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EUROPEAN SOCIAL CHARTER

Comments submitted by

*Sindacato Italiano Lavoratori Finanzieri (SILF)*concerning the 22nd National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF ITALY

Follow – up to Collective Complaint No. 140/2016

Comments registered by the Secretariat

on 02 July 2023

REPORT FOR FINDINGS 2023

EUROPEAN COUNCIL. COLLECTIVE COMPLAINT No. 140/2016 REGISTERED WITH THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS OF THE CGIL (GENERAL ITALIAN CONFEDERATION OF LABOR) V. ITALY REGARDING THE RECOGNITION OF TRADE UNION RIGHTS FOR STAFF OF THE FINANCIAL GUARD. "XXII REPORT ON THE APPLICATION OF THE EUROPEAN SOCIAL CHARTER".

COUNTER-CLAIMS
to the Observations of the Italian Government of 22 February 2023

With this report we intend to reply and counter-deduce the Observations made by the Italian Government on 22.02.2023.

For operational purposes, it is specified that the order of matters as dealt with by the Italian Government followed.

FOREWORD

In the introduction, the Government retraces the steps of collective appeal no. 140/2016, recalling the rules violated by the Italian Government, the articles 5 and 6 of the European Social Charter.

We read that the Italian State had already referred to the content of the then bill containing "*Rules for the exercise of trade union freedom of members of the armed forces and police and delegation to the Government for legislative coordination*", allegedly demonstrating of the progressive adaptation of the Italian State to the supranational legislation.

In particular, we read that this bill would have established legitimate limitations ("conditions and limits") on the membership and establishment of trade unions of military personnel, which would be necessary to exclude the possibility of a regulatory vacuum, which would prevent the recognition of the right to form and join trade unions.

What you read is not true.
The limitations are necessary to reconcile the trade union rights of military workers with other constitutional values ensured by the institutional purposes to which the same Police, military and armed Forces are specifically dedicated. But, even before the adoption of Law 46/2022, there was no regulatory vacuum regarding the right to form and join trade unions, which derives directly from art. 39 of the Constitution.

The sentence of the Constitutional Court which declared the constitutional illegitimacy of art. 1475, paragraph II, Legislative Decree 66/2020, which at the time precluded, not trade union rights, but their exercise.

In fact, the Constitutional Court believed it could declare the constitutional illegitimacy of the aforementioned provision, allowing immediately the establishment of unions between soldiers, by virtue of art. 39 of the Constitution, which already exists.

In particular, on this point the Court observes that <<*The correct implementation of the constitutional discipline of the matter requires this Court to carry out a further verification; in fact, the values that it underlies are of such importance as to make a non-specifically regulated recognition of the right to trade union association incompatible with the regulation itself. The provision of conditions and limits to the exercise of this right, if in fact optional by international standards, is instead a duty from a national perspective, to the point of excluding the possibility of a regulatory void, a void which would be an impediment to the very recognition of the right of union association*.>>.

In a nutshell, the Constitutional Court raised the problem of the consequences of the repeal of the censored law, which forbade the formation of trade unions among soldiers, fearing the danger that the existing regulatory vacuum would prevent the formation of trade unions pending legislative intervention. And here the Constitutional Court basically solves the problem by specifying that the Italian legal system already contains immediately applicable provisions to make the Italian legal system compliant with the supranational legal system, allowing the establishment of military unions right away. The problem of the lack of legislation, on the other hand, arose only with reference to the limits to be placed on union activity immediately, before the adoption of a specific law on the matter, resolved with the analogical application of the limits that already existed for military representation.

Having said that, the Government admits that despite the above draft law, now Law 46/2022, the Committee has considered that, at least in part, the violation of articles still exists 5 and 6, paragraph 2, paragraph 4, of the CES, requesting that reference be made again, in the subsequent Report (XXII) to the parliamentary progress of this bill, to provide more information on the disputed aspects deemed non-compliant with the ESC.

Contrary to what the Government reported:

- Law 46/2022 demonstrates the persistent violation of articles 5 and 6 (points 2 and 4) of the CES;
- the regulatory provision, apart from the adjectives used by the Government in the report, defining it "epochal", while sanctioning the right of trade union association among soldiers, establishes conditions and limits that go beyond the aim of safeguarding the neutrality and impartiality of the forces armed forces (articles 52, 97 and 98 of the Italian Constitution), as the provisions, both as a whole and examined individually, are disproportionate to the objectives to be protected such as internal cohesion and operational readiness;
- conclusively and briefly, the approved regulatory provision does not achieve any reasonable and congruous balancing of opposing interests, being consistently unbalanced to the detriment of trade union associations, to which it sets limits that are in part inconsistent and in any case disproportionate to the needs it intends to protect with those limits.

In particular.

1. The noted possibility for military personnel to form professional trade union associations and to join them freely discounts the limit of the prohibition of the formation of trade unions between subjects not belonging to the military sphere, and in fact art. 1 of Law 46/22 indicate that "*the military may form professional associations of a trade union nature for each single Armed Force or Police Force under military or inter-agency order*", with the clarification that paragraphs 3 and 4 of the law reinforce the principle by establishing respectively that: "*3. Members of the Armed Forces and the Military Police Forces cannot join professional associations of a trade union nature other than those established pursuant to article 1475, paragraph 2, of the Military Code, referred to in the Legislative Decree of 15 March 2010, no. 66, as replaced by paragraph 1 of this article. 4. Members of the Armed Forces and of the Police Forces with a military order can join only one professional association of a trade union nature among military personnel."*

   As if that were not enough, the ban - pursuant to art. 4, paragraph 1, lett. i of the law - to "*join trade union associations other than those established pursuant to this law or federate, affiliate or have relations of an organizational or conventional nature, also through other bodies or organizations, with the same associations.*". Provision concretely interpreted as a prohibition to use the provision of services in favour of members by entities connected only to other trade union associations, institutionally appointed to provide welfare and social security services pursuant to authorization from the Ministry of Labour, such as Tax Assistance Centres, Disputes Offices and so on.

   Not only that, although membership of the trade union is free, it is not constituted, considering that a register has been envisaged in which trade unions must register, as detailed below, with the clarification that this registration is a prerequisite to the exercise of the most important and basic union prerogatives, including the right to union strike and bargaining, so that failure to register does not allow and precludes the exercise of union mandates.

   In addition, checks are envisaged on trade union associations already registered with consequent cancellation in the event of changes to the by-laws that are not considered perfectly in line with Law 46/2022, or in the event of unclear conduct in violation of the law, with loss of economic contributions of members (union withholding) and union rights.

2. The collective protection of the rights and interests of the personnel, by the Union trade, has been provided for by the law, in matters falling within the competence of the military union associations, and comparatively precluded individual protection, with the emptying of part of the union powers.

3. To date, despite the sentence of the Constitutional Court n. 120/2018, the establishment of the Unions, the provisions on bargaining are not yet operational, requiring the adoption of detailed rules to which the same Law 46/22 refers, with the consequence that to date the military representation still exists whose repeal has been postponed to the end of a transitional period – which remains and one year after the adoption of Law 46/22, with an uncertain deadline – which should be used for the adoption of implementing and detailed provisions. So that the concrete

launch of the new system of military union associations is postponed indefinitely, with provision for the transition from the old system to the new one when the "negotiating delegation" for the first contracts will be set up (art.19).

A. Enrolment in the ministerial register of military union associations.

The Italian Government has replaced the need for prior consent to the constitution of the Trade Union with an even more burdensome and limiting condition, the obligation to register in the Register as mentioned above.

If in the 2019 report on complaint no. 140/2016, the ECS communicated to the Italian Government that it believed that the provision of the preventive ministerial consent to the establishment of associations or circles among military personnel deprived the personnel of the freedom to "set up organizations [...] to protect their social and economic interests" , the new law has worsened the situation as consent is no longer required but an even more burdensome tinsel that indexes in an even more persistent way on trade union freedoms.

In particular, the art. 3 of Law 46/2022 establishes that the military unions, within five working days of their establishment, file the statute with their Administration, in our case the Ministry of Economy and Finance, which must ascertain the existence of the requirements set by the law. If so, it will register in the trade union register. Otherwise, a proceeding is initiated which concludes either with the drafting by the Syndicate of the Articles of Association with a text compliant with the indications provided by the Administration, or with the negative provision of registration in the Register.

The provision makes a deep incision of trade union freedom.

— The Ministry does not carry out a formal check, aimed at verifying whether the Statute contains provisions in conflict with Law 46/2022, but carries out a consistent and meaningful check, arrogating itself the power to indicate which provisions must necessarily be included in the Statute in order to obtain enrolment in the Register, interfering in the determination of the social contract. In the event of failure to enrol in the Register, the Union will be prevented from exercising the fundamental union powers, will not be able to collect union contributions from members or participate in bargaining.
  In order to better circumscribe the scope of the art. 3 and therefore of the registration, it is useful to represent that the first version of our statute was the object of a survey by the Ministry of the Economy (on which we depend) and an important modification of the statute was actually imposed on us because otherwise we would not have been registered. To understand the scope of this imposition, it is enough to think that our local section of Turin, before this union was registered in the ministerial register, had intervened in a case of violation of the terms of the planning of the service timetable by a territorial command , we were told by the Administration that since we weren't registered we didn't have the power to represent the workers' interests. Therefore, enrolment in the register is crucial for the operation of the trade union itself.

  In addition, it should be noted that while all the unions have the natural labor judge as a reference for disputes, the military unions must instead turn to the regional administrative courts, instruments to which the state legal system recognizes the power to discuss, evaluate and decide on legitimate interests and not on rights. Among other things, while the first (labour)

judge is free, the second (the administrative one) is not. And this not only discourages their use to defend the rights, but is also a source of incomprehensible unequal treatment compared to the rest of the workers such as the Italian State Police officers.

- In the opinion of the Administrations, failure to register in the Register precludes the exercise of any trade union activity.
- Once enrolment in the Register has been obtained, the Military Union remains under the aegis of the constant control of the Administration, to the point that paragraph 4 of art. 3 in the comment establishes that "*in the event of subsequent ascertainment of the loss of even just one of the requisites or violation of the provisions of the law, the competent Ministry shall timely and reasoned notice to the association, which may submit, within fifteen days and for writing, his comments. Within the following thirty days, the competent Ministry adopts the final provision, informing the Minister for Public Administration, in the case of a provision for cancellation from the register referred to in paragraph 1*", which means that the Administration is holder of a permanent power of control over the military union, also implying the annulment of the union association which he deems is violating the provisions of Law 46/22. Not surprisingly, paragraph 5 of the art. 4 establishes that "*The association incurred in the cancellation provision referred to in paragraph 4 loses its trade union prerogatives and cannot exercise any of the envisaged activities. Consequently, the proxies issued by the members for the payment of union contributions pursuant to article 7 lose their effectiveness*.". In place of prior consent, today there is a permanent control system, which is also harmful due to the generic nature of the provisions which do not indicate specific cases and hypotheses that can lead to cancellation, with the obvious danger of exploiting the rules for different purposes.

With reference to the art. 39 of the Constitution, which would reflect - in the opinion of the Government - the obligation of military unions to register in the Register, the following is specified.
The art. 39 of the Constitution is the result of the compromise between the various political forces of the immediate post-war period, after the fascist experience: a compromise between the liberal forces, aimed at promoting the action and development of the trade union phenomenon, and the corporative ones aimed at restoring the idea, typical of an authoritarian regime, of a trade union lacking autonomous initiative because it is subject to state control and interference. So that if the art. 39 proposes innovative elements, ie the recognition of trade union freedom in all its forms, on the other it brings elements of continuity with the recent past, such as the subjection of trade unions to the obligation to register.

It deserves to be specified that the part of the provision relating to registration has remained a dead letter for the Italian trade unions.

In fact, the second part of Article 39 remained unimplemented due to the resistance of the trade union organizations themselves, who rightly feared, in the political and economic climate of the post-war period, that the registration procedure would allow the State excessive interference in their activities. The obligation to register, in fact, would have led to the establishment of an administrative body aimed at checking that the statutes, as well as their concrete implementation, respected the requirement of possessing a democratic internal system.
The same problem that arises today for the military unions.

Contrary to what is stated in the report, the assent to the constitution of the union, still in force today for the case of the constitution of an association having other purposes, acts as a clearance, as a certificate of lack of obstacles to the constitution of the association, implying a control in the negative, aimed at verifying that the association's Statute does not contain provisions in contrast with the mandatory rules.

In our case, the Administrations responsible for verifying the adequacy of the statutes of the military unions have operated, and will operate when necessary, a meaningful and limiting control, aimed at giving positive indications on the provisions that the Statute must contain, without limiting itself to signalling the existence of any rules in contrast with Italian law.

By way of example, in the control phase of the Statute of the Trade Unions already established following sentence no. 120/2018 of the Constitutional Court, many unions were forced to include the physical address of the registered office in the Statute, which is evidently irrelevant, if only for the possibility of moving house also for the Union.

In other and clearer words, the Administrations, having carried out the checks on the statutes, have given precise indications regarding the provisions to be eliminated or to be included in the Statutes, even expressly threatening the adoption of refusal of registration in the Register.
Not to mention the time-consuming procedures, which far exceeded those expected by pre-existing unions.

Lastly, it should be noted that the "registration" to which the art. 39 of the Constitution, repeated unimplemented on behalf of the operative part, is the registration through which private Italian associations acquire legal personality, while art. 3 of Law 46/22 has provided for the registration in a Register at the end of which the military unions do not acquire any legal personality, remaining as unrecognized associations in the same way as the other Unions.

We also take the liberty of expressing considerable disappointment in the face of the Government's banal attempt to generate confusion between the envisaged and never implemented registration of art. 39 of the constitution, for the acquisition of legal personality, and enrollment in the register of military trade union associations, not aimed at acquiring legal personality but only to carry out that control which is included in art. 39 of the Constitution has remained unimplemented for public and private employment unions and which today would like to be applied to military unions 80 years after its provision, changed political, historical and social conditions.

In this context it is also worth mentioning the art. 2, paragraph 1, of the law.
Now, if the validity of the principles of democracy, transparency and participation does not seem doubtful, indeed common to trade unions exist today even regardless of specific legal provisions that provide for them, one cannot but complain about the expected compliance with the common principles, neutrality, internal efficiency and operational readiness which are generic if not dropped into specific factual situations, the contents of which are extraneous and obscure for the trade unions, keeping to issues not subject to negotiation.
Hence the danger of cancellation from the Register for alleged and unspecified violations of these principles.

B. About the ban on military personnel joining non-military unions.

It is true that trade union associations - including military ones - have a private nature: these are associations governed by private law, like other existing associations that pursue different purposes, such as voluntary associations.

The need for neutrality, i.e. the need to keep the military unions neutral with respect to the political dialectic and party interests, is not compromised by the enrollment of the military in other unions, while the dialectic would be strengthened, due to being non-military trade unions detached from military corporatist logic and insusceptible to being pressured.

The Government infers that the provision of a "closed" trade union system is not new to the national legal system, as it has existed for some time in other civil contexts (e.g. the State Police, which is the civil general police force, pursuant to Article 82 of the law n.121 of 1981).
What is not convincing. It deserves to be specified that, on the other hand, pensioners can also join unions among members of the State Police, and therefore the unions of the State Police are less closed and impervious from the outside.

On the other hand, this opening to civilians has certainly not compromised either the internal coverage or the hierarchical organization of the State Police.
It also deserves to be specified that free unionisation is instead permitted for personnel belonging to the Penitentiary Police Corps, which is also hierarchically organized and cohesive.

Regarding the absolute specificity of the military system and the specificity of the defense - security - public safety sector in general, with the consequent specificity of the contents of the employment contracts, regulated in a completely different way from what one would call "contracted" public employment , suffice it to say that separate Areas could well be created, such as for management, the Government's concern is excessive, given that although members of the Prison Police can join Public Employment unions, the relative delegation, in the negotiation phase , sits at the negotiating table of the Security sector, with the military, without any obstacle whatsoever.

The Government recalls that for personnel in the defence-security sector the contractual procedure is governed by Legislative Decree 195/1995, in support of the above statements.
It is reiterated that the delegations of trade unions of the public sector also participate in this procedure, with reference to the Penitentiary Police, to which the bargaining procedures in question are prohibited.

Therefore, it is evident that any involvement in the negotiations for the renewal of the employment contract of personnel in the defence/security sector of a external trade union organization would not create problems: to be clear, it already participates in them.

As proof, it is sufficient to read the D.P.R. April 20, 2022 no. 57, (Decrees implementing trade union agreements for non-executive personnel of the civil police forces and concertation measures for non-executive personnel of the military police forces) and precisely the Preamble in which the participation is acknowledged of the CGIL Public Function (CGIL FP/PP) which is the Trade Union Federation of the CGIL. In particular, the Federation of Civil Service Workers, hereinafter referred to as FP CGIL, is the CGIL organization which promotes free association and solidarity and collective self-defense of male and female workers who collaborate in public administrations, and in services related to public functions (https://www.fpcgil.it/funzpubb/funzione-pubblica/statuto-fp-cgil/).

C. About the violation of the art. 6, paragraph 2, CES.

The Government claims the recognition, by Law 46/2022, of the military unions, of full negotiating power, failing to specify that this power is currently completely frozen, pending the adoption of the detailed rules and implementation of Law 46/2022.

He also argues that before the approval of the law n. 46/2022 it would not have been possible - without specific regulatory provisions - to allow military unions to participate in the concertation procedures. This is not true, for the following reasons:

- In the first place, the same Constitutional Court, with the sentence 120/2018, removed every obstacle to the free constitution of trade unions among soldiers, guaranteed their operation with the limits of the bodies of military representation;
- Secondly, the problem of the participation of the trade unions in the concertation procedure did not arise, given the role played therein by the bodies of military representation which would serve without the need for a calculation of representativeness, so that it could well have been possible to allow the participation of the trade unions as well, in a prodromal phase to the prediction of the percentages for the calculation of the representativeness, together with the bodies of the military representation.

D. With reference to the ban on exercising the right to strike for military personnel.

The Government reminds that the CEDS has considered the absolute prohibition of the right to strike of the personnel of the Finance Police as disproportionate, as an instrument intrinsically linked to collective bargaining and, therefore, to be granted at least in the minimum form envisaged for public workers (consisting of the guarantee of what are defined as "essential minimum services"), or through alternative institutions such as "an effective negotiation or conciliation procedure".

The Government deduces the absolute incompatibility between the possibility for military personnel to adequately abstain from work and the duties and obligations deriving from the status of military personnel.

The problem here is given by the fact that the personnel of the Guardia di Finanza not only do not have the right to strike, but they do not have access to any possible form of protest, even predictable, giving the worker the opportunity to express his grievances in ways, times and circumstances such as to safeguard the interests of the country that the Government fears compromised by the exercise of the right to strike.

The Government cites sentence 449/1999 of the Constitutional Court, forgetting that it is the same decision which at the time denied all trade union freedom, while clearly stating that military forces are certainly not extraneous to the democratic order, whose guarantee of effective subsistence passes through the exercise of rights, even of protest, which, if necessarily graduated for the protection of concomitant interests of identical or higher rank, cannot undergo total zeroing.

Completely unfounded as regards the law with reference to the circumstance that if in other public sectors the discipline that regulates the calling and conduct of strikes (ensuring a minimum level of service) allows citizens to organize themselves in any case to carry out their activity, in the security

sector public, this possibility would translate, ex se, into the radical elimination or, in any case, into a significant weakening of the effectiveness of the dissuasive and repressive measure, thus guaranteeing anyone intending to commit a crime the awareness of running a lower risk of being identified and sanctioned . Not to mention the lower possibility of preventing more serious crimes, such as those against human life.

The Government seems to forget, although blamelessly it is known, that the Guardia di Finanza is not an institution primarily responsible for guaranteeing public safety, to which the State Police, i.e. the Department of Public Security in which it is based, is intended, within the more general sphere of the Ministry of the Interior.
Establishes the art. 2 of Law 121/1981 that "The Minister of the Interior carries out his duties in the field of protection of public order and safety making use of the Public Safety Administration", while pursuant to art. 16 of Law 121/1981 "*For the purposes of protecting public order and safety, in addition to the State Police, the following are police forces, without prejudice to their respective regulations and dependencies:*
a) the Carabinieri, as an armed force in permanent public safety service;
b) the Guardia di Finanza, to assist in the maintenance of public order and security".

It goes without saying that even if we wanted to exclude the right to strike, it would very well be possible to foresee graduated forms of protest, subject to quotas, duly regulated to avoid inconveniences greater than those that can be absorbed and conceivable.

Rome, 30th June 2023.

Secretary general
Francesco Zavattolo