



Court of Justice of the European Union

**PRESS RELEASE No 101/14**

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Advocate General's Opinion in Joined Cases C-22/13, C-61/13 to C-63/13  
and C-418/13

Raffaella Mascolo and Others v Ministero dell'Istruzione, dell'Università e  
della Ricerca, Fortuna Russo v Comune di Napoli and Carla Napolitano and  
Others v Ministero dell'Istruzione, dell'Università e della Ricerca

Press and Information

## **According to Advocate General Szpunar, the Italian legislation on fixed-term contracts in the education sector is contrary to EU law**

*A large number of the posts could have been filled by contracts of indefinite duration*

Italian legislation lays down a system for the replacement of teaching staff in the State schools sector. That system is based on lists of suitable candidates in which those applying for teaching posts are listed by order of seniority. They may be established on the basis of available posts and their advancement on those lists. However, no competitions were organised for the recruitment of staff in the State schools sector between 1999 and 2011. With respect to applicants for teaching posts employed on the basis of fixed-term contracts, the system does not make provision for either the maximum duration of the contracts or the maximum number of renewals.

Raffaella Mascolo, Fortuna Russo, Carla Napolitano and other persons were recruited in State establishments as teachers and administrative personnel on the basis of successive fixed-term employment contracts. They worked for their respective employers 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, Mrs Mascolo and the other persons brought an application before the courts for the reclassification of the contracts as employment contracts of indefinite duration, to be established, for payment of salaries for periods corresponding to periods during which their employment was interrupted between contracts and, in the alternative, for compensation for the damage they suffered.

The Corte costituzionale (Constitutional Court, Italy) and the Tribunale di Napoli (Civil Court, Naples) have asked the Court of Justice whether the Italian legislation is compatible with the framework agreement on fixed-term work.<sup>1</sup>

In his Opinion today, Advocate General Maciej Szpunar notes first of all that the framework agreement provides for minimum protective provisions designed to ensure stable employment and to avoid the erosion of job security.<sup>2</sup> No particular sector is excluded from its scope;<sup>3</sup> it covers all workers who have directly concluded a contract with an employer (State or private) or who have established an employment relationship with such an employer. The end of the employment contract or relationship must be determined by objective conditions (reaching a specific date, completing a specific task, or the occurrence of a specific event). Therefore, **fixed-term contracts in the State education sector fall within the scope of the framework agreement.**

The framework agreement establishes, moreover, general rules to prevent the abusive use of successive fixed-term employment contracts or relationships.<sup>4</sup> It therefore imposes preventative

<sup>1</sup> Framework Agreement of 18 March 1999, 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-144/04 Mangold](#). see also Press Release No [99/05](#).

<sup>3</sup> Case [C-212/04 Adeneler and Others](#) see also Press Release No [54/06](#) Joined Cases [C-378/07 to C-380/07 Angelidaki and Others](#) and Case [C-290/12 Della Rocca](#).

<sup>4</sup> Case [C-307/05 Del Cerro Alonso](#).

measures (statement of objective reasons justifying the renewal or determination of the total maximum duration of contracts and their number) and provides for penalties in the event of abuse.

The Court has already declared that **the temporary need for replacement staff** may constitute an **objective reason justifying the renewal of fixed-term contracts**, provided that that need is **justified by precise and concrete circumstances characterising a given activity or seeks to replace other employees who are temporarily unable to perform their tasks** (employees on sick or maternity leave, parental leave, etc.).<sup>5</sup> The national authorities must therefore define the objective and transparent criteria allowing verification of whether such contracts actually respond to a genuine temporary need, and not to a fixed and permanent need.

By contrast, **the renewal of fixed-term contracts is not justified where it seeks to meet fixed and permanent needs**. The national authorities must examine in each case the circumstances at issue in order to ensure that fixed-term contracts, even those ostensibly concluded with respect to replacement staff, are not used abusively.<sup>6</sup>

The Advocate General declares that the Italian legislation does not make provision for either the number of successive contracts which may be concluded or their maximum duration. He notes that that legislation is formulated in a general and abstract way, without a clear link with the specific contents or concrete conditions for the performance of the activity. Moreover, the Italian legislation does not allow the identification of objective and transparent criteria allowing verification of whether there is a genuine need for temporary replacement. Finally, it does not limit the conclusion or renewal of contracts with staff intended to replace persons temporarily absent.

In those circumstances, the Advocate General considers that those replacements are intended to meet fixed and permanent staff needs.

He considers therefore that, even if the recruitment of replacement staff is, in principle, temporary, the fact that no precise deadline has been fixed in order to organise recruitment competitions for official staff creates complete uncertainty; specifically, the lack of public competitions for more than 10 years shows that the fixed-term contracts were used to meet fixed and permanent needs, which is a matter for the Corte costituzionale and the Tribunale di Napoli to verify.

The Italian Government justifies the legislation at issue by the need for a very high degree of flexibility (that need for flexibility being due to the close relationship between the need for replacement staff and the cyclical and unpredictable variations in the school population) and by reasons of a financial nature. The Advocate General considers however that financial restrictions in the school sector do not justify an abusive use of successive fixed-term contracts. Fixed-term contracts can be justified only on account of the specific nature of the tasks to be performed or the pursuit of a legitimate social-policy objective (such as protection for pregnancy and maternity and to allow professional and family obligations to be reconciled).

In conclusion, the Advocate General considers that **the Italian legislation does not include sufficient measures to prevent and penalise the abusive use of successive fixed-term contracts and that failure to protect workers in the education sector is contrary to the framework agreement**.

According to the Advocate General, it is for the referring courts to examine each situation in the light of the facts at issue.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.**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

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<sup>5</sup> Case [C-586/10 Küçük](#) see also Press Release No [4/12](#).

<sup>6</sup> By taking into consideration the number of successive contracts concluded with the same person or for the purposes of performing the same work.

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 Opinion is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355

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