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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX**

4 June 2021

**Case Document No. 6**

**Confederazione Generale Sindacale CGS, Federazione GILDA-UNAMS and  
Sindacato Nazionale Insegnanti Di Religione Cattolica v. Italy**  
Complaint No. 192/2020

**RESPONSE BY THE COMPLAINANT ORGANISATIONS  
TO THE GOVERNMENT'S SUBMISSIONS ON THE MERITS**

**Registered at the Secretariat on 21 May 2021**

## CONFEDERAZIONE GENERALE SINDACALE

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To the kind attention of the Executive Secretary of the European Committee of Social Rights, who  
acts in the name and on behalf of the Secretary General of the Council of Europe

### Complaint no. 192/2020

#### Notes to the request for information of 22 march 2021

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In response to the request for information, dated 22 march 2021, ref. 39/2020, the CGS/FGU e Snadir answers the observations of the Italian Government, of 26th february 2021, contested the observation of the merits relative at the complaint no. 192/2020.

With reference to the specialty situation of religion teachers (see observation p. 16 et seq.) both the European Commission (see annex All. 12-complaint) and the Advocate General E. Tanchev, dated 18.03.2021, in the case registered in the CJEU at C-282/19, they held that there are no "*objective reasons*" that could justify discrimination against religion teachers with reference to other teachers of comparable state schools. (**Annex 1- Notes**)

From a different point of view, on 8th October 2020, this Ill.mo Committee decided on the lawsuit registered in the compliant r.g. 144/2017, CGS c / Italian State, declaring the violation of art. 1§2 of the European Social Charter by the Italian State, for abuse of fixed-term contracts to the detriment of state school teachers. (**Annex 2-Notes**)

The aforementioned art. 1§2 established the obligation on the part of the Member States to "... *effectively protect the worker's right to earn a living with a job freely undertaken*".

The Committee in question has find out a disproportionate violation of the right of the precarious staff of the Italian public school, even not enrolled in the GAE, hired with fixed-term contracts for a total period of more than 36 months, to earn a living with work done freely.

In this sense, it is reiterated that the limit of 70% of the calculation of vacant and available positions for entry into the role penalizes, extremely, the stabilization of this category of teachers, as represented in the complaint.

In this regard, it should be noted that, pursuant to art. 2 of Law 186/2003, the aforementioned limitation of 70% refers to the "*overall staff*", ie the total of "*vacant and available*" positions (so-called "*staff by law*"), identified by the Ministry of Education that they should all have been made available for the purposes of being placed in the role. Therefore, the remaining 30% are also vacant posts of "*staff by right*" for the entry into the role, but this availability is not calculated for the stabilization of religion teachers who, therefore, remain precarious "*sine die*", as clarified by the Court Constitutional with sentence no. 146/2013 (see annex Annex 25-complaint).

In addition, the Ministerial Decree 93 of 08.08.2020 of the Ministry of Education, also with respect to the aforementioned limit of 70%, equal to no. 6,600 seats, has allowed the hiring of only 472 teachers for the academic year 2020/21. This can be seen in the aforementioned decree and in the attached Table A, with reference to the availability of kindergartens, elementary, and upper and lower secondary schools. (**Annex 3-4 Notes**)

Therefore, precarious teachers of religion will continue to remain precarious also due to the inexplicable restriction on stabilization imposed by the aforementioned Ministerial Decree 93/2020, together with the reasons deriving from Article 1-bis of the Legislative Decree 126/2019, as already explained in the complaint.

It should be noted that, to date, for the purposes of entry into the role, neither an "*extraordinary*" competition has been announced, as requested and reported in the complaint, nor an "*ordinary*" competition, that the aforementioned art. 1 - bis, although it had ordered it to be banned by the year 2020.

For the aforementioned reasons, the rejection of the Italian Government's observations is requested because they are unfounded and inadmissible with consequent setting of the deadline for filing the substantive observations of the complaint in question.

The following documents are attached

- 1- - Conclusions Advocate General Tanchev;
- 2- Report dell'8.10.20, related to the cause r.g.144/2017;
- 3- Decree d.m.93/2020;
- 4- Table A of the aforementioned decree.

Roma 17th may 2021

*avv. Tommaso de Grandis*