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EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

20 September 2019

Case Document No. 2

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

OBSERVATIONS BY THE GOVERNMENT ON ADMISSIBILITY

Registered at the Secretariat on 30 August 2019

EUROPEAN COMMITTEE OF SOCIAL RIGHTS

ASSOCIATION OF SECONDARY TEACHERS, IRELAND (ASTI)

Complainant

V

IRELAND

Respondent

Complaint Number: 180/2019

Observations on Admissibility

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30 August 2019

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APPENDIX

1. INTRODUCTION

1.1 The Association of Secondary Teachers, Ireland (hereafter, "ASTI" or "the Complainant") has submitted a complaint against Ireland pursuant to the Additional Protocol to the European Social Charter providing for a System of Collective Complaints ("the Protocol") alleging a violation of the Revised European Social Charter ("the Charter"). The complaint was communicated by the Deputy Head of the Department of the European Social Charter to the relevant agent of the Irish Government ("the Government") with a request for the Government to submit written observations on the admissibility of the complaint.

1.2 The Government has the honour of making the following submission in response.

2. ADMISSIBILITY

2.1 The ASTI complaint to the European Committee of Social Rights ("the Committee") states:

> *"Ireland is not in conformity with Article 5 of the European Social Charter in that the government, by according favourable treatment to a rival trade union as regards pay and increments for its members, is interfering with the right to freedom of association guaranteed to teachers thereby."*

2.2 The Government submits that the Complainant fails to meet the admissibility criteria prescribed by the Protocol. Specifically, it is contended that ASTI fails to establish a sufficient evidentiary or arguable basis in respect of its contention that the Government has failed to comply with the Charter.

2.3 The Government accordingly opposes the admissibility of the complaint on the grounds that the complaint first, does not identify with sufficient precision the alleged violations of Article 5. Second, the complaint does not adequately address the factual or legal means by which it contends that the Government fails in its application of Article 5.

2.4 Article 4 of the Protocol states as follows:

> *"The complaint shall be lodged in writing, relate to a provision of the Charter accepted by the Contracting Party concerned and indicate in what respect the latter has not ensured the satisfactory application of the provision."*

2.5 Thus, in this instance the Complainant must set out precisely how the Government has failed to comply with the provisions of Article 5 which concerns the freedom of workers and employers to associate in national or international organisations for the protection of their economic and social interests.

2.6 In the decision of *Sindacato Autonomo Europeo Scuola ed Ecologia (SAESE) v Italy, Complaint No. 166/2018*, the Committee deemed the complaint inadmissible given the failure of the complainant to provide sufficient detail to substantiate its claim and to specify adequately how the contended infringement was relevant to the Article of the Charter invoked. Implicit in this decision is an obligation on a complainant to provide clear and specific detail of the breach alleged and not merely to advance a complaint in generalised terms.

2.7 The dissenting opinion in the decision of *European Organisation of Military Associations (EUROMIL) v Ireland, Complaint No. 164/2018* also set out the requirements that flow from Article 4 of the Protocol, to the effect that the complainant organisation must

> "*...not only indicate which provision of the Charter it considers to be violated but additionally the factual and legal circumstances of the alleged violation. In this respect, the complainant bears the burden of proof. Regularly, such relevant aspects are checked at the merits phase for avoiding a duplication of the Committee's assessment. This rather lenient approach to admissibility of CC's is, however, not appropriate once the situation is at risk of not concerning Charter provisions at all.*"

2.8 Thus, the burden of proof is on the Complainant properly to set up the factual and legal circumstances of the alleged violation.

2.9 Notwithstanding the requirements set out above, it is difficult to ascertain from the ASTI complaint what the precise nature of the complaint advanced is and no adequate attempt has been made to provide a description of the "factual and legal circumstances" constituting the violation.

2.10 However, prior to considering the complaints which appear to be sought to be raised, it is appropriate in the first instance to set out the background to the complaint.

3. BACKGROUND OF THE COMPLAINT

(i) Partnership Agreements

3.1 Ireland places considerable emphasis on industrial relations and has provided a legislative framework for industrial relations processes for many decades. In this context it also has a long history of public service collective bargaining resulting in a succession of collective agreements, many of which pre-date the financial crisis. In fact, since 1987, engagement by public service unions with employers' representatives and government bodies to agree a series of pay and work reform agreements has become the overarching strategy of the trade union movement in Ireland. In that time, it has become an accepted principle of participation in the various partnership agreements, that in order to avail of the benefits of a collective agreement, one has to be a party to the agreement. Thus, it is well understood by the public service unions, that being outside of a public sector agreement is likely to place their members at a financial disadvantage, since the very nature of national collective agreements is that there are no alternative routes to securing benefits which are equal to or greater than those provided for by the agreement.

3.2 The most important aspect of Ireland's partnership agreement model is that each national collective agreement is concluded under the aegis of the State's industrial relations machinery and, as such, is negotiated and ultimately agreed between public service unions, employers' representatives and the government. The model does not operate to allow the State to simply present participants with a series of options on a "*take it or leave it*" basis: instead, all parties negotiate the terms of such agreements and understand that compliance with national collective agreements provides the exclusive route to achieving the benefits provided for by such agreements.

(ii) The Financial Crisis

3.3 Consequent on the global economic downturn, the Government was required to undertake a series of budgetary and fiscal measures to address the serious decline in the economic circumstances of the State. From 2007-2010 there was an 11% reduction in real GDP, a 23% decline in investment, a 7% reduction in personal consumption and an economic slowdown in major trading partners. Unemployment grew from 5% in 2008 to 15% in 2012. By end-2009, general government gross debt had reached 66% of GDP, reflecting the large deficits recorded in the intervening period. It was estimated that the ratio would be 95% of GDP at end 2010.

3.4 Such was the extent of the disturbance to the national economy that the Government had to avail itself of a financial assistance programme established by the European Union and the International Monetary Fund with funding provided by the European Financial Stabilisation Mechanism, the European Financial Stability Facility, bilateral lenders and the International Monetary Fund. As a condition of that financial assistance programme, and in order to reduce its indebtedness, it was necessary for the Government to achieve further significant savings in its expenditure on remuneration and in its expenditure on public service pensions as a contribution to the reduction of the national shortfall between revenue and expenditure.

3.5 The severity of the situation also required the introduction, by way of legislation, of a series of amendments to the terms of public service employment contracts which were unprecedented in the history of the State. This legislation comprised of a number of Acts of Parliament, initially the Financial Emergency Measures in the Public Interest ("FEMPI") Acts and subsequently the Public Service Pay and Pensions Act 2017 ("the 2017 Act"). The objective of the FEMPI legislation was initially to reduce State expenditure to maintain international confidence and protect credit ratings as well as to take urgent steps to restore the State's competitiveness and make savings on both direct and indirect expenditure on remuneration.

3.6 Parallel to the FEMPI and public service pay legislation, the changes required by the fiscal policy and structural reform measures in terms of public service pay were also progressed by collective agreements, being the Public Service Agreements 2010 - 2020. In effect, members of public service unions, such as ASTI, concluded a series of collective agreements with the Government. In recognition of the fact that these public service unions had positively engaged in a collective agreement with the Government (and where such an agreement was registered with the Labour Relations Commission, a body created by statute) members of the signatory public service unions were subject to more favourable terms and conditions than the baseline provisions included in the FEMPI legislation which applied to all other public servants.

3.7 In total, the Government and the public service unions (including ASTI) entered into a series of four sequential public service agreements effective from 2010 to 2020.

3.8 Taken together, the four collective agreements have had the effect of contributing to the improvement of the State's finances by both amending existing contractual arrangements by way of collective agreement and addressing the benefits associated with public service employment.

3.9 The four agreements are as follows:

(a) The Public Service Agreement 2010-2014 (the "Croke Park Agreement"), provided for the introduction and operation of pay rates and flexibilities in the delivery of public services in lieu of reductions in public sector pay rates amongst other provisions;

(b) The Public Service Stability Agreement 2013-2016 (the "Haddington Road Agreement"), subsumed the Croke Park Agreement and introduced a series of pay-related measures including a freeze on increments;

(c) The Public Service Stability Agreement 2013-2018 (the "Lansdowne Road Agreement") extended Haddington Road and commenced the process for the partial restoration of public service pay; and finally,

(d) The Public Service Stability Agreement 2018-2020 again replicated the terms of earlier agreements and continued the process of restoring public service pay.

(iii) Public Service Stability Agreement 2013-2018 or "Lansdowne Road"

3.10 ASTI's complaint seems primarily concerned with the Public Service Stability Agreement 2013-2018 or the Lansdowne Road Agreement.

3.11 The Lansdowne Road Agreement took effect in May 2015 and was a renegotiation of the existing Haddington Road Agreement.

3.12 While ASTI members did not accept the Lansdowne Road Agreement, because ASTI is a member organisation of the umbrella body the Irish Congress of Trade Unions ("ICTU") which did vote to accept the Agreement, ASTI was initially covered by the Agreement's provisions and bound by ICTU's collective decision-making.

3.13 As part of the Croke Park Agreement, ASTI agreed to increase teachers' working hours by 33 hours per year without any change in remuneration. In contrast, the working hours of other public servants increased by an average of 101 hours. Following the 2013 renegotiation of that agreement with the Haddington Road Agreement, ASTI agreed to a

further increase of 6 hours under the Supervision and Substitution Scheme with the removal of the allowance associated with these hours ("the Additional Hours").

3.14 As outlined above, the Public Service Agreements and legislative measures operated in tandem. Thus, in order to give effect to certain provisions of the Haddington Road Agreement, the Government introduced the Financial Emergency Measures in the Public Interest Act 2013 ("FEMPI 2013", **Appendix 1**). FEMPI 2013 provided, in particular, in Section 7 for the application of an increment freeze and suspension of pay scales applying to public servants. However, Section 7(5) of FEMPI 2013 provided for the possibility of a collective agreement registered with the Labour Relations Commission operating to exempt public servants who fell within the scope of the collective agreement from that provision.

3.15 Further, the Haddington Road Agreement also provided for a mechanism to resolve disagreements. The parties recognised the importance of stable industrial relations and the maintenance of a well-managed industrial relations environment. They therefore agreed, where a dispute arose, to refer such dispute to the Labour Relations Commission ("LRC") or the Labour Court (or other agreed machinery). In particular, the parties agreed *not* to have recourse to strikes or other forms of industrial action. Accordingly, once a representative organisation, such as ASTI, engaged in industrial action and failed to apply the dispute resolution procedures provided for in the relevant Public Service Stability Agreement, then members of that organisation were considered to have breached the Agreement and were no longer eligible to benefit from it. Any preferential regime envisaged by the Agreement no longer applied to them.

(iv) Industrial Action

3.16 In May 2016, following rejection of a number of opportunities to engage in negotiation of matters in dispute with the Department of Education and Skills ("DES") and other employer representatives, ASTI members voted to stop providing the Additional Hours as of the 11th of July 2016. As a result of the threatened industrial action, in early July 2016

DES and the Department of Public Expenditure and Reform ("DPER") officials met with ASTI and offered to delay the implementation of the measures associated with ASTI's withdrawal from the agreement in order to allow ASTI further time and space to consider its position and for further engagement on the issue. This offer was rejected and ASTI reiterated its decision to withdraw from the Agreement. Nonetheless, throughout August 2016 DES and DPER officials repeated their offer to ASTI representatives for the union to suspend its decision to withdraw from the provision of the Additional Hours and proposed that the DES would suspend the implementation of the measures in dispute. In fact, throughout May and June 2016, the Minister for Education and Skills reiterated his invitation to ASTI to discuss issues of mutual concern on several occasions, including via the parliamentary process, by correspondence and at meetings between the parties. The Minister again repeated this offer in correspondence to the ASTI President in September 2016. Yet again, however, these repeated offers were refused and ASTI proceeded with industrial action.

3.17 As appears from the above, at all times ASTI was notified by the relevant government departments of the implications of its decision and the fact that the envisaged industrial action would result in the loss of benefits accruing under the Public Service Agreement in force. Specifically, DES and DPER officials, including the Minister for Education and Skills, provided comprehensive information on the implications of a withdrawal from the public service agreements. This included publishing comprehensive details on the DES website in May 2016 and in the address of the DES Secretary General to the Joint Managerial Body for Voluntary Secondary Schools at its annual conference in April 2016. Thus, the State did all within its ability to ensure that the ASTI executive had a clear understanding of the consequences of its decision to repudiate the terms of the relevant Public Service Agreement.

3.18 Notwithstanding the attempts by the State to appeal to ASTI, ASTI issued a directive to its members to cease providing the Additional Hours with effect from 11th July 2016. Given the position adopted by ASTI, the Department of Public Expenditure and Reform wrote to the Workplace Relations Commission (the successor body to the LRC) advising that since ASTI had not confirmed that its members would cooperate with the Lansdowne Road

Agreement, they were taken to have ceased to operate within the agreement as of 1st July 2016 and as such, would default to the provisions of Section 7(1) of FEMPI 2013, which, it will be recalled, prescribed an increment freeze for all public servants not covered by a collective agreement.

3.19 On 14th July 2016, the DES issued a Circular 0045/2016 outlining the benefits arising from the Lansdowne Road Agreement and related reform measures which would no longer apply to ASTI members who had withdrawn from the Public Service Agreements.

3.20 ASTI suspended its industrial action on the 10th June 2017 and, thereafter, ASTI members were considered once again to be in compliance with the provisions of the Lansdowne Road Agreement. Thus, ASTI members could enjoy the benefits of the Public Service Agreements from that date onwards.

4. THE COMPLAINT

(i) Discrimination?

4.1 As set out at §2.1 above, ASTI asserts in its complaint to the Committee that:

> *"Ireland is not in conformity with Article 5 of the European Social Charter in that the government, by according favourable treatment to a rival trade union as regards pay and increments for its members, is interfering with the right to freedom of association guaranteed to teachers thereby."*

4.2 From its submission, it appears that the principal basis of ASTI's complaint is that members of the Teachers' Union of Ireland ("TUI"), a rival union, received preferential treatment from the Government in relation to the Lansdowne Road Agreement. However, beyond its generalised assertions of favouritism, the ASTI submission fails to provide any adequate analysis of the obligations and responsibilities Article 5 imposes on the Government. Thus, the Complainant fails to provide any adequate assessment of the Government's

responsibility in the circumstances or to seek to match those obligations with the legal and factual matrix.

4.3 ASTI asserts that its members are 'subjected to continuing disadvantage'. This statement is not entirely understood but it seems to be predicated on an assumption by ASTI that its members should receive retrospective benefits for a period when they were outside the Lansdowne Road Agreement which gave rise to such benefits. In particular, the case appears to be made that ASTI members should have their entitlement to increments retrospectively adjusted in order to discount the period from June 2016 to June 2017 when ASTI members fell outside the Lansdowne Road collective agreement and, accordingly, did not benefit from any exemption from FEMPI legislation, and in particular Section 7 of FEMPI 2013 which operated to freeze increments. However, it must be acknowledged that ASTI does not expressly formulate its complaint in this way and, critically, fails to acknowledge the legislative landscape or the impact of falling outside the scope of the Lansdowne Road Agreement.

4.4 As is clear from what is set out above, the Government's twin-track approach to the financial crisis was, on the one hand, to introduce legislation designed to reduce public sector pay while, on the other hand, negotiating collective agreements which conferred a preferential regime on those public sector organisations that agreed to be bound by the public service agreements, in exchange for committing their members to enhanced productivity measures and dispute resolution mechanisms designed to ensure industrial stability. Accordingly, the benefits of the Public Service Agreements are only available to those compliant with the relevant agreement. When organisations fall outside the scope of the relevant agreement, they necessarily fall outside the scope of exemptions provided for by FEMPI legislation. This fundamental fact is not clearly acknowledged by ASTI. ASTI then fails to identify in its complaint any statutory, contractual, or legal provision or indeed any provision of a collective agreement, that is claimed to entitle its members to receive retrospectively the benefit of pay increments which it would have received were it not for ASTI's decision to resile from the Lansdowne Road Agreement in the period 2016 to 2017.

4.5 In the circumstances, the Government is at a loss to understand the precise basis for ASTI's claim that its members were placed at a disadvantage which represents an instance of direct or even indirect discrimination. ASTI's claim *appears* to be that a union which does not embrace a collective agreement should not as a result be at any disadvantage. If this proposition were correct, the State's entire collective bargaining regime would be rendered ineffective. It is a proposition which simply does not fall within Article 5 of the Charter.

4.6 Accordingly, the Complainant has failed to properly establish its claim to render its complaint admissible.

4.7 The Government observes that Irish law of course ensures that trade union members are protected from any detrimental consequences that their trade union membership or activities may have on their employment, particularly any form of reprisal or discrimination because they belong to a trade union or engage in trade union activities. Furthermore, Ireland provides comprehensive legal remedies or sanctions for practices which unduly obstruct the freedom to form or join trade union organisations in accordance with the fundamental freedom secured by Article 5 of the Charter. ASTI does not suggest otherwise.

(ii) Unfounded comparison with other trade unions

4.8 In an attempt to support its complaint, ASTI seeks to conflate an entirely separate and unique industrial relations dispute involving the Irish Nurses and Midwives Organisation ("INMO") with ASTI's decision to resile from the Lansdowne Road collective agreement in 2016.

4.9 In its complaint, ASTI states that:

> *"The extent to which the Irish Government sees fit to discriminate against particular trade unions such as ASTI is currently apparent, in the context of strike action by Irish nurses."*

4.10 ASTI then asserts that:

> *"The Irish Government is utilising the FEMPI Acts in an arbitrary and discriminatory fashion – not by reference to any objective criteria, rather, by way of threat to punish trade unions for exercising the right not [to] be forced into agreeing to be bound by a national agreement – leaving in place / withdrawing benefits not by reference to fair and objective rules, rather, on the basis of the government's assessment of what 'might make it more difficult' to 'resolve' (from the Government's perspective), a dispute with a trade union, at any given time."*

4.11 However, the INMO situation was not comparable to ASTI's situation. ASTI resiled from the Lansdowne Road Agreement without operating the dispute resolution procedure included in that Agreement.

4.12 By contrast, the INMO did not resile from the Public Service Stability Agreement 2018-2020. Rather, it co-operated with the dispute resolution procedure included in that Agreement. As noted by the Labour Court in its recommendation (LCR 21900, Appendix 2):

> *"The Trade Union has also made clear to the Court its acknowledgement that the resolution to the within dispute must be found within the framework of the PSSA."*

Accordingly, insofar as ASTI's claim is to the effect that it has been discriminated against when compared with the manner in which the Government has treated members of the INMO, this complaint is entirely misconceived and unsubstantiated. ASTI refused to engage with the dispute resolution process provided for by the Lansdowne Road Agreement. The INMO, by contrast, engaged with the dispute resolution procedure provided for by the Public Service Stability Agreement 2018 – 2020. Simply put, ASTI chose not to comply with the relevant agreements and consequently were not entitled to benefit from the more generous provisions provided for in the agreements.

4.13 As a result of its actions, ASTI members were subjected to the provisions of FEMPI 2013 and, in particular, the generalised regime in respect of suspension of increments provided for by Section 7 of FEMPI 2013. By contrast, as the resolution of the INMO dispute took place within the Public Service Stability Agreement therefore members of the INMO never had applied to them the generalised and less preferential provisions of relevant public pay legislation. ASTI fails to compare like with like and fails to provide the relevant factual and legal framework within which its complaint of discrimination properly falls to be considered.

(iii) International Labour Organisation ("ILO") Authorities

4.14 In support of its submission, ASTI cites two decisions of the ILO Committee on Freedom of Association. ASTI seeks to rely on these decisions (which of course relate to a different international organisation and a different international instrument) in support of its argument as to how the Charter should be applied in the instant case. While the Government acknowledges that the recommendation of the relevant ILO Committee may be of interest to this Committee, the decisions sought to be relied upon in fact provide no support for ASTI's complaint principally as they relate to situations which are readily and radically distinguishable on the facts.

4.15 The first decision cited by ASTI's submission is a complaint titled Government of Malaysia presented by the Malaysian Trade Unions Congress, Complaint 2850 of 2012 of the ILO Committee on Freedom of Association. There, the complaint was made that the relevant Minister registered an in house union to represent the same category of banking officials as represented by another union. Thus, the entire premise of this decision is entirely distinguishable from the present complaint.

4.16 The ASTI submission refers in particular to paragraph 872 of the *Malaysian Trade Union* complaint and the statement to the effect that:

"…any favourable or unfavourable treatment by the public authorities of a particular trade union as compared with others, if it is not based on objective pre-established criteria of representativeness and goes beyond certain preferential rights related to collective bargaining and consultation, would constitute an act of discrimination which might jeopardise the right of workers to establish and join organisations of their own choosing."

4.17 However, it is clear that the approach of the Government in the instant case at all times has been entirely objective. The Government treated ASTI while it was bound by the Lansdowne Road Agreement in the same way as any other union that committed to that Agreement. When it resiled from the Lansdowne Road Agreement, it was equally treated in the same way as any other non-party union and its members were treated in accordance with the provisions of the applicable legislation being FEMPI 2013. Furthermore, the Government did not treat more favourably the members of TUI over the members of ASTI. When ASTI unilaterally decided to resile from the collective agreement, it did so in the clear knowledge that the default position would be the application of Section 7 of FEMPI 2013 to reduce pay and related benefits for public servants. Accordingly, ASTI was fully aware that its unilateral step would result in its members no longer receiving the benefits prescribed by the relevant collective agreement in contrast to the TUI, whose members would continue to enjoy the benefits of that Agreement given that they remained subject to its terms.

4.18 As a simple proposition of industrial relations, it must be the case that those unions which choose not to comply with collective agreements are not entitled to benefit from the more generous provisions provided for in the agreements and contemplated by legislation which set the more restrictive default entitlements.

4.19 The ASTI submission also cites the ILO decision of Government of the Republic of Moldova presented by The Federation of Trade Unions of Public Service Employees (SINASP) and Others, Complaint No. 2317 of 2008. This case related to an alleged breach of Article 2 of ILO Convention No. 98, where it was claimed that the Government of

Moldova threatened and intimidated trade union officials and that criminal complaints to the Moldovan public prosecutor brought no results. It is in this context that the ILO criticised the Government of Moldova for its favouritism of a particular union and its attempts, directly or indirectly, to influence the trade union choice of workers.

4.20 ASTI seeks to assert that its members have been treated in an identical fashion to the Moldovan workers insofar as it asserts that the Government is guilty of according favourable treatment to the TUI over ASTI. In its submission ASTI states:

> *"I am satisfied that, by according favourable treatment to TUI as compared with ASTI, as regards pay and increment restoration, the Irish government, through the Department of Education and Skills, influenced the choice of teachers as to the trade union they should join or in which they should remain contrary to the provisions of Article 5 of the European Social Charter."*

4.21 Clearly, the circumstances of ASTI's complaint are entirely different to the facts in the Moldovan case. Also, it cannot be maintained that the Government has acted in anything but an entirely objective manner. Rather, the legislative framework provided by the FEMPI Acts, and in particular FEMPI 2013 is generally applicable and not directed at any particular union. Similarly, the Public Service Pay Agreements provide a framework which public sector unions can agree to opt into. Legislation provides for the generally applicable consequences of opting into such a collective agreement. Neither the legislation at issue nor the collective agreements themselves can be contended to constitute either a direct or indirect attempt to influence workers in their choice of a particular trade union. It is noteworthy that ASTI does not seek to make this case. Rather, what it appears to wish to contend is that the negative consequences for ASTI members of ASTI's decision to opt out of the Lansdowne Road Agreement constitute a form of inappropriate direct or indirect Government influence in the choice of trade union. This claim is entirely misconceived. No direct or indirect discrimination arises in the instant case. No direct or indirect attempt to influence trade union choice of workers arises save insofar as the Government has put in place a framework that provides benefits to the members of unions who opt into that

framework. This is clearly a legitimate objective of the Government and, insofar as it operates to discriminate between public service unions who opt into the preferential public service pay agreements and those who do not, it is a difference in treatment readily capable of being objectively justified having regard to the significant financial crisis that the Government faced, the choices made by the legislature and the sophisticated industrial relations framework put in place first to protect the public finances and subsequently to seek to provide for the restoration of public service pay.

4.22 Nowhere in its application, does ASTI identify how such measures are claimed to be, or could be, in breach of Article 5 of the Charter.

5. DUTY OF FAIRNESS TO OTHER PUBLIC SERVANTS

5.1 ASTI appears to seek the retrospective application of increments to its members to put them in the same position as those public servants who agreed to abide by the terms of the public service agreement *ab initio.* Thus, ASTI demands the same benefit as that due to those public servants who complied with the full terms of the relevant public service agreement and who, at all material times, accepted those additional obligations placed upon them, including the working of the Additional Hours. However, such an approach of treating ASTI members as if they were at all times compliant with the relevant collective agreement and, in particular, had worked the Additional Hours when they did not, would be unfair and would in effect undermine the State's ability to engage effectively with trade unions in the context of collective bargaining as non-compliant and compliant unions and their members would wrongly be treated in like manner.

5.2 It is submitted that any difference in treatment between ASTI and those other unions and their members who at all times engaged with the public service agreement, is entirely due to the decision of the members of ASTI to resile from the Agreement that they had already agreed to and instead, to subject themselves to the provisions of Section 7 of FEMPI 2013. That decision to resile from the relevant agreement has had the consequence that ASTI members are not placed in exactly the same position as those other public service union

members who at all times acted in good faith, accepting the obligations required of them by virtue of their full acceptance of the terms of the agreement.

5.3 As such, the conscious and fully informed rejection of the collective agreement on the part of ASTI is what placed its members at a financial disadvantage and same was not caused by any capricious or partisan action on the part of the State.

6. CONCLUSION

6.1 The Complainant fails to provide any adequate analysis of the obligations and responsibilities Article 5 imposes on the Government. More fundamentally it fails to provide the necessary legal and factual detail and thereby fails to adequately identify a stateable claim for admissibility, notwithstanding the burden of proof upon it to do so.

6.2 The position ASTI complains about flows from its own actions. ASTI refused to engage with the dispute resolution process within the Lansdowne Road collective agreement and unilaterally resiled from that agreement, thereby subjecting its members to the provisions of the FEMPI 2013. While ASTI is now again compliant with Public Service collective agreements, it has not identified any basis for its contention that it is or was somehow discriminated against in a manner that constitutes a breach of Article 5 by reason of the fact that, for a given period it did not benefit from the preferential regime provided for by the agreement it had resiled from.

6.3 At all material times, it was the conscious and fully informed rejection of the collective agreement on the part of ASTI that placed its members at a financial disadvantage and same was not caused by any capricious or partisan action on the part of the State. Thus, those unions which chose not to comply with the agreements consequently were not entitled to benefit from the more generous provisions provided for in the agreements

6.4 Accordingly, ASTI's complaint should not be admitted.