

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

20 March 2023

**Case Document No. 1**

***Associazione professionale sindacale dirigenti area istruzione e ricerca  
(Dirigentiscuola) v. Italy***  
Complaint No. 223/2023

**COMPLAINT  
(translation)**

**Registered at the Secretariat on 15 March 2023**



**DIRIGENTISCUOLA- Di.S.Conf.**  
ASSOCIAZIONE PROFESSIONALE-SINDACALE  
DIRIGENTI AREA ISTRUZIONE E RICERCA  
**CONFEDERATI CODIRP**



## **Secretary General of the Council of Europe**

### **via the Executive Secretary of the European Committee of Social Rights**

Department of the European Social Charter  
Directorate General of Human Rights and Rule of Law  
Council of Europe  
F-67075 Strasbourg Cedex  
Email address: [social.charter@coe.int](mailto:social.charter@coe.int)

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**A complaint is hereby filed in accordance with Articles 1 et seq of the 1995 Additional Protocol to the European Social Charter by the trade union organisation representative of workers in the Education and Research Area called “Dirigentiscuola”, with registered office at Viale Luigi Pinto 87 – 71122 Foggia, Italy, tel. 0881748615, Italian tax ID 94086870717, represented by its National President Mr Donato Attilio Fratta, and by Counsel Massimo Cosenza of the Benevento bar (Italian tax ID: CSNMSM58H01A783T), email [avv.massimocosenza@pec.it](mailto:avv.massimocosenza@pec.it), Counsel Benedetto Paglione of the Lucera bar (Italian tax ID: PGLBDT54P13B862T), email [paglione.benedetto@avvocatilucera.legalmail.it](mailto:paglione.benedetto@avvocatilucera.legalmail.it); Counsel Benedetto Ronchi of the Trani bar (Italian tax ID: RNCBDT75P21L328P), email [avvbenedetto.ronchi@postacert.it](mailto:avvbenedetto.ronchi@postacert.it), in accordance with the enclosed power of attorney, choosing as service address the email address [dirigentiscuola@libero.it](mailto:dirigentiscuola@libero.it) and the certified email address [dirigentiscuola@pec.it](mailto:dirigentiscuola@pec.it).**

### **VERSUS**

**Italy**, represented by the President of the Republic, Sergio Mattarella, as represented before the Council of Europe by the President of the Council of Ministers, Giorgia Meloni;

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**seeking a declaration of non-compliance relating to the legislative, regulatory and executive acts adopted by Italy following the entry into force of Article 25 of Legislative Decree no. 165/01, including the organisational regulations of the Ministry of Education, as amended from time to time, most recently by Decree of the President of the Council of Ministers no. 166 of 30 September 2020, as well as the 2019 Budget Law, along with the resulting 2016/2018 National Collective Labour Agreement [NCLA] for the Education and Research Area, and the current 2023 Budget Law (no. 197 of 29 December 2022) insofar as they do not comply with the provisions of Article “E” in conjunction with Articles 2, 4, 20, 22 and 26 of the European Social Charter,**

with regard to the application of the legal framework existing under Article 25 of Legislative Decree 165/01, which allocates status as directors to headteachers in schools belonging to the public administration in the Ministry of Education, and specifically status as “non-general directors”, i.e. level-two directors, as they have been appointed to positions of regional relevance. Specifically: a) the organisational regulations of the Ministry of Education, as contained most recently in Decree of the President of the Council of Ministers no. 166 of 30 September 2020, on the grounds that they do not take account of Article 25 of Legislative Decree 165/2001 insofar as Article 7(7)(a)-(t) does not refer to schools as local institutions constituting bodies of each regional schooling office, notwithstanding that director-level appointments in schools are made by the above-mentioned director general; b) all those legislative provisions – with unknown respective reference numbers and dates – that have allocated or that may hereafter allocate financial resources that are not sufficient for the purposes of national collective bargaining with headteachers, as well as the respective NCLAs, the result of which has been that headteachers’ remuneration is not equivalent to that of other directors in the same band working in the same public administration (Ministry of Education and Merit), nor that of directors in the same band working in any other public administration falling under the same collective bargaining area (education and research area) as headteachers.

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**AND**

**consequently requesting the Italian State to bring its laws into line with the  
European Social Charter,**

**as well as A RULING CONCERNING**

**the right to salary equivalence for headteachers as compared to directors in the same band working in the same public administration (Education Ministry) and, in the alternative, to directors in the same band working in any other public administration falling under the same collective bargaining area (education and research area) as headteachers.**

#### **STATEMENT OF FACTS**

By a variety of measures – with unknown respective reference numbers and dates – adopted following the grant of status as directors to headteachers, under the terms of Article 25 Legislative Decree 165/2001, in accordance with the self-governing procedure for schools launched by Article 21 of Law no. 59 of 15 March 1997, as well as the subsequently adopted Decree of the President of the Republic no. 275/99, organisational regulations of the Ministry of Education were issued and national collective bargaining procedures were launched with a view to ensuring the payment of fair remuneration to the newly-created state directors. However, this process – which is still ongoing 23 years later – has never been concluded.

It should be noted that the remuneration of headteachers is structured as follows:

- Basic salary;
- “Working position remuneration”, which is in turn comprised of a fixed element and a variable element;
- Performance-related remuneration.

Initially, only the basic salary was equalised under the NCLA for 2000/01; however, in subsequent NCLAs this process of equalisation with other directors in the same band was frozen, and was only resumed after three five-year periods, and only in part, with

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the conclusion of the 2016/18 NCLA following a highly controversial sit-in by headteachers. That NCLA provided for the equalisation exclusively of the fixed element and deferred full equalisation with other state directors until the following 2019/21 NCLA – along with a commitment by the Government to ensure that this occurred. This would also involve the equalisation of the other items of remuneration, specifically the variable element of working position remuneration and performance-related remuneration, so as to obtain full equivalence in terms of remuneration between headteachers and administrative directors, as both are band-two directors.

However, to date, the Government has still not allocated resources for the conclusion of collective bargaining agreements with headteachers in order to ensure the full harmonisation of their remuneration with that of other state directors. Indeed, the 2023 Budget Law, i.e. Law no. 197 of 29 December 2022, did not make any provision concerning salary equalisation as regards the variable element of the working position remuneration and the performance-related remuneration of headteachers with that of other state directors, despite the various, repeated calls from this trade union as well as the tabling of a specific amendment to that effect.

Italy has thus failed to abide by the commitment made by its Government when signing the NCLA for the Education and Research Area that is still applicable (the 2016/18 NCLA). Above all, however, it has not correctly applied its national legislation – Article 25 of Legislative Decree 165/2001 and Article 3 of the Italian Constitution laying down the principles of equality and equal treatment, as well as Article 39(1) on collective bargaining – having launched a process of salary equalisation more than 20 years ago, and never having completed it. It has also violated Article 14 of the European Convention on Human Rights (prohibition on discrimination) and consequently Article 117 of the Italian Constitution due to the failure to implement international law. Moreover, it has violated the European Social Charter in failing to act in order to ensure compliance with the provisions of **Article “E”** in conjunction with Articles **2, 4, 20, 22 and 26**, specifically by failing to amend the organisational regulations of the Ministry of Education, including most recently those contained in Decree of the President of the Council of Ministers

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no. 166 of 30 September 2020, insofar as it has not been harmonised, as a source of secondary legislation, with Article 25 of Legislative Decree no. 165/2001, and in subsequently failing to incorporate headteachers into the Central Functions Area or to allocate financial resources capable of enabling salary equalisation between headteachers and other state directors in the same band.

## **GROUND**

### **A) ADMISSIBILITY AND THE MERITS OF THE COMPLAINT.**

#### **1) APPLICABILITY OF THE EUROPEAN SOCIAL CHARTER AND ACCEPTANCE BY THE ITALIAN STATE OF THE SYSTEM OF COLLECTIVE COMPLAINTS; NON-COMPLIANCE IN THE APPLICATION OF THE EXISTING LEGAL FRAMEWORK WITH THE EUROPEAN SOCIAL CHARTER AND RESULTING NON-COMPLIANT LEGISLATIVE AND CONTRACTUAL ACTS**

Italy as a country has accepted the European Social Charter and the system of collective complaints, as was formally stated on record on 1 October 2013, and in particular Article 4 of the Protocol, which was ratified by Italy on 3 November 1997 and entered into force in respect of the country on 1 July 1998. In addition, the challenge concerns articles of the Charter that were accepted by the ratification of that treaty on 5 July 1999, and Italy has been bound by these provisions since the Charter entered into force in relation to it on 1 September 1999.

Specifically, this complaint is based on the non-compliant application of the existing legal framework – Article 25 of Legislative Decree no. 165/01 – as well as subsequent legislative, regulatory and executive acts adopted by Italy – with unknown respective reference numbers and dates – including the organisational regulations of the Ministry of Education, most recently contained in Decree of the President of the Council of Ministers no. 166 of 30 September 2020, insofar as it has not been harmonised as a source of secondary legislation with Article 25 of Legislative Decree no. 165/2001, and the 2019 Budget Law and the resulting 2016/2018 NCLA for the Education and

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Research Area, and the current 2023 Budget Law (no. 197 of 29 December 2022), insofar as they are not compliant with the provisions of **Article “E”** of the European Social Charter in conjunction with Articles **2, 4, 20, 22 and 26**.

In particular, as indicated in the statement of facts, although Article 25 of Legislative Decree 165/2001 allocates status as directors to headteachers in schools, along with the respective responsibilities, their remuneration has been much lower than that paid to colleagues in the same band working in the same public administration, and has also been much lower than that paid to colleagues in the same band working in other public administrations included in the same collective bargaining area.

This results in a difference in treatment compared with all other directors in the same band belonging to different public administrations in Italy, but even more so with directors in the same band in the Ministry of Education itself. This is because, notwithstanding that the employer and hence the reference legal framework is the same, the significant difference in remuneration gives rise to discrimination against directors in schools, i.e. directors in the local schools administration (individual school) – as provided for under Article 25 of Legislative Decree no. 165/2001 – compared to other administrative directors.

Indeed, Article 25 of Legislative Decree no. 165/01 provides that a headteacher [in Italian “*dirigente di istituto scolastico*”, literally a “director of a school”] shall have the status of a director in the local schools administration. Similarly, the director in charge of the territorial unit and the director in charge of a department in the regional schooling office also have the status of directors in the local schools administration.

These are all local bodies of the central schools administration operated by the Ministry of Education.

They are essentially non-general directors, also known as “band-two” directors, in the Ministry of Education who work in the local schools administration (schools/territorial units/regional schooling office).

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However, according to Article 19(2) of Legislative Decree no. 165 of 2001, “*all appointments to directorial positions in the state administrations shall be made in accordance with the provisions of Article 19*”.

This article does not provide for any exceptions, and hence any appointment of a headteacher [in Italian “*dirigente scolastico*”, literally a “director of a school”] is governed by Article 19, as also is any appointment of an administrative director.

Article 19(5) goes on to provide that “*appointments of directors to managerial-level offices shall be made by the director general of the office, choosing amongst the directors assigned to his/her office*”; in other words, since each regional schooling office is headed by a director general (i.e. a band-one director), that director appoints the directors assigned to his/her office (non-general directors, or band-two directors).

Essentially, the regional director, who is a director general (band-one appointment) appoints the directors assigned to his/her office (i.e. non-general directors, or band-two directors) in accordance with Article 19(5) of Legislative Decree no. 165/2001, and specifically the directors in the various offices incorporated into the regional structure: the director in charge of the territorial unit and the director in charge of each school [i.e. the headteacher].

It is therefore evident that headteachers are appointed, as provided for under Article 25 of [Legislative Decree no.] 165/2001 “*to positions of regional significance*” by a band-one director general (the regional director). As a result, it is crystal clear that such persons are appointed as band-two directors, i.e. as non-general directors and are assigned to the same band as administrative directors in charge of territorial units and/or of a department in the regional schooling office.

Indeed, Article 23 of Legislative Decree no. 165/01 provides that “*a roll of directors shall be established in each state administration, including self-governing bodies; this roll*

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*shall be comprised of band one and band two, within which specific sections shall be designated so as to guarantee any specialist technical expertise”.*

There are therefore two different bands of director (band one and band two), and specific sections may be created within each band in order to ensure specialist technical expertise.

Accordingly, headteachers are governed by Article 25 of [Legislative Decree of] 165/2001 on account of their specialist technical expertise, which calls for more nuanced selection procedures compared to those used for administrative directors. In fact, public competitions for headteacher appointments are not open to all Italian citizens with university degrees (as is the case for public competitions for administrative director appointments); on the contrary, candidates must not only hold a university degree but must also be working in the schools administration, specifically having successfully participated in a public competition for appointment as a teacher, and having actually worked as a teacher for at least 5 years.

Accordingly, a headteacher must have successfully participated in two public competitions (first as a teacher and later as a headteacher) and must have worked for at least 5 years as an employee of the same public administration; on the other hand, an administrative director need only have successfully participated in a public competition for appointment as an administrative director.

It is clear from the above that the selection procedure used for headteachers is much more exacting and complex, as legislators have considered it appropriate to guarantee that highly specialised headteachers with considerable specialist technical expertise are appointed to schools – which provide the basis for the education and instruction provided to Italian citizens, and thus Italy’s future as a country.

As such, whereas on the one hand this means that headteachers can perform administrative functions – i.e. those performed by an administrative director – as these functions specifically already feature within their duties in the respective school, and,



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moreover, there are no rules to prevent any transfer to an administrative role, on the other hand it is not possible for an administrative director to take on functions *relating to teaching and research*, as they do not have the requisite specialist technical expertise, and are expressly precluded from doing so under Article 15(2) of Legislative Decree no. 165/01.

This means that it is the high degree of specialisation of headteachers that brings them within the ambit of this article, and that in actual fact an administrative director is only a sub-set of the category of headteacher [in Italian “*dirigente scolastico*”, literally a “director of a school”].

Unfortunately, however, under the various legislative, executive, regulatory and contractual instruments adopted, until now Italy has de facto *excluded* headteachers from the scope of Article 23 of Legislative Decree no. 165/01, almost as if they were not *worthy* of falling under that legislative provision (considering the low financial value of the respective remuneration). This is in spite of the fact that this very article expressly provides for only two bands of directors in the state administration, and the article is hence *inclusive and not exclusive* in terms of its effect: a headteacher is in fact a band-two director, like an administrative director, and is likewise appointed by a band-one director. However, on account of their specialist technical expertise, the legislator has enacted more broadly-framed legislative provisions specific to headteachers (Article 25 of Legislative Decree no. 165/01) compared to those laid down by Article 23 of Legislative Decree no. 165/01.

The legislative acts that do not give due regard to the status of headteachers include, in particular, the organisational regulations of the Ministry of Education, issued by various measures adopted over time, including most recently Decree of the President of the Council of Ministers no. 166 of 30 September 2020, which does not comply with Article 25 of Legislative Decree no. 165/2001 due to the failure to stipulate that schools – whose central public administrative body is, as is well known, the Ministry of Education – constitute local bodies of the regional schooling office in the same manner as territorial units. This is because, whilst such institutions have organisational and teaching autonomy, they form part of the Ministry of Education and fall under the regional schooling offices, and,



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moreover, schools are headed by a band-two director appointed by the regional director, with whom, moreover, the respective contract is concluded.

It should be noted that the organisational regulations of the Ministry of Education provide in Article 2 that *“the Ministry shall be organised at local level into regional schooling offices pursuant to Article 7”*, and according to Article 7(3) these are *“organised into non-general-director offices for different functions and territorial units”* (which *prima facie* include territorial units and individual schools, given that paragraph 2 expressly provides that *“the director general shall formally appoint and shall conclude individual contracts of employment with non-general directors assigned to the same office”*, and hence with all non-general directors assigned to his/her office, thus including headteachers). However, the list set out in Article 7(7)(a)-(t) unexpectedly *de facto* disregards territorial units comprised of individual schools, as if they did not exist, in spite of the fact that they are answerable specifically to the regional schooling office and are headed by a non-general director with the same status as the non-general directors in charge of the territorial and functional units numerically specified in that provision, regardless of the fact that it is the same general director who makes all appointments without distinction.

Due to this legacy oversight in paragraph 7(a)-(t), which has been handed down from regulation to regulation, from the time when schools were not headed by a non-general director but rather by a “headteacher” [in Italian “*preside*”, corresponding to “headteacher”], who did not perform any directorial duties, today headteachers [in Italian “*dirigenti scolastici*”, literally “school directors”] come under a different collective bargaining area than officials working in central units, which results in differences in terms of resources and in pay inequality among directors in the same band.

In view of the above, one must therefore consider the following logical proposition: if schools are not considered as local units in the organisation of the Ministry, on the grounds that they do not feature in the exhaustive list laid down by Article 7(7)(a)-(t),



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then surely the headteachers in charge of them cannot be appointed by the regional director general, as such local units should not then fall under his/her competence. Therefore – and conversely – according to what power and on the basis of what competence does the regional director general appoint headteachers to schools?

The answer can be found in Legislative Decree no. 165/2001, namely that *headteachers have status as directors in the local schools administration*. This means that schools form part of the local schools administration – according to the specific definition of regional schooling offices adopted in the Ministry’s organisational regulations, “*the Ministry shall be organised at local level into regional schooling offices*” – and therefore those schools constitute local units of the regional schooling office, whilst at the same time maintaining their special organisational and teaching autonomy. Starting from this premise, it can be readily appreciated that the director general of the regional schools office has the power to appoint directors and to conclude the respective employment contracts, including in respect of schools. Unless this is assumed, the regional director could not have the authority to appoint directors to any administration different from his/her own and/or not falling within its geographical scope.

Essentially, although Legislative Decree no. 165/2001 is new, the various organisational regulations adopted over time, and thus all resulting measures, including collective bargaining arrangements, continue to be tarnished by past blunders. Whilst this might be *convenient* for the Italian Government, as it would thereby feel entitled not to invest the necessary financial resources, to the detriment of headteachers, it does, however, breach the Italian Constitution, national legislation and the European Social Charter.

Having now completed the historical excursus of the macroscopic error that resulted in today’s situation, it should be pointed out that, by **resolution no. 685 of 2019**, the **Italian National Anti-Corruption Authority** [*Autorità Nazionale Anticorruzione italiana*, ANAC]

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has also expressly asserted that “**headteachers on the one hand perform functions related to the management of schools, and on the other hand have decision-making powers regarding the allocation and usage of equipment, financial resources and human resources. This is sufficient to establish their equivalence with administrative directors working in other public administrations and in other public sector bodies, as provided for under Article 1(2)(j) of Legislative Decree no. 39/2013.**”

For the sake of completeness, it is noted that the tasks and responsibilities vested in headteachers are much greater than those vested in administrative directors in the same band working at a local administration of the Ministry of Education (territorial unit, regional office) or for the central administration, as is apparent from the following table:

COMPETENCES	HEADTEACHERS	ADMINISTRATIVE DIRECTORS BAND II
Average number of subordinates	100	5/6
Senior position: individually responsible for results	YES	NO
Application of the Privacy Regulations	YES	NO
Direct appointment of temporary staff	YES	NO
Implementation of anti-corruption law	YES	NO
Direction, co-ordination and control of office operation	YES	NO
Management of tender procedures	YES	NO
Management of and participation in collegial bodies	YES	NO
Management of disciplinary matters with staff	YES	NO
Organisation of teaching activity within schools	YES	NO

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Promotion of co-operation with other local bodies	YES	NO
Relations with and disputes involving subordinate staff	YES	For some
Relations with and disputes involving users	YES	NO
Representation of the administration in court proceedings	YES	NO
Legal representation	YES	NO
Liability under tort law towards staff	YES	NO
Liability under tort law towards users (pupils)	YES	NO
Accounting responsibility	YES	For some
Responsibility for public funds	YES	For some
Responsibility for pension management	YES	NO
Responsibility for website transparency	YES	NO
Responsibility as withholding agent	YES	NO
Responsibility for the safety of school buildings	YES	NO
Responsibility for trade union relations and collective bargaining with unitary trade union representatives	YES	NO
Verification of the legitimacy of rulings	YES	For some
Control and verification of COVID vaccine passes ["Green Passes"]	YES	For some
Development of strategies to <b>prevent</b> and <b>mitigate</b> the spread of Covid-19	YES	NO
Definition of a range of basic <b>preventive</b> measures to be adopted from the start of the school year in order to counter the spread of Covid-19	YES	NO
Identification of further potential measures to be implemented according to the directions of the health authorities in the event of any deterioration in epidemiological conditions	YES	NO

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Regular monitoring of changes in the epidemiological situation within the school environment	YES	NO
Elaboration of ANAC reporting frameworks	YES	NO
Management of National Operating Programmes (NOP) financed by structural funds	YES	For some
Management, organisation and implementation of the National Recovery and Resilience Plan (NRRP)	YES	NO
Reporting on school attendance by Ukrainian students and the related monitoring	YES	NO
Monitoring of disciplinary measures	YES	For some
Monitoring of truancy levels	YES	NO
National school library monitoring and the promotion of reading	YES	NO
<b>Effective remuneration coefficient (see gross average remuneration)</b>	50%	100%
<b>Gross average annual remuneration</b>	€ 58 000	€ 110 000





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Moreover, following the conclusion of the first NCLA after status as directors was granted (i.e. in 2000/2001), the process of equalisation with other public sector directors started, involving the equalisation of the basic salary. This process was moved forward slightly under the 2016/18 NCLA, when the fixed element of the working position remuneration was equalised.

To date, equalisation has not yet occurred either for the variable element of the working position remuneration or for performance-related remuneration, which would have enabled full salary equalisation for headteachers vis-a-vis other public sector directors in the same band.

Although it has not yet been completed – in clear breach of the principle of reasonableness, as it is not logical or reasonable for the equalisation process to last for more than twenty years, and such an operation cannot last forever (see regarding this matter, judgment no. 178/2015 of the Italian Constitutional Court on the freeze of collective bargaining) – this equalisation process that has been launched makes it incontrovertibly clear, not only that headteachers have the right to receive the same remuneration as other directors in the same band, as this is provided for in respect of their legal status, but also that the fact that the Italian State launched the equalisation procedure explicitly indicates that it has acknowledged the right of headteachers to obtain equalisation with fellow administrative directors in the same band. However, the Italian State has not acted upon this, as it has failed to allocate adequate resources when concluding the NCLA, as, unfortunately, has also occurred for the collective bargaining round in progress (2019/21 NCLA), which is due to be completed shortly. Nonetheless, it is clear that this procedural “freeze” on equalisation is unlawful, unreasonable and unconstitutional, and also violates principles enshrined on European level.

For the reasons set out above, [and as confirmed] A) through actions implying consent when concluding the NCLA, which made initial tentative attempts to



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achieve salary equivalence between headteachers and administrative directors; B) also through explicit declarations upon the presentation of the explanatory report to the 2022 Budget Law – Budget Law no. 234/2021 – when the government asserted that the remuneration paid to headteachers should be brought up “*at least*” to the levels stipulated for band-two directors in the Ministry of Education (administrative directors) because the former “*have specific expertise in highly disparate fields, including, to cite a few, teaching and pedagogy (realisation of the three-year educational plan), specialist techniques (school building security) and employment law (staff management).* This therefore amounts to a broad and complex field of operation, which vests one single person with a variety of functions and responsibilities, which in other areas of the public administration are assigned to a variety of directors”; and C) also through the resolutions of one of the highest authorities in Italian public administration, namely the National Anti-Corruption Authority (ANAC), which takes the view that administrative directors and headteachers are fully interchangeable as far as obligations under anti-corruption legislation are concerned (ANAC resolution no. 460 of 2018 and ANAC resolution no. 685 of 2019), **the difference in remuneration still existing between these two types of director in the same band is unjustifiable.**

This difference in remuneration to the detriment of headteachers clearly also entails a violation by Italy of supranational provisions, i.e. the failure by national statutory, regulatory, administrative and contractual provisions to comply with Article “E” of the European Social Charter, as they give rise to evident discrimination among public sector directors appointed to the same band.

Indeed, the remuneration of headteachers is around EUR 60 000.00 per year whereas the remuneration of directors in the same band working in the local schools administration (territorial unit, regional schooling office) and the central



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administration, again of the Ministry of Education – which is, moreover, the central public administrative body for schools and hence for headteachers, as stated in the enclosed declaration by the Ministry for the Public Administration – amounts to around EUR 120 000.00 per year.

*Sic!*

Accordingly, a director working in another local administration of the Ministry of Education – other than a school – appointed to the same band, with far fewer responsibilities... is paid almost twice as much!

## 2) VIOLATION OF ARTICLE “E” OF THE EUROPEAN SOCIAL CHARTER

It is thus entirely clear that **Article “E”** – on non-discrimination – has not been complied with insofar as it provides that “**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**”. This article is framed openly, in the sense that the list of potential grounds for prohibited discrimination is not exhaustive, and for this reason the discrimination feared – to which this complaint relates – between public sector directors in the same band who are remunerated differently without any objective reason to justify that difference falls within the scope of the violation complained of.

A precedent concerning the application of the part of Article “E” concerning “*other status*” may be found in the case, “*Associazione Nazionale Giudici di Pace v. Italy, complaint no. 102/2013, 5 July 2016*”, in which the ECSR examined the differences between the legal status of the various categories of judge (ordinary judges and honorary judges).



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The complainant organisation argued that individuals working as justices of the peace were being discriminated against in matters relating to social security compared to ordinary judges and other categories of honorary judges. As members of the judiciary, justices of the peace in practice performed the same functions as ordinary judges. In addition, both categories received the same remuneration for tax purposes and were subject to the same appointment procedures. The main difference consisted in the fact that justices of the peace were denied the legal status of officials and public sector employees, and the provisions on remuneration, social security, pensions and leave applied exclusively to ordinary judges. This resulted in a situation in which some justices of the peace ceased or reduced their professional activities, and thus had no rights under social security, whereas others qualified for social security on other grounds (by virtue of pension rules, an employment contract or self-employed activity). The ECSR held that the functions assigned to the two groups and the tasks performed by them were similar and confirmed that the position of justices of the peace was analogous to that of ordinary judges. The government proffered various justifications as reasons for the difference in treatment. It referred in particular to selection procedures, fixed-term appointments, part-time work, honorary service and financial remuneration. The ECSR held that these matters merely concerned the manner in which work was organised, and did not constitute an objective, reasonable justification for the difference in treatment. In conclusion, the Committee held that Article “E” in conjunction with Article 12(1) of the Charter had been violated on the grounds that justices of the peace were precluded from pension cover.

**This case, which is now referred for consideration to the European Committee of Social Rights, involves an identical violation of Article “E”, with Italy discriminating between public sector directors in the same band.** It does so in providing different remuneration, to the detriment of headteachers compared to other office-based directors in the same band, perpetuating through its express actions its lack of regard for the role and function of headteachers who, despite having far greater commitments and responsibilities than office-based directors



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(who are also referred to as administrative directors), are in actual fact appreciated much less than the latter, as they are remunerated differently, in particular receiving half the remuneration paid to colleagues in charge of offices.

However there is more!

The Italian National Anti-Corruption Authority addresses the merits of the only difference between administrative directors and headteachers in **resolution 460/2018** in which it states that ***“the provisions of Article 25 of Legislative Decree no. 165/2001 on directors in schools set out a professional profile with administrative and management tasks that are not dissimilar to those of administrative directors, whilst differing from the latter solely as regards the aspect of recruitment according to ad hoc public competition.”***

It is also stressed that, in the above-mentioned case concerning justices of the peace, **complaint no. 102/2013 of 5 July 2016**, in accepting the complaint and responding to the arguments made by the Government, which asserted in support of its actions amongst other reasons differences in the selection procedures for judges, the European Committee of Social Rights specifically justified its decision by pointing out that ***the different selection procedures concerned “mere modalities of work organisation and do not constitute an objective and reasonable justification of the differential treatment.”***

**As such, the difference between the selection procedures for administrative directors (according to Article 23 of Legislative Decree no. 165/01) and headteachers (according to Article 25 of Legislative Decree no. 165/01) does not constitute sufficient grounds for justifying the discrimination by Italy.**

### **3) VIOLATION OF ARTICLE “E” IN CONJUNCTION WITH ARTICLE 2 AND ARTICLE 4 OF THE EUROPEAN SOCIAL CHARTER**





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The acts carried out by Italy in this case have also violated the provisions of Article “E” in conjunction with Articles 2 and 4 of the Charter, namely *the right to just conditions of work* and *the right to a fair remuneration*, insofar as the difference in treatment is not based on any difference in type but rather on the **difference in name**: headteacher on the one hand (director in the local schools administration in charge of a school) and administrative director on the other hand (director in the local schools administration and/or the central schools administration in charge of an office). However, both are permanent public sector directors from band two who are appointed by the same regional director pursuant to Article 19(5) of Legislative Decree no. 165/01, and both are responsible for their results pursuant to Article 21 of Legislative Decree no. 165/01, the responsibilities related to the respective appointments being the same, if not actually significantly greater for headteachers. Moreover, in spite of the principle of “*equal pay for work of equal importance*”, rather than receiving twice as much as their colleagues who are administrative directors or directors in charge of an office, headteachers in practice receive remuneration amounting to one half of that earned by the latter.

**A difference in name is not a sufficient reason to justify a difference in remuneration, moreover to the detriment of those with a larger workload and greater responsibilities, and is therefore discriminatory, as it is not an objective and reasonable justification: indeed it is anything but that.**

However there is even more!

#### **4) VIOLATION OF ARTICLE “E” IN CONJUNCTION WITH ARTICLE 20, ARTICLE 22 AND ARTICLE 26 OF THE EUROPEAN SOCIAL CHARTER**



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The failure by Italy to comply with the Charter is also evident when the provisions of Article “E” are analysed in conjunction with Articles 20 and 22 of the Charter along with Article 26.

Specifically, national legislation and the acts adopted in consequence thereof (the respective NCLAs) do not allow for equal treatment in terms of employment between headteachers and administrative directors. This is first and foremost because they have not been included in the same collective bargaining area (Education and Research Area for headteachers and Central Functions Area for administrative directors). Moreover, no specific provision has been made to rectify de facto inequalities, in the sense that Italy has failed to invest sufficient financial resources in relation to the conclusion of contracts with headteachers, who are still today incorporated into the “*Education and Research*” contractual area rather than the “*Central Functions*” contractual area. This is in contrast to their administrative colleagues in the same band, even though they work in local administrations in territorial units and/or regional offices (which are still local schools administrations, just like the school which a headteacher is in charge of), not the central administration.

In addition, no provision has been made to enable workers, in this case headteachers or their representatives, to achieve an improvement in their working conditions by an increase in remuneration. This is because, although workers’ organisations are party to the conclusion of contracts, due to the low level of financial resources allocated by Italy to the specific NCLA for the “Education and Research” Area, they cannot even call for an increase in pay for the sole purpose of achieving equalisation between headteachers and directors with the same band working in the same contractual area.

When certifying the two previous national contracts for headteachers, the Court of Auditors (the highest control body of the Italian State) noted and censured the systematic failure to align the remuneration of headteachers with that of other





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directors as well as the (lack of any) increase in variable remuneration, which is intended to remunerate the results achieved having regard to the actual fulfilment of targets as well as the organisational capacities and competence displayed in relation to the management of agreed objectives (hearing of 7 April 2006 and hearing of 14 October 2010).

In spite of this, however, Italy has continued to freeze the equalisation process launched.

The “freeze” on the process of full *de facto* equalisation in collective bargaining procedures is also at odds with the protection of the right to organise under Article 39(1) of the Italian Constitution since, despite having been originally justified on budgetary grounds, the suspension has now become *systematic* in nature after a freeze on full equalisation lasting for more than twenty years, and is thus unconstitutional in Italy (on the contractual freeze, see Constitutional Court judgment no. 178/2015) and absolutely not compliant with the European Social Charter.

However there is much more!

Through its actions as well as the acts “*carried out*” or “*not carried out*” in relation to headteachers, Italy has violated their dignity as workers in having failed to take action to prevent acts that are objectionable or explicitly hostile or repeatedly offensive. This has occurred by virtue of the fact that, in successive NCLAs that lack an adequate basis in legislative provisions and financial resources to guarantee equalisation for all state directors (which has consistently been to the detriment of headteachers in particular), it has *de facto* brought about a pay imbalance to the detriment of certain colleagues in the same band. This is clearly indicative of **a perception of reduced value, and hence a violation of social, professional and personal dignity as regards the profile and role of headteachers compared to the profile and role of administrative directors.**



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For the reasons set out above, whereas Italy is obliged to adopt express and sufficiently precise legislation that guarantees equal treatment in all respects – as confining itself to enshrining the principle in the Constitution is not sufficient – it must guarantee that no direct or indirect discrimination occurs in terms of equal pay for work of equal importance, i.e. between workers in the same role and in the same band. Accordingly, **the principle of equal pay excludes any salary differences irrespective of their origin, even if they are provided for under a collective labour agreement. This is because any legislative, statutory, regulatory, administrative or other provision that does not respect the principle of equality must be repealed or revoked and/or otherwise amended** insofar as incompatible with the principle of equal treatment (Conclusions XIII-5, Statement of Interpretation on Article 1 of Additional Protocol of 1988).

**The difference in remuneration between administrative directors and headteachers** – both of which are permanent public sector directors from band two working in the same public administration under the Ministry of Education, both being appointed by the same band-one director general pursuant to Article 19(5) of Legislative Decree no. 165/01 and both being responsible pursuant to Article 21 of the Legislative Decree for the achievement of the targets set – **is not based on any objective or reasonable justification. It therefore amounts to discrimination and Italy must be declared to have violated the European Social Charter, and consequently called upon to comply with the Charter** by amending the organisational regulations of the Ministry of Education and by incorporating headteachers into the Central Functions collective bargaining area alongside administrative directors and allocating appropriate financial resources in order to conclude a national



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collective labour agreement that can guarantee equal pay, and hence non-discrimination amongst public sector directors in the same band.

The Committee is also informed that the undersigned complainant organisation has recently submitted a petition, backed by one thousand signatures, to the Ministry of Education and Merit and the President of the Republic seeking the equalisation of headteachers with other state directors in the same band. However, in spite of this, no action has been taken in favour of headteachers, and it is thus hoped that the Committee will take action to re-establish equal treatment among European workers and citizens as well as compliance by Italy with the European Social Charter.

#### **B) ON “PERICULUM IN MORA” – REQUEST FOR AN IMMEDIATE RULING**

Failure to comply with the Charter within a short space of time will entail the continuation of actions by the Italian State to the detriment of headteachers, as the collective employment agreement for their respective area is due to be renewed shortly and Italy has not yet allocated funds in the 2023 Budget Law in order to complete the process of equalising headteachers with other state directors. **The 2019/21 NCLA for the area is due to be concluded shortly and any delay by the Committee in issuing a decision would entail a failure by Italy to comply in good time with the Charter, resulting in the continuation of discrimination for at least three more years.** For this reason, and due to the considerations set out in detail above, it is requested that action be taken swiftly.

In view of all of the above submissions and arguments, we hereby submit the following

#### **CONCLUSIONS**

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May it please the Secretary General of the Council of Europe, acting through the Executive Secretary of the European Committee of Social Rights, to rule as follows:

**A) To declare that the legislative, regulatory and executive acts adopted by Italy, including Decree of the President of the Council of Ministers no. 166 of 30 September 2020 (organisational regulations of the Ministry of Education), budget laws and the resulting NCLAs for the respective area, violate Article “E” in conjunction with Articles 2, 4 , 20, 22, 26 of the European Social Charter, as do, in particular all acts adopted subsequent to Article 25 of Legislative Decree no. 165/01 – with unknown respective reference numbers and dates – including the organisational regulations of the Ministry of Education, most recently contained in Decree of the President of the Council of Ministers no. 166 of 2020, the 2019 Budget Law and the resulting 2016/2018 Area NCLA, insofar as they do not allow for the equalisation of the remuneration of headteachers with that of administrative directors in the same band, as well as the current 2023 Budget Law, no. 197 of 29 December 2022, insofar as it does not allocate adequate resources to establish pay equality between headteachers and other state directors in the same band through the NCLA for the area due to be concluded shortly.**

**Consequently, request the Italian State to bring its internal acts into line with the European Social Charter,**

**as well as a ruling concerning**

**the right to salary equivalence for headteachers as compared to administrative directors in the same band** working in the same public administration (Education Ministry) and, in the alternative, to directors in the same band working in any other public administration falling under the same collective bargaining area (education and research area) as headteachers.

**B) To instruct** the respondent state, Italy, to inform the Committee of Ministers of the Council of Europe concerning the action taken or planned in order to rectify the



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situation, including, in particular, the rectification and/or supplementing of Decree of the President of the Council of Ministers no. 166 of 30 September 2020 to the effect of incorporating into the territorial units of each regional schooling office the number of self-governing schools pertaining to each of them, as well as the amendment of the 2023 Budget Law – Law no. 197 of 29 December 2022 – or the inclusion of an additional paragraph (paragraph no. 12) into Article 5 of the conversion law for Decree-Law no. 198 of 29 December 2022, or any other arrangement that can otherwise enable the aim of allocating resources to national collective bargaining for headteachers and the subsequent conclusion of an NCLA providing for salary equalisation between headteachers and other state directors in the same band to be achieved.

**C) To declare** Italy the unsuccessful party and order it to compensate the losses resulting from the failure to ensure pay equalisation between headteachers and other state directors for more than twenty years, i.e. from the time when headteachers were granted the status of directors until the time of effective satisfaction, and to order it to pay costs and expenses relating to the proceedings.

**D) On an interim and urgent basis**, as the prerequisites have been met:

**1) To declare** that the Charter has been violated and hence that the acts adopted by Italy following the enactment of Article 25 of Legislative Decree no. 165/01, including the organisational regulations of the Ministry of Education most recently contained in Decree of the President of the Council of Ministers no. 166 of 30 September 2020, as well as the 2019 Budget Law and the resulting 2016/2018 NCLA for the Education and Research Area, are not compliant insofar as they do not enable salary equalisation between headteachers and other directors in the same band, as well as the current 2023 Budget Law, no. 197 of 29 December 2022, insofar as it does not make available any financial resources for the 2019/21 collective bargaining agreement due to be concluded in the near future with headteachers in order to enable the full process of salary equalisation with other directors in the same band, and accordingly





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**2) To recognise** the right of headteachers to be included in the Central Functions Area of collective bargaining and to obtain salary equalisation with other directors in the same band.

**3) To instruct** the respondent state, Italy, to inform the Committee of Ministers of the Council of Europe concerning the action taken or planned in order to rectify the situation, including in particular the rectification and/or supplementing of Decree of the President of the Council of Ministers no. 166 of 30 September 2020, incorporating into the territorial units of each regional schooling office the number of self-governing schools pertaining to each of them, and including headteachers in the Central Functions collective bargaining area, as well as the amendment of the 2023 Budget Law – Law no. 197 of 29 December 2022 – or the inclusion of an additional paragraph (paragraph no. 12) into Article 5 of the conversion law for Decree-Law no. 198 of 29 December 2022, or any other arrangement that can otherwise enable the aim of allocating resources to national collective bargaining for headteachers and the subsequent conclusion of an NCLA providing for salary equalisation between headteachers and other state directors in the same band to be achieved.

**E) IN RELATION TO EVIDENCE**, may it please the Committee:

**1) To order** the acquisition of legislative measures (budget laws) and resulting collective bargaining documentation for headteachers as well as administrative directors in the same band, between 1 September 2000 and today.

Foggia, 15 March 2023



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The Legal Representative of Associazione Nazionale Dirigentiscuola and National President Mr Attilio Fratta \_\_\_\_\_

Counsel Massimo Cosenza

Counsel Benedetto Paglione

Counsel Benedetto Ronchi

*Attilio Fratta*  
*Massimo Cosenza*  
*Benedetto Paglione*  
*Benedetto Ronchi*

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Enclosures:

- 1) Statute of Associazione Sindacale Dirigentiscuola;
- 2) Appointment of the National President, Mr Donato Attilio Fratta;
- 3) Documentation establishing representative status for the Education and Research Area (number of members and national nature of the association, conclusion of NCLAs for the area);
- 4) Instruction issued to the lawyers indicated in the introductory part of the complaint to represent the complainant;
- 5) Extract from Legislative Decree no. 165/01 of the articles cited in the complaint;
- 6) Organisational regulations of the Ministry of Education, Decree of the President of the Council of Ministers no. 166 of 30 September 2020;
- 7) Extract from the 2019 Budget Law;
- 8) Extract from the 2016/18 NCLA for the Education and Research Area;
- 9) Extract from the 2023 Budget Law;
- 10) Extract from the NCLA for the Central Functions Area;
- 11) Notice of appointment for headteacher;
- 12) Notice of appointment for administrative director;
- 13) Remuneration of headteacher;
- 14) Remuneration of administrative director;
- 15) Declaration by the Minister for Public Administration;
- 16) Extract from ANAC resolutions no. 460/2018 and no. 685/2019;
- 17) Extract from Constitutional Court judgment no. 178/2015;

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- 18) Launch of negotiations concerning the 2019/21 NCLA for the “Central Functions Area”.
- 19) Newspaper articles or extracts from websites concerning the 2017 demonstration and initial application concerning the launch of equalisation;
- 20) Petition including signatures collected and letter to the Minister of Education and the President of the Republic.

Foggia,

/ /

The Legal Representative of Associazione Nazionale Dirigentiscuola and Presidente

National President Mr Attilio

Counsel Massimo Cosenza

Counsel Benedetto Paglione

Counsel Benedetto Ranchi

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