

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

DECISION ON ADMISSIBILITY

11 December 2020

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

Complaint No. 194/2020

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 317th session in the following composition:

Giuseppe PALMISANO, President
François VANDAMME, Vice-President
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 and registered on 9 April 2020 as No. 194/2020, 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 6§4 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 7 July 2020;

Having regard to the response from SAESE to the Government’s observations, registered on 22 July 2020;

Having regard to the additional response from SAESE registered on 27 November 2020;

Having regard to the Charter and, in particular to Article 6§4 which reads 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.”

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 308th session (“the Rules”);

Having deliberated on 9 and 11 December 2020;

Delivers the following decision, adopted on the later date:

1. SAESE alleges that Resolutions Nos. 03–162 and 05–423 of the Strike Guarantee Commission established pursuant to Law No. 146/1990, obstructed the national strikes called by SAESE on 8 January and 7 February 2020. The resolutions deemed the strikes in question to be unjustified, unfounded and unrelated to the right to strike. In this connection, SAESE argues that the discretionary power of the Ministry of Education is too broad and that the resolutions of the Strike Guarantee Commission effectively imposed a ban on the said strikes in violation of Article 6§4 of the Charter.

2. The Government objects to the admissibility of the complaint. It alleges that SAESE cannot be regarded as a representative national trade union within the meaning of Article 1 (c) of the Protocol. It also maintains that SAESE is not included in

the national Assessment Tables of Representativeness of trade union organisations for the three-year period 2019/2021 in the area of education and research.

3. In its response to the Government's observations, SAESE argues that the structure of SAESE is similar to those of the *Associazione sindacale "La Voce dei Giusti"*, whose Complaint No. 105/2014 was declared admissible by the Committee on 17 March 2015.

4. In its additional response, SAESE indicates that it has 26,382 members in 2020.

THE LAW

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.

8. As regards the complainant's representativeness within the meaning of Article 1 (c) of the Protocol, the Committee recalls that, although representativeness 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 qualify 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 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 represented by a trade union and the role it plays in collective bargaining.

9. With respect to the objection raised by the Government, the Committee refers to its decisions in *SAESE v. Italy*, Complaint No.166/2018, decision on admissibility of 18 March 2019, and *SAESE v. Italy*, Complaint No.186/2019, decision on admissibility of 20 October 2020. In these decisions the Committee noted that 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. On its website SAESE also specifies that it 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. Nevertheless, the Committee was unable to conclude that SAESE is a representative trade union within the meaning of Article 1 (c) of the Protocol, because of a lack of information necessary to assess the representativeness of the complainant organisation, in particular information on the number of members it represents and on whether it has bargained collectively on behalf of such members with a view to concluding collective agreements.

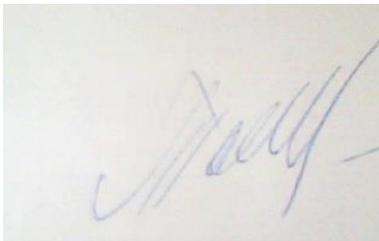
10. While SAESE has now indicated its membership figure in 2020, the Committee still lacks adequate information on the involvement of SAESE in typical trade union activities, including on the role it plays in collective bargaining with a view to concluding collective agreements with employers. Therefore, on the basis of the information at its disposal, the Committee maintains that SAESE cannot be considered as a representative trade union for the purposes of the collective complaints procedure.

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

12. For these reasons, the Committee, on the basis of the report presented by Ekaterina TORKUNOVA,

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.



Ekaterina TORKUNOVA
Rapporteur



Giuseppe PALMISANO
President

Henrik KRISTENSEN
Deputy Executive Secretary