European Social Charter | Charte sociale européenne

COUNCIL OF EUROPE
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EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

20 September 2019

Case Document No. 2

***Unione sindacale di base* (USB) v. Italy**
Complaint No. 170/2018

SUBMISSIONS BY THE GOVERNMENT ON THE MERITS

Registered at the Secretariat on 5 September 2019

REPUBBLICA ITALIANA

Ufficio dell'Agente del Governo italiano
davanti al Comitato Europeo dei Diritti Sociali
*
Avvocatura Generale dello Stato

European Committee of Social Rights (ECSR)

Collective complaint n. 170/2018
Unione Sindacale di Base (USB) vs Italy

OBSERVATIONS
OF THE
ITALIAN GOVERNMENT

Roma, 5 September 2019 Ct. 32893/2019
(Avv.ti Garofoli and Fiandaca)

By the Decision on admissibility dated 3 July 2019, having regard to the complaint registered on 9 August 2018 number 170/2018, the European Committee of Social Rights lodged by Unione sindacale di base (USB) against Italy, unanimously declared the complaint admissible as far as articles 1§1, 1§2, 4§1, 4§4 and 24 of the European Social Charter are concerned.

The Committee invited the Government to make written submissions on the merits of the complaint by 6 September 2019.

In compliance with the Committee request, the Italian Government submits the present observations on the merits of the complaint.

- I -

Article concerned

1. The complainant seeks a declaration of infringement of articles 1§1, 1§2, 4§1, 4§4 and 24 in conjunction with articles 1§1, 1§2, 4§1, 4§4, 24 and 12§1 of the European Social Charter, with reference to the abuse of contracts for '*socially useful workers*' by municipalities and public bodies in Sicily and Campania alleging that this contributes to making the situation of these workers more precarious in violation of the aforementioned provisions of the Charter.

- II -

The facts of the case

2. The Unione Sindacale di base lodged a collective complaint pursuant to art. 1, letter c), of the Additional Regulation to the European Social Charter, complaining about the violation, by the Italian State, of art. 1, 4, 5, 6, 12, 24, together with article E, of the European Social Charter, as well as of art. 45 of the Treaty on the functioning of the European Union.

3. In support of the alleged violation, the applicant association first reconstructed the regulatory evolution in terms of socially useful workers,

and after remarking preliminarly that the vast majority of socially useful workers were stabilized, also thanks to the allocation of funds operated with the latest budget laws, showed that there are still around 20,000 socially useful workers (in the 2000s there were over 80,000).

4. With particular regard to the Sicily Region, over 16,000 workers were stabilized, with the result that according to the applicant company at present, 5,410 socially useful workers remain.

5. With reference to the Campania Region, the current number of socially useful workers is equal to 5,518, but they are in the process of stabilization due to an agreement signed between the Campania Region and the Ministry of Labor and Social Policies.

6. The applicant then reported, by way of example, the professional history of some socially useful workers who have worked in some Sicilian and Campania municipalities for some years without having been stabilized yet.

7. Hence the alleged violation, in the cases reported and in other similar cases, of the cited articles of the European Social Charter and of the art. 45 of the Treaty on the functioning of the European Union.

8. The European Committee of Social Rights, with a decision issued on 3 July 2019, considered the admissibility of the collective complaint, limited to the violations of articles 1.1, 1.2, 4.1, 4.4, 24 and 12.1., and gave the Italian Government deadline for the presentation of the observations on the merits to 6 September 2019.

9. With this act the Government, after having reconstructed the relevant legislation, intends to demonstrate the groundlessness of the merits of the adverse defenses.

- III –

Relevant national rules

10. Since fall 1973, a very serious economic crisis caused by the overproduction and increase in oil prices has hit Italy.

11. This event has resulted in the loss of work for many workers with the consequent need to resort to some *"social safety nets"* to support their income and place them to other occupations.

12. In this context, the institution of socially useful jobs was coined, with different physiognomy, but in the common perspective of contributing to the needs of unemployed people in a solidarity-based perspective of assistance, and allowing them to carry out an activity for community benefit.

13. The first type of socially useful work was regulated by art. 1 bis of the law decree 28 May 1981, n. 244, entitled *"Additional extraordinary wage integration in favour of workers in southern areas"*, which provided for temporary work in public utility activities of workers holding a wage supplement.

14. The aforementioned socially useful workers had a sum equal to the difference between the salary they would have enjoyed in the employment relationship and what they received from INPS as a wage supplement.

15. Subsequently, the legislator took a step forward in protecting this category with the enactment of the law of 19 July 1994, n. 451, art. 14 of conversion of the law decree n. 299 of 1994; this law identified as recipients of the possibility of carrying out socially useful work at the public administrations the holders of extraordinary salary integration, of the mobility allowance, or the long-term unemployed (as per Law No. 223 of 1991, Article 25, paragraph 5).

16. For the former the remuneration for the work performed was equal to the social security benefit in enjoyment (redundancy payment or mobility allowance), except for the right to an additional compensation for further work performed. For the unemployed who did not benefit from any social security benefit, the sum of 7,500 lire per hour was established (paragraph 4 of the aforementioned article 14). **The use of workers did not determine the establishment of an employment relationship**, did not imply the loss

of the extraordinary salary integration **and did not entail the cancellation from the employment lists or from the mobility lists**.

17. Art.1, paragraph 3, of the decree law n. 510 of 1996, converted into law n. 608 of 1996, replaced the art. 14, paragraph 4 of law no. 451 of 1994, in the following terms: *«The subjects referred to in paragraph 1 who do not benefit from any social security treatment may be engaged in the project for no more than twelve months and for them a subsidy not exceeding 800,000 monthly can be requested, paid by the fund referred to in paragraph 7.* ***The subsidy is paid by the National Social Security Institute*** *(INPS) and for this purpose the provisions on mobility and on mobility allowance apply. The workers themselves can be paid a supplementary amount of the aforesaid treatments by the proponents or users, for the days of actual performance of the services»*.

18. The *"socially useful jobs"* were then finally defined by article 1 of the legislative decree 468/1997, like *"the activities that have as object the realization of works and the supply of services of collective utility, through the use of particular categories of subjects"*.

19. The particular categories of subjects to which the law refers are:

- workers seeking their first job or unemployed registered for more than 2 years in the employment lists;
- workers registered on the mobility lists not receiving the mobility allowance or other special unemployment treatment;
- workers registered on the mobility lists and recipients of the mobility allowance or other special unemployment benefits;
- workers who enjoy the extraordinary treatment of wage integration suspended at zero hours;
- groups of workers specifically identified in agreements for the management of redundancies in the context of company, sector and area crises;

• categories of workers identified, also for specific territorial areas, by resolution of the Regional Employment Commission, also pursuant to article 25, paragraph 5, letter c), of the law of 23 July 1991, n. 223;

• detainees for whom admission to external work is envisaged as a modality of the treatment program.

20. Article 7 of Legislative Decree no. 468/97 then establishes that Italian public administrations may resort to the persons referred to in Article 4, paragraph 1, letters c) and d), of the same legislative decree, for the purpose of exercising socially useful activities.

21. The various projects related to socially useful work are distinguished first of all by the source of funding - and corresponding legislation - which is useful to identify the public, local or state administration, which is competent for them.

22. **Also article 8 of legislative decree no. 468/97 establishes that the use of the worker for socially useful activities does not determine the establishment of an employment relationship** with the public administrations that are using him and does not imply the suspension or cancellation of the subjects affected by the lists of employment or mobility. Further regulatory interventions aimed to facilitate the stabilization of socially useful workers.

23. In fact, in order to overcome this type of activity, especially in the public sector, a multitude of interventions have been carried out and financed with the state resources of the Social Fund for Employment and Training (Fondo Sociale per l'Occupazione e Formazione FSOF) which, above all by encouraging permanent employment of the subjects used in a socially useful activities, have led to a significant reduction in the beneficiaries of FSOF from over 39,000 units on 1 January 2001 to the current 6,781.

24. The following rules follow this trend:

a. Article 78, paragraph 2 letter a) and b) and paragraph 3 of the law of 23 December 2000, no. 388, which allows year after year to assign all the

regions in whose territory socially useful workers are used - including Campania and Sicily until 31 December 2017, by signing agreements with the Ministry of Labor - the necessary resources to ensure the payment of allowances and the implementation, by the Regions, of active labor market policies in their favour and, thus, allowing the annual extension of the related projects at user agencies;

b. Article 78, paragraph 2, letter d) of the law of 23 December 2000, no. 388, which allowed to allocate additional resources to finance incentives for the stabilization of socially useful workers to some Regions with a significant reduction in the number of subjects employed for this purpose from over 1,300 to just under 300 current units and which aims at zeroing by 2020;

c. Article 1, paragraph 1156, letter f) of the law of 27 December 2006, no. 296, which provided an incentive for the permanent employment of socially useful workers in the Municipalities with less than 5,000 inhabitants, disbursed annually since 2008 at the expense of the FSOF and allowed the stabilization of a total of 2,132 of socially useful workers, of whom 410 in Campania and 52 in Sicily;

d. Article 1, paragraph 1156, letter f-bis), of the law of 27 December 2006, no. 296, which has allocated 10 million euros, una tantum, for the stabilization of socially useful workers in Campania;

e. Article 1, paragraph 1156, letter g-bis), of the law of 27 December 2006, n. 296 which, starting from 2008, has allocated a total annual budget of 50 million euro for the stabilization of socially useful workers in the Regions included in the so called Convergence of European structural funds objective including Campania and Sicily, until 31 December 2017. From that date the socially useful workers of this latter Region - in accordance with the Sicilian regional law 9 May 2017, n. 8, art. 11 – were included in the basin financed exclusively by the regional budget. On the basis of law n. 296, by decree of the General Director of Social Security Cushions and Training of the

Ministry of Labor and Social Policies n. 234 of 7 August 2018, resources were distributed among the eligible Regions (Basilicata, Calabria, Campania and Puglia) and then 141,838,090.40 million euros allocated to the Campania Region to incentivize the permanent employment of the LLSUUs employed (through special agreement with the Ministry of Labor and Social Policies 20 September 2018) over the next four years, in that Region.

f. Article 1, paragraph 207, third sentence, of the law of 27 December 2013, n. 147, art. 13, paragraph 1-bis, of the law decree 25 November 2015, n. 185, converted, with modifications, by law January 22, 2016, n. 9, art. 1, paragraph 163, of the law of 11 December 2016, n. 232, as well as art. 1, paragraph 224 of the law of 27 December 2017 n. 205, art. 1, paragraph 446 et seq. of the law of 30 December 2018, n. 145, which, respectively, for the years 2015, 2016, 2017, 2018 and 2019, allowed for the temporary employment of approximately 2,300 socially useful workers at public bodies of the Calabria Region as part of a special path aimed at their own stable employment.

25. Furthermore, other regulations have allowed the stabilization of socially useful workers (so called self-financed) to be financed with state resources from the Social Fund for Employment and Training, almost exclusively in Campania and Sicily. They include, by way of an example:

a. Article 1, paragraph 1156, lett. e) of the law of 27 December 2006, n. 296 which, during 2007, allocated one million euros, and of art. 2, paragraph 552 of the law of 24 December 2007, n. 244 that in relation to each year 2008, 2009 and 2010 allocated the same amount, both the rules for the stabilization of socially useful self-financed workers in the Municipalities with a population less than 50,000 inhabitants. A total of 146 workers benefited from this intervention, of whom 13 in Campania and 125 in Sicily;

b. Article 2, paragraphs 550 and 551 of the law of 24 December 2007, n. 244 and of art. 41, paragraph 16-terdecies decree law 30 December 2008, n. 207 converted with amendments by the law of 27 February 2009, n. 14, which

provided for and made structural, starting from 2008, the state co-financing paid by the Social Fund for Employment and Training, of a stabilization program for over 2,500 self-financed LLSUUs, in Sicily, at the Municipality of Palermo.

26. In view of the stabilization of the generality of socially useful and of public utility workers, furthermore, the following provisions are worth noting:

a. Article 4, paragraph 8, of the law decree 31 August 2013, n. 101, converted with law October 30, 2013, n. 125 which, in order to favor the hiring of socially useful and public utility workers for an indefinite period, provided for the creation of a regional list of these workers to which the territorial bodies that have empty spaces can draw on for indefinite time hiring in qualifications for whose access the qualification of compulsory education is sufficient;

b. Article 1, paragraphs 446-449 of the law of 30 December 2018, n. 145 (2019 budget law), which provided for the possibility for public administrations using socially useful and public utility workers to proceed, under certain conditions, to the permanent employment of the aforementioned workers in the three-year period 2019-2021 within the limits of organic endowment and staff requirement plan and provided for the execution of selective procedures "centralized" for this purpose.

27. Furthermore, additional forms of protection are guaranteed, and in particular:

1) the users must activate appropriate insurance coverage against accidents and occupational diseases related to the performance of the work, as well as for civil liability towards third parties (art. 26, paragraph 8, of Legislative Decree 14 September 2015, no. 150) ;

2) the right to an "adequate rest" is envisaged within the terms of the duration of the commitment (art. 26, paragraph 9, of Legislative Decree 14 September 2015, No. 150);

3) the right to payment of the allowance is guaranteed in the event of documented illness (art. 26, paragraph 10, of Legislative Decree 14 September 2015, no. 150);

4) absences are provided for personal reasons, with suspension of the allowance (art. 26, paragraph 10, of Legislative Decree 14 September 2015, No. 150);

5) the possibility of redemption for retirement purposes of periods of use in socially useful works is allowed (art. 26, paragraph 11, of Legislative Decree 14 September 2015, no. 150).

28. The so-called internal stability pact then imposed precise limits on the recruitment of personnel - including LSU - in local authorities (see article 1, paragraph 557 and subsequent and paragraph 562 of law 27 December 2006, n. 296).

29. **To sum up, an institution that is born with a welfare function** over time, thanks to a workfare policy, becomes a vehicle towards the progressive stabilization of the personnel employed for this purpose, operating as a driving force in the perspective of full employment (as on the other hand supported in the adverse claim, which acknowledges a drastic reduction in the number of socially useful workers in the perspective of stabilization).

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30. In summary, thanks to a workfare policy, an institute that is born with a welfare function, over time, becomes a vehicle towards the progressive stabilization of the personnel employed for this purpose, operating as a driving force in the perspective of full employment (as on the other hand supported in the adverse claim, which acknowledges a drastic reduction in the number of socially useful workers in the perspective of stabilization).

- IV –

The absence of an employment relationship

31. The adverse claim is based on a **wrong assumption**: id est, **that there is a subordinate employment relationship**, carried out through the precarization of socially useful workers. Hence the alleged violation of multiple provisions of Part II of the Charter, which read together with Part I refers most of the rights enshrined therein to "workers"; according to the applicant union there is a European concept of "worker", within which the "socially useful" worker falls.

32. It is therefore clear that it is necessary to move from the contestation of this assumption and to clarify the legal nature and the cause of the socially useful employment relationship. The latter must be equated with the model of North American origin defined as workfare, based on the idea that the social protection of the unemployed constitutes a right conditional on the provision of "off-market" work in socially useful activities, as well as a duty to take action personally to get out of assistance.

33. The internal jurisprudence, also of the United Sections of the Supreme Court[1] places the institute downstream of the so-called social safety nets (making redundant workers out of work; layoffs; unemployment treatment) as it represents an innovative tool to tackle unemployment, especially (but not exclusively) the youth one.

34. It was born with a markedly social security-welfare connotation, tending, however, towards forms of youth training and apprenticeship, placed close to the apprenticeship and the training and work contract.

35. The cause of the contract under examination is different, and evidently more complex, than that of the employment relationship, characterized by the exchange between work and pay due to its social security and welfare matrix, the employment purpose and the insertion within the

[1] Decision no. 3 of 2007 of the Court of Cassation.

framework of a program that uses public contributions.

36. **It is a contract that falls within social legislation**, which aims to protect the worker from the risks resulting from the impairment or the loss of his working capacity due to predetermined events independent of his will, as in the case of loss of work for market-related causes.

37. The constitutional source of this protection is in art. 38 of the italian Constitution, from which it follows that the citizen has the right to **social assistance and social security**, and the concrete definition of this content is left to the ordinary legislator, also because of the existing financial resources. The constitutional coverage of the subordinate employment relationship given by art. 36 of the Constitution is completely different. Moreover, the configurability of an employment relationship is expressly excluded by law (Article 14, paragraph 2, of the Decree-Law of 16 May 1994, No. 299, Article 8, paragraph 1, of the Legislative Decree of 1 December 1997, n. 468, article 4, paragraph 1, of legislative decree 28 February 2000, No. 81). On a systematic level, subordination can be excluded with certainty from the complex of legislation on the subject.

38. And indeed:

A) the use of socially useful workers does not entail the suspension or cancellation from the employment or mobility lists (Article 8 of Legislative Decree 469/1997);

B) the economic treatment consists of a sum of money which is not commensurate under art. 36 of the Constitution, with the quantity and quality of the work performed since it was predetermined in a fixed way, first, in an hourly payment (defined benefit by article 1, paragraph 3, of the law decree of June 14, 1995, number 232 equal to L. 7,500, with a ceiling of eighty hours per month for no more than twelve months, then raised to L. 8,000 per hour for a maximum of one hundred hours per month) and subsequently in a monthly benefit (not exceeding L. 800,000 with the possibility of an additional amount of this treatment "for the days of actual performance of the

service"). The workers are paid a sum of money first called benefit (sussidio) -which evokes the institution's welfare matrix - and then "allowance " (assegno) -which instead shows the evolution towards a form of training / apprenticeship;

C) the financing of socially useful jobs has been placed from the beginning at the expense of the Employment Fund, or partly borne by the users in the hypothesis of renewal, except in the case of workers self-financed by the Regions (see region Sicily)[2].

39. The possibility of a European notion of an employed person, which according to the appellant trade union encompasses the category in question and which could be deduced from the scope of application of the CES, UNICE and CEEP framework agreement on fixed-term work is to be excluded. Just in relation to the compatibility of the internal regulations on socially useful workers, in the sentence of March 15, 2012, made in case C 157/2011, on the contrary the Court of Justice stated that "*the definition of the contracts and labor relations to which this framework agreement applies does not fall within the latter or in Union law, but in national legislation or practice* " (paragraph 42).

40. In this sense, indeed, the seventeenth Recital of Directive 1999/70 states that it is up to the Member States to define the terms used in the framework agreement according to national legislation or practice.

41. **To sum up, the cause of the contract, the clear legislative qualification, the discipline, the structure, the purpose and the genesis of the institution exclude its qualification as a subordinate employment relationship**, which is limited to some aspects that are not regulated and reasoning by analogy.

- V –

The alleged violation of art. 1. 1 and 1.2

[2] Decision no. 23317 of 2015 of the Supreme Court.

42. The Unione Sindacale di base complains first and foremost about the violation, by the Italian State, of article 1, commitments number 1) and 2) of the European Social Charter.

43. As is known according to these provisions, in the perspective of "*guaranteeing the effective exercise of the right to work*", the Parties undertake:

1. to recognize the realization and maintenance of the highest and most stable possible level of employment in view of the realization of full employment;

2. to effectively protect the right of the worker to earn his living with work freely undertaken.

44. However, according to the appellant union the violation of these commitments is to be found:

a. in making the socially useful workers precarious “precarizzazione” and in the use of workers for professional profiles falling within the institutional aims of the institution;

b. in the non-recognition to all intents and purposes of the work carried out as a socially useful job after getting a permanent job.

45. As for the profile sub a), the association - on the assumption of a comparison between a socially useful worker and a fixed-term worker - complains that the continuous renewal of these contracts reveals an abuse as happens in the case of a fixed-term employment contract that it is repeatedly renewed over time.

46. Therefore it is supposed to be a form of abuse similar to that prohibited by the framework agreement (and in particular clause 5) on the fixed-term work annexed to Directive 1999/70.

47. The rebuttal of the assumption, that is the recurrence of a subordinate employment relationship, implies the non applicability of this agreement to socially useful workers. Moreover, even art. 1, commitments nos. 1 and 2, refers to the "worker" as a recipient of the protection. Such is not a person who benefits from a social security protection aimed at allowing him to

benefit from a monthly payment behind the provision of an activity that is part of a project, with a reduced hourly commitment (the hours worked in excess are paid as a service in all respects) and with a purpose aimed at avoiding situations of hardship connected to the increase in unemployment as well as allowing the channelling of work energy towards socially useful activities (thus also limiting the hypothesis of undeclared work).

48. In any case, even accessing for a moment the party's thesis, which sees socially useful work as a form of subordinate work, it is easy to see that clause 2 of the framework agreement allows Member States to decide that the agreement does not apply to "contracts and employment relationships defined in the framework of a specific program of training, insertion and public professional requalification or a program that benefits from public contributions", a definition in which socially useful work can be subsumed (aspect enhanced by the judgment of the Court of Justice of 15 March 2012, point 54).

49. Socially useful work is not a fixed-term job, but a social safety net used to avoid situations of unemployment, so that a possible renewal of the relationship, which could also be linked to the achievement of a project and the possibility of using the same working energy in a different context, is not an abuse but a driving force for the gradual reintegration of the worker into the labour market, also thanks to an important training component. Mutatis mutandis, reference should be made to the decision of the European Federation of Public Service Employees (EUROFEDOP) v. Greece, complaint no. 115/2015, in which there emerges the possibility of providing a significant period, in that case mandatory, of joint training for work, without the same safeguards as an employment relationship, also by law.

50. Hence the remark that the mere passage of time cannot constitute, by itself, a suitable element to change the nature of the typical cause of the relationship between the parties.

51. The disputed performance of tasks involving full inclusion in the

ordinary administrative activity, to fill vacant and permanent posts, is not one of the aspects essential to the institution, and indeed constitutes a deviation, as the physiology is the temporary performance of some activities typified in execution of a project, modulated in such a way as to make a formative purpose present too.

52. But even in the hypothesis of a verified breach the party is not out of protection, given that also on the impulse of the warnings of the Court of Justice, in the anomalous case in which an effective relationship of subordination is found, given by an insertion in the user administration to fill vacant, stable and available jobs, performing tasks identical to those performed by comparable permanent workers with the user institution, the internal jurisprudence acknowledged the protection pursuant to art. 2126 c.c.

53. By virtue of this rule, work performed formally as a socially useful job, but in the absence of the prerequisites, due to the lack of an actual project, for the performance of identical tasks with respect to comparable subordinate workers and under the direction of an employer, should be qualified as performance of subordinate work for social security and salary purposes, it being understood that the same cannot give rise to the configuration of an employment relationship of indefinite duration in violation of the rules concerning the recruitment for Administrations (public competition or other methods established by law).

54. In this exceptional hypothesis, internal jurisprudence, by now unanimous[3], recognizes this further protection.

55. It should be noted, however, that the deviation from the scheme of socially useful work does not recur in the cases referred to in the appeal, where instead the workers were assigned to various projects, which is already an indication of a discontinuity in contrast with the contents of the subordination, and where no managerial power of the employer similar to the

[3] *Ex multis*, Decisions no. 17101 and 17012 of 23017 of the Supreme Court; Decision no. 31 of the 14th March 2018 of the Employment Tribunal of Cassino.

one of the employment relationship was demonstrated.

56. As for the profile under b), the ex nunc effectiveness of stabilization with the exclusion of the configuration of the previous relationship as a subordinate employment, derives precisely from the aforementioned characteristics of the socially useful employment relationship, already amply highlighted, which do not allow to recognize the periods of work carried out for that purpose as an employment.

57. This protection competes only in cases of repetition of temporary employment contracts, and also in those hypotheses, the protection in a specific form given by stabilization is not a compulsory safeguard, given that what matters is that energetic, proportionate and dissuasive measures are taken with a view to preventing and eliminating abuses.

58. This is the reason why the Italian legislator has guaranteed stabilized socially useful workers a protection more energetic than the compensatory one (which, however, in the absence of abuse is not due) and more far-sighted, as it has allowed the definitive insertion in the labor market.

59. Hence the lack of any violation of art. 1, commitment n. 1, indeed the respect of this commitment, given that the legislator, including the regional one, stabilizing the vast majority of precarious workers gave them a protection :

1) not compulsory, due to lack of abuse;

2) greater than the ordinary one given by the compensation for damages, which does not definitively resolve the situation of lack of a permanent job.

60. In this exceptional hypothesis, internal jurisprudence, by now unanimous, recognizes this further protection.

61. The commitment no. 2 of art. 1, has not been violated given that the institution of socially useful work arises precisely from the perspective of allowing the unoccupied worker to earn what is needed for his sustenance with his own service making use of training contents that innervate the cause of the contract and in the perspective of social reintegration.

Alleged violation of art. 4, commitments nos. 1 and 4

62. The Unione Sindacale di base complains of the violation of art. 4, commitments nos. 1 and 2 of the European Social Charter. As is known, these commitments, which arise with the declared purpose of guaranteeing the right to fair compensation, are specified as follows:

1. the right of workers to a sufficient salary, such as to guarantee them and their families a dignified standard of living;

2. the right of workers to a reasonable notice period in the event of termination of the work relationship.

63. The party believes that the violation of these rights has manifested itself:

a. in the inadequacy of the emoluments, often established from year to year, to the contractual minimums and without the recognition of a career progression due to the service performed;

b. in the absence of a period of notice in the event of termination of the employment relationship.

64. Both statements are groundless.

As already largely deduced, the question is not about a subordinate employment relationship, with corresponding services, constituted by the continuity and under the direction of the employer of a job performance fully falling within the institutional activities of the institution and upon payment of a remuneration, proportionate to the quantity and quality of the work performed.

65. Instead, a social security work relationship is considered, which is established not so much because of the institution's needs as for the need, socially felt, to allow some categories of unemployed people to re-enter the labour market, also through a path of professional requalification.

66. The service provided is "socially useful", and therefore is not characterized by the need to achieve the institutional goals of the institution.

It is then inserted into a project, which organizes it and delimits it in its contents.

67. It is therefore clear that the emoluments for this activity cannot be parameterized tout court with the remuneration paid for the performance of a comparable job.

68. The same decision quoted by the counterparty (Cassation Court decision no. 23317/2015) stated that:

"***In the present case**, **the doctrine of labour law has correctly spoken of a legal social security relationship**, which is governed by legislation aimed at guaranteeing the worker rights, which are based on the provisions of Article 38 of the Constitution; this prevents that worker, who is engaged in activities with public administrations, from claiming an employment relationship with those administrations and his consequent rights. In other words, the socially useful worker, carrying out his activity for the realization of a general interest, has the right to **emoluments, which cannot be recognized as remuneration, but as has already been said social security nature** (see in these terms Cass. 9.10.2014 n. 21311)*"[4].

69. Equalization of the emoluments of socially useful workers to that of workers is not anyway required by the Charter. Indeed art. 4, commitment no. 1, limits itself to requesting - on the assumption here lacking of the existence of an employment relationship - that the remuneration is sufficient to guarantee a dignified standard of living.

70. The emoluments, according to Part One, point 4, of the Charter, must be "fair": to make this joint assessment, of fairness and sufficiency, it is necessary to value all the elements of the case, which, even if they might not exclude the subordination, certainly affect the emoluments.

[4] In the italian words: "*correttamente la dottrina giuslavoristica ha parlato nel caso in esame di un rapporto giuridico previdenziale, che viene disciplinato da una legislazione volta a garantire al lavoratore diritti, che trovano il loro fondamento nel disposto dell'art. 38 Cost.; il che impedisce al suddetto lavoratore, impegnato in attività presso le amministrazioni pubbliche, la rivendicazione nei confronti di dette amministrazioni di un rapporto di lavoro subordinato, e dei suoi consequenziali diritti. In altri termini il lavoratore socialmente utile, svolgendo la sua attività per la realizzazione di un interesse di carattere generale, ha diritto ad emolumenti, cui non può riconoscersi natura retributiva, ma come si è già detto natura previdenziale (cfr. in tali termini Cass. 9.10.2014 n. 21311).*"

71. Indeed, the judgment of equity is measured just in relation to the specific case which is characterized:

1. by a strong educational component;

2. by the performance of a service that is also for the benefit of the same worker, who comes out of a phase of professional mortification;

3. by the incomplete overlap of the activity carried out with respect to the institutional purposes of the institution;

4. by the delimitation of the service itself according to the contents of the project;

5. by the reduced number of weekly hours (twenty hours).

72. It must then be specified that the hours carried out in addition are compensated with the same emoluments provided for comparable profiles. So that there is a reaffirmation of the principle stated by the Committee in the well-known precedent of June 23, 2010, Confédération Française de l'Ecadrement CFE-CGC v. France, complaint no. 56/2009, in relation to the application scope of the art. 4, commitment no. 2, according to which the hypotheses of failure to recognize the overtime must be exceptional.

73. The "sufficiency" of the emoluments emerges then from the reference contained by the same party to the contractual minimums, which are freely established by the collective parties precisely in the perspective of guaranteeing not only the sufficiency, but also the proportionality to the quantity and quality of the work performed, as requested by art. 36 of the Constitution, a mandatory requirement of collective agreements.

74. The failure to plan an economic progression is then one of the essential aspects to the structuring of the relationship according to a project, and to the frequent succession of different projects, as well as to the remark that it is an activity aimed at reintegrating the worker and not at the acquisition of an experience in an "institutional" professional profile, which can be enhanced over time also from an economic point of view.

75. This is a casual relationship, inserted in a project, and therefore the time limit is fixed *per relationem* on the basis of the achievement of the project.

76. It is obvious that no notice is required, against a term which is not determined, but determinable.

77. Added to this there is the undisputed remark that the vast majority of workers have been stabilized and that none of the workers identified in the part in fact saw their activity cease without any prior notice.

78. To sum up, the commitments referred to in nos. 1 and 4 of the art. 4 are not violated, because of:

1) the absence of an employment relationship;

2) the cause and the nature of the contract;

3) the provision of ordinary emoluments for the hours exceeding 20 weekly;

4) the identifiability of the term *per relationem;*

5) the frequent renewals of projects and stabilization.

- VII –

On the alleged violation of art. 12, commitment 1

79. The party also complains of the violation of art. 12, commitment no. 1 of the European Social Charter, in relation to the situation of socially useful workers of the Campania and Sicily Regions, who would not have adequate social security coverage.

80. This question is also misplaced, as it omits to consider:

a. the absence of an employment relationship;

b. the social security nature of the same emoluments received, and in general of the relationship established;

c. the evaluation of the period of work carried out as socially useful activity for the purposes of contributory seniority;

d. the possibility of redeeming the period of service carried out for this purpose for social security purposes.

81. Issues *sub* a) and *sub* b) have been largely discussed. It may be added here that art. 12, commitment no. 1, enhances the protection in case of unemployment, in which the institution is involved.

82. This is what emerges from the decision of the Committee of economic and social rights of 11 February 2015, complaint 88/2012, Finnish Society of Social Rights v. Finland, according to which "Article 12 of the Charter provides for the right to social security as a fundamental right. The Committee has consistently held that a social security system in the meaning of Article 12§1 must cover the traditional social risks providing benefits in medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors (see eg Conclusions 2013, Georgia, Article 12§1) "(point 57).

83. In relation to the profiles *sub* b) and *sub* c), for all the socially useful works carried out up to 31 July 1995 a figurative contribution is provided for the purpose of recognizing the right to a pension and determining the amount of the pension itself.

84. For subsequent periods, the figurative contribution is relevant for the purposes of seniority required for retirement, in the sense that the relative periods can be counted for the purposes of minimum contributory seniority for the achievement of social security benefits but not for the purpose of pension calculation.

85. However, there is the possibility of redeeming this period to increase the size of the pension check. This faculty may be exercised at any time by the interested party and may concern all the periods for which the allowance was paid for socially useful works, which led to the crediting of the relative figurative contribution useful for the purposes of the pension entitlement.

86. The redemption may concern also part of the periods in question.

87. As an alternative to redemption, the worker can make voluntary payments (legislative decree 468 of 1997, with provisions fundamentally confirmed by legislative decree No. 150 of 2015, known as the "Jobs Act").

88. It is then evident that, on the one hand, the alleged violation cannot be applied to all the socially useful works carried out up to 31 July 1995, given the full evaluation for the purposes of seniority and pension calculation and, on the other hand, that for the subsequent periods the activity is considered for the purposes of the contributory seniority and also for the purposes of the quantum, if the right of redemption is exercised.

89. The system is balanced and coherent, in addition to respecting the commitments made under art. 12 of the Charter, because:

I) even in the face of a benefit of a social security nature, it allows it to be considered for pension purposes, again for the an and, only for certain periods, even for the quantum;

II) the period performed as socially useful work can be redeemed;

III) voluntary payments are allowed.

90. It is therefore necessary to change the angle of perspective, and to understand that the guarantees given are in addition to a relationship that is established, with a welfare and social security purpose, to make up for a situation of unemployment. The term of comparison cannot be the employment relationship, which is missing, but the unemployment situation to which the institution remedies.

- VIII –

On the alleged violation of art. 24

91. Finally, the applicant union complains of the violation of art. 24, which sets out three principles: causality of dismissal, congruity of compensation due to the illegally dismissed worker, challenge of the provision before an impartial body.

92. According to the applicant association, the Italian State infringed:

a. the right of workers not to be fired without a valid reason related to their attitudes or conduct or based on the functioning needs of the company, establishment or service;

b. the right of the dismissed workers without a valid reason, to a suitable compensation or other adequate repair;

c. the right to an effective appeal to denounce the alleged violations.

93. Yet, apart from the lack of any allegation in support of the alleged violation, the existence of an employment relationship is necessary in order to be able to deal with a dismissal, which does not apply here.

94. As anticipated, the work relationship ceases with the realization of the project, and therefore on the basis of a term identified by relationem, which therefore cannot be considered as a dismissal hypothesis. In any case, the possible withdrawal of the worker from the work relationship is subject to a bona fide and correctness evaluation, whose violation legitimates the compensation for damages.

95. It is also evident that - based on the hypothesis of a withdrawal exercised in contrast with good faith, and therefore illegally - compensation is not due because of the realization of the project, to which the activity carried out is instead physiologically directed.

96. And if there is no violation, it makes no sense to hypothesize the payment of an appropriate reparation nor an appeal before the judge to assert non-existent reasons. In summary, the lack of violation of the art. 24 can be deduced:

1. from the lack of an employment relationship:

2. the non-overlapping of the end of the project with a dismissal;

3. the subjection of a possible withdrawal by the employer to a good faith and correctness evaluation;

4. by frequent repetitions of projects and stabilization.

* * *

CONCLUSIONS

97. In light of the present observations, the Italian Government requests the Committee to dismiss the case by declaring the Complaint unfounded, pursuant to the Additional Protocol of 1995 for a system of collective complaints.

Attached documents:

1) Decision of the 9th November 2016 of the Employment Tribunal of Frosinone;

2) Decision no. 31 of the 14th March 2018 of the Employment Tribunal of Cassino;

3) Decision no. 4705 of 21th June 2018 of the Employment Tribunal of Napoli;

4) Decision no 635 of 10th October 2018 of the Employment Tribunal of Cassino;

5) Decision no. 7833 of 29th November 2018 of the Employment Tribunal of Napoli;

6) Decision no. n. 8167 of 11th December 2018 of the Employment Tribunal of Napoli;

7) Decision no. 3 of 2007 of the Court of Cassation;

8) Decree no. 234 of 7th August 2018 of the General Director of the Social Security Cushion and Training;

9) Agreement of the 20 th September 2018 between MLPS and Regione Campania;

10) Decision no. 23317 of 2015 of the Supreme Court.

Rome, 2nd September 2019

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