



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

12 February 2019

**Case Document No. 4**

***Confederazione Generale Sindacale (CGS) and Federazione dei Lavoratori  
Pubblici e Funzioni pubbliche (FLP) v. Italy***  
Complaint No. 161/2018

## **RESPONSE FROM CGS AND FLP TO THE GOVERNMENT'S SUBMISSIONS ON THE MERITS**

**Registered at the Secretariat on 17 January 2019**



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At the attention of the Executive Secretary of European Committee of Social Rights, who shall act in name and on behalf of Secretary General of the Council of Europe

**Compliant nr. 161/2018**  
**Notes to the Italian Government pleadings of 14.11.2018**

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In response to the Italian Government pleadings of the 14<sup>th</sup> of November 2018, CGS concludes the following.

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**Italian Government notes**

In short, Italian Government says:

1. On 21.9.2018, so, after 12.2.2018, the CGS-FLP has signed the National Collective Contract of employment from 2016 to 2018 of the sector “Central Functions”, therefore this action ought to become devoid of purpose and the request for urgent procedure under article 36 of CEDS Regulation ought to be abandoned. For this reason, Italian Government has attached some Italian judgments to its pleadings of 14.11.2018; in those Italian judgments, actions brought by FLP itself have been rejected for the same reasons explained in the present complaint.
2. Italian Legislative Decree nr. 165 of 2001 should exclude trade unions, which didn't sign the National Collective Contract of employment, from the second level collective bargaining, but, however, those trade unions could be involved in the second level collective bargaining by their RSU (single trade union representation). In this way, trade union freedoms, which are claimed violated in the originating application, could be ensured. So the guarantees of article 39 of Italian Constitution, those of Law nr. 300 of 1970 and those of European Social Charter could be secured.

3. You shouldn't consider Italian Constitutional Court judgment nr. 231/2013 because of the difference between public labour law and private labour law.
4. CGS hasn't been discriminated with reference to the point "E" and "G" of European Social Charter, or indeed, with reference to Article 11 of European Charter of Fundamental Rights.

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### **Above point 1**

With reference to the first point of Italian Government pleadings and to Italian judgments attached (cf. **Annex 2-3**), it is noted that the complainant CGS has been excluded from the second level collective bargaining not only with Justice Ministry – Department for juvenile justice system and for the Community of Lombardy (**cf. Annex 2 – Order of Milan Tribunal nr. 18211/2018, in Italian Government pleadings**), but also with Ministry of Cultural Assets – State Archives Office of Brindisi (**cf. Annex 3 – judgment of Brindisi Tribunal nr. 13116/2018, in Italian Government pleadings**), because CGS didn't sign the National Collective Contract of employment 2016 - 2018.

CGS exclusion can be read, respectively, in Milan Tribunal order of dismissing appeal nr. 18211 of 4.7.2018, which is referred to General Register nr. 6332/2018 action, and in Brindisi Tribunal decree of dismissing appeal nr. 13116 of 3.8.2018, which is referred to General Register nr. 1435/2018 claim. In both cases the mentioned Tribunals confirm CGS exclusion from the second level collective bargaining.

Actually, State Archives Office of Brindisi, at first, called the applicant union trade up by the letter registered on 26.1.2018 with number 442, but, then, it revoked CGS calling by the letter registered on 16.2.2018 with number 822, because CGS didn't sign the National Collective Contract of employment 2016 - 2018.

Hence, the current CGS interest to have a final decision in the present procedure does remain very high (cf. **Annex 1 –2, Notes of 20.1.2019**).

CGS interest remains very high also with reference to the negotiation of the unique fund of administration 2016 of the Department for juvenile justice system and for the Community of Lombardy.

Actually, the mentioned Department excluded the applicant CGS from convening to negotiate the cited fund by the letter registered on 16.2.2018 with number 1681; CGS exclusion has been confirmed by the letter registered on 9.3.2018 with number 2571. Hence, Assistant Provincial Coordinator, Mr. Riefoli, sent mentioned Ministry a mail in which he stressed CGS-FLP exclusion, also inviting the cited Department to allow FLP at the negotiating table.

But 9.4.2018 Italian Government Agency for Negotiation Representation (ARAN) excluded FLP from bargaining according to Italian Legislative Decree nr. 165/2001 (cf. **Annex 3-4-5-6, Notes of 20.1.2019**).

The complainant CGS has been somehow “compelled” to sign the National Collective Contract of employment 2016 – 2018 on 21.9.2018 because of the mentioned very important exclusions from the second level collective bargaining, in order not to suffer injury all over the country; but CGS has added also a safeguard clause (not mentioned neither attached by Italian Government), whereby CGS has confirmed all the critical issues of the National Collective Contract of employment 2016 – 2018, which were pointed out during the negotiations to sign the National Collective Contract of employment 2016 – 2018, and also has said that CGS will not renounce to bring actions to protect trade union rights and freedoms injured by the mentioned unlawful exclusion from the second level collective bargaining (cf. **Annex 7-8, Notes of 20.1.2019**).

Hence, the current interest of CGS to have a final judgment in the present procedure does remain very high, because it has been unfairly excluded from the second level collective bargaining in Lombardy and in Brindisi.

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### **Above point 2**

Italian Government has reiterated in its pleadings, in a lots of occasions, that trade union rights wouldn't been infringed because RSU (single trade union representation) can, however, take part to the second level collective bargaining.

But it's false, because, under the third paragraph of Article 7 of the National Collective Contract of employment 2016 – 2018, only trade unions subscribed the National Collective Contract of employment 2016 – 2018 can take part to “national integrative bargaining”, and, under letter b) of the fourth paragraph of Article 7 of the National Collective Contract of employment 2016 – 2018, also territorial representatives of trade unions subscribed the National Collective Contract of employment 2016 – 2018 can take part to territorial bargaining, other than RSU, only if they have been elected.

Actually, if RSU haven't been elected, at territorial level, trade union rights could be guaranteed only by participation of territorial representative of trade union that subscribed the National Collective Contract of employment 2016 – 2018.

Therefore, if RSU haven't been elected or if a list for RSU election hasn't been presented, the protection of trade union rights and freedoms, at territorial or seat level, is offered only by the possibility of participation of trade union territorial representative. If the mentioned territorial representative has been excluded from the territorial bargaining because trade union he

represents didn't sign the National Collective Contract of employment 2016 – 2018, that trade union suffers a serious violation of its freedoms and rights.

At the same time, Italian Government itself has stressed (cf. p. 4 Italian Government pleadings) that, with reference to Italian Legislative Decree nr. 165 of 2001, it's "*the representativeness provided for by law, and not subscribing collective contracts, that takes root in representative trade unions themselves subjective rights to enjoy rights and prerogatives*".

Probably, unintentionally Italian Government has corroborated CGS and Italian Constitutional Court position expressed in the mentioned judgment nr. 231/2013, *i.e.* the source of the referred trade union rights is representativeness, not subscribing the collective contract (**cf. p. 35 et seq. of the present complaint**).

Hence, without prejudice to the requirement of representativeness, the complainant CGS ought to access to trade union rights and prerogatives because it is most representative in the national level and there's not a contrary law on this specific point, even Italian Legislative decree nr. 165 of 2001, which hasn't provide any rule about this unlawful exclusion.

Also Italian Constitutional Court, in the judgments nr. 231/2013 and nr. 244/1996, clearly confirmed that the recognition of trade union prerogatives doesn't depend on subscribing collective contracts of employment but on the requirement of representativeness (**cf. p. 36 et seq. of the present complaint**).

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### **Above point 3**

Italian Government says, in its pleadings at p. 4 et seq., that the judgment of Italian Constitutional Court nr. 231/2013 wouldn't concern public employees.

In pages 25 et seq. of this complaint, it has been clearly specify that public employees have not to be excluded from field of application of Article 11 of European Charter of Fundamental Rights. On this specific point several judgments of European Court of Human Rights, decisions of European Commission, the conclusions of General Advocates C. Villanon and Mengozzi, also the application nr. 98 of ILO Convention have been mentioned.

The system of trade union guarantees, also in application of the general *principle of non-discrimination*, protected by Lett. "E" of European Social Charter, cannot include a different treatment of employees in relation to kind of employer, public or private.

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### **Above point 4**

Finally, Italian Government pleadings about the fact that Letter "E" and "G" and Article 11 of European Charter of Fundamental Rights could be compatible with rules of the National

Collective Contract of employment 2016 – 2018 and with Italian Legislative Decree nr. 165/2001 are apodictic and devoid of any legal basis, even any European legal basis.

It's important to restate that neither Legislative Decree nr. 165/2001 nor indeed European Directives, mentioned in CGS complaint, have conditioned the access to integrative bargaining to the necessary subscription of the National Collective Contract of employment 2016 – 2018, as I wrote at complaint's pages 22 et seq. This circumstance is confirmed by European case-law mentioned at complaint's pages 24 et seq. and by Italian Constitutional Court judgments nr. 231/2013 and 244/1996, cited at complaint's pages 35 et seq. The mentioned infringement of CGS right to be at the negotiating table is provided only by article 3 ff. of the National Collective Contract of 12.2.2018.

For all the reasons I explained in these notes and in the originating application, I do ask to uphold in its entirety the present CGS action.

Attachments:

- 1- letter registered on 26.1.2018 with number 442;
- 2- letter registered on 16.2.2018 with number 822;
- 3- letter registered on 16.2.2018 with number 1681;
- 4- letter registered on 9.3.2018 with number 2571;
- 5- mail of Assistant Provincial Coordinator, Mr. Riefoli;
- 6- document of 9.4.2018 Italian Government Agency for Negotiation Representation (ARAN);
- 7- National Collective Contract of employment 2016 – 2018 on 21.9.2018;
- 8- CGS safeguard clause in the National Collective Contract 2016-2018, not to renounce to bring actions to protect trade union rights and freedoms injured by unlawful exclusion from the second level collective bargaining.

Rome, 19 January 2019

CGS Lawyer

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