



Avvocatura Generale dello Stato

L'AGENTE DEL GOVERNO ITALIANO
THE AGENT OF THE ITALIAN GOVERNMENT
L'AGENT DU GOUVERNEMENT ITALIEN

European Committee of Social Rights (ECSR)

Collective complaint no. 258/26

Sindacato Autonomo Europeo Scuola ed Ecologia (SAESE) v. Italy

**OBSERVATIONS OF THE ITALIAN GOVERNMENT
ON ADMISSIBILITY**

Our reference: CT 11339-26

Avv. Polli – Proc. Pilloni – Proc. D’Onofrio

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A. INTRODUCTION

1. The *Sindacato Autonomo Europeo Scuola ed Ecologia* (also “SAESE”) filed a collective complaint (no. 258/2026) against the Italian Government, more specifically, against the Italian Department of Public Administration (also known as the “DFP”) and the National Anti-Corruption Authority (also known as “ANAC”), alleging the violation of point 21, Part I, Articles 5 and 6, par. 4, of the Revised European Social Charter.

2. The President of the European Committee of Social Rights invited the Italian Government, in accordance with Article 29 § 1 of the Rules of Procedure of the European Committee of Social Rights, to present its observations on the admissibility of the Collective Complaint no. 258/2026 (“the Complaint”), submitted by *Sindacato Autonomo Europeo Scuola ed Ecologia* (“the Complainant”), by 29 april 2026.

3. In response to the Committee’s request, the Italian Government hereby submits the following observations.

B. SUBJECT MATTER OF THE COMPLAINT

4. By Complaint of 20 February 2026, the Complainant submitted a series of claims concerning the alleged inadequacy to publish, in full and in a timely manner, the notices announcing, cancelling or postponing strikes in the public sector in the section entitled “*Public Sector Strike Dashboard*” on the website of the Department for the Civil Service.

5. Furthermore, the complainant alleges “*the failure of the National Anti-Corruption Authority to take effective remedial action in response to such conduct*”, noting that, despite the request for access to public documents submitted pursuant to Article 5(1) of Legislative Decree No. 33 of 14 March 2013, the Authority took no appropriate action to remedy the alleged breach of transparency.

6. In particular, in the Complainant’s view, the incomplete publication of data concerning strikes proclaimed in the public sector would conflict with the relevant national regulations, which, as clarified by the Civil Service Circular ref. no. DFP-0044693-P of 31 May 2022, entitled “*New procedure regarding the obligations of the Department of the Civil Service in relation to strikes pursuant to Law No. 146 of 12 June 1990, as amended*”, expressly requires the full publication of the acts of proclamation, revocation and the procedures for conducting strikes.

7. This omission would have a significantly negative impact on the education sector in which the complainant operates, undermining “*the planning of teaching and organisational activities and disrupting the proper balance between the right to strike, the right to information and the continuity of the public education service*”.

8. For all these reasons, the Complainant believes that the Committee’s intervention is necessary, arguing that the conduct of the Department of Public Administration and the National Anti-Corruption Authority constitutes systematic violations of the European Social Charter.

C. ARTICLES CONCERNED

9. The Complainant seeks a declaration of infringement of the principles enshrined in the Revised European Social Charter, with particular reference to Articles 5,6 par. 4, and point 21, Part I.

D. ADMISSIBILITY

10. The complaint is inadmissible as it has been lodged by a subject that cannot be regarded as a representative trade union within the meaning of Article 1(c) of the Protocol and, in any event, because the link between the situation complained of and the material scope of application of the provisions of the Charter relied upon has not been sufficiently clarified and, therefore, demonstrated (Article 4 of the Protocol).

11. The grounds for inadmissibility outlined above will be explained in greater detail in the following two paragraphs.

D.1 INADMISSIBILITY DUE TO LACK OF REPRESENTATIVENESS

12. With regard to the first ground of inadmissibility, this Committee has repeatedly pointed out that the representativeness of the complainant within the meaning of Article 1(c) of the Protocol constitutes an autonomous concept, not necessarily equivalent to the national definition of representativeness, which must be verified by examining whether the trade union is genuine, active and independent, with specific regard to the field covered by the complaint, the purpose of the trade union and the activities it carries out.

13. A systematic analysis of the relevant case law also shows that a decisive part of the verification of the complainant's representativeness must be attributed to the number of members the trade union represents and the role it plays in collective bargaining.

14. As can be inferred by the text of the complaint itself, this Committee, in its decisions on complaints nos. 166/2018; 186/2019 and 194/2020 lodged by the present Complainant, the *Sindacato Autonomo Europeo Scuola ed Ecologia* (SAESE), ruled that they were inadmissible, pointing out the impossibility of “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”.

15. These findings were confirmed, despite the complainant's assertions, also with regard to complaint no. 194/2020, as the Committee had also excluded SAESE's representativeness in that case (§ 10 of the *Decision on admissibility*) despite the indication of the number of “membership figures in 2020”, since “still lacks adequate information on the involvement of SAESE in typical trade union activities, including on the role it plays in collective bargaining with a view to concluding collective agreements with employers. Therefore, on the basis of the information at its disposal, the Committee maintains that SAESE cannot be considered a representative trade union for the purposes of the collective complaints procedure”.

16. These remarks must, in fact, be reiterated in the present case as well.

17. As can be seen, in fact, from the complaint itself, and in particular from point 5 concerning its admissibility, on this occasion too, SAESE, in demonstrating its legitimacy to avail itself of the protection mechanisms recognised by the European Social Charter, merely provided a link to its statutes, adding that it “has carried out concrete and continuous activities to protect workers over the last twelve years, calling national and local strikes and organising online trade union meetings on school websites”.

18. The complainant further admits that it has ‘never submitted direct candidacies in Italy for the three-yearly renewal of the RSUs’, having simply fulfilled ‘its duties regarding RSU negotiations and procedures on a consistent basis, as evidenced by the documents of the Council of Europe (Ref. 18/2021 LV/KOG of 03/02/2021 and Ref.

72/2021 LV/IE of 21/05/2021) of the Protocol”. In this regard, the complainant submits documentation attesting that it was consulted by the school directors “*for the designation and appointment of the members of the Electoral Commission for the elections of the Unified Trade Union Representatives*”.

19. Finally, it points out that it informed the Committee, as part of the complaint lodged in 2020, of the number of its members at that date. However, no indication can be obtained from the present complaint regarding the current number of union members.

20. Indeed, there is no doubt that the information provided, being essentially the equivalent of that already examined in relation to previous complaints lodged by SAESE, precludes, in this instance too, SAESE’s representativeness under Article 1(c) of the Protocol.

21. Indeed, in this complaint too, SAESE offers no evidence to prove the role it has played in collective bargaining; on the contrary, it provides indications that seem to exclude any activity in this area. In this regard, the complainant’s admission that it has never even submitted any candidacy for the election of the union representatives it seeks to represent seems significant, given that, despite the invitations extended, it has not even ever appointed any member of the Electoral Commission for the election of the union representatives.

22. On the other hand, it should be noted that, in fact, in the present complaint, SAESE fails to indicate its current number of members, limiting itself to reporting the number of its members in 2020.

23. This information cannot, in fact, be taken into account for the purpose of verifying the admissibility of this complaint, as it must be considered that such assessments must be carried out using current parameters alone, which are the only ones capable of demonstrating the union’s actual representativeness.

24. The complainant’s lack of representativeness is therefore evident, and the assessments already made by the Committee in relation to the complaints previously lodged by SAESE must consequently be confirmed in this instance as well.

25. Nor, as claimed by the complainant, can it be considered that the conclusions reached by the Committee regarding the previously lodged complaints cannot be extended to the present case, given the supposed diversity of the alleged infringements.

26. Indeed, whilst it is true that the trade unions' representativeness must be assessed by taking into account the specific scope of the complaint, it is, at the same time, undeniable that the assessments previously made by the Committee regarding SAESE are applicable here as well, given their general scope.

27. As can be inferred from the arguments set out in the cited decisions on inadmissibility, these were based on the established absence of any evidence proving the representativeness of SAESE, irrespective of the alleged violation. In no instance, in fact, did the Committee rule out the representativeness of the current complainant for having ascertained the failure to pursue trade union activities in relation to the sector relevant to the particular case, nor in relation to the provision of the Charter from which the alleged violation was derived.

28. AESE, in fact, has never put forward evidence capable of demonstrating its representativeness in relation to any category of workers or with regard to any relevant sector under the Charter of Social Rights.

29. It must, therefore, be reaffirmed here that SAESE lacks representativeness.

D.2 INADMISSIBILITY UNDER ARTICLE 4 OF THE PROTOCOL TO THE CHARTER

30. Furthermore, as already noted, the present complaint must be declared inadmissible on the basis that "*it has not been stated with sufficient precision in what way Italy has failed to ensure the satisfactory application of these provisions, as required by Article 4 of the Protocol*" (§9, complaint no. 241/2024, Decision on admissibility and immediate measures, *International Movement ATD – Fourth World v. Spain*, 15 May 2025).

31. Indeed, in this regard, it should be noted that the complainant, as attested by the decision to dismiss the case sent to SAESE on 9 April 2025 by ANAC (Annex 1), essentially regrets the alleged incompleteness of the information published on the website of the Department of Public Administration regarding strikes involving the education sector.

32. It is, however, undisputed, as acknowledged by the complainant itself, that the Public Sector Strike Dashboard did, in any event, record every strike called in that sector.

33. Indeed, this circumstance demonstrates that it is impossible to identify any link between the violations complained of by the complainant and the provisions of the Charter whose unsatisfactory application is alleged.

34. Such a conclusion is clear, indeed, considering the alleged violation of the right of workers in the education sector to information and consultation within the undertaking (point 21, Part I of the Charter) and of their trade union rights (Article 5 of the Charter).

35. As regards the former, it suffices to note that the involvement of workers in decisions concerning the organisation of the company in which they work has no bearing on their right to strike.

36. The same must, in fact, be said with regard to Article 5 of the Charter, noting in this respect that this provision merely forbids the Contracting Parties to engage in behaviour that adversely affects workers' trade union freedoms, without, on the contrary, requiring States in any way to adopt proactive measures such as those sought by the complainant. In the complainant's view, the full publication of information regarding the strikes planned is necessary to enable greater participation by the workers concerned.

37. As regards, however, the workers' right to strike referred to in paragraph 4, Article 6 of the Charter, without prejudice to the considerations already set out, it cannot be ignored that the lack of completeness alleged by the complainant does not appear capable of negatively affecting the right to strike of workers in the education sector, since it must be considered that the publicising of the strike, as also recognised by SAESE, is sufficient to ensure the diffusion of the information that the trade union deems essential to guarantee compliance with the Charter.

38. On the other hand, in this context, no significance can be attributed to the requirement to provide complete information to parties other than workers in the sector (such as users of the school service), as there is no connection between this objective and the provisions of the Charter.

39. Finally, with reference to the violations specifically alleged by the complainant against the National Anti-Corruption Authority, the absence of any link between the alleged breach of the principle of transparency and the provisions of the Charter cited is evident.

40. In any event, it is nevertheless appropriate to point out that, through the decision to dismiss the case (also attached by the complainant), ANAC carried out the necessary

checks to ascertain whether or not the breach of transparency reported by SAESE had occurred. The Authority, however, ruled out such a breach in the exercise of assessments that cannot be reviewed here.

41. Nor can it be said that the Authority was under an obligation to review its decision following the new application submitted by the trade union. The relevant national provisions do not, in fact, require administrations to review their decisions.

42. Furthermore, it should be noted that the National Anti-Corruption Authority has no competence in this matter, given that, pursuant to Article 45(1) of Legislative Decree No 33/2013¹, ANAC's supervisory role regarding publication obligations is limited to the data and information to be published in the 'Transparent Administration' section.

¹ «1. The National Anti-Corruption Authority shall monitor strict compliance with the publication obligations laid down by current legislation, exercising its powers of inspection by requesting details, information, records and documents from public administrations and ordering them to proceed, within a period not exceeding thirty days, with the publication of data, documents and information in accordance with this decree, the adoption of acts or measures required by current legislation, or the cessation of conduct or acts contrary to transparency plans and rules.

2. The National Anti-Corruption Authority shall monitor the work of the transparency officers, from whom it may request a report on the results of the monitoring carried out within the administrations. The National Anti-Corruption Authority may also request further information from the Independent Evaluation Body (OIV) regarding the monitoring of strict compliance with the transparency obligations laid down by current legislation.

3. The National Anti-Corruption Authority may also make use of the databases established at the Presidency of the Council of Ministers – Department of Public Administration to monitor compliance with the publication obligations laid down by current legislation.

4. Failure to comply with the publication obligation referred to in paragraph 1 constitutes a disciplinary offence. The National Anti-Corruption Authority shall report the offence to the office referred to in Article 55-bis, paragraph 4, of Legislative Decree No. 165 of 30 March 2001, of the relevant administration, for the purpose of initiating disciplinary proceedings against the person responsible for publication or the manager required to transmit the information. The National Anti-Corruption Authority shall also report such breaches to the political leadership of the administrations, to the OIVs and, where appropriate, to the Court of Auditors, for the purpose of initiating other forms of liability. The National Anti-Corruption Authority shall make the relevant measures public. Furthermore, the National Anti-Corruption Authority shall monitor and publicise cases of failure to comply with the publication obligations referred to in Article 14 of this Decree, publishing the names of the persons concerned for whom publication has not taken place»

«1. L'autorità nazionale anticorruzione controlla l'esatto adempimento degli obblighi di pubblicazione previsti dalla normativa vigente, esercitando poteri ispettivi mediante richiesta di notizie, informazioni, atti e documenti alle amministrazioni pubbliche e ordinando di procedere, entro un termine non superiore a trenta giorni, alla pubblicazione di dati, documenti e informazioni ai sensi del presente decreto, all'adozione di atti o provvedimenti richiesti dalla normativa vigente ovvero alla rimozione di comportamenti o atti contrastanti con i piani e le regole sulla trasparenza.

2. L'autorità nazionale anticorruzione controlla l'operato dei responsabili per la trasparenza a cui può chiedere il rendiconto sui risultati del controllo svolto all'interno delle amministrazioni. L'autorità nazionale anticorruzione può inoltre chiedere all'organismo indipendente di valutazione (OIV) ulteriori informazioni sul controllo dell'esatto adempimento degli obblighi di trasparenza previsti dalla normativa vigente.

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

44. The above considerations lead to the conclusion that the Complaint should be declared inadmissible.

E. CONCLUSION

45. In light of the arguments and considerations set out above, the Government requests the Committee to dismiss the case by declaring the Complaint inadmissible, pursuant to Article 1 of the 1995 Additional Protocol providing for a system of collective complaints, due to SAESE's lack of representativeness and on the grounds that the Complainant has failed to indicate with sufficient precision in what way Italy has not ensured the satisfactory application of the national legislation on publicizing strikes.

F. ANNEXES

- Annexe 1: decision to dismiss the case sent to SAESE on 9 April 2025 by ANAC.

Rome, 29 April 2026

Drafted by

Marianna Polli – *Avvocato dello Stato*

Valentina Pilloni – *Procuratore dello Stato*

Angelo D'Onofrio – *Procuratore dello Stato*

3. L'autorità nazionale anticorruzione può inoltre avvalersi delle banche dati istituite presso la Presidenza del Consiglio dei Ministri - Dipartimento della funzione pubblica per il monitoraggio degli adempimenti degli obblighi di pubblicazione previsti dalla normativa vigente.

4. Il mancato rispetto dell'obbligo di pubblicazione di cui al comma 1 costituisce illecito disciplinare. L'Autorità nazionale anticorruzione segnala l'illecito all'ufficio di cui all'articolo 55-bis, comma 4, del decreto legislativo 30 marzo 2001, n. 165, dell'amministrazione interessata ai fini dell'attivazione del procedimento disciplinare a carico del responsabile della pubblicazione o del dirigente tenuto alla trasmissione delle informazioni. L'autorità nazionale anticorruzione segnala altresì gli inadempimenti ai vertici politici delle amministrazioni, agli OIV e, se del caso, alla Corte dei conti, ai fini dell'attivazione delle altre forme di responsabilità. L'autorità nazionale anticorruzione rende pubblici i relativi provvedimenti. L'autorità nazionale anticorruzione, inoltre, controlla e rende noti i casi di mancata attuazione degli obblighi di pubblicazione di cui all'articolo 14 del presente decreto, pubblicando i nominativi dei soggetti interessati per i quali non si è proceduto alla pubblicazione».



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The Agent of the Italian Government