European Social Charter | Charte sociale européenne
COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

27 July 2018

Case Document No. XX

Nursing up v. Italy
Complaint No.169/2018

COMPLAINT

Registered at the Secretariat on 9 July 2018

Nursing Up

ASSOCIAZIONE NAZIONALE SINDACATO PROFESSIONISTI SANITARI DELLA FUNZIONE INFERMIERISTICA

Via Carlo Conti Rossini, 26 – 00147 Rome

Telephone: 06/5123395 – 06/5121699

Fax: 06/51885793

Website: www.nursingup.it

Email: info@nursingup.it

Certified email address:

annamastrella@ordineavvocatiroma.org

Email: anna.mastrella@libero.it

Department of the European Social Charter
Directorate General Human Rights and Rule of Law
Council of Europe F-67075, Strasbourg Cedex
For the attention of the Executive Secretary of the European Committee of Social Rights
acting on behalf of the Secretary General of the Council of Europe

COLLECTIVE COMPLAINT

pursuant to Article 1(c) of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints

Submitted by the "Associazione nazionale sindacato professionisti sanitari della funzione infermieristica - Nursing Up" for violation by Italy of Articles 5, 6, 21 and 22, and letters E and G of the European Social Charter.

1. The complaint is brought by the trade union organisation "Associazione nazionale sindacato professionisti sanitari della funzione infermieristica – Nursing Up", Italian tax ID 96340350584, with registered office in Rome at via Carlo Conti Rossini, 26, represented by Prof. Antonio De Palma, born in Campobasso on 31 July 1963, residing in Rome at Viale Antonio Ciamarra, 222, Italian tax ID DPLNTN63L31B519X, who is the President and current legal representative,

assisted by Counsel Anna Mastrella (Italian tax ID MSTNNA84L65A515A). The service address chosen for the purposes of this complaint is via Carlo Conti Rossini, 26, Rome (Italy) and/or at the email addresses: anna.mastrella@libero.it; certified email address: annamastrella@ordineavvocatiroma.org, to which any relevant communication may be sent (Document 1).

2. Nursing Up is a **trade union organisation** (accredited by the Presidency of the Council of Ministers – Department of Public Administration, No. 16366-97-8935), based on the principles of autonomy and democracy, **acting to protect the moral, legal and economic rights and interests relating to the employment relationships of its members**. The organisation is divided into various provincial and regional branches, which makes for an extensive presence across Italy (Document 2).

3. The complaint is brought by Nursing Up in order for it to be established that **the entitlement to and the exercise of trade union relations in Italy by representative trade union organisations is not in conformity with the regulatory provisions established in Articles 5, 6, 21 and 22 and letters E and G of the European Social Charter**, which have been accepted by Italy. In this regard, it is noted that Italy signed the Social Charter on 3 May 1996 and ratified it on 5 July 1999. Furthermore, it ratified the Additional Protocol Providing for a System of Collective Complaints on 3 November 1997 (Documents 3 and 4).

4. In this particular complaint, Nursing Up reports the violation and inadequate application of Articles **5, 6, 21 and 22, and letters E and G of the European Social Charter by the Italian State, with reference to the provisions included in Article 40, paragraph 3-Bis, Article 42, paragraph 7, and Article 43, paragraph 5 of Legislative Decree No. 165/2001 and Articles 3, 4, 5, 6, 7, 8 and 12 of the National Collective Labour Agreement of 21 May 2018, since they introduce an unjustified and illogical exclusion from collective bargaining of representative trade union organisations which are not signatories to the national agreement.**

STATEMENT OF FACTS AND THE CONDUCT OF THE ITALIAN STATE OBJECTED TO

Nursing Up is the most representative trade union at national level [for this sector], as recently ascertained by the ARAN, the public sector bargaining agency, for the 2016/2018 three-year period (Document 5). The ARAN has also recognised that the trade union represents approximately 20,000 workers employed in the public health sector.

In Italian legislation, the ARAN, pursuant to Article 46, paragraph 1, of Legislative Decree No. 165/2001, "shall be the legal representative of public administrations for the purposes of national collective bargaining. At national level, the ARAN shall carry out, based on the directions received pursuant to Articles 41 and 47, all activities relating to trade union relations, the negotiation of collective agreements and shall provide assistance to public administrations for the purposes of the uniform application of collective agreements. It shall submit national agreements on essential services for evaluation by the committee ensuring the implementation of Law No. 146 of 12 June 1990, as amended and supplemented, pursuant to Article 2 of the aforementioned law."

However, the ARAN, pursuant to the provisions under Article 43, paragraph 1, of the aforementioned decree, "shall admit to national collective bargaining any trade union organisation which has a level of representativeness within the branch or area no lower than 5%, considering for that purpose the average of the number of members and the results of elections. The number of members shall be obtained from the percentage of authorisations to pay trade union dues out of the total number of authorisations issued during the relevant period. The results of elections shall be the percentage of the votes obtained in elections for the unitary staff representation bodies out of the total number of votes

cast in the relevant election. In essence, the ARAN shall assess, and therefore recognise, the representativeness of the trade union organisations at the beginning of each contract period, calculating the number of members and processing the election results necessary for this purpose."

Specifically because it has on numerous occasions been assessed and recognised as representative, following the above-mentioned procedure, Nursing Up has already signed a health sector labour agreement – the agreement of 10 April 2008, the regulatory and economic section (Document 6) – and, subsequently, was invited by the ARAN to participate in the negotiations for the draft National Collective Labour Agreement (NCLA) for the health sector for the 2016/2018 three-year period (Document 7).

Despite its active participation in the negotiations, on 21 May 2018 **Nursing Up decided not to sign the above-mentioned agreement**, on account of its disadvantageous and inadequate content. In particular, Article 8, paragraph 3, of the NCLA in question provided that only the signatory sectoral trade unions could be vested with trade union prerogatives (participation and supplementary bargaining), **thereby having a detrimental effect on the trade union freedoms of all the trade unions, such as Nursing Up, which, despite being representative, decided not to sign a specific contract, in accordance with the instructions given by their own members.**

On account of this contractual provision, the complainant trade union organisation has been excluded by various health authorities and hospitals from the information and participation system, and from supplementary bargaining. Consequently, the trade union inevitably fails in its ability to negotiate and represent its members.

The above-mentioned contractual clause is therefore **detrimental to trade union freedoms**, as the mere fact of not having signed the sectoral collective agreement excludes the complainant trade unions entirely from the second-level system of trade union relations, resulting in **an improper manner of punishing dissent, discriminating against trade union organisations that decided not to sign a specific contract.**

Furthermore, Articles 3, 4, 5, 6, 7, 8 and 12 of the NCLA in question regulated the aforementioned relations, which concern not only information, participation and supplementary bargaining, but also the establishment of joint participatory bodies for innovation and the Joint Committee to review the professional classification system, which are **comprised solely of trade unions that have signed the agreement.**

It should be noted that supplementary bargaining, as set out in paragraph 5 of Article 3 and Article 8 of the above-mentioned agreement, which is regulated on various levels including national, regional and between individual Enterprises or Entities, has provided for local bargaining in a wide range of matters, concerning both financial aspects and legal instruments of significant importance. The matters listed under letters (a) to (n) of Article 8 relate, for example, although not exhaustively, to regulations concerning bonuses, allowances, ancillary remuneration, supplementary welfare plans, increases in remunerated hours of work, flexible working shifts, health and safety at work, the regulation of part-time work, working time accounts, the regulation of flexitime, the maximum permitted percentage of fixed-term contracts, increase of the maximum limit for overtime and so on.

In addition, Article 9 of the aforementioned contract stipulates that such supplementary agreements are to have a term of three years. Consequently, this has a significant detrimental impact on trade union freedoms and activities as Nursing Up is excluded from all active policy activity within the specific health sector of the public administration, which violates the principles, rights and freedoms protected at both national and supranational level.

On the other hand, it should be noted that the above-mentioned contractual articles do not have the status of primary legislation as they are mere contractual clauses signed between the representative trade unions and the ARAN, the government agency authorised to conclude contracts with trade unions. Nevertheless, they are grounded in the national legal system in Article 40, paragraph 3-bis, Article 42, paragraph 7, and Article 43, paragraph 5, of Legislative Decree No. 165/2001.

In this regard, it should be noted that Legislative Decree No. 165/2001 – the special law regulating the issue of representativeness and trade union relations – **establishes the importance of requiring greater representativeness, by virtue of which parties with negotiating power are identified – on the basis of collected and verified data – in organisations having a stipulated percentage consensus threshold, measured according to both the number of unionised employees in the reference sector and the number of votes obtained by the lists of the union taken into consideration in the trade union representative elections. On the other hand, in Article 42, paragraph 7, the decree provides, in a contradictory manner, for the possibility of the NCLA to include the trade union representatives – for the purposes of supplementary bargaining – with the representatives of trade union organisations that have signed the contract and not with the representatives of those recognised as nationally representative, or those who legally participate in talks for the NCLA in accordance with Article 43 of the same Legislative Decree No. 165/2001, thereby excluding from local bargaining all the trade union organisations, which, although representative, were instructed by their own members not to sign the NCLA. The aforementioned contradictory and illogical aspects can also be found in Article 40, paragraph 3-bis, and Article 43, paragraph 5, of Legislative Decree No. 165/2001.**

Subsequently, it is evident that negotiating parties are able to establish a clause to exclude a party, which is intended only for dissenting trade unions. The legitimacy of this is questionable, not only in terms of national law, but also, and above all, in terms of Community law.

The signing of pre-existing contracts should not be a relevant criterion for being invited to negotiations; rather, it is the **legitimacy of the trade union derived from its strength, in terms of members and votes**, which should be taken into consideration.

In this regard, reference should be made to the specific nature of the trade union body, which is not structured in a top-down way. **Consent is given by the members** at the bottom of the structure and rises through the provincial and regional levels to reach central management, i.e. in the opposite direction to every other structure. **Consequently, a trade union's policies and decisions are made at grass-roots level, not at the top.**

Nursing Up's decision not to sign the health-sector NCLA 2016-2018 came from its members and was expressed through the representative body itself, in addition to the direct approach taken by thousands of affected employees who came together in Rome on 23 February 2018 to protest against the draft national health agreement that the ARAN and trade union organisations were signing, along with the strikes on 12 and 13 April 2018 (Documents 8 and 9).

Therefore, the current complainant's dissent expressed by not signing the agreement is a **demonstration of the wishes of its own members and other employees in the public health sector, falling within the rights established by the principle of freedom of association**.

It follows from the above-mentioned considerations **that the Italian State is in violation of Articles 5, 6, 21 and 22 and letters E and G of the European Social Charter, as it does not guarantee the effective exercise of trade union rights and collective bargaining rights, as well as the right to information and consultation of workers and, specifically, of Nursing Up members**.

Having examined the case in question, the complainant trade union provides the European Committee with the relevant national and European legislation followed by an examination of the principles established on this issue by national and European case-law.

PRESENTATION OF THE RELEVANT DOMESTIC LEGISLATION

a) COLLECTIVE AGREEMENT FOR PUBLIC HEALTH-SECTOR WORKERS of 21 May 2018

The collective labour agreement for workers in the health sector, agreed upon on 21 May 2018, although not signed by the complainant trade union, provides as follows as regards the system of trade union relations (Document 10).

TITLE II

TRADE UNION RELATIONS

Chapter I

System of trade union relations

Article 3

Objectives and instruments

1. The system of trade union relations shall be the instrument for establishing stable relations between an Enterprise or Entity and trade union bodies, and shall be characterised by informed participation, constructive and transparent dialogue, reciprocal consideration for the respective rights and obligations along with the prevention and resolution of disputes.

2. The system of trade union relations shall be used in order to:

- strike a balance between the public service mission of Enterprises and Entities in favour of users and the general public on the one hand as against the interests of workers on the other;
- improve the quality of decision-making;
- support the professional development and updating of staff, along with the processes of organisational innovation and reform of the public administration.

3. Having due regard for the distinct roles and responsibilities of public sector employers and trade union bodies, trade union relations within Enterprises and Entities shall be structured in accordance with the following relationship models:

a) participation;
b) supplementary bargaining.

4. The aim of participation shall be to establish constructive forms of dialogue between the parties concerning acts and decisions of the Enterprises and Entities with general applicability in matters of organisation or that have an impact on the employment relationship or to ensure appropriate rights to information concerning the same; it shall consist in turn of:

- information;
- engagement;
- joint participatory bodies.

5. The aim of supplementary bargaining shall be to conclude contracts that impose reciprocal obligations on the parties, at the various levels provided for under Article 8 (Supplementary collective bargaining: bodies and issues). The clauses of contracts signed may be subject to subsequent authoritative interpretations, including upon request by one of the parties, according to the procedures laid down by Article 9 (Supplementary collective bargaining: timescales and procedures).

6. A joint Observatory shall be established at the ARAN without incurring any new or increased burdens for the public finances, which shall have the task of monitoring the cases and manner in which each Enterprise or Entity adopts the acts adopted unilaterally pursuant to Article 40, paragraph 3-ter, of Legislative Decree No. 165/2001. The Observatory shall also verify that such acts are sufficiently reasoned in terms of the detrimental effect on the proper conduct of administrative action. The members shall have no entitlement to remuneration, attendance fees, emoluments, allowances or the reimbursement of expenses, irrespective of the designation used. The Observatory provided for under this paragraph shall also be a forum for discussion on contractual issues of general significance, in order, amongst other things, to prevent the risk of general disputes.

Article 4
Information

1. Information is an essential prerequisite for the proper operation of trade union relations and the related instruments.

2. Without prejudice to the obligations on transparency laid down under applicable statutory provisions, the information shall involve the transmission of data and information by the Enterprise or Entity to trade union bodies in order to enable them to establish the facts relating to and examine the matter at issue.

3. The information must be provided within the timescale, in the manner and having such content to enable the trade union bodies referred to in Article 8, paragraph 3, (Supplementary collective bargaining: bodies and issues) to perform a detailed assessment of the potential impact of the measures to be adopted, before they are finally adopted, and to state observations and proposals.

4. The requirement to provide information shall apply to all matters in relation to which Article 5 (Engagement), Article 6 (Regional engagement) and Article 8 (Supplementary collective bargaining: bodies and issues) provide for engagement or supplementary bargaining, as it constitutes the prerequisite for the activation of such procedures.

Article 5
Engagement

1. Engagement shall be the manner through which an in-depth dialogue is established concerning the matters reserved to that level of relations in order to enable the trade unions referred to in Article 8, paragraph 3 (Supplementary collective bargaining: bodies and issues), to carry out comprehensive assessments and to participate constructively in the definition of the measures that the Enterprise or Entity intends to adopt.

2. Dialogue shall be initiated by the forwarding to the trade union bodies of details concerning the measures to be adopted, along with the arrangements applicable to the provision of information. Following the transmission of the information, the Enterprise or Entity and the trade union bodies shall meet if engagement is requested by the latter within five days of receipt of the information. A meeting may also be proposed by the Enterprise or Entity at the time the information is sent. The period during which meetings are held may not exceed 30 days. Upon conclusion of engagement, a summary of the work and of the positions adopted shall be drawn up.

3. Engagement shall occur with the trade union bodies referred to in paragraph 3 of Article 8 (Supplementary collective bargaining: bodies and issues) in relation to:

a) the general criteria for establishing working hours;
b) the general criteria for establishing priority in relation to mobility between workplaces within the Enterprise or Entity or between Enterprises and Entities, when employees are relocated in the context of association processes;
c) the general criteria applicable to performance appraisal systems;
d) the criteria applicable to the appointment to and dismissal from duties;
e) the criteria for establishing a scale of duty assignments for the purposes of allocating the respective allowance;
f) the transfer or assignment of activities to other public or private bodies pursuant to Article 31 of Legislative Decree No. 165/2001;
g) measures relating to health and safety at work;
h) the general criteria for the planning of on-call services.

Article 6

Regional engagement

1. Without prejudice to the contractual autonomy of Enterprises and Entities in accordance with Article 40 of Legislative Decree No. 165/2001, the regions shall be able, within 90 days of the entry into force of this contract and after discussion with the trade unions signing it, to issue general guidelines for the conduct of supplementary bargaining, in the following matters relating to:

a) the use of additional regional resources referred to in Article 81, paragraph 4, letter (a) (Fund for bonuses and scales) and, in particular, those allocated to the production facility, which must increasingly be results-oriented in accordance with corporate and regional objectives;

b) the methods employed by Enterprises and Entities to use a proportion of the lower expenses arising from the steady reduction in staff members as referred to in Article 39, paragraph 4, of the NCLA of 7 April 1999 (Funding of salary scales, organisational positions, the shared portion of the former professional qualification allowance and the specific occupational allowance);

c) the method of increasing the funds in the event of an increase in the number of staff or services even if the total number of staff or services remain unchanged, as referred to in Article 39, paragraph 8 of the NCLA of 7 April 1999 (Funding of salary scales, organisational positions, the shared portion of the former professional qualification allowance and the specific occupational allowance);

d) the guidelines on additional staff services.

2. In the reorganisation processes that require changes affecting the enterprises' fields of action, the discussions referred to in this article will address the following matters:

a) the criteria for separating or aggregating funds in the event of changes affecting the enterprises' fields of action;

b) the general criteria relating to the processes of mobility or reassigning staff.

3. With reference to paragraph 1, letters (b) and (c), all the contractual provisions for the establishment of the funds referred to in Articles 80 (Funds for working conditions and duties) and 81 (Funds for bonuses and scales), in addition to the procedures for increase provided for therein, shall remain.

4. Without prejudice to the enterprise's autonomy, the regional dialogue shall assess, with regard to the various regulatory and contractual implications, the problems connected with insecure employment and stabilisation processes, taking into account the guarantee of continuity in the payment of the basic levels of welfare and in relation to the expiry of fixed-term contracts.

Article 7

Joint participatory body for innovation

1. The joint participatory body for innovation shall constitute a forum for the participatory involvement of the trade union organisations referred to in Article 8, paragraph 3 (Supplementary collective bargaining: bodies and issues), with regard to all organisational matters within the Enterprise or Entity having a project-related, complex and experimental dimension.

2. The body referred to in this article shall be the forum for the initiation of stable, open and co-operative relations concerning projects for organisation and innovation, service improvement, the promotion of legality, quality of work and organisational wellbeing – including with reference to training policies and plans, flexible work and the reconciliation of work and private life, with the aim of formulating proposals for the Enterprise or Entity or the parties to the supplementary bargaining process.

3. The joint participatory body for innovation:

a) shall have joint composition and shall be comprised of one member appointed by each of the trade union organisations referred to in Article 8, paragraph 3 (Supplementary collective bargaining: bodies and issues), as well as one representative of the Enterprise or Entity, with equal status to the trade union members;
b) shall meet at least twice per year, or otherwise whenever the Enterprise or Entity expresses an intention to initiate an organisational project that is innovative, complex in terms of the manner and timescale for implementation, and experimental;
c) may submit its own project-related proposals, upon completion of a feasibility analysis, to the supplementary contractual bargaining parties concerning the matters falling within their remit, or to the Enterprise or Entity;
d) may adopt regulations to govern its manner of operation;
e) may carry out analyses, investigations and studies, including in relation to the provisions of Article 83 (Measures to discourage high rates of employee absenteeism).

4. Projects and programmes may be forwarded to the body referred to in this article by the trade union organisations provided for under Article 8, paragraph 3 (Supplementary collective bargaining: bodies and issues), or by groups of workers. In such cases, the joint body shall state its opinion concerning their feasibility as provided for in paragraph 3(c).

5. Information shall be provided every six months within the body referred to in this article in relation to occupational trends, data concerning fixed-term contracts, data concerning fixed-term staff leasing contracts, and data concerning staff absences pursuant to Article 83 (Measures to discourage high rates of employee absenteeism).

Article 8
Supplementary collective bargaining: bodies and issues

1. In accordance with the procedures laid down by law and by this NCLA, supplementary collective bargaining shall be conducted between the trade union delegation as identified pursuant to paragraph 3 and the employer delegation as identified pursuant to paragraph 4.

2. Supplementary collective bargaining shall be conducted at the level of the Enterprise or Entity (enterprise-level supplementary bargaining).

3. The trade union bodies entitled to conduct enterprise-level supplementary bargaining shall be:

a) the trade union representative;
b) the local representatives of the sectoral trade union organisations that have signed this NCLA.

4. The members of the employer delegation, one of whom shall be designated as the chair, shall be appointed by the competent body in accordance with its respective regulations.

5. Enterprise-level collective bargaining may concern:

a) the criteria for allocating the resources available for supplementary bargaining between the various alternative uses within each of the two funds referred to in Articles 80 (Fund for working conditions and duties) and 81 (Fund for bonuses and scales) of this agreement;
b) the criteria for allocating performance-related bonuses;
c) the criteria for defining the procedures governing pay rises;
d) the criteria for allocating ancillary pay elements that specific legislation places within the remit of collective bargaining;
e) the general criteria for implementing supplementary welfare plans;
f) the raising of the overall quota of part-time contracts pursuant to Article 60, paragraph 7 (Part-time contracts);
g) the increase of the maximum percentage of fixed-term contracts and fixed-term staff-leasing contracts pursuant to Article 57, paragraph 3 (Fixed-term contracts);
h) the possible provision of additional types of courses with a minimum duration of one year, through the establishment of study leave, pursuant to the provisions in Article 48, paragraph 5 (Right to study) and within the limits of paragraph 1 of the same article, as well as any other conditions that prioritise the establishment of study leave pursuant to the aforementioned Article 48, paragraph 5 (Right to study);
i) the conditions, criteria and methods for the use of social and recreational services, which are provided for employees, by temporary employees pursuant to Article 59, paragraph 4 (Temporary employment contracts);
j) the criteria for identifying the flexitime bands for starting and finishing work in order to achieve a better reconciliation between work and family life;
k) the implications for quality of work and professional expertise of technological innovations relating to service organisation;
l) the possible raising of the allowance for being on-call, paid by the fund referred to in Article 80 (Fund for working conditions and duties);
m) the possible increase of the allowance for working nights paid by the fund referred to in Article 80 (Fund for working conditions and duties);
n) the possible increase in the timescales set out in Article 27, paragraphs 11 and 12 (Working hours), providing an additional four whole minutes for changing and making deliveries when wards are complex to navigate, or the changing rooms are not located near to the wards.

Article 9
Supplementary collective bargaining: timescales and procedures

1. The supplementary collective agreement shall be valid for three years and shall relate to all the issues referred to in Article 8, paragraph 5 (Supplementary collective bargaining: bodies and issues). The

criteria for the allocation of resources between the various uses referred to in Article 8, paragraph 5 (Supplementary collective bargaining: bodies and issues), may be negotiated annually.

2. The Enterprise or Entity shall establish an employers' delegation as referred to in Article 8, paragraph 4 (Supplementary collective bargaining: bodies and issues), within 30 days of signing this contract.

3. The Enterprise or Entity shall convene the trade unions referred to in Article 8 (Supplementary collective bargaining: bodies and issues) for the start of negotiations within 30 days of the presentation of the political programmes, although not before it has established its own delegation within the time period referred to in paragraph 2.

4. Without prejudice to the principles of autonomy in negotiations and those of conduct specified in Article 10 (Cooling-off clauses), if no agreement has been reached after 30 days from the start of negotiations, which may be extended up to a maximum of a further 30 days, the parties shall resume their respective rights and freedoms of initiative and decisions relating to the issues referred to in Article 8, paragraph 5, letters (f), (g), (h), (i), (j), (k) and (n) (Supplementary collective bargaining: bodies and issues).

5. Where no agreement is reached on the issues referred to in Article 8, paragraph 5, letters (f), (g), (h), (i), (j), (k) and (n) (Supplementary collective bargaining: bodies and issues), and when the protraction of the negotiations has a detrimental effect on the proper conduct of administrative action, pursuant to the principles of conduct referred to in Article 10 (Cooling-off clauses), the Enterprise or Entity concerned may take action, on a provisional basis, in relation to the matters falling under the unconcluded agreement until the next agreement is signed and shall pursue negotiations with the aim of concluding an agreement as quickly as possible. The minimum time-limit for the duration of the negotiations referred to in Article 40, paragraph 3-ter, of Legislative Decree No. 165/2001 shall be set at 45 days, which may be extended by a further 45 days.

6. Monitoring of the compatibility of the costs of supplementary collective bargaining with the budget constraints and the associated audit of the expenses shall be carried out by the competent supervisory body in accordance with Article 40-bis, paragraph 1, of Legislative Decree No. 165/2001. For this purpose, the planned supplementary collective agreement drawn up by the parties, accompanied by the explanatory and technical reports, shall be sent to this body within 10 days of signing the agreement. In the event of any observations made by the aforementioned body, negotiations must be resumed within five days. If 15 days pass without any observations, the governing body of the Enterprise or Entity may authorise the chair of the negotiating delegation, acting on behalf of the public authority, to sign the contract.

7. The supplementary collective agreements must contain specific clauses regarding the timescales, methods and procedures for monitoring their implementation. They shall remain in force until such time as subsequent supplementary collective agreements are concluded by each Enterprise or Entity.

8. Within five days of signing the final agreement, the Enterprises or Entities shall be required to send, by electronic means, to the ARAN and the National Council for the Economy and Labour the text of the supplementary collective agreement or the text of the acts adopted pursuant to paragraphs 4 and 5, together with the explanatory and technical reports.

Article 10

Cooling-off clauses

1. The system of trade union relations shall be based on the principles of responsibility, fairness, good faith and transparency of behaviour and be focused on preventing conflicts.

2. In accordance with the above principles, the parties shall not adopt unilateral decisions or take direct action within the first month of the negotiations on the supplementary bargaining agreement. They shall also make all reasonable efforts to reach an agreement on the issues to be addressed.

3. Similarly, while engaging in dialogue, the parties shall not adopt unilateral decisions on the issues addressed by the discussions.

Article 11

Effective date and non-application

1. With the entry into force of this Title on trade union relations pursuant to Article 2, paragraph 2 (Contract duration, effective date, timescales and application procedures), of this NCLA, all provisions relating to trade union relations, wherever provided for in this sector's previous NCLAs, shall cease to be in force and shall therefore be disapplied.

TITLE III

ORGANISATION OF THE PROFESSION

Chapter 1

Professional classification system

Article 12

Joint Committee for the review of the professional classification system

1. The parties shall agree on whether or not it is appropriate to begin reorganising the professional classification system for national health service staff, identifying the most appropriate solutions to ensure an optimal balance between the organisational and operational needs of Enterprises and Entities in the health sector and the need to recognise and enhance the professionalism of employees.

2. The parties shall consider that the objective of the national health service, in accordance with the Constitution and World Health Organisation guidelines, namely the protection of health defined as a state of complete physical, psychological and social well-being and not simply the absence of disease, should be pursued not only in a health system understood in the narrowest sense, but rather by taking structured and complex action, involving a wider range of professionals and operators, in the context of new and appropriate organisational models.

3. The parties shall agree on the advisability of providing for a preliminary phase to acquire and process all the knowledge on the current system of professional classification, and to examine how it could be developed and brought into line with the objectives referred to in paragraph 1, with a view to achieving a model more suitable to enhancing professional skills and ensuring better management of working processes.

4. In order to carry out the preliminary phase referred to in paragraph 3, in accordance with the objectives set out and within 30 days from the date of signing this NCLA, a specific joint committee between the ARAN and the signatory Parties shall be established at the ARAN, with the participation of representatives appointed by the sector committee. In particular, it shall be entrusted with the following tasks.

a) Identifying methods to develop the current staff classification system in all professional areas, examining, in particular, the possibility of a different structure and a simplification of the categories, economic levels and

scales. To this end, an assessment shall be carried out of the category descriptions in relation to legislative changes, the content of the Health Agreement between central government and the regions, and the changes to working procedures brought about by scientific and technological advances. Consequently, an assessment shall also be carried out on professional content concerning new organisational models.

b) Carrying out an analysis of category descriptions, professional specifications and advanced skills with a view to their enhancement.

c) Carrying out an analysis of the tools to support the development of professional skills and to identify, on a selective basis, how they can be enhanced, also in relation to the development of the quality of services and the effectiveness of health and social-health intervention.

d) Reviewing the criteria for the economic advancement of staff within the categories, in correlation with the assessment of professional skills acquired and professional experience gained.

e) As a consequence of changes to legislation and the reorganisation of professions within the national health system, with particular reference to the establishment of the new field of social and health professions referred to in Article 5 of Law No. 3/2018, examining the possibility of subdividing staff into the following service areas:

- Health professions

- Social and health professions

- Administration of productivity inputs

- Technical and environment professions.

f) Outlining the function of the areas referred to in the previous letter in the classification model, configuring them as a series of service-oriented profiles, in order to ensure more efficient and effective interventions.

g) Identifying any new non-health profiles (e.g. drivers and first responders).

h) Evaluating and assessing the current allowance system in relation to the changes in the professional classification models.

5. The Committee shall conclude its work by next July, making systematic proposals to the negotiating parties on the points referred to in paragraph 4.

6. Article 9 of the NCLA of 19 April 2004 shall be disapplied (Joint Committee on the classification system).

b) FRAMEWORK AGREEMENT of 4 December 2017

Article 26 of the Framework Agreement of 4 December 2017, entitled "Bodies vested with trade union prerogatives" provides that:

"Trade union prerogatives shall be vested in the representative trade union association. The contractual powers and competences relating to supplementary bargaining - as vested in representative trade union organisations that have signed the NCLA for the branch or area - shall be exercised by the representatives of those bodies, acting on their behalf. Consequently, also supplementary collective agreements shall be signed exclusively by entitled representative trade union organisations." (Document 11)

c) GENERAL LEGISLATIVE PROVISIONS ON TRADE UNION RIGHTS IN ITALY

Law No. 300/1979 (the Statute of Workers)

Article 14 of Law No. 300 of 1970, entitled, "Right of association and trade union freedom" provided that the:
"Right to establish and join trade unions and to engage in trade union activity shall be guaranteed to all workers within the workplace."

Article 19 of the above-mentioned law, on the "Establishment of company trade union representation units" provided that: "Company trade union representation units may be established on the initiative of the workers in any production facility by:
a) associations that are members of the largest representative confederations at national level;[1]
b) trade unions not affiliated to the said confederations that have signed collective labour agreements applied within the production facility.[2,3]
Within companies with more than one production facility, the trade union representation units may establish co-ordination bodies."

Legislative Decree No. 165/2001 (Law on Public Employment)

By Legislative Decree No. 165 of 30 March 2001, as amended and supplemented, Italy subsequently laid down general provisions governing employment within the public administrations and, insofar as is of interest here, collective bargaining and trade union representation, in the following Articles (Document 14):

Article 40 National collective and supplementary agreements

"1. Collective bargaining shall regulate employment and trade union relations and shall be conducted in the manner provided for under this Decree. Collective bargaining shall be permitted in relation to disciplinary sanctions, the assessment of performance for the purpose of the payment of ancillary remuneration and mobility in accordance with the limits laid down by law. Collective bargaining may not regulate matters pertaining to the organisation of offices, those pertaining to trade union involvement pursuant to Article 9, those pertaining to managerial prerogatives pursuant to Articles 5(2), 16 and 17, the appointment and dismissal of directorship positions and those provided for under Article 2(1)(c) of Law No. 421 of 23 October 1992.

2. Up to a maximum of four national collective bargaining branches, corresponding to no more than four separate management areas, shall be defined by specific agreements concluded between the ARAN and the representative confederations in accordance with the procedures laid down by Articles 41(5) and 47, which may not result in new or increased burdens on the public finances. A specific contractual area or section for a management area shall be established for tenured health directors within the National Health Service for the purposes of Article 15 of Legislative Decree No. 502 of 30 December 1992, as amended. Dedicated contractual sectors may be established within the collective bargaining branches for specific forms of expertise.

3. In keeping with arrangements in the private sector, collective bargaining shall regulate the contractual structure, relations between different levels and the duration of national and supplementary collective agreements. The duration shall be established in such a manner as to ensure alignment between the applicability period for legal and financial arrangements.

[1] Paragraph repealed by the single article of Decree of the President of the Republic No. 312 of 28 July 1995 with effect from 28 September 1995 following the referendum called by the Decree of the President of the Republic of 5 April 1995.
[2] Paragraph as amended by the single article of Decree of the President of the Republic No. 312 of 28 July 1995 with effect from 28 September 1995 following the referendum called by the Decree of the President of the Republic of 5 April 1995.
[3] By judgment No. 231 of 23 July 2013 (in Official Gazette No. 31 of 31 July), the Constitutional Court ruled this paragraph unconstitutional insofar as it does not provide that company trade union representation may be comprised also of the trade unions which, whilst not having signed the collective agreements applied in the production facility, have nonetheless participated in negotiations relating to those agreements as representatives of the company's workers.

3-bis. The public administrations shall adopt independent levels of supplementary collective bargaining in accordance with Article 7(5) and the budgetary constraints resulting from the annual and multi-year programming instruments of each administration. Supplementary collective bargaining shall ensure adequate levels of efficiency and productivity within public services, incentivising commitment and quality of performance, allocating for this purpose a predominant share of the resources intended for ancillary remuneration, irrespective of their designation under Article 45(3), in order to ensure the optimal pursuit of organisational and individual targets. The above-mentioned share shall be established with reference to the variable resources determined for the reference year. Supplementary collective bargaining shall be conducted in relation to the matters, subject to the constraints and limits laid down by national collective agreements, between the parties and according to the bargaining procedures stipulated by such parties; its scope may be defined geographically and may apply to more than one administration. National collective agreements shall define the time limit for localised bargaining rounds. Upon expiry of the time limit, the parties shall resume their respective prerogatives and freedom of initiative and decision making.

3-ter. In the event that no agreement is reached concerning the conclusion of a supplementary collective agreement, if the continuation of negotiations has a detrimental effect on the proper conduct of administrative action, in accordance with the principles of fairness and good faith between the parties, the administration concerned may make take action, on a provisional basis, in relation to the matters falling under the unconcluded agreement until the next agreement is signed and shall pursue negotiations with the aim of concluding an agreement as quickly as possible. Such unilateral acts adopted shall be subject to the procedures for verifying economic and financial compatibility provided for under Article 40-bis. The national collective agreements may stipulate a minimum time limit for the duration of localised bargaining sessions, upon expiry of which the administration concerned may under all circumstances take action, on a provisional basis, concerning the matters falling under the unconcluded agreement. A joint observatory shall be established at the ARAN without incurring any new or increased burdens for the public finances, which shall have the task of monitoring the cases and manner in which each administration adopts the acts falling under the first sentence. The observatory shall also verify that such acts are sufficiently reasoned in terms of the detrimental effect on the proper conduct of administrative action. The members shall have no entitlement to remuneration, attendance fees, emoluments, allowances or the reimbursement of expenses, irrespective of the designation used.

3-quinquies. National collective bargaining shall stipulate, for the administrations falling under Article 41(3), the arrangements for using resources mentioned in Article 45(3-bis), identifying the criteria and financial limits within which supplementary bargaining must be conducted. The regions, with regard to their own administrations, and the local authorities may allocate additional resources to supplementary bargaining, subject to the limits laid down under national bargaining and subject to the limits associated with the effectiveness criteria set for expenditure on staff in accordance with applicable provisions, under all circumstances in accordance with the objectives of the public finances and analogous cost containment instruments. The allocation of additional resources for supplementary bargaining shall be conditional upon effective compliance with the principles applicable to the measurement, evaluation and transparency of performance and in relation to merit and bonuses applicable to the regions and to the local authorities in accordance with the provisions of Articles 16 and 31 of the Legislative Decree implementing Law No. 15 of 4 March 2009 on the optimisation of productivity within public sector work and the efficiency and transparency of the public administrations. The public administrations may not under any circumstances sign any localised supplementary collective agreements that are in breach of the constraints and limits resulting from national collective agreements or that make provision in relation to matters that are not expressly delegated to that level of bargaining or that result in costs not provided for in the annual and multi-year planning instruments of each administration. In the event of any violation of the constraints and limits on competence imposed under national agreements or by law, the clauses in question shall be void, may not be applied and shall be replaced pursuant to Articles 1339 and 1419(2) of the Civil Code. In the event of a breach of the financial constraints established by the regional control divisions of the Court of Auditors, the Department of Public Administration or the Ministry for the Economy and Finance, the relevant shortfall must be recovered during the following bargaining round in annual instalments for a maximum number of years corresponding to the number of years during which the constraints in question were breached. In order to avoid interference with the orderly prosecution of the administrative activity of the administrations concerned, the quota to be

recovered may not exceed 25% of the resources allocated to supplementary bargaining, in which case the number of years referred to in the previous sentence shall be increased accordingly, subject to certification by the supervisory bodies pursuant to Article 40-bis(1). By way of alternative to the provisions of the previous sentence, the regions and the local authorities may extend the time limit for recovering any amounts unlawfully disbursed for a period not exceeding five years, provided that they adopt or have adopted the cost containment measures provided for under Article 4(1) of Decree-Law No. 16 of 6 March 2014, demonstrate that the expenditure reductions envisaged under such measures have actually been achieved and obtain further cost reductions resulting from the adoption of streamlining measures relating to other sectors, including with reference to processes involving the closure and merger of companies, bodies or executive agencies. The regions and local authorities shall furnish proof of the action carried out under the previous sentence in a special report, accompanied by an opinion from the economic and financial auditing body, which shall be appended to the closing accounts for each year in which payments have been recovered. The provisions of this paragraph shall apply to agreements signed after the date of entry into force of the Legislative Decree implementing Law No. 15 of 4 March 2009 on the optimisation of public sector productivity and the efficiency and transparency of the public administrations.

3-sexies. The public administrations shall draw up, as an accompanying document to each supplementary agreement, a specialist financial report and an illustrative report using the standard templates, which shall be made available on the respective official websites of the Ministry for the Economy and Finance, in consultation with the Department of Public Administration. These reports shall be certified by the supervisory bodies provided for under Article 40-bis(1).

4. The public administrations shall fulfil their obligations under national or supplementary collective agreements as of the definitive date of signature and shall ensure compliance therewith in the manner provided for under the respective regimes applicable to them.
4-bis. National collective labour agreements must contain specific clauses preventing any increases in the overall level of the resources allocated to ancillary remuneration in the event that the period-end figures for absences, either at the level of the administration as a whole or the unit for supplementary bargaining, indicate significant departures from national or sectoral average figures or a concentration over particular periods in which it is necessary to ensure continuity of service provision for users, or otherwise on days immediately preceding or following weekly rest days.

4-ter. For the purpose of simplifying the administrative management of the funds allocated to supplementary bargaining and to enable a usage thereof that is more conducive to achieving the objectives of enhancing the value of staff contributions and improving productivity and service quality, national collective bargaining shall provide for the reorganisation, streamlining and simplification of the provisions applicable to the endowment and usage of funds intended for supplementary bargaining".

Article 42 Rights and prerogatives of trade unions in the workplace

"1. Freedom to organise within the public administrations shall be protected in the manner provided for under Law No. 300 of 20 May 1970, as amended and supplemented. Unless and until those provisions are replaced or amended by the adoption of general provisions on trade union representativeness, the public administrations shall, in accordance with the criteria laid down by Article 2(2)(b) of Law No. 421 of 23 October 1992, comply with the following provisions on the representativeness of trade union organisations for the purpose of the allocation of trade union rights and prerogatives in the workplace and the conduct of collective bargaining.

2. Within each administration, body or administrative structure referred to in paragraph 8, the trade union organisations which, based on the criteria laid down by Article 43, are eligible to participate in negotiations relating to the signature of collective agreements, may establish company trade union representation units pursuant to Article 19 et seq. of Law No. 300 of 20 May 1970, as amended and supplemented. They shall, in proportion with the degree of representativeness, be afforded the guarantees

provided for under Articles 23, 24 and 30 of Law No. 300 of 1970, and shall be guaranteed the most favourable conditions resulting from collective agreements.

3. Within each administration, body or administrative structure referred to in paragraph 8, a unitary staff representation body shall also be established on the joint or individual initiative of the trade union organisations referred to in paragraph 2 by elections, in which the right to participate of all workers must be guaranteed, in accordance with the arrangements set forth in the following paragraphs.

3-bis. For the purposes of the establishment of the bodies referred to in paragraph 3, participation shall be guaranteed for staff working at diplomatic and consular representation bodies and at Italian cultural institutes abroad, including those hired under a contract governed by local law. Consideration shall be given to the provisions of this paragraph for the purposes of calculating trade union representativeness pursuant to Article 43.

4. The ARAN and the representative confederations or trade union organisations pursuant to Article 43 shall conclude specific agreements or national collective agreements to define the composition of the unitary staff representation body along with the specific arrangements applicable to elections, providing under all circumstances for a secret ballot, proportional representation and regular renewals, along with a prohibition on the extension of terms in office. The ability to present lists must also be guaranteed not only to organisations that are eligible pursuant to Article 43 to participate in negotiations relating to the conclusion of collective agreements but also to other trade union organisations, provided that they have been established as an association with their own statute and provided that they have adhered to the collective agreements or contracts that govern the election and functioning of the body. Any sponsoring trade union organisation wishing to present a list may be required to present a certain number of signatures by employees eligible to vote, which may not exceed 3% of the total number of employees for administrations, bodies or administrative structures with up to 2,000 employees, and 2% for larger administrations, bodies or administrative structures.

5. The same collective agreements or contracts may stipulate that, in accordance with the conditions laid down in paragraph 8, unitary staff representation bodies be established that are shared between more than one administration or body where these are small in size and situated within the same territory. They may also stipulate that bodies be established for co-ordinating between the unitary staff representation bodies within administrations or bodies with more than one office or facility falling under paragraph 8.

6. The members of the unitary staff representation bodies shall be deemed to be equivalent to the directors of company trade union representation bodies for the purposes of Law No. 300 of 20 May 1970, as amended and supplemented, and of this Decree. The collective agreements or contracts governing the election and operation of the body shall stipulate the criteria and arrangements according to which the guarantees afforded to the company trade union representation bodies of trade union organisations referred to in paragraph 2 that have signed or adhered to such agreements or contracts are to be transferred to the elected members of the unitary staff representation body.

7. Such agreements may also regulate the manner in which the unitary staff representation body may exercise on an exclusive basis the information and participation rights granted to company trade union representation bodies pursuant to Article 9 or other statutory provisions and collective bargaining. They may also stipulate that, for the purposes of the exercise of supplementary collective bargaining, the unitary staff representation body be supplemented by representatives of the trade union organisations that have signed the national or sectoral collective agreement.

8. Unless the collective agreements lay down different criteria in terms of size, having regard to the characteristics of the branch, the bodies referred to in paragraphs 2 and 3 of this Article may be established, in accordance with the conditions provided for under the previous paragraphs, in each administration or body with more than 15 employees. Such bodies may also be established at local offices or units that are classified under national collective agreements as localised collective bargaining levels, for administrations or bodies with multiple local offices or structures.

9. Without prejudice to the provisions of paragraph 2, the representation of managers within administrations, bodies or administrative structures for the purpose of the establishment of trade union representation bodies pursuant to Article 19 of Law No. 300 of 20 May 1970, as amended and supplemented, shall be governed, having regard to the nature of their functions, by the collective agreements or contracts pertinent to the relevant contractual area.

10. The professional positions for which different provisions are laid down in the collective agreement for the branch pursuant to Article 40(2) must be guaranteed an adequate presence on unitary staff representation bodies, including through the establishment of specific electoral colleges, taking account of their quantitative impact and the number of members of the body.

11. As regards the trade union rights and prerogatives of trade union organisations of linguistic minorities, the provisions of Article 9 of the Decree of the President of the Republic No. 58 of 6 January 1978 and of Legislative Decree No. 430 of 28 December 1989 shall apply in relation to the Province of Bolzano and Valle d'Aosta Region".

Article 43 Trade union representativeness for the purposes of collective bargaining

"1. The ARAN shall admit to national collective bargaining any trade union organisation which has a level of representativeness within the branch or area no lower than 5%, considering for that purpose the average of the number of members and the results of elections. The number of members shall be obtained from the percentage of authorisations to pay trade union dues out of the total number of authorisations issued during the relevant period. The results of elections shall be the percentage of the votes obtained in elections for the unitary staff representation bodies out of the total number of votes cast in the relevant election.

2. The confederations to which the trade union organisations which are admitted to collective bargaining in accordance with paragraph 1 belong shall also participate in national collective bargaining for the relevant branch or area.

3. The ARAN shall sign collective agreements following a prior verification, on the basis of the level of representativeness ascertained for admission to the negotiations pursuant to paragraph 1, that the trade union organisations endorsing the proposed agreement represent cumulatively at least 51%, considered as an average of the number of members and the results of elections, within the contractual branch or area, or at least 60% of the results of elections in the relevant area.

4. The ARAN shall admit to national collective bargaining for the conclusion of collective agreements or contracts that define or modify the branches or areas or that regulate institutes common to all public administrations or that concern more than one branch any trade union confederations to which representative trade union organisations within the meaning of paragraph 1 have affiliated in at least two contractual branches or areas.

5. The participants in and procedures for supplementary collective bargaining shall be governed, in accordance with Article 40(3-bis) et seq., by national collective agreements, without prejudice to the provisions of Article 42(7) for unitary staff representation bodies.

6. For the purposes of the agreement between the ARAN and the representative trade union confederations provided for under Article 50(1) and under the collective agreements applicable to such matters, the trade union confederations and organisations admitted to national collective bargaining in accordance with the previous paragraphs shall have an entitlement to absences from work, sabbaticals and secondments for trade union purposes in proportion to their representativeness pursuant to paragraph 1, taking account also of the territorial distribution and size of the organisational structures within the branch or area.

7. The collection of data relating to elections and authorisations for the deduction of dues shall be carried out by the ARAN. The data relating to authorisations for the deduction of dues provided to each administration during the relevant year shall be collected and transmitted to the ARAN by the public

administrations no later than 31 March of the following year and must be countersigned by a representative of the trade union organisation concerned in such a manner as to guarantee the confidentiality of the information. The public administrations shall be obliged to make known the official responsible for the collection and transmission of data. The ARAN shall co-operate in accordance with dedicated agreements with the Department of Public Administration, the Ministry of Employment and representative or associative bodies of the public administrations for the purpose of monitoring electoral procedures and collecting data relating to authorisations for the deduction of dues.

8. A joint committee shall be established at the ARAN in order to ensure certain and objective procedures for the collection and certification of data and to resolve any disputes, which may be structured according to branch, and which shall include the trade union organisations admitted to national collective bargaining.

9. The committee shall verify the data for elections and authorisations for the deduction of dues. It may resolve that authorisations for the deduction of dues provided to trade union organisations that charge workers dues that are more than 50% lower than the average dues requested by trade union organisations from the branch or area shall be disregarded for the purpose of measuring membership numbers.

10. The committee shall resolve disputes on the determination of votes and authorisations for the deduction of dues. In the event of disagreement, and under all circumstances where the complaint is made by a trade union body that is not represented on the committee, the resolution must be consistent with the opinion of the National Council for the Economy and Labour (CNEL), which shall issue such an opinion within 15 days of a request. The request for an opinion shall be transmitted by the committee to the Minister for Public Administration, who shall arrange for it to be forwarded to the CNEL within five days of receipt.

11. The ARAN and the trade union organisations on the committee shall vote separately and the vote of the latter shall be that of the majority of the representatives present.
12. All trade union organisations shall be ensured adequate forms of information and access to data, in accordance with the legislation on the confidentiality of information pursuant to Law No. 675 of 31 December 1996, as corrected and supplemented.

13. Trade unions of linguistic minorities from the Province of Bolzano and the regions Valle d'Aosta and Friuli-Venezia Giulia that are recognised as having representative status for the purposes of special provisions of regional and provincial law or legislation implementing the regional statutes shall be entitled, as the case may be also through common forms of representation, to the same rights, powers and prerogatives as those provided for trade union organisations that are considered to be representative under this Decree. The criteria for determining the representativeness of trade union organisations that also organise workers from linguistic minorities in the Province of Bolzano and Val d'Aosta Region shall relate exclusively to the respective territories and the employees working therein."

Article 49 Authoritative interpretation of collective agreements

"1. In the event of any disputes concerning the interpretation of collective agreements, the parties that are signatories thereto shall meet in order to determine the meaning of the disputed clauses on a consensual basis.

2. Any agreement on authoritative interpretation concluded in accordance with the procedures laid down by Article 47 shall replace the clause in question with effect from the beginning of the contract. Where such agreement does not entail additional costs and provided that there is no difference of opinion concerning the evaluation of those costs, the opinion of the President of the Council of Ministers shall be issued through the Minister for Public Administration and Innovation, in agreement with the Minister for the Economy and Finance".

d) THE CONSTITUTION

The Constitution of the Italian Republic of 1 January 1948 proclaimed the following articles:

Article 1

Italy is a democratic Republic founded on labour.

Sovereignty belongs to the people and is exercised by the people in the forms and within the limits set forth in the Constitution.

Article 3

All citizens have equal social dignity and are equal before the law, without distinction with regard to sex, race, language, religion, political opinion or personal and social circumstances. It is the duty of the Republic to remove those obstacles of an economic or social nature that constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country.

Article 4

The Republic recognises the right of all citizens to work and promotes those conditions which render this right effective. Every citizen has the duty, according to personal potential and individual choice, to perform an activity or a function that contributes to the material or spiritual progress of society.

Article 35

The Republic shall protect work in all its forms and practices.

It shall make provision for the training and professional advancement of workers. It shall promote and encourage international agreements and organisations that have the aim of establishing and regulating labour rights.

Article 39

Trade unions may be freely established.

No obligations may be imposed on trade unions other than registration at local or central offices, as provided for by law. A condition for registration shall be that the statutes of trade unions establish their internal organisation on a democratic basis. Registered trade unions shall have legal personality. They may, through a unified representation that is proportional to their membership, enter into collective labour agreements that have mandatory effect for all persons belonging to the categories referred to in the agreement.

Article 97

The public administrations shall ensure balanced budgets and sustainable public debt, in accordance with provisions of European Union law.

Public offices shall be organised according to law in such a manner as to ensure the proper conduct and impartiality of the administration.

The provisions governing the organisation of offices shall stipulate the areas of competence, the duties and the responsibilities of officials. Employment within the public administration shall be accessed through competitive examinations, except in the cases established by law.

Article 117(1)

Legislative powers shall be vested in the State and the Regions in accordance with the Constitution and with the constraints deriving from EU legislation and international obligations.

PRESENTATION OF THE RELEVANT LEGISLATION OF THE EUROPEAN UNION

Article 6 of the Treaty on European Union provides that "The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties. The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties. The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.
2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties. 3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law".

Article 12 of the Charter of Fundamental Rights of the European Union, entitled "Freedom of assembly and of association", provides that: "1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests. 2. Political parties at Union level contribute to expressing the political will of the citizens of the Union".

Article 28 of the Charter provides that "workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements (…)"

Article 152 TFEU provides that "the Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy".

The "Community Charter of Fundamental Social Rights of Workers", provides that: "12. Employers or employers' organisations, on the one hand, and workers' organisations, on the other, shall have the right to negotiate and conclude collective agreements under the conditions laid down by national legislation and practice.
The dialogue between the two sides of industry at European level which must be developed, may, if the parties deem it desirable, result in contractual relations in particular at inter-occupational and sectoral level".

The European Convention on Human Rights provides in Article 11, entitled **"Freedom of assembly and association"** that: "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State".

Article 14, entitled **"Prohibition of discrimination"** provides that "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race,

colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

The "European Social Charter"

Article 5, entitled "The right to organise", provides that
"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, entitled, "The right to bargain collectively", provides that:
"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: 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 21, entitled, "The right to information and consultation" provides that: "With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:
a. to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and
b. to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking".

Article 22, entitled, "The right to take part in the determination and improvement of the working conditions and working environment", provides that: With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

a to the determination and the improvement of the working conditions, work organisation and working environment;

b to the protection of health and safety within the undertaking; c to the organisation of social and socio-cultural services and facilities within the undertaking; d to the supervision of the observance of regulations on these matters".

Letter E, entitled "Non-discrimination", provides that:
"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".

Letter G, entitled "Restrictions", provides that:

"1. The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.
2. The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed".

Article 4(3) of the Treaty on European Union provides, based on the principle of "sincere cooperation", that "…the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties…" whilst **Article 6** provides that "Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law".

Articles 27 and 28 of the "Charter of Fundamental Rights of the European Union" guarantee the right to information and to negotiate and conclude collective agreements;

The "Convention of the ILO - International Labour Organisation" approved the solemn **"Declaration on Fundamental Principles and Rights at Work"**, which requires the member states to respect the right to freedom of association (Convention No. 87/1949) and above all the right to organise and collective bargaining (Convention No. 98/1949);

Directive 91/533/EEC: on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship incorporated into national law by Legislative Decree No. 152 of 26 May 1997;

Directives 94/45/EEC and **2009/38/EC**: on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, transposed by Legislative Decree No. 113 of 22 June 2012;

Directive 2002/14/EC: establishing a general framework for informing and consulting employees, transposed by Legislative Decree No. 25/2007;

Directive 2000/78/EC with particular reference to Article 13, entitled "Social dialogue", protection of the principle of autonomy to conclude agreements at the appropriate level laying down anti-discrimination rules including for the public sector, transposed by Legislative Decree No. 216/2003;

Directive 1999/70/EC on fixed-term work provides in clause 4 of the framework agreement, entitled "Principle of non-discrimination", that:

"1. In respect of employment conditions, fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation unless different treatment is justified on objective grounds.

2. Where appropriate, the principle of pro rata temporis shall apply.

3. The arrangements for the application of this clause shall be defined by the Member States after consultation with the social partners and/or the social partners, having regard to Community law and national law, collective agreements and practice.

4. Period-of service qualifications relating to particular conditions of employment shall be the same for fixed-term workers as for permanent workers except where different length-of service qualifications are justified on objective grounds".

THE PROTECTION OF TRADE UNION FREEDOMS IN EUROPEAN CASE-LAW

Over time, there have been several rulings made in European case-law concerning the protection of trade union freedoms, which has asserted that the right of trade union freedom falls within the scope of protection under **"freedom of association" pursuant to Article 11 of the European Convention on Human Rights**, restrictions on which may be justified only by the "necessary overriding interests" of the state in its capacity as a contracting party.

The case-law referred to has asserted that the **"right to bargaining" is an essential instrument for promoting the interests of the trade union and of its own members**, in accordance with ILO Convention No. 98. The case law has already clarified that the "right to collective bargaining" is (also) protected by the European Social Charter and that the signature of collective agreements is a means of upholding the interests of trade union members.
However, let us consider these issues in their proper order.

The judgment in ***Demir and Baykara v. Turkey*** **(GC), No. 34503/97, European Court of Human Rights (hereafter "the Court") 2008, Grand Chamber,** concerned the prohibition imposed on municipal officials on forming a trade union as well as the annulment with retroactive effect of the collective agreement signed by the trade union in question.

The case concerned the trade union Tüm Bel Sen, which had been founded by officials from various municipalities governed by the law on public sector employment; Tüm Bel Sen had concluded a collective agreement with the City of Gaziantep for a period of two years, which covered aspects of working conditions for the Municipality of Gaziantep, including salaries, allowances and welfare services. The workers thereafter launched civil proceedings in order to protect the rights granted to them under the collective agreement, and obtained a judgment recognising their contractual rights; however, the national Court of Cassation overturned the contested judgment and rejected the claim, holding that, whilst there were no obstacles to the creation of trade unions by civil servants, they had no authority to enter into collective agreements as the law stood.

In arriving at this conclusion, the Court of Cassation held that the employment relationship was different from that between an employer and employees of the municipality and that the possibility to conclude a "collective agreement" between the public service trade unions and the administration should have been grounded in special legislation, which was absent in this case. The workers then applied to the Court, alleging a violation of Article 11 of the European Convention on Human Rights (hereafter the Convention).

It is now necessary to consider, albeit briefly, the judgment given by the Court in which the Grand Chamber elaborated on the substance of the right protected by Article 11 of the Convention. The Court clarified that the ability to impose any restrictions for members of the armed forces, the police or the state administration under Article 11 must be interpreted narrowly, must be limited to the exercise of those rights and must not extend to the right to organise.

In interpreting the national provision narrowly, the Court referred to the most relevant international instruments and to the practice of European states according to a now consolidated approach **(*Sigurdur A. Sigurjónsson v. Iceland*, 30 June 1993, § 35, series A No. 264; *Sørensen and Rasmussen v. Denmark* (GC), 52562/99 and 52620/99, § 72-75, 2006**; the judgment also clarified that it was not necessary for the respondent state to have ratified all pertinent instruments within the specific sector.

The Court therefore concluded that employees of the public administration could not be excluded from the scope of Article 11 and that, at most, the national authorities could impose "lawful restrictions" only in accordance with Article 11 § 2. In particular, the Court asserted that Article 11 § 1 presents trade union

freedom as a special form or aspect of "freedom of association" (*National Union of Belgian Police v. Belgium*, 27 October 1975, § 38, series A No. 19, and *Swedish Engine Drivers' Union v. Sweden*, § 37, series A No. 20, § 39).

The Court has also held that Article 11 is essentially intended to protect the individual against arbitrary interference by the public authorities in the exercise of his or her rights by imposing a positive obligation to ensure the enjoyment of such rights. According to the wording of Article 11, **the state is permitted to interfere with the right protected only if it is "prescribed by law", as the protection of freedom of association is "necessary in a democratic society".**

The Court has therefore held that the exceptions falling under Article 11 must be interpreted narrowly and that **only "pressing" reasons can justify restrictions on freedom of association**. When assessing the existence of a "need" and consequently of a "pressing social need" amongst those listed under Article 11 § 2, states have only a limited margin of appreciation, which is always subject to strict supervision by the law and the Constitution (*Yazar and Others v. Turkey*, 22723/93 (cited), 22724/93 and 22725/93, § 51, 2002-II).

As regards the "right to collective bargaining", the Court has asserted that the collective agreement is an essential means for promoting the interests of the trade union and that the right of workers to conclude collective agreements is recognised at international level (especially under ILO Convention No. 98) and in a majority of member states of the Council of Europe, **with the result that any detriment to the negotiation of a collective agreement cannot be permitted within a democratic society.**

Whilst the state party is in principle free to decide which action it intends to carry out in order to guarantee compliance with Article 11, it is obliged to include certain aspects that have been considered to be essential within the case law of the Court.

According to the current case law of the Court, the essential elements of trade union rights are as follows: the right to form and join a trade union (*Tüm Haber Sen and Çınar v. Turkey*, No. 28602/95, §§ 36-39, 2006), the prohibition on trade union monopoly agreements (see for example *Sørensen and Rasmussen v. Denmark* (GC), Nos. 52562/99 and 52620/99, §§ 72-75, 2006), the right of a trade union to seek to convince the employer to listen to what it has to say on behalf of its members (cf. *Wilson v. National Union of Journalists and Others*, § 44, where the Court declared that, although is not indispensable for the effective enjoyment of trade union freedom, it may be one of the ways of protecting the interests of members of trade unions).

The Court considers that these principles must not be construed statically and are destined to evolve in line with developments in the world of work. It must be recalled in this regard that the Convention is a living instrument, which must be interpreted in the light of current conditions, following the evolution of international law, with the aim of increasing demands for the protection of human rights.[1]

---

[1] The Court held that, under international law, the right to collective bargaining is enshrined by ILO Convention No. 98 from 1949 on the Right to Organise and Collective Bargaining.
The Court also noted that Convention No. 151 of 1978 Convention concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service leaves states free to choose whether or not members of the armed forces or of the police should be accorded the right to take part in the determination of working conditions, but provides that this right applies everywhere else in the public service, if need be under specific conditions.
As to European instruments, Article 6 § 2 of the European Social Charter affords to all workers, and to all unions, the right to bargain collectively, thereby imposing on the public authorities the corresponding obligation to promote actively a culture of dialogue and negotiation in the economy, so as to ensure broad coverage for collective agreements. Whilst it does not impose any duty to engage in collective bargaining, the provision requires states to guarantee to workers' representatives a certain role within the definition of workers' terms of employment.
Finally, the Charter of Fundamental Rights of the European Union, which is one of the most recent European instruments, provides in Article 28 that workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels. As to the practice of European States, the Court reiterates that, in the vast majority of them, the right of civil servants to bargain collectively with the authorities has been recognised, subject to various exceptions so as to exclude certain areas regarded as sensitive or certain categories of civil servants who hold exclusive powers of the State. In particular, the right of public servants employed by local authorities and not holding State powers to engage in collective bargaining in order to determine their wages and working conditions has been recognised in the

This implies a more stringent approach in assessing violations of the fundamental values of democratic societies and at the same time the need to interpret narrowly any limitations on human rights in such a manner as to guarantee their concrete and effective protection (see mutatis mutandis, *Refah Partisi (The Welfare Party) and Others v. Turkey* (GC), No. 41340/98, 41342/98, 41343/98 and 41344/98, § 100, 2003-II; *Selmouni v. France* (GC), No. 25803/94, § 101, 1999-V).

In the light of these developments, the Court declared that its own older case law, to the effect that the right to bargain collectively and to enter into collective agreements does not constitute an inherent element of Article 11 should be reconsidered, so as to take account of the perceptible evolution in such matters, in both international law and domestic legal systems.

Consequently, the Court considers that, having regard to the developments in labour law, both international and national, and to the practice of Contracting States in such matters, **"the right to bargain collectively with the employer has, in principle, become one of the essential elements of the right to form and to join trade unions for the protection of [one's] interests"** set forth in Article 11 of the Convention, it being understood that States remain free to organise their system so as, if appropriate, to grant special status to representative trade unions. Like other workers, civil servants, except in very specific cases, should enjoy such rights, but without prejudice to the effects of any "lawful restrictions" that may have to be imposed on "members of the administration of the State" within the meaning of Article 11 § 2.

According to the Court, the exclusion of the right of collective bargaining and the retroactive annulment of the collective agreement would result in an unwarranted interference in a democratic society, which restriction would not correspond to a "pressing social need" of the state. There had therefore been a violation of Article 11 of the Convention.

With regard to the issue of collective bargaining, **in Wilson, *National Union of Journalists and others v. United Kingdom*, 30668/96, 30671/96 and 30678/96, 7 February 2007**, the Court found that Article 11 had been violated by the imposition by the employer on employees of a choice between signing individual contracts incorporating a waiver of trade union rights or accepting a lower pay increase.

The Court held that in the United Kingdom it was open to the employers to seek to pre-empt any protest on the part of the unions or their members against the imposition of limits on voluntary collective bargaining, by offering those employees who acquiesced in the termination of collective bargaining substantial pay rises, which were not provided to those who refused to sign contracts accepting the end of union representation; in other words, under the national legal system, employers were authorised to treat less favourably employees who were not willing to renounce a trade union freedom. Whilst domestic law did not prohibit employers from offering an inducement to employees who relinquished the right to trade union representation, the Court found that this aspect of domestic law – which moreover had been the subject of criticism by the Committee of the European Social Charter (Committee of Independent Experts, section 13 of the 1993, Conclusions XIII-3, Council of Europe, 1996, p. 108) and the ILO's Committee on Freedom of Association (Case No. 1852, 309th Report of the Freedom of Association Committee, Vol. LXXXI, 1998, Series B, No. 1) – entailed a failure by the state to comply with its "positive obligation" to secure the enjoyment of the rights under Article 11 of the Convention.

This legal position was also confirmed **in the judgment in Case C-271/2008, *European Commission v. Federal Republic of Germany* (paragraphs 37- 39)** insofar as it reiterated the application of unitary European principles of law in relation to the "right to bargain collectively": "37 In that regard, it should be noted, first, that the right to bargain collectively, which the signatories of the TV-EUmw/VKA have exercised in the present case, is recognised both by the provisions of various international instruments which the Member States have cooperated in or signed, such as Article 6 of the European Social Charter, signed at Turin on 18 October 1961 and revised at Strasbourg on 3 May 1996, and by the provisions of instruments drawn up

---

majority of Contracting States. The remaining exceptions can be justified only by particular circumstances.

by the Member States at Community level or in the context of the European Union, such as Article 12 of the Community Charter of the Fundamental Social Rights of Workers adopted at the meeting of the European Council held in Strasbourg on 9 December 1989, and Article 28 of the Charter of Fundamental Rights of the European Union ('the Charter'), an instrument to which Article 6 TEU accords the same legal value as the Treaties. P.38 It is apparent from Article 28 of the Charter, read in conjunction with Article 52(6) thereof, that protection of the fundamental right to bargain collectively must take full account, in particular, of national laws and practices. P.39 Furthermore, by virtue of Article 152 TFEU the European Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems".

Also the opinion of Advocate General P. Cruz Villalón, delivered on 19 May 2011 in Case C-447/09, (paragraphs 41-46), on the specific issue concerning the right to conclude collective contracts asserted that this right comes down to the "concept of autonomy in collective bargaining" within the ambit of the exercise of the right to organise:

"41. The fact that the provision at issue is in a collective agreement and is therefore the product of the social partners having exercised their right of collective bargaining (Article 28 of the Charter), has a certain bearing on the matter, as may also be inferred from the previous case-law. This, when taken with other distinctive features of the present case, suggests that the full implications of these circumstances should be taken into account, in any event to a greater extent than was required by the circumstances surrounding other, earlier, cases decided by the Court. In that regard, it seems appropriate at this point to introduce some initial thoughts on the scope of the right of collective bargaining, while leaving its specific effect on the present case to be addressed at a later stage.

42. The right which is now contained in Article 28 of the Charter comes down to the concept of 'autonomy in collective bargaining'. This autonomy is an essential element in the understanding of the development of European employment law, around which the rules of democratic systems of representation are constructed and the boundaries between the law and trade union freedom are set.[2] Over and above the different aspects of the notion of a collective agreement in the Member States,[3] autonomy in collective bargaining enjoys a special respect in their legal traditions.[4]

43. The right of collective bargaining thus implies a recognition of the central role played by collective agreements in the regulation of employment relationships, which are their natural sphere of operation, ensuring that there is always a reasonable balance between such agreements and the law and, in particular, EU law. A reading of the case-law confirms that the Court has attempted to ensure that this delicate balance is maintained.

44. Thus, the Court has held that 'the Member States may leave the implementation of the social policy objectives pursued by a directive in this area … to management and labour', although not without clarifying that 'that possibility does not … discharge them from the obligation of ensuring that all workers in the Community are afforded the full protection provided for in the directive'."[5]

---

[2] Sciarra, S., *La evolución de la negociación colectiva. Apuntes para un estudio comparado en los países de la Unión europea*, Revista de derecho Social No 38 (2007), p. 196.

[3] In this regard, see Wedderburn, 'Inderogability, Collective Agreements and Community Law', *The Industrial Law Journal*, Oxford University Press, 1992; and Valdés Dal-Ré, 'Negociación colectiva y sistemas de relaciones laborales: modelos teóricos y objetos y métodos de investigación', *Relaciones Laborales* , No. 21, 1 to 15 Nov. 2000, p. 83.

[4] In addition to this, there is that fact that, as Advocate General Jacobs emphasised in point 181 of his Opinion in the *Albany, Brentjen's and Drijvende Bokken* cases, 'it is widely accepted that collective agreements between management and labour prevent costly labour conflicts, reduce transaction costs through a collective and rule-based negotiation process and promote predictability and transparency. A measure of equilibrium between the bargaining power on both sides helps to ensure a balanced outcome for both sides and for society as a whole' (opinion delivered on 28 January 1999, paragraph 181).

[5] Case 143/83 *Commission v Denmark* (1985) ECR 427, paragraph 8, and Case 235/84 *Commission v Italy* (1986) ECR 2291, paragraph 20. To a certain extent, these decisions prioritise giving effect to a directive over promoting collective bargaining (on this point, see Davies, P., 'The European Court of Justice, National Courts, and the Member States', *European Community Labour Law. Principles And Perspectives. Liber Amicorum Lord Wedderburn*, Clarendon Press, Oxford, 1996, p. 121), but they also imply a clear recognition of the status of collective agreements within the Community legal framework.

45. Similarly, the Court has had to consider many situations in which the right of collective bargaining, exercised 'in accordance with … national laws and practices,[6] has been invoked as a limitation on the application of EU law. Thus, in Albany[7] the Court held that the competition rules laid down by Article 101(1) TFEU (formerly Article 81) are not applicable to collective agreements intended to improve working conditions. On the other hand, extensive case-law has held that collective agreements are not excluded from the scope of the provisions relating to the freedoms protected under the Treaty[8] and, more specifically, that the principle of non-discrimination between male and female workers in terms of pay, as set out in the Treaties (Article 119 EC and then Article 141 EC, now Article 157 TFEU) and in secondary legislation, applies to collective agreements because it is mandatory.[9] Article 19 TFEU, unlike Article 157 TFEU, is not a provision which is addressed to Member States (it is a provision attributing competence to the Council), but both Directive 2000/78 and, of course, Article 21 of the Charter do have the 'mandatory nature' required by the case-law.

46. In the light of all the above, it is reasonable to conclude that, although collective agreements do not constitute an area which is exempt from the application of EU law (just as they are not, from a domestic law perspective, an area completely exempted from compliance with the law), autonomy in collective bargaining deserves proper protection at EU level."

Therefore, the right to collective bargaining along with the right to conclude collective agreements fall within the so-called space of "autonomy" that is now recognised by Union law as being a necessary means of realising trade union freedoms.

On the other hand, **the Opinion of Advocate General Mengozzi delivered on 23 May 2007 in Case C- 341/05 *Laval un Partneri Ltd v. Svenska Byggnadsarbetareförbundet and Others*, (paragraphs 69-73)** confirmed the findings of **the Court in the case of *Swedish Engine Drivers' Union v. Sweden* (§ 39) and *Gustafsson v. Sweden* (§ 45)** that the signature of collective agreements may also constitute a means for defending the interests of the members of a trade union and the aforementioned trade union freedoms.

"69. With regard to trade union freedom and the right to resort to collective action, it will first be observed that Article 11 of the ECHR, relating to freedom of assembly and of association – of which trade union freedom is merely one special aspect – states, in paragraph 1, that everyone has the right 'to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests'. Paragraph 2 states that 'no restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others …'.

---

[6] Article 28 of the Charter.

[7] Judgment of 21 September 1999, Case C-67/96 (ECR I-5751). See also judgments of the same date on cases from C-115/97 to C-117/97, Brentjens (ECR I-6025); Case C-219/97, Drijvende Bokken (ECR I-6121); and Case C-222/98 Van der Woude ECR I-7111. See also Case C-271/08 *Commission v Germany* on 5 July 2010 (ECR I-7091, paragraph 45).

[8] Case of 15 January 1998 C-15/96 Schöning-Kougebetopoulou (ECR I-47); Case C-35/97 *Commission v France* of 24 September 1998 (ECR I-5325); Case C-400/02 Merida of 16 September 2004 (ECR I-8471); Case C-438/05 of 11 December 2007, International Transport Workers' Federation and Finnish Seamen's Union, named "Viking Line" (ECR I-10779, paragraph 54); Case C-341/05 Laval un Partneri ECR I-11767, paragraph 98; and *Commission v Germany*, paragraphs 42 to 47. The judgments in *Viking Line*, paragraph 44, and Laval, paragraph 91, expressly state that although the right to take collective action, which is also recognised by Article 28 of the Charter, must be "recognised as a fundamental right which forms an integral part of the general principles of Community law the observance of which the Court ensures, the exercise of that right may none the less be subject to certain restrictions".

[9] Case 43/75 Defrenne of 8 April 1976 (ECR 455, paragraph 39); Case C-33/89 Kowalska of 27 June 1990 (ECR I-2591, paragraph 12); Case C-184/89 Nimz of 7 February 1991 (ECR I-297, paragraph 11); Case C-333/97 Lewen of 21 October 1999 (ECR I-7243, paragraph 26); Case C-284/02 Sass of 18 November 2004 (ECR I-11143, paragraph 25); and Case C-19/02 Hlozek of 9 December 2004 (ECR I-11491, paragraph 43). See also Case 165/82 *Commission v United Kingdom* of 8 November 1983 (ECR 3431, paragraph 11).

70. Article 11(1) of the ECHR protects both the freedom to join a union (the 'positive' aspect of freedom of association) and the right not to join one or to withdraw from one (the 'negative' aspect of that freedom). In that regard, the European Court of Human Rights has held that, although compulsion to join a particular trade union may not always be contrary to the ECHR, a form of such compulsion which, in the circumstances of the case, strikes at the very substance of the freedom of association guaranteed by Article 11 of the ECHR will constitute interference with that freedom. National authorities may therefore be obliged in certain circumstances to intervene in the relationships between private individuals by taking reasonable and appropriate measures to secure the effective enjoyment of the right not to join a union.

71. Although Article 11(1) of the ECHR does not explicitly mention the right to resort to collective action, the European Court of Human Rights has taken the view that the words "for the protection of his interests" contained in it "show that the [ECHR] safeguards freedom to protect the occupational interest of trade union members by trade union action, the conduct and development of which the Contracting States must both permit and make possible".[10]

72. However, it is apparent from the case-law of the European Court of Human Rights that Article 11(1) of the ECHR, by leaving each Member State free to choose the means to be used for that purpose, does not necessarily imply a right to strike, since the interests of union members may be defended by other means and, moreover, the right to strike is not expressly upheld by Article 11 of the ECHR and may be subject under national law to regulation of a kind that limits its exercise in certain instances. Similarly, the European Court of Human Rights has recognised that the conclusion of collective agreements may also constitute a means of defending the interests of the members of a union, whilst at the same time rejecting any right, on which a union might purport to rely vis-à-vis the State, to conclude such agreements. Until now, the only form of collective action which has been expressly upheld by the European Court of Human Rights, as a fully-fledged right, is the right to be 'heard' by the State.

73. That case-law could thus be summarised as meaning that Article 11(1) of the ECHR requires the Contracting Parties to enable trade unions to strive to defend their members' interests, without thereby imposing on them the means to be used to that end".

That judgment clarified the power to use the signature of an agreement as a means for defending the interests of the members of the trade union, although refusal to sign could not constitute grounds for any ill-concealed sanction consisting in the exclusion of the dissenting trade union from trade union relations, as has occurred in this case.

Summary: The Court has held that the employees of the public administration cannot be excluded from the scope of Article 11 and that, at most, the national authorities may impose "lawful restrictions", subject to the limits laid down by and in accordance with Article 11 § 2.

In particular, the Court has asserted that Article 11 § 1 presents trade union freedom as a special form or aspect of "freedom of association" (*National Union of Belgian Police v. Belgium*, 27 October 1975, § 38, series A No. 19, and *Swedish Engine Drivers' Union v. Sweden*, § 37, series A No. 20, § 39). According to the wording of Article 11, the state is permitted to interfere with the right protected only if it is "prescribed by law", pursues one or more legitimate aims and is "necessary in a democratic society" in order to achieve them.

The Court therefore held that the exceptions falling under Article 11 must be interpreted narrowly and that only duly justified "pressing reasons" could justify restrictions on freedom of association and trade union freedoms. Accordingly, pursuant to Article 11 § 2, states have only a limited

[10] See Eur. Court HR *National Union of Belgian Police v. Belgium*, judgment of 27 October 1975, Series A No. 19, § 39; *Swedish Engine Drivers' Union v. Sweden*, judgment of 6 February 1976, Series A No. 20, § 4; *Schmidt and Dahlström v. Sweden*, § 36; *Gustafsson v. Sweden*, § 45; and *Wilson, National Union of Journalists and Others v. the United Kingdom*, judgment of 2 July 2002, Reports of Judgments and Decisions 2002-V, § 42.

margin of appreciation, which is always subject to strict supervision by the law and the Constitution (*Yazar and Others v. Turkey*, 22723/93 (cited), 22724/93 and 22725/93, § 51, 2002-II).

As far as the right to collective bargaining is concerned, **the Court has asserted that the collective agreement is an essential means for promoting the interests of the trade union and that the right of workers to conclude collective agreements is recognised on international level.**

The right of a trade union to enshrine the rights of workers under contract has been asserted by the Court, which has declared that, whilst collective bargaining was not indispensable for the enjoyment of freedom of association, it could be one of the ways of protecting the interests of trade union members. (cf.: Wilson, National Union of Journalists and others, § 44)

In conclusion, **the choice of signing collective agreements also falls within the broader reach of the right to bargain and to contract, which is protected under Article 28 of the Charter and may be classified under the concept of "autonomy in collective bargaining", which falls under the scope of protection of "freedom of association" available also to trade unions. This "autonomy" is an essential element in the understanding of the development of European trade union law, around which the rules of democratic systems of representation are constructed and the boundaries to trade union freedom are set, which only national law and European Union law can limit.**

Consequently, the exclusion from trade union relations, participation and national and local contractual bargaining of those trade unions which have not signed the collective agreement, as provided for under Articles 3, 4, 5, 6, 7 and 8 of the NCLA of 12 February 2018 constitutes **a violation of Articles 6, 21, 22 and Letters E and G of the European Social Charter, in addition to the violation referred to of all other sources of unitary European law referred to.**

THE PROTECTION OF TRADE UNION FREEDOMS WITHIN THE CASE LAW OF THE ITALIAN CONSTITUTIONAL COURT IN JUDGMENT 231/2013

The protection of trade union freedoms has also been confirmed in national case-law, in particular with Constitutional Court judgment No. 231 of 3 July 2013, which, although issued to regulate the democratic nature of the trade union system in private employment, establishes a principle of constitutional standing of the labour representation system that is binding for all stakeholders and all sectors, including the public sector.

The Italian Constitutional Court ruled in relation to this matter in **judgment No. 231 of 3 July 2013,** an "*additive*" ruling (i.e. a ruling with substantive effect) declaring unconstitutional Article 19(b) of Law No. 300 of 20 May 1970 (Provisions to protect the freedom and dignity of workers, freedoms relating to trade unions and trade union activity in the workplace and provisions on placement) insofar as it did not provide that company trade union representation may be comprised also of the trade unions which, whilst not having signed the collective agreements applied in the production facility, have nonetheless participated in negotiations relating to those agreements as representatives of the company's workers.

That decision is of fundamental importance under domestic law as it adds "*positive*" interpretative criteria, thereby avoiding the impasse of a simple "*negative*" ruling that the

provision was unconstitutional in order to ensure that the system did not lack the legal instruments necessary in order to regulate the specific issue of trade union representation.

As far as the legislative system of protection for trade union representation and prerogatives in public sector employment is concerned, reference is made to Articles 40 et seq. of Legislative Decree No. 165/2001.

Article 40, entitled "National and supplementary collective agreements" governs collective bargaining and trade union relations within the limits imposed by law.

Article 42, entitled, "Trade union rights and prerogatives in the workplace", provides that trade union freedoms and trade union activity be protected by Law No. 300/1970, and in paragraph 2 that the trade union organisations allowed to participate in negotiations relating to the signature of collective agreements may establish company trade union representation bodies pursuant to Article 19 of Law No. 300/70.

Paragraph 1 of that Article, which refers expressly to Article 2(1) of Law No. 421/1992, reiterates the position that the criteria for determining the representativeness of trade union rights and of contracting must be "compatible with constitutional law."

Article 43, entitled "Trade union representativeness for the purposes of collective bargaining", provides that the degree of representativeness must not be lower than 5% referring, in terms of the parties to and procedures for supplementary collective bargaining, to national collective agreements referred to in Article 40(3-bis) et seq. of Legislative Decree No. 165/2001, with reference also to Article 42(7) on the regulation of unitary staff representation bodies for public sector employees.

Accordingly, in regulating the matters at issue here, Legislative Decree No. 165/2001 referred to principles of constitutional law and to Law No. 300/1970 as far as the protection of trade union freedoms and the regulation of trade union relations is concerned. Conversely, Articles 3 et seq. of the agreement of 12 February 2018 unlawfully stipulated that, for the purposes of participation and supplementary and local bargaining, trade union relations should be conducted exclusively with the trade unions that had signed the agreement.

At this stage, in the light of the provisions cited above along with the interpretative criteria introduced by judgment No. 231 of the Constitutional Court of 3 July 2013, it must be concluded that Articles 5, 6, 21, 22, E and G of the European Social Charter have been violated for the following reasons.

As noted above, the judgment introduced principles and criteria that were "new" compared with the previous Italian legislative and case law framework concerning, albeit in the private sector, the issue of the protection of the rights and freedoms of any representative trade union that had not signed a collective agreement applicable to a production unit, declaring "that Article 19(1)(b) of Law No. 300 of 20 May 1970 (Provisions to protect the freedom and dignity of workers, freedoms relating to trade unions and trade union activity in the workplace and provisions on placement) is unconstitutional insofar as it does not provide that company trade union representation may be comprised also of the trade unions which, whilst not having signed the collective agreements applied in the production facility, have nonetheless participated in negotiations relating to those agreements as representatives of the company's workers".

Following a line of reasoning embracing both legal technique and legal realism, the judgment concluded by asserting the constitutional principles and, along with them, supranational

principles on the protection of trade union freedoms in the light of the changed negotiation framework applicable to trade union relations, also at Community level.

Over and above the specific nature of the case in question, its underlying rationale is of particular importance. **In the Court's view, the provisions which exclude from the negotiations those trade unions which, although having the representation required by law, did not endorse the contractual text proposed by the other party, are in violation of Articles 2, 3, and 39 of the Constitution.**

The Constitutional Court asserted the general principles by scrutinising the "system under the Statute" (i.e. the "Statute of Workers") intended by the legislature, providing an account of the history and development of the case law of the Constitutional Court itself, starting from judgment No. 54 of 1974 and above all the ruling adopted following the referendum on Article 19 on 11 June 1995.

On the basis of that analysis of the case law, the Constitutional Court held, recalling judgment No. 244/1996, that '6.4…..the representativeness of the trade union does not result from recognition by the employer stated by way of an agreement", but rather the "capacity of the trade union to impose its position on the employer as a contractual counterparty", clarifying that "however, the mere formal adherence to an agreement negotiated by other trade unions is not sufficient; on the contrary, there needs to be active participation in the process of drawing up the agreement", and that "it is not sufficient to conclude any agreement whatsoever, but rather a normative agreement laying down comprehensive regulation of employment relations, at least for an important institution or part of such regulations, including on a supplementary basis, on company level for a national or provincial agreement already applied within the same production facility".

It went on to add that "6.6. The internal contradiction created by the denial of rights within the company to trade unions that have not signed any collective agreement, but that have secured a genuine consensus amongst the workers, which enables and at the same time renders inevitable their participation in negotiations, had already moreover been noted; the discussion of this issue had also resulted in calls for the provision in question to be interpreted so as to adapt it to the requirements of constitutional law according to which, moving beyond its literal wording (which refers expressly to the 'signatory' trade unions), stipulated as a necessary and sufficient condition in order to comply with the prerequisite under Article 19 the requirement that it have effectively participated in negotiations, irrespective of whether or not it signed the agreement. It has been argued that this interpretation would be consistent with the constitutional case law referred to, which has held that if the collective agreement is merely signed without having effectively participated in negotiations, this will be irrelevant for the purposes of Article 19(1)(b) of the Statute of Workers".

The trade union rights recognised under Title III of the Statute of Workers are not therefore vested only in the trade union that is a "signatory" to a collective agreement applied within the production unit – according to Article 19 of Law No. 300 of 20 May 1970 – but rather in any trade union that, having already been found with certainty to be representative, has in any case been involved in the contractual stage, participating in negotiations, although without signing any agreement due to its disagreement with the employer.

Therefore, according to the Court, Article 19 as currently applicable violates the following provisions of the Constitution: Article 2 (inviolability of human rights "both as an individual and in the social groups where human personality is expressed.." and non-derogation of the duties "of political, economic and social solidarity"); Article 3 (formal and substantive equality and "effective participation of all workers in the political, economic and social organisation of the country"); Article 39 (trade union freedom, trade union democracy, collective bargaining *erga omnes*).

This is because "Firstly, it is a violation of Article 3 of the Constitution resulting from the inherent unreasonableness of that criterion and the disparity in treatment that is likely to arise between trade unions. The latter, in the exercise of their function of self-protection in the collective interest – which, as such, is based on the guarantee referred to in Article 2 of the Constitution – would be treated preferentially or discriminated against, on the basis not of their relationship with the workers, which is linked to the objective (and value-related) fact of their representativeness and, therefore, justifies the same level of participation in the negotiations, but of the relationship with the enterprise, as a result of the influential importance ascribed to a specified quota for having given its consent for an agreement to be drawn up.

And while, as has just been demonstrated, the model set out in Article 19, which stipulates that an agreement must be signed in order to attain trade union rights, makes any benefit conditional on being in agreement with the enterprise, or at least requires the latter's consent to trade union participation, there is also a clear violation of Article 39, paragraphs 1 and 4, of the Constitution due to the conflict that arises with the values of pluralism and freedom of trade union action in the field of negotiations. In the event of a potential and non-justified refusal to allow them to negotiate, the trade union, on account of its acquired representativeness, is at the outset protected by Article 28 of the Statute. However, it subsequently comes up against the legal effect of being excluded from trade union rights which, pursuant to the impugned provision, follows automatically from the decision not to sign the agreement.

In an additional ruling, the Constitutional Court held not only that to comply fully with the rights set out in Title III of the Statute, the establishment of corporate trade union representation no longer required signature of the contract but merely "participation in the negotiations", but it also laid down the guiding criteria for the constitutionality of any legal or contractual acts aiming to regulate the issue.

According to the Constitutional Court, the protection available for trade union relations may also apply to unions that, whilst having in any case been recognised as representative, have participated actively in negotiations but have not signed any contract.

Essentially, moving beyond the literal wording of the provision (Article 19 of the Statute), the Court construed the notion "signatory trade union" as also embracing that **of "negotiating trade union" (and hence the judgment is classified as "additive"). This is because it is "reasonable" to conclude that the prerequisite of the mandatory signature of the agreement, failing which any rights to engage in trade union relations are forfeit, constitutes a limit on trade union freedom, which is clearly "unreasonable" and hence unconstitutional, as declared by the Constitutional Court.**

The fundamental right of trade union freedom – enshrined in Article 14 of the Statute, reiterating in specific form the principle laid down by Article 39(1) of the Constitution – cannot evidently be conditional upon signature as this illegitimate prerequisite for representativeness would translate, according to the Constitutional Court, into an **"7….improper manner of punishing dissent, which undeniably conditions and thereby impinges upon the freedom of the trade union to choose the forms of protection deemed to be most appropriate for its members; secondly, it runs the risk that an equilibrium may be reached through the conclusion of an unlawful agreement to exclude a trade union".**

It is evident that the scope of these principles must also extend to trade union organisations that act as a counterparty to the public administrations at different levels of bargaining both because Article 42 itself of Legislative Decree No. 165/2001 asserted the application of Law No. 300/1970 and **due to the not insignificant fact that Legislative Decree No. 165, which regulates trade union relations in public sector employment, does not make the recognition of trade union rights conditional upon the signature of an agreement.**

This unlawfulness has been confirmed exclusively by Articles 3, 4, 5, 6, 7 and 8 of the NCLA of 12 August 2018 under which (also) in accordance with the principle of the "hierarchy of sources" laid down by Article 1 of the Provisions on the Law in General (*preleggi*, enacted at the same time as the Civil Code) and Article 117 of the Constitution, the provisions laid down by Legislative Decree No.

165/2001 and the principles asserted by the Constitutional Court in judgment No. 231/2013 **should apply and ultimately the principles of the European Social Charter as explained in greater detail below should apply throughout the member states.**

In conclusion, it must be reiterated that Nursing Up, in its capacity as one the most representative trade unions at national level, which had previously signed the national collective agreement of 10 April 2008, and duly participated in negotiations for the current contract concerning the renewal for the years 2016-2018, in the light of the above-mentioned "*adaptive interpretation*", must be considered to be vested for all purposes with the trade union rights provided for under Articles 3 et seq. of the NCLA of 21 May 2018.

Accordingly, the exclusion from the system of trade union relations provided for under Articles 3 et seq. of the NCLA amounts to an extremely serious violation:

1- of **ILO Conventions No. 87 and 98 of 1949**, with particular reference to the violation of trade union freedoms and the right to collective bargaining;

2- of **Directive 91/533/EEC:** on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship transposed in national law by Legislative Decree No. 152 of 26 May 1997;

3- of **Directives 94/45/EEC and 2009/38/EC**: on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, transposed by Legislative Decree No. 113 of 22 June 2012;

4- of **Directive 2002/14/EC**: establishing a general framework of basic principles and guarantees for informing and consulting employees, transposed by Legislative Decree No. 25/2007;

5- of **Directive 2000/78/EC** with particular reference to Article 13, entitled "Social dialogue", protection of the principle of autonomy to conclude at the appropriate level agreements laying down anti-discrimination rules including for the public sector, transposed by Legislative Decree No. 216/2003;

6- of **Directive 1999/70/EC** on fixed term work, with clause 4 of the framework agreement entitled "Principle of non-discrimination", and specifically with regard to the protection of the requirement to consult the social partners; and

7- **of the European Social Charter**, as ratified by Law No. 30/1999, with specific reference to: **Article 5**, entitled "The right to organise", because through its legislation and its jurisdiction the Italian State has infringed the trade union rights and freedoms of the complainants, who did not sign the NCLA of 21 May 2018;

Article 6, entitled "The right to bargain collectively", **commitment No. 2**, because through its legislation and its jurisdiction the Italian State has not recognised the ability of the complainant organisations to exercise the right of collective bargaining provided for under Articles 3, 4, 5, 6, 7, 8, 12 et seq. of the NCLA of 21 May 2018 in order to regulate during subsequent national and local bargaining the terms of employment of its own members due to the sole fact that the complainants have not signed the renewal of the above-mentioned collective labour agreement;

Article 21, entitled "The right to information and consultation", commitments a) and b), because as an employer and through its legislation and its jurisdiction the Italian State has, for the very same reason as the failure to sign the employment agreement, provided for the exclusion of the complainants from trade union relations involving participation and national and local bargaining, as provided for under Articles 3, 4, 5, 6, 7, 8, 12 et seq. of the NCLA of 12 February 2018;

Article 22, entitled "The right to take part in the determination and improvement of the working conditions and working environment", **commitments a), b) and c)**, because as an employer and through collective bargaining the Italian State has, for the very same reason as the failure to sign the

employment agreement, denied the complainants the right to take part in the determination and improvement of the working conditions of its own members and excluded them from the distribution of ancillary financial resources, from the regulation of rules concerning the working environment, from the organisation of work, from regulations concerning health and safety at work, from regulations concerning the protection of health, from regulations concerning the organisation of service and more specifically from all matters provided for under Article 8(a) to (n) of the NCLA of 21 May 2018, to which express reference is made.

Each of the violations of the European Social Charter mentioned above has been committed in conjunction with a violation of letter E ("Non-discrimination") and letter G ("Restrictions") of the European Social Charter and a violation of the Italian State's commitment to uphold the principle of "non-discrimination" and of the obligation to refrain from imposing "restrictions" on the principles of trade union freedoms and relations, and specifically on the right to bargain at national, regional and company levels and with the Joint Committee for professional classification, in addition to the right of members of Nursing Up to participation and to be informed about working conditions, which the Statute compels it to protect.

By this collective complaint, the European Committee of Social Rights is therefore asked to intervene in order that, acting within the ambit of its competence, it make a finding concerning the violations of the European Social Charter alleged against the Italian State and recommend that they be rectified. Finally, considering the seriousness of the violation of the European Social Charter and the resulting encroachment on the fundamental rights of tens of thousands of members of Nursing Up, the Committee is asked to adopt as an immediate measure the urgent procedure for establishing the admissibility of this complaint pursuant to Article 36 of the Rules of the European Committee of Social Rights.

It is impossible to disregard the imminent, serious and irreparable detrimental effect that – pending a decision on the merits – Nursing Up will suffer due to being unable to participate in, and therefore contribute to the negotiations (a circumstance that has already occurred), which will also occur when supplementary agreements are drawn up in its absence between the 300 or so Italian health authorities and hospitals. These are enterprises where only trade unions that have signed the health-sector NCLA are included in collective bargaining. These agreements shall, however, be in force even in respect of workers who are members of the complainant trade union, which has not been able to express its own views in the interests of said members, with a clear and irreparable detrimental effect, including on the union's own credibility.

However, participation – albeit as a matter of precaution – in the negotiation of supplementary company contracts would not have a detrimental effect on the Public Party, while the harm to the trade union organisation (affecting its own members) would be serious, immediate and irreparable.

Pending the decision on the merits, a continuation of the situation would lead to the complainant union being completely deprived of its nature and function, interfering with the rights of representation for all workers who have joined the union and of those who voted for Nursing Up, giving the latter the power to represent their interests.

It is clear that if the complainant trade union were not allowed to participate in supplementary bargaining and, consequently, approximately 300 supplementary contracts were signed in its absence, its right to participate in the negotiation and drafting of the local agreements would be permanently and irreparably disregarded, forcing it to sign the NCLA solely in order to prevent its function of representation from being jeopardised, with an unacceptable restriction on the right to freedom of association, to express the will of its members and, therefore, the right to self-determination guaranteed by the Constitution and the European Social Charter.

There is a certain urgency to this case, given that several health authorities and/or hospitals have already excluded the current complainant from negotiations, with an inevitable "domino

effect" that has overwhelmed and continues to overwhelm Nursing Up, preventing it from performing its function of representing its own members, who, by voting and registering with it, decided to trust this trade union with protecting their interests (Documents 15-24).

To order the Italian State to pay the costs and legal fees associated with these proceedings.

Use of the Italian language.

The complainant party requests that it be able to use the Italian language in any submission relating to these proceedings.

The following documentation, referred to in the substantive submission, is appended to this complaint:

1- Photographic identification of Prof. Antonio De Palma and report of election as the current legal representative of Nursing Up;
2- Nursing Up's charter;
3- Signature and ratification of the European Social Charter by the Italian State;
4- Signature and ratification of the Additional Protocol Providing for a System of Collective Complaints by the Italian State;
5- ARAN memorandum concerning the representativeness of Nursing Up with reference to the 2016-2018 three-year period;
6- Excerpt of the NCLA of 10 April 2008;
7- ARAN memorandum concerning convocation to engage in negotiations relating to the conclusion of the collective agreement of 21 May 2018;
8- Declaration of national strike by public health-sector workers on 23 February 2018;
9- Declaration of national strike by public health-sector workers on 12 and 13 April 2018;
10- Collective agreement of 21 May 2018, excerpt of relevant parts, Articles 3-9 and Article 12;
11- Framework Agreement of 4 December 2017, Article 26, excerpt of relevant parts;
12- Law No. 300/70, excerpt of relevant parts, Articles 4 and 9;
13- Constitutional Court judgment No. 231/2013;
14- Legislative Decree No. 165/2001, excerpt of relevant parts, Articles 40-43 and Article 49;
12- Note No. 27901 of 23 May 2018 by Azienda Ospedaliera-Universitaria Pisana;
13- Note No. 29587 of 24 May 2018 by Asl Roma 6;
14- Note No. 15503 of 30 May 2018 by Azienda Ospedaliera-Universitaria Maggiore della Carità di Novara;
15- Note No. 14678 of 31 May 2018 by Grande Ospedale Metropolitano ''Bianchi Melacrino Morelli" di Reggio Calabria;
16- Note No. 003445l of 5 June 2018 by ULSS4 Veneto Orientale;
17- Note No. 144/2018 of 5 June 2018 by Ospedale Metropolitano Niguarda;
18- Note No. 45970 of 6 June 2018 by Azienda sanitaria Regionale Molise;
19- Note No. 105977 of 7 June 2018 by ULSS2 Marca Trevigiana;

20- Note No. 144/2018 of 05 June 2018 by Ospedale Metropolitano Niguarda;
21- Note No. 45970 of 6 June 2018 by Azienda sanitaria Regionale Molise;
22- Note No. 105977 of 7 June 2018 by ULSS2 Marca Trevigiana;
23- Note No. 144/2018 of 11 June 2018 by Ospedale Metropolitano Niguarda;
24- Note No. 35403 of 12 June 2018 by ULSS1.

Rome, 4 July 2018

Prof. Antonio De Palma, as legal representative of Nursing Up,

Counsel Anna Mastrella,