



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

16 April 2020

Case Document No. 6

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

ADDITIONAL OBSERVATIONS BY THE GOVERNMENT ON ADMISSIBILITY

Registered at the Secretariat on 1 April 2020

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

COMPLAINT TO EUROPEAN COMMITTEE OF SOCIAL RIGHTS

Complaint Number: 180/2019

Further Supplementary Observations of the Respondent

Dated the 1 April 2020

1. INTRODUCTION

- 1.1 By letter dated March 5th 2020 the Government of Ireland was invited to submit any further response to the additional observations made by the Association of Secondary Teachers, Ireland (“ASTI”) and dated February 17th 2020 on the admissibility of this complaint.
- 1.2 The Government makes the following brief supplemental submission.

2. RESPONSE TO ASTI’S SUPPLEMENTAL OBSERVATIONS

- 2.1 ASTI has sought to address the criticisms made of its complaint by the Government by purporting to address, in the first instance, the evidentiary basis for the complaint and, in the second instance the arguable basis for the complaint. However, its observations fail to engage with the principal deficiency of the ASTI complaint which is that it entirely fails to address the Irish legislative framework and fails to analyse how it contends that the consequences flowing from that legal framework engage or are incompatible with Article 5 of the Charter. The ASTI complaint continues to fail to meet the relevant threshold for admissibility.
- 2.2 As regards the evidentiary basis, while ASTI finally touches upon the legislative framework, being the requirements of FEMPI 2013, it then misdescribes that framework.
- 2.3 As the Government has previously outlined in its observations of August 30th 2019 and December 17th 2019, Section 7(5) of FEMPI 2013 (Annex 1) provided as follows:

“(5) Notwithstanding anything in the preceding subsections of this section, subsection (1) shall—

- (a) apply to a public servant only to the extent specified in the agreement, or*
- (b) apply to a public servant with such modifications as are specified in the agreement,*

to whom a collective agreement relates and which agreement—

- (i) for the time being stands registered with the Labour Relations Commission for the purposes of this section, and*
- (ii) provides for the application to such a public servant of subsection (1) in the manner described in paragraph (a) or (b), as the case may be.”*

- 2.4 Thus, Section 7(5) exempted public servants to whom a collective agreement related from the obligations imposed by FEMPI 2013 and, in particular, the imposition of a freeze on the payment of increments.
- 2.5 Insofar as ASTI appears to suggest that there is a material difference in wording between FEMPI 2013 and the Department of Education and Skills Circular 0045/2016 of 14 July 2016 (“the Circular”) in respect of which it now complains, this is misconceived. The Circular referred to “covered” grade. However, the Circular clearly referred to the extent to which a public servant was “covered” by a collective agreement and, in particular, by the relevant collective agreement in being at the time, being the Lansdowne Road Agreement. There is no material distinction between the language of FEMPI 2013 addressing public servants “to whom a collective agreement relates” and the reference in the Circular to “covered grade”.
- 2.6 ASTI then states that, for the purposes of the Circular, public servants who did not engage in industrial action were “covered” and those who did engage in industrial action were “not covered”. On this basis, it is contended that ASTI member were treated less favourably than members of trade unions who did not engage in industrial action, such as members of TUI.
- 2.7 What is notable in this aspect of ASTI’s argument is that it entirely fails to acknowledge that engaging in industrial action was a *breach* of the relevant collective agreement, being the Lansdowne Road Agreement. Therefore, while it is true that a distinction was drawn by the Circular between public servants (in this instance, teachers) who engaged in lawful industrial action and those who did not, this is because ASTI, by electing to choose the

route of industrial action knowingly brought its members outside the scope of the collective agreement.

- 2.8 ASTI then contend that the favouring of a trade union which engages in industrial action over a trade union which does not do so impairs the freedom of workers to choose which trade union to join. It is contended that the Irish Government influenced the choice of teachers in this manner, contrary to the provisions of Article 5 of the Charter.
- 2.9 For the reasons previously given in the Government's observations, this argument is misconceived. FEMPI 2013 reflected the commitment to and benefit of collective bargaining. FEMPI 2013 did not discriminate between unions but provided a generally applicable legislative framework that unions could avail of.
- 2.10 The fact that ASTI lost members to TUI because it chose to take itself outside the Lansdowne Road Agreement, and accordingly lost the benefit of the Collective Agreement is not action that can be attributed to the Government. No direct or indirect attempt was made by the Government to influence the trade union choice of workers. Further, even if FEMPI 2013, by reflecting the legitimate objective of Government to afford benefits to those covered by collective agreements, operated to put in place a difference in treatment, such a difference in treatment is readily capable of being objectively justified.

3. CONCLUSION

The Government reiterates its view that ASTI's complaint should not be admitted for the reasons previously outlined in its observations.