



21.5.2019

NOTICE TO MEMBERS

Subject: Petition No 0934//2018 by Michele Scirpoli (Italian) on alleged discrimination between Italian teachers in the procedure governing admission to reserve lists for teaching staff

1. Summary of petition

The petitioner describes the alleged discrimination faced by 55 000 people with non-university teaching diplomas ('diploma magistrale') as a result of a judgment delivered by the Council of State in plenary session (Judgment No 11 of 20/12/17). The judgment ruled against the petitioner's employment category, in terms of whether or not it was legitimate to include on closed reserve lists (GAE) those who had been awarded secondary school teaching diplomas prior to 2001-2002, after permanent ranking (reserve) lists had been converted into closed reserve lists called 'graduatorie ad esaurimento' (GAE), one of the arguments being that the 'diploma magistrale' was inadequate as an enabling qualification for the purpose of inclusion on GAE reserve lists. This judgment runs counter to a well-established position of the 6th Chamber of the Council of State itself and it would mean that the teachers in question would be barred from any form of teaching in state schools and accredited (semi-private) schools. Moreover, some 10 000 teachers, recruited under open-ended contracts, would be liable to be made redundant, despite the fact that they have already been confirmed in their permanent posts. The unequal treatment of the Italian teachers affected by the above-mentioned judgment would also affect nationals of other Member States, such as Romania, who have been deemed eligible to teach in Italian primary schools with foreign diplomas comparable to those of Italian teachers with 'magistrale' teaching diplomas. Ultimately, the ruling of the plenary session of the Council of State would conflict with Clause 5 of the framework agreement on fixed-term work annexed to Council Directive 1999/70/EC of 28 June 1999, since the failure to include certain teachers on GAE closed reserve lists would mean that teachers holding a 'diploma magistrale' would be unable to avail themselves of any effective preventive or punitive measures relating to the unlawful (10-year) renewals of their fixed-term contracts. It would also be in breach of Articles 3 and 4 of Directive [2005/36/EC](#) of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications.

2. Admissibility

Declared admissible on 31 January 2019. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 21 May 2019

The Commission would like to mention that as regards the applicability of Directive 2005/36/EC according to its Article 2 on “Scope”, Directive 2005/36/EC “shall apply to all nationals of a Member State wishing to pursue a regulated profession in a Member State, [...], other than that in which they obtained their professional qualifications, on either a self-employed or employed basis”.

Thus, as regards teachers who obtained their qualifications in Italy, their situation is a purely internal situation with no extraterritorial element. The Directive will not be applicable in their case.

As regards teachers whose non-Italian qualifications have been recognised in Italy and are currently working there as teachers, it has to be mentioned that according to Article 4 of Directive 2005/36/EC, once a migrant has had his/ her qualifications recognised in the host Member State, he/ she pursues the exercise of his/ her profession according to the host Member State conditions and national law. In addition, on the basis of the information available to it, the Commission does not consider that the new system introduces any direct or indirect discrimination against teachers who have obtained their qualifications in other Member States. In that respect, the Commission does not consider that the claims of the petitioner are founded.

On the applicability of the Framework Agreement on fixed-term work concluded by the European Trade Union Confederation (ETUC), the Union of Industrial and Employers’ Confederations of Europe (UNICE) and the European Centre of Employers and Enterprises providing Public Services (CEEP) annexed to Council Directive 1999/70/EC (“the Framework Agreement”)², this Framework Agreement seeks, among others, to prevent discrimination between fixed-term workers and comparable permanent workers in respect of employment conditions, as stipulated in its clause 4.

It is not clear from the information submitted by the petitioner whether the Italian-trained teachers who are denied access to a previously open reserve list leading to state employment as teachers are jobseekers or have been in the past already employed as fixed-term workers. The petition rather suggests that they are jobseekers. In case they are jobseekers, the Framework Agreement does not apply to them.

In any case, the alleged differential treatment which is described by the petitioner does not occur on account of the fixed-term worker status of the teachers concerned. Therefore, the Framework Agreement does not apply to the case at hand.

In cases of successive fixed-term relationships, the national courts are competent to determine

¹ Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (Text with EEA relevance), *OJ L 255, 30.9.2005, p. 22–142*.

² Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, *OJ L 175, 10.07.1999, p. 43*.

the existence of an abuse arising from those relationships and to apply the appropriate measures in the Italian legislation. The petitioner does not explain sufficiently why effective preventive or punitive measures would not be available in the situation addressed in the petition.

Conclusion

Regarding the application of Directive 2005/36/EC, the issue is not within the Commission's remit since it is a national competence to ensure the proper application of legal frameworks transposing EU law in the Member States.

The Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP annexed to Council Directive 1999/70/EC does not apply to the case described by the petitioner.