EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

24 September 2021

Case Document No. 4

***Associazione Professionale e Sindacale* (ANIEF) v. Italy**
Complaint No. 159/2018

SUBMISSIONS BY THE GOVERNMENT ON THE MERITS

Registered at the Secretariat on 30 July 2021

Italian Republic
Ministry for Foreign Affairs
and International Cooperation
Government Agent's Office

COMPLAINT NO. 159/2018

ASSOCIAZIONE PROFESSIONALE E SINDACALE - ANIEF
v. ITALY

OBSERVATIONS OF THE ITALIAN GOVERNMENT ON THE MERITS

ROME, 8 SEPTEMBER 2018

Italian Republic
Ministry for Foreign Affairs
and International Cooperation
Government Agent's Office

1. The Italian Government (hereafter referred to as the "Government") refers to the letter of 12 July 2018 from the European Committee of Social Rights (hereafter referred to as "the Committee") giving notice that it had declared admissible the collective complaint lodged against Italy by Associazione professionale e sindacale - ANIEF concerning a violation by the Italian State of Articles 1, 4, 5, 6, 24 and E of the European Social Charter.

2. In response to that letter, the Government hereby submits its initial observations on the merits of the claim, noting that they have been drawn up in Italian as translation has not been possible within the time limit set by the Committee. The Government reserves the right, if necessary, to send a French translation by no later than 30 September 2018.

3. The Government thanks the Committee.

Sincerely,

Office of the Government Agent
[signature]

Enclosure: Letter of 29 August 2018
from the Ministry of Education, Universities and Research.

Ministry of Education, Universities and Research
Legislative Office

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Subject: Council of Europe - ECSR - European Committee of Social Rights - Collective Complaint no. 159/2018 (Associazione Professionale e Sindacale - ANIEF v. Italy). Written statement of 14 July 2018. Position on the merits.

In response to the written statement in which this Office asked to submit an opinion concerning the above-mentioned complaint objecting to the alleged lack of protection for precarious workers in schools, in particular with reference to **judgment no. 11/2017 of 20 December 2017 of the Plenary Session of the Council of State** concerning the capacity of a **"vocational school-leaving qualification"** awarded during or before school year 2001/2002 to establish eligibility for inclusion in eligibility rankings to be drawn upon until exhaustion (so-called "ERE"), it is considered appropriate to submit, as a preliminary matter, as follows.

1. Object of the alleged violation of the provisions of the European Social Charter.

As a preliminary matter, it is noted that the State action objected to by the ANIEF, as stated in paragraph 169 of the complaint, consists in judgment no. 11/2017 of the Plenary Session of the Council of State, the highest instance of administrative justice, the six judgments of the Court of Cassation of 7 November 2016, which were followed by dozens of judgments of the Supreme Court and hundreds of judgments of the merits courts, as well as all national provisions (Article 4(14-bis) of Law no. 124/1999; Article 10(4-bis) of Legislative Decree no. 368/2001; Article 36(5) and (5-ter) of Legislative Decree no. 165/2001 and Article 29(2)(c) of Legislative Decree n. 81/2015), which purportedly precluded the "*recognition of the right to employment stability to the holders of vocational school-leaving qualifications pursuant to Articles 1 and 5 of Legislative Decree no. 368/2001*".

However, a variety of judgments of the civil and administrative courts, as well as the highest judicial bodies of last resort, which have correctly interpreted the applicable law, have ruled out any violation of the provisions of the European Social Charter.

2. The provisions of the European Social Charter that have supposedly been violated and the preliminary reasons why no such violation has occurred.

Article 1 (The right to work)
Commitments no. 1 and 2

"With a view to ensuring the effective exercise of the right to work, the Parties undertake:

1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;

2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;"

The objectives of full employment, the achievement of the highest and most stable level of employment and the protection of the right to "earn [a] living in an occupation freely entered upon" have not in any way been affected by the court proceedings, which concerned persons who obtained a vocational school-leaving qualification during or before school year 2001/2002.

In fact, as will be made clearly apparent in the legal account set out below, those persons were only provisionally included within the ranking lists to be drawn upon until exhaustion as a result of certain court orders. By virtue of such inclusion, in some cases they obtained - to the detriment of other persons with stronger and more legitimate entitlement - a provisional contract of employment, which was subject to the outcome of the dispute. That dispute was resolved in a manner that was unfavourable to them, guaranteeing the appointment of persons who had previously been excluded.

Accordingly, the employment objectives are outcomes that have nevertheless been pursued, and the only change has concerned the specific individuals with whom employment contracts have been concluded. The right to earn a living in an occupation freely entered upon, which must be protected, has been guaranteed precisely to those persons legitimately present in the ranking lists who had been illegitimately (by virtue of the above-mentioned decision of the Plenary Session) excluded by persons who obtained a vocational school-leaving qualification during or before school year 2001/2002. As is stated in the complaint itself, this last category of people consisted specifically of individuals who, having for years refrained from taking any action with a view to pursuing a career in the schools sector, only sought to be recruited into the Italian education system after the initial court rulings.

Article 4 (The right to a fair remuneration)

Commitments no. 1 and 4

"With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;

4. to recognise the right of all workers to a reasonable period of notice for termination of employment;"

As has been clarified in the previous section, the right - which the State must guarantee - to sufficient remuneration cannot apply exclusively to one single class of person, such as the holders of vocational school-leaving qualifications obtained during or before 2001/2002, but rather to the overall class of teachers, and this class must include those persons who have legitimately secured the right to practise the profession.

As regards the reasonable duration of the notice period, it is pointed out, as a preliminary matter, that this case involves the implementation of court orders in the manner required by the courts. It should also be noted that, in an attempt to resolve the situation, the State has adopted specific legislative measures in order to implement the court orders within a reasonable timescale in such a way as to safeguard the holders of vocational school-leaving qualifications to which the court orders relate for the entire school year.

In this regard, indeed, it is important to note the express provision made concerning the enforcement of court orders relating to holders of vocational school-leaving qualifications by Article 4 of Decree-Law no. 87 of 12 July 2018 ("Urgent provisions on the dignity of workers and undertakings"), converted with amendments into Law no. 96 of 9 August 2018:

"Article 4. Provisions on the holders of vocational school-leaving qualifications and on the filling of vacant and available teaching positions in nursery and primary schools

In order to ensure an orderly start to school year 2018/2019 and to safeguard continuity of teaching in the interest of pupils, any court orders that have the effect of annulling fixed-term or permanent contracts concluded between schools administered by the state and teachers holding a vocational school-leaving qualification obtained during or before school year 2001-2002 shall be enforced, having regard also to the high number of persons affected by such decisions, in accordance with the time limit provided for under Article 14(7) of Decree-Law no. 669 of 31 December 1996, converted with amendments into Law no. 30 of 28 February 1997; consequently, the above-mentioned decisions shall be implemented within 120 days of the date on which notice of the court order was given to the Ministry of Education, Universities and Research.

1-bis. In order to safeguard continuity of teaching in the interest of pupils throughout school year 2018/2019, the Ministry of Education, Universities and Research shall, subject to the limit of vacant and available positions, implement the court orders falling under paragraph 7:

a) by transforming the permanent contracts of employment concluded with teachers falling under paragraph 1 into fixed-term contracts of employment expiring on 30 June 2019;

b) by concluding with the teachers falling under paragraph 1 a fixed-term contract expiring no later than 30 June 2019, instead of the annual supply appointment previously made.

Accordingly, Law no. 96 provides that any judgments that entail the termination of contracts must be enforced within 120 days of notification, whilst also transforming existing contracts concluded with holders of vocational school-leaving qualifications into supply contracts expiring on 30 June 2019 in order to ensure continuity of teaching during school year 2018/2019.

Article 5 (The right to organise)

"With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations".

This objection appears to be unfounded given the absence in the complaint in question of any duly substantiated legal argument or factual information that is capable of establishing that the alleged violation occurred. It will also be recalled that the right to organise is recognised under Article 18 of the Constitution. This right may only be subject to restrictions under the terms of criminal legislation and only insofar as its exercise seeks to achieve goals that are prohibited for individuals under the Constitution. There is no indication with reference to this aspect that the Italian State has limited the right to organise, which is recognised, with reference to the case under examination, to workers in the schools sector.

Therefore, no trade union prerogative or right has been violated by national law, which, on the contrary, recognises the right to join any organisation, including the ANIEF.

Article 6 (The right to bargain collectively)

Commitment no. 4

"With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake... and recognise:

4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into."

As specified in the previous section, no trade union right, no right to organise and no right to strike of holders of vocational school-leaving qualifications or of teachers in general has been violated.

Article 24 (The right to protection in cases of termination of employment)

"With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise: a) the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service; b) the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief. To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body."

For all of the reasons set out above and for the reasons mentioned below in this submission, it is reiterated that no workers have been dismissed.

In view of the above, this submission will now set out all of the factual reasons and legal arguments that establish why no violation of any type has been committed by the Italian State, with reference also to the transition measures governing access to the schools system by holders of vocational school-leaving qualifications obtained during or before 2001/2002 adopted upon the conversion into law of Decree-Law no. 87 of 12 July 2017 ("*Urgent provisions on the dignity of workers and undertakings*") and which, as is clearly apparent, rule out any kind of violation.

3. Development of the legal workforce and of the de facto workforce

Following the entry into force of Law no. 107/2015, the workforce in schools has developed in two different phases.

The first phase involved the definition on a regional basis by a dedicated decree - applicable for a three-year period - of the notional workforce, which is comprised of ordinary teaching positions, support positions and positions responsible for enhancing educational delivery. The 2016 decree defines that quota for school years 2016/17, 2017/18 and 2018/19, subject to the upper limit of the appropriations specified in the Law.

However, in the event that a finding of imperative need is made in accordance with the criteria laid down by Decree of the President of the Republic no. 81/2009, a further quota is established each year by decree of the Minister of Education, Universities and Research [MIUR], acting in concert with the Finance Minister, comprised of positions that do not fall within the notional workforce - and that are not available for permanent staff, for mobility purposes or for the grant of tenured status - for the exclusive purpose of addressing staffing requirements over and above those met by the notional workforce, again according to Law no. 107 (although not including exceptional supply positions, which will be considered below). These workforces are defined based on a forecast of demographic trends in each region in order to consolidate the notional workforce for the three-year period.

These positions are occupied by drawing on ranking lists comprised of staff who wish to conclude fixed-term contracts provided for under applicable legislation, or by appointing permanent staff according to measures applicable exclusively for one single school year. That workforce (the so-called "de facto workforce") is allocated on a regional basis subject to the limit of the annual available resources in the MIUR budget.

As regards in particular the **notional workforce** - excluding the enhancement - its level is established for each region on the basis of forecasts of the school population size obtained from data in the register of school pupils, taking account of past data and also having regard to the needs of pupils who are disabled and those who are not Italian citizens, and considering also the level of demographic density of the provinces of each region, the distribution of the population amongst the municipalities of each provincial district, the geo-morphological characteristics of the relevant territories, as well as the socio-economic circumstances and conditions of social need of the various local areas.

The establishment of workforces is affected *inter alia* by the structure and operational needs of schools, having regard to the number of pupils and their distribution across

classes and school complexes, considering the number of hours necessary in order to guarantee the educational delivery required by law in terms of full-time equivalent positions.

The procedure for ascertaining the notional workforce consists of various phases and involves cooperation between various administrative levels.

When obtaining any data and information that is useful in order to identify changes in the school population within the local areas falling under their competence, the directors in charge of regional schooling offices operate in conjunction with the relevant data collection, monitoring and verification body. They also promote service conferences, dialogue and consultations with responsible officials from local government offices and head teachers in order to carry out examinations and to provide detailed and exhaustive clarifications in the relevant area, as well as to identify and define problem aspects and situations.

Once they have concluded their dialogue and discussions with the regions and the local authorities with the aim of achieving full adherence to the three-year plan for educational delivery and the allocation of resources, after first informing trade union organisations, the directors in charge of regional schooling offices then allocate the workforce amongst the local and provincial areas falling under their competence. Resources are allocated having regard to the specific requirements and to the different types and operating conditions of schools, as well as to the possibility for flexible deployment of resources, in accordance with the provisions of Decree of the President of the Republic no. 275 of 8 March 1999, which lays down provisions on schooling autonomy.

The workforces are defined at individual school level by the responsible director from the regional schooling office on the basis of proposals received from the relevant individual schools, as defined in the respective three-year educational delivery plans, subject to the limit of the regional workforce assigned. To that effect, head teachers submit the requirements set out in the three-year educational delivery plan, supported by appropriate reasons, to the responsible director from the regional schooling office along with any other information considered to be useful. Their proposals are based on the criteria of efficiency and the rational containment of spending, and they must also give an undertaking to the effect that their forecasts reflect actual requirements, based on trends in the school population over recent years, data available from the register of school pupils as well as any other information in their possession.

The starting point when establishing workforces is obtained from classes, which are established in accordance with the parameters and criteria laid down by Decree of the

President of the Republic 81/2009. The initial classes for the cycle in schools and colleges of every type and level and nursery school sections are established with reference to the overall number of pupils registered. Having established the number of the above-mentioned classes and sections, the head teacher then allocates pupils to them in line with the various choices made, based on the school's educational capability, and under all circumstances subject to the limit of the resources allocated.

The **enhancement positions** - ordinary positions - within the notional workforce are those provided for under Article 1(95) of Law no. 107 of 13 July 2015, subject to the limit of the overall quota indicated in table 1 appended to the Law.

Each year, the director in charge of each regional schooling office allocates enhancement positions to each school, taking account of the requests made by schools within the ambit of the three-year educational delivery plan, subject to the limit of the positions established by decree.

The workforce must be allocated to schools without giving rise to any surplus staff at regional level and in accordance with the quotas set each year for the hiring of tenured staff.

There are also sectoral criteria applicable to each type of school for the formation of classes and workforce positions, which criteria are set out in specific reference legislation, taking account of the relevant curricular characteristics (nursery school, primary school, level I secondary school and level II secondary school).

The procedure described above is that applicable to the workforce comprised of ordinary positions, in terms of the notional workforce as well as the *de facto* workforce.

The **support workforce** is subject to different provisions, both according to the decree and under the applicable legislation.

The three-year decree sets the quota for positions within the legal workforce. The directors in charge of regional schooling offices then ensure that the allocation of support teachers within that quota is commensurate with the actual presence of disabled children, taking account of the resources made available by the regions and the local authorities.

Under the terms of Constitutional Court judgment no. 80 of 22 February 2010, with the aim of providing adequate protection to disabled persons, in particular those with a severe disability, once all the options available under applicable legislation have been exhausted the rule laid down by Article 40(1) of Law no. 449 of 27 December 1997 comes

into play. This provides for the possibility of appointing support teachers on an exceptional basis under fixed-term contracts in line with the actual needs established pursuant to Article 1(605)(b) of Law no. 296 of 27 December 2006, taking account of the specific type of disability of the pupil affected. These positions must be allocated on a priority basis to teachers employed on permanent contracts according to annual measures, or if this is not possible, to supply teachers employed on fixed-term contracts until the end of teaching activities.

4. Holders of vocational school-leaving qualifications

Having set out these premises, as far as the circumstances of holders of vocational school-leaving qualifications are concerned, first of all - with a view to resolving the question at issue - it is necessary to clarify the reference legislative framework considered both from the perspective of the so-called "twin-track recruitment channel" as well as that of entitled persons.

The origins of the twin-track channel can be traced back to the 1970s and the first exception from the principle of appointment by competition based on qualifications and examinations, which was provided for by Article 17 of Law no. 477 of 30 July 1973 laying down an "*Authorisation for the Government to issue provisions concerning the legal status of management, inspection, teaching and non-teaching staff in nursery, primary, secondary and artistic schools administered by the State*". According to this Article, "*Teachers employed on permanent contracts in secondary and artistic schools who have previously obtained a qualification valid for the teaching position to which they have been appointed and who in school year 1973-74 hold a teaching post or a position remunerated by the hour shall be granted tenured status with effect from 1 October 1974. They shall maintain the teaching post or position that they currently hold. The effective date of the grant of tenured status for those persons who fulfil the prerequisites laid down in paragraph one, and have been included in ranking lists to be drawn upon until exhaustion under the terms of previous legislative measures, shall be that specified for the ranking list to be drawn upon until exhaustion in which they have been included. The Minister for Public Education shall by decree specify the arrangements and timescales for definitive allocation to a particular school. Non-teaching staff without tenured status employed on permanent contracts in secondary and artistic colleges and schools who have completed at least one year of uninterrupted service on 30 September 1973 that has been performed in an unobjectionable manner shall be appointed with effect from 1 October 1974 to the corresponding workforce position, and shall continue to be allocated to the school in which they work. Measures ordering the appointment of management and teaching staff who are entitled to the grant of tenured status may also be ordered whilst such persons are still registered in the ranking lists in which they have been included*".

Following years of legislative initiatives involving the one-off appointment to tenured positions of persons who had completed particular periods of service, the twin-track channel was formally established by Decree-Law no. 357 of 6 November 1989 laying down provisions on the recruitment of staff to schools, converted with amendments into Law no. 417 of 27 December 1989. Article 2(1) provided that "*appointments to tenured teaching positions in nursery, primary and secondary schools, artistic secondary schools and art colleges, shall be made pursuant to competitions based on qualifications and examinations and by competitions based only on qualifications; 50 percent of the positions for which competitions are held shall be allocated each year to each type of competition*"; Article 1(10) provided that "*the following shall be required in order to establish eligibility for competitions based only on qualifications: a) successful completion of the examinations in a previous competition based on qualifications or examinations or of previous examinations even solely for the purpose of establishing accreditation in relation to the same competition class or the same position; b) teaching work in institutions and schools administered by the state of every type and level, including Italian schools abroad, in positions corresponding to tenured appointments, performed on the basis of the academic qualification required for eligibility for the appointments, as well as for teaching positions relating to competition classes. The work must have been performed for at least three hundred and sixty days, which need not have been continuous, over the previous three-year period, it being understood that service performed in nursery and primary schools on the one hand, and in secondary schools and educational colleges on the other hand, may be combined.*" Both provisions were subsequently incorporated into Legislative Decree no. 297 of 16 April 1994 laying down the "*Consolidated Act of legislative provisions applicable to education in relation to schools of every type and level*" (hereafter the Consolidated Act), respectively as Articles 399 and Article 401, whilst Article 400 regulated recruitment through competitions based on qualifications and examinations.

Article 1(6) of Law no. 124 of 3 March 1999 laying down "*Urgent provisions on school staff*" amended Article 401 of Legislative Decree no. 297 of 16 April 1994 (hereafter the Consolidated Act), providing for the replacement of the previous ranking lists from "*competitions based on qualifications*" with the newly-constituted "*permanent ranking lists*"; this legislation is still in force.

According to Article 401(1), as amended, "*The eligibility rankings for competitions based only on qualifications to recruit teaching staff in nursery, primary and secondary schools, including art high schools and art colleges, shall be transformed into permanent eligibility rankings, which shall be used to make tenured appointments pursuant to Article 399(7).*"

Accordingly, updates and supplements are governed by paragraph 2, which expressly provides that "*The permanent eligibility rankings falling under paragraph 7 shall be regularly supplemented by the inclusion of teachers who have passed the tests set within the most recent regional competition based on qualifications and examinations for the same competition class*

and the same position, and of any teachers who have requested a transfer from the equivalent eligibility ranking of another province. At the time the new aspiring candidates are included, the positions in the eligibility ranking of those already included in the permanent eligibility ranking shall be updated".

During the 1999-2000 two-year period almost 200,000 people gained entitlement to inclusion in permanent ranking lists thanks to the eligibility obtained in the competition based on qualifications and examinations announced in 1999 along with the parallel reserved competition procedure launched pursuant to Article 2(4) of Law 124/1999 and intended for teachers who had completed at least 360 days of service.

The legislator then made provision once again in order to expand the range of beneficiaries, enacting the following provisions:

1) Decree-Law no. 240 of 28 August 2000 laying down "*Urgent provisions for the start of the school year 2000-2001*", converted with amendments into Law no. 306 of 27 October 2000, Article 1(6-ter). "*The state examination held upon conclusion of the course offered by specialist schools provided for under Article 4 of Law no. 341 of 19 November 1990, as amended, shall be valid within competition procedures for the purposes of inclusion in the permanent ranking lists provided for under Article 401 of Legislative Decree no. 297 of 16 April 1994, as replaced by Article 1(6) of Law no. 124 of 3 May 1999. paragraph 6-ter [sic.]*".

2) Law no. 53 of 28 March 2003 laying down "*Authorisation of the Government to adopt general rules on education and essential service levels in the area of education and professional training*", Article 5(3): "*The degree examination taken upon conclusion of the courses in Science of Primary Education established pursuant to Article 3(2) of Law no. 341 of 19 November 1990, including the assessment of the trainee activity provided for under the relative course programme, shall have the status of a state examination and shall establish accreditation to teach, respectively, in nursery schools or in primary schools. It shall also establish entitlement to inclusion in the permanent ranking lists provided for under Article 401 of the Consolidated Act laid down by Legislative Decree no. 297 of 26 April 1994, as amended*".

3) Decree-Law no. 97 of 7 April 2004 laying down "*Urgent provisions to ensure the ordinary launch of school year 2004-2005, and concerning state examinations and universities*", converted with amendments into Law no. 143 of 4 June 2004,

a. Article 1(3-bis). "*The second-level academic diploma provided for under Law no. 508 of 22 December 1999, along with subsequent implementing measures, issued by fine arts academies upon conclusion of courses specialising in teaching as regulated by a dedicated decree of the Minister for Education, Universities and Research following a final examination having the status of an*

accrediting state examination shall also establish eligibility for inclusion in the ranking lists provided for under paragraph 1 ("permanent ranking lists, author's note)".

b. Article 2(1): "*During academic year 2004-2005, and under no circumstances after the entry into force of the legislative decree implementing Article 5 of Law no. 53 of 28 March 2003, universities and advanced artistic and musical training institutions (AFAM) shall establish special one-year courses within the ambit of their own teaching structures, which shall be reserved: a) for teachers in secondary schools holding a specialist support qualification for disabled pupils obtained in accordance with the Decree of the Minister for Public Education of 24 November 1998, published in Official Journal no. 131 of 7 June 1999, and Decree of the President of the Republic no. 970 of 31 October 1975 who lack accreditation to teach within secondary schools, but who hold an undergraduate degree or a diploma from the Higher Institute for Physical Education [ISEF] or an academy for the fine arts or a higher institute for artistic industries that establishes eligibility for inclusion in any of the competition classes provided for under Decree of the Minister for Public Education no. 39 of 30 January 1998, as amended, published in the ordinary supplement to the official bulletin of the Minister for Public Education, first part, no. 11-12 of 12-19 March 1998 and who have worked in support positions for at least three hundred and sixty days between 1 September 1999 and the date on which this Decree enters into force; b) for teachers in nursery and primary schools holding the specialist support qualification referred to under letter a) who lack accreditation or fitness to teach and who have worked in support positions for at least three hundred and sixty days between 1 September 1999 and the date on which this Decree enters into force; c) for teachers holding the specialist support qualification referred to under letter a) and a school-leaving qualification relevant for the competition classes indicated in tables C and D in the said Decree of the Minister for Public Education no. 39 of 30 January 1998, as amended, and for the competition classes indicated in table A of the Decree, eligibility for which is established by the possession of a qualification awarded upon completion of a period of study of five years at an upper secondary school, who lack accreditation or fitness and who have worked in support positions for at least three hundred and sixty days between 1 September 1999 and the date on which this Decree enters into force; c-bis) for teachers holding a vocational school-leaving qualification awarded in 1999, 2000, 2001 or 2002 who lack accreditation or fitness and who have worked for at least 360 days in a nursery school or in a primary school between 1 September 1999 and the date on which this Decree enters into force and in accordance with the training arrangements established during the transition period for implementing the legislative decree to be issued pursuant to Article 5 of Law no. 53 of 2003; c-ter) technical and practical education teachers holding a qualification referred to in letter (c) who lack accreditation or fitness and who have worked for at least three hundred and sixty days between 1 September 1999 and the date on which this Decree enters into force*";

c. paragraph 1-ter: "*When making provision for the transition period for implementing the legislative decree to be issued pursuant to Article 5 of Law no. 53 of 2003, training arrangements shall be established in order to enable non-accredited teachers who have worked as teachers for at least*

360 days between 1 September 1999 and the date on which the law converting this decree into law enters into force to be included in the permanent ranking lists provided for under Article 401 of the Consolidated Act";

d. paragraph 2: "*Teachers holding diplomas issued by music conservatories or equivalent musical colleges who lack accreditation to teach and who have worked for a total of at least three hundred and sixty days in either of the competition classes 31/A or 32/A between 1 September 1999 and the date on which this Decree enters into force shall be admitted, for academic year 2004-2005, to a special one-year course established within the ambit of music teaching schools at conservatories in accordance with the arrangements laid down by decree of the Minister for Education, Universities and Research. The costs associated with the courses falling under this paragraph shall be financed in accordance with the arrangements laid down pursuant to paragraph 3, and having regard to the provisions of paragraph 7*";

e. paragraph 3: "*The courses falling under paragraphs 1 and 2 shall be established for the purpose of achieving accreditation or fitness to teach following a final examination having the status of a state examination and for the resulting inclusion in one of the permanent ranking lists established pursuant to Article 1(1) in accordance with the arrangements laid down by Decree of the Minister for Education, Universities and Research, which shall also require compliance with a minimum number of persons enrolling at each university in order for the relevant course to be held, or the holding of the courses at different times having regard to the number of persons enrolling*".

As is known, Article 1(605) of Law no. 296 of 27 December 2006 made provision for the transformation of permanent ranking lists into ranking lists to be drawn upon until exhaustion, thus preventing the inclusion of new persons, whilst however allowing those persons already included in the list the opportunity to update their scores. The deadlines for the closure of the ranking lists to be drawn upon until exhaustion have been extended twice:

1) Article 5-bis of Decree-law no. 137 of 1 September 2008 laying down "*Urgent provisions on education and universities*", converted with amendments into Law no. 169 of 30 October 2008, allowed for the inclusion in ranking lists to be drawn upon until exhaustion of accredited teachers registered for SSIS [Specialist School for Secondary Education] cycle IX [and] for similar accrediting courses offered by faculties of educational science, academies and conservatories during academic year 2007-2008: the category of persons eligible for inclusion was only expanded, pursuant to paragraph 2, for "*teachers who completed the first biennial level-two course for the training of musical education teachers in competition classes 31/A and 32/A and teachers of musical instruments in middle schools in competition class 77/A and who achieved the related accreditation*". These pathways were established in an analogous manner to the official pathways of the SSIS, COBASLID and

SFP, which already established entitlement to such inclusion;

2) Article 14(2-ter) of Decree-Law no. 216 of 29 December 2011 laying down an "*Extension of deadlines provided for by law*", converted with amendments into the Law of 24 February 2012, provided that "*Notwithstanding that the ranking lists to be drawn upon until exhaustion pursuant to Article 1(605)(c) and (607) of Law no. 296 of 27 December 2006, as amended, shall remain closed and limited to teachers who obtained accreditation after completing the level-two biennial accrediting courses specialising in teaching (COBASLID), the second and third level-two biennial course for the training of music teachers in competition classes 31/A and 32/A and the teachers of musical instruments in middle schools in competition class 77/A, as well as the degree courses in Science of Primary Education for academic years 2003-2009, 2009-2010 and 2010-2011, an additional band shall be created for the above-mentioned ranking lists. A decree of the Ministry of Education, Universities and Research shall stipulate the time limits for inclusion in the above-mentioned additional ranking lists with effect from school year 2012-2013.*".

It is therefore sufficiently clear that the criteria for inclusion in the ranking lists pursuant to Article 401 of the Consolidated Act are set out in mandatory rules, which generally have the status of primary legislation, and that the purpose of all subsequent decrees updating them is merely to implement the applicable legal framework.

Incidentally, it should be pointed out that the current system of ranking lists to be drawn upon until exhaustion, which are subdivided into three distinct bands, is the result of considerable litigation before the courts; although the courts have not sought to alter the eligibility criteria, on various occasions they have issued orders that affect provisions with secondary status that divide those eligible for inclusion into separate bands. At present the system of permanent ranking lists envisages:

a) band I, in which aspiring teachers with accreditation or fitness to teach who have fulfilled the prerequisite of 360 days of work before 13 May 1996 are included in two different provinces;

b) band II, which includes aspiring teachers with accreditation or fitness to teach who have fulfilled the prerequisite of 360 days of work before 25 May 1999;

c) band III, which includes aspiring teachers with

a. accreditation or fitness to teach obtained by way of a competition for teaching posts and positions based on qualifications and examinations announced under the Ministerial Decree of 6 April 1999 (nursery schools), 2 April 1999 (primary schools) or 1 April 1999 (secondary schools) as well as the parallel reserved competition rounds pursuant to Law no. 124/99, announced under Ministerial Ordinances 153/99, 33/2000 and 1/2001;

b. accreditation having completed an SSIS (Specialist School for Secondary Education) course, Cobaslid (biennial level-two academic courses specialising in teaching for artistic subjects), Biforcon (biennial level-two academic courses specialising in teaching for musical subjects), or accreditation having completed the previously available four-year courses in music teaching, who registered for the above-mentioned courses during or before the year 2007/2008. If the qualification has not yet been obtained, registration is permitted, subject to reservation;

c. accreditation obtained following completion of an undergraduate degree course in Science of Primary Education, having registered during or before the year 2007/2008. If the qualification has not yet been obtained, registration is permitted, subject to reservation;

d. accreditation or fitness to teach obtained following completion of the special courses provided for under Law no. 143/04, Ministerial Decree no. 100/04, Ministerial Decree no. 21/05 and Ministerial Decree no. 85/05;

e. accreditation obtained in another Member State of the European Union that has been recognised by the Ministry, provided that it has been obtained within the time limits applicable to aspiring teachers from Italy.

d) Additional band:

a. persons who registered for an undergraduate degree course in Science of Primary Education during or after academic year 2008/2009 who obtained the accreditation concerned during academic year 2008-2009, 2009-2010 or 2010-2011;

b. persons holding accreditation obtained during academic years 2008-2009, 2009-2010 or 2010-2011 after completing the level-two biennial accrediting courses specialising in teaching (COBASLID) and who have not previously been included in any ranking list;

c. persons holding accreditation obtained after completing the second and third biennial level-two course for the training of musical education teachers in competition classes 31/A and 32/A and teachers of musical instruments in middle schools in competition class 77/A;

d. persons holding accreditation obtained in another Member State of the European Union that has been recognised by the Ministry, provided that it has been obtained within the time limits applicable to aspiring teachers from Italy and for similar positions or competition classes.

As is known, the decrees making further provision in relation to ranking lists to be drawn upon until exhaustion (hereafter, ERE), including recently Ministerial Decree no. 235/14 and nos. 325-326/2015, have been issued in order to implement the legislation referred to above (Article 1(605)(c) of Law no. 296/06). This legislation transformed the permanent ranking lists into ranking lists to be drawn upon until exhaustion (thereby preventing the inclusion of new teaching staff) and provided for regular updates to the scores and respective positions of the teaching staff already included in the list upon the entry into force of Law no. 296/06 (or who were subsequently included *pleno iure* in accordance with provisions of equal status providing for exceptions from the "closure" rules mentioned above).

Far from establishing unlawful exceptions from the primary legislation - either by providing for the reactivation of statutory provisions that had been repealed or by repealing statutory provisions that were still in force - the secondary legislation adopted in this area following the 2007 Finance Law represented a logical extension of the legislation enacted over time and the gradual move from open ranking lists to closed ranking lists and ranking lists to be drawn upon until exhaustion (see in particular Decree of the Director General of 16 March 2007 issued in relation to the supplementing and updating of permanent ranking lists for school years 2007-2009; this was the first time that the new

legislation which entered into force on 1 January 2007 was applied).

Ranking lists to be drawn upon until exhaustion **are ranking lists that are destined to lapse**. For this reason, no provision has been made for the inclusion of additional persons, other than the specific categories of new teacher stipulated in a closed list by the 2006 Finance Law, and only for the 2007-2008 two-year period; however, their sole purpose (subject to the extraordinary reopening of the lists in accordance with specific legislative exceptions) was to safeguard the legitimate interests of particular categories of teacher through the issue of dedicated transitional provisions (cf. Decree-Law no. 137/08 and Decree-Law no. 70/11-216/11).

Indeed, the decree updating the ranking lists, the lawfulness of which was an issue in judgment 11 of 20 December 2017 of the Plenary Session of the Council of State, **does not have regulatory status since, contrary to the argument advanced by the appellant, it is the primary legislation (cf. Articles 399 et seq of Legislative Decree 297/1994, as amended, Article 1 of Decree-Law 255/2001, converted with amendments into Law 333/2001, and Article 1 of Decree-Law 97/2004, converted with amendments into Law 134/2004) that identifies those persons who are entitled to be included in the ranking lists to be drawn upon until exhaustion (and prior to that in permanent ranking lists), whereas the ministerial decrees such as Ministerial Decree 235/14 (or Ministerial Decree 325/15 and Ministerial Decree 495/16) regulate exclusively procedural arrangements and details relating to regular updates.**

The inclusion in permanent ranking lists of the holders of vocational school-leaving qualifications obtained during or before the year 2001-2002 **was conditional on obtaining further accreditation through competitions based on qualifications and examinations pursuant to Articles 401 and 402 of Legislative Decree 297/1994**, as amended by Law 124/1999, which established those ranking lists.

In fact, since the permanent ranking lists were established, the prerequisite for inclusion had always been the holding of an academic qualification and the successful completion of a competition, including merely for the purpose of accreditation (Article 2 of Law 124/1994). Since 1990, various competitions based on qualifications and examinations with accrediting status have been held; in addition, various accrediting procedures for aspiring teachers in primary and secondary schools have been held:

Ordinary Competition held in 1990

Ordinary Competition held in 1994

Ordinary Competition held in 1999

Ministerial Ordinance no. 153/1999 - procedure solely for the purposes of accreditation

Ministerial Ordinance no. 33/2000 - procedure solely for the purposes of accreditation

Ministerial Ordinance no. 1/2001 - procedure solely for the purposes of accreditation

Ministerial Ordinance no. 85/2005 - procedure solely for the purposes of accreditation.

According to Article 401 of Legislative Decree no. 297/1994, as amended by Article 1(6) of Law no. 124/1999, ranking lists relating to previous competitions based on qualifications only of teaching staff in nursery, primary and secondary schools were transformed into permanent ranking lists to be used for appointments pursuant to Article 399(1) of Legislative Decree no. 297/1994. For this purpose, the legislation adopted in 1999 provided that these ranking lists should be "*regularly supplemented by the inclusion of teachers who have passed the tests set within the most recent regional competition based on qualifications and examinations for the same competition class and the same position, and of any teachers who have requested a transfer from the equivalent eligibility ranking of another province. At the time the new aspiring candidates are included, the positions in the eligibility ranking of those already included in the permanent eligibility ranking shall be updated* (Article 401(2) of Legislative Decree no. 297/1994).

In fact, when first supplementing the permanent ranking lists in 1999, the legislator established a specific regime of exceptions **set out in Article 2 of Law no. 124/1999. This involved specifically provision for a reserved round of examinations for teachers who, upon entry into force of the Law, had actually worked as teachers for at least 360 days during the period falling between school year 1989-1990 and the date of entry into force of the Law.**

As far as is relevant for our present purposes, exclusively "non-accredited teachers" were entitled to participate in that reserved procedure as well as "*teachers from nursery schools, technical-practical education teachers, applied art teachers and educational staff who do not have fitness to teach*".

Thus, whereas on the one hand the inclusion in permanent ranking lists of any person who had successfully completed a competition based on qualifications and examinations was permitted , on the other hand, when making the first supplementary inclusions, it was stipulated that any teacher - including "accredited" teachers under

Articles 194 and 197 of Legislative Decree no. 297/1994 - who had actually worked for a particular period of time could be included in those ranking lists, although only upon completion of a competitive selection procedure reserved for them (this procedure, which entailed attendance of a course with a duration of 120 hours, as well as successful completion of a written examination and an oral examination, was specifically launched by Ministerial Ordinance no. 153 of 15 June 1999).

Finally, after completing the first supplementary inclusions in permanent ranking lists, the legislator subsequently recognised the right to inclusion in the ranking lists in question only for those persons who had successfully completed competitions based on examinations and qualifications, and for holders of specialist secondary teaching diplomas.

In fact, Article 2 of Decree-Law no. 255/2001 provided that: "*With effect from school year 2002-2003, ranking lists shall be supplemented by incorporating into the bracket provided for under Article 7(b): those possessing fitness to teach following the successful completion of competitions for teaching posts and positions based on qualifications and examinations and holders of diplomas issued by specialist schools for secondary teaching*".

This occurred long before Article 1(605)(c) of Law no. 296/2006 provided for the transformation of the above-mentioned ranking lists into ranking lists to be drawn upon until exhaustion, and was without prejudice "to teachers who are to be included in the said ranking lists for the 2007-2008 two-year period who already hold accreditation".

One further clarification should also be noted specifically as regards the accrediting capacity provided for under Articles 194 and 197 of Legislative Decree no. 297/1994.

In providing that "*Academic qualifications obtained following completion of the three-year and four-year experimental courses at vocational secondary schools and experimental four-year and five-year courses at vocational colleges that were started during or before school year1997-1998 or otherwise obtained during or before school year 2001-2002 shall permanently retain their current legal status and establish entitlement to participate in the rounds for the grant of accreditation to teach in nursery schools, as provided for under Article 9(2) of Law no. 444/1968, as well as in ordinary competitions based on qualifications and examinations for teaching positions in nursery schools and primary schools, in accordance with the provisions of Articles 399 et seq of Legislative Decree no. 297 of 1994*", Article 2 of the Inter-Ministerial Decree of 10 March 1997 in actual fact laid down transitional arrangements to govern the transfer from the previous system to the new system of teacher training for primary and nursery schools, identifying two clear principles.

The transitional arrangements provided that the status of any academic qualifications previously obtained would be maintained, stipulating that those obtained following completion of the three-year and five-year experimental courses at vocational secondary schools and experimental four-year and five-year courses at vocational colleges that were started during or before school year 1997-1998 or otherwise obtained during or before school year 2001-2002 **would establish entitlement to participate in ordinary competitions based on qualifications and examinations for teaching positions in nursery and primary schools "nunc et semper"**.

In fact, pursuant to Article 9(2) of Law no. 444/1968, which is cited in the above-mentioned Decree-Law, "specific accreditation" was required for teaching in nursery schools, which could be "obtained at the same time as the competition referred to in Article 14 below", whereas the previously applicable Articles 399-401 in any case required the successful completion of a competition based on examinations and qualifications in order to access teaching positions.

Therefore, the recognition of the permanent legal status of vocational school-leaving qualifications (in the terms laid down by the Decree-Law of 10 March 1997 and Article 15(7) of Decree of the President of the Republic no. 323 of 23 July 1998, in contrast to the original provision in Article 197 of the Consolidated Act, which was repealed by Law no. 425 of 10 December 1997) was limited specifically to participation in competitions and/or accreditation rounds, and was subject to a clear and necessary distinction between fitness to practise the teaching profession as a supply teacher and fitness to practise the profession on a permanent basis.

In the past, whereas a mere vocational school-leaving qualification (now an undergraduate degree in Science of Primary Education) was sufficient for supply appointments, in order to be eligible for the grant of tenured status, i.e. in order to teach on a permanent basis, it was necessary to successfully complete an actual public competition , the so-called "competition for holders of vocational school-leaving qualifications".

Since the previous system remained in place until the end of the last year of university courses leading to the award of the qualifications provided for under Articles 3 and 4 of Law no. 341/1990 (reform of university teaching systems), this required specifically:

- an undergraduate degree in Science of Primary Education for teaching in nursery and primary schools;
- completion of biennial post-graduate specialisation courses, known as SSIS (Specialist Schools for Secondary Teaching) for teaching in level-one and level-two secondary schools.

Moreover, the requirement for individuals to hold accreditation in order to be included in ranking lists (once permanent ranking lists, now ranking lists to be drawn upon until exhaustion) must be considered in the wider context of the transfer from the previously applicable rules to the new regime established by Law no. 341/90, which sought primarily to achieve greater (or in any case more adequate) professionalisation of aspiring teachers, and secondly to address the underlying causes of insecurity.

Considering, too, that academic qualifications awarded by vocational colleges could no longer be deemed to establish eligibility to teach in nursery and primary schools following the introduction of undergraduate degree courses in Science of Primary Education, as well as the fact that SSIS training courses for obtaining accreditation to teach in secondary schools had been launched during academic year 1999-2000, the Decree-Law of 10 March 1997 and the Ministerial Decree of 24 November 1998 contained transitional provisions for enabling the transfer to the university-based system of accreditation for teaching by removing the ability to obtain accreditation in the manner provided for under Article 400(12) of Legislative Decree. 297/1994.

For that purpose, and likewise as a consequence of the abolition of competitions based on qualifications only, the legislation enacted in 1999 had provided for a specific regime of exceptions, which was laid down by Article 2 of Law no. 124/1999, when first supplementing the permanent ranking lists. This involved specifically the provision for a round of examinations reserved for teachers ("teachers without accreditation, and nursery school teachers, technical-practical education teachers, applied art teachers and educational staff who do not have fitness to teach" pursuant to Article 2(4) of Law no. 124) who, upon entry into force of the Law, had actually worked as teachers for at least 360 days during the period falling between school year 1989-1990 and the date of entry into force of the Law.

That requirement explains the choice made when abolishing competitions based on qualifications only (successful completion of which resulted in accreditation), to allow those persons who were entitled to participate in them, subject to the holding of particular qualifications along with length-of-service requirements, to be included in the newly-established permanent ranking lists (Article 1 of Decree-Law no. 255/01). **However, that choice did not entail, as an automatic consequence, the establishment of any equivalence between those persons and teachers holding accreditation obtained according to the rules applicable prior to that time (as was consistently provided for under Article 2 of Decree-Law no. 255/01)**, even if it is considered that the exception stipulated was limited to the first supplementary inclusions in ranking lists under Law no. 124/99 and applied on an exceptional and transitional basis, as it could not be extended further to subsequent updates once the system had become fully operational, and

especially not after the ranking lists had subsequently been transformed into ranking lists to be drawn upon until exhaustion.

In fact, Article 2 of Decree-Law no. 255/2001 provided that: "*With effect from school year 2002-2003, ranking lists shall be supplemented by incorporating into the bracket provided for under Article 7(b): those possessing fitness to teach following the successful completion of competitions for teaching posts and positions based on qualifications and examinations and holders of diplomas issued by specialist schools for secondary teaching*", thereby supplementing and clarifying the scope of Article 1 of the Decree-Law.

In a nutshell, as stated above, whereas the inclusion in permanent ranking lists of any person who had successfully completed a competition based on qualifications and examinations was permitted , when making the first supplementary inclusions, it was stipulated that any teacher - including teachers who had allegedly been "accredited" under Articles 194 and 197 of Legislative Decree no. 297/1994 - who had actually worked for a particular period of time could be included in those ranking lists, although only upon completion of a competitive selection procedure reserved for them.

According to Ministerial Ordinance no. 153 of 15 June 1999, the purpose of this competition procedure, "*which could only be completed after having attended a course*" and which was in actual fact launched "*pursuant to Article 2(4) of Law no. 124 of 3 May 1999*" (Article 1), was "*respectively to obtain accreditation to teach in nursery schools or in schools and colleges providing secondary and artistic education, or fitness establishing entitlement for teachers in primary schools, technical-practical education teachers, applied art teachers and educational staff at educational institutions to be included in the permanent ranking lists provided for under Article 401 of Legislative Decree no. 297 of 16 April 1994, as amended by Article 1(6) of Law no. 124 of 3 May 1999" (Article 1).* Article 2 of the Ministerial Ordinance goes on to state that: "*The reserved round referred to in Article 1 above for the purpose of granting accreditation to teach in nursery schools and in schools and colleges providing secondary and artistic education, fitness to teach in primary schools, fitness to teach for technical-practical education and applied art teachers, as well as fitness to work as a teacher responsible for providing pastoral care [istitutore], shall be open to candidates without the prescribed accreditation or fitness who fulfil respectively the prerequisites laid down in letters A, B, C and D below:*

A. for obtaining accreditation to teach in nursery schools, possession of a vocational school-leaving or vocational college qualification; for obtaining fitness to teach in primary schools, possession of a vocational school-leaving qualification;

- the performance of actual work as a teacher in nursery schools administered by the state, or not administered by the state but authorised, or in primary schools administered by the state or non-state primary schools recognised as equivalent, including Italian schooling institutions administered by the state or legally recognised abroad in teaching positions corresponding to tenured positions, possessing the prescribed educational qualification, for at least 360 days during the period falling between school year 1989-1990 and the date of entry into force of Law no. 124 of 3 May 1999, including at least 180 days no earlier than school year 1994-1995; work performed in a nursery school or in a primary school shall be valid for the purposes of the grant of tenured status, even if it is performed entirely in one type of school or the other or involves support teaching or activities. [...]".

Once again, therefore, it is clearly apparent from the provisions set out above, and for the purposes of Article 1 of Decree-Law no. 255/01, that a vocational school-leaving qualification cannot be regarded as a qualification sufficient in itself to establish entitlement to participate in the abolished competitions based on qualifications only, as a length-of-service rule also applied, which was inseparable from the holding of the above-mentioned academic qualification.

Finally, after completing the first supplementary inclusions in permanent ranking lists, the legislator subsequently recognised the right to inclusion in the ranking lists in question only for those persons who had successfully completed competitions based on examinations and qualifications, as well as for the holders of specialist secondary teaching diplomas.

For the sake of completeness, it should also be pointed out that the legal framework set out above is consistent with the provisions of the "Regulations laying down rules on the procedure for supplementing and updating permanent ranking lists" pursuant to Ministerial Decree no. 123 of 27 March 2000, which on the one hand regulated (in Article 2) the "*First supplementary inclusions in permanent ranking lists*", referring expressly to "*those who have successfully completed the reserved examination round*", and on the other hand confirmed that only those who had passed competitions based on examinations and qualifications would be entitled to be included in future. In fact, Article 4 of the above-mentioned Regulations provides that: "*Any supplementary inclusions in the permanent ranking lists occurring after the first supplementary inclusion shall occur periodically through the inclusion of staff who have successfully completed the last competition based on qualifications and examinations for the same competition class or the same position*".

This reading appears to reflect a systematic interpretation that is consistent, first and foremost, with the principle laid down by Article 97 of the Constitution, as an inherent feature of access to public sector employment, along with the attendant stipulation that any

exceptions to it may only be provided for under primary legislation. Secondly, it is consistent with a systemic view which, imperfect though it may be, certainly does not feature any gaps or even legal contradictions that could be such as to undermine the reasonableness of the overall recruitment mechanism devised by the legislator. Within the ambit of that mechanism, the subsequently enacted reform of the training requirements applicable to reaching staff (based on the consideration that at least a university-level qualification was necessary in order to establish accreditation to teach either in a tenured position or only as a supply teacher) has made it essential to provide protection to those persons who were originally admitted to the teaching profession, albeit exclusively on a fixed-term basis, on the strength of secondary education qualifications. Such persons were thus able to benefit from dedicated pathways for fulfilling the new prerequisite (accreditation), whilst maintaining their entitlement to participate in recruitment procedures provided for by law, namely competitions for teaching posts, rather than competitions based on qualifications only, which were often chosen in the past.

The very recent judgment of the Plenary Session of the Council of State has recently ruled on this issue, which is decisive for our present purposes.

By judgment no. 11/2017, the Council of State, in its capacity as the guarantor of the uniform and settled interpretation of the law, held that the mere possession of a vocational school-leaving qualification, albeit one obtained during or before school year 2001/2002, does not constitute a sufficient basis for inclusion in the ranking lists to be drawn upon until exhaustion of teaching and educational staff established pursuant to Article 1(605)(c) of Law no. 296 of 27 December 2006, in the light of the legislation enacted over time. This was because, in order for this to be possible, it would have been necessary to have obtained a further qualification establishing accreditation and for the administrative measures precluding that possibility to have been challenged in good time. Neither Ministerial Decree no. 235/14 nor any of the similar acts preceding or following it concerning the mere updating of ERE (for the individuals already included in them) can be considered to contain the relevant measures, but rather - evidently - the acts adopted immediately after the ranking lists were drawn up, namely Ministerial Decree no. 27/2007 governing the composition of and inclusion within ranking lists.

At the same time, the ruling dispels any doubt concerning the propriety of the actions of the administration also in terms of compliance with Community rules on successive fixed-term contracts. The rules laid down by Italian law and by the public administration in relation to ERE appear to be entirely consistent with the ultimate goal pursued by the provisions in question of eliminating the historical causes of precarious employment, avoiding their re-emergence with a "general trend back towards permanent employment contracts according to competitive selection procedures based on merit in order to further

the public interest in the cultural training of young persons, which schools must guarantee through qualified teaching staff". This interest would by contrast be frustrated were the ERE to be reopened to the holders of vocational school-leaving qualification as an exception to the provisions regulating their closed status.

5. Measures introduced for teachers holding vocational school-leaving qualifications by Decree-Law no. 87 of 12 July 2018 ("Urgent provisions on the dignity of workers and undertakings"), converted with amendments into Law no. 96 of 9 August 2018.

Finally, it should be pointed out that Decree-Law no. 87 of 12 July 2018 ("Urgent provisions on the dignity of workers and undertakings"), converted with amendments into Law no. 96 of 9 August 2018, made provision for specific measures with the aim of resolving the issue affecting teachers holding vocational school-leaving qualifications that had arisen following the above-mentioned judgment of the Plenary Session of the Council of State.

In particular, Article 4(1-quater) of Decree-Law no. 87, as converted into law, on "*provisions on the holders of vocational school-leaving qualifications and on the filling of vacant and available teaching positions in nursery and primary schools*", expressly provides that "*the remaining 50 percent of vacant and available teaching positions, whether ordinary positions, including enhancement roles, or support positions, whose inclusion in a competition has been authorised under Article 39(3-bis) of Law no. 449 of 27 December 1997, in nursery and primary schools shall be filled each year by drawing on the merit-based ranking lists for the following competition procedures, with priority being given to those falling under letter a)*:
a) competitions announced in 2016 pursuant to Article 1(114) of Law no. 107 of 13 July 2015, with regard solely to those who have achieved the minimum score stipulated in the competition notice prior to expiry of the ranking lists, without prejudice to the right to tenured status for the successful candidates in the competition;
b) the extraordinary competition announced in each region, to which 50 percent of the positions falling under this paragraph until each regional merits-based ranking list has been entirely depleted shall be allocated, after the positions used for the procedure falling under letter a); each regional ranking list shall be abolished once it has been depleted;
c) ordinary competitions based on qualifications and examinations announced at biennial intervals pursuant to Article 400 of the Consolidated Act laid down by Legislative Decree no. 297 of 16 April 1994 and to Articles 1(109)(b) and (110) of Law no. 107 of 13 July 2015 to which 50 percent of vacant and available positions falling under this paragraph shall be allocated, and in any case any positions remaining vacant and available following the completion of the procedures provided for under letters (a) and (b);"

In particular, Article 4(1-quinquies) also stipulates, in relation to the extraordinary

competition provided for, that "*The Ministry of Education, Universities and Research is authorised to announce the extraordinary competition provided for under paragraph 1-quater(b), notwithstanding the ordinary authorisation procedures, which shall continue to apply for the subsequent grant of tenured status, within each region and separately for nursery and primary schools, in order to fill ordinary positions, including enhancement roles, and support positions.* ***The competition shall be reserved for teachers who, as at the date stipulated in the competition notice as the deadline for submitting the application, hold one of the following qualifications:***

a) a qualification establishing entitlement to teach awarded upon completion of an undergraduate degree course in Science of Primary Education or an equivalent qualification obtained abroad that is recognised in Italy under applicable legislation, provided that the teachers holding the above-mentioned qualifications have performed at least two years of specific service within the last eight school years, which need not be consecutive, in an ordinary or support position at a school administered by the state, which is eligible for consideration as such pursuant to Article 11(14) of Law no. 124 of 3 May 1999;

b) ***a vocational school-leaving qualification establishing eligibility or an equivalent qualification obtained abroad that is recognised in Italy under applicable legislation, obtained in any case during or before school year 2001/2002****, provided that the teachers holding the above-mentioned qualifications have performed at least two years of specific service within the last eight school years, which need not be consecutive, in an ordinary or support position at a school administered by the state, which is eligible for consideration as such pursuant to Article 11(14) of Law no. 124 of 3 May 1999.*

Accordingly, the above-mentioned Decree-Law, as converted into law, has expressly provided for a specific competition procedure reserved for teachers holding vocational school-leaving qualifications obtained during or before school year 2001/2002 with a view to enabling them to be granted tenured status.

In the light of all of the considerations set out above, it does not appear that any of the provisions contained in the European Social Charter has been violated, as is alleged in the complaint.

The Head of the Legislative Office
Counsel Maurizio Borgo
[signature]