



**DECISION ON ADMISSIBILITY**

**7 December 2022**

***Unione sindacale di base (USB) v. Italy***

Complaint No. 208/2022

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 331<sup>st</sup> session in the following composition:

Karin LUKAS, President  
Eliane CHEMLA, Vice-President  
Aoife NOLAN, Vice-President  
Giuseppe PALMISANO, General Rapporteur  
József HAJDU  
Barbara KRESAL  
Kristine DUPATE  
Karin Møhl LARSEN  
Yusuf BALCI  
Tatiana PUIU  
Paul RIETJENS  
George THEODOSIS  
Mario VINKOVIC  
Miriam KULLMANN

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having regard to the complaint registered on 31 March 2022 as number 208/2022, lodged by *Unione sindacale di base (USB)* and signed by Paola Palmieri, legal representative of USB, assisted by Andrea Danilo Conte and Marco Tufo, lawyers, and Giovanni Orlandini, professor, requesting the Committee to find that the situation in Italy is not in conformity with Article 6§4, as well as Article G of the Revised European Social Charter (“the Charter”);

Having regard to the documents appended to the complaint;

Having regard to the observations of the Government of Italy (“the Government”) on the admissibility of the complaint, registered on 31 May 2022;

Having regard to the response from USB to the Government’s observations, registered on 20 July 2022;

Having regard the reply of the Government to the response from USB on the admissibility of the complaint, registered on 15 September 2022;

Having regard to the Charter, and in particular to Articles 6§4 and G, which read as follows:

**Article 6 – The right to bargain collectively**

Part I: “All workers and employers have the right to bargain collectively.”

Part II: “With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

[...]

and recognise:

4.the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.”

**Article G – Restrictions**

1.“The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

2.The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.”

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

Having regard to the Rules of the Committee adopted by the Committee on 29 March 2004 at its 201<sup>st</sup> session and last revised on 6 July 2022 at its 328<sup>th</sup> session (“the Rules”);

Having deliberated on 6 and 7 December 2022;

Delivers the following decision, adopted on the latter date:

1. USB alleges that Law No. 146/1990 as subsequently amended (in particular by Law No. 182/2015) regarding the exercise of the right to strike in essential public services, considered in light of its practical application, is in breach of Article 6§4 and Article G of the Charter. More specifically, USB argues that Articles 1(2), 2(1), (2) and (5), 13(1)(a), (c), (d) and (e) and 8 of Law No. 146/1990 authorise the adoption and enforcement of restrictions and limitations on the right to strike that are not compatible with the aforementioned provisions of the Charter, in particular by:

- requiring that work be performed during a strike on a broader scale than merely those “minimum services” that are necessary in the meaning of Article G of the Charter;
- imposing a requirement to indicate the duration of a strike at the time it is called;
- imposing mandatory cooling-off and conciliation procedures, which must be completed before a strike can start and are of such a duration as to impair its efficacy;
- imposing a prohibition on strikes for a certain period of time after a strike has taken place and at certain times during the year;
- granting an independent administrative authority the power to prohibit or otherwise limit the exercise of the right to strike that is not subject to review by the courts;
- granting the Prefect and the Minister the power to order workers to return to work in the event of a strike, without establishing statutory prerequisites that are sufficiently clear and defined in order to enable a review of whether the power has been legitimately exercised.

2. In its observations, the Government objects to the admissibility of the complaint. It argues that USB cannot be regarded as a representative national trade union within the meaning of Article 1 (c) of the Protocol. The Government considers, in particular, that the complainant organisation has not provided any information on:

- the number of workers it represents or its current number of members;
- any activity of a trade union nature which it has undertaken for its members, such as the conclusion of collective agreements.

3. In its response to the Government’s objections, USB states that in view of its widespread presence throughout the Italian territory, its substantial number of members, as well as its recognised representativeness at national level and its collective bargaining activities, it is a representative trade union for the purposes of the collective complaints procedure. USB draws attention to other collective complaints it has submitted before the Committee in the past, where the Committee held the USB to be a representative trade union for the purposes of the collective complaints procedure. On this basis, USB asks the Committee to reject the Government’s objections.

4. In its reply to USB's response, the Government reiterates its objections to the admissibility of the complaint referring to the observations previously submitted.

## **THE LAW**

### *As to the admissibility conditions set out in the Protocol and the Committee's Rules*

5. 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 6§4 of the Charter, provision accepted by Italy when it ratified the Charter on 5 July 1999, as well as Article G. Italy is bound by these provisions since the entry into force of this treaty in its respect on 1 September 1999.

6. The Committee observes that the complaint is signed by Paola Palmieri, legal representative of USB, who according to Article 9(2)(b) of its Statutes has the power to legally represent the organisation concerning all matters with third parties and within legal action. The Committee considers, consequently, that the complaint complies with Rule 23 of its Rules.

7. Moreover, the Committee notes that the grounds of the complaint are indicated, detailing in what respect USB considers that Italy has not ensured the satisfactory application of the Charter. On this basis, the Committee considers that the complaint fulfils the requirements set out in Article 4 of the Protocol for the purposes of admissibility.

8. As to the allegation of the complainant organisation relating to Article G of the Charter, the Committee recalls that this provision sets out the conditions under which restrictions may be imposed on the enjoyment of substantive Charter rights and cannot lead to a violation as such (*Greek General Confederation of Labour (GSEE) v. Greece*, Complaint No. 111/2014, decision on admissibility of 19 May 2015, §9).

9. The Committee therefore considers that the complaint alleges, in substance, a violation of Article 6§4 of the Charter.

### *As to the objection of inadmissibility raised by the Government*

10. The Committee recalls that the representative nature of a complainant organisation within the meaning of Article 1 (c) of the Protocol 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). In order to be regarded as representative under the collective complaints procedure, a trade union must be real, active and independent. The Committee examines representativeness in particular with regard to the field covered by the complaint, to the aim of the trade union and to 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). Moreover, the Committee takes into account the number of members a trade union represents and the role it plays in collective bargaining at national level.

11. The Committee observes that USB is a trade union that according to Article 2 of its Statute, has the objective of representing, defending and promoting the economic, social, professional, trade union and cultural rights of workers. Article 2(2)(d) of its Statute specifies that, among other things, USB aims to defend and promote the right of workers to strike. In its response to the Government's observations, USB states that it has 492,468 members spread over 20 regions in Italy, which makes it one of the largest Italian trade unions in terms of membership. It has representativeness at national level in both the public and private employment spheres. In this regard, USB refers to the ARAN (Agency for negotiated representation of public administrations) survey that has verified and confirmed USB's representativeness for the 2019-2021 period. Moreover, the information submitted by USB shows that it has concluded collective agreements in several sectors and that it has taken a variety of actions to defend workers' interests.

12. The Committee finally recalls that it has already found that USB is a representative trade union for the purposes of the collective complaints procedure (*Unione sindacale di base (USB) v. Italy*, Complaint No. 152/2017, decision on admissibility of 23 January 2018, §§5-6; *USB v. Italy*, Complaint No. 153/2017, decision on admissibility of 23 January 2018, §§5-6; *USB v. Italy*, Complaint No. 170/2018, decision on admissibility of 3 July 2018, §4). Since no significant change has taken place, the Committee maintains its position in this respect.

13. On these grounds, the Committee, on the basis of the report presented by Mario VINKOVIC and without prejudice to its decision on the merits of the complaint,

### **DECLARES THE COMPLAINT ADMISSIBLE**

In application of Article 7§1 of the Protocol, requests the Deputy Executive Secretary to notify the complainant organisation and the respondent State of the present decision, to transmit it to the parties to the Protocol and the states having submitted a declaration pursuant to Article D§2 of the Charter, and to publish it on the Internet site of the Council of Europe.

Invites the Government to make written submissions on the merits of the complaint by 15 February 2023.

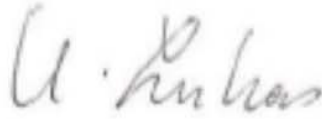
Invites USB to submit a response to the Government's submissions by a deadline which it shall determine.

Invites the Parties to the Protocol and the States having submitted a declaration pursuant to Article D paragraph 2 of the Charter to make comments by 15 February 2023, should they so wish.

Pursuant to Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the European Social Charter to make observations by 15 February 2023



Mario VINKOVIC  
Rapporteur



Karin LUKAS  
President



Henrik KRISTENSEN  
Deputy Executive Secretary