



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

9 June 2020

Case Document No. 4

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

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

Registered at the Secretariat on 19 May 2020



REPUBBLICA ITALIANA

Ufficio dell'Agente del Governo italiano
davanti al Comitato Europeo dei Diritti Sociali

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Avvocatura Generale dello Stato

European Committee of Social Rights (ECSR)

Collective complaint n. 187/2019

Sa.Pens Or.sa vs Italy

**REPLY STATEMENTS
OF THE
ITALIAN GOVERNMENT**

Roma, 19 maggio 2020



1. PRELIMINARY REMARKS

1.1 With the letter dated 15 May 2020, the Registrar of the European Court of Human Rights (*“the Court”*) invited the Italian Government to present its further observations on the applicant’s statements.

1.2. With these observations, the Italian Government wishes to clarify its defence with reference to the applicant's arguments.

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Admissibility of the complaint

What has been criticised by the counterparties in the deposited replicas is unfounded.

In fact, the complaint is clearly inadmissible, and counterparties nothing said about what the Italian Government has objected to the favourable case-law of this Court.

As said in the observations, the Additional Protocol of 1995 (providing for a system of collective complaints), at the Article 1, gives the right to the following types of organisations to make a complaint that the situation within a state party to the Protocol is not in conformity with the ESC, among which are identified representative national organisations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint.

In the present case, is clear the lack of legitimacy of the complaining trade union due to a lack of representativeness, as no suitable evidence has been provided or attached to the complaint on this point.

Specifically, the union has not given any indication of the number of workers it would represent or the current number of members, or whether it has concluded collective agreements or undertaken activities in favour of them, the only elements that could be traced back to an activity of a trade union nature.

As stated by the Committee in its Decision No 166/2018 - *Sindacato Autonomo Europeo Scuola ed Ecologia (SAESE) v. Italy*: “10. *The Committee is unable to conclude that SAESE is a representative trade union within the meaning*



of Article 1 (c) of the Protocol because it does not have the information necessary to assess the representativeness of the complainant organisation, including any indication of the specific number of members it represents or whether it has bargained collectively on behalf of such members with a view to concluding collective agreements.” **The ECSR declared the complaint inadmissible.**

In addition, the statute produced by the complainant shows that the association has as its purpose training and cultural activities and management of a website.

As stated in the aforementioned decision of this honourable committee No 166/2018 - Sindacato Autonomo Europeo Scuola ed Ecologia (SAESE) v. Italy: “8. Moreover, in determining representativeness, the Committee takes into account the number of members a trade union represents and the role it plays in collective bargaining. However, it has also held that the application of criteria of representativeness should not lead to the automatic exclusion of small trade unions or of those formed recently to the advantage of larger and long-established trade unions (see *Fellesforbundet for Sjøfolk (FFFS) v. Norway, Complaint No. 74/2011, decision on admissibility of 23 May 2012, §§20-21*).” For this reason as well, in addition to the reasons indicated above, this committee declared the complaint inadmissible.

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CONCLUSIONS

In light of the present observations, the Italian Government requests the Committee to dismiss the case by declaring the Complaint inadmissible, pursuant to Article 1 of the Additional Protocol of 1995 for a system of collective complaints, since the Applicant’s lack of representativeness.

Roma, 19 maggio 2020

Drafted by

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