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Standing to Sue against Anti-Union Conduct and Representative Union Prerequisites

The Italian Supreme Court of Cassation, Civil Division defines the territorial and sectoral scope prerequisites for bringing summary proceedings under Article 28 of the Workers' Statute

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Current Legal Framework as of 9 November 2026: settled case law on active standing under Article 28 of Law no. 300/1970, clarifying its strict functional autonomy vis-a-vis the representativeness prerequisites of Article 19 of the Workers' Statute following constitutional case law.

ABSTRACT

Abstract: In Judgment no. 25184 of 2026, the Italian Supreme Court of Cassation, Civil Division addresses the prerequisites for **standing to sue against anti-union conduct** under Article 28 of the Workers' Statute, ruling out any assimilation with the selective criteria introduced into Article 19 of the Workers' Statute by constitutional case law. The decision reaffirms that triggering this special summary proceeding merely requires the **national dimension of the trade union association**, substantiated by genuine organizational presence and effective collective bargaining or industrial action across most of the national territory within the specific **relevant industrial sector**. This contribution examines the substantive scope of this special judicial protection, its procedural implications, and the **burden of proof** incumbent upon the claimant trade union.

Key Takeaways

- **Functional autonomy of remedies:** repressive judicial protection under Article 28 of the Workers' Statute safeguards general trade union freedom and the right to strike, diverging fundamentally from the selective prerequisites of comparative representativeness introduced into Article 19 of the Statute by constitutional case law.
- **Dual requirement of national status:** active standing requires two concurrent conditions: structural organizational presence across most of the national territory and the effective exercise of trade union activity (whether industrial conflict or collective bargaining).
- **Industrial sector filter:** the substantive consistency of trade union activity must be demonstrated specifically with regard to the economic sector to which the respondent undertaking belongs, whereas collective agreements signed in different sectors are irrelevant.
- **Insufficiency of confederal affiliation:** membership in a national confederation or the appointment of representatives to institutional advisory bodies does not cure the organizational fragmentation or territorial weakness of the claimant sectoral federation.

CASE DOSSIER

JURISDICTION
Italy (Civil Law)

SUBJECT AREA
Labour & Employment Law & Trade Union & Collective Labour Law

LEADING DECISION
Italian Supreme Court of Cassation, Civil Division, Judgment of 10 September 2026, no. 25184 — Dismissed the union's appeal again

Legal Principle / Editorial Headnote

For the purpose of recognizing standing to sue under Article 28 of Law no. 300 of 1970 in favor of the local bodies of national trade union associations, it is both necessary and sufficient to establish organizational presence across most of the national territory and the performance of effective trade union activity across most of the national territory within the specific industrial sector to which the respondent undertaking belongs; neither qualification as a comparatively or most representative trade union nor the execution of normative collective agreements or participation in collective bargaining negotiations under Article 19 of the Workers' Statute is required, given the clear functional divergence between general judicial protection of trade union freedom and the selective enjoyment of workplace union rights under Title III.

01. STANDING TO SUE AGAINST ANTI-UNION CONDUCT BETWEEN ARTICLE 28 AND ARTICLE 19 OF THE WORKERS' STATUTE

Within the institutional architecture crafted by Italian statutory labor legislation, **standing to sue against anti-union conduct** constitutes the procedural cornerstone safeguarding trade union freedom and collective activity in the workplace. In Judgment no. 25184 of 2026, the **Italian Supreme Court of Cassation, Civil Division** once again delineates the boundary separating the scope of application of **Article 28** of Law no. 300 of 20 May 1970 from the prerequisites governing access to enhanced workplace support measures under **Article 19** of the same enactment. The dispute arose out of an application brought by the regional secretariat of a sectoral trade union federation against a joint-stock company operating **local public transport services**, which had consistently refused to recognize statutory rights to hold workplace assemblies and to utilize paid and unpaid union leave.

The core legal issue revolves around the alleged osmosis between the parameters of **selective representativeness** and access to this special **summary judicial proceeding**. Following the dismissal of its claim on appeal due to the claimant organization's lack of **national status**, the union invoked a purported alignment of standing requirements between the two statutory provisions stemming from recent rulings of the constitutional court. The nomophylactic ruling of the Supreme Court of Cassation squarely rejects that interpretive approach, reaffirming the **axiological and teleological independence** of the repressive summary remedy vis-a-vis collective bargaining selection filters[1].

> **Systemic framework:** the summary judicial protection afforded by Article 28 of Law no. 300 of 1970 counteracts any employer infringement of freedom of organization and the right to industrial conflict, irrespective of quantitative membership thresholds or participation in normative collective bargaining tables.

1.1 — Structural Autonomy of the Repressive Action and Scope of Trade Union Freedom

To grasp the autonomy of this procedural instrument, one must recall that Article 28 operates as a judicial guarantee protecting **primary constitutional values**, specifically **trade union freedom** enshrined in Article 39 of the Italian Constitution and the **right to strike** guaranteed under Article 40 of the Constitution. Unlike the provisions grouped under Title III of the Workers' Statute—which form the body of **promotional support legislation** designed to foster institutional union presence within business undertakings—Article 28 does not confer special organizational prerogatives; rather, it secures **injunctive and restorative relief** against employer conduct objectively obstructing the free exercise of collective autonomy.

The statutory provision subjects the initiation of urgent proceedings to a single subjective prerequisite: the action must be brought by the **local bodies of national trade union associations** holding a concrete interest therein. Consequently, the **national dimension** of the trade union association constitutes the indispensable objective prerequisite establishing **standing to sue against anti-union conduct**, operating as both a necessary and a sufficient condition without the legal system requiring a **position of representative preeminence**. Repressive judicial protection brooks no restrictive interpretations aimed at subordinating legal standing to **minimum electoral thresholds** within the productive unit or to the execution of company-level collective agreements, since such restrictions would unduly curtail the **right to effective judicial protection** of emerging or minority union organizations.

Judicial scrutiny must therefore keep the plane of **entitlement to procedural standing** strictly distinct from the merits of the **substantive claim asserted**. A trade union body may possess full standing to petition the labor court in summary proceedings to challenge an **unlawful ban on union proselytizing**, while simultaneously being denied, on the merits, any entitlement to **permanent company premises** or additional paid union leave where it lacks the **special statutory prerequisites** set out in Articles 19, 20, and 23 of the Workers' Statute.

> *Proceedings for the repression of anti-union conduct protect the freedom of bargaining and industrial conflict of every organization of national standing, without subordinating access to justice to hierarchies of comparative representativeness.*

1.2 — The Purported Alignment with Judgment no. 156/2025 of the Italian Constitutional Court

The most intricate argument debated in the proceedings culminating in Judgment no. 25184 of 2026 concerned the alleged impact of **Judgment no. 156 of 2025** of the Italian Constitutional Court on the interpretation of Article 28. In that ruling, the Constitutional Court, adjudicating upon Article 19 of Law no. 300 of 20 May 1970, introduced a third channel of access to the **establishment of workplace union representations (RSA)**, anchored to the criterion of **comparative representativeness at the national level** for associations that had neither signed collective agreements applied within the undertaking nor participated in the relevant negotiations. According to counsel in the lower courts, the reference to an **alignment of standing titles** expressed in the Constitutional Court's reasoning required extending the very same **stringent selective filter** to actions against anti-union conduct.

The Italian Supreme Court of Cassation, Civil Division forcefully rejects any such conceptual assimilation. The Court underscores that the differentiated statutory regime rests on the specific **rational selective function** inherent in Article 19, an institution conferring **intrusive organizational powers** affecting business operations solely upon unions endowed with a high degree of **social reliability and worker support**. Conversely, Article 28 confers neither co-management prerogatives nor privileged bargaining channels, but rather a **fundamental judicial safeguard** against employer abuse. The alignment mentioned in constitutional case law must be understood in a **purely directional and geographical sense**—that is, confined to identifying the national horizon as the minimum baseline of assessment, without transplanting **quantitative majority thresholds** into procedural standing to sue.

Any contrary solution would inflict an irremediable breach upon the **principle of effective judicial protection**, carving out an immunity zone in which employers could obstruct the activities of lawfully established national trade unions while shielding themselves from judicial review on the ground of an alleged lack of relative majority status. This **axiological distinguishing** definitively establishes that a trade union association lacking the entitlement to form workplace union representations (RSA) may nonetheless successfully bring proceedings under Article 28 whenever the employer engages in **discriminatory acts impairing** its freedom of action.

02. NATIONAL STATUS PREREQUISITES AND THE SECTORAL DIMENSION OF TRADE UNION ACTIVITY

While the Supreme Court of Cassation rules out the need for comparative majority representativeness on the one hand, on the other hand it anchors **standing to sue against anti-union conduct** to a rigorous factual inquiry into the concrete national stature of the claimant organization. The text of **Article 28** of Law no. 300 of 20 May 1970 expressly requires that the action be brought by the **territorial bodies** of associations possessing a national character. That statutory predicate cannot be reduced to a mere **formal self-designation in union bylaws** or a purely nominalistic label; rather, it demands substantive verification of the organization's **effective operational presence** across the country's economic fabric.

> **Governing principle:** the national character of a trade union association consists in the concurrent existence of a stable organizational network and effective collective self-protection activity extending across most of the national territory, specifically assessed within the relevant industrial sector.

2.1 — Qualified Territorial Presence and Indicators of Operational Effectiveness

Supreme Court case law has progressively developed a taxonomy of **symptomatic indicators** capable of substantiating the national dimension of a trade union. The organization is not required to maintain a capillary presence in every single province or region; instead, a **qualified presence across most of the national territory** suffices. Even so, the structural element must necessarily be accompanied by a functional dynamic: the association must demonstrate the performance of **genuine collective self-protection activity**, evidenced through the **calling of strikes**, the execution of decentralized or company-level collective agreements, the handling of **conciliation procedures**, and the conduct of collective labor disputes on a multi-regional scale[1].

Evidentiary assessment requires a historical reconstruction of the association's operational presence. Merely producing union bylaws envisaging regional branches, or submitting formal resolutions **establishing local bodies** devoid of concrete operational life, does not suffice. **Documentary evidence** must attest to the continuous exercise of **powers of worker representation**, demonstrating an ability to engage as an institutional interlocutor with a plurality of employers distributed across **distinct geographical macro-areas**. Absent such empirical corroboration, the entity cannot be regarded as representative of a meaningful segment of the workforce at the national level, subsiding instead into a circumscribed or purely local phenomenon.

From a doctrinal standpoint, selecting the entities endowed with legal standing serves the purpose of preventing **particularistic and opportunistic abuses** in resorting to a procedural remedy characterized by exceptional speed and backed by criminal enforcement sanctions. Conferring standing to initiate proceedings under Article 28 upon formations lacking genuine organizational roots would expose **industrial relations** to hazardous **bargaining fragmentation**, turning a safeguard designed to protect trade union freedom into an instrument of pressure wielded by groups devoid of genuine support among employees.

2.2 — The Industrial Sector Perimeter as a Filter for Verifying Representativeness

One of the most substantive passages in the reasoning of Judgment no. 25184 of 2026 concerns the precise delineation of the economic context within which national status must be verified. The Supreme Court of Cassation holds that verifying **territorial presence** and effective union action cannot be conducted in the abstract or by indiscriminately aggregating activities carried out across heterogeneous branches of industry; rather, it must be strictly anchored to the **industrial sector of the respondent employer undertaking**. The underlying rationale lies in the necessary **nexus of substantive relevance** between the alleged infringement and the **qualified interest of the trade union** in opposing it.

In the case at hand, the claimant trade union organization sought to prove its **national character** by relying upon its execution of the **collective agreement for railway operations** and the collective agreement covering the workforce of a major road infrastructure operator. The Supreme Court upheld the assessment of the appellate court, which had found those agreements wholly unsuitable to prove national presence within the sector of **local public transport**—an industry governed by distinct bargaining dynamics and by its own specific **collective contractual framework**.

Sectoral specialization thus operates as a preclusive threshold: national prominence achieved by a union within one specific branch of industry (such as rail or air transport) generates no **spillover effect** into contiguous or neighboring sectors (such as urban road transit). Allowing cross-sectoral reliance upon national status would empty the statutory prerequisite of **standing and concrete interest to sue** under Article 28 of any substantive meaning, enabling **procedural incursions** into industries where the organization lacks both a genuine representative base and widespread territorial roots.

2.3 — Organizational Fragmentation and the Insufficiency of Confederal Affiliation

Examination of the judgment's reasoning yields a further clarification of considerable **practical significance** concerning the evidentiary weight of **confederal affiliation**. Specifically, the claimant federation emphasized its affiliation with a **most representative trade union confederation** and pointed out that it had appointed representatives to prominent **institutional advisory committees**, including supervisory boards of social security institutions and national bilateral bodies. The Italian Supreme Court of Cassation, Civil Division flatly ruled out that such institutional appointments can compensate for the sectoral federation's lack of territorial presence.

Standing to initiate proceedings for the repression of anti-union conduct vests in the **local body of the sectoral federation** representing the interests of workers in the relevant industry, and not in the overarching confederal umbrella organization. Consequently, participation in **central collegiate bodies** reflects the broader politico-institutional stature of the parent confederation, without automatically demonstrating an **effective organizational structure** of the affiliated federation within the specific industrial sector concerned. Holding otherwise would amount to reintroducing, in a different guise, an **irrebuttable presumption of representativeness** grounded solely on confederal affiliation—an approach long superseded by the evolution of Italian collective labor law.

In reviewing the empirical figures established in the proceedings below, the Supreme Court found the appellate decision soundly reasoned where it noted that the union was present in **only eight regions** and fewer than thirty out of more than one hundred provinces, with fewer than three thousand members out of a sectoral workforce exceeding one hundred and thirteen thousand employees. Such **partial territorial concentration**, predominantly centered on the metropolitan area of Rome and a handful of peripheral districts, fails to satisfy the requirement of **presence across most of the national territory** mandated by settled case law, revealing an insurmountable state of organizational fragmentation.

03. DISTINGUISHING FEATURES AND CONVERGENCES: INFORMATION RIGHTS AND BOUNDARIES OF SELF-EMPLOYMENT

A systematic understanding of **standing to sue against anti-union conduct** is further enriched by comparison with other recent Supreme Court rulings handed down over the same period. The reach of **Article 28** of Law no. 300 of 20 May 1970 is continually tested by two opposing forces: on the one hand, the objective expansion of **employer duties deriving from European Union law**; on the other hand, the strict **subjective delimitation of the special summary remedy**, traditionally confined within the boundaries of **subordinate employment** strictly construed.

> **Synoptic overview of remedies:** whereas breaching mandatory statutory information obligations triggers repressive judicial protection even against employers unaffiliated with collective bargaining associations, the absence of a subordinate employment relationship bars recourse to the statutory summary remedy from the outset.

3.1 — Breach of Statutory Consultation Duties and Special Protection in the Air Transport Sector

A noteworthy convergence on the objective plane emerges from **Judgment no. 25178 of 2026** of the **Italian Supreme Court of Cassation, Civil Division**, delivered on the very same date as the decision under review. That dispute pitted a

prominent **multinational airline** against local sectoral union representations over the carrier's **categorical refusal** to hold union meetings, to disclose **mandatory domestic information flows** regarding the use of temporary agency work contracts, and to cooperate toward the **election of workplace health and safety representatives**. The airline objected that those duties were inapplicable to it, arguing that it applied no Italian national collective labor agreement and belonged to none of the signatory employers' federations.

The Supreme Court dismissed the employer's defense, holding that the **information and consultation procedures** mandated by Legislative Decree no. 25 of 6 February 2007—enacted in transposition of **Directive 2002/14/EC**—derive their binding force directly from **domestic statutory law** rather than from ordinary collective agreements. An employer stably employing workers on Italian territory cannot hide behind its **negative freedom not to bargain** so as to evade a **minimum, non-derogable core of participatory rights**. An outright, blanket refusal to engage in any form of dialogue constitutes conduct impairing the union's representative function, amounting to a genuine **abuse of freedom of contract** actionable under Article 28 of the Workers' Statute[2].

This holding carries major systemic importance in balancing industrial powers: while an entrepreneur remains free to decide whether or not to adhere to a given sectoral collective agreement, the undertaking nonetheless remains legally bound to establish **adequate participatory channels** ensuring meaningful dialogue with **worker representatives** operating within the productive unit. **Sectoral collective bargaining** thus serves as a **technical benchmark** for assessing the adequacy of consultation procedures, preventing entrepreneurial autonomy from degenerating into complete immunity from judicial oversight.

3.2 — Contracted Public Healthcare Professionals and Inapplicability of Summary Proceedings: Subordination versus Quasi-Subordination

At the opposite end of the spectrum, concerning the **subjective limits on the availability** of the action, stands **Order no. 698 of 2026** of the **Italian Supreme Court of Cassation, Civil Division**. In those proceedings, a medical trade union challenged under Article 28 the conduct of a regional public administration during decentralized negotiations for the implementation of the **National Collective Agreement** governing outpatient medical specialists. The Supreme Court declared the **claim inadmissible from the outset**, reaffirming the settled bar against extending this summary remedy to **autonomous or quasi-subordinate contracted professional relationships**, as previously examined in the analysis on proceedings against anti-union conduct and contracted public healthcare physicians[3].

The insurmountable textual and interpretive threshold lies in the statutory concept of **employer** set forth in Article 28. Because the Workers' Statute regulates safeguards specific to **subordinate employment**, its special summary procedure does not apply outside the sphere of subordination. Unlike **contractualized civil servants** employed by public administrations—for whom **repressive statutory protection operates in full**—within relationships involving **coordinated collaboration of contracted healthcare professionals** the public contracting authority acts on an **equal footing of public-law coordination**, precluding the existence of **managerial and hetero-organizational authority** strictly speaking.

This doctrinal distinction creates no gap in judicial protection incompatible with **Article 24 of the Italian Constitution**, inasmuch as trade union organizations representing quasi-subordinate professionals retain full access to **ordinary plenary proceedings** before the competent court and may apply for **atypical interim relief under Article 700 of the Code of Civil Procedure** to safeguard their collective prerogatives. Such **structural distinguishing** confirms the **overall rationality of the statutory design**: Article 28 remains an **exceptional procedural remedy**, tailored to the specific **contractual asymmetry** of subordinate employment and closed to extension by analogy.

04. CRITICAL REMARKS AND PROCEDURAL IMPLICATIONS FOR LITIGATION COUNSEL

The interpretive evolution of **standing to sue against anti-union conduct** charted by the Supreme Court of Cassation compels legal practitioners and litigation counsel to undertake a careful reassessment of **procedural strategies**, both when drafting initial applications and when formulating defenses on behalf of the **respondent employer**. Maintaining a clear separation between repressive proceedings under **Article 28 of the Workers' Statute** and access to workplace union rights under Title III prevents unwarranted conceptual overlaps, while simultaneously investing the **evidentiary burden** with heightened empirical complexity.

> **Procedural guidance:** the claimant trade union bears the specific burden of documenting the effectiveness of its collective action within the industrial sector of the respondent undertaking; conversely, employer's counsel must timely raise preliminary objections highlighting territorial fragmentation or the sectoral irrelevance of collective agreements produced in evidence.

4.1 — Burden of Proof, Procedural Objections, and Litigation Strategies under Article 28

In courtroom litigation, counsel representing a trade union organization cannot merely file its **deed of incorporation**, its **national bylaws**, or formal certificates attesting to **affiliation with confederal umbrella organizations**. Counsel initiating summary proceedings must discharge a rigorous **burden of proof** demonstrating both the solidity of the union's **organizational network** and its concrete exercise of **collective representation functions** across most of the national territory. Specifically, documentary submissions must focus on **company-level or territorial collective agreements** pertaining to the very same industrial sector, **collective conciliation minutes**, and official strike calls or industrial actions capable of substantiating a **tangible following among the workforce**.

Conversely, for **employer's defense counsel**, timely raising a **preliminary procedural objection of lack of active standing** constitutes the primary and most effective line of defense. That objection must be structured by challenging the **sectoral relevance of opposing documentary evidence**: counsel should demonstrate that any collective agreements or understandings exhibited by the claimant pertain to **heterogeneous branches of production** distinct from the industry in which the respondent undertaking operates, thereby neutralizing any **cross-sectoral evidentiary value**. On the geographical plane, it is equally vital to highlight the **localized concentration of union offices** or the limited number of provinces covered, showing that the union's activity remains confined to a **partial territorial scale** insufficient to meet the statutory **requirement of national status**.

Particular care must also be devoted to rules governing **evidentiary preclusions and statutory time-bars**. Within proceedings under Article 28, both the **initial summary phase** and the subsequent **full-cognizance opposition phase** demand **timely documentary submissions**. As underscored in Judgment no. 25184 of 2026, belated production of **employer statistical reports** or collective agreements at the final oral hearing incurs a **ruling of inadmissibility** for breach of adversarial due process, barring both the trial court and the Supreme Court of Cassation from considering **factual elements** not properly introduced within procedural deadlines.

Legal Dimension	Substantive Prerequisites	Claimant's Burden of Proof	Employer's Defense Strategy
Territorial Presence	Structured organizational presence extending across most national regions and provinces.	Documentary proof of active offices, territorial bodies, and multi-regional operational branches.	Objection of territorial fragmentation, presence confined to few districts, or purely paper-based existence.
Operational Effectiveness	Continuous exercise of collective self-protection (collective bargaining, strike calls, conciliations).	Official strike notices, executed collective agreements, and formal meeting or conciliation minutes.	Challenge highlighting sporadic activity, bargaining isolation, or lack of genuine employee support.
Sectoral Relevance	Specific operational activity within the industrial sector to which the respondent undertaking belongs.	Collective agreements and industrial disputes conducted within the company's specific economic sector.	Objection of contractual heterogeneity and irrelevance of representativeness accrued in other industries.

Ultimately, the Supreme Court's ruling consolidates a **functional and dynamic concept of national status**. Dispensing with comparative representativeness filters safeguards **trade union freedom** against arbitrary employer conduct, while requiring union counsel to furnish rigorous proof of a **collective entity genuinely rooted and active in the field**, free from nominalistic or confederal shortcuts.

References & Authorities Cited

Statutory Provisions

- Article 28 of Law no. 300 of 20 May 1970 (Workers' Statute) — Repression of anti-union conduct.
- Article 19 of Law no. 300 of 20 May 1970 (Workers' Statute) — Establishment of workplace trade union representations.
- Legislative Decree no. 25 of 6 February 2007 — General framework for informing and consulting employees.
- Articles 39 and 40 of the Constitution of the Italian Republic — Trade union freedom and the right to strike.

Article 409, no. 3, of the Italian Code of Civil Procedure — Individual labor disputes, agency, and coordinated collaboration relationships.

Case Law Cited

1. **Italian Supreme Court of Cassation, Civil Division, Judgment of 10 September 2026, no. 25184** — Dismissed the union's appeal against the appellate judgment confirming lack of active standing under Article 28 of the Workers' Statute due to the absence of national presence within the local public transport sector, while squarely reaffirming the inapplicability to Article 28 of the comparative representativeness criteria set out in Article 19 of the Workers' Statute. Outcome: appeal dismissed. Para.: grounds of appeal 1–3.

2. **Italian Supreme Court of Cassation, Civil Division, Judgment of 10 September 2026, no. 25178** — Dismissed the employer's appeal against a finding of anti-union conduct, holding that the minimum employee information and consultation duties established by Legislative Decree no. 25/2007 derive directly from statutory law and bind the employer irrespective of formal adherence to sectoral collective bargaining agreements. Outcome: appeal dismissed. Para.: substantive grounds on statutory consultation duties.

3. **Italian Supreme Court of Cassation, Civil Division, Order of 13 January 2026, no. 698** — Dismissed the trade union's appeal on the ground of inadmissibility of summary proceedings against anti-union conduct brought on behalf of contracted outpatient medical specialists, owing to the autonomous quasi-subordinate nature of the professional relationship and the absence of a subordinate employer strictly speaking. Outcome: appeal dismissed. Para.: preliminary admissibility assessment.

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