



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

16 March 2020

**Case Document No. 5**

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

**ADDITIONAL OBSERVATIONS BY ASTI  
ON ADMISSIBILITY**

**Registered at the Secretariat on 17 February 2020**



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  
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17<sup>th</sup> February 2020

**Re: Complaint to European Committee of Social Rights**

Dear Mr Kristensen,

I refer to the Irish Government's 17 December 2019 Supplementary Observations on the Admissibility of the Complaint in this case. I note from that document that the Irish Government continues to contend that ASTI's Complaint fails to meet the admissibility criteria prescribed by the Protocol and, in particular fails to establish a sufficient evidentiary or arguable basis in respect of its contention that the Irish Government has failed to comply with the Charter. That is not the case as is apparent from the following synopsis of ASTI's Complaint (as articulated in previous correspondence):

**Evidentiary Basis**

The Financial Emergency Measures in the Public Interest Acts (the "FEMPI" Acts) initially involved, *inter alia*, reductions in public service pay, the imposition of a pensions levy and the freezing of increments of **all public sector workers** (including teachers) regardless of which trade union the workers were members.

Then, Ireland moved essentially to distinguish as between **public sector workers who engaged in industrial action** and **those who did not engage in such action**.

Initially, the FEMPI Act 2013 differentiated as between public servants "*to whom a collective agreement relates*" and those to whom no such agreement relates. Then, Department of Education and Skills Circular Letter 0030/2016 of 22 April 2016 ("CL 0030/2016") differentiated as between "*Grades **not covered** by the Public Service Stability Agreement 2013-2018 (Haddington Road Agreement/Lansdowne Road Agreement)*" and "*Grades*" who were covered by that Agreement. That "covered" concept was repeated in the Public Service Pay and Pensions Act 2017 which spoke of "**covered**" and "**non-covered**" teachers/public servants.

Essentially, teachers/public servants who did not engage in industrial action were "covered". Those who engaged in industrial action were "not covered"/"non-covered". The former were treated more favourably than the latter.

ASTI members engaged in lawful industrial action between 11th July 2016 and 10 June 2017. In the context of that industrial action, CL 0030/2016 singled out ASTI and TUI members and (although no distinction was expressly drawn between members of those two trade unions) ASTI members, by virtue of their having taken part in lawful industrial action, were deemed to be “not covered”, while TUI members, by virtue of their not having taken part in industrial action, were deemed to be “covered”. **On that basis**, ASTI members were treated less favourably than the members of trade unions who had not engaged in industrial action, such as members of the TUI.

In consequence of all of the above, 1,235 ASTI members resigned from membership of ASTI between 1 January 2017 and 10 June 2017 and at least 1,059 of them sought, and were admitted into, membership of TUI and I note that the Irish Government, in their Observations and Supplementary Observations on the Admissibility of ASTI’s Complaint, singularly fail to address this point.

### **Arguable Basis**

The freedom of a worker to choose which trade union to join is a right expressly laid down in Article 5 of the European Social Charter. Unfavourable treatment by public authorities, such as the unfavourable treatment with which we are concerned here, constitutes an act of discrimination which jeopardises the right of workers to establish and form organisations of their own choosing contrary to Article 2 of ILO Convention No. 87, see 363<sup>rd</sup> Report of the ILO Committee on Freedom of Association, Case No. 2850, para 872. Favouring a trade union which does not engage in industrial action over a trade union which does so serves to impair the freedom of workers to choose which of those two trade unions to join. By placing TUI at an advantage to ASTI (in the fashion described above), the Irish government 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.

Finally, the attempt by the Irish Government to suggest - by reference to INMO - that ASTI is, in some way, “resiling from one of the central tenants of its original submission” and/or withdrawing an “aspect” of our Complaint and/or choosing to “narrow down” our Complaint, is disingenuous and entirely misleading. In our Complaint, ASTI clearly and unequivocally referenced the INMO’s strike action, as **an example** of “[t]he extent to which the Irish government sees fit to discriminate against particular trade unions such as ASTI”, in circumstances where Ireland’s Prime Minister (“Taoiseach”) admitted that, on the basis of the Government’s view that withdrawing benefits from INMO’s members “would be provocative” in a strike where “[the members of the INMO had] enormous public support”. That context was made clear in ASTI’s Complaint and reiterated in my letter to you of 14 November 2019 - the references in the Complaint to the dispute involving the 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 attempt by the Irish Government to equate that contextualisation with “resiling from” any tenets of our original submission and/or “withdrawing”/“narrowing down” any aspect of our Complaint is inappropriate.

Yours sincerely,



Kieran Christie  
General Secretary

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