DIRECTORATE GENERAL
HUMAN RIGHTS AND RULE OF LAW
DEPARTMENT OF THE
EUROPEAN SOCIAL CHARTER

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COMITÉ EUROPÉEN DES DROITS SOCIAUX

16 September 2021

Case Document No. 1

***Comitato Nazionale Quadri Direttivi della Pubblica Amministrazione* (CO.N.QUA.DIR - P.A.) and *Cassa Mutua Nazionale tra i Cancellieri e Segretari Giudiziari* v. Italy**
Complaint No. 202/2021

COMPLAINT
(translation)

Registered at the Secretariat on 4 August 2021

Department of the European Social Charter, Directorate General Human Rights and Rule of Law, Council of Europe

F-67075 Strasbourg Cedex

FAO: Executive Secretary of the European Committee of Social Rights, acting on behalf of the Secretary General of the Council of Europe

COLLECTIVE COMPLAINT

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

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INFORMATION CONCERNING THE COMPLAINANT COMMITTEE, *CONQUADIR – P.A. (Comitato Nazionale Quadri Direttivi della Pubblica Amministrazione* [National Committee for Senior Managers from the Public Administration]) AND *CASSA MUTUA NAZIONALE TRA I CANCELLIERI E SEGRETARI GIUDIZIARI* [National Mutual Fund for Registrars and Judicial Secretaries]

1. The Committee, CO.N.QUA.DIR – P.A., was established on 12 December 2017 (doc. 1) by an authentic instrument certified by the Notary Public, Andrea Venturini, in Florence in order to represent public sector employees appointed to directorial positions who have been appointed to their administrations of origin following the successful completion of a public competition requiring a masters-level degree [*laurea magistrale*, second cycle degree] or another equivalent qualification and who, upon the entry into force of Law no. 145/02, were remunerated under a salary band intended for deputy directors.

2. The Committee operates at national level and the number of members is steadily increasing (currently 524, although this figure is being updated to reflect members who have recently joined) from various state administrations (Ministry of Justice, Interior Ministry, Ministry of Infrastructure, Ministry of Cultural Heritage, Ministry of Economic Development, Ministry of Foreign Affairs, National Labour Inspectorate, INPS [National Institute for Social Security], INAIL [National Institute for Insurance Against Occupational Accidents] and others) spread over around 17 Italian regions, as is clear from the annexed membership files, the names in which are listed in the register of members (doc. 2-3).

3. The representative status of the complainant Committee in the area of public sector employment is not only apparent from the number of members and their geographical distribution but also from the activity carried out by CONQUADIR-P.A. with the aim of protecting and *promoting the professionalism, status, prerogatives and role of public sector employees working in directorial positions within the public administration and in all areas pertaining to the public administration, as well as pursuing equal opportunities for those with corresponding qualifications in the private sector, as provided for by law and under collective and supplementary agreements. This may also be achieved by the* ***establishment of a separate professional area, corresponding to the SENIOR MANAGEMENT AREA within private sector employment, full recognition of the directorial role and liaison with directors, and the allocation of new tasks and responsibilities that equate this senior position with that of counterparts elsewhere in Europe***.

4. In order to achieve these objectives, as early as the first few months following its establishment, the Committee launched an institutional process in support of calls by staff from the former directors' career track in the public administration for the establishment of a Senior Management Area.

5. Specifically, on 15 February 2018 a CONQUADIR P.A. delegation was received by the *Chief of Staff of the Department for the Public Administration – Office of the President of the Council of Ministers*, to whom the request for the establishment of

a Senior Management Area for staff from the former directors' career track was submitted.

6. Following that meeting, on 1 March 2018 the Chief of Staff, Mr Polverari, forwarded (doc. 4) the request made by the CONQUADIR PA Committee *to the Agency for Representation in Bargaining with the Public Administrations (Agenzia per la Rappresentanza Negoziale delle Pubbliche Amministrazioni*, A.R.A.N.) in order for **the request to be discussed by the Joint Committee as part of the appraisal process prior to the adoption of the new professional regulations pursuant to Article 12 of the National Collective Labour Agreement [NCLA] for Central Executive Bodies**.

7. Subsequently, a delegation from the complainant Committee was received on 10 April 2018 by the ARAN President at that time, Mr Gasparrini, in order to explain the request previously submitted to the Department for the Public Administration concerning the establishment of a Senior Management Area for graduate staff appointed by the respective administrations to the directors' career track.

8. **The request was also made by an extra-judicial formal notice served on 25 May 2018 (doc. 5) on the Office of the President of the Council of Ministers and the ARAN**, and was submitted a second time on 19 October 2018 by formal notice on the Ministry for Simplification and the Public Administration.

9. In addition to requesting the creation of a Senior Management Area, the Committee has also pursued initiatives and made requests with the aim of enhancing and protecting the professional status of its members vis-à-vis the administration of origin. The representative status of the CONQUADIR-P.A. for staff from the former directors' career track has thus been recognised on an institutional level by the various central administrations with which the various discussions have been conducted.

10. The meetings requested along with the **CASSA MUTUA NAZIONALE TRA I CANCELLIERI E SEGRETARI GIUDIZIARI** should be considered in this context. This is a national pension scheme and mutual association governed by

Law no. 384 of 11 May 1951, as amended by Law no. 89 of 24 February 1953 and Law no. 458 of 15 November 1993, and is subject to oversight by the Justice Ministry (docs. 6 - 7). As provided for by law, its members include employees from the judiciary who currently have the status of director (formerly registry directors and C2 registrars) (doc. 8).

11. In consideration of this representative status, on **16 December 2018 and 31 May 2019 (docs. 9 to 13)**, the complainants [asked] Mr Pucci, the Deputy Chief of Staff at the Ministry of Justice, to establish at least one separate professional profile for former administrative directors.

12. At the same time, the CONQUADIR-PA Committee launched other initiatives to protect staff from the former directors' career track, such as the request filed on 13 December 2018 with the National Labour Inspectorate seeking the extension of the Ministerial Decree of 6 March 2018 insofar as it provides for the disbursement of the amounts allocated to the dedicated "Fund" to tenured staff who contribute to the fulfilment of the targets related to the monitoring and combatting of undocumented and unlawful work, and insofar as it comprises within that category also inspectors, including the heads of those areas and the staff responsible for the collection of penalty payments, such as lawyers from the National Labour Inspectorate.

13. That request was followed by an **extra-judicial formal notice served on the National Labour Inspectorate on 14 December 2018 (doc. 14)** requesting that those amounts be distributed amongst the above-mentioned staff.

14. In the same context, and for similar purposes, a delegation **from the complainant Committee was received on 14 March 2019 by the Under-Secretary of the Interior Ministry, Deputy Carlo Sibilia**, in order to consider the establishment of a list to be drawn upon until exhaustion for staff from the former directors' career track in accountancy for which the Committee had served an extra-judicial formal notice on 7 September 2018 (docs. 15 to 17).

15. Finally, **on 14 November 2019**, a CONQUADIR-PA delegation was received by the Minister for the Public Administration – the honourable Fabiana Dadone –

and presented to her the proposal concerning the establishment of a Senior Management Area for graduate staff appointed to the separate "deputy directors" area established by Law no. 145 of 24 July 2002, which law was never implemented and has since been repealed.

16. In this collective complaint the **CONQUADIR-PA Committee is represented by its current legal representative and chairperson, Mr Salvatore Filocamo. The service address chosen for the purposes of this collective complaint is the email address conquadir@gmail.com and/or the mobile telephone number +393394471461**, whilst the **CASSA MUTUA NAZIONALE TRA I CANCELLIERI E SEGRETARI GIUDIZIARI** is represented by its current legal representative and chairperson, Mr Federico Mancuso. The service address chosen for the purposes of this complaint is the email address federici@legalefederici.it and/or the telephone number 06. 06/68801848.

17. For the purposes of this Complaint, the CONQUADIR PA Committee is represented by Counsel Roberta Federici (Italian tax ID: FDRRRT68B46L117J) of the Milan bar

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Contracting party which violated the European Social Charter: ITALY

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Statement of facts

18. According to Article 1 of Decree of the President of the Republic no. 3/57, the old career structure of state civil servants (administrative and technical staff) subdivided employees into the following career categories: directorial, clerical, executive and auxiliary staff. Staff were allocated to hierarchical bands within these career categories.

19. Article 161 of Decree of the President of the Republic no. 3/57 (doc. 20) provided for access to the directors' career track (former categories VII, VIII and IX) by public competition involving examinations, which could be taken by any person holding a university degree.

20. Subsequently, Legislative Decree no. 29/93 (doc. 21) launched the process of transferring the regulation of public sector employment to private law. Article 2(2) provided that the employment relations of employees of the public administrations would be governed by the provisions of private law, insofar as compatible with the special nature of the relationship and the pursuit of the general interest, as defined by the Decree.

21. Following the enactment of that provision, individual employment relations were regulated by collective agreements concluded for different branches of the public administration regulated in accordance with the criteria and arrangements laid down in Title III of the Decree.

22. As a result of the "privatisation" process, the staff classification system was radically changed by the collective agreements concluded for the various branches, moving from a system based on "qualifications" to others based on "functional areas", within which staff were allocated to different salary bands.

23. More specifically, Article 13 of the NCLA for the Ministerial Staff branch for the years 1998/2001 (doc. 22) (now the Central Executive Bodies branch) introduced a new professional system based on criteria of flexibility to reflect requirements related to the new organisational models.

24. This involved the amalgamation of the former nine qualifications into three functional areas according to the following breakdown:

Area A - comprising levels I to III;

Area B - comprising levels IV to VI;

Area C - comprising levels VII to IX and tenured staff from ranking lists to be drawn upon until exhaustion;

25. In addition, according to Article 13 of the NCLA for the Ministerial Staff branch, the new professional system provided for *the establishment within area C* of a separate area for "*professional employees*", which would incorporate workers included in levels VII, VIII and IX who performed activities that, based on the type of degree held, required a licence to practise the profession and/or for inclusion in a professional register.

26. The declaration concerning the establishment of Area C, described in Annex A to the above-mentioned contract, expressly provided as follows: *This functional area shall include workers who, within the ambit of general guidelines, by virtue of their knowledge of the various management processes, perform* ***management, co-ordination and control functions over activities of significant importance*** *within the non-directorial units to which they are allocated,* ***or workers performing duties characterised by their high degree of specialist content****.*

27. The NCLA stipulated the prerequisite of a university degree for any external candidate seeking to access this Area. However, despite the high degree of specialist content of the tasks pertinent to that Area, it was specified that internal staff could access such positions even if they did not hold any such academic qualification.

28. Specifically, Annex A) established the following additional prerequisites for internal staff who did not fulfil the prerequisites for external access, where the academic qualification stipulated was not a necessary prerequisite for the conduct of professional duties, without prejudice to any professional qualifications or licensing requirements provided for by law, provided that the staff concerned held an upper secondary school-leaving diploma:

- from salary band B1 to salary band C1: professional experience of nine years in the position of origin;

- from salary band B2 to salary band C1: professional experience of seven years in the position of origin;

- from salary bands B3 and B3S to salary band C1: professional experience of five years in the position of origin;

29. To summarise, the new professional system, **which was introduced not only for the Ministerial Staff branch but also in the NCLAs for the branches that have now been incorporated into the "Central Executive Bodies" branch according to the National Framework Collective Agreement [NFCA] of 13 July 2016 (doc. 23)**, was characterised by a structure that was no longer pyramid-shaped but cylindrical, resulting in the homogeneous treatment of the functions assigned between the staff allocated within the individual areas. As a result, staff hired under the directors' career track became substantially equivalent to those hired under the clerical career track thanks to the recognition of the value of the skills of the latter, to the detriment of those who had been classed as directorial staff since their appointment.

30. Over the years, the category of staff from the former directors' career track (represented by the complainant Committee) has suffered more than others under the effects of the transfer of the regulation of public sector employment to private law. This is because, in most cases, this transfer entailed measures intended to provide administrations with greater flexibility over staff management, although without at the same time ensuring specific harmonisation with the private sector, above all in terms of the recognition of the value of directorial staff, who continued to bear significant responsibilities.

31. In some cases in fact, the legislature allowed supplementary labour agreements to fundamentally alter the professional duties of former directors' career track staff, depriving them of any right to career progression, to which they would have been entitled according to the positions to which they had been appointed under the previous public law system.

32. This is the case for staff appointed as *"accountancy deputy directors"* from the **former directors' career track in Civil Administration Accountancy** in the **Interior Ministry in accordance with Decree of the President of the Republic no. 340/82 (doc. 24)**; such staff were appointed as *"accountancy deputy directors*" only after having successfully completed a public competition (reserved to candidates holding a master's level degree) **in addition to a 6-month training course at the Advanced School of the defendant administration**.

33. The above legislation provided for the performance of extremely professional duties with career advancement based on a review of comparative merit, which ensured them (along with their counterparts from the directors' career track for the legal-administrative area who, according to Article 3 of Legislative Decree no. 165/01, maintained the legal and salary conditions provided for upon appointment) access to directorial positions, along with all of the legal and financial benefits provided for under the legislation cited. By contrast, as a result of the above-mentioned transfer of regulation to private law, such staff were first appointed to the position of Administrative and Accounting Director (under an employment relationship governed by private law) and were subsequently, under the terms of the Interior Ministry Supplementary National Collective Agreement [SNCA] for 2010 (doc. 25), classified as Administrative Officials (former level VII) and Administrative and Accounting Officials (former level VIII) with the same professional profile as an "Economic-Financial Official" – Area III (former Area C)

34. Therefore, the transfer of regulation to private law not only rendered such staff ineligible for any form of career advancement but also reduced the remuneration provided for under Article 17 of Decree of the President of the Republic no. 340/82, resulting in a violation of their "*legitimate expectations*"; this principle is intended to protect any legal situation established as a consequence of actions of the public administration that has given a third party reasonable grounds to expect a particular outcome.

35. Despite the abolition of the accountancy directors' career track, in many cases the staff working at that time in that career track continued to have duties involving significant responsibility, equivalent to those of the prefecture career track, which following the repeal of Decree of the President of the Republic no. 340/82 has been governed by Legislative Decree no. 139/00 (doc. 26).

36. In this regard, it should be noted that the only distinction between the two career tracks (accountancy directors' and prefecture) until the repeal of Decree of the President of the Republic no. 340/82 concerned the academic qualification required for eligibility for those career tracks. Whereas the prefecture career track required a degree in law, the accountancy career track required a degree in

economics and business studies. That distinction had initially justified the transfer of regulation to private law of the accountancy directors' career track, although the very same specialist academic qualification was reintroduced as a criterion for eligibility for the prefecture career track by Legislative Decree no. 139/00.

37. The administrative courts have ruled on various occasions on the complex issue of the transfer of the regulation of public sector employment to private law, holding that "*the failure to transform the former directorial role (levels VIII and IX for Ministerial Staff) into a high intermediate band with duties partially equivalent to senior managers, as is moreover provided for under Article 2095 of the Civil Code, resulted in the absence of a qualified pool of workers to be drawn upon both for directorial positions as well as for functions delegated by directors. In addition, there has been an undisputed and relentless drive by staff towards senior positions; this dynamic has not permitted adequate filtering, to the detriment of organisational quality."*

38. Moreover, the censure motion passed by the European Parliament on 14 June 2001 – which was issued following the presentation of petitions at that time (doc. 27), and was directed at Italy as a warning about the negative consequences that its choices in the area of public sector employment could have on the policy of Community cohesion, given the divergence within that sector from other European "*partners*" – induced Italian lawmakers to take action to bring the status of public sector officials into line with European law.

39. In view of this, as part of the overhaul of the law governing state directorial positions, Law no. 145/2002 (doc. 28) introduced Article 17-bis into the Consolidated Text on Public Sector Employment (Legislative Decree no. 165/01) establishing a dedicated deputy directors' area, to be regulated according to collective bargaining. This area was to incorporate graduate staff in bands C2 and C3 who had completed a total of five years' service in those positions or in the corresponding levels VIII and IX under the previous system.

38. To that effect, Article 9 of the 2002-2005 NCLA for Ministerial Staff provided for the establishment of a Joint Committee charged with the task of making

proposals on the review of the rules applicable to the deputy directors' area and the professionals' area, in accordance with the Memorandum of Understanding concluded in February 2002 between the Government and trade unions.

40. Nevertheless, the Committee limited itself to making an entirely generic proposal that did not specifically implement the provisions or Article 17-bis, cited above.

41. Subsequently, Article 1(227) of Law no. 266/05 (doc. 37) provided, according to a clearly proactive "*rationale*", that "*for the purposes of the provisions of Article 17-bis(1) of Legislative Decree no. 165 of 30 March 2001, as amended, a figure of 15 million euros for the year 2006 and 20 million euros starting from the year 2007 shall be allocated for staff from the Ministerial Branch*".

42. The continuing failure by the public administration to give specific effect to Article 17-bis of Legislative Decree no. 165/01 led a group of officials from the Ministry of Justice, after issuing a formal notice calling for compliance, to apply to the Lazio Regional Administrative Court objecting to the unlawful failure by the bodies vested with policy powers to state their position and/or to act. The applicants asked the administrative court to order the authorities in breach to issue the contractual guidance provided for under Article 10(3) of Law no. 145 of 15 July 2002, which was necessary in order to make contractual provision to regulate the separate deputy directors' area, along with the related automatic appointment, for legal and salary purposes, to the role of deputy director of the persons working in the relevant employment role.

43. By judgment no. 4266/07, the Lazio Regional Administrative Court accepted the claim, and ordered the administration to act within six months.

44. However, the protracted, culpable failure to comply with the obligation to establish the separate deputy directors' area within the State Administrations branch through contractual negotiation once again led a group of officials from the Ministry of Justice to apply to the Lazio Regional Administrative Court, filing an application pursuant to Article 117(3) of Legislative Decree no. 104 of 2 July 2010 in which they requested the appointment of an ad hoc commissioner to implement the terms of judgment no. 4266/07 issued by Division 1 of the Lazio Regional Administrative Court, which had in the meantime become final.

45. During the intervening period in fact, the new 2006/2009 NCLA for the Ministerial Branch (doc. 29) concluded on 14 September 2007 had amended the classification system previously in place, whilst, however, retaining a similar structuring into three areas:

- First Area: comprising the former positions A1 and A1S;
- Second Area: comprising the former positions B1, B2, B3 and B3S;
- Third Area: comprising the former positions C1, C1S, C2, C3 and C3S.

However, no provision was made, even in this case, for a separate area for directorial staff, in spite of the fact that Article 17-bis of Law no. 145/02 had expressly provided for its establishment some time before.

46. By judgment no. 4391/2012 of 16 May 2012 issued by Division 1 of the Lazio Regional Administrative Court (doc. 30), having held the application to be well-founded in the light of the legislation governing the establishment of the deputy directors' area and judgment no. 4266/2007, the court ruled, accepting the above application, that: "*In view of the continuing failure to act on the part of the authorities mentioned, which have responsibility over this matter, the current Head of Department for Legal and Legislative Affairs at the Office of the President of the Council of Ministers is therefore appointed as an ad hoc commissioner in order to give full effect to the requirements contained in judgment no. 4266 of 10 May 2007, without any authority to sub-delegate powers, given the evident delicate nature of the appointment.* ***The commissioner must fulfil the tasks assigned to him within six months of communication or service of this decision****."*

47. The service of the above-mentioned judgment gave rise, as a matter of cause and effect, to the annulment of the provision establishing deputy directors; it was formally repealed by Article 5(13) of Decree-Law no. 95 of 6 July 2012 upon conversion into law (doc. 38), based on the formal justification of the need to review and contain public spending.

48. However, the repeal of the above-mentioned provision due to mere "*budgetary requirements*" violates the ***proportionality principle*** insofar as the final measure did not fulfil the prerequisites of suitability, necessity and adequacy; moreover, this would especially be the case if it were it to be established that the

restriction of the right to appointment to that area was justified by factual considerations, which were in actual fact non-existent.

49. In this case, the reasons relied on by the Italian Government are clearly non-existent, as the funds required in order to establish deputy directors had already been identified; these funds were subsequently used for other purposes of the public administration.

50. Moreover, the lack of substantiation for the reasons relied on by the Italian Government for abolishing deputy directors is also apparent from the timing of the repeal of the legislation (i.e. immediately after judgment no. 4391/2012 of the Lazio Regional Administrative Court was served) and due to the lack of any other normative and/or contractual measure that was capable of recognising and protecting the professionalism of staff on the former directors' career track.

51. The Italian State thus, once again, culpably failed to act in response to the censure of the European Parliament, which had expressed a desire and called for the specific harmonisation of the rules governing public sector employment with the provisions of private law and with EU law in order to remove any discrimination arising out of the process of transferring regulation to private law (which had besides not yet been completed, while the rules governing the process were constrained by the requirement to contain public spending).

52. As noted above, this requirement was often satisfied to the detriment of the employees themselves, including above all senior employees, who continued to perform duties involving significant responsibility.

53. At the same time in fact, the above requirement had resulted in the ***"freezing of national collective bargaining"*** (ordered by Article 9(17) of Legislative Decree no. 78/10 – doc. 39), which freeze was extended on several occasions. The collective bargaining process was only relaunched following the declaration by the Constitutional Court in judgment no. 178/15 that Article 1(254) of Law no. 190 of 2014 was unconstitutional.

54. Article 9(1) of Decree-Law no. 78 of 31 May 2010, converted with amendments into Law no. 122 of 30 July 2010, laying down urgent measures on financial stabilisation and competitiveness, had thus provided that the remuneration

of public sector employees for the years 2010, 2011 and 2012 should be equal to that payable on 31 December 2010.

55. Paragraph 17 of that Article had in turn provided that "*contractual and collective bargaining procedures for the 2010/2012 three-year period*" would not take place for "*staff falling under Article 2(2) and Article 3 of Legislative Decree 165/01*", and could not be resumed at a later stage.

56. In addition, paragraph 21 of that Article had provided that career advancements, irrespective of their designation, and any transfers between areas that may have been ordered during the years 2011, 2012 and 2013 would only have effect for the previous years in relation to staff covered by a collective agreement exclusively for legal purposes.

57. Therefore, under the terms of the legislation cited, the legislature had suspended the system of trade union bargaining, impinging upon the primary principle of freedom of organisation as guaranteed under the Constitution, namely the freedom to conclude collective agreements.

58. In addition, legislation had been enacted to alter the salary dynamics of public sector employees, freezing basic pay elements and those payable for 2010 and blocking the financial effects of career advancement, thus also violating the right to fair remuneration that is proportionate with the quantity and quality of work performed, as enshrined in Article 36 of the Constitution.

59. Subsequently, Article 16(1) of Decree-Law no. 98 of 6 July 2011 (doc. 40), converted into Law no. 111 of 15 July 2011, had authorised the Government to issue regulations to extend the freeze introduced by Decree-Law no. 78/10; this extension was ordered by Decree of the President of the Republic no. 122/13 (doc. 41) until 31 December 2014, thereby expanding the violation of the constitutional rights recognised by Articles 39, 3 and 36 of the Italian Constitution.

60. Article 1(456) of Law no. 147/2013 (doc. 42) and Article 1(254), (255) and (256) of Law no. 190/2014 (doc. 43) had in turn reiterated and extended until 31 December 2015 both the freeze on collective bargaining as well as the pay freeze, and blocked even the "*contractual holiday allowance*".

61. By judgment no. 178/2015, the Constitutional Court ruled unconstitutional Article 16(1)(b) of Decree-law no. 98 of 2011, converted into Law no. 111/2011,

Article 1(453) of Law no. 147 of 27 December 2013 and Article 1(254) of Law no. 190 of 23 December 2014.

62. The Court held that, "*... as a matter of principle... whilst the economic emergency may justify the suspension of collective bargaining procedures, it cannot validate an unreasonable prolongation of the pay freeze. In fact, to conclude otherwise would be tantamount to casting aside the criterion of proportionality of remuneration, having regard to the quantity and quality of the work performed*" (judgment no. 124/91, section 6 of the conclusions on points of law, citing p. 14 of judgment no. 178/2015).

63. However, the Constitutional Court clarified that "the structural nature of the suspension of bargaining procedures" had only become fully apparent following the extensions of the freeze initially imposed for the 2010-2012 three-year period. In view of this fact, the Court established the "*supervening unconstitutionality*" of the contested provisions, "*without prejudice to the financial effects resulting from the provisions examined for the period that has already elapsed*".

64. The Court went on to conclude that, having removed with future effect the limits applicable to the conduct of bargaining procedures in relation to the financial aspect, it will be for the legislature to provide a new impulse to ordinary contractual bargaining dynamics, choosing the arrangements and forms that best reflect its nature, without stipulating any specific result (page 18 of judgment no. 178/2015).

65. Despite the ruling by the Constitutional Court, public sector employees suffered an unlawful pay freeze (in accordance with a provision that has been ruled unconstitutional by the Constitutional Court) until February 2018; this freeze had a more severe effect on senior staff, who are required to perform highly specialist duties on a significant scale.

66. Indeed, the remuneration earned over the duration of the bargaining freeze, i.e. from 2010 until February 2018, was certainly not proportionate in terms of quantity and quality with the work performed and the responsibilities taken on by directorial staff when performing their duties in return for absolutely inadequate financial compensation.

67. At the same time, in addition to the above, given the absence of a separate area for directorial staff (as called for by the European Parliament, and as provided

for under the repealed Article 17-bis of Law no. 145/02), the transfer of the regulation of public sector employment to private law continued to result in discrimination and to undermine the professionalism of directorial staff.

68. In fact, by the **Ministerial Decree of 9 November 2017** (doc. 31), **the Ministry of Justice** provided for the reorganisation of the profile of former Administrative Director, establishing as a replacement for it the single professional profile of "Director", which also incorporated officials with 7 years' service, thereby classifying together staff holding a master's degree with staff who might only have held a mere upper secondary school-leaving diploma.

69. As is apparent from the declaration contained in the 2010 SNCA for the Ministry of Justice (doc. 32), directorial staff classified under the profile of **Administrative Director**, Functional Area III, are required to possess *a high level of theoretical and practical knowledge and expertise in relation to administrative, legal and organisational matters; to co-ordinate, manage and control, where provided for, staff units, including those of external relevance, working groups and study groups; to conduct activities with a high technical, management and specialist content involving the direct assumption of responsibility for the results; and to have autonomy and responsibility under general directions.* The specific professional requirements include: *Activity of a highly specialist nature within the ambit of administrative or judicial procedures with the goal of implementing the guidelines and objectives of the office as defined by the director. Workers who are charged with the management and/or co-ordination of registries or, within the ambit of registries, of multiple departments, where the management of the office as a whole is reserved to professionals with directorial status; workers charged with acting as a substitute for a director, workers with duties relating to staff training*.

70. Under the terms of the Ministerial Decree referred to above, directorial staff with such competence are treated as being equivalent to staff who, whilst being appointed to the same functional area (although having arrived along different professional paths, and merely holding an upper secondary school-leaving diploma), will be transferred to one single professional profile referred to as "Director" by virtue merely of the fulfilment of the length-of-service prerequisite.

71. Another significant adverse effect has also occurred for **professionals working in the public administration** who, alongside holding a degree, must also be licensed to practise their profession (such as engineers or architects working for the **Ministry of Infrastructure (doc. 33)**, lawyers from the **National Labour Inspectorate**, etc.), in spite of which they are classified under former Area C, now Functional Area III. A separate area has never been created for them, despite being provided for already under Article 13(1)(b) of the 1998/2001 NCLA.

72. The lifting of the collective bargaining freeze entailed a gradual resumption of bargaining procedures for the renewal of contracts, which, however, occurred after the overhaul of the collective bargaining branches within public sector employment with the signature of the NFCA on 13 July 2016. As a result of that overhaul, the new collective bargaining branches were the following: Central Executive Bodies, Local Executive Bodies, Health and Education and Research.

73. As far as is relevant for the purposes of this complaint, the **Central Executive Bodies** branch incorporated branches for the ministries, the State Legal Advisory Office [*Avvocatura Generale dello Stato*], the Council of State, the Court of Auditors and the National Council for the Economy and Employment; the Italian Pharmaceuticals Agency, AIFA; the National Labour Inspectorate; other agencies provided for under Legislative Decree no. 300 of 30 July 1999; the Revenue Agency; the Customs and Monopolies Agency; the National Institute for Insurance against Occupational Accidents, INAIL; the National Institute for Social Security, INPS, etc.

74. The policy document of 6 July 2017 (doc. 34) sent by the Office of the President of the Council of Ministers to the ARAN reopened bargaining procedures, and on 18 February 2018 the NCLA for the **Central Executive Bodies (doc. 36)** was signed, Article 12 of which provided for the establishment at the ARAN of **a specific joint committee charged with achieving convergence among the different classification models in one single model valid for all employees currently in the branch.**

75. In particular, in Article 12(2), the parties agreed that it would be appropriate to provide for a fact-finding phase during which it would be possible to acquire and process all information concerning the current professional classification systems,

and to verify the feasibility for their development and convergence in line with the goals set out in paragraph 1, with a view to establishing models that were more capable of recognising professional expertise and ensuring better management of work processes.

76. Therefore, in line with the goals set out in Article 12, the Joint Committee was charged with the following tasks:

a) analysis of the characteristics of the current professional classification systems, including also a comparison with those prevailing in other public and private sectors or in other public administrations throughout Europe;

b) evaluation of the efficacy and appropriateness of those systems with reference to the organisation of the work, and the functions and structure of the administrations concerned, with a view to balancing the requirement of convergence against that of recognising the specific characteristics of each of them;

c) verification of declarations concerning areas or categories, in relation to changes in employment processes brought about by service or process innovations and new technologies, along with the resulting requirements in terms of the fungibility of services and the recognition of professional expertise;

d) verification of the characteristics of professional profiles in relation to new organisational models;

e) verification as to whether it is possible to represent and define professional profiles in an innovative manner, to identify new roles or to define versatile roles, with a view to supporting processes of organisational change and incentivising innovative conduct;

f) verification as to whether it is possible to identify further opportunities for salary advancement for senior staff in each area or category;

g) review of the criteria applicable to salary advancement of staff within areas or categories, in conjunction with an assessment of the professional expertise acquired and the professional experience acquired;

h) verification as to whether it is possible to carry out a review of salary frameworks associated with employment roles;

i) analysis of instruments to maintain the development of professional expertise and to recognise selectively any effective increase in expertise, including in relation to the development of service quality and the efficacy of administrative action;
j) analysis and recognition of specific professional characteristics.

77. In order to act on the tasks listed above, and in particular those highlighted in points a) c) and j), the Joint Committee should have identified organisational models in line not only with those of European countries but also with the private sector in order to complete the process of transferring regulation to private law, which was still incomplete and had been assessed unfavourably by the Court of Auditors in the certification report on the NCLA for Central Executive Bodies (cf. page 14 – doc. 35),

78. In order to follow a process that would be capable of satisfying the criteria set out above and the prerequisites of harmonising the classification system for public sector employment with the private sector and with European organisational models, the Committee should have provided for the establishment of a separate functional area solely for Senior Managers [*Quadri Direttivi*] (i.e. for staff originating from the former directors' career track) and for professionals from the public administration within the NCLA for Central Executive Bodies who had not benefited from career advancement.

79. In spite of this, the progress made in the Committee's work suggests that, once again, a separate area will not be established for the staff referred to above in line with the principle laid down by Article 1 of Legislative Decree no. 165/01, insofar as it provides that employment by the public administrations must comply with Article 97(1) of the Constitution and must pursue the goal of *"c) achieving the best usage of human resources in the public administrations, ensuring the training and professional development of employees, applying the same conditions as those applicable to private sector work, …."*

80. Various benefits can be achieved by establishing such an area: 1) taking full advantage of the professionalism of graduate staff working in senior positions in the public administration and reinstating their rights to career advancement that were previously precluded; and 2) containing public spending through savings in

staff costs; 3) bringing the public sector into line with the private sector and other European countries by finally acting to address the European Parliament's censure motion, and fulfilling a need for the modernisation and radical reform of public sector employment, in line with other European countries.

81. The recognition of a specific functional area within the NCLA for Senior Managers from the Public Administration, from which the appointments provided for under Article 17(1-bis) of Legislative Decree no. 165/01 are to be made, would result in the rationalisation of public sector directorial roles (along with a reduction in the related costs), as already occurs in many European countries.

82. As set out in the introduction, by means of an extra-judicial formal notice served on the Office of the President of the Council of Ministers and the ARAN, in May 2018 the complainant Committee called for the establishment of a Joint Committee and the creation of a Senior Management Area for directorial staff with the same distinguishing features as those provided for in relation to the private sector by Law no. 190/85, including: management autonomy in relation to the functions delegated, direct management of relations with third parties, the removal of the obligation to comply with specific working hours or to comply with the rules applicable to staff clock-in and clock-out systems at the place of work. No response was provided to this request.

THE VIOLATIONS OF THE EUROPEAN SOCIAL CHARTER REGARDING WHICH THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS IS ASKED TO MAKE A FINDING

83. The right to work and to fair and dignified working conditions had been enshrined by Italian law on constitutional level and is widely recognised and protected by the European Social Charter.

84. The CO.N.QUA.DIR-P.A. Committee is entitled, as a collective body representative of directorial staff from Central Functions, to act in order to uphold the interests of its members, both at institutional level (as is apparent from the various meetings listed in the introduction) as well as within extra-judicial

procedures.

85. The facts set out above clearly establish that the Italian public administration has acted in such a manner as to thwart in all ways the creation of a Senior Management Area for directorial staff, relegating them to a functional area that includes other professional profiles not requiring a university degree, and providing for their treatment as a single body throughout all phases of the bargaining process.

86. In fact, these workers are forced to perform tasks pertaining to levels higher than that to which they have been appointed. They carry out professional duties (including even those requiring a licence to practise) and/or otherwise bear significant responsibility, despite being classified in Functional Area III, which includes other professional profiles originating from the former clerical career track (holding an upper secondary school-leaving diploma), who have nonetheless had the opportunity of career advancement.

87. It is thus entirely evident that the transfer of regulation of public sector employment to private law has resulted in the establishment of a classification for public sector employees that violates even the very principles laid down by the NCLA for the Ministerial Branch, now Central Executive Bodies.

88. In relation to this matter, Article 5 of the 2006-2009 NCLA for the Ministerial Branch provided, amongst its purposes and objectives, "*that of promoting the development and recognising the value of existing expertise*" and also stated that "*with a view to realising a new classification model, the parties reiterate their commitment to identify appropriate management instruments that can ensure, by providing career advancement and salary growth for employees, higher quality and more effective action by the public administrations*".

89. However, not only was there no recognition of the value of directorial staff, but also no action was taken to ensure professional development, such as that envisaged with the enactment of Article 17-bis of Law no. 145/02.

90. Moreover, Article 5(4) of the 2006-2009 NCLA provided that the new classification system for staff should be based on the recognition of the value of internal expertise in order to guarantee high quality services to the general public

as well as the achievement of efficiency objectives.

91. Therefore, compliance with these provisions was to be achieved by ensuring the fundamental rights of the category of worker to which this complaint relates, and also in the overriding public interest, which was, however, disregarded.

92. Rather than having its value recognised as required under Article 5 of the NCLA for the Ministerial Branch, the expertise of directorial staff was entirely debased and was associated with absolutely inadequate remuneration, in breach of Article 36 of the Constitution.

93. The submissions set out above make it even clearer that collective bargaining subsequently followed a different path from that required under the legislation, which intended to achieve separate treatment for senior managers in recognition of their special functions of liaising with directors.

94. The conduct of the Italian State as an employer cannot be justified on the grounds that it pursues the public interest either. Moreover, it violates the principles and objectives laid down by the legislature in Article 17-bis of Legislative Decree 165/01 (which was applicable at that time, as it was only repealed in 2012) and Legislative Decree 150/09, which had enshrined the central status in public sector employment, and also in the NCLA for the Ministerial Branch, of recognition of employees' expertise, thereby rendering that classification void/illegitimate.

95. The classification system formulated by supplementary bargaining, with the culpable backing of the Italian State, resulted in an indiscriminate levelling up of lower categories, thus debasing the expertise of directorial staff, as an interface for linkage and aggregation for any model, whether hierarchical or functional, as well as a source of future directors.

96. The climate of progressive delegitimation of directorial staff established by the Italian State, in failing to act in response to the European Parliament's censure motion, has produced, permitted, favoured or otherwise culpably tolerated the implementation of illegitimate provisions that have resulted in a complete loss of credibility and authority, both outside and inside the workplace.

97. In other words, directorial staff occupying senior management positions are

denied any possibility of career advancement, as they remain – and risk remaining for the rest of their employment relationship – "pinned down" to the same area without any possibility of career advancement, despite performing significant duties.

98. This means that the following provisions of the Social Charter have been violated:

• **Article 1,** commitment no. 2, as the Italian state has failed to honour the commitment to recognise as one of its principal objectives and responsibilities in respect of hundreds of public sector workers carrying on the institutional activity of the Central Executive Bodies the realisation and maintenance of levels of professionalism as well as the commitment to protect effectively the right of such workers to earn a living through work freely undertaken, thereby forcing them to perform tasks for which adequate professional remuneration is not provided, in its threefold status as legislature, judge and employer, and also as the body responsible for monitoring the application of EU law in Italy;

• **Article 4**, commitment no. 4, as the Italian State has failed to honour as an employer the commitment to guarantee to directorial staff working in senior management positions (coinciding with that identified by Article 17-bis, introduced by Law 145/02) in the administrations incorporated into the Central Executive Bodies branch career progression towards a separate area for which the Office of the President of the Council of Ministers should have issued dedicated guidelines addressed to the ARAN concerning its establishment within the NCLA for Central Executive Bodies;

• **Article 6**, commitment no. 4, because the Italian State has failed, through both legislation and judicial rulings, to recognise as a matter of fact the right of staff from the former directors' career track in administrations from the Central Executive Bodies branch to the establishment of the separate area provided for under Article 17-bis of Law 145/02, thereby depriving collective action (as provided for under that Law) of its effect of protecting rights, which have been denied by the

Court of Cassation;

- **Article 10** because the Italian State, as an employer and through legislation and judicial rulings, has denied the opportunity for thousands of employees on the former directors' career track working in senior management positions (coinciding with that identified by Article 17-bis, introduced by Law 145/02) to obtain professional training in order to achieve career progression towards a separate classification area, instead "pinning them down" in a functional area intended [missing sentence]

Each of the violations of the European Social Charter highlighted above was committed in parallel with the violation of **Article E of the European Social Charter** and the commitment by the Italian State **not to discriminate** against workers by recognising the professionalism they have acquired in relation to the tasks required of them and performed by them along with the possibility of career advancement, which is by contrast recognised to all other workers who have moved in recent years to the various ministries from other public sector bodies, often being assigned to higher salary bands, despite not having any experience in the activities of the receiving administration.

*

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

1. Statute and Memorandum of Association of CONQUADIR
2. Member registration forms
3. Register of members
4. Note from the Office of the President of the Council of Ministers – Department for the Public Administration – 1 March 2018
5. Extra-judicial formal notice served on the Office of the President of the Council of Ministers and the ARAN
6. Law no. 384/1951 Cassa Mutua Nazionale Cancellieri

7. Composition of the Central Committee of the Cassa Mutua Cancellieri

8. Note to the Ministry of Justice from members of the Cassa Mutua Cancellieri, ref. 75/2021

9. Unitary document from the Cassa Mutua Cancellieri concerning the establishment of a separate directors' profile

10. CONQUADIR-PA Communiqué no. 18 of 21 September 2018

11. CONQUADIR – PA – Joint Communiqué with Cassa Mutua Cancellieri

12. Convocation by the Ministry of Justice of CONQUADIR-PA and CASSA MUTUA NAZIONALE CANCELLIERI of 11 April 2019

13. Convocation by the Ministry of Justice of CONQUADIR-PA and CASSA MUTUA NAZIONALE CANCELLIERI of 31 May 2019

14. Formal notice served on the National Labour Inspectorate on 13 December 2018

15. CONQUADIR-PA Request for a meeting with the Interior Ministry – Under-Secretary the Honourable Sibilia

16. Convocation by the Interior Ministry of CONQUADIR of 14 March 2019

17. Formal notice from CONQUADIR-PA served on the Interior Ministry concerning the former directors' career track

18. CONQUADIR – Request for a meeting with the Ministry for the Public Administration

19. Contacts between CONQUADIR and the Ministry for the Public Administration

20. Decree of the President of the Republic no. 3/57 (extract)

21. Legislative Decree no. 29/93 (extract)

22. NCLA for the Ministerial Branch 98/01 (extract)

23. NFCA of 13 July 2016

24. Decree of the President of the Republic no. 340/82 (extract)

25. SNCA for the Interior Ministry, 2010 (extract)

26. Legislative Decree no. 139/00 (extract)
27. Petitions to the European Parliament Committee on Petitions, 14 June 2001
28. Law no. 145/02
29. NCLA for Ministerial Staff 2006/2009 (extract)
30. Lazio Regional Administrative Court, judgment no. 4391/2012
31. Ministry of Justice Decree of 9 November 2017
32. SNCA for the Ministry of Justice, 2010 (extract)
33. SNCA 2010 – Professional System for the Ministry of Infrastructure
34. Policy document of 6 July 2017
35. Court of Auditors certification
36. NCLA for Central Executive Bodies (extract)
37. Article 1(227) of Law no. 266/05
38. Article 5(13) of Decree-Law no. 95/12
39. Article 9(17) of Law no. 78/10
40. Article 16 of Decree-Law no. 98/11
41. Article 1(456) of Law no. 147/2013

Rome, 30 June 2021

Conquadir- p.a., Chair, Mr Salvatore Filocamo _____

CASSA MUTUA NAZIONALE TRA I CANCELLIERI E SEGRETARI GIUDIZIARI, Chair, Mr Federico Mancuso _____

Counsel, Roberta Federici _____