



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

27 February 2020

Case Document No. 4

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

FURTHER OBSERVATIONS BY THE GOVERNMENT ON ADMISSIBILITY

Registered at the Secretariat on 17 December 2019

EUROPEAN COMMITTEE OF SOCIAL RIGHTS

ASSOCIATION OF SECONDARY TEACHERS, IRELAND (ASTI)

Complainant

V

IRELAND

Respondent

Complaint Number: 180/2019

*Supplementary Observations by the Respondent on the Admissibility of the
Complaint*

17 December 2019

1. INTRODUCTION

- 1.1 Pursuant to Article 6 of the Additional Protocol to the European Social Charter providing for a system of collective complaints and Rule 28§3 of the Rules of the European Committee of Social Rights, the President of the Committee has invited the Government of Ireland to submit a further response to the Response of the Association of Secondary Teachers Ireland (hereafter, “ASTI” or “the Complainant”) which response was registered on the 14 November 2019.
- 1.2 The Government makes the following supplemental submission on the admissibility of the ASTI complaint.

2. MATTERS ARISING

- 2.1 The Government made observations on admissibility in respect of ASTI’s complaint on 30 August 2019. The Government emphasised, in its observations, that ASTI’s complaint failed to meet the admissibility criteria prescribed by the Protocol. In particular, ASTI failed to establish a sufficient evidentiary or arguable basis in respect of its contention that the Government had failed to comply with the Charter.
- 2.2 The Government noted, in particular, that the burden of proof was on the Complainant to properly set up the factual and legal circumstances of the alleged violation.
- 2.3 The Government then, at Part 4 of its observations, sought to address what it believed to be the nature of the complaint. In the first instance, the Government recalled that ASTI itself was responsible for the decision to resile from the relevant Public Service Agreement, being the Lansdowne Road Agreement, in the period from 2016 to 2017. The “disadvantages” claimed to be suffered by ASTI and its members flowed directly from ASTI’s decision. In particular, that decision was one taken in the knowledge of the impact of Section 7 of FEMPI 2013. The effect of Section 7 of FEMPI 2013 was to freeze pay increments. Exemptions were provided from the operation of the pay freeze imposed by

FEMPI 2013 if, and only if, public servants fell within the scope of the Public Service Agreements. Once ASTI fell outside the Lansdowne Road Agreement, its members necessarily lost the benefit of the exemption from the statutory increment freeze.

2.4 The Government noted in its observations that it was unclear how precisely ASTI contended that this legislative framework operated to breach Article 5 of the Charter.

2.5 The Government then noted that ASTI sought to advance an entirely unfounded comparison with other trade unions and, in particular, with the INMO. However, it was contended that ASTI and the INMO were never in comparable positions. It is noteworthy that this now appears to be accepted.

2.6 In particular, ASTI in its response now confirms that:

“the references in the complaint to disputes 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 disadvantage as ASTI members”.

2.7 Accordingly, it now appears that ASTI no longer maintains a claim of discrimination by reference to the INMO. It seems that ASTI now wishes to resile from one of the central tenets of its original submission, which invited a direct comparison between the treatment of ASTI and the treatment afforded the INMO.

2.8 That ASTI has now withdrawn this aspect of its complaint is understandable: the INMO cooperated with the dispute resolution process of a different agreement (the Public Service Stability Agreement 2018-2020), engaged with the Labour Court to achieve the resolution of their dispute within the terms of the Agreement. Consequently, the provisions of the FEMPI Act of 2013, including the suspension of increments provided for by Section 7 of FEMPI 2013, did not apply to them.

- 2.9 It is worth repeating the relevant recommendation of the Labour Court with respect to Nursing Staff Remuneration (LCR 21900) as follows:

“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...The Court, consequently, has considered all aspects of the dispute between Public Service Employers and the INMO in the context of the PSSA.”

- 2.10 However, the fact that ASTI has now chosen to narrow down the complaint does not remedy the core deficiencies in the complaint. ASTI has now sought to clarify that its complaint “centres” on the Department of Education and Skills Circular 0045/2016 of 14 July 2016 (“the Circular”) which it claims “*drew an explicit distinction between ASTI members and those of the TUP*”. ASTI now claims that ample evidence exists of the “favourable treatment” afforded to TUI as compared with ASTI. It then addresses the impact of the Circular.
- 2.11 However, it is noteworthy that ASTI still does not engage in any adequate analysis of the obligations and responsibilities Article 5 imposes on the Government or the legal and factual matrix within which the ASTI complaint is made. In particular, ASTI entirely fails to address the fundamental fact that the Circular reflected the decision made by TUI to abide by the Lansdowne Road Agreement which afforded to their members the benefit of the preferential regime envisaged by that agreement. By contrast, ASTI members did not enjoy the benefits flowing from the Circular. This alleged detriment to ASTI was the direct consequence of the decision made by ASTI. Nowhere in its response does ASTI acknowledge this fact or take any issue with the legislative framework as described by the Government. The fact that the evidence sought to be relied upon may serve to demonstrate that ASTI members left ASTI and joined TUI is not evidence of discrimination prohibited by Article 5 of the Charter. Rather, it reflects the freedom of choice of individual trade union members to join a union which benefitted from a preferential regime such as that which was enjoyed by TUI. Critically, that preferential regime was generally applicable. It is accordingly entirely misconceived to contend, as ASTI does, that any change in

membership as between the two unions was “*entirely due to the actions of the Government of Ireland in providing financial and other incentives for teachers to leave ASTI and join TUI*”. This is the fallacy at the heart of the ASTI submission. The Government did not provide any incentives for individual teachers to join TUI as opposed to ASTI. Rather, the preferential regime provided for by the Public Service Agreement framework was open to the members of any union which agreed to its terms. The incentives provided for the Public Service Agreements were indistinctly and generally applicable. Any detriment suffered by ASTI members was as a consequence of ASTI’s decision rather than Government action.

3. CONCLUSION

- 3.1 The Respondent reaffirms its submission that the Complainant has failed 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 necessary and thereby fails to adequately identify a stateable claim for admissibility, notwithstanding the burden of proof upon it to do so.
- 3.2 Accordingly, the Government reiterates its view that ASTI’s complaint should not be admitted.