



6.5.2011

NOTICE TO MEMBERS

Subject: Petition 1278/2010 by D.M. (Italian), on renewal of fixed-term employment contracts and alleged infringement by Italy of Directive 1999/70/EC

Petition 1302/2010 by M. R. (Italian), on the renewal of fixed-term employment contracts and alleged infringement by Italy of Directive 1999/70/EC

Petition 1525/2010 by Valeria Pizzati (Italian), on extensions of fixed-term contracts and alleged infringement of Council Directive 1999/70/EC

1. Summary of petition

Petition 1278/2010

The petitioner alleges that the Italian authorities are failing to implement properly Directive 1999/70/EC concerning the framework agreement regarding fixed-term work transposed into national law under Decree-Law 368/01.

In particular, he takes the view that the repeated renewal of fixed-term contracts is an infringement of the EU Charter of Fundamental Rights.

Petition 1302/2010

The petitioner alleges that the Italian authorities are failing to implement properly Council Directive 1999/70/EC concerning the framework agreement on fixed-term work transposed into national legislation under Decree-Law 368/01. In particular, she maintains that the continued renewal of fixed-term contracts is an infringement of the European Union Charter of Fundamental Rights.

Petition 1525/2010

The petitioner maintains that the Italian authorities are failing to implement properly Council Directive 1999/70/EC concerning the framework agreement on fixed-term work transposed into national law under legislative decree 368/01. In particular, the petitioner maintains that continual extensions of fixed-term contracts constitute an infringement of the EU Charter of Fundamental Rights.

2. Admissibility

Declared admissible on 7 February 2011. Information requested from Commission under Rule 202(6).

Declared admissible on 8 February 2011. Information requested from Commission under Rule 202(6).

Declared admissible on 18 March 2011. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 6 May 2011.

The petitions

In petition 1278/2010 the petitioner indicates that he suffered from a lack of implementation in practice of the protection against abusive successions of fixed-term contracts. According to the petitioner Article 5(4)(a) of Legislative Decree 368/01, which stipulates that one or more contracts with a term of more than three years shall be considered to be permanent contracts is not being adhered to in Italian schools.

The petitioner complains that he was dismissed without notice in September 2010 by the Italian Ministry of Education, Universities and Research, through the Catania Provincial Education Office after a series of 11 fixed-term contracts since 2004 as administrative assistant (ATA personnel). The petitioner also claims the Italian State to be at fault with regard to the effective protection since he reports that Employment Courts merely provide compensation rather than conversion into a permanent contract.

The petitioner equally refers to a written question by MEP Rita Borsellino to the Commission and the response by Commissioner Andor.

In petition 1302/2010 the petitioner indicates that she suffered from a lack of implementation in practice of the protection against abusive successions of fixed-term contracts. The petitioner alleges that she was dismissed without notice in September 2010 after a series of 7 fixed-term contracts since 2004 as administrative assistant (ATA personnel). The petitioner also complains about the Italian State's behaviour with regard to the effective protection since she reports that Employment Courts merely provide compensation rather than conversion into a permanent contract. The petitioner considers the awards of compensation to be ineffective and inadequate.

In petition 1525/2010 the petitioner states having suffered from a lack of implementation in practice of the protection against abusive successions of fixed-term contracts. The petitioner

complains that she was employed on a series of 9 fixed-term contracts, with a 10th contract still running until June 2011. The petitioner considers this to be a clear failure to apply the Framework Agreement annexed to Directive 1999/70/EC. The petitioner claims to have suffered damage as a result.

The petitioner also complains about the inadequacy of the protection provided by the Employment Courts, in that these merely provide compensation, which reduces the effectiveness and adequacy of the sanctions used in practice.

The Commission's comments on the petitions

The Honourable Member Borsellino, in Parliamentary Question E-2354/10 also raised the issue of auxiliary technical administrative (ATA) staff in public schools on successive fixed-term contracts over a number of years. The question recalls the European Court of Justice's findings in C-212/04 *Adeneler*, which held that Community law prohibited consecutive fixed-term contracts being regarded as successive only when they were concluded within 20 days of each other.

Italy has transposed Directive 1999/70/EC by means of Legislative Decree No 368 of 6 September 2001 (as amended). Article 4 of this legislation specifies that a fixed-term contract may be extended no more than once and the total duration may not exceed 3 years. Article 5 sets down the arrangements for fixed-term contracts being converted into contracts of indefinite duration within ten days of the date of expiry of a contract lasting up to six months, or twenty days of the date of expiry of a contract lasting longer than six months. In addition Article 5(4-bis) provides that unless otherwise specified in collective agreements, when, as a result of a succession of fixed-term contracts for performance of equivalent tasks, an employment relationship between the same employer and the same worker has exceeded a total of 36 months, including extensions and renewals, the employment relationship shall henceforth be considered to be an open-ended contract, regardless of the periods of interruption between one contract and another.

The Commission contacted the Italian authorities in April 2010 to clarify whether Italy's employment on successive fixed-term contracts of auxiliary technical administrative staff in state schools adhered to this Italian transposition legislation.

In July 2010, the Italian authorities informed the Commission that Italian law governing workers in the schools sector is a category of its own (in particular Article 4(1) of Law No 124/99 and Article 1(1)(a) of Ministerial Decree No 430/00), allowing the non-indication of the causal nature of the first fixed-term contract, as laid down in general in the internal rules governing all other fixed-term employment relationships, and the renewal of contracts independently of the existence of permanent and long-term requirements and making no provision for the total maximum duration of fixed-term contracts or employment relationships, the number of renewals thereof or, under normal circumstances, of any period between renewals or, in the case of annual temporary teaching posts, corresponding to the summer holidays, when school activities are suspended or greatly reduced.

The Italian authorities went on to state that the question of contract renewals for school staff falls within the competence of the Ministry of Education, and that employment relationships under a public authority are the responsibility of the Department of Public Administration.

However, the Ministry of Labour stated that within the meaning of Article 36(1) and (2) of Legislative Decree No 165/2001 (Consolidated Law (TU) on the civil service), the public authorities are known to use exclusively open-ended employment contracts for their normal requirements, but in response to temporary and exceptional requirements they may use the flexible forms of contract for the recruitment and employment of staff provided for in the Civil Code and the laws on employment relationships in undertakings (such as fixed-term contracts and training and work contracts), subject to the recruitment procedures in force.

They pointed out that Article 36(5) lays down that under no circumstances may the infringement of binding provisions on the recruitment or employment of workers by the public authorities lead to the establishment of open-ended employment relationships with those public authorities, without prejudice to any liability or penalty. The worker concerned is entitled to compensation for damage incurred as a result of working in breach of binding provisions. It is not clear, however, that these binding provisions include measures to prevent the abuse of successive fixed-term contracts as required by Clause 5 of the Framework Agreement.

The Italian authorities then stressed that, with specific regard to the conversion of a fixed-term employment relationship into an open-ended one where the time limits laid down in law are breached, Legislative Decree No 78/2009, converted into Law No 102/2009, added a new paragraph 5a to Article 36 in relation to public-sector employment, whereby the provisions of Article 5(4c, d and e) of Legislative Decree No 368/2001 shall apply exclusively to staff recruited in accordance with the procedures referred to in Article 35(1)(b) of the Consolidated Law on the civil service, i.e. through recruitment from among those registered for skills and occupations requiring only a certificate of completion of compulsory education, with the exception of any further requirements for specific occupations.

As a result, under the above-mentioned legislation, the penalties governing the conversion of a fixed-term employment relationship into an open-ended one do not apply in Italian law to employment relationships for technical staff within schools, as such staff are not covered by the provisions referred to in Article 35(1)(b) of Legislative Decree No 165/2001. According to the Italian authorities this exclusion does not appear to be discriminatory as it refers not to a specific category of workers but to the entire public employment sector.

The Directive does not require that employment on the basis of successive fixed-term contracts after a certain period, has to be converted to permanent employment. It rather requires measures to be taken against abusive successive fixed-term contracts. The Court held in C-212/02 Adeneler and C-53/04 Marrosu that conversion of a fixed-term contract into a contract of indefinite duration was not the only measure to prevent abuse nor an inevitable outcome of the Directive for the public sector. Alternative effective measures to prevent, and where appropriate, punish the misuse of successive fixed-term contracts, that take the place of such a conversion may also satisfy the requirements of the Directive.

These petitions again raise allegations of abuse of successive fixed-term contracts for auxiliary technical administrative staff in state schools, a matter that has already been the subject of investigations by the Commission and on which the Italian authorities have been contacted. The reply from the Italian authorities suggests that there are no measures in place to prevent abuse of such fixed-term contracts. In addition, there appears to be no wider

legislative framework that could be used as a means of preventing abuse. This conclusion results from the correspondence, where the Italian authorities merely informed the Commission that the usual measures to prevent abuse do not apply to this category of employees in the public sector.

Since there is no derogation for the category of public sector employee in question¹, Clause 5 of the Framework Agreement applies to employment of auxiliary technical administrative staff in state schools. Furthermore, since the Italian authorities have provided no information concerning what measures may be in place to prevent the abuse of successive fixed-term contracts for auxiliary technical administrative staff, the Commission can only infer that there are no effective measures in place.

Conclusion

The Commission takes the view that the petitioners' allegations regarding Italy's practice of employing auxiliary technical administrative staff on successive fixed-term contracts are well-founded in so far as it appears there are no measures to prevent the abuse of such practice, which is not in conformity with EU Law. It has already initiated the necessary steps to request Italy to comply with EU law.

¹ See paragraphs 28 to 30 of Case C-307/05, Yolanda Del Cerro Alonso v Osakidetza-Servicio Vasco de Salud, European Court reports 2007 Page I-07109