



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

21 November 2019

Case Document No. 3

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

**RESPONSE BY ASTI TO THE GOVERNMENT'S
OBSERVATIONS ON ADMISSIBILITY**

Registered at the Secretariat on 14 November 2019

Mr Henrik Kristensen
Deputy Executive Secretary of the European Committee of Social Rights
Directorate General of Human Rights and Rule of Law
Department of the European Social Charter – Collective Complaints
Council of Europe
67075 Strasbourg Cedex,
France

By email to DGI-ESC-Collective-Complaints@coe.int

14th November, 2019

Re: Complaint to European Committee of Social Rights

Dear Mr Kristensen,

Thank you for the opportunity to respond to the Government of Ireland's Observations on Admissibility of the ASTI's Complaint to the European Committee of Social Rights in which it is maintained that ASTI has failed to adequately identify a stateable claim for admissibility. Specifically, it is contended that ASTI had failed to establish "a sufficient evidentiary or arguable basis" in respect of its contention that Ireland is not in conformity with Article 5 of the European Social Charter.

In this response, I will identify with precision the alleged violations of Article 5. Before doing so I wish to emphasise that the references in the complaint to the dispute involving the Irish Nurses and Midwives Organisation (INMO) were provided merely for the purpose of giving context to ASTI's specific complaint herein, namely that the relevant Government departments are specifically targeting ASTI by declining to treat INMO members as "non-covered" public servants and thus subjecting them to the same disadvantages as ASTI members.

The ASTI complaint centres on the Department of Education and Skills Circular 0045/2016 of 14 July 2016 which drew an explicit distinction between ASTI members and those of the TUI. Ample evidence exists that, by affording favourable treatment to TUI as compared with ASTI, Ireland (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.

The impact of Circular 0045/2016 can be seen from the fact that, in the six-month period between January and June 2017, 1,235 teachers resigned their membership of ASTI and at least 1,059 of whom sought, and were admitted into, membership of TUI. ASTI commissioned an actuary's report on the loss of subscription income which estimates that the loss of income from January 2017 to 13 June 2019 amounted to €606,700. The report also provides estimates of loss of subscription income going forward. It should be noted that the report indicates that, as of 13 June 2019, 92 of the 1,059 had re-joined ASTI. As of today's date that figure is now 121. A copy of this report is attached hereto.

These figures are supported by answers to Parliamentary Questions ("PQs") posed to the Minister for Education and Skills.

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GENERAL SECRETARY: KIERAN CHRISTIE

PQs 40312/17 to 40323/17 requested “details of the number of post primary teachers who had deduction facilities for ASTI and TUI subscriptions in January and July 2017”. These questions were answered by letter dated 10 November 2017 and details were provided which showed that, as of 1 January 2017, there were deduction facilities in place for 14,901 ASTI members and for 1,793 TUI members. By 1 July 2017, the ASTI figure had decreased to 13,930 (a loss of 971) whereas the TUI figure had increased to 2,993 (a gain of 1,200) with the largest increase being in the voluntary sector (184 rising to 1,099).

PQ 40324/17 requested details of “the number of teachers in the voluntary secondary schools sector who were in receipt of the gross additional payment of €796 in lieu of the supervision and substitution allowance in respect of the 2016/2017 school year on **2 June 2017**”. It will be recalled that this payment was made **only to TUI members**. The Minister responded (by way of written answer) on Tuesday, 26 September 2017 advising that that number was 1,113. As can be seen from the answer to the previous PQs, on **1 January 2017** the number of TUI members in the voluntary sector who were having their membership subscriptions deducted from salary was only 184. Copies of the PQs and the answers are attached hereto.

I also refer you to an extract from the March 2019 issue of *TUI News* (Vol.41/No.5) at page 32, dealing with the ASTI/TUI dispute. The first of the “Points of Note” states that “TUI did not approach, solicit or encourage or offer inducements to members of the ASTI to leave membership of that union and join TUI”. Consequently, the change in membership as between the two unions is entirely due to the actions of the Government of Ireland in providing financial and other incentives for teachers to leave ASTI and join TUI. A copy of the March 2019 issue of *TUI News* is attached hereto.

I would also like the opportunity to expand upon the reference in the complaint to the different treatment of teachers, depending on the trade union of which they are a member, as regards transitioning from a fixed-term contract to a contract of indefinite duration (“CID”). Circular 0045/2016 goes on to provide that Circular 0024/2015 is withdrawn with immediate effect in respect of teachers not covered by the Lansdowne Road Agreement. Circular 0024/2015 introduced improved arrangements whereby teachers on fixed-term contracts could transition to CIDs after two years. The withdrawal of these arrangements from ASTI members meant that they reverted to being governed by the provisions of the Protection of Employees (Fixed-Term Work) Act 2003 which provides for a transition to a CID after four years on a series of fixed-term contracts. A number of those teachers who resigned their membership of ASTI specifically cited this as a reason for leaving the union.

Yours sincerely,



Kieran Christie
General Secretary

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