

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

07 March 2022

Case Document No. 4

***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

**REPLY FROM THE GOVERNMENT TO THE
COMPLAINANTS' RESPONSE
ON ADMISSIBILITY**

Registered at the Secretariat on 24 February 2022



*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. and CASSA MUTUA NAZIONALE TRA I CANCELLIERI E
SEGRETARI GIUDIZIARI vs Italy*

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

Roma, 28 febbraio 2021

Ct 32270/21 - Proc. Angelo de Curtis



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

AVVOCATURA GENERALE DELLO STATO

1. The Italian Government, referring to all that has been explained in the observation on the admissibility of October 15, 2021, aim to clarify certain aspects set out in the complainant associations' replies.

2. First of all, it should be remarked that CO.N.QUA.DIR. - P.A. and CASSA MUTUA NAZIONALE TRA I CANCELLIERI E SEGRETARI GIUDIZIARI did not participate in any activity that could be said to amount to core trade union activities, as they have never participated in or contributed to the definition of the collective labour agreements of the Public Administration Central Function Sector nor to the establishment of the high professionalism area.

3. In particular, the Associations have never participated in the work of the Commission on professional regulations of the Public Administration, no document related to CONQUADIR-PA has ever been examined by this Commission or by Aran (Agency for the negotiated representation of Public Administration - Public Agency who represents, for the purposes of collective labour agreements, all Public Administrations).

4. Moreover, the introduction of the Area of High Professionalism within the Public Administration does not in any way depend on any action attributable to CONQUADIR-P.A. and CASSA MUTUA but depends on the will of the Representative Unions in accordance with the procedures set out in Legislative Decree No. 165/2000.

5. On this point, it should be pointed out that Article 2 of Legislative Decree No. 165/2001 reserves the right to amend workers' pay conditions solely to labour agreements, and the same article also provides for the possibility for collective agreements to render ineffective any legal provisions regulating matters typical of the employment relationship of public employees.

6. Therefore, the non-participation in collective bargaining, together with the lack of typical trade union initiatives on the part of the applicants, makes it clear that the Applicants cannot be considered a trade union (see *Associazione Medici Liberi v. Italy*,



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

AVVOCATURA GENERALE DELLO STATO

Complaint No. 177/2019, decision on the admissibility of 6 December 2019 § 11; SAESE v. Italy, Complaint No. 166/2018, decision on the admissibility of 18 March 2019 § 8-11; SAESE v. Italy, Complaint No. 194/2020, decision on the admissibility of 11 December 2020 § 9).

7. As regards, specifically, CASSA MUTUA, it should be noted that the Complainants themselves (par. 10 of the complaint) point out that it is a national welfare and mutuality institution.

8. According to Law No. 384 of 11 May 1981 (Law establishing CASSA MUTUA) CASSA MUTUA is a fund whose purpose is to provide supplementary social security and assistance to its members.

9. In particular, Article 4 of the Law No. 384 of 11 May 1981 provides that:
“*The Mutual Fund provides for the granting to its members:*

1) of loans on honour;

2) a severance grant for court clerks and judicial secretaries who are members judicial secretaries who have been members of the Fund for at least ten years, and their legal heirs;

3) extraordinary grants to serving members, permanent members, as referred to in Article 3 of Law 1814 of 23 November 1939, and their families”¹ (unofficial translation).

10. Therefore, the carrying out of trade union activities and representation by the CASSA MUTUA is excluded by the founding Law itself, which limits its activities to mutualist and welfare purposes only.

11. In the light of the above, it is worth remarking that the activities referred to in the Complaint and in the Replies of the Applicants, can only be qualified as mere

¹ “*La Cassa mutua provvede alla concessione ai suoi soci: 1) di prestiti sull'onore; 2) di un premio di buona uscita in favore dei cancellieri e segretari giudiziari che sono soci della Cassa da almeno dieci anni, e dei loro eredi legittimi; 3) di sovvenzioni straordinarie ai soci in servizio, ai soci permanenti, di cui all'art. 3 della legge 23 novembre 1939, n. 1814, ed alle famiglie di questi ultimi”.*



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

AVVOCATURA GENERALE DELLO STATO

interlocution with Italian Public Authorities, without effective participation in the decision-making process of collective bargaining or agreements.

12. The above-mentioned lack of participation in collective bargaining also has implications in terms of representativeness of the complaining associations.

13. With reference to CO.N.QUA.DIR.-P.A., it represents a very small number of public employees.

14. As reported by the applicant, the reference sector of trade union memberships should be the Public Administration Central Function Sector.

15. On this point, it should be noted that against a total number of **203,593 employees** (ARANA annual account updated to 31.12.2020) of the Public Administration Central Functions Sector, CON QUA DIR-P.A. **has only 524 members** (pag. 1 of the Compliant).

16. Even if only the top management of the Public Administration Central Functions Sector is considered, the lack of representativeness emerges, as it has a total number of **41,094 employees** (ARAN annual account updated to 31.12.2020).

17. If, on the other hand, the members indicated by the complainant were those belonging to the Cassa Mutua Nazionale tra i Cancellieri e Segretari Giudiziari, as indicated in the complainant's replies (and in any event in numbers far from a minimum level of representativeness), it should be borne in mind that CASSA MUTUA – as seen above – is a structure relating to simple social security claims to whom the carrying out of trade union activities is precluded by the funding Law.

* * *

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

* * *

CONCLUSIONS



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

AVVOCATURA GENERALE DELLO STATO

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, 24 February 2022

Drafted by

Angelo de Curtis –Procuratore dello Stato

The Agent of the Italian Government

Lorenzo D'Ascia – Avvocato dello Stato