



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

20 June 2022

Case Document No. 2

Unione sindacale di base (USB) v. Italy
Complaint No. 208/2022

**OBSERVATIONS BY THE GOVERNMENT
ON ADMISSIBILITY**

Registered at the Secretariat on 31 May 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. 208/2022

Unione Sindacale di Base (USB) vs Italy

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

Ct 16381/22
Proc. Andrea Lipari



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I. Introduction

1. With the letter dated 20th April 2022, the Secretariat of the General Directorate of the European Social Charter requested the Italian Government to present their observations on the admissibility of the collective complaint n. 208/2021 (“the complaint”), submitted by Unione Sindacale di Base (USB) (“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.

4. The subject of the complaint is the regulation of the exercise of the right to strike in essential public services, provided for by the provisions of Law 12 June 1990, no. 146 (“*Rules on the exercise of the right to strike in essential public services and the protection of constitutionally protected. Establishment of the Commission to guarantee the implementation of the law*”), as well as by collective agreements and by the resolutions of the “Guarantee Commission”, that implement the above provisions.
5. According to the complainant, the rules contained in Article 1, paragraph 2; Article 2, paragraphs 1, 2 and 5; Article 13, paragraph 1, lett. (a), (c), (d), (e); Article 8, of Law 12 June 1990, no. 146, read in the light of their application in practice, restrict the right to strike in a manner inconsistent with the principles inferable from Article 6(4) and Article G of the European Social Charter.

III. Articles concerned.

6. The complainant association seeks a declaration of infringement of Article 6(4) (concerning the right to strike) and Article G (“restrictions”) of the European Social Charter.

IV. Admissibility of the complaint

7. The complaint is inadmissible.



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8. 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 European Social Charter:

- a. international organisations of employers and trade unions referred to in 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.

9. Therefore, if the complainant is a national trade union or a national employers' organisation, as in this case, the complainant must provide proof that these bodies are representative within the meaning of the collective complaints procedure.

10. In the present case, the lack of legitimacy of the complaining trade union is evident, 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.

11. 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 complaint was declared inadmissible.



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

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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, 31st May 2022

Drafted by

Andrea Lipari –Procuratore dello Stato

The Agent of the Italian Government
Lorenzo D'Ascia – Avvocato dello Stato