



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

DECISION ON ADMISSIBILITY

18 March 2019

***Associazione nazionale sindacato professionisti sanitari della funzione
infermieristica - Nursing Up v. Italy***

Complaint No. 169/2018

The European Committee of Social Rights, a committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 305th session, in the following composition:

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 registered on 9 July 2018 as number 169/2018, lodged by *Associazione nazionale sindacato professionisti sanitari della funzione infermieristica - Nursing Up* (“Nursing Up”) against Italy and signed by Antonio De Palma, President of the trade union, and Anna Mastrella, lawyer, requesting the Committee to find that the situation in Italy is not in conformity with Articles 5, 6§2, 21, 22 as well as E and G, in conjunction with each of the provisions concerned of the Revised European Social Charter (“the Charter”);

Having regard to the documents appended to the complaint;

Having regard to the observations of the Italian Government (“the Government”) on admissibility and on the request for immediate measures registered on 17 September 2018;

Having regard to the response of Nursing Up to the Government’s observations registered on 11 December 2018;

Having regard to the Charter, and in particular to Articles 5, 6§2, 21, 22 as well as E and G, which read as follows:

Article 5 – The right to organise

Part I: “All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.”

Part II: “With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.”

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:

...

2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers’ organisations and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;

...”

Article 21 – The right to information and consultation

Part I: “Workers have the right to be informed and to be consulted within the undertaking”.

Part II: “With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

- a to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality;
- b to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking”.

Article 22 – The right to take part in the determination and improvement of the working conditions and working environment

Part I: “Workers have the right to take part in the determination and improvement of the working conditions and working environment in the undertaking”.

Part II: “With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

- a to the determination and the improvement of the working conditions, work organisation and working environment;
- b to the protection of health and safety within the undertaking;
- c to the organisation of social and socio-cultural services and facilities within the undertaking;
- d to the supervision of the observance of regulations on these matters.”

Article E – Non-discrimination

“The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.”

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 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 this date:

1. Nursing Up alleges that, pursuant to the Legislative decree No. 165/2001 and the National Collective Labour Agreement (NCLA) related to staff from the public health sector of 21 May 2018, representative trade unions – Nursing Up among them – have been excluded from any subsequent participation in collective bargaining because of their refusal to sign the NCLA. The complainant trade union alleges that this situation violates Articles 5, 6§2, 21, 22 as well as E and G in conjunction with each of the provisions concerned of the Charter.

2. Moreover Nursing Up asks the Committee to give precedence to treating the admissibility of this complaint, as an “immediate measure” pursuant to Article 36 of the Rules, because of the gravity of the matters complained of.

3. In its observations, the Government objects to the admissibility of the complaint on the ground that it is unfounded. It maintains that the complainant organisation, although representative at national level, has excluded itself from any participation in second-level collective bargaining by freely deciding not to sign the framework established by the NCLA, but that it is still able to take part with its elected representatives through the unitary representation system (RSU) which is a collegial body representing all workers.

4. The Government further maintains that the impugned provisions of Legislative Decree No. 165/2001 and the NCLA of 21 May 2018 have no impact on the complainant organisation’s freedom to organise in the light of the Constitution and Italian law and that no violation of Articles 5, 6, 21, 22 and E of the Charter can be found. Lastly, it maintains that the restrictions provided for in these provisions fall within the exceptions allowed under Article G of the Charter. It therefore holds that the complaint is unfounded, including with regard to the request for immediate measures.

5. In its response to the Government’s observations, Nursing Up maintains that the Government’s objections relate to the merits of the complaint, not its admissibility. It also holds that all admissibility conditions have been met. Lastly, it states that the RSU, as a collegial body, does not have any capacity to represent the trade unions, from whose activities it is completely separate and cannot therefore take the place of trade union representation in second-level collective bargaining. It maintains that the NCLA cannot exclude from second-level collective bargaining trade unions identified as representative under the law merely because they have not signed the NCLA and without there being the possibility of derogating therefrom.

THE LAW

6. 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 Articles 5, 6§2, 21 and 22 of the Charter, provisions accepted by Italy when it ratified the

Charter on 5 July 1999, as well as Article E and G. Italy is bound by these provisions since the entry into force of this treaty in its respect on 1 September 1999.

7. Moreover, the grounds for the complaint are indicated. The Committee therefore considers that the complaint meets the requirements of Article 4 of the Protocol.

8. The Committee notes that Nursing Up is a trade union representing nurses from the public health sector, which engages in activities within the jurisdiction of Italy, and is considered as a representative trade union at the national level for collective bargaining, as confirmed by the Government in its observations. On the basis of the information at its disposal, the Committee finds that Nursing Up is a representative trade union for the purposes of the collective complaints procedure, in accordance with Article 1 (c) of the Protocol.

9. The Committee observes that the complaint is signed by Antonio De Palma, President of Nursing Up, who is the legal Representative competent to bring or defend legal proceedings on behalf of the trade union, in accordance with Article 10§2 of its statutes. The complaint is also signed by Anna Mastrella, Lawyer appointed by the complainant trade union. The Committee therefore considers that the complaint complies with Rule 23.

10. With regard to the Government's objections that the complaint is unfounded, and that the impugned provisions have no impact on the complainant organisation's trade union rights under Articles 5, 6, 21, 22 and E of the Charter, the Committee considers that the Government's objections relate to the merits of the complaint and will therefore have to be dealt with at the merits stage.

11. As to the violation of Article G of the Charter alleged by the complainant trade union, the Committee recalls that this provision sets out the conditions under which restrictions on the enjoyment of rights provided for by the Charter are permitted and cannot lead to a violation as such (*Syndicat des Agrégés de l'Enseignement Supérieur* (SAGES) c. France, Complaint No. 26/2004, decision on the merits of 15 June 2005, §31).

12. The Committee therefore holds that Article G of the Charter cannot lead to a violation as such.

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

DECLARES THE COMPLAINT ADMISSIBLE

Decides that Rule 36 of its Rules is not applicable and that it is not necessary to give precedence to this complaint, pursuant to Rule 26 of its Rules.

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, 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 29 May 2019.

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

Invites parties to the Protocol and the States having submitted a declaration pursuant to Article D§2 of the Charter to make comments by 29 May 2019, 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 29 May 2019.



Kristine DUPATE
Rapporteur



Giuseppe PALMISANO
President



Henrik KRISTENSEN
Deputy Executive Secretary