

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

22 June 2017

Case Document No. 2

Associazione Professionale e Sindacale (ANIEF) v. Italy
Complaint No.146/2017

**OBSERVATIONS BY THE GOVERNMENT
ON ADMISSIBILITY**

Registered at the Secretariat on 19 June 2017



Repubblica Italiana
Ministero degli Affari Esteri
e della Cooperazione Internazionale
Ufficio dell'Agente del Governo

1. The Italian Government (hereinafter "the Government") refers to the letter of the European Committee of Social Rights (hereinafter "the Committee") dated 12 May 2017 giving notification of the collective complaint lodged against Italy by the Confederazione generale sindacale (CGS) for a breach of Articles 1, 4, 5, 6, 24 and E of the European Social Charter by the Italian State.
2. Bearing in mind Articles 1, 2 and 3 of the 1995 Additional Protocol to the European Social Charter on the right to lodge collective complaints alleging the unsatisfactory application of the Charter, the Government wishes to refer in particular to Article 1 (c) of the Protocol, [which grants the right to submit complaints to] "**representative national organisations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint**", in order to make the following observations on the admissibility of the CGS complaint.
3. In particular, the Government wishes to inform the Committee that in the Italian system, **Article 43 (1) of Legislative Decree No. 165 of 30 March 2001** provides that "*the ARAN (Agency for collective bargaining for the public sector) shall accept the participation in national collective bargaining procedures of trade unions which in their sector or field, have a representativeness of no less than 5%, calculated, for this purpose, as the average between the membership figure and the electoral data. a) The membership figure shall be understood as the percentage of authorisations for payment of trade union contributions in relation to the total number of authorisations issued in the sector concerned; b) the electoral data shall be understood as the percentage of votes obtained during the election of amalgamated staff representatives in relation to the votes cast in the sector concerned.*"
4. We also wish to inform the Committee that **Article 43 (2)** provides that "*Confederations to which the trade unions authorised to take part in collective bargaining pursuant to the provisions of paragraph 1 are affiliated shall participate in national collective bargaining at national level for the same sector or field.*"
5. Furthermore, **Article 43 (3)** provides that "*the ARAN shall conclude collective agreements after verifying, on the basis of the confirmed representativeness authorising participation in collective bargaining within the meaning of paragraph 1 above, that the trade unions subscribing to the proposed agreement represent, as a whole, at least 50% as an average between the membership figure and the electoral data in the contractual sector or field or at least 60% of the electoral data in the same sector.*"



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6. **Article 43 (7)** also provides that *"the ARAN shall be responsible for collecting data on the votes and payment authorisations. The data relating to the payment authorisations issued to each administration in the year under consideration shall be collected and transmitted by the authorities to the ARAN by no later than 31 March of the following year, having been countersigned by a representative of the trade union concerned and under conditions guaranteeing the confidentiality of the information. The authorities shall indicate the name of the public official responsible for collecting and transmitting the data. As concerns the monitoring of the electoral process and the collection of data regarding payment authorisations, the ARAN shall collaborate, on the basis of appropriate agreements, with the Civil Service Department, the Ministry of Labour and public administration representative bodies or organisations."*

7. In accordance with these provisions, the ARAN periodically verifies the representativeness of trade unions, which for the period between 2016 and 2018 was discussed on 26 October 2016.

8. This verification found that the ANIEF has a representativeness of less than 5% and that, therefore, this trade union is not representative of the sector concerned.

9. In the light of these observations, the Government considers that under the Italian law in force, the ANIEF cannot be considered as qualified to submit the collective complaint within the meaning of Article 1 of the 1995 Additional Protocol to the European Social Charter.

10. The Government reserves the right to make any submissions on the merits of the complaint.

Government agent
E. Spatafora