



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

15 July 2024

Case Document No. 4

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

**REPLY FROM THE GOVERNMENT TO
CUB'S RESPONSE ON ADMISSIBILITY**

Registered at the Secretariat on 8 July 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 complaints No. 234/2024

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

**FURTHER OBSERVATIONS OF THE ITALIAN GOVERNMENT
ON THE ADMISSIBILITY OF COLLECTIVE COMPLAINTS**

Ct 2438/2024
Avv. Monica De Vergori
Avv. Eva Ferretti



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1. With the letter dated 29 May 2024, the Secretariat of the General Directorate of the European Social Charter requested the Italian Government to present their replies on the admissibility of the collective complaints 234/2024 (“the complaint”), 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.

3. As stated in the complainant’s reply, the CUB asserts that its representativeness could not be denied in light of both the principles established by national case law and the clarifications provided in interpretative note (*Circolare*) of the Ministry of Labour and Social Security Circular No. 14 of 11 January 1995.

4. The opposing party’s argument is unfounded.

5. In order to better clarify the issue of “trade union representativeness”, it is necessary to clarify that Article 39 of the Italian Constitution, in its first part, affirms the principle of trade union freedom understood as protection of the trade union sphere from possible interference and as the active exercise of collective bargaining in the forms of reciprocal interaction between workers and employers.

The second part of the provision provides that the contractual system is based on the law, which regulates every aspect of it and ensures its effectiveness.

It should also be pointed out that the system of registration and recognition of trade union organisations provided for in Article 39 of the Constitution has not been implemented to date because the implementing legislation has not been adopted.

6. Trade unions are thus configured as unrecognised associations; this situation has, therefore, led to the need to identify appropriate criteria and methods for measuring the representativeness of individual organisations.

When using the concept of representativeness, reference is made to the size and capacity of individual organisations to mobilise and protect collective interests.



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7. The Constitutional Court has also ruled on this point (see Constitutional Court, judgment 6 March 1974, no. 54; judgment 24 March 1988, no. 334; judgment 26 January 1990, no. 30). The Constitutional Court affirmed the legitimacy of regulations selecting trade unions on the basis of lesser or greater representativeness.

8. Jurisprudence has consequently derived and identified from the general principles of the legal system the elements useful for measuring the representativeness of organisations (cf. Court of Cassation, judgment no. 1320/1986; judgment no. 7622/1991; judgment no. 9027/1991; judgment no. 5017/1992). The aforementioned judgments refer to the principles of territorial breadth and spread, the numerical size of the membership, the effective participation in training, the stipulation of national collective labour contracts or agreements, and the settlement of individual and collective labour disputes.

9. In this context, moreover, the Ministry of Labour and Social Security adopted the interpretative note no. 14 of 11 January 1995 (referred to by the Italian Government in their observations).

This note incorporated the criteria developed by case law, the content of which was considered to be largely consolidated; these criteria are then used to verify and assess the trade union representativeness of organisations at a national level.

10. Interpretative note No 14/1995, after listing the indices or elements on which jurisprudence relies to identify representativeness, dwells in particular on that of territorial spread, i.e. the adequate presence and distribution in the territory.

In this sense, considering that it is necessary to identify a minimum threshold of territorial presence for the purposes of representativeness, the *Circolare* states that it is necessary to demonstrate the presence of own offices actually operating in at least half of the Italian provinces, as already clarified in the observations of the Italian Government. On page 3, the interpretative note also specifies that the requirement of the declared territorial spread, aimed at ensuring the presence in the territory, can be subject to special *on-site* checks; indeed, the



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assessment of the actual territorial spread is an objective criterion that can be concretely verified by carrying out direct inspections of the individual offices.

11. Moreover, national jurisprudence holds that “*by - national trade union associations - must be understood those associations that have an organisational structure articulated at a national level and that carry out trade union activities over all or a large part of the national territory*” (see Cass. Lavoro, judgment no. 11322/2015; judgment no. 12885/2014); the case law therefore also following the issuance of the circular has confirmed what was indicated therein, i.e. that the effectiveness of trade union action exists only for associations that have branches operating in at least half of the provinces, a situation that does not occur in the present case.

12. It is, therefore, clear that, as already clarified in the observations, since the other party does not have sufficient branches to fulfil the requirement of territorial spread, the union cannot be considered effectively representative.

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13. The above considerations, together with those determined in the observations of the Italian government, 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, 04th July 2024

Drafted by



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