

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

**DECISION ON ADMISSIBILITY**

**20 October 2020**

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

Complaint No. 186/2019

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 316<sup>th</sup> session attended by:

Giuseppe PALMISANO, President  
François VANDAMME, Vice-President  
Eliane CHEMLA, General Rapporteur  
Petros STANGOS  
József HAJDU  
Krassimira SREDKOVA  
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 24 November 2019, registered on 25 November 2019 as No. 186/2019, lodged by *Sindacato Autonomo Europeo Scuola ed Ecologia* (SAESE) against Italy and signed by Francesco Orbitello, President and Treasurer of SAESE requesting the Committee to find that the situation in Italy is not in conformity with Article 30 of the Revised European Social Charter (“the Charter”);

Having regard to the additional information from SAESE registered on 8 December 2019;

Having regard to the observations of the Government of Italy (“the Government”) on the admissibility of the complaint, registered on 21 February 2020;

Having regard to the letter from SAESE in response to the Government’s observations, registered on 12 March 2020;

Having regard to the Charter and, in particular to Article 30 which reads as follows:

**Article 30 – The right to protection against poverty and social exclusion**

Part I: “Everyone has the right to protection against poverty and social exclusion.”

Part II: “With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

a. to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;

b. to review these measures with a view to their adaptation if necessary.”

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 10 September 2019 at its 308<sup>th</sup> session (“the Rules”);

Having deliberated on 20 October 2020;

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

1. SAESE alleges that according to projections by the National Social Security Institute (INPS) three and a half million workers aged below 35 in public education (teachers and administrative, technical and auxiliary staff – ATA) on fixed-term contracts will have to face poverty risks when they reach retirement age, due to the reduction in the amount of pensions. The SAESE maintains that the minimum level for pensions is manifestly inadequate and that Italy has failed to adopt an overall and co-ordinated approach to combat poverty and social exclusion in violation of Article 30 (right to protection against poverty and social exclusion) of the Charter.

2. In its additional information, SAESE refers to former Italian show business and television personalities who earn very low pensions.

3. The Government objects to the admissibility of the complaint. It argues that SAESE cannot be regarded as a representative national trade union or national employers' organisation within the meaning of Article 1 (c) of the Protocol, on the grounds that the union 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.

4. In its response to the Government's observations, SAESE argues that the Committee's decision in *SAESE v. Italy*, Complaint No. 166/2018, decision on admissibility of 18 March 2019, shows that SAESE is a trade union representing the interests of teachers and ATA staff in Italy and that it is, in SAESE's view, entitled to lodge complaints before the Committee. SAESE points out that the names of former show business and television personalities were given only as a practical example showing how Article 30 of the Charter has been infringed.

## 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 30 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.

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

7. Moreover, the grounds for the complaint are indicated. The complaint therefore satisfies Article 4 of the Protocol for the purposes of admissibility.

### *As to the Government's objection concerning the admissibility*

8. As regards the complainant's representativeness within the meaning of Article 1 (c) of the Protocol, the Committee recalls that, although the 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), a trade union, in order to be qualified as representative, 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 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.

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 refers to its decision in *SAESE v. Italy*, Complaint No.166/2018, op.cit., in which it declared SAESE's complaint inadmissible. The Committee was unable to conclude that SAESE is a representative trade union within the meaning of Article 1 (c) of the Protocol because it did 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. On the basis of the information at its disposal, the Committee maintains its position in this respect.

11. In view of the above, the Committee holds that the complaint, as submitted, does not meet the requirements of Articles 1 (c) of the Protocol.

12. For these reasons, the Committee, on the basis of the report presented by Barbara KRESAL,

**UNANIMOUSLY 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.



Barbara KRESAL  
Rapporteur



Giuseppe PALMISANO  
President



Henrik KRISTENSEN  
Deputy Executive Secretary