



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

2 October 2024

Case Document No. 4

Confederación Sindical ELA v. Spain
Complaint No. 239/2024

**REPLY FROM THE GOVERNMENT TO THE RESPONSE BY
CONFEDERACION SINDICAL ELA ON ADMISSIBILITY**

Registered at the Secretariat on 13 September 2024



MINISTERIO
DE LA PRESIDENCIA, JUSTICIA
Y RELACIONES CON LAS CORTES

ABOGACÍA GENERAL DEL ESTADO

SUBDIRECCIÓN GENERAL
DE ASUNTOS CONSTITUCIONALES
Y DERECHOS HUMANOS

TO THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

**REPLY BY THE SPANISH GOVERNMENT TO CONFEDERACIÓN
SINDICAL ELA'S RESPONSE ON ADMISSIBILITY**

**COLLECTIVE COMPLAINT
No. 239/2024**

**CONFEDERACIÓN SINDICAL ELA
v. SPAIN**



By letter dated 19/07/2024, the Committee notified the Kingdom of Spain of the response submitted by *CONFEDERACIÓN SINDICAL ELA* (“ELA”) to the Kingdom of Spain’s Observations on admissibility.

Within the time limit granted, I hereby reply on behalf of the Kingdom of Spain to ELA’s response on admissibility.

1. As already stated in our Observations, only an excessively broad interpretation of the concept of “representativeness” under Article 1(c) of the Additional Protocol would grant ELA standing to bring this complaint.
2. The applicant trade union bases its standing to lodge this collective complaint primarily on its involvement and participation in certain consultative or negotiating bodies at the State level—and sometimes also at the international level. ELA also argues that in some cases domestic courts have recognised its standing to bring complaints before them.
3. However, ELA ignores the Committee’s well-established position according to which national representativeness under domestic legislation does not necessarily imply representativeness for the purposes of bringing collective complaints before the European Committee of Social Rights. The Committee has developed an **autonomous concept** not only with respect to domestic regulations, but also to other international organisations for the protection of workers rights.
4. The Kingdom of Spain does not question ELA’s widespread establishment in the specific territory referred to in its Statutes (i.e., the Basque Country and Navarre). However, while the complainant trade union insists on this fact, it makes no reference to its complete absence outside that area.
5. Nor do we question ELA’s intense activity in various fields or its presence in State bodies—which stems precisely from its recognition as the “most representative trade union at the regional level.” As already explained, Spanish legislation grants regionally representative unions representative status before State authorities and bodies—even if they are not representative at the national level.

6. However, the representativeness of the trade union for the purposes of using the instrument of collective complaints to the committee is not justified by either of the two elements above -the fact that ELA has an effective establishment in a specific geographical area or that it carries out activities at the State level.
7. It is to be noted that the complainant organisation has not questioned an essential aspect referred to in our Observations: according to its **Statutes**, ELA's aim is **to defend workers' interests in a single part of the national territory—i.e., the Basque Country.**

It is worth recalling that the Statutes determine the purpose and aim of the trade union, as well as its territorial scope.

8. In its response, ELA reiterates that its aims include the defence of workers' rights in general, and not in a specific area.

However, this is in direct contradiction with the wording of its Statutes, which are clear in determining the purpose and aim of the trade union, as well as its territorial scope:

- Article 1 § 2 of the Statutes establishes ELA's territorial scope as "historically defined" by the four territories of the peninsular Basque Country: *Araba, Bizkaia, Gipuzkoa and Nafarroa.*
 - Article 2 § 1 defines ELA's aim: "to unite and organise the workers of the Basque Country in order to achieve the best representation and the most effective defence of their rights, interests and aspirations in the workplace and in life."
9. Therefore, even if ELA's activity may reach national or international level (by participating in State representative or negotiating bodies, or by carrying out consultative actions or defending workers' interests beyond the Basque Country and Navarre), its purpose is restricted to that specific area. In other words, participation in bodies at State level is conceived exclusively as a means of defending the rights and interests of workers in the Basque Country and Navarre—which is the express aim of the trade union.
 10. Nothing prevents ELA from changing its purpose and aim—for instance to defend and protect workers' rights and interests in Spain, regardless of where they reside or provide services. But until then, **according to its stated will, it is a trade union**

created with the aim of protecting workers' interests in a specific part of the national territory. ELA's insistence that its aim is to defend workers nationwide is therefore striking, as it is a blatant contradiction with its founding purpose.

11. Ultimately, the **question** before the European Committee of Social Rights is **whether to grant standing to bring collective complaints to a trade union set up to protect workers' interests in a specific part of the national territory (according to the express limitation of its territorial scope under its own Statutes).** For this purpose, the Committee should take into account that **whereas ELA's presence in that area is undisputed, its establishment outside it is non-existent.** Also relevant is the fact that **ELA's complaint seeks to challenge legislation of national scope which does not affect in a special or more intense way the workers in the territorial area where it operates.**
12. In this party's opinion, ELA's standing must be rejected. Hypothetically, it could claim standing to bring a collective complaint before the Committee for an alleged infringement of the European Social Charter by the legislation of a State or by an administrative or judicial practice that particularly affected workers in the Basque Country or Navarre—subject to a specific regime.
13. That is not the case in the present proceedings. The complaint refers to the conformity with the European Social Charter of the 16-week parental leave regulation and the additional 16 weeks' leave to care for a newborn child for single-parent families—which is a general issue of national scope (i.e., a State regulation that applies nationwide).
14. Only an excessively broad interpretation of the concept of “representativeness” under Article 1(c) of the Additional Protocol would grant ELA standing to bring this complaint.
15. As stated in our Observations, the above is without prejudice to ELA's ability to resort to collaborative mechanisms to appear before the European Committee of Social Rights under the collective complaints procedure. For this purpose, it may seek cooperation with other national or international trade unions or non-governmental organisations in accordance with the provisions of the Additional Protocol.



THE CO- AGENT OF THE KINGDOM OF SPAIN

A handwritten signature in blue ink, consisting of several overlapping loops and lines, appearing to read 'Heide-Elena Nicolás Martínez'.

Heide-Elena Nicolás Martínez