



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

17 April 2024

**Case Document No. 2**

***Sindacato Italiano Lavoratori (S.I.Lav.) v. Italy***  
Complaint No. 236/2024

**OBSERVATIONS BY THE GOVERNMENT  
ON ADMISSIBILITY**

**Registered at the Secretariat on 4 April 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 nn. 236/2024*

*Sindacato Italiano Lavoratori (S.I.Lav.) vs. Italy*

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

Ct 4877/2024  
Avv. Monica De Vergori  
Avv. Eva Ferretti



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**I. Introduction**

1. With the letter dated 5 February 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 nn. 236/2024 (“the complaints”), submitted by Sindacato Italiano Lçavoratori (S.I.Lav.) (“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 national regulations involve an inequality of treatment between teachers employed in private parish schools (*scuole paritarie*) and teachers in State schools and boarding schools, in relation to career seniority and recognition of pre-role service (*servizio pre-ruolo*) with respect to entry into service in State schools.
4. According to the complainant association’s submission, Italian law gives rise to unequal treatment when teachers are recruited onto the rolls of the Ministero dell’Istruzione e del merito, in so far as, on recruitment, teachers coming from “*scuole pareggiate*” and “*educandati*” are recognised as having been employed in those establishments and acquire a higher level of seniority and remuneration which takes account of their overall length of service, whereas teachers coming from “*scuole paritarie*” do not have their length of service in those establishments recognised and are classified in the initial remuneration band.
5. The claimant maintains that the provision in Article 485 of Legislative Decree No 297/1997 (Testo Unico in materia di istruzione) allowing recognition, for the purposes of seniority, of pre-role service only for employees of State, *scuole pareggiate* and *educandati femminili* and not for those of *scuole paritarie* leads to substantial



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discrimination between employees in the school sector for the purposes of calculating seniority and remuneration.

**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 1(1) and (2), 4(1) and (2), 6(4).

**IV. Admissibility of the complaint**

7. The complaint is inadmissible.
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 union, with reference to the number of its representatives in the school sector, attached ARAN’s provisional assessment of representativeness - three-year period 2022-2024, from which it emerges that it has 44 proxies out of a total of 693,494 proxies, equal to 0.01% of the number of school personnel registered with trade unions (Annex 1 page 8) and therefore not representative in subjective terms.
11. In relation to this aspect, moreover, taking into account that the appeal concerns teaching staff of the *scuole paritarie*, SiLav has not produced any specific data giving evidence of the actual representativeness of these workers who, indeed, underlie selective procedures totally different from the ordinary teaching staff of the school sector.
12. It must be emphasised in this respect that the mere indication of the number of registered workers is not sufficient to prove the representativeness of the union, which according to



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the Committee must represent “*the great majority of professionals working in the relevant sector of activity*”.

13. The complainant has not demonstrated that the number of members is sufficient to constitute the representativeness of the majority of the workers affected by the national provisions that are contested in the complaint.
14. The total number of members of the complainant association is in no way capable of integrating the requirement of representativeness (in terms of the number of union members compared to the persons affected by the contested measure).
15. In fact, the matter under complaint concerns a rather small number of teachers compared to those affected by the school sector.
16. The complainant union, in fact, acts as stated above for the recognition of the seniority of service in the *scuole paritarie*. In this regard, the complainant has not in any way demonstrated how many teachers may be affected by the application formulated, nor whether some of its members are teachers who, after having served in *scuole paritarie*, then applied for the reconstruction of their careers and were denied recognition of those years of service.
17. With regard to the criterion of the breadth and spread of the organisational structures, the trade union organisation did not produce any data that would allow it to certify the actual number of regional and provincial branches. In fact, Si.Lav has the duty to provide such information so that, in this first phase of admissibility, it would be possible to weigh the actual level of representativeness of the organisation.
18. On this point - premising that, in any case, it is not evidence capable of providing legal certainty -, consultation of the organisation’s institutional site shows that there are only 60 alleged territorial offices, the majority of which are in Sicily, and therefore there is a lack of territorial representativeness at national level.



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19. On the other hand, as regards the criterion of participation in the formation and stipulation of collective labour agreements, the union in question is not among the most representative trade union organisations that sign the sectoral collective labour agreement (Annex 2).
20. In terms of representativeness in the school sector, it is also pointed out that this union has no trade union representative on the Consiglio Superiore della Pubblica Istruzione (CSPI) (Annexes Nos. 3 and 4).
21. Moreover, the documentation that the trade union organisation attached to the complaint does not show any specific representativeness, either national or territorial, of teachers belonging to *scuole paritarie*.
22. Furthermore, the statutes attached by the complainant union clearly show a generalist vocation of the demands it represents (article 1 “*trade union organisation based on the principle of associative autonomy of an inter-branch type, representing employees and self-employed workers, those employed in cooperative and self-managed forms, temporary workers or those seeking their first job, pensioners, students, tenants and users and consumers*”<sup>1</sup>) without any specific attention or peculiarity for the school sector. This circumstance is also confirmed by the low number of delegations in the specific sector (44 out of 693,494).
23. Additionally, 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.
24. The criteria used, to be assessed as a whole, are:
  - a. the number of subjects represented by 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 scope of action of representative organisations must

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<sup>1</sup> Unofficial translation of: “*organizzazione sindacale fondata sul principio dell'autonomia associativa di tipo intercategoriale, rappresentativa dei lavoratori dipendenti ed autonomi, di quelli occupati in forme cooperative ed autogestite, dei precari o in cerca di prima occupazione, dei pensionati, degli studenti, degli inquilini e degli utenti e consumatori*”



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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. participation in the formation and conclusion of collective labour agreements.

25. In the present case, also in the light of the counterparty's submissions, the 2<sup>nd</sup> requirement is not fulfilled.

26. The aforementioned circular of the Ministry of Labour (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.

27. There are currently a total of 107 provinces in Italy, and it is therefore necessary that the offices declared by the Association be established in the territories of at least 54 different provinces. The complainant, on the other hand, is mostly based in Sicily.

28. With regard to the requirement of representativeness, the Committee also stated that it is supplemented not only by the number of registered subjects, but also 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.

29. In the present case, as has been shown, the complainant union is not representative in the national territory. The presence of branches located only in certain regions and provinces entails the inadmissibility of the complaint since the grievance of the complainant association evidently concerns the entire national territory and cannot be considered limited to a single geographical area.



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

31. In view of the foregoing, there do not appear to be either adequate or sufficient conditions for the complainant trade union to be recognised as having a level of representativeness sufficient to satisfy the minimum admissibility conditions required for standing to lodge the complaint in question.

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32. The above considerations lead to the conclusion that the counterparty complaint should be declared inadmissible.

**CONCLUSIONS**

In light of the present observations, the Italian Government requests 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, 3 April 2024

Drafted by

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