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COUNCIL OF EUROPE
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EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

7 July 2020

Case Document No. 2

Confederazione Generale Sindacale, Federazione GILDA-UNAMS and Sindacato Nazionale Insegnanti di Religione Cattolica v. Italy
Complaint No. 192/2020

OBSERVATIONS BY THE GOVERNMENT ON ADMISSIBILITY

Registered at the Secretariat on 24 June 2020

REPUBBLICA ITALIANA

Ufficio dell'Agente del Governo italiano
davanti al Comitato Europeo dei Diritti Sociali
*
Avvocatura Generale dello Stato

European Committee of Social Rights (ECSR)

Collective complaint n. 192/2020
C.G.S./F.G.U.vs Italy

OBSERVATIONS OF THE ITALIAN GOVERNMENT ON THE ADMISSIBILITY OF COLLECTIVE COMPLAINT

Roma, 24 giugno 2020
CT 12507/2020 - Avv. G. Greco

With the letter dated 18 march 2020, the Secretariat of the General Directorate of the European Social Charter, requested the Italian Government to present its observations on the admissibility of the collective complaint n. 192/2020 ("the complaint"), submitted by "Confederazione generale Sindacale-Federazione GILDA-UNAMS"- "CGS/FGU" ("the complainant").

- I -

Article concerned

The complainant seeks a declaration of infringement of Articles 1, 4, 5, 6, 24 of the revised European Social Charter, with reference to abuse in the repetition of the term contracts of teachers of religion, discriminated against in comparison with other teachers.

- II -

Subject Matter of the Complaint

The central point of the complaint, as stated by the complainant himself, concerns the treatment reserved by Italian law for teachers of religion who have stipulated several fixed-term contracts with the Public Administration.

The complainant assumes that Italian teachers of religion who have entered into more fixed-term contracts with the public administration have been treated less favourably than other teachers of other subjects and have been unduly disadvantaged.

- III -

Admissibility of the complaint

The complaint is clearly inadmissible.

The Additional Protocol of 1995 (providing for a system of collective complaints), at the Article 1, gives the right to the following types of organisations to make a complaint that the situation within a state party to the Protocol is not in conformity with the ESC:

a. international organisations of employers and trade unions referred to in paragraph 2 of Article 27 of the Charter;

b. other international non-governmental organisations which have consultative status with the Council of Europe and have been put on a list established for this purpose by the Governmental Committee;

c. **representative** national organisations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint.

Therefore, if the complainant is a national trade union or a national employers' organisation, as in this case, the complainant must provide proof that these bodies are representative within the meaning of the collective complaints procedure.

In the present case, is clear the lack of legitimacy of the complaining trade union due to a lack of representativeness, as no suitable evidence has been provided or attached to the complaint on this point.

Specifically, the union has not given any indication of the number of workers it would represent or the current number of members, or whether it has concluded collective agreements or undertaken activities in favour of them, the only elements that could be traced back to an activity of a trade union nature.

As stated by the Committee in its Decision No 166/2018 - Sindacato Autonomo Europeo Scuola ed Ecologia (SAESE) v. Italy: "*10. The Committee is unable to conclude that SAESE is a representative trade union within the meaning of Article 1 (c) of the Protocol because it does not have the information necessary to assess the representativeness of the complainant organisation, including any indication of the specific number of members it represents or whether it has bargained collectively on behalf of such members with a view to concluding collective agreements.*" The ECSR declared the complaint inadmissible.

In addition, the statute produced by the complainant shows that the association has as its purpose training and cultural activities and management of a website.

As stated in the aforementioned decision of this honourable committee No 166/2018 - Sindacato Autonomo Europeo Scuola ed Ecologia (SAESE) v. Italy: "*8. Moreover, in determining representativeness, the Committee takes into account the number of members a trade union represents and the role it plays in*

collective bargaining. However, it has also held that the application of criteria of representativeness should not lead to the automatic exclusion of small trade unions or of those formed recently to the advantage of larger and long-established trade unions (see Fellesforbundet for Sjøfolk (FFFS) v. Norway, Complaint No. 74/2011, decision on admissibility of 23 May 2012, §§20-21)." For this reason as well, in addition to the reasons indicated above, this committee declared the complaint inadmissible.

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

In light of the present observations, the Italian Government requests the Committee to dismiss the case by declaring the Complaint inadmissible, pursuant to Article 1 of the Additional Protocol of 1995 for a system of collective complaints, since the Applicant's lack of representativeness.

In the alternative, the Italian Government insists that the action be dismissed as unfounded.

Roma, 24 giugno 2020

Drafted by Giovanni Greco – Avvocato dello Stato

The Agent of Italian Government
Lorenzo D'Ascia – Avvocato dello Stato