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EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

17 June 2019

Case Document No. 2

Associazione Medici Liberi v. Italy
Complaint No. 177/2019

OBSERVATIONS BY THE GOVERNMENT ON ADMISSIBILITY

Registered at the Secretariat on 14 May 2019

REPUBBLICA ITALIANA

Ufficio dell'Agente del Governo italiano

davanti al Comitato Europeo dei Diritti Sociali

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Avvocatura Generale dello Stato

European Committee of Social Rights (ECSR)

Collective complaint n. 177/2019

Associazione Medici Liberi vs Italy

OBSERVATIONS

OF THE

ITALIAN GOVERNMENT

Roma, 14 maggio 2019

1. With the letter dated 21 March 2019, the Secretariat of the General Directorate of the European Social Charter, requested the Italian Government to present its observations on the admissibility of the collective complaint n. 177/2019 ("the complaint"), submitted by Associazione Medici Liberi ("the complainant").

2. In compliance with the Secretariat of the European Social Charter request, the present observations are limited to the admissibility of counterparty complain.

- I -

Article concerned

The complainant seeks a declaration of infringement of Article 12 of the revised European Social Charter, with reference to inadequate social security and welfare protection, in Italy, for self-employed doctors.

- II -

Subject Matter of the Complaint

The central point of the complaint, as stated by the complainant himself, concerns the lack of an efficient social security protection in Italy for freelance doctors with reference to the compulsory contribution under the "A" ENPAM quota, which the complainant assumes to be the only source of social security for self-employed doctors who do not have the income conditions for the contribution to the "B" quota.

The complainant assumes that, in return for the obligation to pay these contributions, the self-employed doctors will receive an inadequate social security treatment when they reach retirement age.

- III -

Admissibility of the complaint

The complaint is clearly inadmissible.

The Additional Protocol of 1995 (providing for a system of collective complaints), at the Article 1, gives the right to the following types of organisations to make a complaint that the situation within a state party to the Protocol is not in conformity with the ESC:

a. international organisations of employers and trade unions referred to in paragraph 2 of Article 27 of the Charter;

b. other international non-governmental organisations which have consultative status with the Council of Europe and have been put on a list established for this purpose by the Governmental Committee;

c. **representative** national organisations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint.

Therefore, if the complainant is a national trade union or a national employers' organisation, as in this case, the complainant must provide proof that these bodies are representative within the meaning of the collective complaints procedure.

In the present case, the lack of legitimacy of the complaining trade union due to a lack of representativeness is clear, as no suitable evidence has been provided or attached to the complaint on this point.

Specifically, the union has not given any indication of the number of workers it would represent or the current number of members, or whether it has concluded collective agreements or undertaken activities in favour of them, the only elements that could be traced back to an activity of a trade union nature.

As stated by the Committee in its Decision No 166/2018 - Sindacato Autonomo Europeo Scuola ed Ecologia (SAESE) v. Italy: "*10. The Committee is unable to conclude that SAESE is a representative trade union within the meaning of Article 1 (c) of the Protocol because it does not have the information necessary to assess the representativeness of the complainant organisation, including any indication of the specific number of members it represents or whether it has bargained collectively on behalf of such members with a view to concluding collective agreements.*" The ECSR declared the complaint inadmissible.

In addition, the statute produced by the complainant shows that the association has as its purpose training and cultural activities and management of a website.

As stated in the aforementioned decision of this honourable committee No 166/2018 - Sindacato Autonomo Europeo Scuola ed Ecologia (SAESE) v. Italy: "*8. Moreover, in determining representativeness, the Committee takes into account the number of members a trade union represents and the role it plays in collective bargaining. However, it has also held that the application of criteria of representativeness should not lead to the automatic exclusion of small trade unions or of those formed recently to the advantage of larger and long-established trade unions (see Fellesforbundet for Sjøfolk (FFFS) v. Norway, Complaint No. 74/2011, decision on admissibility of 23 May 2012, §§20-21).*" For this reason as well, in addition to the reasons indicated above, this committee declared the complaint inadmissible.

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

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CONCLUSIONS

In light of the present observations, the Italian Government requests the Committee to dismiss the case by declaring the Complaint inadmissible, pursuant to Article 1 of the Additional Protocol of 1995 for a system of collective complaints, since the Applicant's lack of representativeness.

Roma, 14 maggio 2019

Pietro Garofoli
Avvocato dello Stato

Lorenzo D'ascia
the Agent of the Italian Government