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

29 May 2024

**Case Document No. 7**

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

**RESPONSE FROM THE GOVERNMENT TO THE  
ADDITIONAL OBSERVATIONS BY ANIEF**

**Registered at the Secretariat on 15 May 2024**



*Ufficio dell' Agente del Governo  
davanti alla Corte europea dei diritti dell'uomo*

**AVVOCATURA GENERALE DELLO STATO**

**European Committee of Social Rights (ECSR)**

*Collective complaint n. 200/2021*

*Associazione Professionale e Sindacale (ANIEF) vs Italy*

**FURTHER OBSERVATIONS  
OF THE ITALIAN GOVERNMENT**

Ct 25088/21

Proc. Andrea Lipari

Proc. Adele Berti Suman



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1. With the letter dated 15 April 2024, the Secretariat of the General Directorate of the European Social Charter, requested the Italian Government to submit further observations to ANIEF's additional comments by 15 May 2024.

2. In compliance with the Secretariat of the European Social Charter request, the present further observations are limited to the admissibility of counterparty complain.

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3. The Government, in recalling what has already been stated in the previous observations, state the following in response to the Complainant Association's comments.

4. With particular reference to the recruitment of specialised support teachers, it must be remembered that access to the active training apprenticeship is by programmed number, according to the indications adopted by ministerial decree of the Ministry of Education, University and Research, and the admission of candidates, who meet the requirements for participation, takes place within the limits of the programming established by the Ministry of Education, University and Research for the places available nationally for enrolment in the enrolment in T.F.A. courses for secondary school certification (Article 5 of the ministerial decree no. 249 of 2010).

5. Ministerial decree No 249/2010, in fact, is in precise continuity with the provisions of Law No 341/2010, which in Article 4, paragraph 3, provides that:

*“By decree of the President of the Republic, to be adopted within the time limit and in the manner set out in Article 3, paragraph 3, are defined the scale of the school of specialisation in teaching referred to in paragraph 2 of this Article, the duration of the courses to be fixed in a period of not less than one year and the related curricula. These must include disciplines aimed at professional preparation with reference to the sciences of education and in-depth methodological and didactic study of the subject areas concerned, as well as compulsory teaching traineeships.*

*A decree of the Minister for Universities and Scientific and Technological Research, issued in agreement with the Minister for Education, lays down the criteria for admission to the School of Specialisation in Teaching and the procedures for holding the final examination. The provisions of Article 3(7) and (8) shall also apply”.*



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6. In this regard, it is important to note the targeted planning of requirements on the basis of the regulatory provision (Article 5 of Ministerial Decree 249/10, which provides that the planning of requirements must be subject to the favourable opinion of the MEF and the Department of Public Administration): in order to determine the requirements, in fact, the regional planning of staffing levels and the contingent of substitute teaching staff on available but not vacant posts is taken into account. The number of posts thus identified is ordinarily increased by up to 30% to cover the needs of parish schools and professional education and training paths of the Regions. Finally, the training proposal of academic institutions is also taken into account for the activation of the pathways.

7. In other respects, these Schools are structures in which the training activities of specialization students are carried out, so that it meets a higher-order requirement that the same specialization activities be carried out at Schools with adequate receptive and training capacities of aspirants that only a limitation to unconditional access can guarantee, without prejudice to the compatibility with the principles of constitutional order on the right to study of the programming of access to university courses, even for that referring to specialization courses for secondary teaching (SSIS courses), according to national jurisprudence (*ex aliis, Corte Costituzionale*, ruling No. 302/2013).

8. In this regard, reference should be made to the regulations set out in Presidential Decree no. 970/1975, with which this professional figure was legally established (later better specified in Law no. 517/77). The aforementioned Decree defines him or her as a 'specialist' teacher, provided with specific training or a *quid pluris*, who, together with the curricular teachers, defines the methods of integration of individual pupils with disabilities.

9. The transition from a perspective of inclusion (Law 118/71) to one of integration (Ministerial Circular no. 227/75 and the aforementioned law no. 517/77) of students in disadvantaged situations in school has made it necessary to redefine the figure of the support teacher, outlining a series of knowledge, skills and attitudes of a complex professional profile, which cannot disregard an experiential and training base common to all teachers called upon to carry out such a delicate 'profession', precisely in order to decline this articulated competence in relation to the specific activity to be carried out.



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10. The support teacher, in fact, is not only the teacher of the disabled schoolchildren, but a support teacher for the whole class, who has the task of encouraging didactic, training, and relational situations, aimed at realising the integration process in full co-ownership with the curricular teachers.

11. The legislative prerequisites for the professional profile of the support teacher are, moreover, already to be found in the aforementioned Presidential Decree no. 970 of 31/10/1975, which clarifies that specialised personnel are not assigned to disabled students, but rather *'to normal schools for individualised interventions of an integrative nature in favour of the generality of pupils and in particular those with specific learning difficulties'* (art. 9).

Concerning the protection of the right to work, even the Constitutional Court stated that: *'All the fundamental rights protected by the Constitution are in a relationship of mutual integration and it is not possible, therefore, to identify one of them having absolute precedence over the others. Protection must always be 'systemic and not broken up into a series of uncoordinated and potentially conflicting rules' (Judgment No. 264 of 2012). If this were not the case, there would be the unlimited expansion of one of the rights, which would become a 'tyrant' against the other constitutionally recognised and protected legal situations, which together constitute an expression of the dignity of the person. [...]'* (Judgment No. 85/2013).

12. At the same time, however, considering the need arising from the exponential increase in the demand for specialised teachers, the School Administration, when planning the need for teachers to be specialised through specialisation courses on support for the three-year period 2021/2023, has requested and obtained authorisation to start specialisation courses on support for students with disabilities, for the three-year period 2021/23, for a total number of 90,000 posts.

13. As part of the recruitment policies financed with PNRR funds, competition procedures are currently underway for the permanent recruitment of

- 1,037 support teachers in kindergarten;
- 9348 primary school support teachers;
- 4242 support teachers in secondary schools;
- 961 secondary school support teachers.



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14. Moreover, as pointed out in the European Union, the temporary employment relationship is justified by the need to guarantee, without interruption, the essential public service of education, in order to protect, in favour of all citizens, the right to education referred to in Articles 33 and 34 of the Constitution, since a break in the provision of the services that constitute the fundamental cornerstone of the public service exercised is inconceivable.

15. Therefore, comes into relief, in the light of the methodological premise just mentioned, the physiological and unavoidable nature of recourse to the use of fixed-term employment contracts in the school sector. This is because the needs and public interests they serve are conditioned by events and factors that are not subject to predictability, i.e. not foreseeable ex ante.

16. Non-predictability pertains, first of all, to the change in the delta related to the increase and decrease in the contingent of school personnel in actual service. Indeed, the staff called upon to take over from school staff in retirement, through the mechanism of induction into a changing school population or a different internal geographical redistribution of the same staff, should it become necessary to increase the number of staff for reasons related to the increased demand for a particular curriculum and vice versa.

17. Similarly, it is not possible to foresee in advance the eventuality of the need to replace a teacher who holds a chair (or even a substitute teacher who receives an offer on another seat) during the school year due to events linked to factors of force majeure or objective impossibility, albeit transitory. That makes it unavoidable to resort to temporary substitutions that increase the service rendered by the teacher. In this regard, it is necessary not to undermine, on the one hand, the performance of teaching activities as they are scheduled and structured by law, and, on the other hand, not to discriminate or unlawfully exclude from the call for substitutions candidates in a useful position, to the detriment of selection mechanisms based on merit and transparency (e.g. the ranking system based on qualifications and service, such as GPS and GI).

18. In order to demonstrate the preponderant 'speciality' of the school sector and its discipline with respect to the genus of the civil service, it is enough to think of the strong variability of the demand for enrolment. That demand changes annually in different schools and geographical areas due to numerous and unexpected factors such as, on the one hand, the variation in the



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student population, the free choice of school addresses by families as well as migration flows within the different regions, on the other hand, the mobility of personnel and the number of students entitled to a support teacher.

19. This last socio-sanitary variable, with regard to the complaint under consideration here, appears to have an ever-increasing weight in the daily teaching and training activities of Italian schools, as it is connected to the protection of further and higher constitutional principles. The position of disabled persons of school age finds adequate and strengthened constitutional protection within the social justice programme outlined by the Constitution in favour of the weak people. That program is aimed at pursuing - through a supportive and emancipatory legislative discipline - effective social inclusion and direct participation in the active life of the disabled, especially at school and work.

20. In particular, the Italian Constitution 'recognizes' and 'guarantees' (art. 2 Cost.) the rights of the disabled, for the achievement of their 'equal social dignity' (art. 3 Cost.) in order to allow the 'full development of the human person' (art. 3 Cost.). That finds a firm foundation precisely in the expansive parameter offered by the Constitution and represented by the fullness of the development of the human person, to which educational institutions are subject in every choice linked to learners with disabilities ascertained by the health authorities.

21. The Ministry of Education and Merit has instituted a progressively increasing number of places in derogation, which, by way of example, shows a growth of 1,860.87% in the interval between the 2010/11 and 2019/20 school years, just as shown in the following table:

Anno scolastico	Posti di organico di diritto	Posti di organico di fatto	Totale
2010/11	90.469	3.961	94.430
2011/12	90.469	7.167	97.636
2012/13	90.469	10.832	101.301
2013/14	90.469	19.747	110.216
2014/15	90.469	27.204	117.673
2015/16	90.034	38.893	128.927
2016/17	96.480	46.469	142.949
2017/18	100.080	54.352	154.432
2018/19	100.080	65.890	165.970
2019/20	100.080	77.670	177.750



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22. The increase in the number of exempted seats is part of the Administration's broader plan to implement and stabilise the number of support staff, which, in the period between the 2010/11 school year and the 2019/20 school year, has made it possible to meet the inclusion needs of users with an overall increase of staff of 88.23%. That trend was also confirmed by the authorisations for the following school years.

23. Indeed, for the school year 2020/21 the support seats established by decree were 101,170 and the exceptions (*de facto* staff) were 83,664, while for the school year 2021/22 the support seats established by decree were 106,170 and the exceptions were 91,034. For the school year 2022/23, an increase of a further 11,000 was ordered, increasing the quota of support teacher seats from 106,170 to 117,170, to which were added 102,891 derogation seats authorised, just as, for the current school year 2023/24, support teacher seats see a further significant increase, from 117,170 to 126,170, and derogations for an additional 108,290 seats.

REGIONE	2022/23			2023/24			2024/25		
	Posti Decreto	Deroghe	Totale OF	Posti Decreto	Deroghe	Totale OF	Posti Decreto	Deroghe	Totale OF
Abruzzo	3.038	3.213	6.251	3.249	3.535	6.784	3.249		
Basilicata	1.180	436	1.616	1.229	434	1.663	1.229		
Calabria	4.420	3.569	7.989	4.661	3.551	8.212	4.661		
Campania	14.917	9.818	24.735	15.765	10.878	26.643	15.765		
Emilia Romagna	7.167	6.246	13.413	7.841	7.029	14.870	7.841		
Friuli	1.589	1.410	2.999	1.730	1.451	3.181	1.730		
Lazio	12.811	10.195	23.006	13.660	11.149	24.809	13.660		
Liguria	2.674	2.048	4.722	2.908	2.343	5.251	2.908		
Lombardia	17.043	13.231	30.274	18.972	13.960	32.932	18.972		
Marche	3.068	2.895	5.963	3.300	2.803	6.103	3.300		
Molise	756	578	1.334	783	579	1.362	783		
Piemonte	7.267	9.697	16.964	7.838	10.315	18.153	7.838		
Puglia	9.795	8.096	17.891	10.357	8.284	18.641	10.357		
Sardegna	3.283	3.931	7.214	3.552	3.885	7.437	3.552		
Sicilia	13.137	12.288	25.425	13.954	12.946	26.900	13.954		
Toscana	5.939	8.070	14.009	6.511	7.524	14.035	6.511		
Umbria	1.598	2.192	3.790	1.754	2.424	4.178	1.754		
Veneto	7.488	4.978	12.466	8.106	5.200	13.306	8.106		
<b>Totale</b>	<b>117.170</b>	<b>102.891</b>	<b>220.061</b>	<b>126.170</b>	<b>108.290</b>	<b>234.460</b>	<b>126.170</b>	<b>0</b>	<b>0</b>

**I posti di O.F. sono definiti come somma dei posti interi + spezzoni orari rapportati + Potenziamento**

24. As it can be deduced from the table above, the organic quota envisaged for the next school year 2024/25 envisages the confirmation of the allocated posts (126,170).

25. That being said, the fact that in the school sector there is a physiological recourse to the awarding of fixed-term employment contracts does not exclude the existence of an adequate





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body of legislation to protect fixed-term workers and of a system of measures to prevent the abusive use of fixed-term contracts in the school sector.

26. What has been observed so far is confirmed by the evident circumstance that the system for recruiting school staff - in line with what is provided for in the whole public employment sector under Legislative Decree no. 165/2001 - provides for recruitment to take place by means of a public competition. That guarantees the principles of good performance and impartiality of the Administration under Article 97 of the Italian Constitution.

27. The mechanism for assigning substitutions, contextualized in the broader system of recruitment and - consequently - read in conjunction with the rules on the dual channel of recruitment to the roles (Legislative Decree no. 297/94, Articles 399 and following), constitutes in fact a tool to overcome precariousness, and not to fuel it. Indeed, the fixed-term worker is included in a path that (albeit in times that cannot be defined *a priori* for the reasons mentioned above, albeit contingent through choices of “recruitment policy”) leads him or her toward tenure.

28. Recourse to the appointment of substitutes, therefore, has a mandatory residual nature, in the sense that it does not depend on a discretionary choice of the public administration, but on objective needs. That leads to the assumption that the institution finds its justification in a legitimate social policy purpose.

29. In any case, the administrative compartment of educational institutions, as far as the composition of the workforce is concerned, is necessarily oriented and influenced by external, social, health and anthropological factors, over which the administration has no predictive government.

30. For these reasons, and in order to be able to ensure the maximum protection allowed under current legislation, the legislature introduced Article 14 of Decree-Law March 2, 2024, no. 19 “Further Urgent Provisions for the Implementation of the National Recovery and Resilience Plan (PNRR),” currently being converted into law in *Senato*, after the intervening approval by *Camera dei Deputati*. That rule provides the chance of using the GPS of first band support for appointments aimed at placing them on the tenure track in the event of the exhaustion of the



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competition rankings, according to the provisions contained in Article 5 paragraphs 5 to 12 of Decree-Law 44/2023.

31. In conclusion, the legislative framework described above, and the precise way it is applied by the school administration, demonstrates, therefore, that the Italian system of support teachers, contrary to ANIEF's assertions, is an efficient system capable of responding to the protection needs of minors with disabilities. The Italian Government has in fact activated the appropriate procedures to guarantee the well-being and the right to study of students with disabilities.

\* \* \*

The above considerations lead to the conclusion that the counterparty complaint should be rejected.

\* \* \*

**CONCLUSIONS**

In light of the present observations, the Italian Government insist for the rejection of the complaint.

Rome, May 15<sup>th</sup> 2024

Drafted by

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