



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 161/14**

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Judgment in Joined Cases C-22/13, C-61/13, C-62/13, C-63/13, C-418/13  
Raffaella Mascolo and Others v Ministero dell'Istruzione, dell'Università e  
della Ricerca

## **Italian legislation on fixed-term employment contracts in the school sector is contrary to EU law**

*The unlimited renewal of such contracts to cover fixed and permanent needs of State schools is  
not justified*

Italian legislation lays down a system for temporary replacement of teaching and administrative staff in schools administered by the State. One element of that system is the filling of posts that are in fact vacant and unfilled by 31 December by means of replacements on an annual basis, 'pending the completion of competitive selection procedures'. These temporary appointments are made by drawing on lists of suitable candidates, which include, in ranking order, teachers who have passed a competition, but have not been able to obtain a tenured post and teachers who have attended courses leading to certification run by specialist teacher-training colleges. The teachers who work as replacements in this way may be granted tenure depending on the posts available and their progression on those lists. The grant of tenure may also result directly from passing a competition. Those competitions were, however, broken off between 1999 and 2011.

Raffaella Mascolo, Carla Napolitano and other persons were recruited in State establishments as teachers and administrators on the basis of successive fixed-term employment contracts. They worked for various periods, but they were never employed for less than 45 months over a period of five years. Claiming that those contracts were unlawful, they brought actions before the courts for the reclassification of their contracts as employment contracts of indefinite duration, for the grant of tenure, for the payment of salaries in respect of the breaks between contracts, and for compensation for the damage suffered.

The Corte costituzionale (Italian Constitutional Court) and the Tribunale di Napoli (District Court, Naples) asked the Court of Justice whether the Italian legislation is consistent with the framework agreement on fixed-term work<sup>1</sup> and in particular, whether that agreement permits the renewal of fixed-term employment contracts to fill posts that are vacant and unfilled, pending the completion of competitive selection procedures for the recruitment of tenured staff of schools administered by the State, without any definite period being set for the completion of those procedures and while excluding all compensation for damage suffered on account of such a renewal.

In today's judgment, the Court recalls first of all that **the framework agreement applies** to all workers, and no distinction should be drawn according to whether their employer is in the public or private sector or according to the sphere of activity concerned. The framework agreement thus applies **to workers** teachers or administrators **recruited to act by way of replacement on an annual basis in State schools.**<sup>2</sup> In order to prevent the misuse of successive fixed-term contracts, the framework agreement obliges<sup>3</sup> Member States to lay down, first, at least one of the following: a measure indicating the **objective reasons justifying the renewal of contracts** or

<sup>1</sup> Framework agreement of 18 March 1999 which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

<sup>2</sup> Case [C-212/04 Adeneler and Others](#), see also Press Release No [54/06](#), Cases [C-378/07 to C-380/07 Angelidaki and Others](#) and Case [C-290/12 Della Rocca](#).

<sup>3</sup> On the other hand, the framework agreement does not impose a general obligation on the Member States to provide for the conversion of fixed-term contracts into contracts of indefinite duration, Case [C-362/13 Fiamingo and Others](#), see Press Release No [92/14](#).

otherwise a measure determining the **maximum total duration of the contracts** or the **number of renewals of contracts**. In addition, in order to ensure that the framework agreement is fully effective, a **penalising measure** must be applied in the event of misuse of successive fixed-term contracts. That measure must be **proportionate, effective and a deterrent**.

#### *Preventive measures*

The Italian legislation does not lay down any measure limiting the maximum total duration, or the number of renewals, of the contracts; nor does it lay down any equivalent measure. That being so, renewal must be justified by an 'objective reason', such as the specific nature of the tasks, their characteristics or pursuit of a legitimate social-policy objective.

According to the Court, the temporary replacement of workers for reasons of social policy (sick, maternity, parental or other leave) constitutes an objective reason justifying a contract being for a fixed term.

The Court also notes that education is a fundamental right guaranteed by the Italian constitution, which obliges the Italian State to organise the school service while ensuring that teacher-pupil ratios are constantly appropriate, an outcome which depends on a multitude of factors, some of which are difficult to control or predict. Those factors show that there is a particular need for flexibility, which can provide an objective justification for recourse to successive fixed-term employment contracts.

Also, the Court acknowledges that where, in the schools administered by it, a Member State grants access to permanent employment – by means of the grant of tenure – only to staff who have passed a competition, it may also be objectively justified for the posts that are to be filled to be covered by successive fixed-term employment contracts pending the completion of competitions.

However, contrary to the Italian Government's submissions, the mere fact that the national legislation – which permits the very renewal of fixed-term employment contracts in order to fill, by annual replacements, posts that are vacant and unfilled pending the completion of competitive selection procedures – may be justified by an 'objective reason' is not sufficient to render it consistent with the framework agreement if it is apparent that the actual application of that legislation leads, in practice, to misuse of successive fixed-term employment contracts. That is the case when such contracts are used to meet the fixed and permanent staffing needs of State schools.

The Court observes that, in the present instance, the period required for teachers to be granted tenure under that system is variable and uncertain, as the grant of tenure depends on fortuitous and unpredictable circumstances. First, the grant of tenure as a result of teachers' progressing up the ranking list is dictated by the overall duration of the fixed-term employment contracts and by the posts that have in the meantime become vacant. Second, no definite period is set for organisation of the competitive selection procedures. It follows that, although, under the Italian legislation recourse to fixed-term employment contracts for the purpose of filling by way of replacement on an annual basis posts that are vacant and unfilled is expressly limited to just a temporary period that comes to an end when the competitive selection procedures are completed, that legislation does not make it possible to be sure that the actual application of the objective reasons is consistent with the requirements of the framework agreement.<sup>4</sup>

Furthermore, budgetary considerations do not in themselves constitute an aim pursued by social policy and, therefore, cannot justify the lack of any measure designed to prevent the misuse of successive fixed-term employment contracts.

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<sup>4</sup> Depending on the year and the source of the data, approximately 30%, or even 61%, of the administrative, technical and auxiliary staff of schools administered by the State are employed on the basis of fixed-term contracts. Between 2006 and 2011 the teaching staff of those schools who had such contracts accounted for between 13% and 18% of the total teaching staff. No competitive selection procedure was organised between 2000 and 2011.

Consequently, **the Italian legislation does not contain any measure designed to prevent the misuse of successive fixed-term employment contracts.**

#### *Penalising measures*

The Italian legislation excludes compensation for the damage suffered on account of the misuse of successive fixed-term employment contracts in the education sector. Nor does it permit such contracts to be converted into contracts of indefinite duration.

The fact that a worker who has acted by way of temporary replacement can obtain a contract of indefinite duration only by being granted tenure as a result of progressing up the ranking list involves matters of chance and therefore does not result in a penalty that is sufficiently effective and a sufficient deterrent to ensure that the provisions adopted pursuant to the framework agreement are fully effective.

The Court points out that, even though the education sector displays a particular need for flexibility, the Italian State cannot dispense with observance of the obligation to lay down an appropriate measure designed to duly punish the misuse of successive fixed-term employment contracts.

On those grounds, the Court concludes that **the framework agreement on fixed-term work does not permit legislation which**, pending the completion of competitive selection procedures for the recruitment of tenured staff of schools administered by the State, **authorises the renewal of fixed-term contracts to fill posts of teachers and administrative, technical and auxiliary staff that are vacant and unfilled without stating a definite period for the completion of those procedures and while excluding compensation for the damage suffered on account of such a renewal.**

**Such legislation does not contain objective and transparent criteria in order to verify whether renewal responds to a genuine need, is capable of achieving the objective pursued and is necessary for that purpose. Nor does it contain other measures intended to prevent and punish the misuse of such contracts.**

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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