



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

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Case Document No. 2

Confederación Intersindical Galega (CIG) v. Spain
Complaint No. 231/2023

**OBSERVATIONS OF THE GOVERNMENT ON
ADMISSIBILITY**

Registered at the Secretariat on 23 November 2023



MINISTERIO
DE JUSTICIA

ABOGACÍA GENERAL DEL ESTADO

SUBDIRECCIÓN GENERAL DE ASUNTOS
CONSTITUCIONALES Y DERECHOS HUMANOS

TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

OBSERVATIONS ON ADMISSIBILITY

**COLLECTIVE COMPLAINT
No. 231/2023**

**CONFEDERACIÓN INTERSINDICAL GALEGA (CIG)
v. Spain**

On 10 October 2023 the Committee has communicated to the Kingdom of Spain the Collective Complaint submitted by the trade union *Confederación Intersindical Galega* (CIG), which was registered on 3 October 2023 and has been given the reference number 231/2023.

In this communication, the Spanish Government is invited to submit written observations on the admissibility of the complaint by 23 November 2023.

Accordingly, on behalf of Spain, we hereby submit observations on the admissibility of the complaint.

I. DESCRIPTION OF THE COMPLAINT

1. The complainant organisation requests the Committee to declare that the setting of the minimum interprofessional wage by Spanish legislation is in breach of Article 4.1 of the Revised European Social Charter, for the reasons set out in the complaint.

II. ON THE ADMISSIBILITY OF THE COMPLAINT: lack of legal standing of the trade union involved

2. The Kingdom of Spain finds that the complaint, as detailed below, does not meet the requirement set out in Article 1(c) of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, which attributes standing to bring complaints to “*representative national organisations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint.*”
3. This is because the complainant is a trade union organisation which defends the interests of workers in a single part of the national territory – that is, Galician workers - and whose presence is limited to the territory of a single Autonomous Community, namely the Autonomous Community of Galicia, outside of which it has no presence whatsoever.
4. The issue raised in the complaint at the origin of the present proceedings - the adequacy and sufficiency of the minimum interprofessional wage currently set in Royal Decree 99/2023, of 14 February - is a general issue of national scope, insofar as it is a national regulation that applies throughout the national territory;

in order to establish the representative nature of the national trade union organisation acting, the establishment, aims and activity of the CIG trade union at the national level must be assessed. And the result of this examination, in the opinion of the Government of Spain, as we shall see, leads to the rejection of the union trade's standing for the purposes of Article 1 (c) of the Protocol.

a) **The Committee's doctrine on the requirement of the "representative" character of the trade union submitting a collective complaint**

5. It is the Committee's well-established doctrine, dating back to the admissibility decisions in Complaints Nos. 6/1999 and 9/2000, in *Syndicat national des professions du tourisme v. France* and *Confédération Française de l'Encadrement (CFE-CGC) v. France*¹ and has been consistently reiterated, that the "representative" term used by Article 1(c) of the Additional Protocol is an autonomous concept, not coincides with the national notion of representativeness in the domestic sphere of each State.
6. In this regard, according to the Committee's doctrine, in certain cases the representative status, for the purposes of bringing a collective complaint before the Committee, of trade union organisations which have the status of "representative" at the internal level², may be rejected, but, on the other hand, the representative status of a trade union organisation which is not recognised as such at the internal level in a given area may be accepted in accordance with its doctrine³.
7. In the absence of any development in the Additional Protocol - or in the Committee's Rules of Procedure - of the "representative" concept used in Article

¹ "As regards the representative character of the trade union as referred to in Article 1 para. c, the Committee underlines that the representativity of national trade unions is an autonomous concept, beyond the ambit of national considerations as well the domestic collective labour relations context".

² In this regard, in the admissibility decisions of 28/01/2020 - delivered in *Syndicat CGT YTO France v. France*, Complaint No 174/2019 - or 13/05/2020 - delivered in *Syndicat CGT Ford Aquitaine*, Complaint No 184/2019, §§10 and 13 - the Committee denies "representative" status for the purposes of the collective complaints system to trade union organisations that do have representative status under domestic law.

³ "A trade union may be considered representative for the purposes of the collective complaints procedure whenever it exercises, in the geographical area in which it is based, activities in defence of the material and moral interests of personnel in a given sector, of which it represents a considerable number (Decision on admissibility of 12/09/2017, *Associazione Professionale e Sindicale (ANIEF) v. Italy*, Complaint 146/2017, §6).

1, and given that this is a broad concept that can be defined in different ways, the Explanatory Report of the Additional Protocol is often consulted, which states the following in relation to Article 1.(c):

“c. national organisations of employers and trade unions

[...]

23. To ensure the efficient functioning of the procedure established by the Protocol and in view of the very large number of trade unions operating in some states, it was deemed necessary to stipulate that the organisation must be "representative". The Committee of Independent Experts will judge whether the organisation meets this criterion when examining whether the complaint is admissible, in the light of information and observations submitted by the state and the organisation concerned (see Article 6). In the absence of any criteria on a national level, factors such as the number of members and the organisation's actual role in national negotiations should be taken into account.

[...].”

8. On the basis of these explanations contained in the Explanatory Report, the Committee, when assessing the representativeness of a trade union organisation for the purposes of the collective complaints system, takes into account a number of reasons related to the union's effective presence in the area concerned by the complaint, such as the number of members affiliated to the trade union⁴, or the role it plays in collective bargaining (for all, among the most recent, decision on admissibility of 28 January 2020 in *Syndicat CGT YTO France v. France*, Complaint No. 174/2019).
9. The two reasons mentioned above do not, however, preclude other factors from being assessed. According to the Committee, the determination of the representativeness of a trade union - within the meaning of Article 1.(c) of the Additional Protocol - requires, **in each case, an overall assessment of the various circumstances involved in order to establish whether the trade union, for the specific complaint it is making through the collective complaint, and in the geographical area affected by that complaint⁵, is "representative",**

⁴ While not automatically denying the representativeness for the purposes of the collective complaints system of smaller, recently established organisations to the detriment of larger, long-established organisations (e.g. *Fellesforbundet for Sjøfolk (FFFS) v. Norway*, Complaint no. 74/2011, Decision on admissibility of 23/05/2012).

⁵ Decision on admissibility of 12/09/2017, *Associazione Professionale e Sindicale (ANIEF) v. Italy*, Complaint 146/2017, §6: “A trade union may be considered representative for the purposes of the collective complaints procedure whenever it exercises, in the geographical area in which it is based, activities in defence of the material and moral interests of personnel in a given sector, of which it represents a considerable number”.

such as the nature of the organisation, its purpose or interests for whose protection it is being established - in accordance with its statutes -, the activity it carries out, or its effective presence in the corresponding territorial area⁶. It is interesting to note the Committee's particular emphasis on the need to assess the representativeness of a trade union for the lodging of a collective complaint in view of (among other reasons) the specific scope of the complaint (“*The Committee examines representativeness in particular with regard to the **field covered by the complaint** [...]*” (case *Sindacato Autonomo Europeo Scuola ed Ecologia (SAESE) v. Italy*, decision on admissibility of 20 October 2020, §8; a criteria reiterated in *Associazione Sindacale Militari (ASSO.MIL.) v. Italy*, complaint no. 213/2023, decision on admissibility of 23 May 2023)

b) Transposition of the Committee's doctrine on the requirement of "representativeness" of the trade union to the present case

10. As regards its **nature and purpose**, the *Confederación Intersindical Galega* is, according to its Statutes, which are provided by the complainant organisation itself, a trade union organisation "of **Galician** workers", which is being established for the better defence of **their** interests [i.e. the interests of Galician workers] (Article 1 of the Statutes), specifying that its territorial scope of action is Galicia (Article 4 of the Statutes), and that its membership is open to "all workers in Galicia" (Article 7 of the Statutes).

We are therefore dealing here with a "trade union" - there is no doubt as to the strictly trade union nature of the organisation - which was set up to defend the interests of workers in a specific region of the national territory (the Autonomous Community of Galicia), which operates in that territorial area and which is made up of workers from that region.

11. As regards **the establishment of the trade union organisation**, the *Confederación Intersindical Galega* has, according to the information provided, a representativeness of 30.18% in the territory of the Autonomous Community of Galicia (i.e. in the territory of one of the seventeen Autonomous Communities into which the Spanish State is territorially structured), in the sense that in that

⁶ “*The Committee consider that the number of members and the role performed at the national negotiations are not conditions of an exclusive nature (see Explanatory Report to the Additional Protocol to the Charter). It accordingly makes an overall assessment to establish whether or not an employers’ organisation or a trade union is representative within the meaning of Article 1§c of the Protocol*” (*FFFS v. Norway*, cited above, §20)

territory, on 1/07/2023, a 30.18% of the representatives of workers or employees in the private and public sectors belonged to that organisation. They are not representative in other regions of the territory.

Bearing in mind that the Autonomous Community of Galicia, according to the official population data published by the National Institute of Statistics⁷, has a population of 2,695,645 people, and that the total national population is 47,385,107 people, it can be seen that the representativeness of the *Confederación Intersindical Galega* is 30.18% in an area of the national territory in which a 5.6% of the total population resides.

12. In the light of the foregoing, the Government of Spain is of the view that it cannot be affirmed that the trade union organisation in question meets the requirement of "representativeness" in Article 1(c) of the Additional Protocol, in the framework of the complaint raised.

In fact, the complaint raised by the organisation refers to an aspect of national legislation that is applicable to the entire territory of the State, so that **the scope of the complaint is national**, and yet the complainant organisation carries out its activity in a specific geographical area (the geographical area of one of the 17 Autonomous Communities that make up the Spanish State), its purpose being the protection of the specific interests of workers in that geographical area.

13. Accordingly, and without prejudice to the fact that at national level the *Confederación Sindical Galega* - despite the fact that its scope of action according to its own statutes is limited to the geographical area of the Autonomous Community of Galicia - may be recognised as having a certain institutional representativeness and capacity to participate in matters of general scope, and that its contributions may be heard or taken into account, this does not mean that it is "representative" before an international body such as the European Committee of Social Rights and may intervene by submitting a collective complaint.
14. The complainant organization argues that the *Confederación Intersindical Galega* has legal standing on the fact that it has the "legal status of being a representative trade union [*sindicato más representativo*]" under national law -in §§14 and 15-, that it has submitted observations to the Spanish Government prior

⁷ <https://www.ine.es/up/aJdJAgMJi1E>

to the fixing of the minimum wage - §16 -, and that it submits observations to the Committee in the context of the reporting system of the European Social Charter.

However, none of the above aspects on which the trade union claims to have legal standing determines that the trade union must be recognised as "representative" in the system of collective complaints to the European Committee of Social Rights, given that:

- (i) The fact that it has been attributed representative status under national legislation, as stated above, is not an element that determines that the trade union has the "representativeness" that Article 1(c) of the Additional Protocol requires in order to have standing to bring a collective complaint before the Committee, since "representativeness" for these purposes is an autonomous concept that does not coincide with the national notion.

In any event, it should be noted that **the *Confederación Intersindical Galega* has, in accordance with national legislation, the status of being representative only and exclusively at regional level**, namely in the Autonomous Community of Galicia⁸.

- (ii) The fact that the trade union submitted observations to the Spanish Government prior to the fixing of the minimum wage does not mean that the trade union should therefore be entitled to bring a complaint against the State at the international level, in particular before the European Committee of Social Rights.

On this point, it is worth noting the decision adopted by the Committee declaring the complaint inadmissible in *Sindacato Autonomo Europeo Scuola ed Ecologia (SAESE) v. Italy*, Complaint No. 194/2020, in which the Committee explains how the fact that the trade union organisation

⁸ This aspect is not explained in the complaint with sufficient clarity. Thus, it is stated that "the claimant *Confederación Intersindical Galega* holds the legal status of the most representative trade union", but it is not made clear that the status attributed to it by law is that of "most representative trade union at Autonomous Community level", a category that article 7 of the Organic Law on Trade Union Freedom contemplates as opposed to the category of "most representative trade union at State level" in article 6 - a condition that the *Confederación Intersindical Galega* trade union does not hold. Precisely for this reason, the law (art. 7.2 of the LOLS) attributes to the union a series of representative and participatory functions in collective bargaining, "to be exercised within the specific scope of the Autonomous Community" - in contrast to the representative and participatory functions attributed to the most representative unions at the state level, which are attributed representative capacity "at all territorial and functional levels."

had initiated several actions before the Italian Parliament, the Ministry of Labour and judicial bodies as well as the European Parliament does not imply that it must have the "representativeness" required for the purposes of the collective complaints procedure.

In any case, it should be noted at this point that the complainant trade union (as it acknowledges in its written observations addressed to the Government, attached to the complaint) is not a member of the general tripartite dialogue body set up between the Government and the most representative employers' and trade union organisations within which the determination of the minimum interprofessional wage was discussed prior to its determination by the Government⁹.

- (iii) The fact that the *Confederación Intersindical Galega* submits observations to the Committee under the reporting system of the European Social Charter does not imply that it has legal standing under the system of collective complaints, since the action of trade union organisations in both systems is governed by different rules, and in the first case it is not required that the trade union organisation has specific "representativeness" in order to submit observations.

It is striking, moreover, that the complainant organisation does not provide data on the number of affiliated members of the organisation, or on the activity carried out by the trade union in relation to effective participation in negotiating tables or collective agreements in which it has participated, which are precisely the reasons which, according to the Committee, should be taken into account when assessing the representativeness of a trade union for the purposes of the collective complaints system.

From the foregoing, the Spanish Government REQUESTS the Committee:

To declare the collective complaint submitted by the *Confederación Intersindical Galega* inadmissible, on the ground that the complainant organisation lacks standing in accordance with the explanations contained in these observations.

In the event that the complainant organisation submits allegations in response to this observations, we respectfully request that these allegations be forwarded to the Kingdom of Spain, in order to formulate the corresponding observations, if

⁹ The complainant organisation precisely complains about this fact.



appropriate, in accordance with the provisions of Rule 29 § 3 bis of the Committee's Rules of Procedure.

Madrid for Strasbourg, 23 November 2023

The Agent of Spain

The Co-Agent of Spain

Alfonso Brezmes Martínez de Villareal

Heide-Elena Nicolás Martínez