



DECISION ON ADMISSIBILITY

12 September 2017

Associazione Professionale e Sindacale (ANIEF) v. Italy

Complaint No.146/2017

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 294th session in the following composition:

Giuseppe PALMISANO, President
Monika SCHLACHTER, Vice-President
Karin LUKAS, Vice-President
Eliane CHEMLA, General Rapporteur
Birgitta NYSTRÖM
Petros STANGOS
Marcin WUJCZYK
Krassimira SREDKOVA
Raul CANOSA USERA
Marit FROGNER
François VANDAMME
Barbara KRESAL
Kristine DUPATE
Aoife NOLAN

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary,

Having regard to the complaint registered on 7 March 2017 as number 146/2017, lodged by *Associazione Professionale e Sindacale (ANIEF)* and signed by Marcello Pacifico, President of ANIEF, as well as Vincenzo De Michele, Sergio Galleano, Ersilia De Nisco, Fabio Ganci and Walter Miceli, lawyers, requesting the Committee to find that the situation in Italy is not in conformity with Articles 1, 4, 5, 6, 24 and E, in conjunction with each of the provisions concerned of the Revised European Social Charter (“the Charter”);

Having regard to the documents appended to the complaint;

Having regard to the Charter, and in particular to Articles 1, 4, 5, 6, 24 and E, which read as follows:

Article 1 – The right to work

Part I: “Everyone shall have the opportunity to earn his living in an occupation freely entered upon.”

Part II: “With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake:

1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;
2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;
3. to establish or maintain free employment services for all workers;
4. to provide or promote appropriate vocational guidance, training and rehabilitation.”

Article 4 – Right to a fair remuneration

Part I: “All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.”

Part II: “With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;
2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
3. to recognise the right of men and women workers to equal pay for work of equal value;
4. to recognise the right of all workers to a reasonable period of notice for termination of employment;
5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.”

Article 5 – The right to organise

Part I: “All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.”

Part II: "With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations."

Article 6 – The right to bargain collectively

Part I: "All workers and employers have the right to bargain collectively."

Part II: "With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

1. to promote joint consultation between workers and employers;
 2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
 3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;
- and recognise:
4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into."

Article 24 – The right to protection in cases of termination of employment

Part I: "All workers have the right to protection in cases of termination of employment".

Part II: "With a view to ensuring the effective exercise of the right of workers to protection in cases of termination of employment, the Parties undertake to recognise:

- a. the right of all workers not to have their employment terminated without valid reasons for such termination connected with their capacity or conduct or based on the operational requirements of the undertaking, establishment or service;
- b. the right of workers whose employment is terminated without a valid reason to adequate compensation or other appropriate relief.

To this end the Parties undertake to ensure that a worker who considers that his employment has been terminated without a valid reason shall have the right to appeal to an impartial body."

Article E – Non-discrimination

"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."

Having regard to the Additional Protocol to the European Social Charter providing for a system of collective complaints ("the Protocol");

Having regard to the Rules of the Committee adopted by the Committee on 29 March 2004 at its 201st session and last revised on 6 July 2016 at its 286th session ("the Rules");

Having deliberated on 12 September 2017;

Delivers the following decision, adopted on this date:

1. ANIEF alleges that the situation in Italy constitutes a violation of Articles 1, 4, 5, 6, 24 and E in conjunction with each of the provisions concerned of the Charter. ANIEF invokes the Italian legislation on fixed-term employment contracts in the public sector, especially in the teaching and education sector, but also on administrative, technical and auxiliary staff, which improperly authorises the renewal of such contracts and jeopardises the situation of these public sector employees in violation of the above-mentioned provisions and in a discriminatory manner. ANIEF alleges particularly that the right to contracts of indefinite duration is ensured to the staff recruited in the private sector with fixed-term contracts if they are renewed for over 36 months, as established by the Decree-law No. 368/2001, but the same protection is not granted to public sector workers under fixed-term contracts.

2. In its observations, the Government objects to the admissibility of the complaint. It alleges that ANIEF does not fulfill the conditions required by Italian legislation to be considered as a "representative" trade union within the meaning of Article 1 (c) of the 1995 Additional Protocol to the Charter. The Government states that the ARAN (Agency for negotiated representation of public administrations) only admits to collective bargaining those trade unions having achieved in the sector of reference a minimum representation of 5%. ARAN verified on 26 October 2016 union representativeness for the 2016-2018 period and established that ANIEF had less than 5% in the sector of reference. For these reasons, the Government considers that ANIEF cannot be considered as a representative trade union for the purposes of lodging a collective complaint.

3. In its response to the Government's objections, ANIEF states that its Statutes show proof that it is a trade union. According to its objectives, indicated in Article 2, it pursues the representation of professional and union interests for teaching staff at all levels, including university staff. Moreover, according to Article 36 of the Italian Civil Code, unions do not have to be registered to be considered such, as they do not have a special status as associations. A trade union is such depending on the acts and activities developed by the organisation, and, notably, the help offered by ANIEF to its members, its protests and its judicial actions, which ANIEF has lodged in several occasions, including before Italian public bodies.

THE LAW

4. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Italy on 3 November 1997 and entered into force for this State on 1 July 1998, the complaint has been submitted in writing and concerns Articles 1, 4, 5, 6 and 24 of the Charter, provisions accepted by Italy when it ratified the Charter on 5 July 1999, as well as Article E. Italy is bound by these provisions since the entry into force of this treaty in its respect on 1 September 1999.

5. Moreover, the grounds for the complaint are indicated.

6. As regards the union's representativeness within the meaning of Article 1 (c) of the Protocol, the Committee points out that its representative nature is an autonomous concept, not necessarily identical to the national notion of representativeness (see *Confédération Française d'Encadrement "CFE-CGC" v. France*, Complaint No. 9/2000, decision on admissibility of 6 November 2000, §6). A trade union may be considered representative for the purposes of the collective complaints procedure whenever it exercises, in the geographical area in which it is based, activities in defence of the material and moral interests of personnel in a given sector, of which it represents a considerable number, and this in total independence from the employing authorities (see *Syndicat occitan de l'Education v. France*, Complaint No. 23/2003, decision on admissibility of 13 February 2004, §5). Even a trade union which is not considered representative at the national level for collective bargaining may be considered representative for the purposes of the collective complaints procedure.

7. The Committee observes that ANIEF is a union for teaching staff in all schools, including universities, academies and conservatories' teaching staff. According to Article 2 of its Statutes, ANIEF's objective is to defend the professional, union and cultural rights of all workers of the sector, defend freedom of education, promote education and training, as well as to participate in the choice of education and university policies. Moreover, ANIEF has initiated many actions before the Italian Parliament, the Ministry of Labour as well as several judicial bodies, both Italian and international, actions initiated with the aim of improving the working conditions of teaching staff. According to the criteria required by Italian legislation, ANIEF's representativity is below the 5% threshold. However, it has about 38.000 members throughout Italy. The Committee has already stated that "the application of criteria of representativeness should not lead to automatic exclusion of the small trade unions or those not long formed, to the advantage of larger and longer-established trade unions" (see *Fellesforbundet for Sjøfolk (FFFS) v. Norway*, Complaint No. 74/2011, decision on admissibility of 23 May 2012, §21).

8. Taking into consideration all the elements of the file, the Committee holds that ANIEF is a representative trade union which engages in activities within Italian jurisdiction in accordance with Article 1 (c) of the Protocol.

9. Finally, the complaint filed is signed by Marcello Pacifico, its President, who according to Article 10 of its Statutes has the power to represent legally the organisation before any institution, including judicial bodies and other organs. The Committee considers, consequently, that the complaint complies with Rule 23 of its Rules.

10. For these reasons, the Committee, on the basis of the report presented by Marcin WUJCZYK, and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE

In application of Article 7§1 of the Protocol, requests the Deputy Executive Secretary to notify the complainant organisation and the Respondent State of the present decision, to transmit it to the parties to the Protocol and the states having submitted a declaration pursuant to Article D§2 of the Charter, and to publish it on the Internet site of the Council of Europe.

Invites the Government to make written submissions on the merits of the complaint by 15 November 2017.


Invites ANIEF to submit a response to the Government's submissions by a deadline which it shall determine.

Invites parties to the Protocol and the States having submitted a declaration pursuant to Article D paragraph 2 of the Charter to make comments by 15 November 2017, should they so wish.

Pursuant to Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the Charter to make observations by 15 November 2017.



Marcin WUJCZYK
Rapporteur



Giuseppe PALMISANO
President



Henrik KRISTENSEN
Deputy Executive Secretary