



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

20 November 2020

**Case Document No. 9**

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

**FURTHER RESPONSE BY THE GOVERNMENT ON THE  
MERITS**

**Registered at the Secretariat on 16 November 2020**



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS**

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**ASSOCIATION OF SECONDARY TEACHERS, IRELAND (ASTI) v IRELAND**

*Complaint Number: 180/2019*

*Further response submitted by the Government of Ireland pursuant to Rule 31§3 of the Rules of the  
European Committee of Social Rights*

## **1. INTRODUCTION**

- 1.1 By letter dated 7 October 2020, the Government of Ireland was invited by the President of the Committee to submit a further response pursuant to Rule 31§3 of the Rules of the European Committee of Social Rights.
- 1.2 These submissions are made further to the response of the Association of Secondary Teachers, Ireland (“ASTI”) dated 25 September 2020 in respect of the Government of Ireland’s submissions on the merits of the above-mentioned complaint, dated 22 July 2020 (“the Government’s submissions on the merits”).

## **2. GOVERNMENT OF IRELAND’S RESPONSE**

- 2.1 At the outset, the Government of Ireland feels compelled to observe that it has consistently complained that the parameters of ASTI’s complaint were unclear. ASTI has not adequately set out the precise means by which it contends that the Government failed to comply with Article 5 of the European Social Charter (revised) (“the Charter”). In this regard, at paragraph 7.1 of the the Government’s submissions on the merits, it noted that 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.”*

The Government of Ireland observed that the ASTI submission failed to provide any detail of its complaint. It is noteworthy that ASTI, in its response to the Government’s submissions on the merits dated 25 September 2020 (“the ASTI’s response”) now states that:

*This complaint is **not** about whether ASTI members should receive retrospective benefits or have their increments retrospectively adjusted. [emphasis added]*

2.2 Instead, ASTI states that:

*The issue in this complaint is whether the Government of Ireland influenced the choice of teachers as to the Trade Union they should join, or whether they should remain, in a manner contrary to its obligations under Article 5 of the Charter.*

2.3 Notably, however, ASTI again fails to identify precisely how it is contended that the Government has influenced the choice of teachers as to the trade union they should join. The Government of Ireland understood that the complaint as initially articulated was directed to the Circular. No reference is now made in the ASTI's response to the Circular.

2.4 In short, ASTI has failed to identify precisely or consistently the State action in respect of which it complains and now makes generalised criticisms which again fail to have sufficient regard to the legislative framework. That legislative framework has been insufficiently analysed by ASTI.

2.5 ASTI is, nonetheless, required to acknowledge the effect of the Financial Emergency Measures in the Public Interest legislation ("FEMPI"), stating in its response that:

*[...] the reason why so many ASTI members joined the TUI was because TUI members were not subject to FEMPI [and] the only incentive and/or inducement for teachers to leave ASTI membership, or not to join that trade union, arises from the fact that TUI members, but not ASTI members, could benefit from the available pay restoration and other measures. The Committee will note that these measures were denied to ASTI members notwithstanding that the industrial action in which they had engaged was perfectly lawful.*

2.6 The Government of Ireland will not repeat in detail its description of the operation of the FEMPI legislation outlined in its submissions on the merits. However, it is clear that the selective analysis now proposed by ASTI fails to take account of the proper context of and legislative background to the collective agreements and seeks to conflate the apparent fact that ASTI experienced a decline in membership following the ASTI decision to engage in industrial action with the decision of the

Government to proceed in accordance with the terms of the Lansdowne Road Agreement and the FEMPI legislation.

- 2.7 The assertion that the Government of Ireland has acted in a manner contrary to its obligations under Article 5 of the Charter is rejected. By its own admission ASTI acknowledges that:

*Ireland has undertaken that its national law shall not be such as to impair, nor shall it be so applied as to impair, the right to Freedom of Association, which right includes the right of workers to join trade unions of their own choosing free from governmental incentives and/or inducements.*

- 2.8 The Government offered the same choice to teachers irrespective of which union they were members of, namely, to engage with an agreement that provided certain benefits, including protections against measures to be applied to those who did not engage. ASTI chose not to comply with the collective agreements. The operative legislative framework, FEMPI 2013, did not discriminate between trade unions. Instead, it prescribed baseline provisions for universal application and recognised the positive commitment of participating unions in collective bargaining.
- 2.9 Those who opted out of the collective agreement, knowingly opted out of the FEMPI exemptions for their members.
- 2.10 ASTI's claim is 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.
- 2.11 FEMPI 2013 explicitly provided for a series of measures reducing the benefits of public service employment. This aspect of the legislation is not challenged by ASTI in this forum or elsewhere. The default position was therefore that the FEMPI legislation applied. That legislation offered a mechanism to avoid the FEMPI pay reductions: engaging with the relevant collective agreements.

2.12 Those who failed to engage with the collective agreements or resiled from them by way of breach or otherwise were subject to legal consequences, as described in FEMPI 2013.

2.13 ASTI states that the benefits of the collective agreements:

*were denied to ASTI members notwithstanding that the industrial action in which they had engaged was perfectly lawful.*

2.14 ASTI supports this claim by reference to a decision of the Irish High Court, *Holland v Athlone Institute of Technology* and argues that:

*Consequently, as a matter of Irish law, none of the four public service agreements are legally enforceable and non-compliance therewith should have no legal consequences unless that non-compliance was either unlawful or illegal.*

2.15 In advancing this argument, ASTI again conflates a number of separate and unrelated issues.

2.16 The extent to which industrial action is lawful is a separate one to the application of the benefits of the collective agreements. Undoubtedly, ASTI is entitled in principle to mount industrial action in accordance with its Irish constitutional and European legislative rights. However, ASTI's ability to embark upon an industrial action in the context of the voluntary Lansdowne Road collective agreement was contrary to the express terms of that agreement.

2.17 There was no restriction placed on ASTI engaging in lawful industrial action (e.g. in line with the provisions of the Industrial Relations Acts). There was, however, legislative provision for treating those who engaged with the collective agreements differently to those who did not. The agreements precluded industrial action and, by initiating such action, ASTI acted in breach of the Lansdowne Road Agreement.

2.18 ASTI fails to acknowledge that engaging in industrial action was a *breach* of the Lansdowne Road Agreement.

- 2.19 Section 7 (5) to (7) of the FEMPI 2013 states, in this regard, that the benefits of a collective agreement:

*(5) ...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”.*

[emphasis added]

- 2.20 Therefore, ASTI’s assertion that non-compliance with the Lansdowne Road Agreement “*should have no legal consequences unless that non-compliance was either unlawful or illegal*” is without foundation.
- 2.21 In effect, nothing in FEMPI 2013 specifies that any non-compliance with a collective agreement must in and of itself constitute an illegality in order to bring public servants outside the scope of a collective agreement or the Act. ASTI fails to point to any such statutory pre-condition, although it seeks to imply the existence of one.
- 2.22 Nor did the Government of Ireland seek to suggest, in its submissions on the merits (at §8.10) that ASTI acted unlawfully *per se* by engaging in industrial action. The true distinction is between those who did not engage in industrial action in respect of matters governed by the Lansdowne Road Agreement – thereby continuing to benefit from the protections provided by FEMPI 2013 – and those who did engage in industrial action in respect of matters governed by the Lansdowne Road Agreement. By engaging in such action, the latter cohort brought themselves outside the scope of the Lansdowne Road Agreement, thereby losing the benefit of the preferential regime provided for by FEMPI 2013. Of course, nothing in Irish law precluded industrial action in the normal course in respect of matters which were not governed by the Lansdowne Road Agreement at all.

### **3. CONCLUSION**

The Government reiterates its view that ASTI's complaint should be dismissed for the reasons set out in its submissions on the merits and the further response set out above.