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

17 April 2024

Case Document No. 4

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

**REPLY FROM THE GOVERNMENT
TO THE CIG RESPONSE ON ADMISSIBILITY**

Registered at the Secretariat on 12 April 2024



MINISTERIO
DE LA PRESIDENCIA, JUSTICIA
Y RELACIONES CON LAS CORTES

ABOGACÍA GENERAL DEL ESTADO

SUBDIRECCIÓN GENERAL DE ASUNTOS CONSTITUCIONALES
Y DERECHOS HUMANOS

TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

THE SPANISH GOVERNMENT'S REPLY TO THE CIG'S RESPONSE
ON THE INADMISSIBILITY OF THE COMPLAINT

COLLECTIVE COMPLAINT
No. 231/2023

CONFEDERACIÓN INTERSINDICAL GALEGA (CIG)
v. Spain

By letter dated 28/02/2024 the Committee has communicated to the Kingdom of Spain the observations submitted by the *CONFEDERACIÓN INTERSINDICAL GALEGA* (CIG) trade union in response to the Kingdom of Spain's observations on the admissibility.

Within the time-limit granted, on behalf of the Kingdom of Spain, we thereby come to reply to the CIG's observations on the admissibility of the present complaint.

In particular, it should be emphasised that **the Spanish Government has never disputed CIG's status as the *most representative* trade union at internal level, nor the various kinds of activities that the trade union carries out** as a consequence, mainly, of the recognition of its status as the most representative trade union in the internal order.

- With regard to the representative status of the trade union recognised at internal level, in our observations on admissibility we explained that, in accordance with national legislation, the CIG trade union is indeed the *most representative union*, although we highlighted an important fact that was omitted in the complaint: the trade union is **only the** most representative at the **regional level**, in the Autonomous Community of Galicia. It **is not, therefore, the most representative trade union at the national level** - for which it must prove that it is established at the national level, which CIG does not prove - **but the most representative trade union at the regional level**.
- We also referred in our submission to the fact that the trade union carries out certain activities that have a wider impact, and it participates in state institutions or bodies, as a result of the recognition of its status as *most representative*¹, which are described by the trade union organisation involved and not denied by this party (General Council for Vocational Training, National Commission for Health and Safety at Work, Consultative Commission for Collective Agreements...).

¹ National legislation generally allows all trade unions that are recognised as the most representative, even if only at regional (autonomous) level, the possibility of having institutional representation before certain state bodies (Article 7.1 LOLS). It is this - and not the fact that this organisation defends the general interests of the workers' community at national level - which explains the presence of the CIG in such bodies.

However, as we have explained, the notion of "representativeness" under Article 1.(c) of the Additional Protocol is an **autonomous concept**, which, as the Committee itself has emphasised on many occasions, **does not coincide with the notion of representativeness in the internal sphere of each State**. Accordingly, **the fact that a trade union is considered representative, for different purposes, in a national system, does not imply that it is so for the purposes of being entitled to bring collective complaints before the European Committee of Social Rights**, which must be verified in each case depending on the concurrent circumstances and various factors assessed by the Committee.

Therefore, the fact **that national legislation recognises CIG as the most representative trade union (at regional level) or, as a consequence of its recognition as the most representative, allows it to carry out certain functions or participate in certain state bodies** and through the performance of those functions or its presence in those bodies, defending the interests of Galician workers (which is what justifies its existence, in accordance with its Statutes), **does not necessarily imply, as the trade union argues, that it is a representative trade union for the purposes of Article 1.(c) of the Additional Protocol to the European Social Charter**.

At this point, it is worth recalling the reference we made to the decision of inadmissibility adopted by the Committee 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 had initiated several actions before the Italian Parliament, the Government - Ministry of Labour -, some internal judicial bodies, or even before international bodies such as the European Parliament, does not imply *per se* that it has to have the "representativeness" required for the purposes of the system of collective complaints before the European Committee of Social Rights².

On this point, and since the CIG insists on these aspects in its written statement, we must also insist that the fact that it performs certain functions before different internal or international bodies, or even that it participates in the negotiation of collective agreements at the internal level (in a number of cases also in agreements at a higher

² The trade union acting in the present case, in its reply to the observations on admissibility, has provided - unlike in the case cited above - specific data on the number of members of that trade union, or the number of agreements in whose negotiation it has been involved. However, none of these data is indicative of its real degree of representativeness - even if it were considered that, despite having a limited geographical scope, it may be representative at the national level - as it is not accompanied by any comparative analysis, even an estimate, with respect to other trade union organisations, or in general of the workers in Spain.

level than the regional level) is not decisive for the purposes of recognition of this representativeness. Thus, in particular:

- i) The fact that the trade union has submitted observations to the Spanish Government prior to the setting of the minimum wage is because, according to the Workers' Statute, whichever trade union which is most representative can intervene in this procedure, even if it is only at a territorial level³.
- ii) The fact that the trade union submits observations to the Committee in the reporting system (or that it participates in ILO conferences) does not imply a specific assessment by the Committee of its representativeness, since the requirement of representativeness is not required for the submission of allegations in the reporting system, but is required for the submission of collective complaints.

In short, given that what establishes the standing of a trade union organisation to bring collective complaints before the European Committee of Social Rights is the concurrence of the factors determined by the Committee, precisely because it is considered that in the present case the factors establishing the attribution of such standing are not present, this party has requested that the complaint be declared inadmissible:

- CIG is well-established in Galicia, with 30.18% of the workers' representatives or employees in the private or public sector, but no data have been provided to support any establishment outside this trade union in Galicia.

In its comments on the observations on admissibility, the CIG states that it has 82,287 members, but it does not specify whether all its members are workers from the Autonomous Community - where we have acknowledged that it has an unquestionable presence - or whether they are also workers from other Autonomous Communities, although it is clear from its own account that the former is the case⁴.

³ We also insist that the complainant trade union does not form part of the general tripartite dialogue body set up between the Government and the most representative employers' and trade union organisations, a body in which the determination of the minimum interprofessional wage is discussed prior to be fixed by the Government.

⁴ At no point does it state that it defends the interests of workers from other Autonomous Communities, or that its members belong to Autonomous Communities other than Galicia.



- According to the trade union organisation's Articles of Association - which the trade union itself reproduced in the complaint at the origin of the present proceedings - in defining its objectives, it states that is a trade union organisation 'of the Galician workers', which was set up 'for the better defence of their [Galician workers'] interests'.

It is therefore a trade union organisation which is effectively established in only one part of the national territory, and whose sole purpose is to defend the interests of workers in that territory.

In this context, this party is of the view that the trade union organisation CIG could, in a hypothetical situation, fully raise its standing before the European Committee of Social Rights for the submission of collective complaints intended to report the violation of the European Social Charter by the regulations of a State or administrative or judicial practice with regard to situations that particularly affect workers of the Autonomous Community of Galicia, due to the specific features of the applicable regime.

However, this is not the case in present proceedings, in which the issue raised in the complaint at the origin of the present proceedings - the adequacy and sufficiency of the minimum interprofessional wage currently laid down in Royal Decree 99/2023 of 14 February - is a general issue of national scope (it is a national rule that applies throughout the national territory).

In view of the foregoing, this party considers that only an excessively broad interpretation of the concept of "representativeness" in Article 1(c) of the Additional Protocol would allow the CIG to be considered to have standing to bring the present complaint. This is without prejudice to the fact that the trade union may use a collaborative formula to act before the European Committee of Social Rights in the collective complaints procedure, and may do so effectively through collaboration with other national or international trade union organisations, or non-governmental organisations, entitled to do so in accordance with the provisions of the Additional Protocol.

Madrid for Strasbourg, 12 April 2024

THE AGENT OF SPAIN

Heide-Elena Nicolás Martínez