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

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Associazione Professionale e Sindacale (ANIEF) v. Italy
Complaint no. 200/2021

COMPLAINT

Registered by the secretariat on 21 June 2021

European Social Charter Department

Directorate General of Human Rights and Rule of Law

Council of Europe

F-67075, Strasbourg Cedex

For the attention of the Secretariat of the European Committee of Social Rights,
on behalf of the Secretary General of the Council of Europe

Collective complaint

under Article 1 c) of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints

INFORMATION ON THE COMPLAINANT ASSOCIATION

ANIEF

1. ANIEF (*Associazione Professionale e Sindacale*) (see its statutes, appended to document 1), whose headquarters are in Palermo, Piazza Don Bosco 1/B, tax identification code and VAT number 00906801006, is represented by its president and temporary legal representative, Mr Marcello Pacifico (tax identification code PCFMCL77D28G273T), born in Palermo on 28 April 1977. ANIEF is a professional trade union representing and assisting more than 70 000 employees in the Italian public education sector. These include teachers and technical, administrative and auxiliary staff employed by the Ministry of Education, and also in the private sector, on permanent and fixed-term (or “replacement”) contracts.

1.2 The organisation’s statutes specify the following objectives:

Art. 2 – Objectives: the association’s purpose is to:

- 1) provide professional, occupational and cultural representation and protection to teachers in all levels and categories of Italian schools, and in universities, academies and schools of music, to improve their working, legal and financial conditions and their social standing;
- 2) enhance the status of university training of teachers in schools at all levels, from initial selection to their formal certification, and from their fixed-term or permanent recruitment to their subsequent career progression, and promote a legal status of teachers which also gives due recognition to the role of trainers;

- 3) defend the freedom of education and the teaching profession, by promoting comparison of different political and cultural policies. It seeks to act as interlocutor in any policy initiatives affecting the direct or indirect interests of the worlds of education, research and knowledge, in order to improve the effectiveness of the service provided and protect and promote professional autonomy;
- 4) help to confirm education's European dimension, particularly by participating in the activities of similar international associations, encouraging exchanges of ideas and experience and comparing different organisational models;
- 5) promote initiatives aimed at extending teachers' professional knowledge and encouraging their professional and cultural development;
- 6) protect members' ethical, moral, professional, legal, regulatory and financial interests, both individual and collective, through trade union and cultural activities.

1.3 ANIEF – which represents 41 125 education ministry employees – received 55 238 votes at the most recent elections for joint union representatives (RSUs) of Italian educational establishments and has established offices throughout the country (see doc. 2). It has been certified as “the most representative” trade union in the education and research sector, under article 43 of legislative decree 165/2001 [see RSU campaign report 2018 – doc. 3; the ARAN (agency for negotiated representation of public administrations) table on representativeness shows that ANIEF was ascribed 6.16% in the education and research sector vote on the allocation of representative trade union places for negotiating purposes, under the national collective bargaining agreement for the three-year period 2019 – 2021, starting on 19 November 2019 (doc. 4)].

1.4 ANIEF is affiliated nationally to CISAL, the autonomous public sector confederation, and internationally to CESI, a recognised social partner of the European institutions.

1.5 ANIEF is a leading opinion former in Italian education policy debates and is also active in the judicial sphere, in both administrative and labour courts (103 008 and 32 006 applications, respectively), not to mention its successful applications to the Constitutional Court and the Court of Justice of the European Union.

- 1.6 In recent years, in support of its claims and demands ANIEF has organised some dozen general strikes, accompanied by several demonstrations and marches with thousands taking part. and has actively continued its initial and updating training activities for staff in post, with more than 1 650 seminars on education legislation attended by 35 924 participants.
- 1.7 Finally, ANIEF's institutional role has been recognised both by parliament, in the course of lower house and senate hearings on issues relating to schools and their staffing, and by the education ministry, in informal meetings on a range of subjects, particularly in connection with disputes and the level of dissatisfaction of teaching personnel.
- 1.8 ANIEF therefore defends and assists tens of thousands of workers in the Italian public education sector, including very numerous auxiliary teachers specialising in disability with great job insecurity.
- 1.9 In this collective complaint, ANIEF is represented by its President and temporary legal representative, Mr Marcello Pacifico. The addresses for the purposes of this complaint are as follows: email segreteria@anief.net or presidente@anief.net and/or telephone number +39 091 7098355 and/or fax number +39 091 6455845 and/or mobile number +39 338 4167107 or +39 392 9322359.

The complaint has been prepared jointly with

THE ASSOCIATION "LA CHIAVE DI VOLTA – ODV"

2. La Chiave di Volta OdV is a non-profit-making, either directly or indirectly, organisation, which is solely concerned with social, human, civil and cultural solidarity (see statutes, appended doc. 5).

2.1.2 The association, whose headquarters are located at Fiano Romano (RM), Via Monte Severino, 26 (00065), tax identification code and VAT number 96448170587, is represented by its president and temporary legal representative, Ms Natalia Sinibaldi, born in Rome on 17/09/1979 and residing in Fiano Romano (RM) (tax identification number SNBNTL79P57H501E). La Chiave di Volta OdV is active in the following areas:

- a) protecting civil rights, particularly ones relating to persons with disabilities;
- b) seeking practical solutions in individual and specific cases concerning disabled persons;

- c)* encouraging social and cultural initiatives to raise collective public and institutional awareness of problems relating to marginalisation, disability and social inclusion;
- d)* securing the highest possible level of integration for persons with disabilities in such social spheres as education, employment and sport;
- e)* providing information and clarification on current legislation relating to disability;
- f)* providing legal assistance to protect disabled persons and their families;
- g)* collaborating with public and private bodies, associations and voluntary groups;
- h)* establishing and encouraging the establishment of services to assist both initial nuclear and patchwork families, one of whose members is disabled – these include parenting training, mutual support groups, parenting therapy and support, and workshops on support for siblings.

3. For the purposes of this complaint, ANIEF and La Chiave di Volta are assisted by three lawyers: Mr Sergio Galleano of the Milan bar (tax identification number GLLSRN52E18F205N), Mr Walter Miceli of the Palermo bar (tax identification number MCLWTR71C17G273N) and Mr Fabio Ganci of the Palermo bar (tax identification number GNCFBA71A01G273E).

Reference email addresses: roma@studiogalleano.it; avvocato@waltermiceli.com

Contracting Party that has violated the European Social Charter: ITALY

THE FACTS

4. ANIEF has previously submitted to the European Committee of Social Rights collective complaint no.146/2017 concerning job insecurity in the education system in general, which the Committee acknowledged in its decision of 7 July 2020, which found that Italy was in violation of Article 1.2 of the Social Charter.

5. ANIEF has also submitted another collective complaint, no.159/2018 (doc. 6), concerning the Italian education sector, with specific reference to the peculiar situation of persons with a primary school teaching certificate (*diploma magistrale*) who were initially authorised to teach in primary schools and were then denied this option by a disputed decision of the Italian Council of State (highest administrative court). As a result of this, thousands of

teachers who have previously been recruited under indefinite duration contracts face the risk of dismissal.

6. This new collective complaint, in contrast, is concerned with the specific situation of special needs auxiliary teachers (*insegnanti di sostegno*), that is professionals specialising in educational assistance activities attached to classes that include pupils with disabilities, to assist their inclusion.

7. In the complaint, we will describe the disastrous state of educational assistance to disabled pupils in Italy, associated with:

- a) the lack of job security faced by a high proportion of those employed in this activity (104 000, or more than 56% of the total number);
- b) the fact that more than 79% of the special needs auxiliary teachers facing job insecurity lack the required specialist educational qualifications;
- c) maintaining 82 509 special needs teaching posts on the “*de facto* workforce” list, meaning that those concerned can only be recruited on the basis of contracts expiring on 30 June;
- d) the resulting lack of educational continuity, with 170 000 pupils with disability (59% of the total) affected by systematic changes of special needs teaching assistance each year, and;
- e) the inevitable recourse each year to the courts by families seeking to ensure that their children are assigned a special needs teacher.

SUPRANATIONAL LEGAL SOURCES

8. The United Nations Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006 (doc. 7) at the 61st session of the UN General Assembly, with its optional protocol, the first legally binding international instrument, ratified not only by Italy but also by the European Union.

9. The Convention was ratified by Italy under Act no. 18 of 3 March 2009 (doc. 8), leading to the establishment of a national observatory on the conditions of persons with disabilities, whose task is to promote the full integration of disabled persons in accordance with the principles enshrined in the Convention and laid down in Act no. 104 of 5 February 1992 (doc. 9).
10. The vision of a society founded on respect for human rights requires particular care and attention to be paid to establishing an inclusive education system at all levels, which encompasses the entire community.
11. The European Union has been concerned with disability since the second half of the 1970s. The first Council resolution recommending a programme for the vocational and social integration of handicapped persons dates from 1974.¹ Based on this initial resolution, and up to the early 1990s, four action programmes were developed, mainly concerned with assisting member states with employment and vocational training for disabled persons.
12. The first real turning point on the European front came in 1996, with approval of the European Community's disability strategy.²
13. Even though the strategy was non-binding, it constituted initial recognition of disability as a branch of European policy and the first real affirmation of the need to protect the rights of disadvantaged persons through a series of comprehensive and co-ordinated actions. The strategy proposed placing "a much stronger emphasis on identifying and removing the various barriers to equal opportunities and full participation in all aspects of life".³ It reflected a change of perspective inspired by the Standard Rules for the Equalisation of Opportunities of Persons with Disabilities⁴ (approved by the United Nations in 1993) and the growing impact of the so-called "social model of disability,"⁵ which views disability as a consequence of social factors and not simply the effect of an individual's impairment.

¹ Priestley M, In search of European disability policy: between national and global, ALTER - Volume 1, Issue 1, November 2007, Pages 61-74

² Communication of the Commission on Equality of Opportunity for People With Disabilities, A New European Community Disability Strategy, Brussels, 30 July 1996, COM(96)406 final.

³ Op cit. Executive summary and policy conclusions.

⁴ UN General Assembly Resolution 48/96 of 20 December 1993

⁵ On the social model, see *inter alia* Barnes C, Understanding the social model of disability, Routledge, Handbook of Disability Studies

14. When the Treaty of Amsterdam came into force in 1999, the Community was given power to take appropriate action to combat discrimination based on, *inter alia*, disability (Article 13 of the TEC, now Article 19 of the TFEU). A further declaration appended to Article 95 of the TEC, now article 114 of the TFEU, stated that the needs of persons with disabilities must be taken into account when drawing up measures to harmonise the internal market.
15. However, the most important legal document to date is Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, which represents the first real steps taken by lawmakers to guarantee disabled persons' right to work. As well as banning direct or indirect discrimination or harassment based on disability, religion or beliefs, age or sexual orientation, the directive requires employers, for example, to provide reasonable accommodation.
16. In 2000, in Nice, the European Council adopted the Charter of Fundamental Rights of the European Union, which included two provisions specifically relating to disability. Article 21 reaffirmed the principle of non-discrimination, while under article 26 the European Union "recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community".
17. From a political standpoint, in late 2003, which had been declared European Year of People with Disabilities,⁶ the new European disability action plan for the period 2004-2010 set out to implement fully the directive on equal treatment in employment, reinforce mainstreaming of disability issues in the relevant Community policies and improve accessibility.
18. Following active involvement in negotiations the European Union signed the UN Convention on the Rights of Persons with Disabilities in 2007.⁷ The ratification that

⁶ Council Decision of 3 December 2001 on the European Year of People with Disabilities 2003; Commission Communication to the Council, the European Parliament, the Economic and Social Committee and to the Committee of the Regions, Equal opportunities for people with disabilities: A European Action Plan, 30 October 2003, COM(2003) 650 final.

⁷ The [Convention on the Rights of Persons with Disabilities](#) and its optional protocol were adopted on 13 December 2006 at the UN headquarters in New York and were opened for signature on 30 March 2007. There were 82 signatures to the Convention, 44 to the optional protocol and one ratification. It was the largest number of signatures ever on the opening day for signature of a United Nations convention. It was the first global human

followed nearly three years later⁸ represents a further, and definitive, change in European Union policy in favour of comprehensive and effective policies in the field of disability. Following its ratification, the Convention has become an integral part of European Union law and now has “sub-constitutional” status. Thus, under Article 216.2, paragraph 2 TFEU, when the European Union concludes international agreements these are binding on its institutions and take precedence over Union decisions. They thereby have an intermediate status as sources of law, above that of Union rules and regulations but below that of the treaties: TEU and TFEU.

19. Almost coinciding with its ratification of the UN convention, the Commission adopted the European Disability Strategy 2010-2020. The title was a direct reference to the previous, 1996, strategy and there was a clear conceptual continuity between the two since the aim of the new strategy was to “empower people with disabilities so that they can enjoy their full rights, and benefit fully from participating in society and in the European economy”.⁹

20. The principles laid down were aimed at safeguarding:

- education and training, by promoting access to mainstream education and training for pupils and students with disabilities;
- equal access to a high standard of education and lifelong learning to enable persons with disabilities to participate fully in society and improve their quality of life.

21. The European Commission has launched a number of educational initiatives for disabled persons. This culminated in the establishment of the European Agency for Special Needs and Inclusive Education and of a specific study group on disability and lifelong learning. And for the first time, the European Union identified eight areas in which it proposed to act jointly with member states: accessibility, participation, equality, employment, education and training, social protection and health.

22. In July 2016, the Committee on Employment and Social Affairs reported to the European Parliament on the implementation of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (Employment Equality

rights treaty of the twenty-first century and the first human rights convention open to the signature of regional integration organisations. The Convention came into force on 3 May 2008.

⁸ Ratification was formalised in Council Decision 2010/48/EC of 26 November 2009, but it was only deposited with the United Nations on 23 December 2010.

⁹ Commission communication of 15 November 2010, European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe, SEC(2010) 1324.

Directive: 2015/2116(INI)). In its subsequent resolution of 15 September 2016, the European Parliament stated, in relation to disability, that it:

“22. emphasises that ‘discrimination on the basis of disability’ means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field; notes that it includes all forms of discrimination, including denial of reasonable accommodation;

...

38. notes that persons with disabilities make a valuable contribution to society as a whole, and calls on the Member States to use structural funds, in particular the European Social Fund, to adapt workplaces and to provide necessary assistance for persons with disabilities at work, and to improve education and training with a view to increasing their employment rate in the open labour market and combating unemployment, poverty and the social exclusion of disabled persons; points to Article 7 and Article 96(7) of the Common Provisions Regulation (CPR) (27) which promote equal opportunities, non-discrimination and inclusion of persons with disabilities in the implementation of the European Structural and Investment Funds (ESI funds) in general, and in the operational programmes in particular, and stresses that *ex ante* evaluation should appraise the adequacy of planned measures to promote equal opportunities and prevent any discrimination; considers that European and national funding could also be channelled, for example, towards SMEs which encourage workers to follow courses in order to enable them to stay in employment;

...

43. calls on all actors involved to pay particular attention to the integration of persons with intellectual and psychosocial disabilities and to develop a comprehensive campaign to raise awareness about the CRPD and combat prejudice against persons with disabilities — especially persons with psychosocial disabilities, intellectual disabilities, persons with autism spectrum disorders and older persons with disabilities in the workplace; requests that all materials related to capacity-building, training, awareness-raising and public statements, among others, be made available in accessible formats”.

23. The report on “Access of Persons with Disabilities to Social Rights in Europe”, drawn up by Marc Maudinet, Director of the national centre for studies and research on disability and social misfit (CTNERHI), in Paris, which was adopted by the 26th session of the Committee

on the Rehabilitation and Integration of People with Disabilities (CD-P-RR) (Strasbourg, 7-10 October 2003), reads: “2.4.1. **General principles: education, schooling**

Article 2 of the European Convention on Human Rights makes the right to education a basic right. In Article 7, the revised Social Charter sets out to make the right of children and adolescents to protection effective, by stipulating a minimum age for admission to employment and declaring that children ‘still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education’.

Chapter 5 of Recommendation No. R(92)6 sets out the aims and practical details of normal and special education, and types of education which link the normal system with rehabilitation. This section is based on the principle that children should attend special schools only when the gravity of their disability makes this necessary. Otherwise than in this situation, which may be temporary, the normal educational facilities should be open to all children with disabilities.

In 1989, the United Nations Convention on the Rights of the Child confirmed the Council of Europe’s approach to the education of children and young adults with disabilities. This convention is based on the principle that children living in institutions have the same rights as all other children, including the right to live with their families. This means that placing children with disabilities in institutions is a last-resort solution. All such children, whatever their capacities, are entitled to suitable education in an appropriate environment, which takes account of their needs and their families’ wishes. Education and schooling should enable them to achieve the highest possible level of personal development, and acquire the abilities they need to live as independently as possible”.

24. Also relevant are: the European Convention on the Exercise of Children’s Rights (ETS No. 160), whose purpose (Article 1) is “in the best interests of children, to promote their rights, to grant them procedural rights and to facilitate the exercise of these rights by ensuring that children are, themselves or through other persons or bodies, informed and allowed to participate in proceedings affecting them before a judicial authority”; and the European Convention on Contact concerning Children (ETS No. 192), which is now being ratified by Council member states, and is designed to implement the United Nations Convention on the Rights of the Child.

25. The European Court of Human Rights has also ruled on a number of occasions on disabled persons’ right to education. One particular example is its very recent judgment of 10 September 2020 (*G.L. v. Italy*, application no. 59751/15 - doc. 10), in which the Court found

that Italy was in breach of a disabled pupil's right to education. In this important decision, the Court ruled that Italy had violated Article 2 of Protocol No. 1, which established the right to education, and Article 14 of the Convention, which prohibited any form of discrimination against pupils with disabilities, and ordered Italy to pay EUR 2 520 for pecuniary damage and EUR 10 000 for non-pecuniary damage.

ITALIAN CONSTITUTION AND DOMESTIC LEGISLATION

25. The Constitution of the Italian Republic, adopted on 1 January 1948, provides as follows:

Art.1

“Italy is a democratic Republic founded on labour.

Sovereignty belongs to the people and is exercised by the people in the forms and within the limits set forth in the Constitution”.

Art. 2

“The Republic recognises and guarantees the inviolable rights of the person ... [and] expects that the fundamental duties of political, economic and social solidarity be fulfilled.”

Art.3

“All citizens have equal social dignity and are equal before the law, without distinction with regard to sex, race, language, religion, political opinion or personal and social circumstances. It is the duty of the Republic to remove those obstacles of an economic or social nature that constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country”.

Art.4

“The Republic recognises the right of all citizens to work and promotes those conditions which render this right effective.

Every citizen has the duty, according to personal potential and individual choice, to perform an activity or a function that contributes to the material or spiritual progress of society”.

Art. 32

“The Republic safeguards health as a fundamental right of the individual and as a collective interest”.

RELEVANT DOMESTIC LEGISLATION

26. Section 7 of Act no. 517 of 4 August 1977 (doc. 11) abolished the so-called “differentiated” classes, namely those reserved exclusively for disabled pupils, and specified that pupils with disabilities should be included in ordinary classes (presented as inclusion of persons with special characteristics in an ordinary context). The act made no provision for the transformation or adaptation of the school environment to disabled persons’ needs, but simply authorised their presence in class, with the support of a specialist auxiliary teacher, while maintaining and emphasising the notion that disabled persons were different from the rest.

27. The Italian Constitutional Court subsequently became involved and in its judgment no. 15 of 8 June 1987 (doc. 12) laid down certain principles that would have a significant impact on the rules governing this area of activity. Based on the technical/scientific principle that it is possible for pupils with disabilities to make progress, the Court ruled that denying disabled students access to higher education institutions purely on the basis of their presumed incapacity, and in the absence of appropriate compensatory measures, was in breach of article 3.2 of the Constitution, which required institutions to remove all types of obstacles to education.

28. The educational integration of pupils with disabilities then became the subject of Act no.104/1992, which included certain provisions on disabled persons’ right to education and training, on the principle that educational integration was a necessary step on the way to social integration.

Section 8 paragraph 1 of Act 104/1992 provides that the inclusion and social integration of “*persona handicappata*” [author’s note, this was the term, subsequently abandoned, used by parliament in 1992] also entails a series of measures to give effect to disabled persons’ right to information and to study. Specific reference is made to special educational and technical equipment, programmes, specialist languages, assessment tests and the availability of specialist teaching and non-teaching staff (letter d); outside school activities that incorporate and build on the educational experience on a continuing basis and consistent with what is practised in school (letter d); similarly, before and after-school school activities that incorporate and build on the educational experience on a continuing basis and consistent with what is practised in school (letter m).

Under section 12 of Act 104/1992, all children with disabilities aged 0 to 3 are entitled to day nursery places. Disabled persons' right to education and training is guaranteed in nursery classes, the ordinary classes of schools of all levels and universities. The aim of educational integration is to develop the potential of persons with disabilities in terms of learning, communication, personal relationships and socialisation. There shall be no obstacles to exercising the right to education and training arising from learning or other difficulties caused by impairments linked to disability.

Section 13 of Act 104/1992 is more specifically concerned with educational integration. It specifies, *inter alia*, that pursuant to presidential decree 616 of 24 July 1977 and its subsequent amendments, in schools at all levels, and apart from the duty imposed on local authorities to furnish assistance to pupils with physical or sensory disabilities to facilitate their personal autonomy and communication, special teachers shall be appointed to provide support activities. It also specifies that provision shall be made for sufficient specialist auxiliary teacher posts in secondary school establishments when the Act in question comes into force, to ensure that the ratio is at least equal to that in other levels of schooling, and in all events, subject to the level of financing available for this purpose, in accordance with section 42.6.h. In first- and second-tier secondary schools assisted educational activities must be available, with priority given to the experimental approaches specified in sub-paragraph 1.e. These are provided by auxiliary teachers specialising in disability in subjects identified on the basis of dynamic functional profiles and the resulting individual educational plans. Special needs auxiliary teachers are jointly responsible for sections and classes in which they work and take part in educational planning and the preparation and monitoring of activities coming under the aegis of joint-class, class and teacher councils.

29. It should also be noted that a recent legislative decree (66/2017 - rules for developing disabled pupils' social inclusion) (doc. 13) has redefined the role of teaching staff specialising in disability and their training requirements, their selection procedures and, finally, the key levels of educational provision. In particular, under article 12.1, completion of the specialist course on educational assistance for and social inclusion of pupils with disabilities now authorises those concerned to apply for posts of auxiliary teacher specialising in disability in nursery and primary schools. Under paragraph 5, the Minister of Education, Universities and Research may issue a decree¹⁰ laying down the study programmes and implementation

¹⁰ The decree must be adopted under section 17, paragraph 95 of Act 127/1997, which lays down the general rules governing the organisation of university courses, other than doctorates, in compliance with the relevant European

arrangements for, and organisation of, the specialist course in question and the educational qualifications required for acceptance on such a course.¹¹ In the case of first- and second-tier secondary schools, under article 12.2, those concerned must complete the specialist course on educational assistance for and social inclusion of pupils with disabilities. The course is drawn up at national level by the education, universities and research ministry, having regard to the needs and requirements of the national education and training system, and is run by universities authorised to do so by the ministry. The training lasts one year and requires students to obtain 60 university training credits, including at least 300 hours of placements (the equivalent of 12 credits).

Under paragraph 3, candidates must pass an entry test organised by the universities.

Paragraph 3 also specifies that entry to the course is restricted to persons holding the diploma of *laurea magistrale a ciclo unico* in primary education studies, with 60 additional university training credits relating to educational activities concerned with inclusion, other than those provided for in the course. Under article 15, great importance is placed on the social inclusion observatory, a standing body that already existed but whose activities had been suspended in recent years. Article 16 of the decree entitles pupils who are unable to attend school for at least 30 days to home schooling.

30. There is therefore a substantial body of legislation on the education of disabled pupils and students, which is protected by the Italian Constitutional Court.

CONSTITUTIONAL CASE-LAW

31. The Constitutional Court has ruled on a number of occasions on disabled pupils' attendance at school, as a fundamental aspect of the general development of the personality.

Reference has already been made to judgment 215 of 1987, in which the Court ruled that young disabled persons' attendance at secondary schools should be guaranteed for all, rather than merely facilitated. Judgment no. 80 of 22 February 2010 (doc. 14), in which the Constitutional Court stated that disabled persons' entitlement to education is a fundamental right, is also critical. It noted that, among the various measures laid down in legislation, "of particular importance are the provisions on teaching staff specialising in disability, who are specifically

Union legislation. Following consultations with the national university council and the relevant parliamentary committees, and with the agreement of other ministers concerned, the decisions taken are published in one or more decrees of the minister responsible for education, universities and research (formerly the minister responsible for universities and scientific and technological research).

¹¹ The decree has not yet been approved.

required to apply ‘models of integration and assistance’, which are applicable to pupils with disabilities and which cannot be waived (equally from a constitutional standpoint)”. Since the overtime payments for auxiliary teachers specialising in disability represent a specific form of protection for persons with disabilities facing particularly serious difficulties, any rule that removes this option is unconstitutional. This is all the more so since the decision in question “shall be applied once all the possibilities provided for in current legislation have been implemented, which, it should be noted, does not apply automatically to all disabled pupils, irrespective of degree of disability, but shall take due consideration of the types of disability suffered by the person concerned”. There can be no justifiable reasons for restricting the fundamental right to education of persons with major disabilities, for whom the rehabilitation process “seeks to secure their full integration into society, in which education and their integration into the school environment play a critical role”.

32. More recently, in judgment no. 275/2016 (doc. 15), the Constitutional Court ruled that when applying disabled students’ fundamental right to education, parliament was obliged to provide the necessary resources, including financial resources, to make the right effective. The practical application of the hard core of disabled persons’ rights cannot remain dependent on financial decisions made by parliament in the form of provisions that leave it uncertain how much will be made available and when.

33. The more recent Constitutional Court judgment no. 83 of 11 April 2019 (doc. 16) follows the same pattern, in that it also sets out to provide adequate safeguards to ensure the effectiveness of the right to education of pupils with physical or sensory disabilities, which should include appropriate financial provision and equipment and facilities. The Court started from the principle that the legal situation of disabled persons encapsulates “a range of values based on the fundamental grounds that inspired the preparation on the Constitution” (Constitutional Court no. 232 of 2018, no. 258 of 2017, no. 275 of 2016, no. 215 of 1987), and reaffirmed the principle that services that transpose constitutional rights must be provided “without interruption to ensure that persons with disabilities have effective enjoyment of their right to education and to educational integration”.

COMPLAINED OF CONDUCT OF THE ITALIAN STATE

34. Despite this theoretically praiseworthy legal framework as presented here, the Ministry of Education, the public body responsible for public education at national level, has behaved

in practice in such a way as to fail to apply correctly what is laid down in the legislation, in violation of the provisions of the European Social Charter.

35. There is a long and detailed description of the situation of educational staff in complaint no. 146/2017, on which the Committee has already ruled. To avoid unnecessary repetition we refer to the content of this document. We will simply summarise the main points set out in the previous complaint as the introduction to matters dealt with here.

36. Recruitment of education ministry teaching staff is the subject of article 399, paragraph 1, of legislative decree no. 297 of 16 April 1994 (the sole education legal text in force concerned with schools of all levels, appendix 11), as replaced by Act no. 124/1999 (urgent provisions relating to school staff), which reads: “50% of teaching positions in nursery, primary and secondary schools, including art high schools and institutes of art shall be filled out of the positions eligible for allocation each year for that purpose by competitions based on qualifications and examinations, whilst the remaining 50% shall be drawn from the permanent eligibility ranking (or GAE) lists established pursuant to Article 401.”

37. The permanent eligibility ranking lists therefore constitute the second means of recruitment to permanent posts in the Italian public school system.

38. However, permanent lists, which are now termed specific reserve lists closed to new entries, or “eligibility ranking (GAE) lists”, do not include all the teachers lacking job security. In particular, teachers who qualified and were authorised to teach after the 2010/2011 school year were not eligible for inclusion on the specific reserve lists closed to new entries.

39. The result has been to deny a high proportion of teachers without job security the right to apply for permanent posts, as the European Committee of Social Rights found in its decision on collective complaint no. 146/2017, which stated that “there is a violation of Article 1§2 of the Charter in respect of public education staff not registered in the [GAE] lists and recruited under successive contracts with interruptions for an overall length of more than 36 months”. As such, the Italian government was in breach of its undertaking to all the other members of the European Union to “to protect effectively the right of the worker to earn his living in an occupation freely entered upon”

40. It should also be noted that recruitment to Italian public schools is organised each year on the basis of the so-called *de jure* workforce.

In theory, at the start of each school year, the education ministry draws up the *de jure* workforce list for each school, on the basis of previously determined financial criteria that bear no

relationship to the actual situation. These employees are made up of staff with permanent contracts and, with respect to vacant posts, because no competitions have been held for more than eleven years (see paragraph 42 of the Mascolo decision), these are the employees from whom teaching posts are awarded for the complete school years, from September to August of the following year.

41. This level of staffing does not reflect in any sense the real needs of the school system, so in mid-year, in June-July, after monitoring the number of pupils enrolled, a correction is carried out, giving rise to the *de facto* workforce, which forms the basis on which posts are filled up to the end of the school year, that is from September to June.

42. The situation remains unaltered since the Mascolo judgment of the Court of Justice of the European Union and the passing of Act no.107/2015, which was intended, in theory, to rectify the Luxembourg court's criticisms of the Italian school system.

43. The act confined itself to regularising persons registered on the (former) ranking lists until expiry, but does not provide for the granting of tenure or alternative forms of regularisation to all the staff without job security included on the ranking order lists draw up by the schools. These constitute the reservoir from which to draw the teachers who will make up the so-called *de facto* workforce, in other words the staff who are really needed at the start of each school year.

44. At the last meeting with the unions, on 24 February 2021, the education minister said that some 900 000 teachers were employed in the country's 8 200 public schools, of whom 695 262 were on permanent contracts and about 213 000 on annual contracts.

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A) THE NUMBER OF AUXILIARY TEACHERS SPECIALISING IN DISABILITY FACING JOB INSECURITY

45. According to the education minister, of the 213 000 teachers facing job insecurity, 104 000 were auxiliary teachers specialising in disability. In other words, more than 56% of the total number of teaching staff specialising in disability is made up of replacements, recruited in the course of the year and then made redundant in June (see the report of the meeting between the Minister of Education and the unions, extract from an article in a specialist journal, *La Tecnica della Scuola*, doc. 17).

46. More precisely, according to statistics published by the education ministry, the composition of the workforce of auxiliary teachers specialising in disability is currently as follows:

- 79 679 teachers recruited on a permanent basis;
- 21 491 teachers on contracts expiring on 31 August registered on the *de jure* staff lists;
- 82 509 teachers on temporary contracts to 30 June registered on the *de facto* staff lists.

47. The lack of job security of auxiliary teachers in the disability field has therefore become worse than that, already dramatic, described in specialist journal, *Tuttoscuola*, concerning the school year 2019/2020 (doc. 18) and taken up by the main press organs (see the attached press review, with articles from *Corriere della Sera*, *La Repubblica*, *Sole 24 ore*, *L'Avvenire*, etc. - doc. 19).

B) THE LACK OF SPECIALIST TEACHERS

47. The problem of lack of staff specialising in teaching disabled persons is also very serious. According to a recent document produced by *Cisl Scuola*¹² (doc. 20), more than 79% of teachers facing job insecurity who teach children requiring special assistance do not have the necessary educational qualifications, which is quite incompatible with the purpose of the relevant legislation, which is to help pupils who need it to get special help with the learning and educational process.

48. Moreover, in the absence of teachers with the necessary qualifications for teaching the disabled, the education ministry cannot even offer permanent contracts to staff it wishes to recruit to vacant posts set aside for the *de facto* workforce. This is why 21 841 posts of auxiliary teacher specialising in disability remain vacant on the *de facto* staff list, even though the relevant workforce is under-provided and generally short of staff (doc. *Cisl scuola* no. 20).

C) NO INVESTIGATION OF THE REAL NEEDS FOR AUXILIARY TEACHERS SPECIALISING IN DISABILITY

49. The situation described above is the consequence of the education ministry's decision, since 2006, not to change the method of determining the required number of auxiliary teachers in this field on permanent contracts, without the least attempt to investigate the real needs of

¹² CISL (the confederation of Italian trade unions) is the most representative trade union in the public sector.

pupils with disabilities for educational integration, while basing itself solely on the minimum number of staff required for the long-past school year 2006/2007 (that is, in terms of the *minimum* quota provided for in section 2, paragraph 414, of Act no. 244/2007), even though from 2006 to 2019, the number of pupils certified as having a disability rose from 174 000 in 2006 to 283 856 today (doc. 21).

50. This is why the Latium administrative court, in its final judgment no. 149 of 7 January 2019 (doc. 22), declared admissible the application filed by the specialist teachers concerning the systematic gap between the forecast staff requirement (*de jure*, on the basis of which it was possible to recruit on permanent contracts) and the required number in practice (*de facto* workforce), which could only be used to recruit replacements. The application relied on abuse of authority based on the failure to conduct any investigation, as a result of which, “it is impossible to establish the number of teachers required with reference to the period 2006/2007. Having regard to the Constitution, the provision relating to the protection of pupils with disabilities requires the public authorities to acquire information to enable them to implement paragraph 413, namely to identify the criteria and processes relating to the needs uncovered, while ensuring development of the procedures for integrating disabled pupils, including, where necessary, an appropriate balance between the various provinces to ensure that a national average ratio of one teacher per two pupils with disabilities is not exceeded. This does not automatically signify that posts made available by this derogation must be included in the *de facto* workforce but simply that determining the size of this list cannot be based simply on circumstances that applied more than ten years previously, since the situation must be monitored closely and regularly on account of the clear increase in the pathologies deemed to be relevant. It is therefore incumbent on the public authorities to carry out a detailed investigation of the situation, while at the same establishing that there is a genuine need for auxiliary teachers specialising in disability, because it is quite inappropriate to set the level of staff needed purely on the “trial and error” basis employed by the existing protective instruments, given the particular circumstances of the disabled school population. The application must therefore be declared admissible and the measures referred to in the introduction set aside, because they do not match the number of permanent posts and are not derived from a detailed investigation, based on year-on-year findings, but are the fruit of almost automatic process.

D) THE LARGE NUMBER OF CASES BEFORE THE COURTS

51. The exponential growth in the number of disabled pupils, coupled with the absence of any prior surveys aimed at adapting the number of permanent staff involved to their real needs for full integration into the education system, has led to an explosion of judicial applications by disabled pupils' families to secure an adequate number of specialist auxiliary teachers concerned. In Sicily alone, and only in 2016, disabled pupils' parents filed a total of 2 314 applications, which cost the authorities a one-year total of more than 17 million euros, (doc. 23)¹³ in orders to pay damages for harm incurred and lawyers' fees.

According to a recent report of the auditor general's department on educational activities on behalf of disabled pupils and their special educational needs (doc. 24), over several years 8.5% of families of pupils with disabilities have lodged applications to secure more hours of educational assistance.

51. This is why it cannot be justified, other than from a public spending standpoint, to have a system for allocating posts of special needs auxiliary teachers specialising in disability in which "only parents who lodge judicial applications and have the means, including the financial resources, to do so can obtain a decision ordering the school management to permit the use of the number of hours laid down by the G.L.O.H. [*Gruppo di Lavoro per l'Handicap Operativo*: the team set up in each school to determine what practical activities should be introduced to assist each disabled pupil], whereas this is not possible for parents without the same means. Such a system is incompatible with constitutional principles and the law which, before and after Constitutional Court judgment no. 80 of 2010, entitled pupils with disabilities to obtain the hours of special teaching assistance laid down by the G.L.O.H." (Council of State decision no. 2023, sez. VI, of 23 March – 3 May 2017, doc. 25).

¹³ The cost to the treasury in coming years could be even more demanding given the very recent decision of 10 September 2020 (case of G.L. v; Italy, application no. 59751/15), in which the European Court of Human Rights found that Italy had violated the right to study of a disabled student. The Court found that Italy had breached Article 2 of the first additional protocol to the Convention, which safeguards the right to education, and Article 14 of the Convention, which prohibits all forms of discrimination against pupils with disabilities, and ordered Italy to pay 2 520 euros as pecuniary damage, 10 000 euros as non-pecuniary damage and 4 175 euros in costs and fees. More specifically, the European Court found that Italy had not responded with the due diligence required to ensure that persons with disabilities enjoyed the right to equal education on an equal footing with other pupils, such as to ensure a fair balance between the competing interests involved (§ 72).

E) NO CONTINUITY OF TEACHING STAFF

53. Having no prior surveys or investigations on which to base the matching of the permanent workforce to pupils' real needs for integration also has dramatic effects on the continuity of those pupils' learning experience.

54. According to the aforementioned specialist journal, *Tuttoscuola* (doc. 19), about 158 000 disabled pupils, or more than half the total, start the school year without their teacher, and remain at home (a decision that appears to have been taken by the parents of severely disabled pupils) or attend classes where they are taught by other teachers, and assisted by their classmates.

However, this also appears to show that at least 170 000 pupils with disabilities (59% of the total) will not have the assistance of their previous year's special auxiliary teacher.

This mindless rotation of posts is a grave breach of the principle of continuity of teaching staff, which for a class as a whole is far less important than it is for a disabled pupil. Thus, in the case of a full class such lack of continuity occurs in the somewhat rare event of a total renewal of the teaching staff from one year to the next, whereas for disabled pupils failure to confirm the appointment of their specialist teacher represents a total loss of teaching continuity, since they lose their main reference point in the school.

For pupils with disabilities, continuity of teaching is also an essential means of overcoming the difficulties arising from their condition and strengthening their relationships with their fellow pupils.

More precisely, according to statistics published by FISH (the Italian federation on overcoming disability: doc. 26), 90% of pupils have changed their special teachers from one year to the next, 80% have changed them twice in the course of a school year and 6% have even had five changes of special teacher.

55. This is because at least 90% of auxiliary teachers specialising in disability who are recruited on fixed-term contracts are appointed to schools other than the ones they taught in the previous year, which prevents any continuity of teaching, that key factor that ensures that all children with disabilities receive the education to which they are entitled under the Constitution.

56. The negative impact of this is clear, in a situation where a continuing relationship between the specialist auxiliary teacher and the pupil needing assistance is key to achieving a

positive conclusion to the process of integration and of overcoming the sense of personal and social malaise that many children and young persons experience.

57. The foregoing analysis is also confirmed by the previously cited auditor general's report (doc. 24) on educational measures to assist pupils with disabilities and special education needs. The report considers the period from 2012 to 2017, during which the proportion of disabled pupils rose from 2.3% in the school year 2011-2012 to 2.9% in 2016-2017, an increase of 26% in five years. According to the report, this increase in the number of pupils with disabilities was accompanied by a steady decline in the effectiveness of the system for integrating these pupils into the school environment.

The report summarises the critical aspects of the system in six points:

- 1* inadequate planning at central level to ensure that resources matched needs and administrative shortcomings in drawing up forecasts;
- 2* rigid operational procedures and poor co-ordination between the various institutions concerned;
- 3* delays in allocating resources to schools;
- 4* lack of information based on well-founded evidence and statistical data;
- 5* failure to assess the effectiveness of activities to secure integration and acceptance;
- 6* uncertainties regarding the allocation of earmarked financial resources and the unpredictability of their arrival.

The auditor general's department has clearly highlighted "the difficulties experienced in obtaining both information on the extent of disability in schools and the relevant financial and management information". It also notes "the absence of any plans to establish an integrated system for information sources" and "the serious failures of the ministry".

58. It is hardly necessary to stress that this situation is fully consistent with the Charter violations previously found by the Committee in its decision of 7 July 2020 on complaint no.146/2017: the reason for the shortage of auxiliary teachers in the field of disability is that the Italian state has failed to manage its education system correctly.

59. Turning to the other aspect of this complaint, it is clear that there is an unacceptable situation in which the most vulnerable members of the community suffer from the

organisational malfunctioning of the education system, as it is currently structured. They are prevented from receiving, from their very early years, the education that is essential for their future integration into the world of employment, thus depriving them of this opportunity, which is the very least that a democracy can guarantee for the most vulnerable members of society in the interests of the community as a whole.

60. Moreover, the result of deferring indefinitely the organisation of competitions to fill what are effectively vacant posts, thereby retaining some 80 000 posts of auxiliary teacher specialising in disability in the so-called “*de facto* workforce” list, that is persons who can only be called on on a supply-teaching basis, is to create a permanent increase in the number of education staff suffering job insecurity, in breach of the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, appended to directive 1999/70/EC.

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The undersigned organisation therefore complains of the following:

Violations of the European Social Charter

- **Article 1, undertakings nos 1 and 2**, because the Italian state has failed, particularly from 2017 to the present, to acknowledge its duty to tens of thousands of auxiliary teachers specialising in disability facing job insecurity to fulfil, as one of its 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, and the effective protection of these workers’ right to earn their living in an occupation freely entered upon.

- **Part 1 of the Preamble to the European Social Charter** (and Article 21 of the Charter of Fundamental Rights of the European Union, articles 19 and 114 of the TFEU, the EU directive of 2008 and UN convention of 13.12.2006), which states that: “the Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised: (15) Disabled persons have the right to independence, social integration and participation in the life of the community”.

- **Article 15 of Part II of the Charter** which reads: “The right of persons with disabilities to independence, social integration and participation in the life of the community: with a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and

participation in the life of the community, the Parties undertake, in particular: 1. to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private”.

- **Article E of Part V of the Charter states:** “Non-discrimination: 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.”

In this collective complaint, we request the European Committee of Social Rights to find, having regard to its jurisdiction, that the Italian state has violated the aforementioned provisions of the European Social Charter and recommend that they be eliminated.

The following documentation, referred to in the substantive submission, is appended to the complaint:

- 1- Statute of the ANIEF
- 2- Documentation concerning the representativeness of ANIEF
- 3- Certification of ANIEF as the most representative trade union
- 4- Percentage of votes at the RSU (combined union representatives) elections
- 5- Statute of the “La chiave di volta OdV” association
- 6- Complaint no.159/2018
- 7- UN Convention of 13 December 2006
- 8- Act no.18 of 3 March 2009;
- 9- Act no.104 of 5 February 1992;
- 10- Judgment of 10 September 2020 (G.L. v. Italy, application no. 59751/15)
- 11- Italian Act no.517/1997
- 12- Italian Constitutional Court 215/87
- 13- Legislative decree 66/2017
- 14- Italian Constitutional Court 80/10
- 15- Italian Constitutional Court 275/16
- 16- Italian Constitutional Court 83/19
- 17- Report of meeting between the minister of education and trade unions, extract of an article in the specialist journal, *La Tecnica della Scuola*

- 18- Article in the journal, *Tuttoscuola*
- 19- National press review
- 20- CISL Scuola file 2021
- 21- The principal data relating to pupils with disabilities for the school year 2018/2019.
- 22- Lazio regional administrative court decision 149/19
- 23- Judicial cases in the Sicily region
- 24- Report of the auditor general's department
- 25- Council of State 2023/17
- 26- Data supplied by the FISH (overcoming disability) federation.

Rome, 24 May 2021

Marcello Pacifico as legal representative of ANIEF _____

Natalia Sinibaldi as President of the voluntary association *La Chiave di Volta odv*

Sergio Galleano _____

Walter Miceli _____

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