

Case C-268/24 [Lalfi] ⁱ**Summary of request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

16 April 2024

Referring court:

Tribunale di Lecce (Italy)

Date of the decision to refer:

16 April 2024

Applicant:

ZT

Defendant:

Ministero dell'Istruzione e del Merito

Subject matter of the main proceedings

Action brought by the applicant before the District Court of Lecce – Employment Section to obtain confirmation of her entitlement to receive the financial contribution referred to as the ‘teachers’ card’ provided for by legge n. 107 (Law No 107/2015). However, the Italian legislation in force, as interpreted by the prevailing national case-law, provides for the exclusion from that benefit of teachers who have held only temporary supply teaching posts.

Subject matter and legal basis of the request

Pursuant to Article 270 TFEU, the referring court makes a request to the Court for a preliminary ruling concerning the compatibility with Clause 4 of the Framework Agreement on fixed-term work, concluded on 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

ⁱ The name of the present case is fictitious. It does not correspond to the real name of any of the parties to the proceedings.

(Directive 1999/70), of national legislation which provides for a financial contribution to teachers for the purposes of training, and which is interpreted as excluding from the right to that contribution teachers who have taken up short-term, ad hoc supply teaching assignments, that is to say, temporary supply teaching posts, which do not correspond to annual placements.

Questions referred for a preliminary ruling

- Is Clause 4 of the Framework Agreement referred to in [Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP] to be interpreted as precluding a limitation on the award of the teachers' card, as provided for in Article 1(121) et seq. of legge del 13 luglio 2015, n. 107 – Riforma del sistema nazionale di istruzione e formazione e delega per il riordino delle disposizioni legislative vigenti (Law No 107 of 13 July 2015 reforming the national education and training system and introducing delegation measures for the reorganisation of the legislative provisions in force) (OJ No 162 of 15 July 2015), based on the duration of the supply teaching assignment?;
- In the light of Clause 4 cited above, is it possible to regard as 'objective grounds', such as to exclude the existence of discrimination, the types of staff vacancy – in the cases referred to in Article 4(1), (2) or (3) of legge 124/99 (Law 124/99) – which the individual supply teacher is called upon to 'fill'?
- Can the fact of having held temporary supply teaching posts in different schools – in the same academic year – under a number of different temporary supply teaching contracts be regarded as an objective ground within the meaning of Clause 4 of the Framework Agreement of [Directive 1999/70]?;
- In any event, is the assessment of comparability between fixed-term teachers and permanent teachers to be made *ex ante* or must account be taken of the actual duration of the supply teaching services provided in the course of the year (for example, where, although under more than one contract, the supply teacher has worked for a period not unlike a supply teacher recruited to fill a vacant post in the 'de facto' staff lists)?

Provisions of European Union law and case-law relied on

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), and in particular Article 1;

Framework Agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Directive 1999/70. In particular, Clause 2(1), Clause 3 and Clause 4(1).

Order of the Court of 18 May 2022 in Case C-450/21, ECLI:EU:C:2022:411.

National law and national case-law relied on

Legge del 13 luglio 2015, n. 107 – Riforma del sistema nazionale di istruzione e formazione e delega per il riordino delle disposizioni legislative vigenti (Law No 107 of 13 July 2015 reforming the national education and training system and introducing delegation measures for the reorganisation of the legislative provisions in force; ‘Law No 107/2015’) (OJ No 162 of 15 July 2015); in particular, Article 1(121) to (124).

Paragraph 121 reads as follows: *‘In order to support the in-service training of teachers and to enhance their professional skills, an electronic card is introduced ... for the updating and training of tenured teaching staff at teaching establishments of every type and at all levels. The card, having a nominal value of EUR 500 per academic year, can be used to purchase books and texts, including those in digital form, publications and journals which are nevertheless useful for professional development, to purchase hardware and software, to enrol on training and vocational training courses organised by bodies accredited at the [Ministry], on bachelor, two-year or five-year master degree courses, relating to the professional profile, that is, postgraduate courses, or university masters related to the professional profile, for theatre and cinematographic performances, for admission to museums, exhibitions and live cultural events and shows, and for initiatives consistent with the activities identified under the three-year educational offer plan for schools and the national training plan referred to in paragraph 124. The amount charged on the card does not constitute additional remuneration or taxable income.’*

Paragraphs 122, 123 and 124 refer, respectively, to the rules implementing the teachers’ card, to be established by a decree of the President of the Council of Ministers, to the annual expenditure authorised for that financial contribution and to the in-service training of tenured teachers, which is compulsory, permanent and structural.

Legge del 3 maggio 1999, n. 124 – Disposizioni urgenti in materia di personale scolastico (Law No 124 of 3 May 1999 introducing urgent measures concerning school staff; ‘Law No 124/1999’) (OJ No 107 of 10 May 1999); in particular, Article 4(1) to (7).

Paragraphs 1 to 3 provide for three types of supply teaching posts:

1. In order to fill teaching posts and senior teaching posts which are in fact vacant and are not filled by 31 December and which are expected to remain so for the

entire academic year, where it is not possible to fill the posts with a teacher from the provincial staff allocation list for tenured teaching staff or by calling upon surplus staff and provided that no tenured teaching staff have in any way been assigned to the posts, supply teaching posts of one year shall be created, pending the completion of competitive selection procedures for the recruitment of tenured teaching staff. [supply teaching posts in the ‘de jure’ staff lists]

2. In order to fill non-vacant teaching posts and senior teaching posts which become de facto available by 31 December and up to the end of the academic year, temporary supply teaching posts lasting until the end of teaching activities shall be created. Provision shall also be made to create temporary supply teaching posts until the end of teaching activities in order to cover teaching hours which are not included in the calculation of the official weekly teaching schedule of tenured staff. [supply teaching posts in the ‘de facto’ staff lists]

3. In cases other than those provided for in paragraphs 1 and 2, temporary supply teaching posts shall be created. [temporary or short-term, ad hoc supply teaching posts]

Paragraph 4 states that posts in provincial staff allocation lists may under no circumstances be filled by recruiting non-tenured teaching staff.

Paragraphs 5 to 7 refer to the procedure for allocating the annual and temporary supply teaching posts referred to in paragraphs 1, 2 and 3 with the use of ranking lists.

Decreto legislativo del 16 aprile 1994 n. 297 – Approvazione del testo unico delle disposizioni legislative vigenti in materia di istruzione, relative alle scuole di ogni ordine e grado (Legislative Decree No 297 of 16 April 1994 approving the consolidated text of the applicable legislative provisions on education relating to schools of all types and levels (Ordinary Supplement to GURI No 115 of 19 May 1994), in particular Article 282, according to which the updating of knowledge is a fundamental right and duty of teaching staff.

Decreto legge del 13 giugno 2023, n. 69 – Disposizioni urgenti per l’attuazione di obblighi derivanti da atti dell’Unione europea e da procedure di infrazione e pre-infrazione pendenti nei confronti dello Stato italiano (Decree-Law No 69 of 13 June 2023 introducing urgent provisions for the implementation of obligations arising from acts of the European Union and from pending infringement and pre-infringement procedures against the Italian State; ‘Decree-Law No 69/2023’). In particular, Article 15 limits the award of a teachers’ card to supply teachers filling vacancies in the de jure staff lists.

Contratto collettivo nazionale di lavoro del comparto scuola, del 4 agosto 1995 (National Collective Labour Agreement for the School Sector of 4 August 1995), in particular Article 28, according to which participation in training and updating activities constitutes a right for teaching staff on the ground that it serves as a means of obtaining professional fulfilment and development.

Contratto collettivo nazionale di lavoro del comparto scuola, del 27 novembre 2007 (National Collective Labour Agreement for the School Sector of 27 November 2007), in particular Article 63(1), according to which the administration is required to provide instruments, resources and opportunities which guarantee in-service training.

Judgment No 29961/2023 of the Corte di cassazione (Supreme Court of Cassation, Italy).

Succinct presentation of the facts and procedure in the main proceedings

- 1 The applicant is a teacher who, during the 2020/2021 and 2021/2022 academic years, held a number of supply teaching posts. In particular, in the course of the 2021/2021 academic year, the applicant held a supply teaching post until the end of teaching activities, whereas, during the 2021/2022 academic year, she filled a series of short-term, ad hoc supply teaching vacancies over the period from 8 October 2021 to 27 May 2022.
- 2 The periods of the various supply teaching posts are often consecutive. The first supply teaching period ended on 22 December 2021, with an interruption for the Christmas period. The second supply teaching period concerns several contracts during a period from 24 January 2022 to 10 February 2022 and the third period runs from 11 February 2022 to 27 May 2022 (with an interruption between 14 and 19 April inclusive, coinciding with the 2022 Easter period).
- 3 During all these periods, the teacher's tasks and duties were the same as those of her colleagues working as permanent members of staff (as well as those of the supply teachers recruited to fill vacancies in the de jure or de facto staff lists).
- 4 In view of her teaching services provided during the two academic years, the applicant applied, pursuant to Law No 107 of 2015, for the financial training contribution known as the 'teachers' card', amounting to EUR 500 per year, which the Ministry of Education refused to grant her.
- 5 The applicant then brought an action before the Tribunale di Lecce (District Court, Lecce), the referring court, seeking to establish her right to that contribution.

The essential arguments of the parties in the main proceedings

- 6 The applicant maintains that the Ministry's refusal to grant her the contribution is unlawful, in so far as it is contrary to Clause 4 of the framework agreement annexed to Directive 1999/70 on equal treatment between fixed-term workers and comparable permanent workers. She claims that her right as provided for by Law No 107 of 2015 should be recognised on the basis of the services provided as a supply teacher.

- 7 The Ministry reaffirms that it acted correctly.

Succinct presentation of the reasoning in the request for a preliminary ruling

- 8 The referring court states that the need for a reference for a preliminary ruling arises only in relation to the recognition of the contribution for the supply teaching services provided in the 2021/22 academic year, consisting of a series of temporary supply teaching posts, assigned on the basis of Article 4(3) of Law 124/1999.

On the other hand, as regards the 2020/21 academic year, the fact that the applicant carried out her occupation as a supply teacher until the end of the teaching activities, within the meaning of Article 4(2) of Law 124/1999, is regarded as capable, according to national case-law, of conferring on her the right to the contribution.

To that effect, the referring court refers to judgment No 29961/2023 of the Supreme Court of Cassation, which points out that the legislature, by introducing the teachers' card, sought to support teaching activities of a duration of at least one year.

In particular, according to the Supreme Court of Cassation, the aim of the provision establishing the teachers' card, namely Article 1(121) of Law No 107/2015, is to support the in-service training of teachers and enhance their professional skills, which highlights an objective for improving the performance of the service in its entirety, through the professional development of staff and teaching activities on a one-year basis. It is also significant that the teachers' card is associated with initiatives under the three-year educational offer plan, that is to say, with the programming instruments aimed at establishing and evaluating the strategic priorities of the education system. The link with a one-year teaching activity would then be clearly in line with the educational programming schedule each teacher is obliged to follow, on the basis of the guidelines provided by the Academic Board, which are set annually.

The referring court also draws attention, in particular, to the opinion expressed in that regard by the First President of the Supreme Court of Cassation, which – in the context of a decision of inadmissibility, adopted in March 2024, in respect of a question of interpretation submitted to it by another national court regarding the recognition of the teachers' card contribution – referring to the abovementioned judgment of the Supreme Court of Cassation, points out that the recognition of the right to the contribution of non-tenured teachers, who nevertheless have supply teaching contracts until the end of the academic year or teaching activities, is based on the fact that the temporal link which the legislature intended to establish between the specific training instrument represented by the teachers' card and the annual nature of the teaching activities, also applies to them.

The referring court observes that those judgments, which, having regard to the bodies from which they emanate, are particularly authoritative, contain precise indications that access to the contribution by the category of teachers who fill short-term, ad hoc supply teaching vacancies should be denied, highlighting the legislature's decision to link the award of the contribution to a one-year teaching activity.

The referring court takes the view, however, that that restrictive line of national case-law, which interprets the national legislation as denying the right to the contribution to teachers holding temporary supply teaching posts, is contrary to Clause 4 of the Framework Agreement, according to which 'in respect of employment conditions, fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or [relationship] unless different treatment is justified on objective grounds'.

It refers, in that regard, to the order of the Court of 18 May 2022, in Case C-450/21 (ECLI:EU:C:2022:411), in which the Court held that the teachers' card contribution must be regarded as falling within the scope of employment conditions within the meaning of that clause, given that that contribution is paid '*in order to support the in-service training of teachers, which is compulsory both for permanent staff and for those employed on a fixed-term basis by the Ministry, and to enhance their professional skills*'. Furthermore, '*the fact that the electronic card may also be used for the purchase of goods and services which are not strictly linked to in-service training is not ... decisive for the purpose of classifying the allowance at issue in the main proceedings as a "employment condition"*'. Furthermore, according to the Court, the reference to the mere temporary nature of the work of contract agents governed by public law cannot constitute an objective ground, within the meaning of Clause 4(1) of the framework agreement, justifying a difference in treatment.

So far as the present case is concerned, the referring court points out that all support teachers are subject to the same obligations with regard to students and the same training obligations as permanent teachers, irrespective of the type of supply teaching post assigned to them, and that they are all recruited on the basis of calls from ranking lists.

It points out that the teachers' card does not provide for any link between the expenditure incurred (which may also relate to admission to theatrical and cinematographic performances) and the subject taught by the teacher, and that, even though it is defined as support for in-service training and the enhancement of professional skills, there is no obligation to spend; in any event, the contribution does not necessarily have to be spent during the academic year in which it is awarded.

In its view, the link with support for a one-year teaching activity therefore appears to be prospective and left to the teacher's discretion, with the result that the link

with a one-year teaching activity is unfounded. A one-year teaching activity cannot therefore constitute an objective ground within the meaning of Clause 4 of the Framework Agreement.

The referring court also states that the three-year educational offer plan is an act of scholastic macro-organisation and is more closely linked to the offer of training ‘to the public’ than to the training of teachers per se. That provision does not therefore appear to constitute an objective ground precluding the granting of the benefit to teachers holding temporary supply teaching posts.

Teaching planning is a precondition for the activity of teachers, and all supply teachers, irrespective of the type of vacancies they fill, are required to comply with it. All supply teachers, irrespective of the type of vacancies they fill, are members of the teaching staff during the period for which they are employed.

The referring court therefore highlights the universal purposes of the teachers’ card, which would be discriminatory if they excluded supply teaching posts essentially on the basis of the duration of the placements. In addition, supply teaching posts, of different categories, are sometimes assigned for overlapping periods, the only difference between them being the ground for the assignment of the different positions, without the activity actually carried out being of any relevance.

Lastly, the referring court refers, in support of its own representations, to Article 15 of Decree-Law No 69/2023, in which the award of the teachers’ card is limited to teaching staff from the de jure staff lists. It would therefore appear, *a contrario*, that the link with teaching on a one-year basis is not a decisive criterion.