



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

8 April 2024

Case Document No. 2

Confederazione Unitaria di Base (CUB) v. Italy
Complaint No. 234/2024

OBSERVATIONS BY THE GOVERNMENT ON ADMISSIBILITY

Registered at the Secretariat on 14 March 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. 234/2024

Confederazione Unitaria di Base (C.U.B.) vs. Italy

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

Ct 2438/2024

Avv. Monica De Vergori

Avv. Eva Ferretti



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I. Introduction

1. With the letter dated 12 January 2024, 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 complaints n. 234/2024 (“the complaints”), submitted by Confederazione Unitaria di Base (C.U.B.) (“the complainant”).
2. In compliance with the Secretariat of the European Social Charter request, the present observations are limited to the admissibility of the counterparty’s complaint.

II. Subject Matter of the Complaint.

3. In the complainant union’s opinion, the Italian legislature would not ensure an adequate level of poverty alleviation.
4. According to the association’s perspective, with the recent reforms, Italy would have abolished its universal poverty support instruments (Reddito di Cittadinanza) and replaced them with new, more restrictive income support legislative measures (Assegno di Inclusione and Supporto alla Formazione e al Lavoro).
5. The complainant states that these new measures adopted by the Italian government would not be adequate to combat poverty and would not guarantee a universal minimum income also in view of the inflationary phenomenon.

III. Articles concerned.

6. The complainant seeks a declaration of infringement of the principles enshrined in the revised European Social Charter, with particular reference to articles 4, 12 and 30 of the European Charter of Social Rights.

IV. Admissibility of the complaint

7. The complaint is inadmissible.



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8. Among the admissibility requirements of the Additional Protocol, Article 1(c) provides for “*national representativeness of the trade union or organisation*”.

9. This requirement implies establishing the representativeness of the complainant. In other words, for the complaint to be admissible, the complaining confederation must demonstrate an adequate level of representativeness with an effective presence throughout the country.

10. The complainant association asserts exclusively that its representativeness would derive from the membership count of 228,947 workers for the year 2022 (see paragraph 1.1. of the application).

11. It must be emphasised in this regard that the mere indication of the number of registered workers is not sufficient to prove the representativeness of the association, which according to the Committee must represent “*the great majority of professionals working in the relevant sector of activity*”.

12. The complainant has not shown that the number of members is sufficient to integrate the majority of the workers affected by the national provisions that are contested in the complaint.

13. In fact, with the complaint in question, the confederation has challenged national provisions applicable across the board to all workers, so that the representativeness of the association must necessarily be analysed taking into account the general (and not sectoral) relevance of the complaints.

14. On the contrary, it would appear from a reading of the complaint that the contested national legislation affects approximately 4.5% of the population, i.e. some 2.613 million individuals (see paragraph 2.1. of the complaint).

15. Again, even if one were to take as a figure exclusively that of the “*poor worker*”, i.e. workers below the EUR 9 per hour threshold (and thus workers potentially affected by poverty support measures), the complainant states that the number of workers affected is approximately 2.841 million.



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16. The total number of members of the complainant association is, therefore, in no way capable of integrating the requirement of representativeness (in terms of the number of union members in relation to those affected by the contested measure).

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17. In addition, the requirement of representativeness must also be demonstrated in the light of the parameters identified by national case law and transposed by the interpretative note of the Ministry of Labour and Social Security of 11 January 1995 no. 14.

18. The criteria, to be globally evaluated, are:

(a) the numerical size of the subjects represented by the individual trade union organisations;
(b) the breadth and spread of organisational structures. In this respect, national case law has shown that the spread in the field of action of the confederations **must be verified both territorially (it must not be limited to a single part of the national territory)** and sectorally (it must not be limited only to certain categories of workers)

(c) the participation in the formation and stipulation of collective labour agreement

19. In the present case, also in the light of the counterparty's submissions, the requirement set out in point b) is not fulfilled.

20. The aforementioned note of the Ministry of Labour (n. 14/95) specifies that in order to be recognised as “nationally representative”, organisations must prove that they have their own branches operating in at least half of the provinces. This is necessary to guarantee effective protection of the interests of their members by ensuring adequate territorial proximity.

21. At present, there are a total of 107 provinces in Italy, and it is therefore necessary for the headquarters declared by the Association to be established in the territories of at least 54 different provinces.

22. The complainant, however, has 16 regional offices and 41 provincial offices, 8 of which cannot be counted because they are located in an area where there is also a regional office. These data were transmitted by the complainant by means of a self-declaration (as required



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by national legislation) to the competent Ministry and must, therefore, be considered undisputed.

22. On the basis of the information communicated by the association to the competent Ministry, a total of 49 provinces covered by the organisation's seats can be recognised. This figure is lower than the minimum requirement of 54 provincial seats laid down in Ministerial note No. 14 of 1995.

23. In support of the foregoing, it is emphasised that, contrary to what has been asserted by the appellant, the reference to certain precedents of the Committee (on collective complaints Nos. 91/2013 and 140/2016) cannot be considered relevant for the admissibility of the appeal since they relate to a different complainant (CGIL) which has a completely different representative base and presence throughout the country.

24. With regard to the requirement of representativeness, the Committee also stated that it is supplemented, in addition to the number of registered subjects, by the following conditions:

- the fact of the trade union being representative at the national level and therefore being able to negotiate collective agreements;
- the fact of a trade union exercising, in a geographical area where it is established, activities in defence of the material and non-material interests of workers in a given sector of whom it covers a sufficient number, in conditions of independence vis-à-vis the employment authorities.

25. In the present case, as has been shown, the claimant is not representative throughout the State. The presence of branches located only in some regions and provinces (with less than 50% of the provinces) highlights the inadmissibility of the complaint as the grievance of the complainant association (relating to the effects of the national legislation on the fight against poverty) evidently concerns the entire national territory and cannot be considered limited to a single geographical area.



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26. Therefore, the complainant Association, which, according to national law, does not have a sufficient territorial representativeness requirement, is not entitled to assert the grievances raised in the appeal under consideration.

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27. 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 request the Committee to dismiss the case by declaring the Complaint inadmissible, pursuant to Article 1 of the Additional Protocol of 1995 for a system of collective complaints, since the Complainant's lack of representativeness.

Rome, 13 March 2024

Drafted by

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