



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

2 June 2020

**Case Document No. 3**

***Sindacato Autonomo Pensionati OR. S.A. v. Italy***  
Complaint No. 187/2019

**RESPONSE BY SINDACATO AUTONOMO PENSIONATI OR.  
S.A. TO THE GOVERNMENT'S OBSERVATIONS ON  
ADMISSIBILITY**

**Registered at the Secretariat on 2 Avril 2020**



S.A.Pens. OR.S.A. –  
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**Object: Collective Complaint by S.A.Pens. Or.S.A. concerning the violation of Articles 4, 12, 16, 20 and 23 of the Revised European Social Charter by the Italian Republic in relation to the provisions contained in Article 1(41) of Law no. 335 of 8 August 1995.**

By this written statement, the trade union Sa.Pens. Or.S.A., with registered office at Via Magenta 13, Rome, acting through its General Secretary Mr Daniele Gorfer, responds to the observations made by the Italian Government in the written statement of 21 February 2020, requesting that the Italian language be used – alongside English – for all purposes in relation to these proceedings. And to that effect, it states as follows.

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In its submissions in the proceedings registered as no. 187 of 2019 before the European Committee of Social Rights, the Italian Government has limited itself to objecting to the admissibility of the collective complaint, without entering into the merits of the matter referred to the Committee for review, asserting that the trade union S.A.Pens. Or.S.A. did not have standing to initiate proceedings pursuant to Article 1(c) of the 1995 Additional Protocol, and that no evidence had been provided and no indications had been given as to the trade union's level of national representativeness.

The objection is devoid of any foundation whatsoever. The objection raised by the Italian Government is spurious and unfounded for a series of reasons – discussed in detail below – which are summarised here:

1. acting through its Secretary General, S.A.Pens. Or.S.A. has already filed other collective complaints before this Committee seeking to establish breaches by the Italian Republic, which has already accepted the undersigned trade union as a party within proceedings; in point of fact, the complainant trade union has already been found by this Committee (by a decision taken in proceedings on 22 January 2019) to be a trade union with significant national representation, which as such has standing to initiate proceedings seeking collective redress under the Additional Protocol to the Charter;

2. as a matter of Italian law it is clear that S.A.Pens. Or.S.A. has the status of a trade union organisation of national significance, which provides collective representation for its members, engages in dialogue with political representatives and concludes agreements with the National Institute for Social Security [*Istituto nazionale di previdenza sociale*, INPS] concerning social security and pension issues, which only organisations with significant representative status are permitted to do;

3. S.A.Pens. represents 3,344 pensioners, who are located, in a uniform fashion, throughout the country; the Confederation with which S.A.Pens. is affiliated – *Organizzazione dei Sindacati Autonomi* [Organisation of Autonomous Trade Unions] – at present has a total of 15,432 members. It should also be noted that the complainant trade union has already made detailed submissions concerning this matter in the relevant section of the collective complaint (see § 2.1. entitled “The organisation filing the collective complaint”, which is divided into two sub-sections: 2.1.1., on “The *Sindacato Autonomo dei Pensionati dell’Organizzazione Sindacati Autonomi e di base*” [Autonomous Trade Union of Pensioners from the Organisation of Autonomous and Rank and File Trade Unions]; and 2.1.2.: “The standing of the trade union S.A.Pens. Or.S.A. to file collective complaints with the European Committee of Social Rights”); these submissions have been entirely disregarded by the Italian

Government, and must therefore be restated in full in this submission, as an integral part of this written statement in response.

May the truth therefore prevail.

(1)

As regards the first of the issues highlighted, we limit ourselves to reiterating that proceedings are pending, now for the purposes of a decision on the merits, in relation to the collective complaint brought by Sindacato Autonomo Pensionati Or.S.A. against the Italian Republic on 11 May 2018, registered as. 167/2018. By that complaint, the trade union objected to the violation and inadequate application by the Italian State of Article 12 of the Charter with regard to the provisions of Article 1 of Decree-Law no. 65 of 2015 and Article 1(483)(e) of Law no. 147 of 2013, which introduced unjustified regressive measures in the area of social security (and in particular limit the automatic annual adjustment of pensions to the point of exclusion through mechanisms that have resulted in the definitive reduction of pensions according to law).<sup>1</sup>

In those proceedings, the Italian Government first accepted without objection to engage with S.A.Pens. as a party, along with the latter's standing to act under the Additional Protocol to the European Social Charter; second, by a decision of 22 January 2019, the Committee ruled the collective complaint admissible on the basis of a variety of clearly stated reasons, which can obviously be transposed as such to these proceedings.

The Committee's decision deserves to be cited in detail here (see Document 1 appended to this written statement):<sup>2</sup>

*"5. As regards the union's representativeness within the meaning of Article 1 (c) of the Protocol, the Committee points out that the representativeness for the purposes of the collective complaints procedure is an autonomous concept, not necessarily identical to the national notion of representativeness (see Confédération Française d'Encadrement CFE-CGC v. France, Complaint No. 9/2000, decision on admissibility of 6 November 2000, §6). The Committee also observes that, in accordance with Articles 1 (b) and 3 of the Protocol, the Sindacato autonomo Pensionati Or.S.A. is a trade union which is engaged in activities within the jurisdiction of Italy, and that the Government does not contest this. According to Article 3 of its Statute, its purpose is to protect the legal, moral and financial interests of*

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<sup>1</sup> For full detailed information concerning the procedure referred to, which is still pending, please refer to the official website of the Committee and specifically the link: [https://www.coe.int/it/web/european-social-charter/pending-complaints/-/asset\\_publisher/1f8ufoBY2Thr/content/no-167-2018-sindacato-autonomo-pensionati-or-s-a-v-italy?inheritRedirect=false&redirect=https%3A%2F%2Fwww.coe.int%2Fit%2Fweb%2F european-social-charter%2Fpending-complaints%3Fp\\_p\\_id%3D101\\_INSTANCE\\_1f8ufoBY2Thr%26p\\_p\\_lifecycle%3D0%26p\\_p\\_state%3Dnormal%26p\\_p\\_mode%3Dview%26p\\_p\\_col\\_id%3Dcolumn-4%26p\\_p\\_col\\_count%3D1](https://www.coe.int/it/web/european-social-charter/pending-complaints/-/asset_publisher/1f8ufoBY2Thr/content/no-167-2018-sindacato-autonomo-pensionati-or-s-a-v-italy?inheritRedirect=false&redirect=https%3A%2F%2Fwww.coe.int%2Fit%2Fweb%2F european-social-charter%2Fpending-complaints%3Fp_p_id%3D101_INSTANCE_1f8ufoBY2Thr%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-4%26p_p_col_count%3D1) (accessed on 31 March 2020).

<sup>2</sup> The decision is also available via the following link: <https://hudoc.esc.coe.int/eng#%7B%22ESCDcIdentifier%22:%5B%22cc-167-2018-dadmiss-en%22%5D%7D>.

*its members, with particular attention to pension issues.*

*6. The Sindacato autonomo Pensionati Or.S.A. represents the interests of pensioners within Confederation Or.S.A. which has among its main objectives to protect active and retired workers and to organise pensioners in order to strengthen their economic protection, ensure equal dignity and equal protection for all generations (Article 2 (a) of its Statute). The Committee recalls that it has already considered as representative trade unions complainant organisations representing pensioners of public and private Greek enterprises (see, among others, Panhellenic Association of Pensioners of the OTE Group Telecommunications (FPP-OTE) v. Greece, Complaint No. 156/2017, decision on the admissibility of 22 March 2018).*

*7. On the basis of the information at its disposal, the Committee finds that in accordance with Article 1 c) of the Protocol, Sindacato autonomo Pensionati Or.S.A is a representative national trade union for the purposes of the collective complaints procedure*

*8. Lastly, the Committee observes that the complaint is signed by Daniele Gorfer, General Secretary of the Sindacato autonomo Pensionati Or.S.A, and legal Representative who has capacity to bring or defend legal proceedings on behalf of the trade union, in accordance with Article 16 of its statutes. The Committee therefore considers that the complaint complies with Rule 23.*

*9. For these reasons, the Committee, on the basis of the report presented by François Vandamme, DECLARES THE COMPLAINT ADMISSIBLE”*

Therefore, not only has the Italian Government already accepted the trade union S.A.Pens. Or.S.A. as an party before the Committee in proceedings relating to a collective complaint that are aimed at protecting the social security and financial interests of the pensioners represented, but a decision has also been issued by the Committee concerning this matter between the same parties, which is therefore fully binding upon them, finding Sindacato autonomo Pensionati dell’Or.S.A. to be a nationally representative trade union organisation for the purposes of the rules on collective complaints laid down in the Additional Protocol to the European Social Charter.

It is therefore evident that the objection raised by the Italian Government in these proceedings is entirely unfounded and spurious.

**(2)**

As regards the second issue raised, namely the national significance and representativeness of the collective action carried out on various fronts by the complainant trade union, it is also important to highlight the following.

**A)** The objectives of S.A.Pens. as set out in its Charter are: “protecting the moral, legal and financial

interests of its members; studying problems associated with old age, the physiological consequences and development of a trade union culture that channels new generations towards a retirement during which income capitalised over years of work may be enjoyed; protecting the interests of workers' survivors" (Article 3 of the Charter of S.A.Pens. Or.S.A. – see Doc. 2).

**B)** S.A.PENS. Or.S.A. protects its members in relation to contractual and social disputes with employers, pension bodies and institutions. In particular, it provides social assistance to all persons who approach its branches situated throughout the country, at regional and provincial levels, in relation to pensions, accidents, civil invalidity, checks and controls of insurance entitlement, legal protection in relation to medical issues and tax advice.

**C)** S.A.Pens. represents the interests of retired workers in the trade union confederation Or.S.A., with which it is affiliated as a "constitutive body for the relevant pensioners' section" (Article 2 of the Charter of S.A.Pens.) and the principal objectives of the entire trade union confederation Or.S.A. and of all sections within it in are: protecting active and retired workers; fulfilling "professional, economic and social aspirations within the ambit of a fair and balanced improvement of the general conditions of workers and pensioners"; protecting "pensioners with the aim of improving their condition, in the context of a balanced 'Welfare State' that ensures equal dignity and guarantees to all generations"; the pursuit of the "objective of solidarity and co-operation with workers and pensioners represented by trade unions from other countries with the aim of developing and sustaining a platform of minimum guarantees of work and protection for social rights within national and international institutions" (Article 4 of the Charter of the Or.S.A. Confederation – see Doc. 3).

**D)** Under the terms of Italian law and administrative practice in relation to social security, the National Institute for Social Security (INPS), as the largest Italian social security fund (and perhaps indeed the largest in Europe), recognises S.A.Pens. as a federal trade union organisation of national significance, which protects and promotes the interests of Italian pensioners and has engaged in dialogue with it, at both technical and political level, concerning matters specific to retired workers and has concluded agreements concerning the collection of trade union dues from pension payments. In point of fact, the INPS has concluded a Protocol of Understanding with pensioners' trade union organisations, including the trade union S.A.Pens. Or.S.A., which has established a concerted and co-operative working method for dialogue, study and analysis in relation to problems and issues of a general nature concerning "the benefits provided to pensioners and the strategies adopted by INPS in relation to them", establishing also technical round tables and a dedicated national Observatory (see Doc. 4).

In addition, with reference to the provisions of Article 23-*octies* of Law no. 485 of 11 August 1972,

converting into law Decree-Law no. 267<sup>3</sup> of 30 June 1972, INPS concluded an agreement with the complainant S.A.Pens. concerning the collection of trade union dues from pensions on 14 December 2015, which was approved by INPS ruling no. 127 of 30 July 2014 and published by a dedicated administrative circular issued by that body, no. 31 of 12 February 2016 (see Docs 5 and 6). By virtue of the affiliation by S.A.Pens with a trade union confederation with representative status on the CNEL – the National Committee for the Economy and Labour, a body with constitutional status in Italy performing a consultative function vis-à-vis the Government, Parliament and the regions, which is also vested with the power of legislative initiative as regards the matters falling within its competence, namely economic and social affairs – the undersigned trade union, Organizzazione dei sindacati autonomi Or.S.A., has therefore, acting as a representative trade union organisation, instructed INPS to collect trade union contributions and membership fees due by withholding the relevant amounts from pensions paid by that body.

It is therefore evident that the INPS, and with it the Italian state bodies that were involved in various respects in the proceedings that led to the conclusion of the above-mentioned agreement (including in particular the Ministry of Employment which, by a note registered as no. 21361 on 23 November 2015, certified that S.A.Pens. Or.S.A. was affiliated with a national trade union confederation represented on the CNEL, and that it was therefore entitled to request and obtain the collection of trade union contributions through the withholding of such amounts by the INPS from pensions), recognise the status of S.A.Pens. as a trade union organisation of national significance as well as its representative status and the efficacy of the action taken by it to protect, safeguard and promote the interests of pensioners.

E) Moreover, S.A.Pens. Or.S.A. is involved in trade union activity and represents the interests of its members also at international and European level. Article 2 of the Charter provides that “it shall be a member of *Age Platform Europe*, with registered office in Brussels” (see Doc. 7) and shall join and participate in the activities of the Italian delegation to Platform Europe, known as AGE Italy, which has been heavily involved over the last two years in the drafting of guidelines for a national framework law on active ageing, through studies carried out by researchers from INRCA-IRCCS [National Institute for

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<sup>3</sup> For the sake of convenience, the text of the legislation is set out below. Article 23-*octies* of Law no. 485 of 1972, converting into law Decree-Law no. 267 of 1972: “*The recipients of a direct, indirect or reversionary pension under mandatory general INPS insurance for employee pensions or any other fund or special body or scheme for alternative pensions and pensions associated with an exemption from the requirement of mandatory pension provision shall be entitled to pay trade union contributions to national federations of pensioners that are affiliated with the trade union confederations represented within the CNEL by the withholding of such amounts from their pensions, authorised by a voluntary, personal instruction signed by the recipient of the pension. The manner in which the amounts are to be withheld shall be established by a direct agreement concluded between the representatives of the trade union organisations concerned and the administrators of the INPS or the other bodies involved*”.



the Admission of the Elderly to Facilities and the Provision of Care to the Elderly – Scientific In-patient and Treatment Facility], in conjunction with the Office of the President of the Council of Ministers and the Department for Family Policies (see Doc. 8). Consequently, S.A.Pens. Or.S.A. co-operates also at international and European level with other federal trade union organisations of pensioners and workers from various countries throughout the European Union in order to protect the interests of pensioners and to promote national and European social legislation that is attentive to matters of significance for them.

F) In addition, S.A.Pens. Or.S.A. is actively involved in public, political and trade union debates on issues concerning the status of pensioners of every type as well as issues concerning the pension and social security system, thereby influencing national legislative initiatives. For example, a delegation from the trade union has always been invited to attend the study meetings and debates held by CNEL and to engage in dialogue with parliamentary representatives and with the social partners (see Doc. 9). In parallel, S.A.Pens. Or.S.A. is in close contact with academics and universities, and organises conferences and events throughout Italy, acting through its various regional and provincial structures, and carries out extensive studies and research, which constitutes an essential basis for its more specifically trade union activities (see Doc. 10).

### (3)

Ultimately, the national status of the trade union federation S.A.Pens. Or.S.A. is demonstrated by the figures: the Income Statement drawn up in February 2020 states that a total of 3,344 pensioners are members of the undersigned trade union, who are located in a uniform fashion throughout the entire country.

More specifically:

- Abruzzo has 147 members;
- Calabria has 163;
- Campania has 99;
- Emilia Romagna has 60;
- Friuli Venezia Giulia has 142;
- Lazio has 306;
- Liguria has 1,057;
- Lombardy has 55;
- Marche has 41;
- Piedmont has 175;

- Puglia has 82;
- Sardinia has 21;
- Sicily has 482;
- Tuscany has 85;
- Umbria has 115;
- Veneto has 310;
- in addition to 4 member pensioners who are resident abroad.

For the sake of completeness, since S.A.Pens. is the federal section for pensioners of the confederation Or.S.A., it is also noted that the latter has a total of 15,432 members throughout the country, including the complainant's pensioners (Docs 11 and 12).

In conclusion, the complainant trade union is without doubt a representative national trade union organisation for the purposes of the provisions governing collective complaints set out in the Additional Protocol to the European Social Charter.

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In view of the above, the undersigned Daniele Gorfer, acting in his capacity as the Secretary General of the complainant trade union organisation, expressly reserving the right insofar as may be necessary to supplement the submissions set out above at a later stage of the proceedings, again exercising the right to use the Italian language,

**asks**

the Committee to rule its complaint admissible, rejecting the objection raised by the Italian Government, and in addition to rule that the objections raised are well-founded on the merits and as a result to rule that the Italian Republic has violated Articles 4, 12, 16, 20 and 23 of the European Social Charter.

Copies of the documents mentioned in the substantive part of the above written statement submitted in response are appended:

1. decision by the European Committee of Social Rights of 22 January 2019 issued in case no. 167/2018;
2. Charter of Sindacato Autonomo dei Pensionati S.A.Pens. Or.S.A.;
3. Charter of the Organizzazione Sindacati Autonomi, confederazione nazionale Or.S.A.;
4. Memorandum of Understanding between the INPS and S.A.Pens. Or.S.A. of 4 February 2010;
5. Agreement between the INPS and S.A.Pens. Or.S.A. of 14 December 2015;
6. INPS circular no. 31 of 12 February 2016 concerning the agreement of 14 December 2015;

7. Presentation document from AGE Platform Europe and list of the member trade unions;
8. Documentation concerning the activities of AGE Platform Italy and list of members;
9. Miscellaneous documentation providing examples of recent activities by S.A.Pens. Or.S.A. involving studies and debates with state bodies vested with the power of legislative initiative;
10. Summary documentation listing the academic publications resulting from conference activities and studies organised by the Italian provincial and regional branches of S.A.Pens. Or.S.A.;
11. Income Statement of S.A.Pens. Or.S.A. certifying the number of members in February 2020;
12. Number of members of the Confederation Or.S.A. updated as at December 2019.

Rome and Strasbourg, 1 April 2020

S.A. Pens. Or.S.A.

(The Secretary General)

A handwritten signature in blue ink, appearing to be 'J. De L...', is written over a light blue rectangular background.