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CONSEIL DE L'EUROPE

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

15 December 2022

Case Document No. 2

Sindacato Autonomo Comitato Nazionale Pompieri (CO.NA.PO.) v. Italy
Complaint No. 214/2022

**OBSERVATIONS BY THE GOVERNMENT
ON ADMISSIBILITY**

Registered at the Secretariat on 25 November 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 complaints nn. 214/2022 and 215/2022

Sindacato Autonomo Comitato Nazionale Pompieri (Co.Na.Po) vs. Italy

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

Ct 41192/2022
Avv. De Vergori



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I. Introduction

1. With the letter dated 12 October 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 complaints nn. 214/2022 and 215/2022 (“the complaints”), submitted by Sindacato Autonomo Comitato Nazionale Pompieri (CO.NA.PO.) (“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. In the complainant union's opinion, the national regulations (Article 1, paragraph 133 of Law No. 166 of 2019 and Article 20 of Decree-Law No. 76 of 2020) determined a salary and pension discrimination affecting firefighters both currently in service- who did not obtain the same status as persons belonging to other Civil Defence Corps - and retired ones.

III. Articles concerned.

4. The complainant seeks a declaration of infringement of the principles enshrined in the revised European Social Charter, with particular reference to Principle 4 of Part I, Articles 2(4) and 12 of Part II, and Article E of Part V.

IV. Admissibility of the complaint

5. The complaint is inadmissible.
6. Among the admissibility requirements of the Additional Protocol, Article 1(c) provides for "*national representativeness of the trade union or organisation*".
7. This requirement implies establishing the representativeness of the complainant, which must derive, inter alia, from the fact of a trade union representing the great majority of professionals working in the relevant sector of activity..



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8. In the present case, also in the light of the counterparty's submissions, the requirement is not fulfilled.

9. In fact, even if the complainant organisation exercises functions which can be considered as trade union prerogatives (as stated in the statutes), the complainant union does not fulfil the requirement of being representative of the majority of the workers in the sector concerned.

10. As is also highlighted in the complaint, in fact, the CO.NA.PO. has about 6,500 members at present, against a number of firefighters employed by the administration of about 35,000.

11. As also clarified in the “Decision on admissibility” of 28 January 2020, para 11 (relating to Reclamation No. 174/2019) *“in determining representativeness, the Committee takes into account the number of members a trade union represents and the role it plays in collective bargaining, including its role in national negotiations (see §23 of the Explanatory Report to the Protocol)”* (par. 11).

Furthermore, in the same decision it was made explicit (para 17) that representativeness *“in accordance with domestic law at the level of a single enterprise, does not possess representativeness for the purposes of the collective complaints procedure”*; this since, according to the Committee, for the purposes of the collective complaints procedure, representativeness is an autonomous concept, not necessarily identical to the national notion of representativity.

12. Therefore, the complainant Association, which represents about 18 per cent of the workers employed in the sector, is not entitled to assert the grievances raised in the appeal under consideration.

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

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CONCLUSIONS



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In light of the present observations, the 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, 25 November 2022

Drafted by

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