provide updated information as regards any relevant changes that have occurred after the submission of the latest observations, in respect of:

- the limits applicable to the use of fixed-term contracts (maximum number of contracts and overall length) and requirements/conditions; and
- the remedies available when recourse to fixed-term contracts violates the applicable legislation;

with regard respectively to:

1. Public sector workers employed on fixed-term contracts in particular by the municipalities of the region of Sicily;
2. Workers employed on fixed-term contracts in general by public administrations in Italy;
3. Private sector workers employed on fixed-term contracts.

2. In compliance with the Committee letter, the present observations are limited to the information requested.

**II. About the Region of Sicily.**

3. According to the complainant association, Sicilian Region is in breach of EU Directive No 70 of 1999.

In this regard, it must be said that Sicilian Region has exclusive competence, recognised by the Statute, in matters of the legal status of personnel under Article 14, para. 1, lett. q) and in matters of local administrations under Article 14, para. 1, lett. o), while it has concurrent competence under Article 17, para. 1, lett. f) in matters of social legislation.

In the field of social legislation, Sicilian Region has produced over time, as in the State, legislation to support people who are unemployed and/or do not have social



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security benefits, by including them in projects such as Socially Useful Works and providing sums for Socially Useful Activities.

Regional Law No 85 of 21 December 1995, laying down 'Rules for the integration into the labour market of persons taking part in the projects of collective utility referred to in Article 23 of Law No 67 of 11 March 1988 and measures for the implementation of active employment policies', already introduced this type of aid and assistance for the unemployed into Sicilian Region.

It was not, therefore, a matter of fixed-term recruitment to fill posts on the establishment plans of regional bodies and local administrations; similarly for subsequent regional legislation.

Both Article 77 of Regional Law No 174 of 21 December 2004 (Planning and financial provisions for 2005) and Article 5 of Regional Law No 245 of 29 December 2010 (Extension of measures for the 2011 financial year. Measures for the stabilisation of fixed-term employment relationships), which are deducted in the complaint, are to be ascribed to the regulatory strand of welfare and/or exit from the precariousness in the meantime become a social emergency throughout the country.

The latter article of the regional law cannot, however, be read alone, as alleged in the complaint, but together with articles 6 (Initiation of stabilisation processes), 7 (Continuation of relationships of personnel benefiting from the transitional regime of socially useful jobs) and 8 (Rules on the prohibition of recruitment and application of article 30 of legislative decree no. 165/2001) of the above-mentioned Regional law.

Having said that, it is quite clear that these rules do not fall *tout court* within the scope of application of Legislative Decree no. 368 of 6 September 2001, implementing Directive 1999/70/EC on fixed-term employment contracts, but rather within the scope of work fare, as developed by doctrine and case law.



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These provisions, in fact, are rules to protect the worker, given that the ordinary form of the employment contract is an open-ended contract, and the abuse of the use of fixed-term contracts, which cannot exceed 36 months, is sanctioned.

The sanction for such abuse, in the privatised public sector, is not the conversion of the contract into an open-ended one, given the prohibition laid down by Article 36 of Legislative Decree no. 165 of 30 March 2001 - the provisions of which have been held to be legitimate by the Constitutional Court (see Sentence No. 98 of 2003) - but compensation for damages, as confirmed by case law (e.g. *Corte di Cassazione*, sentence n. 9114 del 02.04.2019).

It should be noted that the EU Court of Justice intervened in Case C-494/16 Santoro v. Comune di Valderice stating that the European Framework Agreement on Fixed-term Work of 18 March 1999 does not establish a general obligation of Member States to provide for the transformation into contracts of indefinite duration in case of abuse of the instrument by employers, leaving a certain discretion in the matter to the domestic legislator.

It is not, in fact, a question of abuse of socially useful workers as claimed in the complaint. On the contrary, it is a matter of rules which ensure their protection, including the use of fixed-term contracts of various kinds, extended over time and which then provide for the stabilisation of the LSU/ASU in the presence of the requisites laid down from time to time by State legislation.

With regard to the question about the regulatory evolution from 2018 onwards, it should be noted that Sicilian Region has provided with Article 26, paragraph 6, of the Regional Law No. 8 of 8 May 2018<sup>1</sup>, the possibility to stabilise the precarious workers

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<sup>1</sup> 6. *Ferme restando le norme di contenimento della spesa del personale, limitatamente alle risorse regionali aggiuntive assicurate dalle autorizzazioni di spesa di cui al comma 1 dell'articolo 6 e al comma 7 dell'articolo 30 della legge regionale 28 gennaio 2014, n. 5 e dalle autorizzazioni di spesa di cui al comma 10, lettera b), dell'articolo 3 della legge regionale n. 27/2016, gli enti locali, in conformità a quanto disposto dall'articolo 20 del decreto legislativo n. 75/2017, provvedono ad avviare, entro il 31 dicembre 2018, le procedure di stabilizzazione dei lavoratori a tempo determinato, con contratti a tempo*



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of local administrations - in harmony with the provisions contained in the Legislative Decree No. 75 of 25 May 2017 and its implementing rules - in possession of the necessary requirements, following a competitive procedure. This option was extended with paragraph 10, also to the precarious workers of the Sicilian Region, holders of fixed-term employment contracts.

With regard to the latter, it should be noted that they were hired once the relevant competitive procedures had been completed.

The Sicilian Region with the Regional Law 22 February 2019, n. 1, entitled "*Disposizioni programmatiche e correttive per l'anno 2019. Regional Stability Law*", in Article 22, paragraph 2, provided that such competitive procedures "*are to be understood as relating to extraordinary recruitment procedures aimed at overcoming the historical precariousness, which disregard the procedures directed externally and are entirely reserved for the persons referred to in the same Article 26.*"

Still on the subject of exit from precarious employment, it should be noted that Regional Law 16 October 2019, No. 17, (Annex to the Regional Stability Law for the year 2019), in Article 13, entitled "*Measures in favour of LSU Almaviva workers*", has extended in their favour the provisions of Article 30 of Regional Law 28 January 2014, No. 5 (Stability Law of 2014) and that, in Article 15, entitled "*Measures in favour of workers used in socially useful activities*", stated, inter alia, that the "*Regional Department of Labour, shall provide for the assignment of persons included in the list referred to in paragraph 1 of Article 30 of Regional Law 28 January 2014, No. 5 and used in socially useful activities, including through*

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*indeterminato anche part-time, per un numero di ore non inferiore a quello in essere con il medesimo lavoratore al 31 dicembre 2015. Ove non ricorrano le condizioni di cui al comma 1 dell'articolo 20 del decreto legislativo n. 75/2017, gli enti locali sono autorizzati ad avviare le procedure di stabilizzazione per i soggetti che prestano servizio presso lo stesso ente a valere sulle risorse regionali richiamate nel presente articolo, mediante le disposizioni di cui al comma 2 dell'articolo 20 del medesimo decreto legislativo, interamente riservate ai medesimi.*



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*agreements, in public bodies other than the regional administration, in the entities in which they are working at the date of entry into force of this law".*

**III. Italian general situation.**

4. With regard to workers employed on fixed-term contracts by public administrations in Italy, it should be recalled that Italian law establishes that access to the civil service requires participation in a public competition, which ensures the effectiveness of the recruitment procedure, except in the cases provided for by law (Article 97, paragraph 4 of the Constitution).

In fact, public competition constitutes the general and ordinary method of recruitment in the civil service.

This mechanism makes it possible to meet the requirements of efficiency of the administration. It can only be derogated in presence of specific situations which justify this choice, in the exercise of a discretionary power that is limited by the need to ensure the proper functioning of the public. The selection procedure should not be characterised by arbitrary and unreasonable restrictions on the individuals entitled to participate.

It should be reminded that the principle of public competition aims not only to ensure the impartiality of the action of public employees but also to guarantee a rigorous selection of the most suitable and qualified personnel to carry out specific functions, with a view to ensuring the proper functioning of the public administration. Derogation from this provision is only possible in exceptional situations and in the presence of particular and extraordinary requirements of public interest.

The above considerations, therefore, explain the different protective measures provided for workers in the public or private sector. The working conditions in these two sectors are not comparable.

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**CONCLUSIONS**

In light of the present observations, the Italian Government insist for the rejection of the complaint.

Rome, 2<sup>nd</sup> September 2021

Drafted by

*Andrea Lipari* – Procuratore dello Stato

The Agent of the Italian Government  
*Lorenzo D'Ascia* – Avvocato dello Stato