



Emily O'Reilly  
European Ombudsman

## Decision

in case 1087/2018/LM on the time taken by the European Commission to assess complaints about the use of fixed term contracts in Italy being contrary to EU law

*The complaint was about the European Commission taking too long to assess whether the use of fixed-term contracts in the public sector in Italy is contrary to EU law.*

*The Ombudsman notes that the matter before the Commission is complex and challenging, with a range of relevant court cases, successive changes to the law in Italy, multiple complaints and a resolution from the European Parliament resulting from petitions. The Commission had provided a reasonable explanation as to why it needs to await the delivery of another court judgment before deciding whether to launch an infringement procedure. No further inquiries by the Ombudsman are therefore justified at this stage. However, the Ombudsman asks the Commission to inform her, within two months of the delivery of the judgment, of the action it will take in this case.*

## Background to the complaint

1. The complainant, along with several other Italian nationals, made a number of complaints to the European Commission alleging that the use of fixed term contracts in the Italian public sector is contrary to EU law. On the basis of these complaints, the Commission is currently assessing<sup>1</sup> whether the Italian legislation seeking to prevent the abuse of fixed-term contracts in the public sector complies with the EU Directive on fixed term work<sup>2</sup>. Due to the high number of

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<sup>1</sup> In the context of proceedings NIF 2014/4231.

<sup>2</sup> In particular, with Clause 5 (1) of the Framework Agreement on fixed-term work, concluded on 18 March 1999, which forms part of the annex of 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, 10.7.1999, p. 43.



complaints received on this issue, the Commission keeps the complainants informed about the developments in the case by making an 'information notice on multiple complaints' available on its website<sup>3</sup>. The Commission has not yet opened a formal procedure against Italy, by sending a 'letter of formal notice'.

**2.** The Ombudsman has already inquired into the time taken by the Commission to deal with this matter. She closed these cases<sup>4</sup> (one of which came from the complainant) in June 2017 on the grounds that it was appropriate to let the Commission await a judgment of the Court of Justice of the EU (the *Santoro* case)<sup>5</sup>. The Ombudsman considered the court case to be clearly linked to the legal issues at stake in the proceedings, because it concerned the measures in place in Italy to compensate employees in the public sector for the abusive use of successive fixed-term contracts. The Ombudsman asked the Commission to inform her, within three months of the judgment, about the steps it had decided to take regarding the complaints about fixed term contracts in the Italian public sector.

**3.** The Court of Justice of the EU delivered its judgment in the *Santoro* case on 7 March 2018. Despite the Ombudsman's request, the Commission did not inform her, within three months of the judgment, about the steps it had decided to take regarding the complaints. The complainant turned to the Ombudsman again in June 2018.

## The inquiry

**4.** The Ombudsman opened a new inquiry on the basis of the complainant's position that the Commission is taking too long to pursue the case about fixed term contracts in the Italian public sector.

**5.** In the course of the inquiry, the Ombudsman received two replies from the Commission. The Ombudsman also received the comments of the complainant.

## Arguments presented to the Ombudsman

**6.** The complainant noted that, in a recent resolution, the European Parliament criticised the Commission for its delays in handling this issue. Parliament stated that "*the Commission accumulated long delays in handling infringement proceedings concerning the breach of EU labour legislation by some Member States, allowing the abusive use of fixed-term contracts and violations of workers' rights to go on for years*"<sup>6</sup>.

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<sup>3</sup> [https://ec.europa.eu/info/sites/info/files/information-notice-multiple-complaint-chap-2013-02870\\_en.pdf](https://ec.europa.eu/info/sites/info/files/information-notice-multiple-complaint-chap-2013-02870_en.pdf)

<sup>4</sup> See decision in cases 1234/2016/EIS, 1241/2016/EIS, 1717/2016/EIS and 1841/2016/EIS, available at <https://www.ombudsman.europa.eu/en/cases/decision.faces/en/80471/html.bookmark>

<sup>5</sup> Judgment of the Court of 7 March 2018, *Giuseppe Santoro v. Comune di Valderice and Presidenza del Consiglio dei Ministri*, Case C-494/16.

<sup>6</sup> European Parliament resolution of 31 May 2018 on Responding to petitions on tackling precariousness and the abusive use of fixed term contracts (2018/2600(RSP)).



**7.** The complainant contended that the Commission is not handling its investigation of the matter efficiently. The Commission lost time by unnecessarily duplicating its work on the matter. It analysed the issue of alleged abuse of fixed term contracts in public schools in Italy in a previous case<sup>7</sup>, which it closed. It is now analysing the same issue again in the context of the ongoing case. In addition, the Commission has given contradictory information to complainants about the scope of the investigations in the two cases.

**8.** The complainant argued that the Italian courts do not comply with recent case-law of EU courts on the Directive on fixed term work<sup>8</sup>. Therefore, the Commission needs to launch a formal infringement procedure against Italy urgently.

**9.** The Commission stated that it is currently assessing the overall conformity of the Italian legislation governing several categories of public sector employees with the Directive on fixed-term work. These categories include staff employed in state schools, at public research institutions, at operatic and orchestral foundations and in the field of higher education in art and music.

**10.** Italy has changed the relevant legislation a number of times and the last reform took place mid-2018<sup>9</sup>. When the Commission sent its reply to the Ombudsman, Italian authorities still needed to inform the Commission whether a draft piece of legislation had been adopted<sup>10</sup>.

**11.** To finalise its assessment, the Commission said that it needed to await two additional judgments of the Court of Justice of the EU, the *Rossato*<sup>11</sup> case and the *Sciotto*<sup>12</sup> case. The *Rossato* case is about the provisions on how to convert temporary teachers' fixed-term contracts into contracts of indefinite duration, without any compensation for damage being granted. The *Sciotto* case concerns the Italian national legislation applicable to the Italian operatic and orchestral foundations.

**12.** The Commission explained that the previous investigation on fixed term contracts in public schools was closed because in 2015 Italian authorities adopted a reform in the area of public education<sup>13</sup> which was meant to solve the

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<sup>7</sup> NIF 2010/2124

<sup>8</sup> The complainant referred, in particular, to Sentenza n. 481/2018 pubbl. il 14/05/2018 della Corte d'Appello di Palermo, Sentenza n. 2006/2018 pubbl. il 18/12/2018 della Corte di Appello di Bari, sentenza Corte Costituzionale n. 248/2018.

<sup>9</sup> The so called "Dignity Decree", Decree-Law of 12 July 2018 No 87 which seeks to address, in an urgent manner, the dignity of workers and undertakings, converted and modified by Law 9 August 2018, No 96.

<sup>10</sup> Draft Decree of the President of the Republic laying down Rules on the procedures and modalities for the programming and the recruitment of teaching staff and of the administrative and technical staff of the AFAM (Higher Education in Art and Music).

<sup>11</sup> Case C-494/17, *Rossato and Conservatorio di Musica F.A. Bonporti*.

<sup>12</sup> Judgment of the Court of Justice of 25 October 2018, *Martina Sciotto v. Fondazione Teatro dell'Opera di Roma*, C-331/17 has been rendered after the Commission sent its reply to the Ombudsman.

<sup>13</sup> The so called "Buona Scuola" reform, Legge 13 luglio 2015, n. 107, Riforma del sistema nazionale di istruzione e formazione e delega per il riordino delle disposizioni legislative vigenti - 15G00122 / GU n.162 del 15-7-2015).



problems identified in the investigation. However, the Commission decided to reopen the investigation concerning fixed term contracts in public schools because, after the reform had been approved, it had received several new complaints on this issue

**13.** The Commission noted that the complainants had been informed individually in writing that further correspondence on their complaints will take place via the “information notice on multiple complaints” published on its website.

## The Ombudsman's assessment

**14.** The Commission is responsible for overseeing the effective application, implementation and enforcement of EU law by the Member States<sup>14</sup>. If a Member State fails to fulfil an obligation under the EU Treaties, the Commission can take measures (infringement procedures) to bring this infringement to an end. However, the Commission enjoys wide discretionary powers in deciding whether or not, and when, to start an infringement procedure against a Member State<sup>15</sup>.

**15.** The Commission has acknowledged that members of the public make an important contribution to the Commission’s monitoring by reporting shortcomings by way of infringement complaints.<sup>16</sup> As a general rule, the Commission will investigate infringement complaints with a view to arriving at a decision to issue a formal notice or to close the case within not more than one year from the date of registration of the complaint.<sup>17</sup> If the Commission cannot respect this deadline it should put forward valid reasons as to why the assessment is taking additional time.

**16.** The complainant submitted his first complaint to the Commission on this matter in 2013. The issue has therefore been pending for many years and affects potentially hundreds of thousands of public sector employees in Italy.

**17.** The Ombudsman appreciates that the matter before the Commission is complex and challenging, with a range of relevant court cases, successive changes to the law in Italy, multiple complaints and a resolution from Parliament resulting from petitions.

**18.** The Ombudsman notes that, once again, the Commission has explained that it needs to await the delivery of a court judgment (in this case, the *Rossato*

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<sup>14</sup> Article 17(1) Treaty on the European Union and Article 258 Treaty of the Functioning of the European Union.

<sup>15</sup> Judgment of the Court of Justice of 6 December 1989, *Commission v Greece*, C-329/88.

<sup>16</sup> Communication from the Commission, EU law: better results through better application, point 1, [https://ec.europa.eu/info/publications/communication-commission-eu-law-better-results-through-better-application\\_en](https://ec.europa.eu/info/publications/communication-commission-eu-law-better-results-through-better-application_en)

<sup>17</sup> Point 8 of Annex to communication from the Commission, EU law: better results through better application.



judgment<sup>18</sup>) before deciding whether to launch an infringement procedure<sup>19</sup>. The Ombudsman finds that the Commission has therefore provided a reasonable explanation for why, exercising its margin of discretion, it is not yet ready to start an infringement procedure. It is also entirely within the Commission's margin of discretion to take something up for assessment again, such as the use of fixed term contracts in public schools in Italy, if – despite changes made to the law in Italy – complaints suggest that problems persist.

**19.** The Commission has therefore given reasonable explanations as to why its assessment of the matter is still pending. The Ombudsman urges the Commission, however, to proceed as quickly as possible after the Court of Justice delivers its judgment in the *Rossato* case. She will invite the Commission to inform her within two months of the *Rossato* judgment being rendered of its proposed next steps in this case and trusts that the Commission will do so. She therefore closes the inquiry on the grounds that no further inquiries are justified for now.

**20.** Finally, the Commission has kept the complainants informed about the developments in this case through its website. The information notice on the website explains which legal issues the Commission still needs to clarify, before finalising its assessment. The Ombudsman welcomes the fact that this information is being provided and encourages the Commission to keep the information notices on multiple complaints as up to date as possible.

## Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion and suggestion<sup>20</sup>:

**No further inquiries into the complaint are justified at this stage.**

## Suggestion

**The Ombudsman invites the Commission to inform her, within two months of the *Rossato* judgment being rendered, of its proposed next steps in the case.**

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<sup>18</sup> At this point in time, there is still no judgment in the *Rossato* case. The Court of Justice has announced on its website that it expects to render the judgment on 8 May 2019. The judgment in the *Sciotto* case was delivered on 25 October 2018.

<sup>19</sup> See, in this respect, paragraph 8 of the decision of the European Ombudsman setting out suggestions following her strategic inquiry OI/5/2016/AB on timeliness and transparency in the European Commission's handling of infringement complaints:

<https://www.ombudsman.europa.eu/en/decision/en/83646>

<sup>20</sup> Information on the review procedure can be found on the Ombudsman's [website](http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/70669/html.bookmark): <http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/70669/html.bookmark>



The complainant and the Commission will be informed of this decision.

A handwritten signature in black ink, which appears to read 'Emily O'Reilly'. The signature is fluid and cursive, with a long horizontal stroke at the end.

Emily O'Reilly  
European Ombudsman

Strasbourg, 30/04/2019