

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

27 June 2023

Case Document No. 2

***Associazione professionale sindacale dirigenti area istruzione e ricerca
(Dirigentiscuola) v. Italy***
Complaint No. 223/2023

**OBSERVATIONS BY THE GOVERNMENT
ON ADMISSIBILITY**

Registered at the Secretariat on 15 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. 223/2023

Associazione professionale sindacale dirigenti area istruzione e ricerca (Dirigentiscuola)
vs. Italy

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

Ct 21046/2023

Avv. Monica De Vergori



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I. Introduction

1. With the letter dated 27 March 2023, 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 223/2023 (“the complaint”), submitted by Associazione professionale sindacale dirigenti area istruzione e ricerca (Dirigentiscuola) (“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 and articles concerned.

3. The applicant trade union organisation complains that the remuneration of school managers is not equal to that of managers belonging to the Public Administration of the Ministry of Education and Merit and, specifically, that of non-second-ranking managers.
4. It, therefore, alleges that Italian law is not in conformity with European law on account of infringement of Article ‘E’ in conjunction with Articles 2, 4, 20, 22 and 26 of the European Social Charter.

III. Admissibility of the complaint

5. The complaint is clearly inadmissible.
6. Among the eligibility 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
8. In the present case, the requirement is not fulfilled.
9. Moreover, the claimant also fails to mention the requirement of representativeness in its complaint.



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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. The plaintiff association, in fact, counts about 554 delegations (6.79% out of the total number of unionised managers in the 'Education and Research' bargaining area) (**Annex 1**).

11. Specifically, this is a figure that concerns the total number of union members (not only school managers, since the negotiating area is unique and includes, in addition to school managers, mainly managers of Universities, Public Research Institutions and Bodies, ASI, Afam plus other minor categories) (**Annexes 2 and 2-bis**).

12. 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

13. Therefore, the complainant Association, which represents about 7 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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14. Even if one were to admit that the other party, despite its meagre representativeness, could have access to collective bargaining, in any event it must be emphasised that the trade union in question has no concrete interest in the appeal in this case.



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15. As pointed out in the preceding paragraphs, the current rules governing the remuneration and quantification of the remuneration of school managers were defined with the trade unions, including the applicant.

16. In this regard, it should be noted that 'Dirigentiscuola', in the person of its President and legal representative, recently signed the *Ipotesi di contratto collettivo nazionale*.

17. Supplementary Collective Agreement for the Education and Research Area - School Management, concerning the identification of the bands of complexity, criteria for the distribution and use of the resource constituting the Single National Fund (FUN), between the share allocated to position remuneration and the share allocated to result remuneration, for the school year 2023/2024 (**Annex n. 3**).

18. The profile of the failure to equate the variable remuneration of school principals with that of the second-level managers of the Ministry of Education and Merit constitutes the main content of the complaint, but it is precisely the signing of the criteria for the distribution of the national fund by the same organisation that constitutes proof that the applicant, as the organisation representing the School directors registered with it, has accepted the implementation of the contractual rules governing the sector, with the result that its interest in supporting the grounds of the complaint is lacking.

19. A different interpretation would lead to the paradoxical situation that an act signed, and therefore accepted, by the appellant itself would also have to be challenged.

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

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CONCLUSIONS

In light of the present observations, the Italian Government requests the Committee to dismiss the case by declaring the complaint inadmissible, pursuant to Article 1 of the Additional



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Protocol of 1995 for a system of collective complaints, since the Complainant's lack of representativeness and lack of interest.

Rome, 15 June 2023

Drafted by

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