



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

23 September 2015

**Case Document No. 4**

***Associazione sindacale La Voce dei Giusti v. Italy***  
Complaint No.105/2014

**RESPONSE  
BY THE *ASSOCIAZIONE SINDACALE LA VOCE DEI GIUSTI*  
TO THE GOVERNMENT'S SUBMISSIONS ON THE MERITS  
(TRANSLATION)**

**Registered at the Secretariat on 3 September 2015**



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Noceto 03/09/2015

To the attention of the General Secretary of the European Committee  
of Social Rights

Secretariat of the European Social Charter  
Directorate General of Human Rights and Legal Affairs  
Directorate of Monitoring

F-67075 Strasbourg Cedex Francia

**OBJECT: CLAIM 105/2014 – Responding to the comments made by the Italian Government**

Text sent by: UNION ASSOCIATION LA VOCE DEI GIUSTI, based in Via del Santuario della Madonna dei Sette Dolori, n° 256 - CAP 65125 - Pescara (Pe), C.F.: 91125260686;

PART I  
THE FACTS

It's easy to become disoriented in the intricate story of the temporary teachers of the III band of Institute, because the existence of this category of teachers is the result of an overlapping of disorderly regulations among them contradictory and without a logical common that binds. For decades, in fact, the only criterion by which the M.I.U.R. (Ministry of Education and Research) and the several governments have legislated on recruiting school, was not based on logic and common sense, but rather they pursued the logic of power and interest in political / economic. The precarious of the III band of Institute were so limited in other words the role of 'useful stopgap'. Such staff, due to the alleged lack of qualification, was unable to advance any request and could therefore be as it were 'exploited at will'.

In the opinion of representatives of the undersigned trade union association, there is no doubt that this was all so convenient to the administration, as the governments that have followed. Even the 'occasional amnesties' by which it was granted access to the III band of Institute that he had achieved a certain length of service by a certain date in 'paths reserved' to achieve the coveted 'teaching qualification', they have been dictated more by the logic of power and political interests / economic rather than by way of common sense.

Even the last of these 'amnesty' is no an exception in this respect, namely that provided for by the Ministerial Decree 81/2013, which will be discussed in more detail later. There is no doubt that the granting of such measures, which after years of lies and omissions resulted mostly completely unaware of their rights and expectations (The union association La voce dei Giusti was born only in the 2013), not only meant to be the political force that promoted the acquisition of critical acclaims and then of votes, but in many cases also constituted an important source of revenue for the state and private universities that prepared these paths. It should not forget that the cost of these courses, which was usually of a few thousand euro, was entirely the teachers responsibility. The association denounces as even the teachers seriously considered economically destitute, or winners of scholarships, have not been able to enjoy of any economic aid. Having said that the association would like to summarize the facts considered essential, or the terms within which the matter should be in our opinion evaluated.

*1a. TASKS AND DUTIES OF PRECARIOUS TEACHERS OF THE III BAND OF INSTITUTE*

For almost half a century the Italian government took over teachers holding licenses and qualifications valid for the inclusion in the III group of the rankings of the club and of the Institute with temporary contracts and in some cases indefinitely contracts. The staff were hired as defined security holder valid and appropriate teaching, using a procedure that had to be considered in all respects akin to bankruptcy (for securities only) fully taking the Constitution.

The type of contract and the specific performances required for teaching staff employed under temporary or permanent contract, regardless of the rank of extraction, are exactly the same and refer to the activities attributed to the professional profile of the teacher and ordered contained in the current national labor contract (National collective agreement for the school division)

The call service may vary according to the ranking by which it is called, it can be by appointment of the school board, or for the appointment of the head teacher. Not a difference of tasks, therefore, but of rankings!

The temporary teachers of the III band of the Institute can flunk and promote students, signed official documents, they are exams commissioners and they can play within individual institutions or senior positions of responsibility, like the role colleagues or from other rankings .

Teachers unskilled support, including teachers of the III band of Institute, regardless of the rank of extraction, by express provision of law, can aspire to supply teachers on support in the absence of professors or specialized role.

Although there are no official estimates of the number of temporary teachers of the III band of Institute assumed by the Ministry of Education to cover supply teachers and teacher vacancy, it is believed that at least the last decade the number of temporary teachers hired annually by the end of the III band is not less than ten / twenty thousand units, in each case are hundreds of thousands of teachers of the III band Institute that over time have been hired by the Ministry of Education, each year several thousand of these were, as documented by another in the text of the complaint sent, called to fill professorships support. And all this is still happening .

*1b. INABILITY FOR TEACHERS OF THE III BAND TO ACCESS TO THE ROUTES FOR THE ACQUISITION OF THE SPECIFICATION FOR BUSINESS 'SUPPORT TEACHING STUDENTS WITH DISABILITIES*

It's appropriate from now to confirm that in a not too distant past, or even a few years ago, as documented in the complaint sent by express provision of law, was allowed to teachers of the III band of Institute to access to courses for the achievement of specialization for the activities of educational support to students with disabilities.

With the enactment of the Ministerial Decree 249/2010 that possibility was their completely precluded. The temporary teachers of the III band of Institute paradoxically although are considered sufficiently qualified to teach and work on teaching support, are not, according to the same Ministry of Education, sufficiently skilled to access to university courses arranged by the University aimed to achieve specialization for activities of educational support to students with disabilities. This opportunity is denied even though that staff has worked on teaching support for many years in a row and / or still operates there.

If it fails to enable such staff to access these paths, even when they operated for more than a decade of support duties and still operates there, implies the impossibility for them to be stabilized, and it's a constant risk of permanent loss of work place.

***It seems clear that the inability of such personnel to access these pathways involves not only a violation of the right to education, under the Article 10 - Part II of the Social Charter, but that is indeed the impossibility also involves a violation of the law at work, planned and protected by the Article. 1, Part II of the Charter, since the possibility of permanently losing their jobs, it is impossible in any case to be stabilized, seriously compromises this right. Moreover, it holds the same social charter to reiterate expressly art. 1, part II, that***

***To ensure the effective exercise of the right to work, the Parties undertake [...] to provide or promote guidance, training and rehabilitation appropriate vocational".***

In the text sent by the government response has reiterated that "the Ministerial Decree 249/2010 Article 13 in connection with Article 5 of the same Decree established that specialization to support activities is restricted to staff already trained and can be obtained only after university courses which 60 CFU (credits) regularly in accordance with the credits defined by the Ministry of Education after consulting the national university Council and the national associations competent in the subject matter. "The text goes on to explain how to access and set-up of these courses.

This extract, as well as more generally the entire text of response of the Italian Government, did not provide any valid reason why the permanent staff of group III should be seen completely foreclosed the possibility to achieve the above-mentioned specialization. The Italian Government confines itself to reiterate that this is a summary of the provisions of Ministerial Decree 249/2010. Yet this is precisely what the association contests! In practice, the response document of the Italian government, as well as containing some important inaccuracies, later reported, in reality does not respond in any way to the allegations made, but simply reiterate that this is what lay down the rules, but does not try to justify them.

In fact, even if they wanted to try to justify the decision, bringing back the regulatory framework for quality selection, that the Italian government wants to ensure that the role of teacher support is covered exclusively by highly qualified personnel, and decided to implement this provision by excluding from 'access to such routes personnel' considered less qualified', or temporary teachers of the III band of the Institute, it must be said that in this context, such a choice would in any case completely irrational. It found that these employees work and can still operate on teaching support, denying them the possibility of being able to train and specialize rather lowers the quality of the service provided by the administration, since it would prevent the existing staff to acquire skills considered essential.

And anyway, even if they wanted to give true that statement, it is impossible for staff already employed by the administration, and that maybe has worked and still works on the support of access to such training, clearly violates the right to training and work under art. 1 and Art. 10 Part II of the Social Charter.

#### *1c. MODE OF ACQUISITION OF TEACHING THAT IS WHY MANY TEACHERS OF THE III BAND ARE UNABLE TO ACHIEVE THIS QUALIFICATION*

Since the only possibility for temporary teachers of group III of the Institute of access paths to the acquisition of specialization for the activities of educational support to students with disabilities is subject to possession of evidence of teaching qualifications. Always remembering that according to national legislation such qualification is not strictly binding on the access to and the teaching profession, and that such teachers have been able to operate as defined suitable and holders of certificates valid teaching.

Ascertained so for them, the frequency of these routes, would not only as a kind of humiliating re-enabled, it is useful to point out the following:

**For about 50% of the classes of competition / disciplines, there are no paths enabling ordinary (competitions based on qualifications and examinations, SSIS, TFA etc ..) at least 15 years, or from distant 1990. For about a quarter of the classes of competition paths enabling ordinary have never been set up, that they lack more than 20/30!!**

The mode of achievement of teaching is currently governed by the Ministerial Decree 249/2010. According to art. 15 of that decree the permanent staff of the III band of institute that intends to acquire this qualification must enroll in a university course lasts one year called TFA providing for the acquisition of 60 Credits (equivalent to a workload of 1,500 hours).

**The access to these courses is limited and involves passing a triple test of barrier.**

The cost of these courses is entirely borne by students who enter and usually amounts to several thousand euro. These routes include compulsory attendance for all activities. Not all cities have been set TFA, there is indeed that many of the teachers who were able to attend to these training courses, they had to travel hundreds of kilometers to reach the place where the courses, in some cases, there has been incidents of subjects who have had to move to another region, leaving work, spouses and children..

**Especially it is useful to point out that only for just 20% of the classes of competition were set the TFA, which means that for the teachers working on the remaining 80% of the classes of competition there is at present no possibility of obtaining that status, because there are no paths to ordinary acquisition of this status.**

Even with the P.A.S, enabling special paths, namely those paths enabling special provided by Legislative Decree 81/2013 which was amended by Legislative Decree 249/2010, it has been able to completely fill this lack.

While it is true that these routes have been set up for all or most of the classes of competition, and that they did not provide, unlike the TFA, a limited number of test barrier, it should first be noted that access to these routes, being reserved only to persons who have gained from the 1999/2000 school year and up to the school year 2011/2012, at least three years of service in state schools, equal or in vocational training centers, it was denied not only to all those those who have completed this requirement later, but indeed it is worth mentioning that the same happened to many teachers who by this time had developed well over three years of service. In fact, according to the same provisions of the decree, for the achievement of the requirements, it resulted evaluated the only service carried out in the same class of competition or type of place, paid per academic year for a period of at least 180 days. So teachers who had worked for many years, but on occasional substitutes, or that they had reached the prescribed three annual service to 180 days., But paying that service disciplines / classes teaching differently, they could not access the same and are results excluded! Even for those persons who have had the opportunity at least to join P.A.S or T.F.A. finally it should be remembered that:

1. **BARRIERS TO TFA ACCESS** : The access to T.F.A provides a three-part test barrage limited. So it is not enough in this case to have the good fortune that these courses are set up for your class of competition, but the workers, with many years of service, they cannot access it directly, but are forced to face a barrage of three-part test to a limited number , which provides a multiple choice quiz, a written test and an oral test, and be lucky enough to not only pass the three tests, but to rank at the top, since only the first arrivals will have access to these routes!

It is also reported briefly that the arrangements for carrying out these tests, because of the serious irregularities observed during the course of the same, have been repeatedly censored by the Italian courts and in some cases erroneous recognized by the Ministry of Education<sup>1</sup> !

2. **COMMITMENT REQUIRED:** T.F.A. and P.A.S. respectively require the acquisition of 60 credits<sup>2</sup> (equivalent to a workload of 1500 hours) and 42 CFU (equal to a workload of 1025) and both have annual duration, or rather are held over one academic semester (six months), most often their life was concentrated in a period of time even less. Both routes include compulsory attendance of at least 70% of assets (for some activities such obligations have risen to 80%), passing numerous tests, the preparation of a final and a final exam enabler. The final exam is allowed only to students who have achieved a score of 18/30 in all intermediate exams. **It appears immediately clear that these routes require an exclusive commitment, difficult to reconcile with the occupation of a teacher hired on full time or full-time.**

3. **DISTANCE COURSE WORK FROM HOME:** The T.F.A. as well as for P.A.S. not have been set up for all classes of competition and regions / provinces. Indeed often it happened that for some classes of competition, these routes were set up only in a limited number of universities / cities, with the result that often teachers who wish to access, had to travel many hundreds of kilometers and many hours of travel. The most striking example comes from Sardinia. It is in fact known that the region of Sardinia, has set up such courses only for a very limited number of classes of competition, with the result that many of the teachers who wanted Sardinian acquire teaching qualifications had to enroll in courses set up on the peninsula, reached as It is known only by plane or boat. In other words, in consideration of the same compulsory attendance fixed by law, the same were almost forced to leave their jobs and move to 'mainland' to be able to attend!

**In each region there were cases of teachers who could not have access to these routes for a distance of the preparation of the courses with the obligation to attend the course.**

Professor Francesca Bertolini, whose case was brought by way of example in the complaint, if she had wanted to acquire the qualification for the classes of competition AO31 / AO32 (Music to the middle school and high school), for which had valid title to teaching, should have access to the P.A.S set up at the University of Bologna. It must be said that these routes include a mandatory frequency of 5 days a week and the same were held at a university that was at least an hour and a half by road from his home / workplace. In short, the same not only would have to pay out of pocket cost of enrollment in such courses, totaling € 3,000 in addition to supporting his own pocket all the associated costs. But the same, if she had not waived its use, it must be said that in school year. 2013/2014, the Professor was hired on full professorship annual support at the Comprehensive School of Fiorenzuola d'Arda, she would have to go daily every morning at this institution to do her job as a teacher. At 13:10, time after school, she would have to travel by car about half an hour to go to

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<sup>1</sup> The speech deserves a wide discussion, however, the association and its lawyers, in declaring available to provide any clarification required, are cited as an example the tests administered for accessing TFA 2012. Well, in this case it turned out that not only the parties intended by decree by the Minister who had to make those questionnaires were never informed of the assignment given to them and not edited therefore these tests (despite the complaints and queries etc. ... no one ever knew who actually wrote those tests), but in truth is that the administration admitted in his own hand that those tests contained not one, but hundreds of errors! The quiz, which included set of 60 questions, all contained a number of requests declared erroneous by the same administration which ranged from 4 to 25 questions! Other errors were denounced and reported by members of the association. For testing of the French example, the administration said as many as 25 questions wrong, and careful technical analysis of these tests led to believe that the remaining 35 questions were considered inaccurate, off-topic, or otherwise does not confirm to the dictates regulatory and programs established by Ministerial Decree 249/2010 which they had been set up. In practice, we are before a test incorrectly stated at 40% by the administration itself, and still felt wrong wrong even for the remaining 60%.

Remember that thousands of teachers could not 'qualify' in the name of merit and through tests barrage wrong, foolish and managed to say the least grotesque!

<sup>2</sup> The university credit (CFU) is a method used in Italian universities to measure the load of student work. Conventionally 1 CFU is equal to a work load of 25 hours.

the train station in Parma, park your car (parking operations require about 20 minutes, because there are no spaces if not for the parking fee in the immediate vicinity of the station) and take the train to Bologna, face an hour's drive and a further journey on foot / bus at least ten minutes to arrive finally at the university. Once there, hoping to arrive in time, she would have to attend all afternoon classes, and finally make the trip back home. Arrived home around 20:00 pm (at best), the same had to be provided to study and prepare to pass the exams required by the courses and prepare lessons and fulfill all the commitments that her teaching profession required.

All this adds family commitments that it would have to still support in this period. It seems clear in the light of the facts, and the examples given, that these routes, were often incompatible, or at least difficult to reconcile with the work of these teachers.

4. **COSTS** : Although according to the decree of the President of the Republic July 25, 1997, n. 306, it is provided that "the contribution ordinary student in university courses cannot exceed 20 per cent of the normal annual funding of the State". Despite also from a reading of the sources contractual, and in particular of the Negotiable and C.C.N.I. Education of the school division, still in force, it appears that the right to education, including the input "is an important strategic asset for the professional development of staff" [1]. "The training is therefore a right for staff with permanent contracts and fixed-term contract and the duty of the administration, as functional to the full realization and development of all the professional" [2] and these sources also agree in saying that the training is also achieved through tools that provide access to university courses restating the character of generosity that these paths should have, and the right for workers who participate to be reimbursed for any costs participation in training and that the remuneration of the hours devoted to the frequency of these routes.<sup>3</sup>

According to art. 16 of D.M. 249/2010 is expected that charges for attending such courses, even in cases of workers who have worked for years in the employ of the administration and still in service, are entirely dependent on the worker!

**In other words, the teachers employed by the Ministry of Education They are not entitled to benefit, in terms of access and funding costs in these locations, nor the rights of their students, nor of those who would be granted as workers!**

**It appears useful to note in this regard that as a result of a special parliamentary question promoted by members of the association, the administration has justified that decision by saying that the temporary teachers of group III that access these paths not to be considered neither workers as TFA and P.A.S. are not intended for teachers in service! ... how to justify and validate the need on the part of many who have attended, having to lay off from their jobs to be able to attend ... or students<sup>4</sup>! In any case it is noted that the cost of these courses, which usually hovers between 3,000 and 4,000 euro, is entirely the responsibility of teachers who attend them, as well as the costs for the purchase of textbooks and those of travel expenses for travel to the universities at which these paths are set.**

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<sup>3</sup> Article. 64 of C.C.N.L. states in particular that "training initiatives, ordinarily, take place outside teaching" and that "the personnel participating in the training courses is considered to be in service in all respects. If the courses are conducted off-site, the participation in them result in the refund of travel expenses. " While C.C.N.I. Supplementary training includes among its contractual obligations borne by the administration, to "ensure the conditions for the construction of a permanent system of educational opportunities" and the introduction of training for the "induction training of teaching staff and ATA ". The Charter of school services, approved by Prime Ministerial Decree of 7 June 1995, reaffirming the concept, states that "the update and training are a commitment for all school staff and a task for the administration, which ensures organic interventions and regular" .

<sup>4</sup> We note that at this page can be downloaded the text of question:

<https://sites.google.com/site/vocedeigiusti/home/comunicati/interrogazioneparlamentarecostieillegittimemodalitaall'estimentopastfa>

On this page you can also download the text of the

reply:<https://sites.google.com/site/vocedeigiusti/home/comunicati/questanotiziavifaraarrabbiareilmiurrispondeaduinterrogazioneuidocentiprecariimpegnatinellafrequenzadeipase>

It is noted in this regard that in the web pages of the association there is also the link to the institutional sites where you can view the same documents

What you intend to say in summary is that a large share of temporary teachers of Italian III band of Institute with years of teaching experience could not access any path enabling, as it appears to have been set up for his class of competition any kind of path enabling ordinary, nor was in possession of the requirements for access to the paths enabling reserved sporadically banned by the administration (PAS). In some cases the total absence of any route for certified remains even over 15/20 years! And there are even cases of teachers<sup>5</sup> for whom it was never set up any path enabling ordinary.

Even in the cases of those who have seen these routes prepared for its class of competition, it must be acknowledged that the incorrect methods of preparation of these courses, namely the obligations of frequency, exclusive commitment required and the high costs, have made frequency of themselves incompatible with the work of many of these teachers. In other words, many teachers had to choose whether to qualify taking leave from work or continue to work giving up the chance to qualify. Finally it must be said that even for those subjects for which they were set up paths for enabling their competition class (with the exclusion of those who have had the right to access routes Enabling Special PAS, which had explained how the different means of access) , should not be forgotten, that the access to the same foresaw the overcoming of a three-part test of the barrier to a limited number, and access even in this case was not free, but resulted indeed difficult and most often precluded.

It is therefore concluded that the method of preparation and access routes for the acquisition of all teaching are, like the methods of preparation and access routes for the acquisition of specialization for the activities of educational support to students with disabilities, which are governed by other rules and by the ministerial decrees, reprehensible. And in any case they have the same identical profiles of illegality. Both violate the right to training and employment of temporary teachers of band III Institute, protected by Article. 10 and Art. 1 of the Social Charter.

The only substantial difference between the courses for the acquisition of specialization to support activities and those for the acquisition of all teaching, is that in the former case the temporary teachers of band III Institute with years of teaching experience (also support), access to these routes is always denied. In the second case, access was totally denied to only some of them (the TFA were set for only 20% of the classes of competition, and PAS have involved only part of teachers with many years of service experience). But even for those who could access it in the abstract, it must be said that the requirements of frequency, costs and commitments often made these courses cannot revisit the same, unless the staff not to give up his position as a teacher and then resign.

Nor must we forget that some teachers of III-end working for years on support, may not be interested / motivated to acquire teaching qualifications, but rather be interested in acquiring the expertise to support educational activities. It is not clear why the same should achieve in order to gain access to these routes, a qualification that is already implicitly recognized, being that the same is allowed to access to education on the basis of defined titles valid Teaching, order to acquire actually quite another qualifying! It 'clear that everything appears to be irrational, as well as illegitimate!

#### *1c. ROUTES FOR THE ACQUISITION OF SPECIFICATION FOR THE ACTIVITIES 'SUPPORT TEACHING STUDENTS WITH DISABILITIES'*

According to art. 13 of D.M. 249/2010, the access and the mode of carrying out the paths for the acquisition of specialization for the activities of educational support to students with disabilities (also known as the TFA's support), like the paths for the acquisition of approval teaching (TFA), also regulated by the same decree, provide:

1. Passing a three-part test barrier to a limited number;
2. The acquisition of at least 60 credits, or a workload equal to 1,500 hours;
3. Compulsory attendance of at least 70% of lessons and activities;
4. Costs and charges of frequency entirely borne by students;
5. Overcoming all the intermediate examinations, the preparation of a final thesis and passing a final exam;

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<sup>5</sup> Consider the case of I.T.P. Teachers Technical Practical, that moving from the role of ATA to teachers around the 80 'never saw prepared for their classes of competition, any type of paths enabling ordinary. Simply the government saw to 'adjust' their issue allowing teachers who at the time were in service with direct access to the rankings Permanent teachers, also valid for the placing on the role (without, however, recognize enabled). Teachers I.T.P. who later began to pursue that profession, even if they have identical qualifications, they are currently included in the group of the III band of the Institute as they are considered not enabled. No contest for exams and qualifications or enabling ordinary path has never been set up for them.



These paths ultimately, like the T.F.A. (Courses for the acquisition of all teaching), also provide for a duration of one year or six months, as well as having been set up only by some universities, often their frequency, it required a substantial shift from the students involved in the frequency these sessions. Always remembering that access to such routes is subject to the possession of 'appropriate teaching qualifications', in referring to the reading of paragraph 1.c), it is clear that the method of preparation of these paths, violate not only the rights of temporary teachers of group III of the Institute to which access is always denied them, but in fact, they also violate the right to education and work, protected by art. 1 and 10 of Part II of the Social Charter, those temporary teachers 'enabled' who have gained many years of teaching experience, maybe working on teaching support. Even for them it is free access, being the same subject to passing a test triple barrier. Even the lucky chance the same managed to overcome this barrier, it must be remembered that compulsory attendance, together with the commitment required and often exclusive to the distance and the distances that these teachers have to travel to be able to go at the forum where these pathways are set up, it made these paths irreconcilable with his employment as a teacher. It should not forget then that the high costs of such courses, the total lack of financial support even in cases of individuals recognized indigent, has further hampered / limited access, even for those deemed qualified teachers. Also for these reasons, it asks to be recognized that the methods of implementation of these paths violate the Social Charter.

*1d. COURSES SPECIALIZED SUPPORT AIMED TO TEACHERS OF ROLE - DISCRIMINATION IN BETWEEN TEACHERS WITH CONTRACT TEMPORARY AND PERMANENT*

It's been documented, both within this document, both in the complaint sent, such as access paths for the acquisition of specialization for the activities of educational support to students with disabilities proves completely closed to temporary teachers of group III of the Institute, and as the same proves in every difficult and not always possible even here teachers deemed qualified, but still precarious that maybe had operated for years in the employ of the administration but also of duties of support. In the latter case, access was not however free, but subject to passing a test triple barrier, and the procedures of the same courses were not always compatible with the work of the persons listed. It is interesting to note that the attitude of the administration appears quite different with respect to these professors, who may not even have ever worked on support teaching.

The same fact, not only, as opposed to temporary teachers (enabled or not), are entitled to access these paths directly and without passing any test barrier. But indeed that is the frequency of the same for them is free, and universities that have set up these paths, received the obligation be fitted out in an electronic, so as to be fully compatible with the professional activities of such personnel. Yet the type of contract and the specific performances required for teaching staff employed under contract to be it temporary or permanent, regardless of the rank of extraction, are exactly the same and refer to the activities attributed to the professional profile of the teacher and ordered contained in the current CCNL (National collective agreement for the school division). The call service may vary according to the ranking by which it is called, it can be by appointment of the school board, or for the appointment of the head teacher. Not a difference of tasks, therefore, but of rankings!

Before the denunciation of such discrimination by the undersigned trade union association in the complaint sent to the Italian Government it responded as follows "The government estimates that there are some discrimination, as reported, between teachers of role indefinitely who have the 'teaching certificate and persons claimants who have the opportunity to participate in training courses as described in the light of the national collective agreement of work of the school of 29 November 2007 called by the complainant. The government points out that the object of the provision cited is the training of teachers qualified to perform the delicate role of teacher to students dined handicapped ".

**In fact it must be said that if the reasons for which the temporary teachers of the III Band of Institute was precluded access to such routes is the lack of enabling, in any case remains clear that such discrimination subsists in each case in respect of teachers precarious deemed qualified.**

**Because they are hired that they cannot even go directly to those locations, and result clearly discriminated against compared with teachers employed on a permanent contract for the same job. Beyond that it is worth pointing out that in fact the government claims, where reiterates that the professors are all enabled, must be considered false. Indeed, it is that there are thousands of teachers 'not qualified', or in possession of qualifications in all respects identical to those of teachers precarious of the third band made in the past by the open-ended, and it is believed that certainly some of them will enter free and without barriers to these routes.**

In this regard, we note the following:

The access to the assignments indefinitely by parties thought to lack qualification, or in possession of degrees and diplomas of those giving access to group of the III band in the rankings of the Institute, is neither a new nor an exception. With the law of 13 June 1969, no. 282, the Italian Parliament has established that may be employed under permanent contracts all those teachers, including those deemed not qualified, that they had been hired on a chair and on annual vacancy. This rule was so in force until the end of the 70s.

In 1982, following the enactment of Law 270, parliament gave off again similar measures, ordering the continued operation, and then the permanent employment, of all the staff that resulted in service at the state school at the date of entry into force of that provision. In its judgment No. 249 YEAR 1986, the Constitutional Court ordered that this measure was extended towards all the teaching staff considered 'disabled', declaring unacceptable discrimination which such staff were victim and priority to respect for such rights teachers had gained as workers.

In the early 90 'the I.T.P, teachers practical technical, employed in technical and vocational schools, becoming the role of ATA (Technical Assistant Auxiliary), to that of teachers, were placed on the ground in the rankings Permanent, valid for taking part in, and from there the most part of them was later stabilized and operates still employed by the Ministry of Education. It must be said that the staff was never declared qualified, and that teachers I.T.P of the III band, possess the same qualifications were not able to enjoy the same benefit, just because they have been in business as a teacher later.

In 2000, the M.I.U.R. extended this provision to teachers I.T.P. employed by local authorities who then entered role subordinate to the Ministry of Education without any prior recognition of qualification. What astonished leaves is that I.T.P. time employees employed by the Ministry of Education of the III band, were relegated to those lists and then not only did not have access to the stabilization, but indeed we now see that also denied access to the paths for the acquisition of specialization for teaching support to students with disabilities.

In the years after 2000, with the entry into force of the Community provisions regarding the recognition of foreign qualifications enabling it has also been a curious phenomenon that is worth illustrating. In fact, according to the provisions of Dir. EC / 36/2005<sup>6</sup>, Art. 3, paragraph 3, must be considered in all treated as a professional qualification any professional experience of at least three years.

Although not just so happened that the Ministry of Education has equated as enabling teachers deemed 'not enabled' in their countries of origin, however, it has three years of experience teaching, but indeed it happened that in some cases have been declared qualified persons in possession of degrees and diplomas of the III band acquired in Italy, for another is not always necessarily to joint teaching experience!

It takes as an example the decree of 6 July 2001 (OJ No. 223 of 25/09/2001) of the Ministry of University and Research which has been recognized as valid evidence of authorization for the classes teaching 45 / A - foreign language, 46 / A - foreign languages and civilizations - and in English class competition and 3 / C - Conversation in foreign language - English, the "degree in modern foreign languages and literature", awarded in the July 20, 1993 at the University of Rome "La Sapienza by Prof. Belinda Perni. Well, we are faced with a degree acquired in Italy, the kind that ordinarily would have given right to inclusion in the III band of Institute.

By Decree of 12 May 2011 - Recognition, with Professor Maria Matthaïou, foreign professional qualifications authorizing the practice in Italy of the teaching profession - the Ministry of Education has recognized that the "degree in biological sciences - address pathophysiological" achieved in the '11 of July 2002 at the University of Perugia (ITALY), joined to the fulfillment of experience as a teacher in Greece, he was to be considered qualifying for the competition classes: 57 / A food Science, 59 / A math and science in school secondary level, 60 / A natural sciences, chemistry and geography, microbiology.

These parties, even if in possession of qualifications and services through and all identical to those of temporary workers of group III of the Institute have been able to access not only to stabilization and to the role, but in truth, even if they are remained precarious, can access if only the admission tests for the acquisition of specialization for the activities of educational support to students with disabilities.

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<sup>6</sup> The same concept is confirmed by the previous directives, such as the no 89/48 / EEC

The only reason why these people were issued this recognition is based on nationality. Paradoxically, a teacher in a qualification of the III Italian band, can be considered qualified if he has completed three years of teaching experience, but only if it turns out to be of foreign nationality!...

So in denying categorically that all professors should be declared as qualified (as defined in the Ministry of Education), or other qualifications and requirements 'superior' to those of temporary teachers of III-end, this association calls for the declared infringement of the Part V, Art.E, in relation to Article 10 education right) and Article. 1 (work right), of the Social Charter.

**Since there is no reason why the temporary teachers, hired employed by the administration, whether considered or not enabled, so should be discriminated against in access to professors paths to acquire the specialization of educational support !**

## PART II

### *ABOUT THE PREMISES OF THE ITALIAN GOVERNMENT – THE TEACHER PROFESSION NOT REGULATED AS SUCH A PROFESSION*

In the text sent by the Italian Government it has stated that: "The Government wishes to state that the teaching profession is, in Italy, a" regulated profession "within the meaning of Directive 2005/36 / EC, article 3, paragraph 1, letter a). Its exercise is subject to possession of a degree in teaching, according to the domestic legislation in force, it can be obtained in accordance with the decree of the Ministry of Education, University and Research of the 10<sup>th</sup> of September 2010, no 249 with following changes ".

This statement is totally inaccurate. You can talk about regulation of the profession of teacher in state schools, but even in this context that the concept is entirely correct and in any case, the titles of the profession of teacher in State schools are those established by the Ministerial Decree of 10 September 2010, n. 249 and subsequent amendments as considered by the government. This decree is limited to establishing the terms of access and performance of courses for the acquisition of specialization for the activities of educational support to students with disabilities, as well as Master of Science, the active Completion courses and trails for Enabling Special 'obtaining evidence of "teaching certificate". This term, however, as specified below must not be understood literally, because as also explained within the text of the complaint sent by the undersigned association, the access to teaching in state schools of all types has never been bound to hold that qualification.

For over half a century the M.I.U.R. (Ministry of Education, University and Research) annually takes to employ tens of thousands of teachers without the title of teaching qualifications, but still defined and suitable holders of securities valid teaching by the decrees by which the rankings of the Institute were created and regularly updated. And there are even cases of teachers without a teaching certificate who have had access to the assignments indefinitely and rankings Permanent now become to exhaustion, without any 'recognition of qualifications' and without having passed any additional competitive procedure for examinations and qualifications or training.

Teachers with qualifications that give access to the III band of Institute not only can aspire to teaching in state schools of all levels to cover 'chairs ordinary', but in truth they can also aspire to supply support teachers . With that being said it is in our opinion useful to specify some useful concepts to better understand and frame the intricate question of the teachers of the III band of Institute.

## *2A. ABOUT THE REGULARY ITALIAN PROFESSIONS*

**THE REGULATED PROFESSIONS IN ITALY:** According to the Italian Constitution, Art. 33, "it is a prescribed examination for admission to the various types and grades of schools or for their termination and for certification in the practice."

According to the Italian Civil Code (Royal Decree of the 16 of March 1942 n. 262 and S.S.), Art. 2229<sup>7</sup>, the professional qualification is required only for those professions that require the entry in a register or in a professional association.

**WHO CARRIES ILLEGALLY A REGULATED PROFESSION CANNOT BE PAID:** According to art. 2231 of the Italian Civil Code<sup>8</sup> is also provided that "when the exercise of a profession is subject to enrollment in a register or list, the services performed by those who are not registered does not give him action for the payment of wages."

**THE CRIME OF FINANCIAL ABUSE OF REGULATED PROFESSION:** According to art. 348 of the Italian Criminal Code is provided that "Any person who unlawfully exercising a profession, for which is required a special authorization of the State [cod. Civil Art. 2229], shall be punished with imprisonment up to six months or with a fine of 103 Euros to 516 Euros. "

## *2B. ABOUT THE PROFESSION OF THE TEACHER IN ITALY AND ABOUT THE WAYS OF THE PUBLIC EMPLOYEE RECRUITMENT*

According to the Italian Constitution, Art. 33, it is expected that "art and science are free and free is the teaching." Accordingly, the teaching will never rise to the rank of a regulated profession, as it is the Constitution itself to establish that art and science are free and free is the teaching. So there cannot be a professional teacher or professional association of teachers and even a permit to teach, in the strict sense, since it is the very constitution to establish that education should be free!

In accordance with art. 97 of the Italian Constitution<sup>9</sup> the state can dictate the requirements for employee recruitment and participation in competitions always remembering that the state HAS A DUTY TO ENSURE THAT THE PERSON SELECTED IS IN POSSESSION OF THE NECESSARY SKILLS TO THE CONDUCT OF THE ASSIGNMENT.

According to art. 20 of the Law 93/83 is provided that "the recruitment of civil servants is done through competitive examinations. It is an objective assessment of the merits of the candidates assessed by examining the titles and / or selection tests or by selective recruitment and training courses for the theoretical and practical, for the acquisition of professional skills required".

Article. 34 of Legislative Decree 165/2001 provides that "the access to public office is through the selection procedures for the verification of professionalism required to conform to the following principles: [...] adoption of objective and transparent mechanisms, used to verify the possession of required training and professional requirements in relation to the position to be filled "

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<sup>7</sup> Art. 2229 - Exercise of intellectual professions

The law determines the intellectual professions for the pursuit of which requires enrollment in special rolls or lists. The assessment of the requirements for registration in the registers or lists, the estate of the same and disciplinary authority over members are delegated to [professional associations], under the supervision of the State, unless the law provides otherwise.

Against the refusal of registration or cancellation from the rolls or lists, and disciplinary measures against importing the loss or suspension of the right to practice it may be challenged in the courts in the manner and within the terms established by special laws.

<sup>8</sup> Art. 2231 - Lack of registration

When the exercise of an activity is subject to enrollment in a register or list, the services performed by those who are not registered does not give him the action for the payment of the wages.

<sup>9</sup> Art. 97 Italian Constitution: Public offices are organized according to the law to ensure the good conduct and impartiality of the administration. The regulations of the offices lay down the areas of competence, duties and responsibilities of the officials. It is through competitive examinations to posts in the public administration, except in cases established by law.

The state has allowed to teachers of the III band of Institute to participate to competitions for the recruitment both determined and undetermined participating to competitions for qualifications and exams and sometimes it has allowed them to access to the assignments indefinitely with no recognition of the enabling qualification

## *2C. CONCLUSIONS – COURT OF CASSATION'S JUDGMENT*

The teaching profession is not regulated in Italy. For as stated in paragraph 2a, a regulated profession means, under current regulations, only those professions whose exercise involves placing an order or professional register.

There are no professional bodies of teachers in Italy, nor is there any professional order of teachers and also the same Constitution states that the teaching should be free and its exercise cannot be bound to enrollment in special books or orders.

The Criminal Code and the Civil Code provide in addition that the holding of a regulated profession by persons without special authorization includes not only the occurrence of the criminal offense of "unlawful practice of the teaching profession", but in truth there would be no obligation for the buyer to pay the performance of work carried out by persons deemed 'not enabled'.

It is known that the administration has always paid a regular salary to teachers not qualified or lack of qualification but with qualifications considered valid teaching under decrees by which the rankings of the club and of the Institute have been established and updated.

In observance of the principle of sound public administration (Article 97 of the Constitution.) The state has not only the right but the duty to select staff considered in possession of the required training and expertise adequate to the tasks required. Teachers of the III band of Institute, were selected and employed as holders of securities deemed valid and appropriate teaching.

This profession cannot and will never be subject to enrollment, upon the acquisition of a specific qualification in order or professional register, however, the administration can regulate the access to the profession in order to access the public service by establishing what the qualifications considered valid / appropriate and which are not.

However it must be said that the title of 'teaching qualifications' should not be understood in the strict sense of the word, that is not to be understood as a binding way to practice, but rather as the name of a particular type of qualification / specialization to exercise a profession.

It should also be said that when a specific person accesses to public services through a competition (and this must be understood as the recognition and the sliding of the rankings of the Institute in which such persons are members<sup>10</sup>), it accesses as it does not only winner of the above procedure, but also because it was considered suitable and meet the requirements necessary for the performance of this task<sup>11</sup>.

His view is not only right of trade union leaders of the writer, but also the Constitution Court, the most important national judicial body, whose creation is foreseen in the Constitution with judgment No. 77/1964 has been expressed in a similar way .

On that occasion, 50 people including teachers, school administrators and supervisors<sup>12</sup> were denounced, "the first 43 for the offense under Article. 348 of the Penal Code (unlawful practice of a regulated

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<sup>10</sup> Again, please note that the assumption by those rankings is in effect a competitive procedure for securities only in full compliance with the Constitution.

<sup>11</sup> In addition it should be noted that the Consolidated Public Administration (legislative decree no. 201/1999), clarifies that public officials, including school managers and superintendents, should be deficient training of the staff who work in their offices / administrations it manages, they have a duty to report annually to the Prime Ministers of these shortcomings and provide for their education. It does not appear that in over half a century that procedure was never adopted even once, despite the teachers of the III band hired annually result tens of thousands and thousands are school leaders and superintendents involved.

<sup>12</sup> The superintendent is the officer appointed by the Ministry of Education to manage the provincial school boards. In practice he is a kind of provincial leader.

profession), for exercising the teaching temporarily at some state secondary schools without being in possession of all teaching and other (6 school heads and the Director of Education of the Province of Fermo) for complicity in the same crime. "

*In the text of the judgment it reads: "However you want to take on the aspects on which a profession must be regarded as free, the Court considers that in no way the professor of the school of the State can be qualified as a freelancer. [...] The essential reason why Article. 33, fifth paragraph of the Constitution prescribes the state exam for the exercise of professions is given by the need for a prior investigation, made with serious guarantees, secure, and in the interest of the community and sponsors, the trader has the preparation requirements and capacity required for the proper professional exercise. In respect of the public employees this assessment must be done in accordance with the law, pursuant to art. 97 of the Constitution. And also for the recruitment of substitutes considered choices are arranged according to the law. No one disputes to the legislator the power to add or substitute other assessments of capacity a state examination for the recruitment of their employees or disciplinary cumulatively the one and the other. But it cannot be said that this is a duty of the legislator".*

In other words, it is the Constitutional Court to realize that the teaching certificate is not a mandatory qualification to practice as a teacher, and that the state, under the principle of good performance in public office, can substitute for that exam, other types of verification of requirements deemed necessary to undertake the teaching profession.

Teachers of the III band of Institute, while not resulting in the qualification of teaching certificate, have been deemed suitable by the Ministry of Education and teaching for so for over half a century such personnel has been used regularly for coverage of temporary fixed-term, teacher vacancy and in some cases such staff was also taken with assignments indefinitely.

### PART III OTHER INACCURACIES IN THE TEXT OF THE GOVERNMENT RESPONSE

In response to the claims of the Italian Government according to who " About the teaching aimed to support students with disabilities reference is made to the law of February 5, 1992, n 104" Law for the assistance and social integration and rights of people with handicap as amended "and in particular, Article 12 on the" right to education and to instruction and 12 School integration where paragraph 3 provides that in the schools of all levels of education, is understood that - according to the decree of the President of the Republic (DPR) of 24 July 1977 n 616 as amended, the obligation for local officials to provide assistance for autonomy and personal communication of students with physical disabilities and sensory support activities are guaranteed by assigning specialized teachers with undergraduate teaching, as cited in Article 3, paragraph 4, letter c) of Decree 249/2010 ".

It is helpful to point out that according to the aforementioned Law 104/1992 art. 14 is expected that "The Minister of Education provides training and updating of the teaching staff to acquire knowledge on education of students with handicap, in accordance with Article 26 of the decree of the president on Aug. 23, 1988 , n. 399, in accordance with the procedures for coordination with the Ministry of University and Scientific and Technological Research in Article 4 of the law of 9 May 1989, no. 168 ".

In other words, the above law emphasizes the obligation for the administration to provide adequate professional skills to teachers who work as a teacher support.

Please note that the Italian Government, in the text of the reply sent, deliberately distorted the text of art. 13, paragraph 3 of Law, where reiterates that "according to the decree of the President of the Republic (DPR) of 24 July 1977 n616 as amended, the obligation for local officials to provide assistance for the 'autonomy and personal communication of students with physical disabilities and sensory support activities are guaranteed by assigning specialized teachers with undergraduate teaching, as cited in Article 3, paragraph 4, letter c) of Decree 249/2010 ".

In fact it must be said that the original text reads exactly like "In schools of all levels, without prejudice, in accordance with the decree of the president of the republic 24 July 1977, n. 616, as amended, the requirement for local authorities to provide assistance for autonomy and personal communication of pupils with physical and sensory impairments are guaranteed support activities by assigning specialized teachers ".

In other words there is no obligation, under current law, for the administration to provide teachers with specialization with undergraduate teaching, as cited in Article 3, paragraph 4, letter c) of Decree 249/2010, but there is obligation for the Ministry of Education, in the presence of pupils with Special Needs, to provide specialized teachers, and they want teachers with sufficient skills to fill the post of teacher.

The inability of the teachers of the III band of the Institute, but also of teachers deemed qualified but non-specialized operating on teaching assignments and support to access without barriers to paths for the acquisition of the aforementioned specialization underlines the complaints lodged by the undersigned association and in any case is a serious violation of that law.

Date 03 / 09 / 2015

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*Francesca Bertolini (Union Association President La Voce dei Giusti)*



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