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EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

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Case Document No. 2

Sindacato Autonomo Europeo Scuola ed Ecologia (SAESE) v. Italy
Complaint No. 194/2020

OBSERVATIONS BY THE GOVERNMENT ON ADMISSIBILITY

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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

Complaint No. 194/2020
Sindacato Autonomo Europeo Scuola ed Ecologia v. Italy

OBSERVATIONS OF THE ITALIAN GOVERNMENT ON THE ADMISSIBILITY OF COLLECTIVE COMPLAINT

Rome, 7.7.2020

CT 18245/2020 (Avv. Gaetana Natale)

1. The Facts of the case

1. On December 8, 2019, the SAESE trade union organization, the current claimant, called a national strike for the 8th of January 2020 concerning all school staff.

2. On December 13, 2019, the Italian Ministry of Education, University and Research contested the reasons underlying the strike action, considering it unjustified, unfounded and unrelated to the right to strike as protected by law.

3. In particular, the promoted action would not have concerned workers' economic and social rights and interests. The strike, instead, simply concerned "food education" to be included in schools of all levels and the introduction of a new competition class AO31, "Food Science", based on "Blood Group Diet" as a perfect lifestyle.

4. Therefore, on December 16, 2019, the Strike Guarantee Commission, with the disputed Resolution no. 2245/19, declared the action extraneous from the legitimate exercise of the right to strike. Furthermore, the Commission stated that SAESE is not a representative organization of a general and common interest of workers in the sector of education and the strike itself was not intended to pursue an objective able to affect employment relationships.

5. Following the Resolution, on December 17, 2019, the SAESE submitted a review request to the Strike Guarantee Commission, underlining the importance of teaching a good "food education" to prevent various diseases.

6. Given the lack of new elements or relevant circumstances that could have led to a different conclusion, on December 19, 2019, the Commission rejected the review request.

7. Consequently, on December 23, 2019, the SAESE issued a formal notice to the Ministry of Education, University and Research warning him for anti-union conduct and inviting him to cease and desist from hindering the exercise of the right to strike.

8. In the absence of any reply from the Ministry, on February 5, 2020, the SAESE called a second national strike for the 7th of April 2020.

9. On March 5, 2020, the Strike Guarantee Commission, with Resolution no. 339/20, confirmed what already previously declared over the first call for the strike in question. In particular, the Commission stressed out the absence of new elements or new circumstances, since the reasons underlying that second action were identical to the first strike call ones.

10. Therefore, the SAESE submitted a second review request to the Strike Guarantee Commission and, on March 6, 2020, following the silence over the first one, also issued another warning letter to the Administration.

11. Lastly, on April 9, 2020, the trade union organization notified the present collective complaint.

2. The violations reported by the claimant

12. The SAESE complains of the violation of articles 6.4 of the European Social Charter by the Italian State.

13. In particular, according to the organization, the violation of article 6.4 is to be found in the discretion of the Administration, considered too broad and, therefore, able to prejudice the legitimate exercise of the right to strike as protected by the Charter.

3. Observations of Italian Government on the admissibility of the SAESE's complaint about violation of article 6.4. of the European Social Charter

14. Italian Government deduces the inadmissibility of the SAESE's collective complaint for the lack of representativeness.

15. In according to Rule 29 of the ECSR'S Rules of procedure, the Committee asked the respondent State, Italy, for written observations within a time limit,15th July, that he decides, on the admissibility of the complaint.

16. In according to Article 1 of Additional Protocol to the European Social Charter Providing for a System of Collective Complaints:

"*The Contracting Parties to this Protocol recognise the right of the following organisations to submit complaints alleging unsatisfactory application of the Charter are:*

a) International organisations of employers and trade unions referred to the paragraph 2 of Article 27 of the Charter;

b) other international non-governmental organisations which have consultative status with the Council of Europe and have been put on a list established for this purpose by the Governmental Committee;

c) ***representative national organisations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint****"*.

17. **In this case SAESE is not a representative national organisation of employers in the field of education and research. Its name is not mentioned in Provisional Assessment Tables of Representativeness for the three-year period 2019/2021 in the area of education and research.**

The criteria used by the Committee to assess whether a national organization of employers is representative for the purpose of the collective complaint's procedure include[1]:

1) the overall appraisal of the contents of the case -file;

2) the fact of national organisations of employers representing the great majority of professionals working in the relevant sector of activity;

3) the fact of the national organisation of employers being representative at the national level and therefore being able to negotiate collective agreements;

4) the fact of national organisation exercising, in a geographical area where it is established, activities in defence of the materiel and non-material interests of workers in a given sector of whom it covers a sufficient number, in conditions of independence vis-a vis the employment authorities.

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[1] *Associazione sindacale «La Voce dei Giusti»* v. Italy Complaint No. 105/2014, decision on admissability of 17 March 2015; *Movimento per la Libertà della psicanalisi-Associazione Culturale Italiana* v. Italy, complaint No. 122/2016, decision on admissibility of 24 March 2017, § 8-11; *Syndicat national des professions du tourisme* v. France, Complaint No. 6/1999, decision on admissibility of 10 February 2000, §§ 6 and 7; *Syndicat occitan de l'éducation* v. France, Complaint No. 23/2003, decision on admissibility of 13 February 2004, §§ 3 and 4; *Bedriftsforbundet* v. Norway, Complaint No. 103/2013, decision on admissibility of 14 May 2014, § 13; *Associazione Professionale e Sindacale (ANIEF)* v Italy, Complaint No 146/2017, decision on admissability of 12 September 2017, §6; *Associazione Professionale e Sindacale (ANIEF)* v Italy, Complaint No 146/2017, decision on admissability of 12 September 2017, §6; *Confédération Française de l'Encadrement (CFE-CGC)* v. France, Complaint No. 9/2000, decision on admissibility of 7 November 2000, §§ 6-7; *Associazione Nazionale Giudici di Pace* v. Italy, Complaint No. 102/2013, decision on admissibility of 2 December 2014, § 12; *Tehy ry and STTK ry* v. Finland, Complaint No. 10/2000, decision on admissibility of 12 February 2001, § 6; *Tehy ry and STTK* ry v. Finland, Complaint No. 10/2000, decision on admissibility of 12 February 2001, § 6; *Confederation of Swedish Enterprise* v. Sweden, Complaint No. 12/2002, decision on admissibility of 19 June 2002, § 5; *Syndicat national des dermato-vénérologues (SNDV)* v. France, Complaint No. 28/2004, decision on admissibility of 13 June 2005, § 5; *Syndicat des hauts fonctionnaires (SAIGI)* v. France, Complaint No. 29/2005, decision on admissibility of 14 June 2005, § 3; *Syndicat SUD Travail Affaires Sociales* v. France, Complaint No. 24/2004, decision on admissibility of 7 December 2004, §§ 10 and 11; *The Central Association of Carers in Finland* v. Finland, Complaint No. 70/2011, decision on admissibility of 7 December 2011, § 6; *Finnish Society of Social Rights* v Finland, Complaint No 107/2014, decision on admissibility and on the merits of 6 September 2016, §§28-30; *Frente Comum de Sindicatos da Administração Pública* v. Portugal, Complaint No. 36/2006, decision on admissibility of 5 December 2006, § 4; *Syndicat des Agrégés de l'Enseignement Supérieur (SAGES)* v. France, Complaint No. 26/2004, decision on admissibility of 7 December 2004, § 5; *World Organisation against Torture (OMCT)* v. Greece, Complaint No. 17/2003, decision on admissibility of 9 December 2003, § 5; *European Roma Rights Center (ERRC)* v. Bulgaria, Complaint No. 31/2005, decision on admissibility of 10 October 2005, § 7; *Centrale générale des services publics* v. Belgium, Complaint No. 25/2004, decision on admissibility of 6 September 2004, §§ 2 and 8; *European Organisation of Military Associations (EUROMIL)* v. Ireland, Complaint No. 112/2014, decision on admissibility of 30 June 2015, § 8; *Syndicat des Agrégés de l'Enseignement Supérieur (SAGES)* v. France, Complaint No. 26/2004, decision on admissibility of 7 December 2004, §§ 4 and 5.

18. SAESE does not satisfy those criteria, because it is not representative of general interest of employers in the sector of education.

It is true that the Committee has sometimes considered that it could not determine whether this condition was fulfilled, or that it was unnecessary to do so owing to its findings on the reasons given for the complaint.

Where a trade union or employers' organisation is considered representative for the purposes of the collective complaints procedure, it can submit complaints even if they relate to occupational categories other than those which it represents at the national level.

19. **Article 2§ 1 of the Protocol mentions**: <a representative national non-governmental organisation for States Parties which have made a declaration to this effect>.

The concept of "representativeness" for national non - governmental organisations is the same, mutatis mutandis, as for national trade unions or employer's organisation.

For the purposes of the collective complaint's procedure, the representativeness of employer's organisation is an autonomous concept which has a different scope from the national representativeness concept. This applies even more to the associations. It is therefore incumbent on the Committee gradually to establish the nexus of criteria enabling it to assess the representativeness of national organisations, taking account, inter alia, of their social purposes field of activity.

20. In this case this nexus is inexistent, because the SAESE's collective complaint is in a matter unrelated, outsider, extraneous about the right to strike by article 6§4 of the Social Charter.

Article 6§4 guarantees the right to strike and the right to call a lock-out. The right may result from statutory law or case law,

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike subject to obligations that might arise out of collective agreements previously entered into[2].

[2] Conclusions I (1969), Statement of Interpretation on Article 6§4; Conclusions I (1969), Statement of Interpretation on Article 6§4; Conclusions I (1969), Statement of Interpretation on Article 6§4; Conclusions XVII-1 (2004), Netherlands; Conclusions XVII-1 (2004), Netherlands; Conclusions I (1969), Statement of Interpretation on Article 6§4; Conclusions VIII (1984), Statement of Interpretation on Article 6§4; Conclusions VIII (1980) Statement of interpretation on Article 6§4; Conclusions 2004, Sweden; Conclusions 2014, Germany; Conclusions XV-1 (2000), France; Conclusions XVI-1 (2002), Portugal; Conclusions I (1969),

In this case the strike isn't about economic and social rights and interests of workers, the employment conditions, including wage levels, but the question is merely about "the food education to be included in schools of all levels". SAESE asks the introduction of a new competition class AO31, "Food Science", "Blood Group Diet", as a perfect lifestyle. As it is possible to read in document n.0038465 of 13th December 2019 of the Ministry of Education, this question can be resolved by Parliament with a specific law, not with a collective action. Indeed, the subject of food education is a cross matter that is already taught in all Italian school.

It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G oh the Social Charter.

21. Specific restrictions to the right to strike.

In this case the Resolution of the Strike Guarantee Commission ex L. n. 146/1990 is legitimate and correct.

The right to strike may be restricted provided that any restriction satisfies the conditions laid down in Article G, which provides that restrictions on the right guaranteed by the Charter that are prescribed by law, serve legitimate purpose and are necessary in a democratic society

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Statement of Interpretation on Article 6§4; Conclusions II (1971), Statement of Interpretation on Article 6§4; Conclusions XX-3 (2014), Germany; Conclusions X-1 (1987), Norway (regarding Article 31 of the Charter); European Trade Union Confederation (ETUC)/Centrale Générale des Syndicats Libéraux de Belgique (CGSLB)/Confédération des Syndicats Chrétiens de Belgique (CSC)/ Fédération Générale du Travail de Belgique (FGTB) v. Belgium, Complaint No. 59/2009, Decision on the merits of 13 September 2011, §43-44; Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, Decision on admissibility and the merits: §119; Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, Decision on admissibility and the merits §120; Conclusions XX-3 (2014), United Kingdom; Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, decision on admissibility and the merits of 3 July 2013, §§ 119-122; Conclusions I (1969), Statement of Interpretation on Article 6§4; Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour "Podkrepa" and European Trade Union Confederation (CES) v. Bulgaria, Complaint No. 32/2005, Decision on the merits of 16 October 2006, §24; Conclusions XVII-1 (2004), Czech Republic; Conclusions I (1969), Statement of Interpretation on Article 6§4;Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour "Podkrepa" and European Trade Union Confederation (CES) v. Bulgaria, Complaint No. 32/2005, Decision on the merits of 16 October 2006, §44-46; Conclusions I (1969), Statement of Interpretation on Article 6§4;Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour "Podkrepa" and European Trade Union Confederation (CES) v. Bulgaria, Complaint No. 32/2005, Decision on the merits of 16 October 2006, §46; EUROMIL v Ireland, Complaint No. 112/2014, decision on the merits of 12 September 2017 §113-117; European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, Decision on the admissibility and merits of 2 December 2013, § 211; Conclusions 2004, Norway; Conclusions 2014, Norway, Article 6§4.

for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals. The expression "prescribed by law" means, not only statutory law, but also case law of domestic courts, if it is stable and foreseeable.

Moreover, this expression includes the respect of fair procedures.

The prohibition of certain types of collective action, or even the introduction of a general legislative limitation of the right to collective action in order to prevent initiatives aimed at achieving illegitimate or abusive goals (such as in this case, goals which do not relate to the enjoyment of labour rights) is not necessarily contrary to Article 6§4 of the Charter. In this context, excessive or abusive forms of collective action, such as extended blockades, which would put at risk the maintenance of public order or unduly limit the rights and freedoms of others (such as the right of co-workers to work, or the right of employers to engage in a gainful occupation) may be limited or prohibited by law.

CONCLUSIONS

22.In the light of the foregoing, the collective complaint lodged by the applicant must be dismissed.

23. Therefore, the Government demands that the collective complaint is declared manifestly inadmissible due to the failure to satisfy the admissibility criterion of representativeness pursuant to Article 1 of Additional Protocol to the European Social Charter providing for a System of Collective Complaint.

Rome, July 7th, 2020

Drafted by

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