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EUROPEAN SOCIAL CHARTER

Comments by the Sindacato Italiano Lavoratori Finanzier on the 21st National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF ITALY

Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29
for the period 01/01/2017 – 31/12/2020

Comments registered by the Secretariat

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CYCLE 2022

SINDACATO ITALIANO LAVORATORI FINANZIERI

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Rome, 27.06.2022

RE: comments on national reports under the reporting procedure relating to the provisions belonging to the thematic group 3 "Labour rights" – Italy

SILF[1] asks for the opportunity to submit the attached comments to the European Committee of Social Rights (hereinafter the Committee) about 21st National Report on the implementation of the European Social Charter.

The Committee is invited to reiterate the existence of a violation of articles 5 and 6 of the European Social Charter to date, as the violations found by the Committee in the CGIL case c. Italy (n. 140/2016) have not yet been properly addressed by the Italian government.

Respectfully,

Francesco Zavattolo
General Secretary

[1] *The SILF is a democratic trade union association founded on 27 February 2019, with the right prior consent of the Minister of Economy and Finance on 04 February 2019, and made up of workers in service and auxiliary belonging to the Guardia di Finanza - https://www.silfnazionale.it/*

21st National Report on the implementation of the European Social Charter

COMMENTS ON NATIONAL REPORTS UNDER THE REPORTING PROCEDURE RELATING TO THE PROVISIONS BELONGING TO THE THEMATIC GROUP 3 "LABOUR RIGHTS" – ITALY

The Italian Government on 1 March 2022 presented the Committee with the 21st National Report on the implementation of the European Social Charter (hereinafter the Charter).

Regarding the art. 5 of the Charter, the Italian Government states: "The reference regulatory framework has remained unchanged. Therefore, what has been illustrated in the previous reports is confirmed, in particular in the last one presented in 2013. "

In the 13th National Report on the application of the European Social Charter, the Italian government referred to a series of rules that have never been and are not yet applied to the workers of the Guardia di Finanza.

Also with regard to art. 6 of the Charter, the Italian Government refers to a series of rules and practices that have never been and still do not apply to the workers of the Guardia di Finanza.

From May 27, 2022 the law (attached) n. 46/2022 (Rules on the exercise of trade union freedom of the personnel of the armed forces and military police forces), on the other hand, applies to our trade union organization.

The law is to be considered completely unsatisfactory and contrary to the Charter; here are some of the reasons:

Art.1 (Right of trade union association)

The law requires GDF staff to join trade unions closed to other categories; are not allowed to register with public employment unions, unlike the penitentiary police.

Students of military schools and military academies cannot join: this is an absolute ban on enrollment for a significant part of the Guardia di Finanza. It is not clear why the pupils should not be protected.

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Art. 2 (General principles regarding trade union professional associations between military personnel)

The will to relegate the operations of trade union organizations in compliance with the principles of internal cohesion, efficiency and operational readiness of the Armed Forces. and of the Police Forces, appears as an undue mixture between the aims of the trade unions and that of the military institutions of reference: this is a sign that for the military leaders, trade unions are in fact assimilated to internal military representation. We cannot ignore that the aforementioned principles, by their nature, express values of a general nature that can change over time or find different caliber depending on the social environments in which it is practiced or even be influenced by unpredictable external conditions. By setting these limits, the legislator intended to bring the trade unions back to a constant subjection to the employer.

Furthermore, the reference to the principle of internal cohesion, efficiency and operational readiness is excessive for a police force like the Guardia di Finanza, which has no military defense duties.

The statutes must not have purposes contrary to the duties deriving from the oath taken by the military: this is too vague a requirement and which leaves room for arbitrary interpretations.

Art. 3 (Establishment of trade union professional associations between military personnel)

The limiting perspective outlined in article 2 is confirmed both in the general framework of the rule and in art. 3. By providing for the "registration in a special register" of the trade unions, these organizations are in fact brought back to the professional orders which by their nature have little to do with trade unions!

The rule essentially attributes to the Administration - not only the power to verify compliance with the Statute to the principles indicated above before expressing consent - but a power of control and interference in the exercise of trade union freedom.

The whole article essentially subjects the unions of the Guardia di Finanza to perennial domination by the Government, which is the counterpart. Both preventive and periodic control is in fact not entrusted to a third body, but to the Ministry itself.

Moreover, the timing of the various phases of the procedure appear to be completely unbalanced in favor of the Ministries, which, however, unlike the trade unions, have a large number of qualified and paid personnel to handle the paperwork.

Art. 4 (Limitations)

Letter b of paragraph I imposes a wider prohibition with respect to the exercise of the right to strike, given the express reference not only to the proclamation of the strike but also to actions in lieu of the same, without however any indication of what such actions are substitutes, with evident worrying implications for the concrete possibility of considering overlapping - and therefore prohibited - free manifestations of thought which, although not consisting in exercising the right to strike, could nevertheless be prohibited as they are considered illegal.

With reference to letter i) of art. 4, it is forbidden to create federations, affiliations or relationships of an organizational or conventional nature with trade union associations other than those between military personnel.

The representation of a single category must not exceed the limit of 75 percent of its members: this is an unreasonable limitation, which places a ceiling on affiliations.

Article 5 (Competences of trade union professional associations between military personnel)

The trade union should limit itself to guaranteeing the pursuit of the statutory objectives and purposes according to the rules of the Statute and in accordance with the legal system, and cannot be required to be "guarantor" of the tasks of the Armed Forces. With this provision we find ourselves faced with organizations placed in a subordinate position with respect to the Administrations: a privatized copy of the bodies of the military representation.

Also worrying is the prohibition not to "interfere with the regular performance of institutional services" which in its generic nature risks instrumental use, aggravated by the fact that some behaviors constituting a crime, such as the interruption of public service, are already sanctioned by the criminal code , so why further burden the sanctioning aspect?

As regards the matters falling within the competence of the unions of the Guardia di Finanza, the law first of all identifies the matters within which trade union activity is permitted. Without making any substantial changes with respect to the matters of competence of the military representation.

Listing what the union can do by taking a cue from what the military representation can already do today is equivalent to circumscribing its action. The broad provision of exclusion of matters, in peacetime, has no basis. The political choice to limit so broadly

the field of intervention of the trade unions may be motivated by the plan to relegate the interaction between public administrations and trade unions to the sole contractual matter. But such a limitation is unparalleled in any field of the civil service and for the unions of other police forces.

Article 6 (Peripheral articulations of trade union professional associations between military personnel)

Basically, the law provides for the faculty that the statutes of trade unions provide for territorial articulations, which however would not seem to be comparable to regional, provincial or other territorial union structures, endowed with their own autonomy.

It is undeniable that we are faced with a lack of enhancement and recognition of territorial bodies with management bodies, but also faced with the impossibility for peripheral levels to dialogue with territorial levels of the Administration lower than the regional level. The tasks of the provincial and basic structures are emptied of any prerogative worth defining as a union!

The whole article is a heavy interference in the associative freedom of trade unions and in the activity that they will be able to carry out. The indication of the intervention subjects of the peripheral joints appears extremely reductive, without indicating the possibility of dialogue with the managers of the more peripheral joints of the Ministry.

Art. 7 (Financing and transparency of the financial statements of trade union professional associations between military personnel)

The barrier to the financing of the union only and exclusively through the delegations of members and the proceeds of assistance, is extremely restrictive of the freedom of association.

The associations cannot receive inheritances or bequests, donations or subsidies in any form: this is a unique limitation in the whole Italian legislative landscape regarding private entities.

Article 8 (Elective positions of professional associations of a trade union nature among military personnel)

The law creates a disparity in treatment between members with reference to the right to electorate, both passive and active, not allowing personnel who have been in service for less than 5 years to be elected (in fact, the choice of those eligible is limited).

The whole article is a serious interference in internal associative life. Unacceptable limits and prohibitions are placed in a democratic state. The provision of the 5 years of service required is unreasonably restrictive and without a legal basis. As such, it is not only preclusive of trade union freedoms and the rights of military citizens, but also ends up unreasonably compressing the right to participate in the union life of each member. Furthermore, it precludes potential excellent military union representatives from representing colleagues: this serious limitation is not reflected in any union organization or in the current system of military representation. More generally, the article appears to be excessively restrictive of the military's trade union freedom and the organizational freedom of the association by placing unreasonable constraints on eligibility for executive positions or conditions that are too extensive. In particular, the requirement not to have been convicted for non-culpable crimes should either be limited to specific crimes that indicate an incompatibility ontology (crimes against the public administration, criminal association crimes; crimes against sexual freedom; against life, etc. , i.e. criminal hypotheses that denote the risk of abuse of the managerial position within the trade union organization) and / or provide for a lapse of time that renders the prohibition or express exclusion ineffective for minor convictions. In addition, the risk should be avoided that such stringent requirements induce the administration to arbitrarily use its inspection powers to outplay unwelcome trade union activists, for example by promoting criminal judgments aimed at making the accused military ineligible. It is also not clear why the duration of the mandate should be regulated, where a similar case is not regulated for the State Police.

Art. 9 (Performance of trade union activities and delegation to the Government for the regulation of the exercise of trade union rights by staff employed in place of operations)

The trade union activity is institutionally a working activity in all respects, but it is not clear why it should be carried out outside the service and not outside the working hours ?! This absolute prohibition suggests limits of time and space which, except in cases that will be governed for meetings in the premises made available to the administrations, actually translates into the impossibility of "talking" about the union even in a moment of pause.

Another aspect that deserves consideration concerns the fact that work is the subject of evaluation by the military, also for purposes related to career progression.

Therefore, the failure to provide for the equalization of the posting to the service activity, risks determining the failure or bad evaluation of those who remain for long periods in posting, thus constituting a deterrent to benefit from the posting.

The law does not envisage or recall any additional union contribution to compensate for the economic loss of the military union manager, not even with reference to the provisions on figurative contributions currently in force.

Paragraph 8 also raises perplexity, because the forecast of the four-year duration of the offices is opposed by the maximum three-year forecast of secondment and leave (co. 9 art. 9): the person who is elected as general secretary (The Secretary who works at national level) risks not being seconded at the end of the three-year period.

The prohibition of accumulation of permits referred to in paragraph 10 - in the absence of priority impediments - is potentially detrimental to trade union activity which, for the fruitful experiment, may require the use of the accumulation.

The law in question, which was supposed to provide for limits in the indication of the Constitutional Court, refers to a future regulation the discipline of the specific further limitations that will be imposed on the personnel referred to in paragraph 14, with a deleterious regulatory stratification.

Considering that the draft decree, according to paragraph 15, will be adopted after consultation with the representative trade union organizations, it is clear that this decree will not be adopted shortly, with the consequence that the personnel concerned will remain for some time without regulations that guarantee them the exercise of trade union rights.

Only the maximum number of trade union secondments is indicated; a minimum number of secondments should be guaranteed by law in order to give concrete opportunities to carry out trade union activities

Between each secondment or unpaid trade union leave, at least three years of effective service must elapse: the mandatory alternation places the union delegate in the condition of being continuously conditioned by the administration.

Art.10 (Right of assembly)

On the basis of this article, no more than ten hours per year are allowed for meetings in service areas, a very short time that will oblige those who carry out trade union activities to use the free time available for their trade union activities where there is a need to hold meetings.

The fact that meetings in administration rooms can be carried out as long as the items on the agenda fall within the competence of the associations, and that authorization is required to that effect, recalls art. 1470 Legislative Decree 66/2010 which governs the prerogatives of COCER in the matter of "preventive control"

During these authorized meetings, the staff is considered absent from service (see paragraph 2, where it refers to the "provisions governing absence from service"), reiterating the anomalous assumption that the trade union representative in carrying out his representative mandate does not carry out any work activity.

Art.11 (Bargaining procedures)

The article is dedicated to bargaining, which is only national and which will take place in matters already within the remit of military representation bodies, therefore no additions, with mortification of the expectations of military unions.

There is no minimum recognition of bargaining matters comparable to that of civilian policemen. For example, without competence in the articulation of working hours, the union is essentially useless.

Art. 12 (Obligations of administrations)

Information is the minimum level of trade union participation. With bargaining, more incisive institutions can and must be envisaged: opinion, consultation, comparison, etc.

Art.13 (Representativeness)

Unlike the whole world of work, both private and public (including the State Police), for the Guardia di Finanza, trade union representation is not calculated on the total number of personnel enrolled in the various trade unions, but rather on the total number of workers (including the not registered). This makes it more difficult to reach the threshold and also makes it possible that there is no representative trade union.

Art 14 (Protection and rights)

In essence, these are limits that are so general as to make freedom of expression virtually empty.

The transfer of the trade union delegate must be agreed, except in cases of absolute emergency which are certainly not related to command obligations. The rule basically leaves a free hand to the military administration on the grounds of environmental incompatibility. Cases of environmental incompatibility can lead to discretionary proceedings for the military administration to expel trade union representatives who

are freely elected, but not appreciated by the chain of command; in the last part of the paragraph, extraordinary cases of necessity and urgency open up to a discretion of the administration not supported by objective elements of emergency.

The manifestation of thought is allowed only in the matters provided for by law, from which many essential areas for trade union activity are excluded (eg working hours).

The guarantees provided are reserved only for those who hold elective positions in the representative associations, with the express purpose of limiting the number of interlocutors by limiting the number of trade unions. In this regard, we cannot remain silent about the disturbing passage relating to the expression of opinions that must be rendered (so that the manager cannot be prosecuted) within the limits of the duties deriving from the sense of responsibility and behavior to be kept even out of service.

Art. 15 (Information and publicity)

The manifestation of thought is allowed only in the matters provided for by law, from which many essential areas for trade union activity are excluded (eg working hours).

The obligation to make public all trade union activity (resolutions, votes, reports, minutes, declarations ...) of those who hold elective positions and any news relating to trade union activity, albeit through methods that will be provided for in the statute, it not only means that the statute must provide for such modalities, under penalty of refusal of the authorization, but it also interferes with the right of confidentiality and with the internal life of the union.

Art. 17 (Jurisdiction)

The natural judge of disputes concerning anti-union behavior for all unions (including the State Police) is the labor judge. The special devolution of this matter to the administrative judge is not justified. Statistically, the administrative judges, especially the Council of State, have a very high percentage of rejections of appeals made by the military.

Furthermore, only the military unions will be obliged to pay a fixed contribution of € 650.

It is of little use to add the fact that in the case of the administrative judge it is necessary to bear the costs of the unified contribution which, in the first instance, will act as a deterrent in proposing such disputes, to the advantage of a conciliatory solution provided for by art. 18 for which, in any case, an onerous contribution between 105 and 155 euros is foreseen depending on the territorial level (peripheral / national).

Art. 18 (Conciliation procedures)

The functioning of the Commissions cannot be decided unilaterally by one party alone. If the President is to be the guarantor, his appointment must be shared by the parties.

The body in charge is hinged at the ministerial structure and not, for example, in any of the bodies accredited to carry out a conciliation activity (eg. Labor Inspectorate). In fact, there is a strong risk that the subjects chosen to be part of the central litigation commission will be induced to be closer to the top management requests for greater physical proximity. For this reason, it is emphasized that the article, as proposed, does not ensure the necessary impartiality of the conciliation body.

Also in this case an economic contribution is imposed on the military unions that is not asked of any other union

Art. 19 (Repeals and transitional provisions)

The Military Representation remains sine die, so much so that the provision provides for its repeal upon the entry into force of the Decree pursuant to art. 16, paragraph 4, or that referring to the decree determining the postings, for the adoption of which this latter provision in turn does not provide for a deadline.