



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

27 May 2014

**Case Document No. 1**

***Associazione sindacale La Voce dei Giusti v. Italy***  
Complaint No.105/20143

**COMPLAINT**

**Registered at the Secretariat on 22 April 2014**

For the attention of the Executive 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 France

## **COLLECTIVE COMPLAINT**

### **Submitted in accordance with the Additional Protocol of 1995 providing for a system of collective complaints and Rules 23 and 25 of the Rules of Procedure of the European Committee of Social Rights**

Submitted by the trade union Associazione Sindacale la Voce dei Giusti, having its registered office at Via del Santuario della Madonna dei Sette Dolori 256, 65125 Pescara, Italy, Fiscal identification No. 91125260686

V.

The Italian Government and the Ministry of Education, Universities and Research, represented by the minister in office;

#### **CONCERNING VIOLATIONS OF THE EUROPEAN SOCIAL CHARTER, IN PARTICULAR**

- Part I, 10, whereby "Everyone has the right to appropriate facilities for vocational training";
- Part II, Article 10 on "The right to vocational training";
- Part V, Article E, in conjunction with Part I, Article 10

#### **SEEKING THE REJECTION AND A FINDING OF NON-COMPLIANCE OF**

The national legislation determining and defining the requirements and conditions for obtaining a specialisation as support teacher for pupils with disabilities, insofar as it prevents Italian temporary teachers in category III on "Establishment" aptitude lists from having free access to the relevant training courses, in particular the following decrees and administrative decisions:

a) Ministerial Decree No. 249 of 10 September 2010, Article 13 of which provides that access to training courses for obtaining a specialisation as support teacher for pupils with disabilities shall be numerically restricted and "confined to duly habilitated teachers";

b) Ministerial Decree No. 78 of 30 September 2011 published in the Official Gazette of 2 April 2012 under the title "Criteria and conditions for following training courses leading to the support activity specialisation under Articles 5 and 13 of Ministerial Decree No. 249/2010", Article 5 of which provides that training sessions shall be reserved for "teachers possessing the habilitation";

b1) Article 2 of the same Ministerial Decree providing that the scheduling of courses "shall be determined based on the regional programme of a school's teaching staff bodies and the specific need for specialised staff to provide pedagogic support to pupils with disabilities."

c) Ministerial Decree No. 706 of 9 August 2013 determining the places available for admission to training courses delivering the specialisation as support teacher for pupils with disabilities for the 2013/14 academic year;

d) the announcements made by the following Italian universities: L'Aquila, Calabria, Suor Orsola Benincasa, Salerno, Bologna, Udine, Foro Italicco, Rome Three, Studi Internazionali UNINT, Lumsa, Genoa, Bergamo, Milan Bicocca, Cattolica, Macerata, Urbino Carlo Bo, Molise, Turin, Bari, Cagliari, Enna Kore, Messina, Palermo, Florence, Pisa, Sienna, Perugia, Padua, Trento, Valle d'Aosta, Modena;

e) the Director General's Order No. 7 of 16 April 2012, providing that supernumerary teachers on the roll shall have free, unlimited access to courses for obtaining the specialisation as support teacher for pupils with disabilities, which accordingly discriminates between staff on fixed-term and indefinite-term contracts and therefore denies this possibility to temporary teachers who have been employed in a support capacity by the administration for years;

#### AND RECOGNITION

of the right of Italian temporary teachers in category III on "Establishment" aptitude lists employed by the administration to have unlimited access to courses delivering the specialisation as support teacher for pupils with disabilities, provided for in Article 13 of Ministerial Decree No. 249/2010, designated the "Outline Decree of the Minister of Education, Universities and Research regulating the definition of the requirements and initial training conditions for teachers in nursery schools, etc.";

#### INTRODUCTION

##### **I. Legal status of Italian temporary teachers in category III on "Establishment" aptitude lists**

It is no easy task to find one's way around the complex provisions governing recruitment in Italian state schools, which are the result of a not always organised or orderly superposition of decrees and rules that have led to the emergence of a maze of aptitude lists and categories, themselves internally subdivided into many classes of competitions and sometimes sub-classes. That said, it should be noted that, in accordance with the principle of the efficiency of public administration enshrined in Article 97 of the Constitution,<sup>1</sup> national law provides that access to public office shall be subject to possession of the appropriate diplomas and qualifications, regardless of the entry aptitude list. Pursuant to these provisions, under no circumstances can the administration's management recruit staff who are considered as unqualified, without habilitation or unsuitable, not even on fixed-term contracts.

At the same time, Article 34 of Legislative Decree 165/2001, the Single Act on the Civil Service, provides "access to public office shall take place under selective procedures aimed at ascertaining the required professionalism and complying with the following principles: ... adoption of appropriate objective, transparent mechanisms such as to verify possession of the aptitudes and professional qualifications for the posts to be filled".

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<sup>1</sup> In this connection reference is made to Article 20 of Law 93/83 providing "Access to public office shall take place under selective procedures aimed at ascertaining the required professionalism and complying with the following principles: ... adoption of appropriate objective, transparent mechanisms such as to verify possession of the aptitudes and professional qualifications for the posts to be filled".

Teachers belonging to the category "Temporary teachers in category III on "Establishment" aptitude lists" are those who can obtain teaching posts through their inclusion in the ministerial aptitude lists which, as they are an "appropriate objective, transparent mechanism" , can be seen to constitute an entirely valid means of recruitment of temporary teachers for Italian state schools of all types and levels.

The "Circle" and "Establishment" aptitude lists, apart from constituting to all effects a competitive recruitment practice based on diplomas alone,<sup>2</sup> as we know it today, were the result of the reform brought about by Article 4 of Law No. 124 of 3 May 1999 and of Ministerial Decree No. 201 of 25 May 2000, but were suspended and re-introduced as from 2001 every two/three years.

It is significant and informative that the decrees, of which brief extracts - relating to category III of the "Establishment" aptitude lists - are reproduced below, stipulate that access to these aptitude lists/categories is expressly reserved for those with valid diplomas for teaching and for inclusion on the roll.

Article 5 "Circle and Establishment aptitude lists" of **Ministerial Decree No. 201 of 25 May 2000**, regulating the methods of assignment of replacements for teaching and educational staff in accordance with Article 4 of Law No. 124 of 3 May 1999, reads:

"1. The school head, for the purpose of assigning replacements under Article 7, shall draw up, on the basis of the applications made under paragraph 6, appropriate aptitude lists concerning the subjects taught in the school, according to the criteria laid down in paragraph 3 ...

Third category: includes applicants possessing valid diplomas for the requested teaching posts."

Academic years 2001/2002, 2002/2003, 2003/2004 – **Ministerial Decree No. 103 of 4 June 2001**:

Article 2 – Diplomas giving access to the categories of the "Circle" and "Establishment" aptitude lists: 1. In accordance with Article 5, paragraph 3 of the regulations the following shall be qualified for inclusion in the categories of the "Circle" and "Establishment" aptitude lists specified below:

Third category: applicants possessing valid diplomas for the requested teaching posts. The diplomas giving access to the requested teaching posts, which are those laid down by the rules in force for access to the corresponding posts of the roll, shall be as follows: ..."

Academic years 2004/2005, 2005/2006, 2006/2007 – **Ministerial Decree No. 64 of 28 July 2004**:

Article 2 – Diplomas giving access to the categories of the "Circle" and "Establishment" aptitude lists: In accordance with Article 5, paragraph 3 of the regulations the following shall be qualified for inclusion in the categories of the "circle" and "Establishment" aptitude lists specified below:

Third category: applicants possessing valid diplomas for the requested teaching posts. The diplomas giving access to the requested teaching posts, which are those laid down by the rules in force for access to the corresponding posts of the roll, shall be as follows: ..."

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<sup>2</sup> It can be noted that the decrees periodically suspending and introducing these aptitude lists clarify and reaffirm this concept.

Academic years 2007/2008, 2008/2009 – **Ministerial Decree of 21 June 2007:**

Article 2 – Diplomas giving access to the categories of the "Circle" and "Establishment" aptitude lists: 1. In accordance with Article 5, paragraph 3 of the regulations the following shall be qualified for inclusion in the categories of the "Circle" and "Establishment" aptitude lists specified below:

Third category: applicants possessing valid diplomas for the requested teaching posts. The diplomas giving access to the requested teaching posts, which are those laid down by the rules in force for access to the corresponding posts of the roll, shall be as follows: ..."

Academic years 2009/2010, 2010/2011 – **Ministerial Decree No. 56 of 28 May 2009:**

Article 2 – Diplomas giving access to the categories of the "Circle" and "Establishment" aptitude lists: 1. In accordance with Article 5, paragraph 3 of the regulations the following shall be qualified for inclusion in the categories of the "Circle" and "Establishment" aptitude lists specified below:

Third category: applicants possessing valid diplomas for the requested teaching posts. The diplomas giving access to the requested teaching posts, which are those laid down by the rules in force for access to the corresponding posts of the roll, shall be as follows: ..."

Academic years 2011/2012, 2012/2013, 2013/2014 – **Ministerial Decree No. 62 of 13 July 2011:**

Article 2 – Diplomas giving access to the categories of the "Circle" and "Establishment" aptitude lists: 1. In accordance with Article 5, paragraph 3 of the regulations the following shall be qualified for inclusion in the categories of the "Circle" and "Establishment" aptitude lists specified below:

Third category: applicants possessing valid diplomas for the requested teaching posts. The diplomas giving access to the requested teaching posts, which are those laid down by the rules in force for access to the corresponding posts of the roll, shall be as follows: ..."

The type of contract and the specific services required of the teaching staff, whether hired under fixed-term contracts or contracts of indefinite duration and regardless of the aptitude list from which they are drawn, are strictly identical and make reference to the activities assigned to the teacher job profile, as laid down in the current National Collective Agreement for the Education Sector. The call to serve may vary depending on the aptitude list concerned and may take place by appointment by the superintendent or appointment by the school director. The difference therefore lies not in the assigned tasks but in the aptitude list.

The temporary teachers in Category III of the "Establishment" aptitude lists fail and pass pupils, sign official documents, serve as examiners and may assume managerial or other responsibilities within individual schools in the same way as their colleagues on the roll or originating from other aptitude lists.

It should also be specified that, recently, the EU institutions gave a final decision in which they recognised the validity of certain diplomas giving access to the "Establishment" and "Circle" aptitude lists in category III and allowed Petition No. 0567/2011 submitted by an Italian primary school teacher holding the "Diploma di maturità magistrale" and entitled to be included on the above-mentioned "Circle" and "Establishment" aptitude lists. Both the Italian education ministry and the European Commission arrived at the conclusion not only that the diploma in question constituted a valid teaching

qualification, but also that the competitions based on examinations and diplomas had never had a habilitating function but were simply procedures for recruiting school staff.<sup>3</sup>

## **2.1 Support teachers**

A support teacher is a teacher as provided for in Law 517/77 who is assigned, on a basis of full co-entitlement with other teachers, to the class in which the pupil benefiting from the support activity is included, so as to carry out "forms of integration in favour of pupils with disabilities" and to "take individualised action relating to the needs of given pupils". He or she is always appointed by the Superintendent of Studies for the Province, at the request of schools which anticipate the presence of pupils recognised as "disabled".

Under the new pre-registration system all schools determine on an annual basis the number of pupils in need of support, assess the seriousness of the disability and the needs in each individual case and ask the Superintendent's Office to assign a number of support teachers suited to their requirements.

The support teacher is responsible for co-operating in full with his/her colleagues in the definition and implementation of the educational/pedagogic project for the disabled pupil, while at the same time assuming co-responsibility for the time-table and the overall educational activities undertaken in the class and/or section in which he/she works, and participates in the definition and verification of activities coming within the competence of the interclass and class councils and the teaching staff as a body (Law 104/92, article 13); in addition he/she collaborates with the families and local health authorities (Ministerial Circular No. 184 of 3/7/1991).

The conditions for selecting support teachers are set out in Ministerial Decree No. 331/98 (Article 37 and Article 41), integrated in Law No. 448/98 (Article 26, paragraph 16).

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<sup>3</sup> [European Parliament Notice of 31/01/2014 – PE519.572v02-00 CM\)1017788EN](#)

### **3. Who can be a support teacher?**

The Ministry of Education, Universities and Research clarified in Note 19030 of 21 November 2008 that, under Law 104/92, the Framework Law on the Support, Social Integration and Rights of People with Disabilities, and Ministerial Decree No. 131 of 13 June 2007 (regulating the replacement of teachers) "the use in support functions of teachers lacking the required specialist diplomas is permitted solely in the event of a shortage of specialised teachers, whether or not included on the roll."

Teachers lacking the support specialisation, regardless of the aptitude list from which they are drawn, can therefore by express legal provision aspire to serve as replacement support teachers where there is a shortage of specialised teachers, whether or not they are included on the roll.

Given the very limited number of specialisation courses, that has largely been the case, since in many Italian provinces the shortage of specialised staff has made it necessary for schools to appoint teachers belonging to other competition classes to support posts.

As a result, many temporary teachers in category III of the "Establishment" aptitude lists have made their services available to schools of all types and levels as support teachers. Accordingly, to repeat what has already been said, they have, like the specialised teachers, entered into contracts whereby they have been assigned, on a basis of full co-entitlement with other teachers, to classes including pupils benefiting from support, so as to carry out "forms of integration in favour of pupils with disabilities" and to "take individualised action relating to the needs of given pupils" (Law 517/77).

As support teachers they have therefore played a key role in the integration of pupils with disabilities, as an integral part of the school organisation. These support teachers have not confined themselves to dealing exclusively with the disabled pupils, but have worked with the entire class, positioning themselves as mediators between the disabled pupil and his/her fellow pupils, between the disabled pupil and teachers and between the disabled pupil and the school.

### **4. How did Italian support teachers undergo training and acquire the specialisation in the past?**

The training dispensed to support teachers, like many other categories of teachers, has been the subject of a number of reforms, made necessary by the practices of schools themselves. Initially, specialisation courses lasting two years and dealing with only one kind of impairment (sight, hearing, psychosocial) were set up (Ministerial Decree of 26/06/76). However, after some ten years' experience, these single-purpose courses proved inadequate to meet the needs of generalised integration, since it was not easy to create posts purely to support pupils with impaired sight or hearing, given that as a rule there is one teacher for every four pupils having the same disability.

The Ministerial Decree of 24/04/86 therefore established the programmes of multi-purpose specialisation courses with a greater focus on general methodological and pedagogic themes, so as to permit the specialised teachers to concentrate their action solely in the educational field, while catering for any type of disability from which pupils might suffer.

The Constitutional Court's judgment No. 215/87, which confirmed the opening of the senior schools to pupils with disabilities, led to a further reform of the programmes' content, approved under Ministerial Decree No. 226/95 and organised in accordance with Ministerial Order No. 169/96.

Article 14 of Law 104/92 provided that the specialisation in support teaching would be acquired at university. The programmes set out in Ministerial Decree 226/95 and the rules on the establishment and organisation of such courses were provisionally adopted by the inter-university SSIS (Scuole di Specializzazione all'Insegnamento Secondario – Specialist Schools for Training of Secondary School Teachers) for teachers destined for the middle and senior schools and by the Education Science Faculty of the university concerned for teachers destined for the nursery and primary schools.

The objectives were to "prepare teachers playing a support role in respect of colleagues with a view to identifying methodological and pedagogic-disciplinary obstacles that tend to hamper the education of pupils with disabilities".

### **5. The former situation regarding access to courses delivering the support specialisation by temporary teachers in category III of the "Establishment" aptitude lists**

It should be said forthwith that teachers in possession of the diplomas and qualifications giving access to category III of the "Establishment" aptitude lists were never completely barred from courses delivering the specialisation as support teacher for pupils with disabilities.

Article 8 – "Specialisation diploma" – of Presidential Decree No. 970 of 31 October 1975 entitled "Rules concerning special purpose schools"<sup>4</sup> provided expressly that access to the above-mentioned courses would be open to "holders of the qualifications laid down in Presidential Decree No. 417 of 31 May 1974 for access to posts of the roll", namely to teachers holding diplomas valid for admission to competitions based on diplomas alone or on diplomas and examinations, and therefore to support teachers in category III of the "Establishment" aptitude lists, who have always had access to these competitive procedures.

These provisions remained unchanged with the successive reforms of the training system for such staff. Under Article 4 of a Ministerial Decree of 26 May 1998 published in the Official Gazette No. 15 of 3 July 1998, entitled "General criteria governing the organisation of degree courses in primary education science by the universities and by the Specialist Schools for Training of Secondary School Teachers", the following constituted diplomas valid for admission to such courses: "a) degrees giving access to one of the habilitation classes mentioned in paragraph 4 ...; b) for the corresponding classes the diplomas awarded by the Academies of Fine Arts and the Higher Institutes for the Arts Industries, the Conservatories and equivalent music institutes, the ISEF (Higher Physical Education Institute); c) university diplomas awarded in a European Union member State that give access, in that country, to teacher training courses for the corresponding subject matter."<sup>5</sup>

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<sup>4</sup> Presidential Decree No. 970 of 31 October 1975 "Rules concerning special purpose schools", Article 8 "Specialisation diploma": "The managerial and teaching staff assigned to the establishments, sections or classes referred to in Article 1 of this decree shall be in possession of the appropriate specialisation diploma ... Admission to the above-mentioned courses shall be open to holders of the qualifications laid down in Presidential Decree No. 417 of 31 May 1974 for access to posts of the roll concerned by the specialisation."

<sup>5</sup> The subsequent paragraph 2 of the Ministerial Decree provided inter alia "2. The final examination for the award of the specialisation diploma shall have the value of a State examination and shall qualify the holder to teach the corresponding classes in the subject areas covered by the degrees held by those acquiring the specialisation. The specialisation diploma awarded shall constitute a diploma valid for admission to competitions for teaching posts in secondary schools."

It can be seen that the diplomas referred to in a) and b) are fully consistent with the qualifications giving access to category III of the "Establishment" aptitude lists.

Many universities and bodies running the above-mentioned courses unlawfully restricted access to "those possessing the habilitation alone", as construed by the Ministry of Education, Universities and Research, but many exceptions were made<sup>6</sup> with the result that the ministry was obliged to adopt Decree No. 21 of 9 February 2005 to "remedy the situation" of the many temporary teachers in category III who had obtained the support specialisation and had acquired many years' seniority but who maintained that they had been deprived of the teaching habilitation and could therefore not obtain a permanent post. The administration accordingly arranged for these persons to have access to "reserved habilitation procedures", which also entitled them, if they succeeded, to be included on the aptitude lists for permanent posts, giving them the possibility of at last obtaining their permanentisation.

Other courses were also organised after that date, including quite recently. As an example mention can be made of the courses delivering the specialisation as support teachers for pupils with disabilities run by the Walden Institute,<sup>7</sup> closed for good only in 2011, which were, by express announcement, open to anyone in possession of a diploma valid for admission to the teaching aptitude lists,<sup>8</sup> and therefore also to teachers in category III of the "Establishment" aptitude lists, who were indeed qualified for inclusion on the above-mentioned aptitude lists. Many of these teachers thus quite recently acquired the support specialisation at either infant/primary or secondary level.

## **6. The new scenario resulting from Decree No. 249 of 10 September 2010**

With the publication of this decree, setting out the regulations governing "the definition of requirements and initial training conditions for teachers in nursery schools, primary schools and lower and upper secondary schools, within the meaning of Article 2, paragraph 416 of Law No. 244 of 24 December 2007", and of the decree of 30 September 2011 and Ministerial Decree No. 706 of 9 August 2013, it became established that access to courses delivering the specialisation in educational support

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<sup>6</sup> For example, in the case of the courses delivering the support specialisation run in the 1990s by the Turin Higher Institute of Social Psychology, School of Orthophonetics

<sup>7</sup> Managed by the company Ce.p.i.down – Centro Prevenzione Istruzione Down – a co-operative with limited responsibility having its registered office at Via Gobetti 3, Belpasso, established in accordance with Administrative Decree No. 1502 of 25/09/1995; the former Presidential Decree No. 970 of 31/10/1975; Ministerial Decree No. 226 of 27/06/1998; judgment No. 91/01 given on 8.01.2001 by the Sicily Regional Administrative Court, detached division for Catania (Div. III); Decision No. 732/2005 of the Sicilian Administrative Courts Council; Order No. 981/08 of 12/07/2008 of the Sicily Regional Administrative Court, detached division for Catania; Prefectural Decree No. 20080039509/GAB of 1 August 2008 and Article 2 of Municipal By-Law No. 1019/XII of 16/10/2008, as well as Order No. 1502 of 25 September 1995 of the Department for Cultural and Environmental Goods and Public Education, Directorate General of the Region of Sicily, Article 7, paragraph 2 of which provided "Enrolment on the courses can be requested by persons who, by no later than the deadline for submission of applications, have obtained the diplomas giving access to teaching posts in nursery, primary, lower and upper secondary and arts schools."

<sup>8</sup> Article 5: "Admission requirements: applicants must be in possession of the specific diploma required for inclusion on the aptitude lists for teaching within the school for which they intend to acquire the specialisation, in addition to the qualifications required under the legislation in force for admission to public recruitment competitions. They must verify that they have the required qualifications at the time of submission of their application to participate in the competition, so as to avoid being excluded."

activities for pupils with disabilities would be numerically restricted and confined to duly habilitated teachers.

No reserved places are set aside for temporary teachers who have lawfully worked in this area, even for a decade, and no provision is made for evaluation of past service. Teachers with many years' seniority as support teachers are placed on an identical footing with those that have never taught in a support capacity.

With the subsequent publication of the university notices concerning preparation for the tests giving access to the new courses established under the previously cited legislation, provision was also made for the exclusion from these tests of Italian temporary teachers in category III of the "Establishment" aptitude lists, including those in possession of a habilitating teaching diploma awarded before 2002.

Therefore, in a clearly unlawful way - as there is no reason why, after having been used in support posts for years and thus enabled to acquire specific competencies "in the field", they cannot seek to formalise their professional ability - they are excluded from the courses that the ministry has introduced with a view to delivering the support qualification on the pretext that they are considered not to have the habilitation.

To allow a better understanding of the consequences of these provisions, reference is made here, by way of example, to the situation of Francesca Bertolini, an Italian temporary teacher in category III of the "Establishment" aptitude lists, who has many years' experience of teaching in state schools, a good part of which she spent working in a support capacity.

### **7. The law's consequences for temporary teachers in category III of the "Establishment" aptitude lists**

The unlawfulness of the provisions under consideration, which irremediably preclude admission to the specialisation courses, is immediately and obviously evident from the present example.

As can be seen from the following table summarising her successive service records, Ms Bertolini has worked in a support capacity for approximately seven years, during which time her competence and professionalism were consistently acknowledged by the pupils, parents and, above all, the very schools where she taught, and on more than one occasion she was requested to continue performing her teaching duties.

Academic year	From	To	School	Subject taught
2012/2013	15/09/2013	30/06/2014	Fiorenzuola Comprehensive School (vacant post)	Support
2011/2012	23/11/2011	08/03/2012	Bettola Comprehensive School (replacement)	Music for middle students (A032)
2011/2012	19/10/2011	22/11/2011	Podenzano Comprehensive School (replacement until arrival of incumbent)	Support
2010/2011	03/06/2011	12/06/2011	Rottofreno Comprehensive School "M.K. Ghandi" (replacement)	Support
2010/2011	04/04/2011	02/06/2011	Rottofreno Comprehensive School "M.K. Ghandi" (replacement)	Support
2010/2011	03/11/2010	03/04/2011	Rottofreno Comprehensive School "M.K. Ghandi" (replacement)	Support
2008/2009	15/09/2008	30/06/2009	Castell'Arquato Comprehensive School (vacant post)	Support
2007/2008	29/11/2007	30/06/2008	Castell'Arquato Comprehensive School (vacant post)	Support
2007/2008	13/09/2007	28/11/2007	Faustini Frank Comprehensive School (vacant post until arrival of incumbent)	Support
2006/2007	12/10/2006	30/06/2007	Lugagnano Val d'Arda Comprehensive School (vacant post)	Support
2006/2007	01/10/2006	11/10/2006	Ponte dell'Olio Comprehensive School (replacement until arrival of incumbent)	Support
2006/2007	25/09/2006	30/09/2006	Ponte dell'Olio Comprehensive School (replacement )	Support
2005/2006	29/11/2005	30/06/2006	Bettola Comprehensive School (vacant post)	Music for middle students (A032)
2005/2006	01/10/2005	28/11/2005	Bettola Comprehensive School (vacant post until arrival of incumbent)	Music for middle students (A032)
2005/2006	14/10/2005	12/12/2005	Fiorenzuola d'Arda Comprehensive School (replacement)	Support
2005/2006	13/12/2005	23/12/2005	Fiorenzuola d'Arda Comprehensive School (replacement)	Support
2005/2006	24/12/2005	26/01/2006	Fiorenzuola d'Arda Comprehensive School (replacement)	Support

2005/2006	27/01/2005	08/04/2006	Fiorenzuola d'Arda Comprehensive School (replacement)	Support
2005/2006	09/04/2006	10/06/2006	Fiorenzuola d'Arda Comprehensive School (replacement)	Support
2005/2006	02/06/2006	12/06/2006	Fiorenzuola d'Arda Comprehensive School (replacement)	Support
2005/2006	09/02/2005	21/02/2005	Carpaneto Comprehensive School (replacement)	Support
2004/2005	22/02/2005	26/02/2005	Carpaneto Comprehensive School (replacement)	Support
2005/2005	27/02/2005	15/03/2005	Carpaneto Comprehensive School (replacement)	Support
2004/2005	31/03/2005	14/04/2005	Carpaneto Comprehensive School (replacement)	Support
2004/2005	15/04/2005	26/04/2005	Carpaneto Comprehensive School (replacement)	Support
2004/2005	27/04/2005	02/05/2005	Carpaneto Comprehensive School (replacement)	Support
2004/2005	03/05/2005	17/05/2005	Carpaneto Comprehensive School (replacement)	Support
2004/2005	18/05/2005	19/05/2005	Carpaneto Comprehensive School (replacement)	Support
2004/2005	20/05/2005	03/06/2005	Carpaneto Comprehensive School (replacement)	Support
2004/2005	04/06/2005	06/06/2005	Carpaneto Comprehensive School (replacement)	Support

Moreover, her lack of the sole diplomas erroneously considered habilitating by the administration is certainly not her fault, as, according to Ministerial Decree 249/2010, she would have had to possess a right of direct access to the TFA university course in order to obtain the habilitation. However, no such course was announced for music, the competition class for which she obtained her inclusion on the aptitude list and hence her recruitment within the teaching profession.

Despite her eight years' experience of teaching in state schools, including seven in a support capacity, she is now denied the right to benefit from application of Directive 2005/26/EC of the European Parliament and of the Council, which in Article 3, paragraph 3 equates three years' professional experience with evidence of formal qualifications, or the provisions of Decision No. 1719/2006/EC of the European Parliament and of the Council, dated 15 November 2006, which in any case require the member States to adopt such measures as are necessary to foster the recognition and mutual validation of formal and non-formal learning, or work experience attested by the issuance of documents or certificates, and she is even prevented from sitting the university tests for enrolment in the support courses.

She is therefore destined, with time, to be overtaken on the aptitude list by persons who have been able to enrol in these courses, even if they have no practical teaching experience or experience in her specific subject matter, and is therefore in fact condemned ultimately to lose her job, or at best to suffer job insecurity throughout her working life.

These provisions are accordingly unlawful and violate national law, EU law, contractual law and the provisions of the European Social Charter on the grounds set out below.

## GROUNDS

### THE RIGHT TO TRAINING IN ACCORDANCE WITH THE CONTRACTUAL SOURCES OF EUROPEAN UNION AND NATIONAL LAW

It should first be said that training is a right for workers and an obligation for the administration and employers, who have recruited them. This right/obligation is expressly established not only in Article 35 of the Constitution of the Italian Republic, which provides "The Republic protects labour in all its forms. It provides for the training and professional enhancement of workers", but also in EU and national law, national employment agreements and even certain international treaties signed by Italy.

Article 1 of the Single Act on the Civil Service "recognises expressly that public employment must be organised so as to 'realise' the best possible use of human resources in the public administration, providing for the training and professional development of employees" and Article 7 reasserts this notion, stating "public administrations provide for training and further training of staff".

A reading of the contractual sources, in particular the National Collective Agreement for the Education Sector and the Supplementary National Collective Agreement on Training in the Education Sector, indeed shows that the right to training, including further training, "constitutes a fundamental strategic means of ensuring the professional development of staff" ... "Training therefore constitutes a **right** for staff with a contract of indefinite duration or a **fixed-term contract** and a duty for the administration, since it is essential to the full realisation and development of all professional abilities."

The Education Services Charter adopted by a Decree of the President of the Council of Ministers of 7 June 1995 confirms this notion, stating "Training and further training are a task for all school staff and a duty for the administration, which ensures the organisation of regular training activities."

EU law, apart from underlining and recognising the importance of the right to training, requires the member States to "improve initial and continuing vocational training in order to facilitate vocational integration and reintegration into the labour market."<sup>9</sup>

Furthermore, under Directive 1999/70/EC "As far as possible, employers should facilitate access by fixed-term workers to appropriate training opportunities to enhance their skills, career development and occupational mobility."

The Charter of Fundamental Rights of the European Union, approved by the European Parliament on 14 November 2000, proclaims "Everyone has the right to education and to have access to vocational and continuing training."

The Community Charter of the Fundamental Social Rights of Workers provides "Every worker of the European Community must be able to have access to vocational training and to receive such training throughout his working life. In the conditions governing access to such training there may be no discrimination on grounds of nationality. The competent public authorities, undertakings or the two sides of industry, each within their own sphere of competence, should set up continuing and permanent

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<sup>9</sup> Article 150 of The Treaty establishing the European Community (TEC)

training systems enabling every person to undergo retraining, more especially through leave for training purposes, to improve his skills or to acquire new skills, ...".

Article 166 of the Treaty on the Functioning of the European Union provides "The Union shall implement a vocational training policy [and] Union action shall aim to ... facilitate access to vocational training and encourage mobility of instructors and trainees and particularly young people."

Council Decision 63/266/EEC laying down general principles for implementing a common vocational training policy provides "... every person should, during the different stages of his working life, be able to receive adequate basic and advanced training, and any necessary vocational retraining;" "... the general principles for implementing a common vocational training policy should apply to all vocational training of young persons and adults who might be or already are employed in posts up to supervisory level; and whereas special importance should be attached to the basic and advanced training of teachers and instructors".

The same decision states "The common vocational training policy shall have the following fundamental objectives:

(a) To bring about conditions that will guarantee adequate vocational training for all;

...

(f) To promote basic and advanced vocational training and, where appropriate, retraining, suitable for the various stages of working life;

(g) To offer to every person, according to his inclinations and capabilities, working knowledge and experience, and by means of permanent facilities for vocational advancement, the opportunity to gain promotion or to receive instruction for a new and higher level of activity".

It is worth pointing out that all the above provisions are in striking contrast with the impugned legislation, which substantially violates the right to training, preventing teaching staff already employed by the administration from having access to support specialisation courses.

## VIOLATION OF PART I, PARAGRAPH 10, AND PART II, ARTICLE 10, OF THE EUROPEAN SOCIAL CHARTER

There is also a violation of Part I, paragraph 10, of the European Social Charter, which provides "Everyone has the right to appropriate facilities for vocational training" and of Part II, Article 10, "The right to vocational training", under which: "With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake: ...

2. to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments;
3. to provide or promote, as necessary:
  - a. adequate and readily available training facilities for adult workers; ...
5. to encourage the full utilisation of the facilities provided by appropriate measures such as:
  - a. reducing or abolishing any fees or charges;
  - b. granting financial assistance in appropriate cases;
  - c. including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;
  - d. ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally."

It should be reiterated that for Italian temporary teachers in category III of the "Establishment" aptitude lists, who are already employed by the administration and who may have been working in a support capacity for years, any possibility of accessing courses delivering the specialisation in educational support for pupils with disabilities is precluded.

Given that the administration has always been required by the constitution and by law to recruit only qualified staff and that the Italian temporary teachers in category III of the "Establishment" aptitude lists are drawn from valid ministerial merit lists, inasmuch as they are deemed by law to hold valid teaching diplomas for inclusion on the roll and to be suitable for teaching posts, it is not only irrational to prevent such staff from having access to the above-mentioned specialisation courses on the ground that they are arbitrarily assumed to be "without habilitation", but, in any case, if the intention were to buttress this hypothesis, such staff should with even greater reason be fully entitled to access such courses which permit them to attain the level of professionalism and ability required for the performance of the duties to which they are temporarily and repeatedly assigned by the ministry.

Permitting staff with several years' experience as support teachers to access the training courses delivering the support specialisation would benefit both the teachers, who would no longer need to fear being overtaken in the aptitude lists and consequently ousted from their jobs, and the students, who would derive advantages from being monitored by even better prepared staff.

In any case, apart from the unlawful exclusion of teachers belonging to category III of the "Establishment" aptitude lists, the very adoption of the decree infringes the more general rights of teachers of all kinds and levels, including those considered "habilitated", as construed by the Ministry of Education, Universities and Research.

It should indeed be pointed out that not even teachers deemed to have the above-mentioned "habilitation", possibly even with many years' teaching experience including in a support capacity, can directly access these courses, since provision is made for a threefold entrance test and the number of places is restricted.

Accordingly, like their colleagues in category III of the "Establishment" aptitude lists with several years' experience of support teaching, "habilitated temporary teachers", in the sense intended by the ministry, would, if they failed to pass the entrance tests for the specialisation courses, also be at risk of being supplanted in the aptitude lists and therefore of losing their jobs.

Another breach results from the manner in which such courses are organised. According to Ministerial Decree 249/2010 and the universities' announcements, the cost of the courses is borne entirely by those enrolled in them, and no exemption or granting of "financial assistance in appropriate cases" is foreseen for persons already employed by the administration.

The above-mentioned university courses, which stipulate an obligatory attendance requirement of at least 80% of lessons and the acquisition of 60 university credits, equivalent to a commitment of 1500 hours' work, take not the slightest account of the situation of working students, necessitate preparation -preferably outside working hours, and are in any case difficult to attend for those employed on a full-time basis by the public administration. It should be borne in mind that, in the majority of cases, the temporary staff members who attend these courses are obliged to travel hundreds of kilometres, since the courses are dispensed only in certain universities dispersed all over Italy. Most of these courses, which last four to six months, require an exclusive commitment and daily studies of between 5 and 8 hours.<sup>10</sup> It is clear from the above that any working teacher could make such an effort only with difficulty and at the cost of huge sacrifices.

For all these reasons the applicant trade union requests the European Committee of Social Rights to find that Italy is in breach of Article 1, paragraph 10, and Article 10 of the European Social Charter.

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<sup>10</sup> According to Ministerial Order 249/2010 the courses delivering the support teacher specialisation are to require the acquisition of 60 university training credits. According to the legislation in force (Ministerial Decree 509/99) a university credit is equivalent to a workload of 25 hours. It can be inferred from this that 60 university credits represent a workload of 1500 hours, which, distributed over an average duration of four to six months, gives a daily workload of between 5 and 8 1/2 hours.

## VIOLATION OF PART V, ARTICLE E – NON-DISCRIMINATION – IN CONJUNCTION WITH ARTICLE 10

It is interesting to see how the Ministry of Education, Universities and Research has, on one hand, completely disregarded its duties towards the tens of thousands of temporary teachers in category III of the "Establishment" aptitude lists employed each year, condemning them to permanent loss of their jobs or to job insecurity, but has on the other hand shown such sensitivity and awareness in respect of staff employed in identical functions and duties but in possession of a contract of indefinite duration. The administration itself has admitted that this situation arose due to the obligations ensuing from the contracts.

However, in actual fact, the Collective Agreement for the Education Sector not only is the same - and should therefore be applied in the same way - for all teaching staff, regardless of the aptitude list from which they are drawn and the duration of their contract, but also makes absolutely no distinctions regarding enjoyment of the right to training. In other words, to reiterate what has already been said, all teachers, regardless of the aptitude list from which they are recruited and the duration of their contract, acquire at the time of their recruitment absolutely the same duties, obligations and rights.

With the issuance of the Director General's Order No.7 of 16 April 2012, the administration refuted this in an entirely arbitrary manner, allowing teachers on the roll, that is those with contracts of indefinite duration, who were supernumerary following the cuts made under the education system reform provided for in Law No. 133 of 6 August 2008, to access courses conferring the specialisation as support teacher for pupils with disabilities provided for in Article 13 of Decree 249/2010 free of charge<sup>11</sup> and without any kind of entrance test.

The same administration, aware of the obligations and duties of serving teaching staff, also expressly confirmed that such courses, intended solely for staff on the roll who were deemed supernumerary, should take account of the needs of serving staff, obliging the colleges and universities "to establish educational and training activities using innovative methodologies and e-learning techniques" and also providing in the tables appended to the decree that, apart from the internship activities, 50% of the classes would take the form of e-learning.

Article 2 of the decree in fact provides: "The courses provided for herein shall be established in accordance with Article 4 of the Agreement<sup>12</sup> between the Ministry of Education, Universities and Research and the National Standing Conference of Deans of Education Science of 5 July 2011, hereinafter designated the Agreement. The courses shall be organised by the networks established under the convention of 27 December 2011 between the Directorate General for School Staff, the Directorate General for Studies, Integration, Participation and Communication, the universities of Florence, Bari, Salerno, Padua, Milan Catholic University, and Alfano I High School, Salerno, hereinafter designated the Convention, taking into account the needs of serving staff."

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<sup>11</sup> In fact Article 1, paragraph 3 of the above-mentioned decree provides "The cost of the courses shall be met by the Ministry of Education, Universities and Research".

<sup>12</sup> Article 4 of which reads: "The networks of faculties undertake to provide teaching and training using innovative methodologies and e-learning techniques, recruiting qualified lecturers."

It is also interesting to note that, in Article 1, paragraph 2 of the same decree, the administration clarified that these courses were being run "in accordance with Article 19, paragraph 11 of Law No. 211 of 15 July", providing "The organisation of support posts shall be determined in accordance with paragraphs 413 and 414 of Article 2 of Law No. 244 of 24 December 2007 ...: the school shall take the necessary educational and integration measures for individual pupils with disabilities, using both support teachers and class teachers. To this end, with regard to the resources allocated for the training of teaching staff, priority shall be given to training all teaching staff in the means of integrating pupils with disabilities... ", and "in accordance with Article 63 of the National Collective Agreement for the Education Sector of 29 November 2007", which should not only be applicable to all teaching staff irrespective of the duration of their contracts or the aptitude list from which they were recruited, as already mentioned, but also provides expressly:

"Article 63 – IN-SERVICE TRAINING.

1. Training constitutes a fundamental strategic means of ensuring the professional development of staff, the necessary support for change objectives, and an effective human resources development policy. The administration shall be required to put in place means, resources and opportunities to guarantee in-service training. Training shall also be carried out through measures giving access to university courses aimed at professional enhancement and occupational mobility via short courses designed so that their curriculum is consistent with the subject matter of the new competition classes and with the profiles considered necessary under the legislation in force ... .

2. To guarantee the training activities referred to herein the administration shall utilise all the available resources and the resources provided for this purpose under specific national or EU laws ...".

The subsequent Article 64 provides:

#### "ENJOYMENT OF THE RIGHT TO TRAINING

1. Participation in training and further training constitutes a right for staff inasmuch as it contributes to the full realisation and the development of their professional skills.
2. Training initiatives shall ordinarily take place outside teaching hours.
3. Staff attending training courses organised by the central or local administration or by school establishments shall be considered to all effects as being in active service. When courses are run off-site, participants shall be reimbursed for their travel expenses."

With the issuance of Circular AOODGPER No. 13391 of 11 December 2013, the Ministry of Education, Universities and Research further clarified the situation: "the training courses delivering the specialisation as support teacher referred to in the Human Resources Directorate General's Note No. 11235 of 20 October 2013, issued pursuant to the Director General's Order No. 7 of 16 April 2012, intended for teachers on the roll belonging to redundant competition classes, constitute a mandatory training activity."

The discrimination made among teaching staff according to whether or not they are included on the roll breaches not only the contractual provisions, which as already mentioned draw no distinctions based on the type of contract or the aptitude list from which staff were recruited, but is also clearly at variance with Directive 1999/70/EC, of which Italy is a signatory and which provides under Clause 4: "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 relation unless different treatment is justified on objective grounds."

Paragraph 2 of Clause 6 goes on to provide "As far as possible, employers should facilitate access by fixed-term workers to appropriate training opportunities to enhance their skills, career development and occupational mobility."

It is therefore abundantly clear that national law, EU law and the agreement rule out discrimination between workers recruited under fixed-term contracts and those on contracts of indefinite duration and require that all teaching staff employed by the ministry must enjoy the same rights.

It is also clearly established that, under EU law, employers, that is the ministry in the case under consideration here, are under an obligation to provide adequate means of training.

To have a full idea of the complex overall situation regarding teaching staff, it should be noted that, contrary to what is alleged, not all teachers on the roll can be considered "habilitated", as construed by the ministry. The majority of the teachers concerned by the measures laid down in the Director General's Order No. 7 of 16 April 2012 can indeed be seen to fall within the competition classes for ITPs (practical technical teachers). Such staff, who in the 1990s rose from the ranks of the administrative technical assistants to become teachers per se, have direct access to the aptitude lists for permanent

posts, valid for inclusion on the teaching staff roll, without any prior "recognition of qualifications". Bearing in mind that no competition or ordinary habilitating course for such staff has ever been advertised in the meantime,<sup>13</sup> one can but conclude that the bulk of those concerned by these career paths are in possession of diplomas and qualifications of entirely identical value to those of the temporary teachers in Category III of the "Establishment" aptitude lists, who perhaps are at even greater risk of definitively losing their jobs.<sup>14</sup>

It should be underlined that the risk does not concern solely temporary teachers in category III who work in a support capacity, but also those included on other aptitude lists working in the same competition classes as teachers included on the roll who are deemed supernumerary. Although, as the administration itself recognises, such staff may lose their jobs as a result of the staff cuts brought about by the education system reform, temporary teachers are at even greater risk of suffering this fate, although they may have worked in schools for many years under repeated annual recruitment contracts, in the same way as their colleagues on the roll.

According to Part V, Article E "Non-discrimination", of the European Social Charter "The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status."

The undersigned is of the opinion that the discrimination suffered by Italian temporary teachers in category III of the "Establishment" aptitude lists, as compared with teachers on the roll who are deemed supernumerary, and not just with regard to the right to vocational training, is unacceptable and entirely unjustified. Not only should the reasons that led the administration to establish such courses be equally valid for both these categories, but also and above all the originating legislation and the contractual clauses, including the Director General's Order No. 7 of 16 April 2012, should be of equal value in respect of both temporary staff and staff included on the roll.

In addition, through Article 19, paragraph 11 of Law No. 211 of 15 July, providing "The organisation of support posts shall be determined in accordance with paragraphs 413 and 414 of Article 2 of Law No. 244 of 24 December 2007 ...: the school shall take the necessary educational and integration measures for individual pupils with disabilities, using both support teachers and class teachers. To this end, with regard to the resources allocated for the training of teaching staff, priority shall be given to training all teaching staff in the means of integrating pupils with disabilities...", the Italian government also confirmed the need to deliver and provide to teaching staff appropriate training on the means of integrating pupils with disabilities.

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<sup>13</sup> At the same time, a few courses reserved for staff with several years' teaching experience were advertised in 1999 and in 2005, but offering only a limited number of places.

<sup>14</sup> In this connection, it should be pointed out that, under the provisions of the National Collective Agreement on Use of Resources teaching staff included on the roll who are deemed supernumerary, in any case, continue to have first priority for available titular and replacement posts concerning any competition class/teaching activity for which they are considered to be in possession of valid teaching diplomas, including the diplomas and qualifications giving access to category III of the "Establishment" aptitude lists, whereas teachers included in this category but having several years' experience are relegated to a non-prioritised list.

It is therefore hard to understand why this training is granted solely to staff on the roll deemed supernumerary, who may never have worked in a support capacity, and is at the same time denied to those who have worked in such a capacity for a decade and are still doing so today, having moreover carried out these tasks in a professional manner and without demerit.

For all these reasons, the applicant trade union asks the European Committee of Social Rights to find Italy in breach of Part V, Article E- Non-discrimination, in conjunction with Article 10 of the European Social Charter.

With reference to the admissibility of this complaint:

A. The respondent state:

- This complaint is lodged against Italy.
- Italy ratified the European Social Charter and made it enforceable through Law No. 30 of 9 February 1999 on the ratification and implementation of the Revised European Social Charter, with Appendix, done in Strasbourg on 3 May 1996, accepting 97 of the 98 paragraphs. The only provision not accepted concerns Article 25, which safeguards the right of workers to protection of their claims in the event of the insolvency of their employer.
- Under Law No. 298 of 28 August 1997 Italy ratified the Additional Protocol to the European Social Charter providing for a system of collective complaints, done in Strasbourg on 9 November 1995.

B. The organisation lodging the collective complaint:

- "La Voce dei Giusti" is a democratic, autonomous association, established in 2013, having its national registered office at Via del Santuario della Madonna dei Sette Dolori 256, Pescara.
- The association has as its main objective to defend workers' rights, in particular those of teachers, safeguarding their dignity and their economic and social interests, taking any necessary action to that end, with particular emphasis on temporary teachers in category III of the "Establishment" aptitude lists, and also functions as a trade union. The association also seeks to ensure the protection of human rights, fundamental freedoms and the rule of law, with the aim of safeguarding the interests and rights of workers and of school teachers in particular, especially temporary teachers on the "circle" and "Establishment" aptitude lists in category III.
- In short, the association functions as a trade union, so as to safeguard the interests and rights of school teachers, in particular temporary teachers recruited in category III of the "circle" and "Establishment" aptitude lists.
- This purpose is expressly recognised in its Statute.
- The above-mentioned trade union organisation is legally established and was registered with the Tax Office in accordance with national law on 3 December 2013.

- The association is accordingly entitled to submit complaints to the European Committee of Social Rights.

C. The trade union association is entitled to submit collective complaints to the European Committee of Social Rights.

- This entitlement ensues from Article 1 of the Additional Protocol to the European Social Charter providing for a system of collective complaints, which provides that this right shall be granted, inter alia, to "representative national organisations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint".

- In view of this entitlement, the association "La Voce dei Giusti" hereby submits this collective complaint against Italy before the European Committee of Social Rights through its President and Legal Representative.

- In accordance with Articles 11 and 12 of the association's Statute its legal representatives are the President and the Vice-President .

The current President of the trade union association "La Voce dei Giusti" is Francesca Bertolini.

Appendices:

- Copy of the association's Statute (Appendix A)

- Copy of the deed of registration with the Tax Office (Appendix B)

Parma, 10 April 2014

Francesca Bertolini

President of the trade union association "La Voce dei Giusti"

(signature)