EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

14 May 2024

Case Document No. 1

***Sindacato Italiano Lavoratori* (S.I.Lav.) v. Italy**
Complaint No. 236/2024

COMPLAINT

Registered at the Secretariat on 12 January 2024

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

F-67075, Strasbourg Cedex

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

Sindacato Italiano Lavoratori

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 trade union organisation S.I.LAV

1. The S.I.LAV – Sindacato Italiano Lavoratori [Italian Workers' Trade Union] (see the Statute, Annex 1), with registered office at Via Ferdinando Li Donni 7, Palermo, Italian tax ID and VAT number annexed (2), represented by its current President and legal representative, Mr Gaetano Giordano, is a professional and trade union association which represents and assists workers from the sector of schools in Italy administered by the state, including both teaching and administrative, technical and auxiliary staff working for the Ministry of Education and Merit (hereafter, MIM) under both permanent and fixed-term employment contracts (so-called supply appointments).

2.The membership of the body is documented by membership forms, which have been certified by the ARAN [Agency for Representation in Bargaining with the Public Administrations] (3). The S.I.LAV offers assistance to its members throughout the country at branch offices and contact points as well as through trade union officials who work free of charge in the performance of their duties.

The S.I.LAV offers assistance to its members throughout the country at **56 branch offices with 50 trade union officials who work free of charge** in the performance of their duties (**4**).

3. Through its activity, the S.I.LAV has established itself as an opinion leader in the debate on Italian schools policy, as is apparent from widespread press reports, and also in the considerable number of legal actions brought before the labour courts, not to speak of the petitions submitted to the European Parliament.

The S.I.LAV thus represents and assists workers from the sector of schools in Italy administered by the state, including both teaching and administrative, technical and auxiliary staff working for the Ministry of Education and Merit (hereafter, MIM) under both permanent and fixed-term employment contracts, with a certified level of representative status.

In this collective complaint the S.I.LAV is represented by its current President and legal representative, Mr Gaetano Giordano. The service address chosen for the purposes of this complaint is the email address: National Secretariat: Via Ferdinando Li Donni, 7 - 90141 Palermo - Tel. 091 6496323 Email address: segreterianazionale@sindacatosilav.it - Certified email address: sindacatosilav@pec.it.

For the purposes of this complaint, the S.I.LAV is assisted by Counsel **Angela Maria Fasano** (Italian tax ID: FSNNLM77E50G273O) and Counsel **Stefania Fasano** (Italian tax ID: FSNSFN84A59G273O) of the Palermo bar, with offices at Via Giacomo Cusmano 28, Palermo. Reference email address: Certified email addresses: studiolegaleavvocatofasano@pec.it and stefaniafasano@pec.it.

Sindacato Italiano Lavoratori

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Contracting party which has violated the European Social Charter: ITALY

APPLICATION TO ITALY OF THE REVISED EUROPEAN SOCIAL CHARTER AND THE SYSTEM OF COLLECTIVE COMPLAINTS

Italy is a party to the Revised European Social Charter of 1996 and the Additional Protocol providing for a system of collective complaints. 12. Italy signed the European Social Charter on 18 October 1961 and ratified it on 22 October 1965. The European Social Charter entered into force in respect of Italy on 21 November 1965. Italy signed the Revised European Social Charter on 3 May 1996 and ratified it on 5 July 1999, with the exception of Article 25, which is not relevant for this complaint. 9. The Revised Charter came into force in respect of Italy on 1 September 1999. 13. Italy signed the Additional Protocol providing for a system of collective complaints on 9 November 1995 and ratified it on 3 November 1997. The Additional Protocol came into force in respect of Italy on 1 July 1998.

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Statement of facts

European Social Charter: "*All workers have the right to just conditions of work - All workers have the right to dignity at work - All workers have the right to equal opportunities and equal treatment in matters of employment.*"

This complaint objects to the extremely serious violation of the following provisions of the European Social Charter:

1. **Article 1, commitments 1 and 2,** as the Italian State has failed to honour both the commitment to achieve and maintain as high and stable a level of employment as possible and the firm right to just conditions of work, as the circumstances of the fixed-term teachers at accredited independent schools [*scuole paritarie*] represented in these proceedings are comparable to those of permanent teachers at schools administered by the state as regards the type of work as well as training and working conditions in view of the fact that they perform the same tasks and hold the same disciplinary, pedagogical, methodological - didactic, organisational - and interpersonal expertise and have the same research background, acquired through the accumulation of teaching experience, which is recognised under national law as being identical for the purposes of appointment under a permanent contract by drawing on permanent ranking lists, now ranking lists to be drawn upon until exhaustion (cf. Article 2(2) of Decree-Law no. 255/2001).

2. **Article 1, commitments 1 and 2,** as the Italian State has failed to honour both the commitment to achieve and maintain as high and stable a level of employment as possible and the firm right to just conditions of work, as well as the general principles under the applicable EU law on equality, equal treatment and non-discrimination in terms of employment, as fixed-term teachers at accredited independent schools are not paid the additional remuneration on account of length of service that is by contrast paid to fixed-term teachers at schools administered by the state, municipal schools, independent schools with ad hoc accreditation [*scuole parificate*], independent schools with authority to issue legally valid qualifications [*scuole pareggiate*], subsidised schools, public schools administered by ecclesiastical authorities [*scuole popolari*] and

schools for girls administered by nuns [*educandati femminili*], whose circumstances are comparable to those of teachers at accredited independent schools as regards the nature of the work performed, functions, services and professional duties, as well as training and working conditions compared to teachers at accredited independent schools provided for under Law no. 62/2000 who perform the same tasks and, through the accumulation of teaching experience, have acquired the same disciplinary, pedagogical, methodological - didactic, organisational - and interpersonal expertise and have the same research background as teachers at accredited independent schools.

3. Article 4, commitments 1 and 4, as the Italian State has failed to honour as an employer the commitment towards tens of thousands of public sector teachers to grant sufficient remuneration such as will guarantee them and their families a dignified standard of living, and has left remuneration at all times at the minimum levels provided for under contract, without recognising any career advancement for service performed previously.

4. Article 6, commitment no. 4, because the Italian State has failed, through both legislation and the judiciary, to recognise the right of workers at schools administered by the state to take collective action through the complainant S.I.LAV in cases involving conflicts of interest because the collective action (provided for by law) brought before the Court of Justice of the European Union was deprived by the Court of Cassation of its effect of protecting rights.

5. Each of the violations of the European Social Charter referred to above has been committed alongside a violation of the provisions of EU law on Fixed-Term Work set out in the Framework Agreement on Fixed-Term Work concluded on 18 March 1999, annexed to Directive 1999/70,

Clause 4 of which provides that "4. period-of service qualifications relating to particular conditions of employment shall be the same for fixed-term workers as for permanent workers." Clause 3 of the Agreement goes on to provide that "2. For the purpose of this agreement, the term 'comparable permanent worker' means a worker with an employment contract or relationship of indefinite duration, in the same establishment, engaged in the same or similar work/occupation, due regard being given to qualifications/skills." 3.2. The Court of Justice of the European Union has already ruled on similar matters, finding that "employment conditions include, *inter alia*, triennial length-of-service allowances (Joined Cases C-444/09 and C-456/09, *Gavieiro and Iglesias Torres*, paragraph 50, and Case C-273/10, *Montoya Medina*, paragraph 32)".

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The trade union SILAV is submitting this complaint, as it takes the view that the conduct of the Italian State currently violates the European Social Charter for the following reasons:

1. Different remuneration (financial and legal advancement) *between teachers performing the same, identical work in the education system governed by Italian law, including during periods of precarious employment under fixed-term employment relationships*.

2. As this complaint concerns the conditions under which periods of teaching performed by teachers working under fixed-term contracts are computed for the purposes of their allocation to the relevant salary band at the time they are appointed as public sector employees, there is thus no doubt that it falls within the scope of "implementing Union law", including under Article 51(1) CFREU, in that it turns on the interpretation of Clause 4 of the Framework Agreement on Fixed-Term Work concluded on 18 March 1999 annexed to Directive 1999/70/EC of the Council of 28 June 1999. 5.34. It is therefore also necessary to examine at the same time whether or not Article 485 is compatible with the general principles of equal treatment, equality and non-discrimination with regard to employment conditions, which are now enshrined in Articles 20 and 21 CFREU, but previously could also be inferred from the European Social Charter approved on 18 June 1961, Article 14 ECHR, Article 157 TFEU and Directives 2000/43/EC and 2000/78/EC, which set out a general framework for equal treatment with regard to employment and employment conditions. Indeed, the CJEU has held in relation to this issue that the "general principle of equal treatment, as a general principle of EU law, requires that comparable situations must not be treated differently" (CJEU, Case C-112/16, *Persidera*, paragraph 46, and

also CJEU, Joined Cases C-444/09 and C-456/09, *Gavieiro and Iglesias Torres*, paragraph 41).

5.36. The CJEU has also clarified that "a difference in treatment is justified if it is based on an objective and reasonable criterion, that is, if the difference relates to a legally permitted aim pursued by the legislation in question, and it is proportionate to the aim pursued by the treatment concerned" (Case C-356/12, *Glatzel*, paragraph 43 and the case law cited).

Indeed, Article 485 of the 1994 Consolidated Act [i.e. Legislative Decree no. 297 of 16 April 1994] discriminates without any objective reason against the employees of accredited independent schools, whose length of service is not recognised, even in part, for the purposes of determining their salary category upon appointment to a public sector position, as compared to employees of the abolished independent schools with authority to issue legally valid qualifications and independent schools with ad hoc accreditation (which were reclassified as accredited independent schools in 2000), public schools administered by ecclesiastical authorities, subsidised schools and schools for girls administered by nuns: upon appointment of teachers from any of these other schools, their length of service prior to appointment to a public sector position is by contrast recognised, in spite of the fact that it is comparable to service at accredited independent schools, as is demonstrated by the fact that the categories of independent school with ad hoc accreditation and independent school with authority to issue legally valid qualifications were amalgamated within the current category of *scuole paritarie*. The national legislation therefore also appears to violate Articles 20 and 21 CFREU, which are applicable to the present dispute, as the aim here is to establish whether or not the failure to compute any periods of fixed-term employment at accredited independent schools, as provided

for under Article 485 (cited above) is compatible with the objective of the Framework Agreement on Fixed-Term Work concluded on 18 March 1999 of improving the quality of fixed-term work by ensuring the application of the principle of non-discrimination between fixed-term workers and permanent workers (which is also a general principle of EU law).

In conclusion, under national law, upon appointment to a permanent position by the Ministry of Education an employee who has worked at a private school classified as an independent school with authority to issue legally valid qualifications, an independent school with ad hoc accreditation, a subsidised school or a school administered by ecclesiastical authorities is allocated to a salary category that takes account of the experience accumulated in the private school of origin. Conversely, an employee who has accumulated the same experience in a current accredited independent school (which amalgamated independent schools with ad hoc accreditation and independent schools with authority to issue legally valid qualifications) is allocated the starting salary as if they had never taught at all. This is in spite of the fact that any such prior service may be relied on in order to gain appointment without having to participate in a public competition, through inclusion in permanent ranking lists or ranking lists to be drawn upon until exhaustion operated by the Ministry for Education, Universities and Research [MIUR].

The discrimination between fixed-term employees at accredited independent schools and permanent employees at schools administered by the state must also be assessed with reference to the principle of equal treatment, which is a general principle of EU law and is now embodied in Articles 20 and 21 CFREU (CJEU, Case C-406/15, *Milkova*, paragraph 55 et seq and, more generally, CJEU, Case C-193/17, *Cresco Investigation*, paragraph 75 et seq, in which the

Court stressed that "Directive 2000/78 does not itself establish the principle of equal treatment in the field of employment and occupation, which originates in various international instruments and the constitutional traditions common to the Member States".

In this case, the S.I.LAV complains of the failure to take account of any length of service accumulated under fixed-term contracts by the workers represented. As such, the case also involves the concept of "fixed-term worker" within the meaning of Clause 3(1) of the Framework Agreement, and thus falls within the scope of Directive 1999/70 and that agreement (Case C-315/17, *Centeno Meléndez*, paragraph 40).

In summary: in the Member State Italy - at the present time - there are teachers **with the same career experience and professional standing** for whom the Italian State, without any legal or objective justification, has recognised **different, less favourable length of service and pay advancement compared to fellow teachers working for the Italian State with identical career backgrounds and contractual status (identical classification)**.

The **circumstances** of teachers represented, who have accumulated experience in accredited independent schools, **are comparable** to those of permanent teachers at schools administered by the state as regards the type of work as well as training and working conditions in view of the fact that they perform the same tasks and hold the same disciplinary, pedagogical, methodological - didactic, organisational - and interpersonal expertise and have the same research background, acquired through the accumulation of teaching experience, which is recognised under national law as being identical for the purposes of appointment under a

permanent contract by drawing on permanent ranking lists, now ranking lists to be drawn upon until exhaustion (cf. Article 2(2) of Decree-Law no. 255/2001) (**5**).

The salary earned is therefore different, in spite of the fact that the contractual starting point, classification and professional standing is now identical and fully comparable with that of teachers who have accumulated prior experience at schools administered by the state.

It is therefore clear that the right to work under fair and dignified conditions has been violated.

Indeed, the failure to take account of prior service at accredited independent schools penalises in financial terms those teachers who have worked under fixed-term contracts at accredited independent schools compared to teachers who have performed the same work (and hence accumulated the same experience) under permanent contracts at schools administered by the state due to the fact that, despite performing identical tasks, the former have not successfully completed a public competition for access to the public administration. In this regard, the Court of Justice of the European Union has noted that the prohibition on discrimination laid down by Clause 4 of the agreement on Fixed-Term Work concluded by ETUC, UNICE and CEEP prohibits any difference in treatment for fixed-term workers that is not objectively justified by the presence of precise, specific grounds for differentiation relating to the inherent nature of the tasks performed and functions carried out (cf. CJEU, Case C-307/05, *Del Cerro Alonso*, paragraph 53, Joined Cases C-444/09 and C-456/09, *Gavieiro and Iglesias Torres*, paragraph 55, and Case C-574/16, *Grupo Norte Facility*, paragraph 54). 5.4. Moreover, it is apparent from the text of the judgments of the CJEU that the difference in treatment can never be justified by a general, abstract legal provision, such as Article 485 of the Consolidated Act laid down by

Legislative Decree no. 297 of 16 April 1994, or by different arrangements for recruiting teachers to permanent positions at schools administered by the state compared to teachers at accredited independent schools, or by the fact that the employer at an accredited independent school is a private sector body. This is because these aspects do not distinguish the work performed and do not pertain to the characteristics of the tasks carried out (cf. CJEU, Case C-177/14, *Regojo Dans*, Joined Cases C-302/11 and C-305/11, *Valenza*, and Case C-393/1).

This means that the general principle of equality expressly guaranteed under the provisions of EU law which require that similar situations must not be treated differently and that different situations must not be treated in an identical manner, thereby establishing a general equality clause with horizontal effect, has been violated. This is one of the fundamental principles of EU law; primary law with legal effect by virtue of the treaties is self-applying and directly effective with regard to both vertical relations with state authorities and also horizontal relations between private parties.

“It must also be made clear, first, that it is required not that the situations be identical, but only that they be comparable and, secondly, that the assessment of that comparability must be carried out not in a global and abstract manner, but in a specific and concrete manner in the light of the objective and of the aim of the national legislation creating the distinction at issue.” (CJEU, Case C-406/15, *Milkova*, paragraphs 55 et seq). Article 485 therefore also appears to violate the general principles of equal treatment, equality and non-discrimination, as the work performed at accredited independent schools is certainly comparable to that performed by fixed-term workers at schools administered by the state and private independent schools with

authority to issue legally valid qualifications, independent schools with ad hoc accreditation, subsidised schools, public schools administered by ecclesiastical authorities and schools for girls administered by nuns. It must also be considered that the purpose of computing any teaching service performed for other employers for career advancement purposes is to acknowledge any teaching experience acquired prior to appointment to a public sector position that is precisely identical to, if not even of higher quality than, experience that can be acquired at other private schools. Article 485, on the other hand, sets out the paradoxical rule that assesses and computes any service performed at "schooling institutions" with "lower" status than accredited independent institutions at which, under the terms of Article 1 of Law no. 62/2000, only "g) teaching staff who hold a teaching qualification; (under) h) individual contracts of employment for management and teaching staff that are compliant with sectoral national collective labour agreements" are permitted to work. 5.39. Indeed, the quality of experience gained by "educational staff" at schools for girls administered by nuns, who teach in "primary schools, middle schools and upper secondary institutions and schools" according to Article 204 of the Consolidated Act laid down by Legislative Decree no. 297 of 16 April 1994 despite not holding any teaching qualification is for obvious reasons less valuable than that of "teaching staff" at the current accredited independent schools, who must by contrast hold a teaching qualification, failing which the respective contract of employment will be invalidated. Similarly, independent primary schools with ad hoc accreditation offer fewer guarantees than legally recognised middle schools, as the former are hierarchically lower than the latter, and the current accredited independent schools since, under the terms of Articles 344-346 of the Consolidated Act laid down by Legislative Decree no. 297 of 16 April 1994, they are only required to follow the primary

school curriculum as regards teaching programmes and hours. Moreover, the quality of the experience acquired by teachers in subsidised schools provided for under Article 348 of the Consolidated Act laid down by Legislative Decree no. 297 of 16 April 1994 is also lower, as these are operated "in parishes, at farms and other agricultural undertakings, at temporary or permanent industrial facilities and installations and at railway stations distant from inhabited areas, at places where shepherds most frequently meet" (cf. Article 91 of Royal Decree no. 577/28), and "the teacher at a subsidised school need not hold a school-leaving diploma establishing entitlement to work as a teacher [*diploma di abilitazione magistrale*]" (cf. Article 92 of Royal Decree no. 577/28). 5.43. Lastly, the recognition of length of service for teachers who have previously worked at public schools administered by ecclesiastical authorities is even more striking than the unjustified difference in treatment and discrimination. This is because the quality of the work performed by them is known to be lower than that performed by teachers at accredited independent schools established in order to combat illiteracy, to complete primary level education and to provide an introduction to middle-level or vocational education through daytime or evening classes for young people and adults working at factories, agricultural undertakings, institutions for emigrants, barracks, hospitals, prisons and any other public forum, especially in agricultural areas, in which there is a need. Lastly, as mentioned above, Article 485 is unjustifiably discriminatory also insofar as it recognises service at private independent schools with authority to issue legally valid qualifications, given that the nature of the work and the training conditions applicable to employees of these schools are identical to those applicable to teachers at accredited independent schools, as both perform the same tasks and both must hold the same degree and teaching qualification.

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As a demonstration of the discrimination in terms of the right to work under equal conditions, and in particular to remuneration such as to guarantee a free and dignified existence, the SILAV submits a copy of a career advancement analysis in which, for legal and financial purposes, the pre-appointment score of the Italian teacher is considered to be 0 (Annex A).

This aspect is not insignificant if it is considered that, according to Article 45(2) TFEU, teachers at accredited independent schools should have been able to benefit from absolute equal treatment. In guaranteeing "the abolition of any discrimination based on nationality […], as regards employment, remuneration and other conditions of work and employment," the rule on equality laid down by Article 45(2) is framed in terms that do not appear to admit any exceptions. It does not therefore appear to be imprudent to hypothesise that, according to this general rule, any Member State legislation such as that at issue in this complaint should be considered to be incompatible with EU law.

As EU citizens, they have the right to equal treatment in terms of pay and pensions. Discrimination (in this case, between public and private sector workers) at work is prohibited throughout the EU, in both the public sector and the private sector.

Although in such cases Member States have a certain degree of discretion, they must comply with the general principles of EU law, which include the principle of equal treatment as enshrined in Articles 20 and 21 of the Charter of Rights, which must be deemed to have been violated wherever there is no objective, reasonable criterion for a difference in treatment that

is premised on a legitimate goal pursued by the legislation in question, and wherever that difference is not proportionate with the goal pursued by the treatment concerned.

In this regard, it must be noted that, in accordance with settled case-law, where discrimination contrary to European Union law has been established, as long as measures reinstating equal treatment have not been adopted, observance of the principle of equality can be ensured only by granting to persons in the disadvantaged category the same advantages as those enjoyed by persons in the favoured category (Case C-18/95 *Terhoeve* [1999] ECR I-345, paragraph 57; Case C-399/09 *Landtová* [2011] ECR I-5573, paragraph 51, and Case C-417/13 *ÖBB Personenverkehr* EU:C:2015:38, paragraph 46). The disadvantaged person must therefore be placed in the same position as the person enjoying the advantage concerned (Case C-401/11, *Soukupová*, EU:C:2013:223, paragraph 35).

LACK OF OBJECTIVE JUSTIFICATION: According to the settled case law of the Court of Justice, the concept of "objective ground" within the meaning of Clause 4(1) of the Framework Agreement must be understood as not permitting a difference in treatment between fixed-term workers and permanent workers to be justified on the basis that the difference is provided for by a general, abstract national norm, such as a law or collective agreement (*Del Cerro Alonso*, cited above, paragraph 57; *Gavieiro Gavieiro [sic] and Iglesias Torres*, paragraph 54, and *Montoya Medina*, cited above, paragraph 40).

The conduct of the Member State Italy is not currently justified by any overriding reasons of general interest.

The conduct of the Member State Italy has subjected teachers at accredited independent schools to an "anomalous and exorbitant" burden and the violation of their right to remuneration has been disproportionate, so much so as to shatter the fair balance between requirements of general interest and the need to safeguard the fundamental rights of individuals.

Specifically, the internal legislative framework applicable to precarious public sector employment in schools is characterised by a complete lack of protection, as the application within this specific sector of Directive 1999/70/EC has been precluded pursuant to Article 10(4-ter) of Legislative Decree no. 368 of 2001 and under Article 29(2)(c) of Legislative Decree no. 81 of 2015, which provides that Legislative Decree 368 of 2001 does not apply to the schools sector (Annex 13). Therefore, the new rules governing fixed-term contracts are contained in Articles 19 and 29 of Legislative Decree no. 81 of 2015, which is, however, expressly stipulated not to be applicable to staff at schools administered by the state [see Article 29(2)(c)], whilst all public administrations (including schools administered by the state) continue to be governed by Article 36 of Legislative Decree no. 165 of 2001. In this complaint the complainant objects [sic]

EQUAL VALUE: the service performed by teachers at accredited independent schools has equal value to that performed by other Italian teachers. The Court of Justice has already set out the main guidelines and objective criteria for assessing what must be regarded as "work of equal value" (Case C-400/93, *Royal Copenhagen*; Case C-309/97, *Angestelltenbetriebsrat der Wiener Gebietskrankenkasse*; Case C-381/99, *Brunnhofer*; Case C-427/11, *Margaret Kenny and Others v. Minister for Justice, Equality and Law Reform and Others*).

LEGAL ASSESSMENT OF THE ISSUE

In this case, teachers at accredited independent schools are teachers at private accredited institutions who, under the terms of national legislation, Law no. 62/2000, work at institutions for which an EQUIVALENCE RULING (CF. ANNEXES) has been issued, i.e. a legal ruling establishing that the teaching provided at the Italian accredited private school is equivalent to that provided at Italian schools administered by the state.

Accordingly, it is as if they were working at a school administered by the state in the same manner as their colleagues working at such schools, as there is no difference between schools administered by the state and accredited independent schools.

Indeed, the teachers in question have been classified as being equivalent – in numerous legal acts – to teachers at Italian schools administered by the state. They are therefore teachers who perform service falling within the standards provided for under the Italian Constitution.

Due to this legal equivalence, there must also be financial equivalence.

Moreover, the point made above is also stated on the website of the MIUR – the Italian Education Ministry (cf. Annex 1).

Indeed, the legislation itself establishes their service as being equivalent, Law no. 62/2000: *Without prejudice to the provisions of Article 33(2) of the Constitution, the national education system is comprised of schools administered by the state and private accredited independent schools* (cf. Annex 2).

However, the achievement of equivalence for schools is governed by complex legislation, which treats service at an accredited independent school as being equivalent to service at a school administered by the state without any distinction (cf. Annex 3 – Decree on the achievement of equivalence for schools).

As such, these teachers not only perform the same work, but are subject to the same taxation (income tax), despite receiving a lower salary (cf. Annex 4 salary tables for teachers at schools administered by the state, compared to Annex 5 salary tables for teachers at accredited independent schools).

Essentially, these teachers are subject to the same legal framework as regards their employment relationships (cf. Annexes 6 and 7, contract for schools administered by the state and contract for accredited independent schools) (same working hours, identical job specification, subjection to the same disciplinary regime), but with one single difference: different remuneration. Teachers at accredited independent schools do not benefit from the same legal and financial conditions as those applied to Italian teachers at schools administered by the state.

SPECIFIC LEGISLATION APPLICABLE TO TEACHERS AT ACCREDITED INDEPENDENT SCHOOLS

The Italian teachers represented in this complaint in any case have the right to have any such service taken into account where they have taught at an accredited independent school since 16 September 2002, when the categories of independent schools with ad hoc accreditation and independent schools with authority to issue legally valid qualifications were amalgamated within the category of “accredited independent schools”, which were considered by lawmakers to be comparable with each other and with schools administered by the state. 1.5. Indeed, Law no. 62

of 10 March 2000 reclassified the previous private independent schools with ad hoc accreditation, independent schools with authority to issue legally valid qualifications and legally recognised schools within a single category of “accredited independent schools”. At the same time, it recognised full equivalence between schools administered by the state and accredited independent schools, as the latter schools “provide a public service” and, alongside schools administered by the state, constitute “the national public education system”: as such, they have authority to issue academic qualifications that are recognised as being equivalent to those that can be obtained at schools administered by the state. 1.6 The reference made in Article 485 of Legislative Decree no. 297/94 to the computation of service performed as an employee of the abolished independent primary schools with ad hoc accreditation and independent secondary schools with authority to issue legally valid qualifications should now be deemed to refer to the above-mentioned accredited independent schools. 1.7. The fact that Article 485 of Legislative Decree no. 297/94 is “obsolete” is confirmed by Article 2 of Decree-Law no. 255/2001, which recognised that fixed-term service as a teacher at an accredited independent school is assessed in the same manner as service performed at a school administered by the state for the purposes of appointment to a permanent position, by running through eligibility rankings to be drawn upon until exhaustion. 1.8. The failure to adapt Article 485 of Legislative Decree no. 297/94 in line with subsequent structural changes thus leads to the absurd outcome that the same teaching service is considered to be identical to that performed by fixed-term teachers at schools administered by the state for the purposes of appointment by the Ministry of Education to a permanent position (without a public competition), whilst being entirely non-comparable for the purposes of determining the salary category upon appointment to a permanent position by the

Ministry of Education. 1.9. According to the claimant, insofar as it does not consider any years of teaching under a fixed-term contract performed between 2002 and 2007 at an accredited independent school ("*Sacro Cuore*") for the purposes of career advancement, Article 485 of Legislative Decree no. 297/94 violates Clause 4 of the Framework Agreement on Fixed-Term Work annexed to Directive 1999/70. It does so in that it treats permanent workers at schools administered by the state, whose prior teaching experience is taken into account, differently from fixed-term workers at accredited independent schools, whose prior experience working under fixed-term contracts is by contrast not taken into account even in part, despite their having performed identical work. 1.10. As Article 485 concerns the conditions under which periods of service performed by fixed-term workers are computed (for the purposes of their allocation to the relevant salary band at the time they are appointed as public sector employees), it falls within the scope of "implementing Union law" under Article 51 CFREU. As such, it may also violate Articles 20 and 21 CFREU in that it discriminates against teachers at accredited independent schools also compared to employees of schools for girls administered by nuns, subsidised schools and public schools administered by ecclesiastical authorities, as well as other private schools, whether independent schools with authority to issue legally valid qualifications or independent schools with ad hoc accreditation since Article 485 recognises service performed at such schools for the purposes of career advancement, despite its being entirely comparable to service performed at accredited independent schools.

In addition, service performed at accredited independent schools is at an even higher level than service performed as an employee of other private schools. This is because, according to

Article 1 of Law no. 62 of 2000, a teaching qualification is essential in order to be able to work as a fixed-term teacher at an accredited independent school, whereas a school-leaving diploma is sufficient for a fixed-term appointment at a school administered by the state or at a private independent school with ad hoc accreditation, a subsidised school or a school administered by ecclesiastical authorities.

The Ministry of Education does not dispute the fact that the service referred to above is identical to that performed at schools administered by the state or at other accredited independent schools (whether formerly legally recognised schools, independent schools with authority to issue legally valid qualifications or independent schools with ad hoc accreditation), schools administered by ecclesiastical authorities or subsidised schools. However, it asserts that such service cannot be computed on the grounds that Article 485 of Legislative Decree no. 297 of 1994 has never been updated. Accordingly, it still takes account only of service performed as an employee of an "independent school with ad hoc accreditation … independent school with authority to issue legally valid qualifications", whilst disregarding service performed at the new accredited independent schools created in 2000, which amalgamated independent schools with ad hoc accreditation and independent schools with authority to issue legally valid qualifications, which therefore cannot be taken into account.

The situation in France is very similar, albeit with one specific difference: in France teachers at private schools receive the same salary as teachers at schools administered by the state, whereas in Italy they do not!

The situation is the same in Spain and in Germany.

In Germany there are various alternatives to the public schooling system. Private schools are also in some way subsidised by the government, are often subject to the same rules as schools administered by the state and the teachers receive the same salaries.

The largest network of private schools in Germany is made up of the *Waldorfschulen*. These "alternative" schools are inspired by the didactic method of Rudolf Steiner, known as anthroposophy. There are numerous common features between these schools and Montessori schools, and they normally offer teaching from primary school through to the first few years of middle school.

Religious schools operate throughout Germany and are subsidised by the government. Many of them are over-subscribed, as they have a reputation for being better than schools administered by the state and private schools.

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

EU Law

The EU law on Fixed-Term Work is set out in the Framework Agreement on Fixed-Term Work concluded on 18 March 1999, annexed to Directive 1999/70, Clause 4 of which provides that "4. period-of service qualifications relating to particular conditions of employment shall be the same for fixed-term workers as for permanent workers." Clause 3 of the Agreement goes on to provide that "2. For the purpose of this agreement, the term 'comparable permanent worker' means a

worker with an employment contract or relationship of indefinite duration, in the same establishment, engaged in the same or similar work/occupation, due regard being given to qualifications/skills." 3.2. The Court of Justice of the European Union has already ruled on similar matters, finding that "employment conditions include, *inter alia*, triennial length-of-service allowances (Joined Cases C-444/09 and C-456/09, *Gavieiro and Iglesias Torres*, paragraph 50, and Case C-273/10, *Montoya Medina*, paragraph 32)" (CJEU, Case C-317/18, *Cátia Correia Moreira*, paragraph 26, and Case C-72/18, *Ustariz Aróstegui*, paragraph 26). 3.3. Moreover, the Court of Justice has stressed that any difference in treatment between fixed-term teachers and permanent teachers can only be justified by "the specific nature of the tasks for the performance of which fixed-term contracts have been concluded and from the inherent characteristics of those tasks" (CJEU, Case C-72/18, *Ustariz Aróstegui*, paragraph 40; see also Joined Cases C-444/09 and C-456/09, *Gavieiro and Iglesias Torres*, and Case C-574/16, *Grupo Norte Facility*). 3.4. Lastly, the Court of Justice of the European Union has clarified that "the fact that the applicant in the main proceedings subsequently acquired the status of career civil servant and, therefore, that of a permanent worker, does not prevent him from relying on the principle of non-discrimination set out in Clause 4(1) of the Framework Agreement, in so far as he calls into question a difference in treatment for the purposes of consolidating his grade, as regards the taking into account of the services which he undertook as an interim civil servant before being appointed as a career civil servant" (CJEU, Case C-192/21 *Clemente*, paragraph 30; see also CJEU, Case C-177/10, *Rosado Santana*, paragraph 43, and CJEU, Joined Cases C-302/11 to C-305/11, *Valenza and Others*, paragraph 36).

IRRELEVANCE OF THE SYSTEM FOR RECRUITING TEACHERS TO ACCREDITED INDEPENDENT SCHOOLS

The Italian Constitutional Court has declined to recognise any entitlement to the consideration of service prior to appointment to a permanent position for teachers from accredited independent schools on the grounds that recruitment to accredited independent schools does not occur on the basis of a public competition.

However, this interpretation by the authoritative Italian court cannot be endorsed in the light of the most recent case law of the CJEU.

The CJEU has constantly ruled that the recruitment procedure is irrelevant, as it does not pertain to the characteristics of the tasks performed, and hence "the fact that she did not pass an administrative competition does not mean that the applicant in the main proceedings was, at the time she was hired permanently, not in a comparable situation to that of career civil servants" (CJEU, Case C-466/17, *Motter*, paragraph 33; see also Case C-152/14, *Autorità per l'energia elettrica e il gas v. Antonella Bertazzi*, and Case C-302/2011, *Valenza*). It should also be stressed that the fact that the recruitment procedure or the public or private status of the employer at which the teaching experience is acquired is manifestly irrelevant is also apparent from the object and aims pursued by career advancement, as provided for under Article 485 of the Consolidated Act on Schools. This is because the basis for length-of-service increments has been consistently identified as being the need to guarantee "fair remuneration… that is commensurate also with the length of service accumulated, given that quality of work normally improves in line with experience" (Court of Cassation, Employment Division, judgment no. 19578

of 26 August 2013; see also judgments no. 17399 of 19 August 2011 and no. 153 of 11 January 2012). Any issue pertaining to the fixed-term or permanent nature of the relationship, the recruitment procedure or the public or private status of the employer at which the teaching experience is gained has no bearing whatsoever on this aspect. 5.24. Discrimination compared to public sector employees with permanent status cannot be justified even by the mere concern that public spending should not increase, as the CJEU has held that, "although budgetary considerations may underlie a Member State's choice of social policy and influence the nature or scope of the social protection measures which it wishes to adopt, they do not in themselves constitute an aim pursued by that policy and cannot therefore justify discrimination against one of the sexes (Case C-343/92 *De Weerd, née Roks, and Others* [1994] ECR I-571, paragraph 35). 60. Moreover, to concede that budgetary considerations may justify a difference in treatment between men and women which would otherwise constitute indirect discrimination on grounds of sex would mean that the application and scope of a rule of Community law as fundamental as that of equal treatment between men and women might vary in time and place according to the state of the public finances of Member States (*De Weerd, née Roks, and Others*, cited above, paragraph 36, and *Jørgensen*, cited above, paragraph 39)" (Case C-187/00, *Kutz-Bauer*, paragraphs 59 and 60, followed in C-220/12, *Thiele Meneses*, paragraph 43, and Case C-22/13, *Mascolo and Others*, paragraph 110).

The difference in treatment between fixed-term employees at accredited independent schools and permanent employees of the Ministry of Education does not therefore reflect any genuine "objective ground," as the supposed need to compute only service performed as an employee

of the Ministry cannot be reconciled with the choice made in national legislation also to recognise service performed in municipal or private schools. Similarly, the supposed need to consider only service performed by successful competition candidates cannot be reconciled with the decision made in Italian legislation to compute any service performed by fixed-term teachers at schools administered by the state who have been teaching without having successfully completed a public competition, and at independent schools with ad hoc accreditation, subsidised schools and schools administered by ecclesiastical authorities or schools for girls administered by nuns at which teachers are not required to hold a teaching qualification.

This complaint objects to the extremely serious violation of the following provisions of the European Social Charter:

6. **Article 1, commitments 1 and 2,** as the Italian State has failed to honour both the commitment to achieve and maintain as high and stable a level of employment as possible and the firm right to just conditions of work, as the circumstances of the fixed-term teachers in accredited independent schools are comparable to those of permanent teachers at schools administered by the state as regards the type of work as well as training and working conditions in view of the fact that they perform the same tasks and hold the same disciplinary, pedagogical, methodological - didactic, organisational - and interpersonal expertise and have the same research background, acquired through the accumulation of teaching experience, which is recognised under national law as being identical for the purposes of appointment under a permanent contract by drawing on permanent ranking lists, now ranking lists to be drawn upon until exhaustion (cf. Article 2(2) of Decree-Law no. 255/2001).

7. **Article 1, commitments 1 and 2,** as the Italian State has failed to honour both the commitment to achieve and maintain as high and stable a level of employment as possible and the firm right to just conditions of work, as well as the general principles under the applicable EU law on equality, equal treatment and non-discrimination in terms of employment, as fixed-term teachers at accredited independent schools are not paid the additional remuneration on account of length of service that is by contrast paid to fixed-term teachers at schools administered by the state, municipal schools, independent schools with ad hoc accreditation [*scuole parificate*], independent schools with authority to issue legally valid qualifications [*scuole pareggiate*], subsidised schools, public schools administered by ecclesiastical authorities [*scuole popolari*] and schools for girls administered by nuns [*educandati femminili*], whose circumstances are comparable to those of teachers at accredited independent schools as regards the nature of the work performed, functions, services and professional duties, as well as training and working conditions compared to teachers at accredited independent schools provided for under Law no. 62/2000 who perform the same tasks and, through the accumulation of teaching experience, have acquired the same disciplinary, pedagogical, methodological - didactic, organisational - and interpersonal expertise and have the same research background as teachers at accredited independent schools.

8. **Article 4, commitments 1 and 4,** as the Italian State has failed to honour as an employer the commitment towards tens of thousands of public sector teachers to grant sufficient remuneration such as will guarantee them and their families a dignified standard of living, and has left remuneration at all times at the minimum levels provided for under contract, without

recognising any career advancement for service performed previously.

9. Article 6, commitment no. 4, because the Italian State has failed, through both legislation and the judiciary, to recognise in practice the right of workers at schools administered by the state to take collective action through the complainant S.I.LAV in cases involving conflicts of interest because the collective action (provided for by law) brought before the Court of Justice of the European Union was deprived by the Court of Cassation of its effect of protecting rights.

10. Each of the violations of the European Social Charter referred to above has been committed alongside a violation of the provisions of EU law on Fixed-Term Work set out in the Framework Agreement on Fixed-Term Work concluded on 18 March 1999, annexed to Directive 1999/70, Clause 4 of which provides that "4. period-of service qualifications relating to particular conditions of employment shall be the same for fixed-term workers as for permanent workers." Clause 3 of the Agreement goes on to provide that "2. For the purpose of this agreement, the term 'comparable permanent worker' means a worker with an employment contract or relationship of indefinite duration, in the same establishment, engaged in the same or similar work/occupation, due regard being given to qualifications/skills." 3.2. The Court of Justice of the European Union has already ruled on similar matters, finding that "employment conditions include, *inter alia*, triennial length-of-service allowances (Joined Cases C-444/09 and C-456/09, *Gavieiro and Iglesias Torres*, paragraph 50, and Case C-273/10, *Montoya Medina*, paragraph 32)".

Indeed, it is undisputed and indisputable that the following are identical at schools administered by the state and at accredited independent schools: the training necessary in order to perform

the teaching required (teacher training); the curriculum, which, according to law, is compliant with the applicable frameworks and provisions, teaching standards and the equivalence of the qualifications issued to students, as well as teachers' duties and obligations.

Moreover, the Italian Court of Cassation itself has recognised that "accredited independent schools are entirely equivalent to schools administered by the state. *Indeed, Article 1(4) of Law no. 62 of 2000 lays down rules on the recognition of equivalence, which include under letter g) that teaching staff must hold a teaching qualification. In addition, paragraph 5 provides that accredited independent schools are subject "to an assessment of processes and outcomes by the national inspection system according to the standards laid down in the applicable frameworks" (see Court of Cassation, Employment Division, judgment no. 4080 of 20 February 2018, followed by Court of Cassation, Employment Division, judgment no. 33137/19, which, moreover, also points out that "9.1. The Constitutional Court has played a significant role in this area, it being sufficient to note judgment no. 42 of 2003 which…. held that 'Accredited independent schools constitute an integral part of the national education system, whilst a proposed referendum seeks to exclude them from this system (...) the principle that exclusion from the national school system is possible, which it is sought to introduce through a referendum, would result in discrimination against private schools, notwithstanding the existence of detailed legislation establishing a regime of substantial parity'").*

The difference in treatment between fixed-term employees at accredited independent schools and permanent employees of the Ministry of Education does not therefore reflect any genuine "objective ground", as the supposed need to compute only service performed as an employee

of the Ministry cannot be reconciled with the choice made in national legislation also to recognise service performed in municipal or private schools. Similarly, the supposed need to consider only service performed by successful competition candidates cannot be reconciled with the decision made in Italian legislation to compute any service performed by fixed-term teachers at schools administered by the state who have been teaching without having successfully completed a public competition, and at independent schools with ad hoc accreditation, subsidised schools and schools administered by ecclesiastical authorities or schools for girls administered by nuns at which teachers are not required to hold a teaching qualification. 5.20. Indeed, whereas Article 356 of Legislative Decree no. 297 of 1994 imposes a requirement of successful completion of a selective public competition (for the purpose of appointment or the issue of a teaching qualification) in order to be appointed to an independent school with authority to issue legally valid qualifications, it is equally indisputable that Article 485 also acknowledges the eligibility for consideration of service performed by fixed-term teachers at schools administered by the state. In order to be able to work as supply teachers, such persons need only apply for inclusion in the school ranking lists or in the provincial and school ranking lists for supply teachers, for which they do not need to have successfully completed a public competition or to hold a teaching qualification. Conversely, in order to teach at an accredited independent school it is always indispensable to hold at least a teaching qualification.

The doubts raised are reinforced by the fact that the discrimination between fixed-term employees at accredited independent schools and permanent employees at schools administered by the state must also be assessed with reference to the principle of equal

treatment, which is a general principle of EU law and is now embodied in Articles 20 and 21 CFREU (CJEU, Case C-406/15, *Milkova*, paragraph 55 et seq and, more generally, CJEU, Case C-193/17, *Cresco Investigation*, paragraph 75 et seq, in which the Court stressed that "Directive 2000/78 does not itself establish the principle of equal treatment in the field of employment and occupation, which originates in various international instruments and the constitutional traditions common to the Member States").

FINAL REQUESTS

By this collective complaint, the European Committee of Social Rights is therefore requested to intervene in order that, acting within the ambit of its competence, it make a finding concerning the violations of the European Social Charter alleged against the Italian State and recommend that they be rectified, along with an award of costs and legal fees to the lawyers, who hereby declare that they have not charged any fees to their clients.

Lastly, considering the seriousness of the violation of the European Social Charter and the resulting encroachment on the fundamental rights of members of the S.I.LAV, the Committee is asked to adopt as an immediate measure the urgent procedure for establishing the admissibility of this complaint pursuant to Article 36 of the Rules of the European Committee of Social Rights.

The complainant party requests that it be able to use the Italian language in any submission relating to these proceedings.

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The following documentation, referred to in the substantive submission, is annexed, as detailed in the separate schedule.

For the SILAV Mr Gaetano Giordano

Counsel Angela Maria Fasano and Counsel Stefania Fasano

SCHEDULE OF DOCUMENTS ANNEXED

1. STATUTE AND MEMORANDUM OF ASSOCIATION OF THE TRADE UNION SILAV.
2. ALLOCATION OF TRADE UNION DEDUCTION CODE BY THE MINISTRY.
3. IDENTIFICATION DOCUMENT OF LEGAL REPRESENTATIVE.
4. CERTIFICATION OF REPRESENTATIVE STATUS FOR THE THREE-YEAR PERIOD 2022-2024
5. CERTIFICATE CONCERNING THE ISSUE OF A TAX ID.
6. JUDGMENT CONCERNING A REFERENCE TO THE COURT OF JUSTICE FOR A PRELIMINARY RULING.