EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

16 May 2023

Case Document No. 8

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

REPLY FROM THE GOVERNMENT TO USB'S RESPONSE ON THE MERITS

Registered at the Secretariat on 16 June 2023

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

FURTHER OBSERVATIONS OF THE ITALIAN GOVERNMENT ON THE MERITS

Ct 16381/22

Proc. Andrea Lipari

I. Introduction.

1. In its letter of 10 May 2023, the Secretariat of the European Social Charter Directorate-General asked the Italian Government to submit its replies to the replies submitted by the Unione Sindacale di Base (USB).

2. In compliance with the request of the Secretariat of the European Social Charter, the Italian Government submit the following additional observations.

II. On the merits of the observations.

3. The complainant's replies are in no way adequate to refute the content of the Italian Government's observations.

4. To those observations, therefore, the Government fully refer. In any event, the following is submitted.

5. First, the Italian Government do not claim at all that "any limitation" (§ II.2 of the Replies) on the right to strike aimed at protecting other rights and interests of equal or greater importance is legitimised by the ESC.

6. The Government have, if anything, argued in detail as to the compatibility of the limitations on the right to strike provided for in our law with Article G of the European Social Charter. That Article G provides: "*The rights and principles set out in Part I, when effectively implemented, and the effective exercise of those rights and principles as set out in Part II, shall not be subject to any restrictions or limitations not specified in Parts I and II except those which are prescribed by law and which are necessary in a democratic society to ensure respect for the rights and freedoms of others or to protect public order, national security, public health or morality*".

7. In this regard, it has been pointed out and explained at length that the limitations provided for by national law are those that are necessary in a democratic society to ensure respect for the rights and freedoms of others or to protect public order, national security, public health or morality.

8. The opposing party's assertion that the Italian legislation is contrary to international standards in that it would go "far beyond the need to avoid 'excessive' impairment of constitutionally important rights affected by its exercise" appears on closer inspection to be a mere petition of principle, wholly devoid of any demonstration whatsoever.

9. The other party then asserts that the Government's arguments would be incorrect in so far as Article 1 of Law 146/1990 "merely lists the rights (in an exhaustive manner) and the essential services (in an illustrative manner) which justify a compression of the right to strike in the Italian legal system", but says nothing "as to the degree of compression of that right, which depends on the way in which the balancing with the other fundamental rights is operated in practice".

10. The other party's complaints in this regard appear generic and not entirely discernible.

11. In any case, it is sufficient to recall the Government's observations, where it was pointed out (in particular §29 ff.) that the experience of national regulation, even before Law 146/1990, has always been based on the balancing of the interests at stake: both in the version resulting from the interventions of the Constitutional Court, in the absence of regulation, and in the case of so-called self-regulation by trade unions.

12. Moreover, as extensively deduced in the observations, the ratio of Law 146/1990 is to balance two constitutionally relevant guarantees: on the one hand, the exercise of the right to strike by those who work in essential services; on the other, the safeguarding of the fundamental rights of citizens, which physiologically the strike of these categories ends up damaging.

13. In particular, the Italian legislature has provided that, in the context of public services essential for the enjoyment of personal rights, the right to strike must be exercised in compliance with measures aimed at enabling the provision of essential services.

14. In the system outlined by Law No. 146 of 1990, the identification of specific rules to balance the exercise of the right to strike with the interests of users is entrusted to collective agreements for employees and to self-regulation codes for the self-employed.

15. That being so, it is clear that the national rules are designed to ensure the delicate balancing of rights and values underlying the exercise of the right to strike, and cannot be said to be unreasonable in any way, also in the light of what has been amply set out in the Government's observations.

16. The considerations relating to the role of collective autonomy are then unfounded, which according to the USB would be "compressed, not to say mortified, by the pre-eminent role assigned by law no. 146/90 to the Guarantee Commission".

17. Through the bilateral self-regulation of the conflict, the parties concerned were put in a position to avoid the danger of an arbitrary regulation of the exercise of the right to strike, through the

participation of their representatives in the processes of forming the rules aimed at limiting the exercise of the right to strike.

18. The legislator therefore entrusted the social partners with the task of mutually determining the indispensable services, the modalities and procedures for their provision and other measures aimed at balancing constitutionally guaranteed goods, when it is necessary to sacrifice the exercise of the right to strike in order to protect a right or interest of a higher rank (Article 2, paragraph 2 of Law 146/1990).

19. The preference given by the legislator to collective autonomy is linked, on the one hand, to the need to take into account the specific nature of the public service provided and, on the other, to the greater social consensus that gives the discipline a good degree of effectiveness.

20. As to the USB's further considerations (§ 5), the following is noted.

21. First of all, it must be reiterated that the possibility of resorting to precepting orders is intended to safeguard the general interest in the continuity of the service.

22. The collective interest of workers may, in fact, manifest itself in forms that are irremediably incompatible with the interest of users in the continuity and regular provision of essential public services; hence the need to safeguard first and foremost, at least in part, the fundamental rights of these subjects even in collective self-defence actions.

23. As for the prohibition of striking in periods following the implementation of a strike, the purpose of this prohibition is to avoid excessive prejudice caused to users of essential services by strikes that are too close together. Indeed, an excessive thickening of the number of strikes could lead to the objective impairment of the continuity of public services. The legislator's objective is to protect the constitutionally protected rights of service users, who cannot tolerate a prejudicial thickening of strikes.

24. The obligation to indicate the duration of a strike is a reasonable measure aimed at allowing, within the framework of essential public services, the right to strike to be exercised in compliance with measures aimed at enabling the provision of essential services.

25. The requirements of cooling-off periods and conciliation procedures respond, in a proportionate and reasonable manner, to the need to verify the possibility of averting a collective abstention from

work. These measures make it possible to attempt to mediate the conflict between the social partners, in the sole interest of users to enjoy the essential public service normally.

26. As regards the control of the legality of a strike, it is reiterated that the Commission's resolutions are adopted within the strict *spatium deliberandi* defined by Law no. 146 of 1990 and are subject to judicial review by the ordinary judge (for measures of a sanctioning nature) and the administrative judge (for other measures), without any impairment of judicial protection and the right of defence (art. 24 of the Constitution). In this respect, the guarantees of cross-examination and participation in the proceedings of the interested parties are also relevant, which are expressly regulated and contribute to strengthening the right of defence.

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CONCLUSIONS

27. In the light of these observations, the Italian Government, recalling their own observations in their entirety, insist that the appeal be dismissed.

Rome, June 16th 2023

Drafted by
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