EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX

DECISION ON THE MERITS

Adoption: 10 September 2025

Notification: 12 November 2025

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***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 350th session in the following composition:

Aoife NOLAN, President
Tatiana PUIU, Vice-President
George THEODOSIS, Vice-President
Kristine DUPATE, General Rapporteur
Karin Møhl LARSEN
Yusuf BALCI
Mario VINKOVIĆ
Miriam KULLMANN
Carmen SALCEDO BELTRÁN
Franz MARHOLD
Alla FEDOROVA
Olivier DE SCHUTTER
Kristina KOLDINSKÁ
Carmen-Constantina NENU

Assisted by Henrik KRISTENSEN, Executive Secretary

Having deliberated on 4 December 2024, 16 January, 2 July and 9 and 10 September 2025,

On the basis of the report presented by Mario VINKOVIĆ,

Delivers the following decision adopted on the latter date:

PROCEDURE

1. The complaint lodged by *Unione sindacale di base* (USB) was registered on 31 March 2022.

2. 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 having regard to Article G of the revised European Social Charter ("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.

3. On 7 December 2022, the Committee declared the complaint admissible.

4. Referring to Article 7§1 of the 1995 Protocol Providing for a System of Collective Complaints ("the Protocol"), the Committee invited the Government to submit written submissions on the merits of the complaint by 15 February 2023.

5. Referring to Article 7§§1, 2 of the Protocol and in application of Article 32§§1, 2 of its Rules of Procedure ("the Rules"), the Committee invited the States Parties to the Protocol, the States having made a declaration in accordance with Article D§2 of the Charter, as well as the international organisations of employers or trade unions referred to in Article 27§2 of the 1961 Charter, if they so wished, to submit observations on the merits of the complaint by 15 February 2023.

6. The observations by the European Trade Union Confederation (ETUC) on the merits of the complaint were registered on 14 February 2023. The President of the Committee invited the Government and USB, if they so wished, to submit a response to the observations by ETUC by 31 March 2023.

7. The Government's submissions on the merits of the complaint were registered on 15 February 2023. In accordance with Rule 31§2 of the Rules, USB was invited to submit a response to the Government's submissions by 28 April 2023.

8. On 31 March 2023, the Government requested an extension of the deadline for submitting its response to the observations by ETUC. The President of the Committee granted an extension until 18 April 2023.

9. The response from the Government to the observations by ETUC was registered on 18 April 2023.

10. The response from USB to the Government's submissions on the merits was registered on 28 April 2023.

11. In accordance with Rule 31§3 of the Rules, the Government was invited to submit a reply to USB's response by 16 June 2023.

12. The reply from the Government was registered on 16 June 2023.

SUBMISSIONS OF THE PARTIES

A – The complainant organisation

13. Unione Sindacale di Base (USB) alleges that certain provisions of Law No. 146/1990 (Articles 1(2), 2(1), (2) and (5), 13(1)(a), (c), (d) and (e) and 8), as subsequently amended and considered in the light of their practical application, violate Article 6§4 (the right to strike) having regard to Article G (restrictions) of the Charter on the ground that the rules governing the exercise of the right to strike within essential public services impose excessive limitations on this right.

14. More specifically, USB alleges that the right to strike is excessively restricted having regard to Article G and in violation of Article 6§4 (the right to strike) due to:

a. The lack of a dedicated procedure for reviewing in substance the independent administrative authorities' decisions to prohibit or otherwise limit the exercise of the right to strike;
b. The requirement of having to perform work during a strike in an essential service that goes beyond what is necessary to guarantee "minimum services";
c. The requirement to indicate the duration of a strike in the prior notice that has to be given to the employer at least 10 days before it is called;
d. The imposition of cooling-off and conciliation procedures, which must be completed before a strike can start and are of such a duration as to impair that strike's efficacy;
e. The imposition of a prohibition on strikes for a certain period of time after a strike has taken place ("objective distancing") and at certain times during the year ("excluded periods");
f. The granting to the Prefect and the Minister of the power to order workers to return to work in the event of a strike without foreseeing a possibility to review whether the power has been legitimately exercised.

B – The respondent Government

15. The Government states that the restrictions of the exercise of the right to strike in the essential public service introduced in the legal system are in conformity with the provisions of the Charter.

16. The Government accordingly requests the Committee to find the complaint unfounded in all respects.

THIRD PARTY OBSERVATIONS

17. The European Trade Union Confederation (ETUC) considers that the restrictions on the exercise of the right to strike in essential public services contained in the provisions of Law No. 146/1990 are in breach with Article 6§4 of the Charter inter alia, because they impose an obligation to provide during a strike "indispensable services" in addition to those necessary to guarantee "minimum services"; because the compulsory period of notice, together with compulsory reflection and conciliation procedures, are excessive and unreasonable, so as to undermine the dissuasive effect of the strike and because the wide discretionary power granted to the administrative authority in the exercise of the power to postpone strikes and/or issue warnings under Article 8 of Law No. 46/1990 is likely, in practice, to exclude and render ineffective the exercise of the right to strike.

RELEVANT DOMESTIC LAW AND PRACTICE

18. In their submissions, the parties refer to the following provisions of domestic law:

A – Constitutional principles

19. The relevant provisions of the Constitution of the Italian Republic read as:

> Article 40
>
> The right to strike shall be exercised in compliance with the law.
>
> Article 41
>
> Private economic enterprise shall have the right to operate freely.
> It cannot be carried out in conflict with social utility or in such a manner as may harm health, the environment, safety, liberty and human dignity.
> The law shall determine appropriate programmes and checks to ensure that public and private economic enterprise activity is directed at and coordinated for social and environmental purposes.
>
> Article 113
>
> The judicial safeguarding of rights and legitimate interests before the bodies of ordinary or administrative justice is always permitted against acts of the public administration.
> Such judicial protection may not be excluded or limited to particular kinds of appeal or for particular categories of acts.

Article 117

Legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU legislation and international obligations.

B – General legislative and contractual provisions related to the right to strike in Italy

20. **Law No. 93/183** (Framework Law on public sector employment) provides that only trade unions that adopted self-regulatory codes may participate in negotiations concerning the conclusion of collective agreements within the public sector.

21. **Law No. 146/1990** amended by **Law No. 83/2000** provides that the exercise of the right to strike is limited during periods in which major events take place.

Article 1 as in force since 19 November 2015

For the purposes of this Act, essential public services, irrespective of the legal nature of the employment relationship, even if carried out under a concessionary regime or by agreement, are those aimed at guaranteeing the enjoyment of the constitutionally protected rights of the individual to life, health, freedom and security, freedom of movement, social assistance and social security, education and freedom of communication.
For the purpose of reconciling the exercise of the right to strike with the enjoyment of the constitutionally protected rights of the individual referred to in paragraph 1, this Act lays down the rules to be observed and the procedures to be followed in the event of collective conflict, in order to ensure the effectiveness, in their essential content, of such rights, in particular in the following services and limited to all the services identified as indispensable under Article *2*:

a) as regards the protection of life, health, liberty and security of the person, the environment and the historical and artistic heritage: health; public hygiene; civil protection; the collection and disposal of urban waste and special, toxic and harmful waste; customs, limited to the control of animals and perishable goods; the supply of energy, energy products, natural resources and basic necessities, as well as the operation and maintenance of related facilities, limited to the safety of the same the administration of justice, with particular reference to measures restricting personal liberty and to precautionary and urgent measures, as well as to criminal trials with defendants in custody; environmental protection services and the supervision of cultural heritage; the regulated opening to the public of museums and other cultural institutes and places, as referred to in Article 101(3) of the Cultural Heritage and Landscape Code, as per Legislative Decree no. 42 of 22 January 2004; No. 42;
b) with regard to the protection of freedom of movement: urban and suburban public transport by road, rail, air, airport and maritime transport limited to island connections;
c) with regard to social assistance and social security, as well as salary emoluments or in any case whatever is economically necessary to satisfy the necessities of life pertaining to constitutionally guaranteed personal rights: the services of disbursement of the relevant amounts, also through the banking service;
with regard to education: public education, with particular reference to the need to ensure the continuity of nursery, kindergarten and primary school services, as well as the conduct of final examinations and examinations, and university education, with particular reference to the final examinations of educational cycles;
with regard to freedom of communication: postal services, telecommunications and public broadcasting.

Article 2 as in force since 26 April 2000

Article 2 (1)

Within the scope of the essential public services indicated in Article 1, the right to strike shall be exercised in compliance with measures aimed at enabling the provision of indispensable services to guarantee the purposes set forth in paragraph 2 of Article 1, with a minimum notice period not shorter than that provided for in paragraph 5 of this Article. Persons calling a strike are obliged to communicate in writing, within the notice period, the duration and manner of implementation, as well as the reasons for collective abstention from work. The communication must be given both to the administrations or companies providing the service and to the special office set up at the authority responsible for adopting the order referred to in Article 8, which shall see to its immediate transmission to the Guarantee Commission referred to in Article 12.

Article 2 (2)

The administrations and service-providing undertakings, with due respect for the right to strike and the purposes set out in paragraph 2 and Article 1, and in relation to the nature of the service and safety requirements, as well as the preservation of the integrity of the facilities, shall agree, in collective agreements or agreements pursuant to Legislative Decree No. 29 of 3 February 1993, as subsequently amended, as well as in service regulations, to be issued on the basis of agreements with the staff representations referred to in Article 47 of the same Legislative Decree No. 29 of 1993, the essential services they are required to provide, within the scope of the services referred to in Article 1, the methods and procedures for providing them and the other measures aimed at enabling the fulfilments referred to in paragraph 1 of this Article. Such measures may provide for the abstention from strike action of strictly necessary quotas of workers required to perform the services and, in that case, indicate the modalities for identifying the workers concerned, or they may provide for forms of periodic disbursement and must also indicate minimum intervals to be observed between the implementation of one strike and the proclamation of the next, when this is necessary to prevent the continuity of the public services referred to in Article 1 from being objectively jeopardised as a result of strikes proclaimed successively by different trade unions and affecting the same final service or the same catchment area. Such collective agreements or contracts shall in any event provide for cooling-off and conciliation procedures, mandatory for both parties, to be carried out before a strike is called pursuant to paragraph 1. If they do not intend to adopt the procedures provided for in agreements or collective agreements, the parties may request that the preliminary attempt at conciliation be carried out: if the strike has a local relevance, at the prefecture, or at the municipality in the case of strikes in public services for which it is responsible and unless the municipal administration is a party; if the strike has a national relevance, at the competent structure of the Ministry of Labour and Social Security. If the indispensable services and the other measures referred to in this article are not provided for by collective contracts or agreements or by self-regulation codes, or if they are not considered suitable, the Guarantee Commission shall adopt, in the forms referred to in Article 13, paragraph 1, subparagraph (a), the provisional regulations compatible with the purposes of paragraph 3. The administrations and undertakings providing transport services are required to inform users, at the same time as the publication of the timetables of ordinary services, of the list of services that will be guaranteed in any case in the event of a strike and the relevant timetables, as defined by the agreements provided for in this paragraph.

Article 2 (5)

In order to allow the administration or company providing the service to prepare the measures referred to in paragraph 2 and for the purpose of encouraging the carrying out of any attempts to resolve the conflict and of allowing users to use service alternatives, the notice referred to in paragraph 1 cannot be less than ten days.

Attempts to settle the conflict and to allow users to make use of alternative services, the notice period referred to in paragraph 1 shall not be less than ten days. Longer periods of notice may be laid down in collective agreements, in the agreements referred to in Legislative Decree No 29 of 3 February 1993, as subsequently amended, and in the service regulations to be issued on the basis of the agreements with the staff representatives referred to in Article 47 of the same Legislative Decree No. 29 of 1993 and in the self-regulatory codes referred to in Article 2 of this Law.

Article 2 (6)

The administrations or undertakings providing the services referred to in Art. 1 are required to inform users, in an appropriate manner, at least five days before the beginning of the strike, of the ways and times services will be provided during the strike and of the measures for their reactivation; they must also guarantee and make known the prompt reactivation of the service when the abstention from work has ended. Unless an agreement has been reached between the parties or a request has been made by the Guarantee Commission or by the authority competent to issue the order referred to in Article 8, the spontaneous withdrawal of a strike after the users have been informed in accordance with this paragraph shall constitute an unfair form of industrial action and shall be assessed by the Guarantee Commission for the purposes of Article 4, paragraphs 2 to 4-bis. The public broadcasting service is required to disseminate such communications in a timely manner, providing full information on the beginning, duration, alternative measures and modalities of the strike in the course of all television and radio news programmes. Daily newspapers and radio and television stations that avail themselves of financing or, in any case, of tariff, credit or tax concessions provided for by State laws are also obliged to give the same information. Administrations and service-providing undertakings are obliged to promptly provide the Guarantee Commission, upon request, with information concerning strikes proclaimed and carried out, cancellations, suspensions and postponements of proclaimed strikes, and the reasons for them, as well as the causes of conflicts. Violation of these obligations shall be assessed by the Guarantee Commission for the purposes of Article 4, paragraph 4-sexies.

Article 2 (7)

The provisions of this article regarding minimum notice and duration shall not apply in cases of abstention from work in defence of the constitutional order, or in protest against serious events detrimental to the safety and security of workers.

Article 8 (1) as in force since 26 April 2000

When there is a well-founded danger of serious and imminent harm to the constitutionally protected personal rights referred to in Article 1, paragraph 1, which could be caused by the interruption or alteration of the functioning of the public services referred to in Article 1, as a result of a strike or forms of collective abstention of self-employed workers, professionals or small businessmen, upon a report of the Guarantee Commission or, in cases of necessity and urgency, on its own initiative, informing the Guarantee Commission in advance, the President of the Council of Ministers or a Minister delegated by him, if the conflict is of national or inter-regional importance, or, in other cases, the prefect or the corresponding body in the regions with a special statute, after informing the Presidents of the regions or the autonomous provinces of Trento and Bolzano, shall invite the parties to desist from the behaviour that is causing the dangerous situation, shall attempt conciliation, to be completed as soon as possible, and if the attempt fails, shall adopt by order the measures necessary to prevent the prejudice to the rights of the individual constitutionally protected in Article 1(1).

Article 12 as in force since 1 January 2014

1. A Guarantee Commission for the implementation of the Act is established to assess the suitability of the measures to ensure the reconciliation of the exercise of the right to strike with the enjoyment of the constitutionally protected rights of the individual, as referred to in Article 1(1).

2. The Commission is composed of nine members, chosen, on designation by the Presidents of the Chamber of Deputies and the Senate of the Republic, from among experts in constitutional law, labour law and industrial relations, and appointed by decree of the President of the Republic; it may avail itself of the advice of experts in the organisation of essential public services affected by the conflict, as well as experts who have distinguished themselves in the protection of users. The Commission shall avail itself of personnel, also with managerial qualification, of public administrations or other public law bodies on secondment or out of office, adopting the relevant measures to this end. For civil servants, the provision of Article 17, paragraph 14 of Law No. 127 of 15 May J 997 applies. The Commission identifies, with its own deliberation, the staff quotas to be used, up to a maximum of 30 units. Personnel employed by the Commission in a secondment or outplacement position shall retain their legal status and basic salary of their administration of origin, at the expense of the latter. The same staff shall be entitled to an allowance at the rate provided for the staff of the roles of the Presidency of the Council of Ministers, as well as other ancillary remuneration provided for by the national collective labour agreements. The additional remuneration shall be paid from the fund referred to in paragraph 5. Members of Parliament and persons holding other elective public offices, or offices in political parties, trade unions or employers' associations, as well as those who have continuous collaboration or consultancy relationships with the aforesaid bodies or with administrations or public service providers may not be members of the Commission.

3. The Commission elects its chairman from among its members; it is appointed for six years and its members may be reappointed once.

4. The Commission establishes the modalities of its operation. It acquires, also through hearings, data and information from public administrations, trade unions and enterprises, as well as from associations of users of essential public services. It may also make use of the activities of the National Economic and Labour Council (CNEL), as well as those of the Labour Market Observatories and the Civil Service Observatory.

5. The Commission provides for the autonomous management of the expenses related to its functioning, within the limits of the appropriations provided for this purpose in a special fund established in the State budget. The financial management accounts shall be subject to audit by the Court of Auditors. The rules governing the management of the expenditure, including by way of derogation from the provisions on the general State accounts, shall be approved by decree of the President of the Republic to be issued pursuant to Article 17(2) of Law No. 23 August 1988, and shall be subject to the control of the Court of Auditors.

6. The costs resulting from the implementation of this article, amounting to 2,300 million lire for each of the years 1990, 1991 and 1992, shall be covered by a corresponding reduction in the appropriation entered, for the purposes of the three-year budget for 1990-1992, in Chapter 6856 of the Treasury Ministry's budget estimate for 1990, using the appropriation "Provisions aimed at guaranteeing the operation of essential public services in the context of the protection of the right to strike and the establishment of the Commission for Labour Relations in the Public Services". The Minister of the Treasury is authorised to make the necessary budgetary changes by his own decrees.

6-bis. In order to ensure the continuity of the Commission's activity, within the limits of the quotas referred to in paragraph 2, the permanent staff of the public administration, in service on secondment as of 30 June 2013, who so request, shall be transferred to the Commission and shall be included in the organic role of the Commission's staff, established for this purpose without new or additional burdens on the public finance, with a corresponding reduction of the staff numbers of the administrations to which they belong and transfer of the relevant financial

resources. The number of seconded staff units which the administration may avail itself of under paragraph 2 shall be reduced by a number equal to the number of units placed on the roster.

Article 13 (1), as in force since 26 April 2000

1. The Commission:

a) shall assess, also on its own initiative, after hearing the consumers' and users' organisations recognised for the purposes of the list referred to in Law No 281 of 30 July 1998, which are concerned and operating in the territory in question, and which may express their opinion within the time limit set by the said Commission, the suitability of the essential services, of the cooling-off and conciliation procedures and of the other measures identified pursuant to Article 2(2) to ensure that the exercise of the right to strike is reconciled with the enjoyment of constitutionally protected individual rights, referred to in paragraph 1 of Article 1, and if it does not consider them suitable on the basis of specific reasons, it shall submit to the parties a proposal on the set of services, procedures and measures to be considered essential. The parties shall give their opinion on the Commission's proposal within fifteen days of notification. If they fail to express an opinion, the Commission, after verifying, following appropriate hearings to be held within twenty days, the willingness of the parties to reach an agreement, shall adopt by its own decision the provisional rules on essential services, cooling-off and conciliation procedures and other measures to achieve compliance, communicating them to the parties concerned, who shall be bound by them for the purposes of Article 2, paragraph 3, until such time as an agreement deemed suitable is reached. In the same manner, the Commission shall assess the self-regulatory codes referred to in Article 2(2)(a), and take action in the event that they are lacking or are not appropriate within the meaning of this subparagraph. For the purpose of the provisional regulation referred to in this letter, the Commission shall take into account the provisions of the self-regulatory acts in force in similar or analogous sectors as well as the agreements entered into in the same sector by the most representative trade unions at national level. In the provisional regulation, the essential services must be identified in such a way as not to compromise, for the duration of the regulation itself, the basic needs referred to in Article 7; except in special cases, they must be limited to an average of no more than 50% of the services normally provided and must concern strictly necessary quotas of personnel no more than one third of the personnel normally used for the full provision of the service during the time covered by the strike, taking into account the technical and safety conditions. It shall in any case take into account the use of alternative services or services provided by competing undertakings. When, for the purposes set forth in Article 1, it is necessary to ensure time slots for the provision of services, the latter must be guaranteed to the extent of those normally offered and therefore not included in the aforementioned 50% percentage. Any derogations on the part of the Commission, for particular cases, must be adequately justified with specific regard to the need to guarantee levels of operation and security strictly necessary for the provision of services, so as not to compromise the basic requirements set out in Article 1. The same criteria provided for the identification of essential services for the purposes of provisional regulation shall constitute benchmarks for the Commission's assessment of the appropriateness of negotiated and self-regulatory acts. The resolutions adopted by the Commission pursuant to this Letter shall immediately be forwarded to the Presidents of the Chambers;

b) expresses its judgement on questions of interpretation or application of the contents of the agreements or self-regulatory codes referred to in paragraph 2 of Art. 2 and Art. 2-bis for the part within its competence at the joint request of the parties or on its own initiative. At the joint request of the parties concerned, the Commission may also issue an award on the merits of the dispute. Where the service is carried out with the concurrence of several administrations and undertakings, the Commission may summon the administrations and undertakings concerned, including those that were instrumental, ancillary or collateral services, and the respective trade union organisations, and make a proposal to the parties concerned to standardise the regulations referred to in Article 2(2), taking into account the needs of the service as a whole;

c) upon receipt of the communication referred to in Article 2, paragraph 1, it may take information or summon the parties to hearings to verify whether attempts at conciliation have been made and whether the conditions for a settlement of the dispute exist, and in the case of conflicts of particular national importance, it may invite, by means of a special resolution, the parties that have called the strike to postpone the date of the abstention from work for the time necessary to allow a further attempt at mediation;

d) shall immediately inform the persons concerned of any breach of the provisions on notice, maximum duration, prior cooling-off and conciliation procedures, periods of exemption, minimum intervals between successive proclamations, and any other requirement concerning the phase preceding collective abstention, and may invite the persons concerned to reformulate their proclamation in accordance with the law and agreements or self-regulatory codes, postponing abstention from work to another date;

e) notes the possible concomitance of interruptions or reductions of alternative public services, affecting the same catchment area, as a result of collective abstentions proclaimed by different trade unions, and may invite those whose proclamation has been communicated subsequently to postpone the collective abstention to another date;

f) reports to the competent authority the situations in which the strike or collective abstention may result in an imminent and well-founded danger of prejudice to the constitutionally protected individual rights referred to in Article 1(1), and make proposals as to the measures to be taken by the order referred to in Article 8 to prevent such prejudice;
[…]

l) shall ensure appropriate and timely forms of publicity for its resolutions, with particular regard to the invitation resolutions referred to in subparagraphs c) d), e) and h), and may request the publication in the Official Gazette of notices containing the agreements or codes of self-regulation at national level deemed suitable or any provisional regulations it has resolved upon in the absence of suitable agreements or codes. Administrations and service-providing undertakings are obliged to publicise the Commission's deliberations, as well as the agreements or collective agreements referred to in Article 2(2), by posting them in a place accessible to all;

m) reports to the Presidents of the Chambers, at their request or on its own initiative, on the aspects within its competence of national and local disputes concerning essential public services, assessing the conformity of the conduct of collective and individual actors, administrations and undertakings with self-regulation rules or indispensable performance clauses;

n) It transmits the acts and rulings within its competence to the Presidents of the Chambers and to the Government, which ensures their dissemination through the media.

22. **Decree-Law No. 146/2015** converted into **Law No. 182/2015** amended Law No. 146/1990 by expanding its scope with regard to services relating to the enjoyment of the country's artistic and cultural heritage.

23. **Resolution No. 18/138** (Guarantee Commission implementation of the law on strikes in essential public services, 9 April 2018)

[…] It is considered indispensable that companies, in fulfilling their obligations under Article 2, paragraph 6, of Law No. 146 of 1990, as amended, provide users with not only the names of the trade unions that have called for strike action and the reasons behind the dispute, but also data on the percentage of adherence recorded during the most recent strikes called by the same trade unions.

With reference to Article 11 (Rarefaction) of the aforementioned National Agreement, the critical remarks made by the trade union organizations regarding the excessive restriction and

compromise of the trade unions' ability to exercise the 'individual' right to strike due to the extension of the rarefaction period cannot be accepted. As is well known, the fundamental objective of Law No. 146 of 1990 is to ensure a balance between the exercise of the right to strike, recognized by the Constitution for all workers, and the higher-ranking right of citizen-users to access essential public services.

This objective is pursued not only through the provisions, in accordance with Article 2 of the aforementioned law, which set rules concerning the formal regularity of strike action, including notice, duration, implementation modalities, and communication of the reasons behind the proclamation. The law also establishes the obligation to observe minimum intervals between strike actions affecting the same service, even if called by different trade unions, as a necessary condition to ensure the continuity of public services.

This provision, which is of fundamental importance, indicates that the balance between constitutional rights is effectively guaranteed not only through the formal regularity of individual strike actions but also, and above all, by preventing excessive repetition of strikes within a short period. Excessive repetition of abstentions would ultimately impair the rights of citizen-users by essentially nullifying their ability to enjoy essential services.

It is deemed appropriate to set a minimum interval of 20 days between one strike action and the next, with the sole aim of finding adequate solutions to rebalance the excessive impairment of citizens' right to freedom of movement caused by strike proclamations carried out in a context of objective trade union fragmentation. […]

C – Domestic case law

24. **Constitutional Court**, judgments Nos. 123/62, 31/69, 125/80, 222/76.

Pursuing the balancing of constitutional rights and individual rights, under Italian law a strike may be limited only to the extent to guarantee respect for other rights and feedoms protected in line with Article 40 of the Constitution, such as those guaranteed by public services.

25. **Constitutional Court,** judgment No. 85/2013

"[...] all the fundamental rights protected by the Constitution are in a relationship of mutual integration and it is not possible to identify one of them that has absolute predominance over the others, since if this were not the case, there would be the unlimited expansion of one of the rights, which would become a 'tyrant' against the other constitutionally recognised and protected legal situations, which constitute, as a whole, an expression of the dignity of the person."

26. **Council of State**, judgments No. 2115 and No. 2116

On 1 March 2023 the Italian Council of State, in a case brought by trade unions alleging that with Resolution18/138 of the Guantanee Commission (see §23 above) had restricted unduly the right to strike, held that "*The discretion of the Commission must "be exercised with particular caution and attention, making decisions that are the result of careful investigation and characterized, in identifying the most appropriate measure to be implemented, by a detailed motivation from which it is possible to reconstruct in its entirety and completeness the informative framework that justifies the authoritative action."* and concluded that in the instant case this had not been so and therefore requested that the Guarantee Commission reassess the situation with regard to the setting of 20 days instead of 10 in terms of minimum interval between one strike action and the next with regard to the local transport sector.

RELEVANT INTERNATIONAL MATERIAL

A – The Council of Europe

1. Parliamentary Assembly

27. Resolution 2033 (2015) of 28 January 2015, “Protection of the right to bargain collectively, including the right to strike” reads as follows:

> “1. Social dialogue, the regular and institutionalised dialogue between employers’ and workers’ representatives, has been an inherent part of European socio-economic processes for decades. The rights to organise, to bargain collectively and to strike – all essential components of this dialogue – are not only democratic principles underlying modern economic processes, but fundamental rights enshrined in the European Convention on Human Rights (ETS No. 5) and the European Social Charter (revised) (ETS No. 163).
> 2. However, these fundamental rights have come under threat in many Council of Europe member States in recent years, in the context of the economic crisis and austerity measures. In some countries, the right to organise has been restricted, collective agreements have been revoked, collective bargaining undermined and the right to strike limited. As a consequence, in the affected countries, inequalities have grown, there has been a persistent trend towards lower wages, and negative effects on working and employment conditions have been observed.
> 3. The Parliamentary Assembly is most concerned by these trends and their consequences for the values, institutions and outcomes of economic governance. Without equal opportunities for all in accessing decent employment and without appropriate means of defending social rights in a globalised economic context, the inclusion, development and life chances of whole generations will be put into question. In the medium term, the exclusion of certain groups from economic development, the distribution of wealth and decision making could seriously damage European economies and democracy itself.
> 4. Investing in social rights is an investment in the future. In order to build and maintain strong and sustainable socio-economic systems in Europe, social rights need to be protected and promoted.
> 5. In particular, the rights to bargain collectively and to strike are crucial to ensure that workers and their organisations can effectively take part in the socio-economic process to promote their interests when it comes to wages, working conditions and social rights. “Social partners” should be taken to mean just that: “partners” in achieving economic performance, but sometimes opponents striving to find a settlement concerning the distribution of power and scarce resources.“

28. Resolution 2146 (2017) of 25 January 2017, “Reinforcing social dialogue as an instrument for stability and decresasing social and economic inequalities” reads as follows:

> “5. […] the Assembly calls on member States to: […]
> 5.4. keep legal limitations on the right to collective bargaining and the right to strike to the strict minimum, as provided for by well-established ILO and European standards;[…]”

2. European Convention of Human Rights

29. Article 11 (Freedom of assembly and association) reads as follows:

> 1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

3. European Court of Human Rights (ECtHR)

30. In *Demir and Baykara v. Turkey*, Case No. 34503/97, judgment of 12 November 2008, §154, the ECtHR considered that

> "…the right to bargain collectively with the employer has, in principle, become one of the essential elements of the "right to form and to join trade unions for the protection of [one's] interests" set forth in Article 11 of the Convention, it being understood that States remain free to organise their system so as, if appropriate, to grant special status to representative trade unions. Like other workers, civil servants, except in very specific cases, should enjoy such rights, but without prejudice to the effects of any "lawful restrictions" that may have to be imposed on "members of the administration of the State" within the meaning of Article 11§2…"

31. In *Enerji Yapi-Yop Sen* v. Turkey, Case No. 68959/01, judgment of 21 April 2009, §32, the Court recognised the right to strike as an aspect of the right to collective bargaining. It is not absolute and may be subject to certain conditions and restrictions. Certain categories of civil servants could be prohibited from striking. However, the ban does not extend to all public servants or emloyees of State-run commercial or industrial concerns. The legal restrictions on the right to strike should be defined as clearly and narrowly as possible, while an absolute ban, without balancing the imperatives and the purposes listed in Article 11§2 is not permitted.

B – The United Nations

1. Universal Declaration of Human Rights (UDHR) (1948)

32. Article 29 of UDHR reads as follows:

> "1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
> 2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
> 3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations."

2. International Covenant on Civil and Political Rights (ICCPR) (1966)

33. Article 22 of ICCPR reads as follows:

> "1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
> 2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national

security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention."

3. International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)

34. Article 8 of ICESCR reads as follows:

"The States Parties to the present Covenant undertake to ensure:
a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade union organisations;
c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.
2. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention."

4. Human Rights Committee (CCPR)

35. In addressing the issue of essential services, the CCPR emphasised on multiple occasions that the right to freedom of association encompasses the right to strike, including within the framework of essential service provisions:

"The State party should take measures to revise the scope of the category of essential services with a view to ensuring that all those civil servants whose services cannot reasonably be deemed as essential are entitled to their right to strike, also in accordance with article 22 of the International Covenant on Civil and Political Rights" (CCPR/C/DEU/CO/7 (CCPR 2021), para. 51.)

"The Committee reiterates the recommendation made by the Committee on Economic, Social and Cultural Rights (E/C.12/EST/CO/3, para. 27) that the Civil Service Act be reviewed with a view to allowing civil servants who do not provide essential services to exercise their right to strike. The State party should refrain from imposing any undue limitations on the right to strike and should ensure that the Collective Labour Dispute Resolution Act is in full conformity with

article 22 of the Covenant" (CCPR, Concluding Observations, Estonia 2019, CCPR/C/EST/CO/4 (CCPR 2019), para. 32.).

36. Concerning the procedural requirements such as a permissible duration of strikes under national laws, the CCPR stated:

> "31. […] The Committee is also concerned about the requirements set forth in the Collective Labour Dispute Resolution Act that may adversely affect the meaningful exercise of the right to strike in practice, inter alia by limiting the duration of a warning strike to one hour as opposed to three days for sympathy strikes (art. 22).
> 32. […] The State party should refrain from imposing any undue limitations on the right to strike and should ensure that the Collective Labour Dispute Resolution Act is in full conformity with article 22 of the Covenant. (CCPR, Concluding Observations, Estonia 2019, CCPR/C/EST/CO/4 (CCPR 2019), paras. 31 and 32.)"

5. Committee on Economic, Social and Cultural Rights (CESCR)

37. In addressing the issue of essential services the CESCR reiterated general principles on multiple occasions and recommended that the state parties take specific actions to:

> "[…] Ensure that restrictions on the right to strike in certain sectors are interpreted strictly, with a view to ensuring that all those workers whose services cannot reasonably be deemed as essential are entitled to their right to strike (Concluding observations, Bahrain 2022, E/C.12/BHR/CO/1 (CESCR 2022), para. 25(c))"
> "[…] limit the prohibition against striking for public sector employees by narrowing the definition of "essential services" so that it complies with the Covenant and relevant International Labour Organization standards.(Concluding observations, Serbia 2022, E/C.12/SRB/CO/3 (CESCR 2022), para. 49.)"
> "[…] Revise the scope of the category of essential services to ensure that all those public servants whose services cannot reasonably be deemed as essential are entitled to their right to strike (Concluding observations, Czechia 2022, E/C.12/CZE/CO/3 (CESCR 2022), para. 27(a))"
> "[…] remove excessive restrictions on the right to strike, in law and in practice, and limit the scope of "essential services" to services where interruption would endanger the life, personal safety or health of the whole or part of the population […]Concluding observations, Viet Nam 2014, E/C.12/VNM/CO/2-4 (CESCR 2014) (no numbered paragraphs))".
> The restrictions to the right to strike of school teachers or of workers in the railway sector cannot be justified by invoking the "essential" nature of the service that they provide. (E/C.12/DEU/CO/6 (2018) (Germany), paras. 44-45 (teachers); E/C.12/RUS/CO/6 (2017) (Russian Federation), paras. 34-35 (railway workers)).

38. Concerning the minimum services the CESCR invited the state party concerned to:

> "[...] establish the list of services, jobs and categories of personnel that are strictly necessary for the performance of a minimum level of service in the event of a strike in public service activities. […](Concluding observations, Mali 2018, E/C.12/MLI/CO/1 (CESCR 2018), para. 29)"

39. Concerning the procedural requirements such as the issue of requisitioning workers in the event of a strike the CESCR recommended the State party concerned to:

> "[…] to restrict the powers of requisition in the event of strikes exclusively to occasions where essential services need to be maintained for the population."(Concluding observations, Central African Republic 2018, E/C.12/CAF/CO/1 (CESCR 2018), para. 32.)"

40. Joint Declaration of the Human Rights Committee (CCPR) and the Committee on Economic, Social and Cultural Rights (CECSR), Statement on freedom of association, including the right to form and join trade unions, 18 October 2019:

> "1. [...] The Human Rights Committee and the Committee on Economic, Social and Cultural Rights, welcome the progress made by States to guarantee the freedom of association in labour relations. At the same time, the two committees note the challenges faced in the effective protection of this fundamental freedom, including undue restrictions of the right of individuals to form and join trade unions, the right of unions to function freely, and the right to strike. [...]
>
> 4. […] The committees recall that the right to strike is corollary to the effective exercise of the freedom to form and join trade unions. Both committees have sought to protect the right to strike in their review of the implementation of the ICESCR and the ICCPR by the States parties."

C – International Labour Organisation (ILO)

1. ILO Convention No. 98 on the Right to Organise and Collective Bargaining (1949)

41. Article 4 of the ILO Convention No. 98 reads as follows:

> Article 4
>
> "Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation 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."

2. ILO Recommendation No. 92, Voluntary Conciliation and Arbitration Recommendation, 1951

42. ILO Recommendation No. 92 provides:

> "1. Voluntary conciliation machinery, appropriate to national conditions, should be made available to assist in the prevention and settlement of industrial disputes between employers and workers.
> 2. Where voluntary conciliation machinery is constituted on a joint basis, it should include equal representation of employers and workers.
> 3.
> (1) The procedure should be free of charge and expeditious; such time limits for the proceedings as may be prescribed by national laws or regulations should be fixed in advance and kept to a minimum.
> (2) Provision should be made to enable the procedure to be set in motion, either on the initiative of any of the parties to the dispute or ex officio by the voluntary conciliation authority.
> 4. If a dispute has been submitted to conciliation procedure with the consent of all the parties concerned, the latter should be encouraged to abstain from strikes and lockouts while conciliation is in progress.
> 5. All agreements which the parties may reach during conciliation procedure or as a result thereof should be drawn up in writing and be regarded as equivalent to agreements concluded in the usual manner.
> II. Voluntary Arbitration

6. If a dispute has been submitted to arbitration for final settlement with the consent of all parties concerned, the latter should be encouraged to abstain from strikes and lockouts while the arbitration is in progress and to accept the arbitration award.
III. General
7. No provision of this Recommendation may be interpreted as limiting, in any way whatsoever, the right to strike."

3. Committee on Freedom of Association (CFA)

43. Compilation of decisions of the Committee on Freedom of Association, Sixth edition, 2018

"779. The Committee has stated on many occasions that strikes at the national level are legitimate insofar as they have economic and social objectives and not purely political ones. The prohibition of strikes could only be acceptable in the case of civil servants acting on behalf of the public authorities or workers in essential services in the strict sense of the term, i.e., services whose interruption could endanger the life, personal safety, or health of the whole or part of the population.
...
794. In general, a decision to suspend a strike for a reasonable period to allow the parties to seek a negotiated solution through mediation or conciliation efforts does not, in itself, constitute a violation of the principles of freedom of association.
...
801. The requirement that a 20-day period of notice be given in services of social or public interest does not undermine the principles of freedom of association.

802. The legal requirement of a cooling-off period of 40 days before a strike is declared in an essential service, in so far as it is designed to provide the parties with a period of reflection, is not contrary to the principles of freedom of association. This clause which defers action may enable both parties to come once again to the bargaining table and possibly to reach an agreement without having recourse to a strike.

803. The information asked for in a strike notice should be reasonable, or interpreted in a reasonable manner, and any resulting injunctions should not be used in such a manner as to render legitimate trade union activity nearly impossible.
…
815. The Committee has expressed concern over the imposition of a limit on the duration of a strike, which, due to its nature as a last resort for the defense of workers' interests, cannot be predetermined.
...
830. The right to strike may be restricted or prohibited:
(1) in the public service only for public servants exercising authority in the name of the State; or
(2) in essential services in the strict sense of the term (i.e., services whose interruption would endanger the life, personal safety, or health of the whole or part of the population).
…
836. To determine situations in which a strike could be prohibited, the criterion to be established is the existence of a clear and imminent threat to the life, personal safety, or health of the whole or part of the population.

837. What constitutes essential services in the strict sense of the term depends largely on the particular circumstances prevailing in a country. Moreover, this concept is not absolute, as a non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope, thereby endangering the life, personal safety, or health of the whole or part of the population.

838. The principle regarding the prohibition of strikes in essential services might lose its meaning if a strike were declared illegal in one or more undertakings that were not performing an “essential service” in the strict sense of the term, i.e., services whose interruption would endanger the life, personal safety, or health of the whole or part of the population.

839. It would not be appropriate for all state-owned undertakings to be treated the same in respect of limitations on the right to strike without distinguishing, in the relevant legislation, between those that are genuinely essential and those that are not.

840. The following may be considered essential services: the hospital sector; electricity services; water supply services; the telephone service; the police and armed forces; firefighting services; public or private prison services; the provision of food to pupils of school age and the cleaning of schools; air traffic control.

841. The principle that air traffic control is an essential service applies to all strikes, regardless of their form—go-slow, work-to-rule, sick-out, etc.—as these may be just as dangerous as a regular strike for the life, personal safety, or health of the whole or part of the population.

842. The following do not constitute essential services in the strict sense of the term: radio and television; the petroleum sector and oil facilities; distribution of fuel to ensure that flights continue to operate; filling and selling gas canisters; ports; banking; the Central Bank; insurance services; computer services for the collection of excise duties and taxes; department stores and pleasure parks; the metal and mining sectors; transport generally, including metropolitan transport; airline pilots; production, transport, and distribution of fuel; rail services; metropolitan transport; postal services; refuse collection services; refrigeration enterprises; hotel services; construction; car manufacturing; agricultural activities, the supply and distribution of foodstuffs; tea, coffee, and coconut plantations; the Mint; the government printing service and the state alcohol, salt, and tobacco monopolies; the education sector; mineral water bottling companies; aircraft repairs; elevator services; export services; private security services (with the exception of public or private prison services); airports (with the exception of air traffic control); pharmacies; bakeries; beer production; the glass industry....

…

866. The establishment of minimum services in the case of strike action should only be possible in:

(1) Services whose interruption would endanger the life, personal safety, or health of the whole or part of the population (essential services in the strict sense of the term);

(2) Services that are not essential in the strict sense of the term but where the extent and duration of a strike might result in an acute national crisis endangering the normal living conditions of the population; and

(3) Public services of fundamental importance.

…

909. The responsibility for declaring a strike illegal should not lie with the government but with an independent and impartial body.

...

914. The responsibility for suspending a strike should not lie with the government but with an independent body that has the confidence of all parties concerned.”

4. CEACR (Committee of Experts on the Application of Conventions and Recommendations)

44. General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, International Labour Conference, 101st Session, 2012

Essential Services

131. The second acceptable restriction on strikes concerns essential services. The Committee considers that essential services, for the purposes of restricting or prohibiting the right to strike, are only those "the interruption of which would endanger the life, personal safety or health of the whole or part of the population." This concept is not absolute in its nature, as a non-essential service may become essential if the strike exceeds a certain duration or extent, or as a function of the special characteristics of a country (for example, an island State). In practice, national legislation frequently uses the concept of essential services to limit or prohibit the right to strike. This may range from a relatively short limitative enumeration to a long list included in the law itself. In extreme cases, the legislation provides that a mere statement to this effect by the authorities suffices to justify the essential nature of the service. However, in certain countries, such as Bulgaria, the right to strike can be exercised throughout the public service and in all services termed essential for the community.

132. In practice, the manner in which strikes are viewed at the national level varies widely: several States continue to define essential services too broadly or leave too much discretion to the authorities to unilaterally declare a service essential; others allow strikes to be prohibited on the basis of their potential economic consequences (particularly in EPZs and recently established enterprises) or prohibit strikes on the basis of the potential detriment to public order or to the general or national interest. Such provisions are not compatible with the principles relating to the right to strike.

Activities Not Considered as Essential Services

134. When examining concrete cases, the ILO supervisory bodies have considered that it should be possible for strikes to be organized by workers in both the public and private sectors in numerous services, including the following: the banking sector; railways; transport services and public transport; air transport services and civil aviation; teachers and the public education service; the agricultural sector; fuel distribution services and the hydrocarbon, natural gas, and petrochemical sector; coal production; maintenance of ports and airports; port services and authorities; loading and unloading services for ships; postal services; municipal services; services for the loading and unloading of animals and of perishable foodstuffs; EPZs; government printing services; road cleaning and refuse collection; radio and television; hotel services; construction.

Activities Considered as Essential Services

135. When examining concrete cases, the ILO supervisory bodies have considered that essential services in the strict sense of the term may include air traffic control services; telephone services; services responsible for dealing with the consequences of natural disasters; firefighting services; health and ambulance services; prison services; the security forces; water and electricity services. The Committee has also considered that other services (such as meteorological services and social security services) include certain components which are essential and others that are not.

Negotiated Minimum Service

136. In situations in which a substantial restriction or total prohibition of strike action would not appear to be justified and where, without calling into question the right to strike of the large majority of workers, consideration might be given to ensuring that users' basic needs are met or that facilities operate safely or without interruption, the introduction of a negotiated minimum service, as a possible alternative to a total prohibition of strikes, could be appropriate. In the view of the Committee, the maintenance of minimum services in the event of strikes should only be possible in certain situations, namely: (i) in services the interruption of which would endanger

the life, personal safety, or health of the whole or part of the population (or essential services "in the strict sense of the term"); (ii) in services which are not essential in the strict sense of the term but in which strikes of a certain magnitude and duration could cause an acute crisis threatening the normal conditions of existence of the population; and (iii) in public services of fundamental importance.

D – The European Union

The Charter of Fundamental Rights of the European Union (CFREU)

45. Article Article 28 (Right of collective bargaining and action) of the CFREU reads as follows:

Article 28 (Right of collective bargaining and action)

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE Article 6§4 OF THE CHARTER

46. Article 6§4 and Article G of the Charter 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."

Appendix to the Revised Charter, Part II, Article 6§4

"It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G."

A – Arguments of the parties

1. The complainant organisation

47. USB refers to the provisions of Law No. 146/1990 concerning the exercise of the right to strike highlighting that Article 1 defines the essential public services that must be guaranteed in the event of a strike in a way so as to balance the right to strike with the enjoyment of individual rights determined by the same Article and protected by the Constitution. Article 1(1) includes rights, such as right to life, health, freedom and security, freedom of movement, and rights to social assistance and social security, education, and communication. Article 1(2) provides examples of essential services linked to each of these rights. It also includes services closely related to the main essential public service, regardless of whether they are delivered by public or private sector employees. Article 2 sets out the conditions governing the exercise of the right to strike.

48. USB indicates that Law No. 146/1990 leaves the identification and regulation of the essential services to collective bargaining, which is subject to approval by an independent administrative authority (Guarantee Commission) whose members are appointed by the President of the Republic acting on the proposal of the presidents of the Chamber of Representatives and of the Senate.

49. USB points out that by Law No. 182/2015, museums and other cultural institutions and venues were added to the list of essential services. Furthermore, under Article 2(2), read in conjunction with Article 13(1)(a) of Law No. 146/90, the Guarantee Commission may at its discretion increase the number of services considered essential. According to USB, over the years, the Guarantee Commission expanded the list of essential services by adding: taxi transportation and fuel distribution to the list of essential transportation services, private healthcare and spa provided for therapeutic purposes to the list of essential public healthcare services, catering services to services essential for airports and aircrafts, IT services to services essential for universities and research centres, school canteen to service essential for educational activities. In USB's view, the above extensions of the notion of "essential services" violate Article 6§4 of the Charter.

50. USB asserts that as regards the regulation of essential services during the exercise of the right to strike, the Guarantee Commission's task is to ensure that measures provided for in collective agreements are suitable for ensuring that a balance is struck between the right to strike and the exercise of individual rights. In case these agreed measures are not suitable or if no agreement is reached, the Guarantee Commission submits a proposal regarding the measures to the parties. Within 15 days,

the parties need to state their views and reach an agreement. Otherwise, the Guarantee Commission adopts a resolution establishing provisional regulations applicable until a suitable agreement is reached (Article 13(1)(a)).

51. Under the Guarantee Commission regulations (adopted in accordance with Article 13(1)(a) of Law No. 146/1990), an agreement is considered suitable if, during the strike, the minimum level of essential services is set at no more than 50% of the services normally provided, and only the strictly necessary staff is involved, not exceeding one third of the staff normally employed for full-service provision. However, according to USB, the Guarantee Commission in practice routinely imposes the maximum level provided by the legislation.

52. Article 13(1)(a) of Law No. 146/1990 further establishes that some services at certain times of day must be guaranteed at the level of those normally offered. USB states as an example that in the transportation sector during certain times of day the provision of essential services must be guaranteed at a normal level. More precisely, the National Agreement for Local Transport Services (supplemented by a provisional regulatory Resolution 18/138 amending and supplementing the National Agreement on Local Public Transport of 28 February 2018) stipulates two periods during the day in which the full service must be guaranteed, for a total of six hours “coinciding with the periods of maximum demand by users or the requirements of particular categories of user for which the service is essential (workers and students, rural and mountain areas, major tourist areas, barracks, industrial areas, hospitals and cemeteries)”.

53. The Guarantee Commission consults and mediates following a joint request of the parties, or on its own initiative (Article 13(1)b). It may also invite the organiser to postpone a strike in case of conflicts of national importance and to attempt conciliation (Article 13(1)c). In case of violation of the conditions applicable to the exercise of the right to strike laid down by Law No. 146/1990 (such as refraining from strikes during the excluded periods), the Guarantee Commission issues an invitation to the relevant social partners to abstain from striking or to postpone the strike until a later date (Article 13(1)d). Furthermore, the Guarantee Commission identifies possible parallel strikes (called by different trade unions) of essential services that affect the same groups of users and can invite the relevant social partners to postpone them (Article 13(1)e).

54. As regards the conditions applicable to the exercise of the right to strike, according to Article 2(2) of Law No. 146/1990, before a strike is called, the cooling-off and conciliation procedures set out in collective agreements must be carried out. If conciliation is unsuccessful and a strike is to take place, there should be at least 10 days prior notice in writing. The prior notice must include details such as the duration of the strike (Article 2(1)), the reasons for it, and arrangements during the strike.

55. USB alleges that Law No. 146/1990 fails to establish the maximum overall time limit for the completion of the cooling-off and conciliation procedure, resulting in extremely broad sectoral rules that can be adopted. Such rules result in overall periods (periods that include the time limit for the attempt at conciliation and the provision of prior notice), that, according to USB, are excessively and unreasonably long (equal to or longer than 30 days in some sectors). In other words, the limits are prolonged to such an extent that their duration impairs the deterrent effect of the strike.

56. USB provides the following examples of, what they consider excessive overall periods for the:

- land reclamation consortia, the conciliation period for national strikes can last 20 days and the minimum notice period 13 days, resulting in an overall period of 33 days;
- rail transport sector, the conciliation procedure for national strikes can last 10 days and the minimum notice period 20 days for a national general strike called in relation to the renewal of the national collective agreement;
- rail support sector, the conciliation may last for up to 21 days and prior notice of at least 12 days must be given for a national strike, resulting in an overall period of 33 days;
- air transport sector, the conciliation may last for up to 20 days and prior notice of at least 12 days must be given for a national strike, resulting in an overall period of 32 days.

Furthermore, under Article 13(1)c, the Guarantee Commission may extend the duration of the conciliation procedure beyond the time limits provided for under collective agreements.

57. Article 2(2) was amended by Law No. 83/2000 when minimum intervals between two strikes were introduced so that the continuity of public services would be ensured. The minimum intervals must be respected in case of subsequent strikes organised by the same trade union (so called subjective interval or distancing), and where strikes are organised by different trade unions but affecting the exercise of individual rights of the same group of persons, i.e. the users of essential services (so called objective interval or distancing). The objective distancing periods vary between 15 and 30 days. Moreover, under Article 13(d) and (e) of Law No 146/1990, the Guarantee Commission may invite those who called the strike to comply with an even longer period of objective distancing. In practice, the objective distancing rules are prohibiting parallel strikes if they affect the same group of services users.

58. The strike interval rule is more stringent for certain sectors (e.g. public transport, see above §53), for which it defines the “excluded periods”. During these periods strikes are not permitted. Examples of the excluded periods are public holidays, departures for and returns from summer holidays, specific events of major importance, elections, and referendums. USB considers that the rules on prohibitions on strikes during the excluded period, combined with subjective and objective intervals, make it difficult to exercise the right to strike to such an extent as to render it ineffective.

59. USB provides several examples of events during which the strikes were limited or prohibited by the Guarantee Commission by invoking the distancing and excluded periods rules. In three instances, USB faced challenges regarding the timing of strikes they called. In October 2014, USB planned a general strike but was advised by the Guarantee Commission to cancel or postpone the strike in the air sector due to overlaps with another airline strike and local elections. USB argued that the other airline had ceased operations, making the overlap irrelevant, but ultimately had to adjust its plans. In another case, the Guarantee Commission requested the calling off of strikes coinciding with culinary events in Perugia and Turin, deeming them major events. USB contested the significance of the events but eventually excluded the affected cities from the strike to avoid penalties. Lastly, in April 2017, USB called a strike for Alitalia staff, but the Guarantee Commission postponed it due to its proximity to long weekends and anticipated tourist travel. After a legal recourse failed, USB postponed the strike.

60. Where the strike may give rise to an imminent and well-founded risk of harm to individual rights protected under the Constitution, the Guarantee Commission must report it to the authority competent to issue the order to return to work (Article 13(1)f).

61. Under Article 1(1) of Law No. 146/1990, the exercise of the right to strike within essential public services may be limited by the authoritative power of the Government and the Prefect (the local representative of the central government) if there is a well-founded risk of serious and imminent harm to the individual rights protected under the Constitution. USB alleges that the discretionary nature of this power allows for a broad interpretation of the risk to public well-being, which infringes on the workers' right to strike. If the conciliation process does not resolve the conflict between the parties, in line with Article 8(1) of Law No. 146/1990, the return-to-work may be ordered, as an urgent administrative measure aiming at the prevention of adverse consequences for individual rights protected under the Constitution. The order is immediately enforceable, although the persons who have called a strike may appeal before the competent regional administrative court within 7 days of its notification. Failure to comply with a return-to-work order results in the imposition of fines on individual workers and persons who called the strike (Article 9 of Law No. 146/1990).

62. USB alleges that several examples illustrate how this power has been used over the years. In cases involving Alitalia employees, local police in Milan, and public transport workers, strikes were either shortened or postponed due to events such as weather emergencies, political meetings, and public gatherings. These orders were often justified by concerns over public safety or service disruption, but in many instances, the reasons cited, such as weather forecasts or local festivals, did not pose the imminent threat required by law.

63. Lastly, in its response to Government's submission on the merits, USB emphasises that Italian legislation permits excessive restrictions of the right to strike and that the Government does not sufficiently demonstrate the compatibility of these restrictions with the conditions of Article G of the Charter. Also, while collective bargaining is taking place, the role of social partners is undermined by the predominant authority of the Guarantee Commission whose decision concerning the essential services to be provided during a strike is final. The complainant argues that collective agreements that regulate strikes are often signed by unions other than those with significant representativeness in given sectors. Moreover, collective agreements are only valid if approved by the Guarantee Commission, otherwise, they are replaced by administrative regulations, which weakens the concept of collective bargaining.

2. The respondent Government

64. According to the Government, the right to strike, which is established by the Italian Constitution, is limited only regarding the essential public services and to the extent necessary for the protection of other constitutionally established individual fundamental rights. In order to balance these constitutional guarantees (the exercise of the right to strike of workers in essential services and citizens' fundamental rights), Law No. 146/90 provides in Article 1(1) an exhaustive list of personal rights (life, health, security, freedom of movement, communication, education, welfare and social security) whose protection may lead to limitations of the right to strike. In Article 1(2), Law No. 146/90 defines only illustratively the essential services in which the workers' right to strike might be limited.

65. The Government states that the balancing of the above rights is based on the Constitutional Court judgment according to which "no right is a tyrant": "[...] all the fundamental rights protected by the Constitution are in a relationship of mutual integration and it is not possible to identify one of them that has absolute predominance over the others, since if this were not the case, there would be the unlimited expansion of one of the rights, which would become a 'tyrant' against the other constitutionally recognised and protected legal situations, which constitute, as a whole, an expression of the dignity of the person" (Constitutional Court, Judgment No. 85/2013).

66. The Government further states, that in the context of essential public services, the right to strike is limited by the imposition of certain obligations such as minimum notice and the predetermined duration (Article 2(1) and (5) of Law No. 146/90). It also entrusts the identification of specific rules that balance the exercise of the right to strike with the interests of users of essential services to the collective agreements between the employer and workers and to self-regulatory codes in the case of self-employed workers.

67. The Government asserts that the Guarantee Commission, as an independent administrative authority with regulatory powers and powers to supervise the correct application of the law (*Commissione di garanzia dell'attuazione della legge sullo sciopero nei servizi publici essenziali*) functions as an institutional guarantor of the fair

balance between the right to strike and constitutionally protected individual rights (Article 12(1)).

68. The Government further states that the sanctioning activity of the Guarantee Commission (Article 13(1)i) is assessed by a labour judge (Article 20bis), while the legitimacy of the measures of non-sanctioning nature (Article 13(1)a to e) is assessed by an administrative judge. In line with Article 4(4), the interested parties participate in the procedure. The Court of Cassation deals with the balancing of rights, i.e. the limits of the right to strike in case of protection of the right to life, health, personal safety, the continuation of the activity of an enterprise and the integrity of the company's assets (Court of Cassation, Judgment No. 711/1980).

69. The Government asserts that the compulsory cooling off and conciliation procedures were established by Article 2(2) of Law No. 146/90 as amended by Law No. 83/2000 in the interest of the users of essential public services. More precisely, it states that in the interest of the users of the essential public service, the cooling-off and conciliation procedures are established to prevent the collective abstention from work and resolve conflict between social partners by mediation.

70. The Government furthermore states that the measure of the prior notice established by Article 2(1) and (5), enables companies to take necessary measures to provide essential services and users to make use of alternative services. The maximum duration of the strike and the restriction of the right to strike during periods of greater need for the use of service, which fall under Article 2(2), are also set for the protection of final users.

71. Finally, the Government observes that Law No. 83/2000 introduced the minimum interval between the carrying out of one strike and the proclamation of the next one. The independent administrative authority, when referring to the Local Public Transport service (see §§ 57-59 above), decided that the previous 13-day interval between two strikes would seriously breach the rights of users of essential services and therefore asked for a 20-day interval between strikes (by Resolution No. 18/138/2018).

B – Assessment of the Committee

72. The Committee recalls that Article 6§4 recognises the right of workers and employers to collective action, including the right to strike, where conflicts of interest arise. It does not, however, raise any obstacle to the existence of legislation regulating the exercise of the right to strike (Conclusions VIII (1984), Statement of Interpretation on Article 6§4).

73. The Committee furthermore recalls that it is understood that each State Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any restriction on this right can be justified under the terms of Article G (*Confederazione Generale Italiana del Lavoro* (CGIL) v. Italy, Complaint No. 140/2016, decision on the merits of 22 January 2019, § 143).

74. In providing that restrictions on the enjoyment of Charter rights must be “prescribed by law”, Article G does not require that such restrictions must necessarily be imposed solely through provisions of statutory law (European Trade Union Confederation (ETUC) / *Centrale Générale des Syndicats Libéraux de Belgique* (CGSLB) / *Confédération des Syndicats Chrétiens de Belgique* (CSC) / *Fédération Générale du Travail de Belgique* (FGTB) v. Belgium, Complaint No. 59/2009, decision on the merits of 13 September 2011, §43). In its interpretation of Article G of the Charter in this context, the Committee "has allowed only a very narrow scope for restrictions, which must be considered exceptions applicable only under extreme circumstances and adopted only in response to a pressing social need".

75. Restrictions have been found to satisfy the conditions of Article G of the Charter where "national security was affected or where the life and health of persons were at stake" and "restrictions or prohibitions can only be justified where the strike action entails a clear and present threat to life, health and/or liberties of persons" (European Trade Union Confederation (ETUC), Netherlands Trade Union Confederation (FNV) and National Federation of Christian Trade Unions (CNV) v. the Netherlands, Complaint No. 201/2021, decision on the merits of 24 January 2024, §§87 and 92). In contrast, "purely economic considerations or concerns of a practical or organisational nature", including for instance the cancellation of flights and trains, temporary shortages of some goods and services, or increased waiting times for certain non-vital services, cannot alone be regarded as sufficient justification for restrictions on the right to strike (Ibid. §87).

As to the lack of a dedicated procedure for reviewing in substance the independent administrative authorities’ decisions to prohibit or otherwise limit the exercise of the right to strike;

76. The Committee notes that the Guarantee Commission is an independent administrative authority (*Autorità amministrativa indipendente*) established by legislation, which defines its composition (Article 12(2) of Law No. 146/1990 as amended), as well as its role (Article 13 of Law No. 146/1990 as amended). The Guarantee Commission is composed of highly regarded experts in constitutional law, labour law, and industrial relations and supported by personnel with managerial qualifications from public administrations and other public service bodies (Article 12(2) of Law No. 146/1990 as amended). To ensure its members are impartial, the law excludes from appointment anyone holding political, trade union, or employers’ association roles, or working with such bodies or public service providers. The Commission elects its own President and manages its own budget within the limits set by a dedicated state fund.

77. The Committee also notes that the decisions of the Guarantee Commission are published on its website (https://www.cgsse.it/Pubblicazioni/Orientamenti%20interpretativi), which contributes to the transparency of the work of the Guarantee Commission. From the mentioned decisions available to the public, the Committee also notes that the impugned prohibition on strikes by workers in essential services is a measure assessed on a case-by case basis. Article 12(1) of Law No. 146/1990 as

amended in 2014, requires that the decisions of the Guarantee Commission "ensure the exercise of the right to strike with the enjoyment of the constitutionally protected rights of the individual, as referred to in Article 1(1)".

78. The Committee further notes that the Guarantee Commission can impose sanctions or issue opinions on the appropriateness of a strike (e.g. ruling that a strike is unlawful due to non-compliance with minimum service requirements). Even though there is no specific procedure established by Law No. 146/1990, the Committee understands that the Guarantee Commission's decisions, as any administrative entity's decision, may be reviewed by an administrative court, which is not contested by USB. USB however argues that this possibility is void of substance as administrative courts do not enter into the merits of the decision at stake as they just verify whether it was duly taken. The Committee observers that trade unions or employers can challenge the Guarantee Commission's decisions in court and as regards the substance of such decisions, the Committee notes that in March 2023 the Council of State overturned a ruling of the administrative tribunal of the region of Lazio requesting the Guarantee Commission to reassess the decision it had taken in terms of distancing of strikes in the transport sector that transport workers' trade unions had contested (see § 26 above).

79. In light of the above the Committee holds that there is no violation of Article 6§4 insofar as the Guarantee Commission's decisions may be subject to judicial review.

As to the requirement of having to perform work during a strike in an "essential service" that goes beyond what is necessary to guarantee "minimum services"

80. The right to strike is intrinsically linked to the right to collective bargaining, as it represents the most effective means to achieve a favourable result from a bargaining process (*Confederazione Generale Italiana del Lavoro* (CGIL) v. Italy, Complaint No. 140/2016, decision on the merits of 22 January 2019, §143). The Committee recalls that restrictions of the right to strike are compatible with Article 6§4 having regard to Article G of the Charter if prescribed by law and necessary in a democratic society for the protection of the rights and freedoms of others, the protection of public interest, national security, public health, or morals. Therefore, excessive restrictions on the right to strike, i.e. restrictions that go beyond what is allowed under the terms of Article G, whether in law or in practice, are not in conformity with the Charter.

81. Restricting strikes in sectors that are essential to the community may serve a legitimate purpose since strikes in these sectors could pose a threat to the public interest, national security and/or public health (*Matica Hrvatskih Sindikata* v. Croatia, Complaint No. 116/2015, decision on the merits of 21 March 2018, §114; Conclusions I (1969), Statement of Interpretation on Article 6§4). However, simply banning strikes in essential sectors – particularly when they are extensively defined, i.e. "energy" or "health" – is not deemed proportionate to the specific requirements of each sector

(*Matica Hrvatskih Sindikata* v. Croatia, Complaint No. 116/2015, decision on the merits of 21 March 2018, §114). Simply prohibiting these workers from striking, without distinguishing between their particular functions, cannot be considered proportionate to the particular circumstances of each of the sectors concerned, and thus necessary in a democratic society (Conclusions XVII-1 (2006), Czech Republic). At most, the introduction of a minimum service requirement in these sectors might be considered in conformity with Article 6§4 (*Matica Hrvatskih Sindikata* v. Croatia, Complaint No. 116/2015, decision on the merits of 21 March 2018, §114; see also Conclusions XVII-1 (2006), Czech Republic).

82. The Committee notes that in the present case, there is no complete ban, but rather, the restriction is subject to a proportionality test. Under Article 1 of Law No.146/1990 it is provided that the right to strike needs to be balanced with the right to enjoy other individual rights protected by the Constitution (see § 21 above).

83. The Committee further notes that Article 13 (1) (a) of Law No. 146/1990 as amended, establishes that the minimum level of essential services to be provided during the strike may be set at a maximum of 50% of the full service level, and the staff present to maximum one third of the staff needed for the full service to operate (see § 21 and § 51) and that at its own initiative the Guarantee Commission may “in particular cases” and “when it deems it appropriate derogate from this rule. Article 13(1) allows for derogations from the prescribed minimum levels, provided they are adequately justified and strictly necessary to ensure the operational and safety levels for the provision of essential services. As concluded above (see §79), if the Guarantee Commssion takes such a decision at its own initiative, it may be judicially challenged.

84. The Committee notes the examples provided by USB regarding the application of the aforementioned provision by the Guarantee Commission in practice to support its argument that the Guarantee Commission often misuses its margin of appreciation by setting the minimum level of the essential service at the maximum level allowed. The Committee understands from the latest annual report to Parliament by the President of the Guarantee Commssion delivered on 12 June 2025 that the adequacy of the rules on the minimum level of essential services to be provided in essential service sectors is being reviewed by the Guarantee Commission in order to better reflect needs.

85. Meanwhile, notwithstanding the Government’s explanation, the Committee considers that the list of essential services as extended by Law No. 182/2015 and subsequently, is excessively broad and that the addition of certain services to the list is not sufficiently justified.

86. The Committee reiterates that, having regard to Article G, the definition of essential services must be based on clear, sufficient, and reasoned analysis demonstrating the importance and impact of these services on the rights and freedoms of others, public interest, national security, public health, or morals. The definition of essential services must ensure a proper balance between the right to strike and the

protection of competing rights and interests (see case law referred in §§80-81 above).

87. Additionally, the Committee notes that Italy is bound by ILO Conventions No. 87 and No. 98 (on the Freedom of Association and the Protection of the Right to Organise and on the Right to Organise and Collective Bargaining respectively). The CFA and CEACR interpretations of these Conventions clearly distinguish between essential services “in the strict sense” of the term and “non essential services” (see §§43-44). The Committee considers this disctintion to be relevant for the prurposes of its assessment of essential services under Article 6§4 of the Charter and having regard to the application of the proportionality test under the terms of Article G of the Charter.

88. In this connection, the Committee considers that non-essential services may become essential if a strike lasts beyond a certain time or extends beyond a certain scope thereby endangering the life, personal safety or health of the whole or part of the population, or may result in an acute crisis endangering the normal living conditions of the population and/or functioning of public services of fundamental importance.

89. The Committee observes that not all the services added to the list of essential services by Law No. 182/2015 (see §21 and §83 above) and by the Guarantee Commission over the years (see §22 and §49 above) qualify as “essential services in the strict sense” of the term, going beyond the limits of Article G as strikes in such sectors would not endanger the life, personal safety or health of the whole or part of the population, or result in an acute crisis endangering the normal living conditions of the population and/or functioning of public services of fundamental importance.

90. In light of the above, the Committee holds that, having regard to the excessively broad definition of essential services in Italy, the minimum service requirement during a strike in sectors that are not essential services in the strict sense of the term is contrary to Article 6§4 of the Charter going beyond the limits of Article G of the Charter.

As to the requirement to indicate the duration of a strike in the prior notice that has to be given to the employer at least 10 days before it is called;

91. The Committee recalls that in 2006 it had noted that “Act No. 83/2000 introduced an obligation to notify the exact duration, the modalities and the reasons for a strike concerning essential public services to the employer concerned as well as to the administrative authority which is competent for deciding whether an ordinance should possibly be issued in order to guarantee minimum services during strike action. The administrative authority is under an obligation to forward the strike notification to the Guarantee Commission.” In light of the information available at the time on the Italian situation, the Committee considered that “a requirement to notify the duration of strikes concerning essential public services to the employer prior to strike action is an excessive restriction to the right to strike going beyond the limits of Article G of the Revised Charter and is therefore not in conformity with Article 6§4 of the Revised Charter.” (Conclusions 2006, Italy).

92. In the instant case, the requirement to notify the duration of the strike, combined with the obligation to notify the employer 10 days in advance and the fact that the definition of essential service in Italy is very broad, leads the Committee to consider such obligation as a disproportionate restriction on the right to strike.

93. Accordingly, the Committee holds that the requirement to indicate the duration of a strike in the prior notice that has to be given to employer at least 10 days before a strike is called amounts to a violation of Article 6§4 of the Charter.

As to the duration of cooling-off and conciliation procedures

94. The Committee recalls that periods of notice or cooling-off periods prescribed in connection with pre-strike conciliation procedures are in conformity with Article 6§4 as long as they are of reasonable duration (Conclusions XIV-1 (1998), Cyprus). The Committee recalls that a requirement that a 30-day period must elapse before mediation attempts are deemed to have failed, and strike action can be taken, is excessive (Conclusions XVII-1 (2004), Czech Republic). The Committee considers that the time-limits set for mediation can be also applied to conciliation.

95. The Committee notes that USB raises issues as to the duration of the cooling-off and conciliation procedures before the strike can be called. The Committee further observes that what USB describes as an overall period (see §§55-59), for the purposes of this complaint can be regarded as cooling-off period. USB alleges that, as some collective agreements allow these periods to last up to 20 or 21 days, and together with the 12-13 day prior notice, this exceeds the 30-day limit deemed excessive in the Committee's case law (Conclusions XVII-1 (2004), Czech Republic). However, the Committee notes that there is a significant difference between the situation in Italy and that in the Czech Republic. In the Czech Republic, the 30-day period allocated to mediation was a minimum period before strikes could be called, whereas in Italy, the 20-21 day conciliation period set is a maximum period (as set by collective agreements). Also, the Committee notes that according to its case-law the maximum period allowed for the completion of the cooling-off procedure is not set; rather, the case law states that it should be of a reasonable duration.

96. The Committee further notes that the rules for cooling-off and conciliation procedures are established by collective agreements, which result from a negotiation process between the employer and the workers' representatives. This indicates that the workers' representatives were afforded an opportunity to negotiate their terms. Finally, the Committee notes that the duration of cooling-off periods (20-21 days) is significantly shorter than the periods which it has found to be excessive in its case law (Conclusions XVII-1 (2004), Czech Republic).

97. Accordingly, the Committee holds that there is no violation of Article 6§4 in respect of the duration of cooling-off and conciliation procedures.

As to the imposition of a prohibition on strikes for a certain period of time after a strike has taken place ("objective distancing") and at certain times during the year ("excluded periods");

98. The Committee has not thus far addressed the prohibition of parallel strikes, or the prohibition of strikes during a certain period of time after a previous strike has taken place and the question of the prohibition of strikes during certain times of the year. It will approach these issues in line with its existing case-law and the general principles guiding the interpretation of the Charter.

99. The Committee has regularly examined the decisions regarding the right to strike of national courts in order to verify whether the courts ruled in a reasonable manner on the right to strike and in particular whether their intervention interfered with the substance of the right in such a way as to make it ineffective (Conclusions II (1969), Statement of Interpretation of Article 6§4, Conclusions XVII-1 (2004), Netherlands). For example, the fact that a national judge may determine whether the recourse to a strike is 'premature' is not in conformity with Article 6§4 as this allows the judge to exercise undue interference with the right to strike (Conclusions XVII-1 (2004), Netherlands). However, when the courts take into account the principles enshrined in Article G of the Charter in their decisions the situation is in conformity with the Charter (Conclusions 2018, Netherlands). As previously mentioned, the Committee further emphasised that having regard to Article G of the Charter, the right to strike may be restricted only if necessary in a democratic society, and that "the duty of care cannot go beyond the principles it has laid down with respect to the rights and freedoms of others" and that "restrictions or prohibitions can only be justified where the strike action entails a clear and present threat to life, health and/or liberties of persons" (European Trade Union Confederation (ETUC), Netherlands Trade Union Confederation (FNV) and National Federation of Christian Trade Unions (CNV) v. the Netherlands, Complaint No. 201/2021, decision on the merits of 24 January 2024, §92). The Committee applies theses standards to assess the decisions of the Guarantee Commission.

100. Furthermore, the Committee considers that what ensures the effectiveness of a strike includes the possibility to carry it out during key periods, so banning the strike during certain periods renders the right to strike ineffective. If these restrictions involve essential services, they must be aimed at preventing excessive disruption of the access of the population to the essential services, justified by public interest concerns. Such concerns may involve the protection of public health and safety, organisation of events of significant public interest (e.g. elections) and other major national interests. The prohibition may not have the form of a general ban on strikes, but it must be limited in time and scope. Most importantly, it must not undermine the essence of the right to strike nor deprive workers of their fundamental right to take collective action.

101. The Committee notes that in Italy the competent body to examine the legality of strikes in relation to the "objective distancing" and "excluded periods" is the Guarantee Commission. The Committee stresses that in the context of its most recent assessment in the reporting procedure, where it examined the conformity of the Guarantee Commission's competencies and decisions with Article 6§4 of the Charter (Conclusions 2022, Italy), the Government provided an overview of the Guarantee Commission's impact on the exercise of the right to strike, which led the Committee to adopt a conclusion of conformity.

102. The Committee notes that during the examination of the present complaint, additional information was brought to its attention enabling it to assess the above-mentioned facts in a different light. Specifically, it was clarified that the above-mentioned procedural rules are also applied to services other than strictly essential ones or to services where the extent or duration of a strike might have a negative impact on public interest, national security, public health or morals. The Committee recalls that in order to be compatible with Article 6§4 of the Charter legal rules relating to the exercise of economic freedoms established by the States Parties either directly through domestic law or indirectly through EU law should be interpreted in such a way as to not impose disproportionate restrictions upon the exercise of labour rights as set forth by domestic laws, EU law, and other international binding standards (Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, decision on admissibility and the merits of 3 July 2013, §121).

103. Accordingly, the Committee holds that there is a violation of Article 6§4 in respect of “objective distancing” and “excluded periods” rules when applied to the excessively expanded list of essential services.

As to the granting to the Prefect and the Minister of the power to order workers to return to work in the event of a strike without foreseeing a possibility for review of whether the power has been legitimately exercised

104. According to the Committee’s case law, as regards situations in which arbitration has been imposed by the Parliament to end a strike, such restrictions can only be compatible with Article 6§4 within the limits set by Article G, namely if it is prescribed by law and is 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 (Conclusions 2004, Norway). The authorities must demonstrate that these conditions are satisfied for each case and the Committee reserves the right to verify whether in its opinion the conditions of Article G are fulfilled (Conclusions 2014, Norway).

105. The Committee observes that Article 8 of Law No. 146/1990, as amended by Law No. 83/2000 foresees that at the recommendation of the Guarantee Commission, the Prime Minister or a Minister delegated by them (if the strike is of national interest) and the Prefect (in other cases) may issue a decree limiting the right to strike where “there is a well-founded threat of serious and imminent harm to the constitutionally protected human rights referred to in Article 1”. Article 8 also establishes the possibility that that the above mentioned representatives of the executive and the Prefect may issue such a decree at their own initiative in “cases of necessity and urgency” after informing the Guarantee Commission. The decree must be preceded by an attempt at conciliation with the administrative authority, to enable all interested parties to defend their interests and put forward their points of view. The terms of the decree are determined by law which sets out deadlines and conditions that must be respected. The decree may order: postponing the strike, shortening its length, and taking

measures to ensure the functioning of services. The decree may be challenged before the administrative competent court.

106. The Committee recalls that under Article G, a proper balance must be struck between the right to strike in certain services and the restriction of the right to strike aiming at protection of the rights affected by such strikes. Based on the above, the Committee notes that there are specific circumstances under which a Minister or a Prefect may restrict or limit the strike and that such limitations are subject to court review. The Committee also recalls that in the aforementioned assessment in the reporting procedure, the situation was found to be in conformity with the Charter on this point (Conclusions 2022, Italy).

107. Accordingly, the Committee holds that there is no violation of Article 6§4 in respect of the Minister or the Prefect's power to issue a return-to-work order given that there are specific circumstances under which this power is to be exercised and that the order may be subject to judicial review.

CONCLUSION

For these reasons, the Committee concludes:

- by 13 votes to 2 that there is no violation of Article 6§4 of the Charter insofar as the Guarantee Commission's decisions may be subject to judicial review;

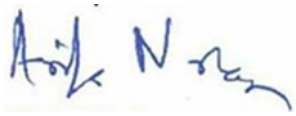
- unanimously that there is a violation of Article 6§4 of the Charter in respect of the minimum service requirement during a strike in sectors that are not essential services in the strict sense of the term;

- by 13 votes to 2 that there is a violation of Article 6§4 of the Charter in respect of the requirement to indicate the duration of a strike in the prior notice that has to be given to the employer at least 10 days before a strike is called;

- by 13 votes to 2 that there is no violation of Article 6§4 of the Charter in respect of cooling-off and conciliation procedures;

- by 13 votes to 2 that there is a violation of Article 6§4 of the Charter in respect of objective distancing and excluded periods;

- by 11 votes to 4 that there is no violation of Article 6§4 of the Charter in respect of the Minister or the Prefect's power to issue a return-to-work order given that there are specific circumstances under which this power is to be exercised and that the order may be subject to judicial review;


Mario VINKOVIĆ	Aoife NOLAN	Henrik KRISTENSEN
Rapporteur	President	Executive Secretary

In accordance with Rule 35§1 of the Rules of the Committee, a separate dissenting opinion of Carmen SALCEDO BELTRÁN, joined by Olivier DE SCHUTTER and a separate concurring opinion of George THEODOSIS are appended to this decision.

SEPARATE DISSENTING OPINION OF CARMEN SALCEDO BELTRÁN, JOINED BY OLIVIER DE SCHUTTER

1. I share the view of the majority of the Committee that there has been a violation of Article 6§4 of the Charter as regards the minimum service requirement during a strike in sectors that are not essential services in the strict sense of the term, the requirement to indicate the duration of a strike in the prior notice that has to be given to the employer at least 10 days before it is called and objective distancing and excluded periods.

2. I cannot agree, however, with the majority that there has been no violation of Article 6§4 of the Charter on account of the lack of a dedicated procedure for reviewing in substance the independent administrative authorities' decisions to prohibit or otherwise limit the exercise of the right to strike, the duration of the cooling-off and conciliation procedures and the power of the Minister or the Prefect to order workers to return to work.

3. I will begin by reiterating the value of the right to strike, in line with my dissenting opinions on the decision on the merits of 24 January 2024 in European Trade Union Confederation (ETUC), Netherlands Trade Union Confederation (FNV) and National Federation of Christian Trade Unions (CNV) v. the Netherlands, Complaint No. 201/2021, and in the decision on the merits of 11 September 2024 in European Organisation of Military Associations and Trade Unions (EUROMIL) v. Portugal, Complaint No. 199/2021.

4. The general right to collective action and, in particular, the right to strike of workers and their organisations, which is the most high-profile and contested aspect of this, is a key value of social democracy in all societies. It is "an instrument to regulate democracy"[1] which has served as a "right to transform the law".[2] Social justice remains a global challenge. To achieve it, it is necessary to establish "means of allowing differing viewpoints to be expressed".[3] The right to strike needs to be guaranteed and effective because strikes make it possible to bring about "a fairer distribution of the fruits of labour. The right to contest the law is not a cause of disruption to the legal order but a means of preserving this order in societies".[4]

5. My first argument underlines my disagreement with the decision that there has been no violation in respect of the recognised possibility of ordering workers to return to work as there are conditions attached to the exercise of this power and the order may be subject to judicial review. Article 8 of Law No. 146/1990, as amended by Law No. 83/2000, provides that the Prime Minister or a Minister delegated by them (if the strike is of national interest) and the Prefect (in other cases) may, on their own initiative or "at the recommendation of the Guarantee Commission", adopt a measure limiting the right to strike in cases of necessity and urgency, or if there is a well-founded threat of serious and imminent harm to the constitutionally protected human rights referred to

[1] Supiot, Alain, "Savant du monde du travail", 9 December 2019, https://www.radiofrance.fr/franceinter/podcasts/l-heure-bleue/reflexions-avec-alain-supiot-savant-du-monde-du-travail-9590288
[2] Supiot, Alain, "Revisiter les droits d'action collective", p. 4, https://www.college-de-france.fr/media/alain-supiot/UPL7408028760523467086_revisiter_droit.pdf
[3] Supiot, Alain, "Savant du monde du travail… ", op. cit.
[4] Supiot, Alain "Vers un droit international de la grève?", Le Monde Diplomatique, January 2024, pp. 1-2.

in Article 1, which could be caused by the interruption or alteration of the functioning of the public services referred to in Article 1.

6. It is evident, therefore, that the very exercise of an essential right, the right to strike, has been entrusted to an organ that forms part of the executive branch of the State (Minister or Prefect). It follows that there has been a violation of Article 6§4 of the Charter in respect of the administrative authority, which has full latitude and decision-making discretion to exercise that power. This is clear from the fact that a decision may be adopted on the authority's "own initiative", with it merely being required to "inform" the Guarantee Commission later, or on the basis of a prior "recommendation" by the Commission. In other words, the final, immediately enforceable decision rests with a Minister or a Prefect, and at no time is it necessary for the Guarantee Commission to intervene, either beforehand or afterwards. It should be noted that neither the Minister nor the Prefect are authorities that have a statutory duty to be impartial in their decision-making. To grant them such responsibility in a general fashion is tantamount to entrusting the power to put an end to a right of essential importance for workers and their representatives, namely the right to strike, to authorities who may be both judge and party in a given dispute.

7. Likewise, I consider that there has been a violation of Article 6§4 of the Charter and, by the same token, of Article G of the Charter, as regards the exceptional circumstances that the Committee considered sufficient to justify a Minister or Prefect issuing a return-to-work order, namely "a well-founded threat of serious and imminent harm to the constitutionally protected human rights referred to in Article 1" and "in cases of necessity and urgency".

8. The conditions for intervention, or more precisely for preventing the exercise of a right as crucial as the right to strike, must be formulated in concise, specific, precise and concrete terms. The expression "necessity and urgency" does not meet any of these criteria. Its meaning is left to the discretion of a Minister or Prefect. Similarly, the provision grants this power in the event of a "serious and imminent threat to the constitutionally protected human rights referred to in Article 1". The same observation applies. If the right to strike is to be sacrificed by decision of an executive body, the concepts on which that limitation is based must be clearly defined. Furthermore, in the contextual analysis of such situations, account must be taken of the fact that, if a country suffers harm or an emergency of such magnitude, the cause does not lie exclusively in the strike, but also in other concomitant acts or omissions, including the situation which gave rise to the collective social movement in the first place.

9. In addition, it is clear from a full reading of Article 8 of Law 146/1990 that immediately after the reference to the "well-founded threat of serious and imminent harm to the constitutionally protected human rights referred to in Article 1", the following clarification is provided: "which could be caused by the interruption or alteration of the functioning of the public services referred to in Article 1". The Committee does not mention this in § 105, yet it is relevant. Throughout the complaint and the decision on the merits, the terms "public services", "essential public services"', "essential service" and "public services of fundamental importance" are used indiscriminately. If the Committee found a violation of Article 6§4 of the Charter "in view of the excessively broad definition of essential services in Italy" (§ 90), it follows that granting the power to order workers to return to work to ensure the functioning of these public services,

thus defined in terms that “[go] beyond the limits of Article G of the Charter”, likewise constitutes a violation of Article 6§4 of the Charter.

10. To conclude my argument on this point, not only has there been a violation of Articles 6§4 and G of the Charter, but there is also a contradiction with the Committee’s previous case law. Under the reporting procedure, the Committee has examined the competence of the Government, a mediator or an employer to impose compulsory arbitration in order to put an end to a strike. The conclusions adopted show, *inter alia*, the decision-making excesses of those who hold this power when they seek to prevent strikes by relying on multiple-interpretation exceptions, for example for serious reasons affecting the economy, animal welfare, strike action lasting more than twenty days, or humanitarian considerations, etc. (Conclusions 2014 and 2010, Norway, Article 6§4; Conclusions 2010, Romania, Article 6§4), or by authorising the application, “without pre-established criteria [of] the linkage rule” (Conclusions XIX-3, Denmark, Article 6§4).

11. The case with the greatest similarity to the present complaint concerns the Committee’s examination of Article 10 of Royal Decree-Law 17/1977 on labour relations in Spain. This article, which is still in force, authorises the government to impose compulsory arbitration to end a strike. It requires the following three conditions to be met: i) the strike must continue for a prolonged period or have serious consequences, ii) the parties must have irreconcilable positions and iii) the strike must cause serious damage to the national economy. These conditions, which must all be met simultaneously, refer to the serious implications of the strike for the rights and freedoms of others. The Committee has on several occasions held that the situation was not in conformity with the Charter on the ground that the conditions under which it is possible to have recourse to compulsory arbitration were set out “in excessively vague and general terms” (Conclusions XXII-3, XVIII-1, XIX-3, Spain, Article 6§4).

12. If the two situations are compared objectively, the conditions laid down in the Spanish and Italian provisions for ending a strike are similar. Consequently, if the Committee considered that the Spanish conditions were set out in “vague and general” terms, it is difficult to see why it should have concluded that the Italian provisions were in conformity with Article G of the Charter. Even less understandable, given that the Spanish provisions grant the Government the power to order “arbitration”, which by its nature presupposes impartiality, is that the Committee should have found these arrangements to be in breach of the Charter, yet concluded that conferring a comparable power on “a Minister or a Prefect”’ was acceptable.

13. Secondly, in finding that there had been no violation, the Committee held that “the Guarantee Commission’s decisions may be subject to judicial review” (§ 79). It also held that there was no violation in respect of the Minister or the Prefect’s power to issue a return-to-work order given that “the order may be subject to judicial review”. In support of my dissenting opinion, I note that the decision on the merits points out that, on 9 April 2018, the Guarantee Commission for the law on strikes in essential public services adopted Resolution No. 18/138, setting a minimum interval of 20 days, instead of 10, between one strike action and the next in the local transport sector, following a request from an administrative court in the Lazio Region dated 9 December 2019. The decision, which echoed the Commission’s interpretation, was challenged by the trade unions. The Council of State, in rulings no. 2115 and no. 2116 of 1 March

2023, overturned the administrative court's decision and requested the Guarantee Commission to reassess the decision it had taken in terms of distancing of strikes in the transport sector.

14. I would emphasise one crucial point here and that is the passage of time. The Guarantee Commission's decision dates from 9 April 2018, whereas the rulings finding the conditions set by the Commission excessive date from 1 March 2023. Almost five years had elapsed. In the meantime, the conditions adopted had to be complied with. Justice delayed is not justice done. Obtaining a favourable decision five years later has no meaningful impact on the dispute that gave rise to it.

15. The Committee should not confine itself, as it usually does in its examinations, to checking whether there is a judicial remedy, without carrying out a detailed analysis of the process per se. Among the points to be examined should be the time required to adopt the judgment. If "the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact" (International Commission of Jurists (ICJ) v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, § 32), then for protection to be effective there must be a substantive analysis of the remedies and the various aspects or specific features of the procedures, i.e. beyond merely the question of whether a remedy is formally available.

16. The European Court of Human Rights has underlined the importance of administering justice without delays which might jeopardise its effectiveness and credibility, on the basis of Article 6§1 of the Convention (*H. v. France*, 989, § 58; *Katte Klitsche de la Grange v. Italy*, 1994, § 61). The right to a decision within a reasonable time applies also to proceedings relating to employment disputes which, by their nature, call for expeditious decision (*Frydlender v. France* [GC], 2000, § 45; *Vocaturo v. Italy,* 1991, § 17; *Ruotolo v. Italy,* 1992, § 17; see also the references in § 72 to the judgment in *Bara and Kola v. Albania*, 2021). The Committee should therefore examine the effectiveness of the rights enshrined in the Charter in the light of national procedures for challenging decisions relating to those rights, in particular as regards the need, in certain cases, for a speedy decision or judgment on the right to strike.

17. Given the context in which the right to strike is exercised and takes place, it is essential that the procedures be specific, as requested by the applicant in their first application, and expeditious, since a belated judicial review would mean that, when it is finally handed down, any favourable decision would be ineffective, as illustrated by the example cited. In this case, the judgment condemning the Commission's resolution unfortunately came too late: the resolution had already produced its effects, with the result that the right to strike was infringed with no possibility of effective redress years later.

18. Thirdly and lastly, as regards the duration of the cooling-off periods and conciliation procedures, I consider that the arguments on which the Committee based its finding of no violation demonstrate precisely the opposite, namely a violation of Article 6§ 4 of the Charter. In the decision (§94), the periods of notice or cooling-off periods prescribed in connection with pre-strike conciliation procedures are held to be in conformity with Article 6§4 as long as they are of "reasonable duration" (Conclusions XIV-1 (1998), Cyprus). Then, to clarify what is meant by this term, the Committee points

out that the requirement for “a 30-day period” to have elapsed before mediation attempts are deemed to have failed, and strike action can be taken, is excessive (Conclusions XVII-1 (2004), Czech Republic).

19. The factors on which the Committee based its conclusion that there had been no violation rest on the fact that in the Czech Republic the 30-day period allowed for mediation “was a minimum period” before strikes could be called, whereas in Italy, the 20-21 day conciliation period is a maximum period (as set by collective agreements) and that the rules for cooling-off and conciliation procedures “are established by collective agreements”, which result from a negotiation process between the employer and the workers’ representatives, meaning that workers’ representatives were afforded an opportunity to negotiate their terms (§§ 95 and 96).

20. I disagree on three points. Firstly, in all its conclusions concerning the Czech Republic, the Committee held that 30 days constituted an excessive period of time, without it being established that the conclusion of non-conformity arose from the fact that this period was a minimum one. To quote the text: “In particular, it found that the length of the period prescribed in Section 12 of the Act ("Proceedings before a mediator shall be regarded as unsuccessful if the dispute is not resolved within 30 days of the day when the mediator was acquainted with the subject-matter of the dispute, unless the contracting parties agree on another time-limit") was excessive” (Conclusions XVIII-1, XX-3 (2014), XIX-3 (2010), Czech Republic, Article 6§4). The term “minimum” does not appear in any of these conclusions.

21. Secondly, it is true that the setting of time limits results from collective agreements, but at no time did the Committee examine the power conferred on the Guarantee Commission to extend the duration of the conciliation procedure beyond the time limits provided for in the collective agreements (Article 13, paragraph 1, c) of Law No. 146/1990, as amended by Law No. 83/2000). There is no mention of that conferral in the paragraph in which it examines this point (the duration of the cooling-off and conciliation procedures, §§ 94 and 97). It is a unilateral, general, abstract grant, without any conditions or rules, upper limit or similar. It constitutes a clear breach of Article 6§4 of the Charter, leaving the effectiveness of the right to strike entirely to the discretion of the Commission. In addition, this prerogative demonstrates that the periods adopted at collective bargaining level, the only ones which the Committee has taken into account, may be longer and thus easily reach the 30-day mark mentioned by the Committee in its previous case law.

22. Thirdly, if the Committee took the view that the requirement to give prior notice of the duration of the strike, combined with the requirement to notify the employer 10 days in advance and the fact that the definition of minimum service in Italy is very broad, suggests that this requirement should be regarded as an excessive restriction of the right to strike and a violation of Article 6§4 of the Charter, it should, logically and consistently, have examined the duration of these cooling-off and conciliation periods overall. It is clear then that, in reality, these periods are excessively long, according to its own case law, and it is worth reiterating that the Guarantee Commission may extend them.

23. Measures reducing the right to strike, i.e. its effectiveness, are currently under consideration. Striking is a fundamental right. Its conditions, limitations or restrictions

must be regulated in a specific, precise and rigorous manner, construed narrowly and never rob it of its essence. Strikes must be able to achieve their objective of protesting and demanding social rights. Moderating their effects by means of long cooling-off or conciliation periods, or at the discretion of an organisation, does not meet these requirements. Articles 6§4 and G of the Charter have thus been violated.

24. Lastly, equality of arms must be preserved both in law and in fact. Equality of arms does not exist in the Italian provisions examined. Analysis reveals prerogatives whereby a Prefect, a Prime Minister, a Minister or a Guarantee Commission are granted powers to adopt decisions with complete or very broad discretion as regards the return to work or the duration of cooling-off periods and conciliation procedures. There is, however, no equivalent provision for organisations calling a strike. In Sweden, the Law (1976:580) on employee participation in working life [*Lag (1976: 580) om medbestämmande i arbetslivet]*,[5] section 45, provides that, where an employers' organisation or a trade union organisation intends to take industrial action or to extend ongoing industrial action, it must give written notice of this to the other party and to the National Mediation Office at least seven working days in advance, but this notification requirement may be waived "if there is a valid impediment". The term "valid impediment' is open to many interpretations and there is no reason why it should not be held to include, for example, the fact that the objective or planning of the strike would be compromised. This reference highlights the value of strikes, not only as a fundamental right, but also as a strategy, as well as the equivalence of exceptional circumstances for both parties to the dispute, especially in a context of globalisation, world trade and the negative sentiment around strikes.

25. For all these reasons, I consider that the Committee should have found a violation of Article 6§4 of the Charter in respect of the lack of a dedicated procedure for reviewing in substance the independent administrative authorities' decisions to prohibit or otherwise limit the exercise of the right to strike, the duration of the cooling-off and conciliation procedures and the power of the Minister or the Prefect to order workers to return to work.

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5 https://www.government.se/government-policy/labour-law-and-work-environment/1976580-employment-co-determination-in-the-workplace-act-lag-om-medbestammande-i-arbetslivet/

SEPARATE CONCURRING OPINION OF GEORGE THEODOSIS

1. As regards the issue of informing the employer in advance of the duration of a strike, which constitutes the third matter on which our Committee held, by majority, that there was a violation of Article 6§4 of the Charter (see §§91–93 of the decision), I would like to express some additional arguments and also provide clarification regarding my vote.

2. As has been consistently accepted by our Committee, and in accordance with the combined provisions of Articles 6§4 and G of the Charter, substantive and procedural restrictions on the exercise of the right to strike are permissible insofar as they are provided by law, pursue a legitimate aim, and are proportionate—so that the essence of the right is not impaired; in other words, no such obstacles are created as to make the exercise of the right impossible or excessively difficult (see Conclusions II (1969)).

3. I do not believe that a mere national legislative requirement to inform the employer in advance of the duration of a strike, whether it concerns essential services or not, falls within these categories, since such a measure does not significantly weaken the right to strike so as to affect its core purpose, which is to exert substantial pressure on the employer.

4. Firstly, trade unions may declare a strike of indefinite duration and communicate this to the employer. Furthermore, if trade unions declare a strike of fixed duration and their mobilisation does not yield the expected results, they can call a new strike, and so forth. Finally, there is also an issue related to the exercise of the right to freedom of association, enshrined in Article 5 of the Charter: when workers collectively decide to go on strike, they must know for how long they will be absent from work and thus for how long they will suffer the adverse consequences of that decision (primarily the loss of wages). Therefore, such a provision, in my opinion, serves a legitimate aim and is proportionate.

5. However, in the present case, the issue does not arise in this manner. Rather, it is a combination of factors that leads to the conclusion that, in the case of essential services in Italy, the requirement to inform the employer of the duration of the strike is contrary to Article 6§4 of the Charter (see also Conclusions 2006, Italy).

6. To begin with, in Italy, before declaring a strike in essential services, a trade union must give ten days' notice. At the same time, there is also a "cooling-off" and conciliation period lasting up to 21-22 days (see §§97–99 of the decision), together with the imposition of a prohibition on strikes for a certain period after a strike has taken place ("objective distancing"), and during specific periods of the year ("excluded periods") (see §§98–103 of the decision)—all of which combine with an excessively broad definition of "essential services."

7. It is therefore the combination of all these factors that significantly undermines the right to strike in essential services in Italy, as was already established in our 2006 Conclusions on Italy (see above). More specifically, when a trade union in Italy declares a strike of limited duration, the employer—being informed in advance of its

length and aware of all other procedural restrictions (notice periods, prohibition of declaring a new strike for a certain period after the previous one)—is placed in a position of advantage vis-à-vis the unions, as they can assess in advance whether the strike, whose duration they already know, will seriously affect them or not. Conversely, if the employer does not know the duration of the strike in advance—even in the presence of the above procedural constraints—the declaration of the strike could more effectively serve its purpose, which is to exert sufficient and effective pressure on the employer to accept, at least partially, the workers' demands.

8. For these reasons, and based on the above clarifications, I consider that the provision of Italian legislation requiring prior notification of the duration of strikes in essential services violates Article 6§4 of the Charter, as rightly held by the majority.