DIRECTORATE GENERAL
HUMAN RIGHTS AND RULE OF LAW
DEPARTMENT OF THE
EUROPEAN SOCIAL CHARTER

28/10/2021 RAP/RCha/ITA/20(2021)

EUROPEAN SOCIAL CHARTER

RESPONSE OF THE ITALIAN GOVERNMENT TO THE COMMENTS SUBMITTED BY FICIESSE ON

THE 20TH SIMPLIFIED ITALIAN GOVERNMNT'S REPORT

Registered by the Secretariat on 28 October 2021

CYCLE 2020

m_lps.32.REGISTRO UFFICIALE.U.0020468.28-10-2021

Mr. Jan Malinowski
c.c. Henrik kristennsen

Department of the European Social Charter
Directorate General I
Human Rights and Rule of Law
Council of Europe
F-67075 Strasbourg Cedex
jan.malinowski@coe.int
henrik.kristensen@coe.int
social.charter@coe.it

Annex: 1

Subject: Response of the Italian government to the comments submitted by FICIESSE on complaint CGIL v. Italy (n°140/2016).

Dear Mr. Malinowski,

Please find attached the Italian government's response regarding FICIESSE's comments on the 20th National report on the implementation of the European Social Charter, pursuant to the collective complaint n° 140/2016 CGIL v.Italy.

Head of Unit
Mrs. Maria Concetta Corinto

Firmato digitalmente da CORINTO MARIA CONCETTA
C=IT
O=MINISTERO DEL LAVORO E DELLE POLITICHE SOCIALI

IM/ 10.03

Documento firmato digitalmente ai sensi degli articoli 20 e 21 del d.lgs. 7 marzo 2005, n. 82.

SUBJECT: Case 140/2016 - Collective complaint to the C.E.D.S. (European Committee of Social Rights) presented by the C.G.I.L. (Italian General Confederation of Labor) vs. the Italian State.

European Council. "XX Report on the application of the European Social Charter" by Italy, by the Ministry of Labor and Social Policies.

Observations presented by FICIESSE. **(“*Associazione Finanzieri Cittadini e Solidarietà”*)**.

Examined the further observations produced, this time, by FICIESSE ("Association of Citizens and Solidarity Financiers" - in relation to the "XX Report on the application of the European Social Charter" by Italy, there is the obligation to reiterate, also in this occasion, how all the structured and in-depth response widely formulated by the government in the collective complaint n°. 140/2016 are in themselves fully capable of rebutting the considerations put forward by the Association in question. Therefore, the precise contents and all of the articulated defensive memories whereby, point by point, the groundlessness of the "reasons" for the complaint and the consequent, not acceptable, critical remarks made by the C.E.D.S. in its "report" dated January 2019 are thus hereby confirmed.

In particular, it is considered appropriate to point out:

a. that on a preliminary basis, the profiles of **inadmissibility of the observations** produced by the aforementioned organization, which - for the pursuit of statutory purposes - is not of a trade union nature. In fact, from the examination of the "presentation note" that the part expressly encloses in support of the letter addressed to the C.E.D.S. and dated the 2nd of September 2021, it appears that the "Ficiesse" Association:

(1) has **no trade union character**, to the point of having provided that "(...) *in the pursuit of institutional purposes, the national and territorial bodies of the association are prohibited from engaging in behavior that can be configured as trade unions*". In this regard, for the sake of completeness, it should be noted that FICIESSE, although being fully part of the "associations or circles among the military" for the constitution of which prior ministerial consent is required, it has never obtained it formally. The prior ministerial assent to the constitution of associations amongst the military personnel is today provided for by **article 1475 of the legislative decree n. 66 of 2010;**

(2) it is **not a professional association** because it is constituted "by members of the Guardia di Finanza and ordinary citizens", and, in any case, it has no legal legitimacy to represent the interests of the members of the Finance police, as this function is expressly delegated by law only to the competent military representation bodies directly and freely elected by all financiers. The prior consent to the establishment of associations and circles among the military, therefore, is analyzed to verify the nature of those associations, deriving in particular, from what emerges from the statutory purposes, to exclude the formation of types of associations **prohibited by law** for the military. . The Constitutional court, however, with **ruling n. 120 dated 2018** has traced the perimeter within which to establish the military trade union associations.

b. in substance, the considerations formulated by FICIESSE:

(1) like those **submitted belatedly by EUROMIL**, they were - by the same admission of the association in question - produced well beyond the deadline as strictly provided for by Article 21A of the Regulations of the European Committee of Social Rights;

2) they appear immediately irrelevant and, in any case, completely unfounded, given that almost all of them relate to profiles that go beyond the subject of the dispute and the "thema decidendum" specifically already defined by the C.E.D.S. when its preliminary conclusions with the 2019 "report" had the forms of order already thought.

(3) consist of 5 "annexed" documents, progressively numbered, in which non-homogeneous elements of different nature are reported, in relation to which it is necessary to specifically state that:

(a) "Annex 1", entitled "**The situation before ruling of the Constitutional Court N°. 120 dated 11th of April 2018**", constitutes a mere and meager reconstruction of the legal framework in force in Italy before the well-known ruling of the Constitutional court which took place in 2018, with the reference to the rules dictated by Article 1475 of the military code (with which Article 8 of Law No. 382 of 11 July 1978 was fully incorporated) containing "**Limitations on the exercise of the right of association and prohibition of strike**" which, it should be noted, also following the legitimacy check, lastly, operated by the Judge, it still represents the primary rank rule to which all the Italian Armed Forces as well as the military police forces, including the Guardia di Finanza, must comply;

(b) "Annex 2", entitled **"The situation in Italy after ruling n°. 120/2018 of the Constitutional Court",** acknowledges, **the many government initiatives already adopted** for the full, integral and timely implementation of rulings established by the Constitutional Judges in the context of ruling n°.120 / 2018 [first of all the circulars of the Minister of Defense dated 21st of September 2018 (concerning "Decision of the Constitutional Court n°.120/2018. Procedures for the establishment of professional associations among military personnel of a trade union nature ") and the subsequent similar internal directive for the *Guardia di Finanza* issued by the Ministry of Economy and Finance on the 30th of October 2018.

These significant regulatory changes in terms of military associations, analytically illustrated in the defensive report, together with the many parliamentary initiatives aimed at organically and systematically regulate the exercise of trade union freedom of the personnel of the Armed Forces and of the Military Police Forces, are not (unreasonably) considered fit by FICIESSE as suitable for guaranteeing "de facto freedom" of professional associations already established or being set up (For the personnel of the "*Guardia di Finanza"* do date **12 professional trade union associations have been established**, 5 of which are of a joint nature).

(c) the documents respectively entitled ***"The military status of the Finance Police***" and ***"The Military Representative Bodies within the Finance Police",*** substantiate the absolute pretext and inconsistency of the "new" observations addressed by the "Association of Citizens and Solidarity Financiers", conversely since they are the same identical considerations already raised by FICIESSE in a similar fashion and brought to the attention of CEDS on November the 28th 2017, in the preliminary phase of the collective complaint n°. 140/2016.

With regard to the broad arguments used by FICIESSE to refute the military nature of the Guardia di Finanza, it should be noted that the same **has never been questioned**, by the Constitutional Court.

In particular, on the basis of national legislation, the ***"Guardia di Finanza*"** is a police force with army regulations, making it an "integral part of the Armed Forces of the State and of law enforcement authorities **(article 1 of law n°. 189 dated 1959).**

The legislation currently in force, also applicable to the Guardia di Finanza, provides for a system of representation of military personnel articulated on established councils at a basic, intermediate and central level (respectively basic military representation councils - **Co.Ba.R**., intermediate - **Co.IR,** and central - **Co.Ce.R**.), flanked by their respective Commanders, with whom they play a role of support and collaboration.

In this regard, it cannot be overlooked that in the **aforementioned bill AS 1893**, currently being examined by the Senate, this system is destined to be definitively superseded by military union associations from the entry into force of that law.

It appears that the critical profiles at the time raised by the Association on these issues (whose content is exactly identical, and literally overlapping, to those now proposed), however exorbitant and **not at all conferring with the specific area of the complaint**, which - it should be remembered - is promoted for the alleged violation of articles 5 and 6 of the European Social Charter by Italy, were:

-widely contradicted and disjointed, point by point, by the Italian goverment with an entirely dedicated memoire (report n°. 13322/2018 on January 15, 2018) in addition to the copious reply observations which had previously been produced with the additional defensive letter n.325256 / 2017 dated 27th of October 2017, to which express and full reference is made;

- already subject to scrutiny and examination (when they were presented four years ago) by the C.E.D.S., and deemed irrelevant for the purposes of the subsequent conclusions made by the Committee in its 2019 report;

(d) The document entitled the ***"Future Perspectives***" focuses entirely on the content of the law proposal containing ***"Rules on the exercise of freedom of association for the personnel of the Armed Forces and of the Military Police Forces, as well as delegation to the Government for regulatory coordination ",*** approved in" first reading "by the Chamber of Deputies on the 22nd of July 2020 and currently being examined, as AS 1893, in the 4th Commission (Defense) – for debate - as well as the 5th Commission (Budget) - in the advisory division - of the Senate of the Republic.

Ministerial assent **in the bill being examined by Parliament** prior to the establishment of military trade unions is replaced by one sort of qualification to exercise trade union activity by registering with a specially constituted register, subject to verification of the legal requirements. These requirements, moreover, they respond to the principles dictated by the Constitutional court in the light of the content of article 5 of the European Social Charter, which allows for imposition, by the States, of legitimate limitations to trade union associations by military. .

The aforementioned bill attributes jurisdiction in matters of military union associations to the administrative judge, according to the abbreviated procedure referred to in art. 119 of Legislative Decree n°.104 dated 2010 (containing the Administrative Process Code). Contrary to what FICIESSE claims, this does not constitute a deminutio in judicial protection in the particular matter, since, precisely by virtue of the reform of the administrative process adopted with the aforementioned legislative provision, the powers of investigation and supervision of the administrative judge may overlap like those of the ordinary judge under labour legislation, with the advantage of the expertise in matters regarding employment relationship under military public law. Furthermore on the particular onerousness of the administrative procedure the same bill AS 1893 provides for a limited unified contribution, and this provision, in the light of an amendment presented by the rapporteur, could be replaced by gratuitousness;

FICIESSE, although evidently aware of the provisional nature of the first draft of the bill, whose examination - as reported by the same party in the opening of the document - is now left to the **"Defense" Commission of the Senate**, considers it not completely satisfactory, corroborating this generic statement with a brief comment on the individual points that make-up the detailed law.

In this regard, it is considered useful to reiterate, as reported for the similar observations of EUROMIL and apart from any consideration regarding the exclusive jurisdiction of the national legislator to regulate the issue at hand (on the basis of the rulings of the Constitutional Court), that:

- in the course of the aforementioned parliamentary work, **numerous amendments were presented**, **still under consideration** by the aforementioned 4th Commission, aimed at intervening, among other things, on the aspects covered by the observations raised by FICIESSE;

- due to the circumstance for which the proposed law in question is being discussed in parliament, the considerations of the association cannot but be entirely without value, **referring to profiles not yet defined on a legal basis** and indeed, susceptible to probable, further changes during the process of approval of the legislative initiative;

-in this context, **extended rounds of hearings were held**, both in the Chamber of Deputies and in the Senate of the Republic, in which the interested parties [**CO.CE.R.**, **trade union professional associations amongst military personnel (APCSM**) as well as organizations representing civilian workers and other associations, including EUROMIL] have already had an adequate opportunity to provide their contributions. (In this regard, it is mandatory to report that from the website www.ficiesse.it it is noted that the Italian Union of Financial Workers (SILF) is supported by FICIESSE (http://www.ficiesse.it/progetto-silf.htm); **on March 18, 2019**, representatives of S.I.L.F. were informally **audited** by the Defense Commission of the Chamber of Deputies as part of the examination of the proposed laws on trade union professional associations of military personnel.

Without neglecting, on this point, the continuous discussions and the necessary debate established within the "Financial police force" on the issue, ensured through close meetings between the top authority of the Financial Police and the representatives of the category of the CO.CE.R. (as, most recently, occurred at the end of July 2021);

-the proposed law under discussion aimed at regulating the exercise of trade union rights of the personnel of the armed forces and police with army regulations contains a wide catalog of prerogatives recognized to the APCSM, so as to allow the most complete exercise of the individual and collective protection of rights and interests of its representatives.

For example, **the A.S. 1893 provides**, among other things, the competence of the APCSM with regard to the contents of the employment relationship of military personnel (including management level). In concrete terms, this prerogative will be expressed in the attribution of negotiating powers to the associations that will be recognized - by reason of the number of members - most representative at national level, which will take part in the bargaining procedures for the stipulation of trade union agreements between the aforementioned APCSM and the so-called delegations "Public part".

The legislative initiative in question, in order to simplify and make the bargaining procedures of the "Security-Defense" sector more efficient, **provides for two levels of negotiation**: a first, "national sector", where to regulate profiles common to all the armed Forces military and police with army regulations, and a second, "national administration", through which to define the most characteristic aspects of the individual military administrations concerned, including the distribution of productivity and ancillary remuneration.

Furthermore, the provision of certain **disclosure obligations for the Administrations** towards the APCSM, as well as special protections and rights for military personnel who hold elective positions should not be overlooked. The possibility of establishing peripheral articulations at regional or territorial level is also established for the APCSM, in order to guarantee the widespread exercise of trade union rights, also locally, with reference to certain matters (compliance and application of national sector bargaining, through discussions with the reference central Administration);

- the sector regulations (which - as mentioned - when fully operational, and definitively approved by Parliament, will expand and significantly strengthening the range of prerogatives of professional associations of a trade union nature among the military, including also negotiating ones), **already at**

present it is not possible to detect any "weakening" of the rights of the military worker in relations with his employer (the military administration to which he belongs).

In concrete terms, the current, effective supervision for the protection of the rights of military workers is ensured by the current system of concerted **procedures** referred to in **Legislative Decree no.195 / 1995**, for the definition of the content of the relative employment relationship, and the role conferred in this area to the bodies of the Military Representation (in particular the CO.CE.R.).

These procedures, which lead to the definition of a concerted act to be implemented through a specific decree of the President of the Republic, in fact see the effective and full participation (as well as ministerial delegations and the Administrations concerned) of the central representative bodies, direct expression of the military as of an elective nature. The procedures in question are governed by legislative provisions which are completely similar to those used by the civilian police forces whose staff is represented by trade unions; moreover, they are also carried out in a uniform manner, through meetings in which both the trade union organizations of the civil police and the representative bodies of the Armed Forces and the military police forces participate jointly.

Having said this and in renewing all the considerations so far stated above regarding **case n°. 140/2016**, from which the legitimacy and conformity of the current condition of the employees of the *"Guardia di Finanza"* emerges incontrovertible to the precepts of primary, constitutional and international status in force, there is confidence in the positive outcome of the delicate dispute under review, given that Italy - as amply demonstrated - is not violating the precepts established in articles 5 and 6 (paragraph 2 and 4) of the European Social Charter.