



CAMMINO DIRITTO

Rivista di informazione giuridica



THE ITALIAN SUPREME COURT'S CONDEMNATION OF THE FIXED-TERM CONTRACTS IN THE PUBLIC ADMINISTRATION

The condemnation of fixed-term contracts in the Public Sector was invoked, albeit only implicitly, by the “Suprema Corte di Cassazione” (The Italian Supreme Court of Cassation, the highest Court of Appeal in Italy) with the Judgment 23\12\2014 No.27363. According to this sentence, fixed-term employment contracts extended for a period longer than thirty six months in the Public Sector, constitute an “abuse of fixed-term employment contracts in breach of the Directive 1999\70\EC of June 28 1999”.

Priscilla Fava (redattore Salvatore Aromando)

PUBBLICO - AMMINISTRATIVO
Articolo divulgativo - ISSN 2421-7123

Publicato, Martedì 2 Febbraio 2016

We have already analyzed the pronouncement in which the European Court of Justice has condemned the Italian government's ongoing use of fixed-term employment contracts in the Public Administration. ([see more here](#))

The Italian Supreme Court of Cassation has urged the Legislator to apply severe sanctions to prevent the improper use of fixed-term employment contracts. However, the part of the Judgment quoted above constitutes "Obiter Dictum", which means that it is a question addressed only incidentally and not covered by claim preclusion ("Res Judicata").

The Cassation has ruled after more than six years, going beyond the reasonable time set by "Legge Pinto" (three years for the first instance, two years for the second instance and one for the judgment on procedure). The delay has avoided the document instituting the proceedings and gave an unsolicited opinion about matters that are outside the scope of the process.

The case concerns a nurse who in the 90s received an open-ended contract. She was given a permanent contract only after passing the required competitive state exam and reaching the maximum limit of fixed-term contracts allowed by law. After being placed at rest, the woman decided to claim for compensatory damages for those old fixed-term contracts. However, even though the judges of the first two instances recognized the illegitimacy of those contracts, they rejected her claims, stating that there was no legal damage. Therefore, the nurse filed an appeal in the Cassation for damages. The Court commented that, in accordance with the latest jurisprudence of the European Court of Justice, **temporary employments that exceeds thirty six months of employment exempts an employee from having to take a Competitive State Exam and the right to the inclusion in the list of permanent staff.**

In the decision under review, the Supreme Court cited the "Carratù" judgment and "Papalia" order of **the European Court of Justice**, but there is the feeling that it took into account especially the judgment of November 26; in fact, the Court reiterated the words of the European Court generically, referring them to the whole public sector. The words concern the applicability of a thirty six months upper limit, after which the individual would be granted the right to the position without a competitive state exam.

Since the Supreme Court's sentence is earlier than the European Court's decision, this could sound strange. However, its publication has a later date and this shows how the evolution of the Internet made the Jurisdiction even more fragile and complicated.