



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

DECISION ON ADMISSIBILITY

18 March 2019

Sindacato Autonomo Europeo Scuola ed Ecologia (SAESE) v. Italy

Complaint No. 166/2018

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 305th session attended by:

Giuseppe PALMISANO, President
Karin LUKAS, Vice-President
François VANDAMME, Vice-President
Eliane CHEMLA, General Rapporteur
Petros STANGOS
József HAJDU
Raul CANOSA USERA
Barbara KRESAL
Kristine DUPATE
Aoife NOLAN
Karin Møhl LARSEN
Yusuf BALCI
Ekaterina TORKUNOVA
Tatiana PUIU

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having regard to the complaint dated 6 May 2018, registered on 7 May 2018 as No. 166/2018, lodged by *Sindacato Autonomo Europeo Scuola ed Ecologia* (SAESE) against Italy and signed by Francesco Orbitello, President et Treasurer of SAESE requesting the Committee to find that the situation in Italy is not in conformity with Article 11 of the Revised European Social Charter ("the Charter");

Having regard to the observations of the Government of Italy ("the Government") on the admissibility of the complaint, registered on 19 July 2018;

Having regard to the letter from SAESE in response to the Government's observations, registered on 25 July 2018;

Having regard to the Charter and, in particular to Article 11 which reads as follows:

Article 11 – The right to protection of health

Part I: "Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable."

Part II: "With a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed *inter alia*:

- 1 to remove as far as possible the causes of ill-health;
- 2 to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
- 3 to prevent as far as possible epidemic, endemic and other diseases, as well as accidents."

Having regard to the 1995 Additional Protocol to the European Social Charter providing for a system of collective complaints ("the Protocol");

Having regard to the Rules adopted by the Committee on 29 March 2004 at its 201st session and last revised on 26 January 2018 at its 297th session ("the Rules");

Having deliberated on 18 March 2019;

Delivers the following decision, adopted on the above-mentioned date:

1. SAESE alleges that the Law-Decree No. 201/2011, called Fornero Act, of 6 December 2011 which extends the minimum retirement age for public and private sector workers, violates Article 11 of the Charter. SAESE maintains, *inter alia*, that when adopting the reforms of pension arrangements for teaching staff, the legislature failed to carry out a scientific assessment of the state of health of this professional category.
2. The Government objects to the admissibility of the complaint on the ground that SAESE does not appear to be a representative trade union entitled to lodge collective complaints, within the meaning of Article 1 (c) of the Protocol.

3. In its response to the Government's observations, SAESE argues that it is an Italian trade union representing teachers and is, consequently entitled to lodge collective complaints, within the meaning of Article 1 (c) of the Protocol.

THE LAW

4. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Italy on 3 November 1997 and entered into force for this State on 1 July 1998, the complaint has been submitted in writing and concerns Article 11 of the Charter, provision accepted by Italy when it ratified the Charter on 5 July 1999. Italy is bound by this provision since the entry into force of this treaty in its respect on 1 September 1999.

5. The Committee observes that the complaint is signed by Francesco Orbitello, President of SAESE, who is entitled to bring or defend legal proceedings on behalf of the complainant organisation, in accordance with Article 21 of its statutes. The Committee therefore considers that the complaint complies with Rule 23.

6. The Committee notes the Government's objection that SAESE is not considered as a representative trade union under Italian law.

7. As regards the complainant organisation's representativeness within the meaning of Article 1 (c) of the Protocol, the Committee recalls that a complainant's representative nature is an autonomous concept, not necessarily identical to the national notion of representativeness (see *Confédération Française d'Encadrement "CFE-CGC"* v. France, Complaint No. 9/2000, decision on admissibility of 6 November 2000, §6). The Committee examines representativeness in particular with regard to the field covered by the complaint, to the aim of the trade union and the activities which it carries out (see *Syndicat de Défense des Fonctionnaires* v. France, Complaint No. 73/2011, decision on admissibility of 7 December 2011, §6). It also considers that in order to qualify as representative, a trade union must be real, active and independent.

8. Moreover, in determining representativeness, the Committee takes into account the number of members a trade union represents and the role it plays in collective bargaining. However, it has also held that the application of criteria of representativeness should not lead to the automatic exclusion of small trade unions or of those formed recently to the advantage of larger and long-established trade unions (see *Fellesforbundet for Sjøfolk (FFFS)* v. Norway, Complaint No. 74/2011, decision on admissibility of 23 May 2012, §§20-21).

9. The Committee observes that SAESE's website states that it is a trade union for teaching staff in all schools, including universities, academies and conservatories' teaching staff. SAESE's objective is to defend the professional, union and cultural rights of teaching staff, defend freedom of education, promote education and training, as well as to contribute to improving the European dimension of education. The website also specifies that SAESE has initiated several actions before the Italian Parliament, the Ministry of Labour and judicial bodies as well as the European Parliament with, *inter alia*, the aim of improving the working conditions of teaching staff.

10. The Committee is unable to conclude that SAESE is a representative trade union within the meaning of Article 1 (c) of the Protocol because it does not have the information necessary to assess the representativeness of the complainant organisation, including any indication of the specific number of members it represents or whether it has bargained collectively on behalf of such members with a view to concluding collective agreements.

11. In addition, turning to the grounds for the complaint, the Committee notes that these primarily refer to the 2012 reform of the pension legislation and its implications for the health of teaching staff. However, the complaint lacks detail and substantiation and it does not specify adequately how this reform of the public pension system relates to the Charter provision invoked, namely Article 11 of the Charter. The complainant organisation states that Italy failed to carry out a scientific assessment before adopting the reform in question, but this assertion does not suffice to indicate in what respect Italy has not ensured the satisfactory application of the relevant provision of the Charter, as required by Article 4 of the Protocol.

12. The Committee therefore holds that the complaint, as submitted, does not meet the requirements of Article 1 (c) and Article 4 of the Protocol.

13. For these reasons, the Committee, on the basis of the report presented by Aoife NOLAN,

DECLARES THE COMPLAINT INADMISSIBLE

Pursuant to Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisation and the Respondent State of the present decision and to publish it on the Council of Europe's Internet site.

The image shows three handwritten signatures in blue ink. From left to right: 1) 'Aoife Nolan' in a cursive script. 2) 'Giuseppe Palmisano' in a cursive script, with 'Giuseppe' above 'Palmisano'. 3) 'Henrik Kristensen' in a cursive script, with 'Henrik' above 'Kristensen'. The signatures are fluid and personal.

Aoife NOLAN
Rapporteur

Giuseppe PALMISANO
President

Henrik KRISTENSEN
Deputy Executive Secretary