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

10 June 2024

**Case Document No. 4**

***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

# REPLY FROM THE GOUVERNMENT TO A.N.P.I.T. AND. C.I.S.A.L.'S RESPONSE ON ADMISSIBILITY

**Registered at the Secretariat on 30 May 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*

# FURTHER OBSERVATIONS OF THE ITALIAN GOVERNMENT ON THE ADMISSIBILITY OF COLLECTIVE COMPLAINT

Ct 43762/23
Proc. Adele Berti Suman

1. With the letter dated 25 April 2024, the Secretariat of the General Directorate of the European Social Charter, requested the Italian Government to submit a reply to observations on 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") by 31 May 2024.

2. In compliance with the Secretariat of the European Social Charter request, the present further observations are limited to replay to the observations on the admissibility of the counterparty.

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3. The trade unions A.N.P.I.T. and C.IS.A.L. bring the present complaint against Italy, censuring Article 22 of Decree-Law No 18 of 17 May 2020, converted, with amendments, by Law No 27 of 24 April 2020, which governs the admission to the "*Cassa integrazione in deroga*" during the period of the COVID-19 emergency, for breach of Article 5 (Trade Union Rights), Article 6 (Right to Collective Bargaining) and Article 12 (Right to Social Security) of Part II of the European Social Charter, committed by the contracting party (the Italian Government) in so far as it makes wage supplementation payments in derogation - as a result of the epidemiological emergency by COVID-19 - requested by employers with more than five employees subject to the conclusion of an agreement with the trade unions which are comparatively more representative at national level.

4. With reference to the profiles of admissibility of the collective complaint, it is reiterated that the legislation whose harmonisation is sought not only does not present any profiles of friction with the principles expressed by the European Social Charter, but has an emergency nature, whose applicability has been limited to the period from 23 February 2020 to 31 August 2020.

5. Therefore, there is no concrete interest for the complaining associations in the decision, given that the Italian rules whose legitimacy the complainants doubt are no longer in force.

6. However, it is reiterated that the documentation cited by the claimants does not appear sufficient to prove *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.

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7. With regard to the merits of the complaint, the provision censured by the applicants appears to be absolutely consistent with the Italian legal system and with all the principles enshrined in the European Social Charter.

8. The purpose of the legislation in question, in fact, is not related to the exercise of trade union freedoms, but to the provision of public benefits, as it is designed to support companies in crisis, which have suffered suspensions or reductions in work activity due to events attributable to the Covid-19 epidemiological emergency, through the introduction of simplified rules for the recognition of wage subsidies as an exception to the ordinary rules.

9. The provision of an agreement signed with comparatively more representative trade unions (*organizzazione sindacale comparativamente più rappresentantiva*) is intended to select those organisations that, more than others, appear to be able to represent the interests of the largest number of employers and employees, essentially in order to guarantee the widest possible protection of interests.

10. The concept of 'comparatively more representative' ("*comparativamente più rappresentativa*") organisation presupposes, unlike the concept of 'greater representativeness' ("*maggiore rappresentatività*"), repeatedly invoked by the applicant, a selection of trade union associations on the basis of a comparative assessment of the actual representative capacity of each of them. And that in order

to commensurate the enjoyment of certain prerogatives with the actual representative capacity of the organisations subject to the comparative assessment.

11. The Constitutional Court has ruled on the issue of representativeness on several occasions (for all see: Constitutional Court, 6 March 1974, no. 54; Constitutional Court, 24 March 1988, no. 34; Constitutional Court, 26 January 1990, no. 10), affirming the legitimacy of rules aimed at selecting trade unions on the basis of their greater or lesser representativeness.

12. The concept of '*comparatively most representative trade union organisation'* was introduced into the Italian legal system by Article 2(25) of Law No. 549 of 28 December 1995 - an authentic interpretation of Article 1 of Law No. 389 of 7 December 1989 - with the specific purpose of individualising the applicable collective bargaining agreements on the subject of minimum contributions.

13. Underlying this notion was the need to identify the trade union actors deemed suitable to identify the contractual system connected to the enjoyment of public benefits and subsidies of an economic nature or to the possibility of flexibilisation of labour standards (hourly, contract types, etc.), in the presence of a plurality of competing collective agreements on the same product sector.

14. Furthermore, there was (and still is) the need to counter the effects of so-called contractual dumping, caused by the application of collective labour agreements adopted for the sole purpose of compressing labour costs by means of an excessive reduction in costs and the consequent worsening of working conditions compared to what is established by the collective agreements concluded by the most representative trade unions.

15. The term 'comparatively most representative trade union' has been used, since legislative decree no. 276 of 10 September 2003, in an ambivalent manner: now as a selection criterion among a possible plurality of collective agreements (in order to identify the only one applicable), now as a criterion of subjective legitimation of the various trade union associations.

16. Within the Italian system, therefore, the criterion of comparative representativeness has replaced the criterion of greater representativeness, invoked, on several occasions, by the plaintiff.

17. According to case law, the criterion of 'comparatively more representative trade union' constitutes an evolution with respect to the concept of the most representative trade union, in that, unlike greater representativeness - a qualitative and equal characteristic - it introduces, in the dialectic of trade union relations, a measurement criterion of a selective nature (in this sense TAR Lazio, 8 February 2018, no. 1522).

18. The criterion of the 'comparatively most representative trade union organisations' is the one that best allows, based also on the case law of the Constitutional Court, the selection of those organisations that, more than others, appear capable of representing the interests of the largest number of employers and workers.

19. This is without committing any infringement of trade union rights, as no prerogative of the trade unions themselves is prevented or restricted, as they retain, in exercising their trade union rights, the freedom to sign collective agreements or to represent and protect their members.

20. The criterion, as clarified, is only used to select the organisations which, among those potential signatories of agreements, are, after comparison, more representative.

21. Depending on the legislation to be applied, the comparison may be carried out at a general level, i.e. on all the indices taken as a reference to measure representativeness or be limited to a territorial level (e.g. among organisations operating in a given region) or, again, be relative to organisations operating in a given production sector (e.g. textiles, metalworking, etc.).

22. Therefore, even if a trade union organisation has been recognised as 'comparatively more representative' in a given context, this does not mean that such

recognition is also valid in an absolute sense thereafter, since it is necessary to ascertain the prerequisites on a case-by-case basis, according to the needs arising from the legislation to be applied to the concrete case.

23. With regard to the alleged pecuniary loss resulting from the non-admission to the Wages Guarantee Fund on an exceptional basis, which was upheld by the courts, and to the alleged dumping effects, the following is submitted.

24. The fact that there have been rulings on the merits confirming the exclusion of the companies applying the collective agreement signed by ANPIT-CISAI from eligibility for the Wage Supplementation Fund in derogation under the Decree-Law No. 28/2020 does not appear to be relevant to this claim. On this point, it should be noted that the subject matter of the action is limited to the request for harmonisation of the legislation, not also to obtaining a ruling of a compensatory nature for the alleged damage caused to the trade unions. Since - as already pointed out - the legislation has no room for application in practice, there does not appear to be a sufficient interest on the part of the complainants to bring such an action.

25. Equally irrelevant appears to be the question as to the permanence of the effects of the judicial rulings, since, if the claimants had considered that the emergency provisions were contrary to supranational law, they could well have highlighted that profile in the courts, using the means that the Code of Procedure provides for that purpose. However, it does not appear that such remedies have been exhausted, with the consequent consolidation of the effects of the judgment formed on the applications for admission to the *cassa integrazione in deroga.* In the light of this element, it is not considered that the complaint lodged can have any useful effect in favour of ANPIT-CISAL.

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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, 29 May 2024

Drafted by

*Adele Berti Suman* – Procuratore dello Stato

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