



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

21 October 2021

Case Document No. 2

***Comitato Nazionale Quadri Direttivi della Pubblica Amministrazione
(CO.N.QUA.DIR - P.A.) and Cassa Mutua Nazionale tra i Cancellieri e Segretari
Giudiziari v. Italy Professionale e Sindacale (ANIEF) v. Italy***
Complaint No. 202/2021

**OBSERVATIONS BY THE GOVERNMENT
ON ADMISSIBILITY**

Registered at the Secretariat on 15 October 2021



*Ufficio dell' Agente del Governo
davanti alla Corte europea dei diritti dell' uomo*

AVVOCATURA GENERALE DELLO STATO

European Committee of Social Rights (ECSR)

Collective complaint n. 202/2021

*Comitato Nazionale Quadri e Direttivi della
Pubblica Amministrazione (CO.N.QUA.DIR. - P.A.) vs Italy*

**OBSERVATIONS OF THE ITALIAN GOVERNMENT
ON THE ADMISSIBILITY OF COLLECTIVE COMPLAINT**

Ct 32270/21

Proc. Angelo de Curtis



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I. Introduction

1. With the letter dated 2 September 2021, the Secretariat of the General Directorate of the European Social Charter requested the Italian Government to present its observations on the admissibility of the collective complaint n. 202/2021 (“the complaint”), submitted by Comitato Nazionale Quadri e Direttivi della Pubblica Amministrazione (CO.N.QUA.DIR. - P.A.) (“the complainant”).
2. In compliance with the Secretariat of the European Social Charter request, the present observations are limited to the admissibility of counterparty’s complaint.

II. Subject Matter of the Complaint.

3. According to the complainant association, the job profile of the middle-managerial public employees in Italy, as resulting from the Italian reform of public employment known as “privatisation”, is in breach of several provisions of the European Social Charter. In particular, CO.N.QUA.DIR. - P.A. contests the placement of the above-mentioned public staff in a functional area comprising other professional profiles without a university degree, as a consequence of Italy's failure to establish a specific professional area for the middle-managerial public employees (so-called “Area-Quadri”).

This has resulted - according to the complainant’s view - in a discriminatory equalization of different professional profiles, with a devaluation of the specific skills of middle-managerial staff, who have been prevented from making any possibility of career and economic progression.

III. Articles concerned.

4. The complainant association seeks a declaration of infringement of Article 1(2) (right to work), Article 4 (4) (right to fair pay), Article 6(4) (right to collective bargaining), Article 10 (right to vocational training) and Article E of Part Five of the Charter (non-discrimination).



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IV. Admissibility of the complaint

5. The complaint is clearly inadmissible since the Complainant's lack of representativeness, within the meaning of Article 1 (c) of the Additional Protocol of 1995.

6. In particular, the CON.QUA.DIR. - P.A. Statute provides that the Association's aims are "*protect and promote the professionalism, position, prerogatives and role of public employees*". As part of this effort, the complainant promotes initiatives aimed at urging the establishment of a middle-management job profile (so-called "Area-Quadri") in the Public Sector.

7. According to this Committee, representativeness is an autonomous concept, not necessarily identical to the national notion of representativeness, so that a trade union, in order to be qualified as representative, must be real, active and independent (see *Confédération Française d'Encadrement "CFE-CGC" v. France, Complaint No. 9/2000, decision on admissibility of 6 November 2000, §6*). Nevertheless, it has been clarified that the number of members a trade union represents and the role it plays in collective bargaining must be taken into account (see *SAESE v. Italy, Complaint No. 166/2018, decision on admissibility of 18 March 2019 § 8-11*).

8. In the present case, it should be noted that CO.N.QUA.DIR. - P.A. is not engaged in any activity that could be said to amount to core trade union activities, such as participating in collective bargaining, calling strikes or concluding collective agreements. The activities referred to in the complaint can also be considered as mere interlocution with Italian Public Authorities, without effective participation in the decision-making process of collective bargaining or agreements (see *Associazione Medici Liberi v. Italy, Complaint No. 177/2019, decision on admissibility of 6 December 2019 § 11*; *SAESE v. Italy, Complaint No. 166/2018, decision on admissibility of 18 March 2019 § 8-11*; *SAESE v. Italy, Complaint No. 194/2020, decision on admissibility of 11 December 2020 § 9*).

9. On the other hand, neither the mere fact that CO.N.QUA.DIR. - P.A. lodged the current complaint, nor the activities carried out for this purpose, can be considered as evidence of a



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trade union activity (see *Associazione Medici Liberi v. Italy*, Complaint No. 177/2019, decision on admissibility of 6 December 2019 § 11).

10. In addition to this, it must be noted that the CO.N.QUA.DIR. - P.A. represents a very small number of public employees. Even leaving aside the low overall number of public employees represented (n. 524 – pag. 1 of the complaint), the very small number of Complainant's members in individual Ministries and Public Authorities is decisive for the lack of representativeness. For instance, it should be considered that:

- the list of employees represented by the CO.N.QUA.DIR. - P.A. does not include employees of the Ministry of Labour and Social Policy;
- the above-mentioned list includes only 47 members from the National Labour Inspectorate compared to a total number of 280 middle-management employees.

11. The above considerations lead to the conclusion that the counterparty complaint should be declared inadmissible.

* * *

CONCLUSIONS

In light of the present observations, the Italian Government request 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 Complainant's lack of representativeness.

Rome, 14 October 2021

Drafted by

Angelo de Curtis –Procuratore dello Stato

The Agent of the Italian Government

Lorenzo D'Ascia – Avvocato dello Stato