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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX**

**1 September 2022**

**Case Document No. 11**

**Association of Secondary Teachers Ireland (ASTI) v. Ireland**  
Complaint No. 180/2019

**ADDITIONAL INFORMATION  
FROM THE GOVERNMENT**

**Registered at the Secretariat on 29 August 2022**



Henrik Kristensen  
Deputy Head of Department  
Deputy Executive Secretary  
European Committee of Social Rights  
Council of Europe  
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*By email only: DGI-ESC-Collective-Complaints@coe.int*

29 July 2022

**Re:** *Association of Secondary Teachers Ireland (ASTI) v Ireland*  
**Complaint no. 180/2019**  
**Your ref:** 81/2022 HK/DB  
**Our ref:** 530/1416

Dear Mr Kristensen,

I refer to the above entitled complaint and to your letter dated 8 June 2022 inviting the Government to provide updated information to the Committee as regards any relevant developments which have occurred since the submission of the Government's observations in this matter, on 16 November 2020.

There are two sets of developments which the Government considers it appropriate to bring to the Committee's attention.

First, since the Government's most recent observations, the Committee on Freedom of Association of the International Labour Office ("ILO") has recommended to the Governing Body of the ILO that an almost identical case brought by ASTI does not call for further examination, and the Governing Body has decided to adopt that recommendation.

Second, there have been certain domestic developments furthering the process of unwinding the Financial Emergency Measures in the Public Interest ('FEMPI') legislation which was originally put in place to address the challenges faced by public finances in the light of the financial crisis.

***(i) Complaint to Committee on Freedom of Association of the International Labour Office***

In parallel to the present complaint before the Committee, ASTI lodged a broadly identical complaint to the Committee on Freedom of Association of the ILO ("the ILO Committee").

ASTI complained that by allegedly according more favourable treatment to the Teachers' Union of Ireland ('the TUI') than to ASTI, the Government influenced the choice by teachers as to which union they should join, in purported violation of (a) the Freedom of Association and Protection



of the Right to Organise Convention 1948 (No. 87), and (b) the Right to Organise and Collective Bargaining Convention (1949).

The ILO Committee recommended that the ILO Governing Body decide that the case did not call for further examination.<sup>1</sup>

In giving its reasons for the proposed rejection of the complaint, the ILO Committee first emphasised the need for mutual respect for the commitments undertaken in collective agreements as a necessary element of such agreements, observing (at §722 of its report) that:

The Committee recalls that it has always considered that agreements should be binding on the parties. Mutual respect for the commitment undertaken in collective agreements is an important element of the right to bargain collectively and should be upheld in order to establish labour relations on stable and firm ground.

Second, the ILO Committee noted that the distinction drawn under the Financial Emergency Measures in the Public Interest Act 2013 ('FEMPI 2013') between those public servants who were covered by a collective agreement and those who were not was at all times objectively known to the parties. As such, it was satisfied that there was no discriminatory action on the part of the Government in this regard, stating (at § 723 of its report) that:

The Committee understands that once ASTI withdrew from the collective agreement in force, legislative provisions of FEMPI Act 2013 became applicable to its members, which made a distinction between public servants covered by an agreement and those not covered by one. This situation was at all times objectively known to the parties; CL 0045/2016 had only clarified application of this distinction in the education sector following ASTI's withdrawal from the Lansdowne Road Agreement by virtue of an industrial action. The Committee sees no discriminatory action on the part of the Government in this respect and therefore cannot conclude that the withdrawal of ASTI members from their membership and their decision to join the TUI can be attributed to the Government.

Third, the ILO Committee concluded that the withdrawal of ASTI members from ASTI membership and their decision to join the TUI could not be attributed to the Government.

Fourth, the ILO Committee determined (at § 724 of its report) that ASTI members were not entitled to receive retroactive benefits in the form of the restoration of incremental dates upon the ASTI suspending its industrial action on 10 June 2017 or the restoration of the relevant Public Sector Stability Agreement ("PSSA"). This was not a violation of ASTI's collective bargaining rights. To treat ASTI members otherwise would place ASTI members in the same situation as members of other unions who had always complied with the terms of the PSSAs.

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<sup>1</sup> 392<sup>nd</sup> Report of the Committee on Freedom of Association, presented at the 340<sup>th</sup> Session of the ILO Governing Body, October – November 2020 (GB.340/INS/16), at paras.678 – 727, available here: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_760123.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_760123.pdf) (accessed 26 July 2022), and set out at Appendix I.



Finally, the ILO Committee had regard to the fact that that ASTI did not resort to the dispute resolution procedures under the PSSA.

The ILO Governing Body subsequently decided to adopt the recommendation made by the ILO Committee in respect of this complaint (at its 340<sup>th</sup> session, held October – November 2020).<sup>2</sup>

A copy of the ILO Committee's report is annexed to this letter as **Appendix I**, while a copy of the ILO Governing Body's decision adopting the recommendations made by the Committee in respect of this complaint is annexed at **Appendix II**.

The Government commends the report of the ILO Committee to this Committee. The reasoning is highly persuasive and the Government respectfully urges this Committee to reject ASTI's complaint on the same basis.

### ***(ii) Domestic Developments***

The process of unwinding the provisions of FEMPI 2013 that commenced with the Lansdowne Road Agreement 2016-2018 continues with the most recent PSSA, *Building Momentum 2020-2022*, which is in turn underpinned by the Public Service Pay and Pensions Act 2017.

While ASTI voted to reject *Building Momentum*, it nonetheless continues to be covered by that PSSA due to ASTI's affiliation with the Irish Congress of Trade Unions ("ICTU"), an umbrella organisation for Irish trade unions which endorsed *Building Momentum*.

*Building Momentum* has provided for two general round pay increases.

ASTI continues to seek the restoration of increment freezes implemented under FEMPI 2013. However, the Government has not agreed to this, given that the increment freezes were correctly applied to ASTI members following ASTI's decision to resile from the Lansdowne Road Agreement between 1 July 2016 to 10 June 2017.

### ***Conclusion***

The Government confirms that nothing has transpired since the date of its last written observations in November 2020 to alter its respectful request that ASTI's complaint should be dismissed.

Yours sincerely,

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<sup>2</sup> ILO Governing Body, Minutes of the Institutional Section, 340<sup>th</sup> Session, October – November 2020 (GB.340/INS/PV) at para. 312, available here: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_764145.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_764145.pdf) (accessed 26 July 2022) and set out at Appendix II.



*[sent by electronic transmission only and accordingly unsigned]*

**Barra Lysaght**

*Agent for the Government of Ireland  
before the European Committee of Social Rights*

**An Roinn Gnóthaí Eachtracha**  
*Department of Foreign Affairs*

Encl:

1. Complaint against Government of Ireland presented by the Association of Secondary Teachers, Ireland (Case no. 3353), 392nd Report of the Committee on Freedom of Association (GB.340/INS/16)
2. ILO Governing Body, Minutes of the Institutional Section, 340th Session, Geneva, October – November 2020 (GB.340/INS/PV)