European Social Charter | Charte sociale européenne

COUNCIL OF EUROPE 75 1949 - 2024 CONSEIL DE L'EUROPE

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

6 February 2024

Case Document No. 2

***Associazione Nazionale per l'Industria e il Terziario* (A.N.P.I.T.) and *Confederazione Italiana Sindacati Autonomi Lavoratori* (C.I.S.A.L.) v. Italy**
Complaint No. 232/2023

OBSERVATIONS BY THE GOVERNMENT ON ADMISSIBILITY

Registered at the Secretariat on 31 January 2024

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. 232/2023

Associazione Nazionale per l'lndustria e il Terziario (A.N.P.I.T.) and Confederazione Italiana Sindacati Autonomi Lavoratori (C.I.S.A.L.) vs Italy

OBSERVATIONS OF THE ITALIAN GOVERNMENT ON THE ADMISSIBILITY OF COLLECTIVE COMPLAINT

Ct 43762/23

Proc. Adele Berti Suman

1. With the letter dated 4 December 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 n. 232/2023 ("the complaint"), submitted by *Associazione Nazionale per l'lndustria e il Terziario* (A.N.P.I.T.) and *Confederazione Italiana Sindacati Autonomi Lavoratori* (C.I.S.A.L.) ("the complainants").

2. In compliance with the Secretariat of the European Social Charter request, the present observations are limited to the admissibility of the complaint.

- I -

Articles concerned.

The complaint by the *Associazione Nazionale per l'lndustria e il Terziario* (A.N.P.I.T.) and *Confederazione Italiana Sindacati Autonomi Lavoratori* (C.I.S.A.L.) seeks a finding of violation of Art. 5 (Trade Union Rights), Art. 6 (Right to Collective Bargaining) and Art. 12 (Right to social security) of the European Social Charter of the Italian regulations in Article 22 of Decree-Law No. 18 of March 17, 2020, converted, with amendments, by Law No. 27 of April 24, 2020, which regulates the admission to the *Cassa Integrazione in Deroga* during the period of the COVID-19 emergency.

The aforementioned Article 22, paragraph 1, provides that: "*The Regions and Autonomous Provinces, with reference to employers in the private sector, including those in agriculture, fishing and the third sector including civilly recognized religious bodies, for whom the protections provided by the current provisions on the suspension or reduction of working hours, during the employment relationship, do not apply, may recognize, as a result of the epidemiological emergency from COVID-19, subject to an agreement that can also be concluded electronically with the comparatively most representative trade unions at the national level for employers, wage subsidies in derogation, for the duration of the reduction or suspension of employment and in any case for a period not exceeding nine weeks (. ..)".*

- II -

Subject Matter of the Complaint

The collective complaint concerns the legitimacy of signing the minutes of agreement to which access to the *Cassa integrazione in deroga* benefit during the Covid-19 emergency is conditioned. According to the complainants, the rule decouples the assessment of representativeness-useful for founding the

legitimacy to sign the minutes of agreement for the benefit of the *Cassa integrazione in deroga* with Covid-19 reason from the examination of the actual capacity of representation of the trade unions within the Company/production unit as signatories of the CCNL applied in them. In this way, according to the complainants, an injury would be realized to the trade union prerogatives of organizations that are certainly representative in the company/production unit.

According to the complainants, attributing the legitimacy to sign the minutes of the agreement, to which access to the benefit is conditioned, not to the union signatory of the CCNL applied in the company or production unit, but to the union signatory of another CCNL only because it is comparatively more representative at the national level would, on the one hand, be detrimental to the union prerogatives of representative organizations in the company or production unit and, on the other hand, would encourage a dumping effect, opportunistic distorting behaviour and the ineffectiveness of the specific CCNL itself applied in the individual labour reality.

-III-

Admissibility of the complaint

For the purposes of the admissibility of the complaint, which is to be evaluated in light of the requirements of the Additional Protocol to the European Social Charter, ratified by Law No. 298 of 1997, it is acknowledged that the complainants, who are among those entitled to bring an action pursuant to Article 1(1)(c) of the aforementioned Protocol, appear, following technical verifications carried out by the competent administration, to be sufficiently representative in the national territory.

However, it is pointed out that there is no documentation from which it emerges incontrovertibly that the signatories to the complaint (Dr. Ladicicco for ANPIT and Dr. Cavallato for CISAL) are the persons entitled to represent their respective complainant organizations and, therefore, this burden is to be considered as not fulfilled.

In addition, there are doubts as to the actual and concrete existence of the interest in bringing the action, given that the domestic rule under censure, that is Article 22 of Decree-Law No. 18 of 2020, is no longer in force and, consequently, its alleged non-conformity with the cited provisions of the Charter is not current.

* * *

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.

Rome, 31 gennaio 2024

Drafted by
Adele Berti Suman – Procuratore dello Stato

The Agent of the Italian Government
Lorenzo D'Ascia – Avvocato dello Stato