



European
Social
Charter

Charte
sociale
européenne



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

12 August 2021

Case Document No. 7

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

**REPLY BY THE GOVERNMENT
TO THE COMPLAINANT ORGANISATIONS' RESPONSE**

Registered at the Secretariat on 1 July 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. 192/2020

C.G.S./F.G.U. vs Italy

Replies of the Government

Ct 12507-20

Avv. G. Greco



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

AVVOCATURA GENERALE DELLO STATO

1. With the letter dated 25 May 2021, the Secretariat of the General Directorate of the European Social Charter, requested the Italian Government to present its reply to the observations submitted, on date 21 May 2021, by “Confederazione generale Sindacale-Federazione GILDA-UNAMS”- “CGS/FGU” (“the complainant”).

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

The complainant assumes that Italian teachers of religion who have entered more fixed-term contracts with the public administration have been treated less favourably than other teachers of other subjects and have been unduly disadvantaged, and still will be treated less favourably in the future.

3. The observations of CGS are unfounded because the legislation applicable to this case does not prescribe an unconditional and general obligation for the Administration to hold an open competition.

4. In this regard, it is necessary to point out that Article 1 of *lex specialis* Law 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).



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

AVVOCATURA GENERALE DELLO STATO

Concerning the organic allocations of posts, Article 2 of the above-mentioned Law establishes 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 the 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 [...]"

5. 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 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).

6. 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.



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

AVVOCATURA GENERALE DELLO STATO

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 that may be repeated.

7. 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.

8. In that regard, it should be noted that the area of teaching in question is special 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.

9. Because 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 abuse of the choice made by the Italian legislature.

10. Indeed, the State needs to ensure, in this specific 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.

11. This need, 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.

The complaint is, therefore, unfounded.



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

AVVOCATURA GENERALE DELLO STATO

* * *

CONCLUSIONS

In conclusion, the Italian Government requests the Committee to dismiss the complaint as unfounded in fact and law.

Roma, 2 July 2021

Drafted by

Giovanni Greco – Avvocato dello Stato

Lorenzo D'Ascia - Avvocato dello Stato
the Agent of the Italian Government