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

16 November 2021

Case Document no. 3

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

**RESPONSE FROM ANIEF TO THE GOVERNMENT'S
OBSERVATIONS ON ADMISSIBILITY**

Registered by the secretariat on 5 November 2021

**Directorate General
Human rights and rule of law
Department of the European Social Charter**

Complaint No. 200/2021

Professional Trade Union Association ANIEF v / Italy

**Replies to the Additional Observations of the Italian Government
of 2nd August 2021**

Recalling all the observations in the complaint, the complainant Organization observes as following.

1. The findings of the Italian government

The observations of the Italian Government are essentially limited to arguing that the poor governance of the school system in terms of support for disability would only concern disabled people, the only ones who bear the consequences.

The considerations, short-sighted and erroneous, they have of no value for the reasons summarized here below.

2. clarifications on the point of fact.

We recall here the factual situation most widely set out in the appeal.

Anief, among its statutory purposes, pursues the objective of "1) Representing and protecting teachers of the Italian school of all levels and of universities, academies and conservatories on a professional, trade union and cultural level, in order to improve the professional, juridical and economic conditions and the social prestige (...) 5) To protect the ethical-moral, professional, juridical-normative and economic, single and collective

interests of the associates ".

Anief counts, among its members, many precarious teachers specialized in teaching activities to support disabled students.

These teachers have for a long time been included, after passing a selective procedure, in the permanent rankings valid for permanent recruitment in relation to vacant positions and available in the so-called "*Organico di diritto*" in support of people with disabilities (ie in the staff that can be used for permanent contracts).

In accordance with these statutory purposes, Anief challenges the determination of the "*Organico di diritto*" of teachers in support of people with disabilities, as it appears completely detached from the actual needs of scholastic integration of disabled pupils.

The illegitimate undersizing of the support staff, indeed, prevents the permanent recruitment of specialized precarious teachers, considering that, pursuant to art. 399 of the d. lgs. n. 297/94, "the appointments are arranged, within the limits of the available places, according to the order of the permanent rankings".

Due to the undersizing of the teachers in support of people with disabilities, the staff hired on permanent contracts this year amounted to 79,679 teachers. This means that the number of chairs assigned to temporary workers (as many as 96,180) in the current school year far exceeds the number of those covered by permanent staff.

The Italian Ministry of Education, deferring indefinitely the selection of the actually vacant support posts, which is responsible for the correct establishment of the staff by law, has favored the increase of the scholastic precarious work, with consequent violation also of clause 5 the framework agreement CES, UNICE and CEEP on fixed-term work, annexed to directive

no. 1999/70 / EC.

Precarious teachers, due to the lack of stabilization of their employment relationship, are forced to change their place of employment every year, resulting in the impossibility of formulating both long and short-term forecasts and projects regarding their future - professional, but often also existential and for their families.

The "damage from school insecurity", however, are manifold. It is necessary to observe that, during the entire service carried out by teachers with fixed-term contracts, teachers do not obtain payment for the seniority increments reserved for permanent teachers from the third year of service.

3. The merits of the complaint

The Government's considerations do not take into account that work is not simply a way to earn a wage, to ensure survival.

The social role of work is clarified by the Italian Constitution. The art. 1 reads: "Italy is a democratic Republic, founded on work". The art. 2 says that "The Republic recognizes and guarantees the inviolable rights of man, both as an individual and in the social formations where his personality takes place, and it requires the fulfillment of the mandatory duties of political, economic and social solidarity". The art. 4 then states that "(...) Every citizen has the duty to carry out, according to his own possibilities and his own choice, an activity or function that contributes to the material or spiritual progress of society". The art. 35 states that "The Republic protects work in all its forms and applications. It takes care of the training and professional development of workers".

The European Social Charter, of which this Committee ensures the correct application, specifies that: "Part one: 1. Every person must have the possibility of earning a living with a job freely undertaken (...) 22. Workers have the right to participate in the determination and to the improvement

of the working conditions and the working environment in the company ".
"Art. 1: In order to guarantee the effective exercise of the right to work, the Parties undertake: (...) 2 to effectively protect the worker's right to earn a living with work freely undertaken; 8 3 to establish or maintain free employment services for all workers; 4 to ensure or encourage adequate orientation, training and professional re-adaptation. Art. 10:

As can be seen, from the national legislation as a whole, which can be inferred from the Charter, work is not simply aimed at guaranteeing one's material subsistence, but constitutes the means to realize one's personality within society, on the basis of one's aptitudes and abilities.

In this case, then, the activity carried out by support teachers, in addition to having an essential social purpose in order to avoid discrimination and contribute to the inclusion of all subjects in social life, constitutes a delicate and highly professional task that requires structures and essential methods of carrying out the work activity, in the absence of which the worker is unable to fully carry out his activity.

It seems evident that the disastrous situation of the Italian school system described in the complaint highlights how the support teachers are not placed in a position by the Italian school administration to carry out their activity in a satisfactory and profitable way.

The mere fact that every year they find themselves in the conditions of choosing the place of work, it involves an interruption of the training path of disabled people which is reflected not only on the pupil, but also on the teacher, who never manages to complete the training path that constitutes the objective of the choice freely made by the teacher to enter this professional line that involves difficult choices due to the particular difficulty that characterizes this type of teaching, compared to that of pupils who

present " normality " aspects, just to say.

The damages and consequent frustrations are intuitive and they do not need to be demonstrated, as being structurally and ontologically correlated with the precariousness of the workplace and the lack of continuity of the training.

For this reason only, the reductive approach given by the Italian Government must be decidedly rejected and the violations of the Charter reported must be examined, with particular reference to the workers' right represented by the undersigned Organization, to earn a living with a freely undertaken job.

Rome, November 5TH, 2021

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