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

1961 • 2021

European Social Charter | Charte sociale européenne

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

31/08/2021 RAP/RCha/ITA/20(2021)

CHARTE SOCIALE EUROPEENNE

COMMENTAIRES DE *THE EUROPEAN ORGANISATION OF MILITARY ASSOCIATIONS AND TRADE UNIONS* (EUROMIL) SUR LE 20e RAPPORT SIMPLIFIÉ DU GOUVERNEMENT ITALIEN
Concernant la réclamation :

Confederazione Generale Italiana del Lavoro **c. Italie, réclamation n° 140/2016**

Enregistrés par le Secrétariat le 3 août 2021

CYCLE 2020

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Submission by the European Organisation of Military Associations and Trade Unions (EUROMIL) on the 20th National Report of Italy on the implementation of the European Social Charter

Follow-up of the Complaint 140/2016: CGIL v. Italy

Introduction

EUROMIL welcomes this opportunity to update the European Committee of Social Rights (hereinafter the Committee) on developments, or lack thereof, in respect of the Decision of the Committee on the complaint CGIL v. Italy (140/2016), where it found violations of Articles 5 (right to organise), 6§2 and 6§4 (right to bargain collectively and right to strike) of the European Social Charter.

EUROMIL acknowledges that its comments are submitted after the deadline. However, we kindly request a derogation be permitted, pursuant to Rule 21A of the Committee's Rules, due to the late publication of the Italian National Report at the end of July 2021.

Response to the findings 2020 of the Committee on the follow-up to decisions on the merits of collective complaints

Please hereby find EUROMIL's comments on the 20th National Report on the implementation of the European Social Charter, submitted by the Government of Italy, pursuant to the collective complaint No.140/2016 CGIL v. Italy.

1. Judgment No. 120/2018 of the Italian Constitutional Court formally produced two results that affected the foundation and functioning of "associations with a trade union character" in the Guardia di Finanza.

   These are:
   a. the adoption of two ministerial circulars concerning the "Professional Associations of a Trade Union Character". The Circular of the Ministry of Defense of 21 Sep 2018, "*Judgment of the Constitutional Court no. 120/2018. Procedures for the establishment of trade union associations formed by members of the armed forces,*" concerns all branches of the Italian armed forces. The Ministry of Economy and Finance adopted a similar circular on 30 October 2018. The procedures foreseen in these circulars paradoxically still restrict freedom of association.
   b. the discussion on a draft law introduced by Hon Corda and others "*on the exercise of trade union freedom of the staff of the Armed Forces and the*

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Military Police Forces, as well as delegation to the Government for regulatory coordination" (A.C. 875-AR) that was approved in 2020 by the Chamber of Deputies, and has remained on the agenda of the competent Commission of the Senate of the Republic since mid-2020 (A.S. 1893).

2. As for point 1.a. the circulars in question provide stringent requirements for the formation of the constitution of the so called "Professional Associations of a Trade Union Character" as well as their recognition by the competent ministries that go beyond the terms provided by the Constitutional Court and that undermine the fundamental rights provided by the Italian Constitution with specific regard to article 18 on the right of association and article 39 right on trade union rights on which no limitations for specific categories of workers are foreseen.
3. On the basis of the ministerial circular of 2018, more than thirty "Professional Associations of a Trade Union Character" have meanwhile been recognized. The official Italian name is "Associzioni professionali tra militari a carattere sindacale" and the reference to "of a trade union character" clearly indicates that in reality, no real trade union rights have been granted to Italian military personnel. Because the recognition of these associations is based on the above mentioned circular(s) from 2018, and not on the basis of the pending draft legislation, the raison d'être of these organizations is wholly uncertain.
4. While the constraints mentioned in the circulars are strictly observed, the minimal attributions granted to the unions are totally disregarded. That is why the dialogue between the trade unions and the administration, which is currently only foreseen for the central level, does not actually exist. On this specific point an appeal has meanwhile been lodged to the Ordinary Labor Judge (Giudice Ordinario del Lavoro) of Rome.
5. At the legislative level, the situation is much worse than the Government has described in its report.

    a. The draft law effectively prevents Professional Associations of a Trade Union Character to act as a fully-fledged trade union, with all associated competences in collective and individual defence of its members, and from using all trade union instruments such as collective bargaining, collective binding agreements and possible industrial action, in cases where the alternative instruments prove insufficient;
    b. Eventual disputes of trade union nature are assigned to the administrative judge and not to the labour judge. This provision is in direct conflict with the current case law of the Court of Cassation which states the exact opposite. Moreover, while the appeal to the Labour Court is free of charge, the appeal to the Regional Administrative Court is onerous - starting with a 900 € fee
    c. The draft law constrains the operational activity of the unions byway of requiring ministerial consent. This not only confirms that there are stringent legal requirements regarding the activity of the so called unions, but also any subsequent amendment to the articles of association and if it

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considers it necessary may revoke the authorization to carry out trade union activities;

d. The draft law intervenes in the internal structures and regulations of the trade unions by controlling every aspect of association life. The law determines, among other things, how long the mandates must last as well as the maximum number of mandates a delegate may carry out;
e. The reference to the principle of internal cohesion, efficiency and operational readiness is excessive for a police force such as the Guardia di Finanza and others, which has no military defence tasks;
f. An unreasonable limitation on the number of member recruitments is envisaged by introducing a maximum number of memberships per category and per union in the law. This has serious consequences for the concerned union and for the rights of every citizen, including those in uniform, to join the union of their choice;
g. The draft law allows for broad exclusion from union affairs in peacetime without justification. Such restrictions are unparalleled in the civil service, nor do they exist for non-military police unions;
h. In addition, under the draft law as well as under current ministerial decree rules, armed forces personnel, and thus also the Guardia di Finanza and their trade unions, are not allowed to join other trade union organizations that are not specifically set up for military personnel. In the case of the Italian General Labour Federation (CGIL) v. Italy, the Committee has ruled that the ban on joining existing trade unions under article 1475§2 of the Military Code is incompatible with the freedom of association enshrined in article 5. According to the Committee, the freedom of any member of the police to join trade unions or professional associations (...) is the essence of the right of organization under the Charter. In this case, the prohibition against members of the Guardia di Finanza from joining other organizations is disproportionate, as it deprives members of the Guardia di Finanza the effective means to claim their economic and social interests, and is therefore unnecessary in a democratic society;
i. The draft law includes limitations regarding the sources of financing for trade union activities and this amounts to unnecessary government interference in the way members contribute financially to such activities or pay their membership dues;
j. The legal requirement to have at least five years of service before taking up a position in the trade union is unreasonably restrictive and interferes with the organization's internal regulations. Such a rule not only excludes certain trade union freedoms, but also disproportionately restricts the right to participate in trade union life of any member. In addition, it excludes potentially excellent union representatives from representing their colleagues. This serious limitation is not foreseen in any other trade union organization or even in the current system of military representation in the Italian armed forces. More generally, the draft text appears to excessively restrict trade union and organizational freedom of the association by imposing unreasonable restrictions on eligibility for managerial positions or

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enacting too extensive conditions in the law. The risk must be avoided that such strict requirements would lead the administration to arbitrarily use its inspection powers to limit undesirable union representatives in their activities. It is also not clear why it is necessary to legislate on the duration of a union mandate, where a similar case is not regulated for the state police and should be the exclusive purview of the union statutes;

k. The determination of negotiation matters is unclear, unduly limited and incomparable with that of the non-military police services. For example, without clear powers to determine working time, any form of vigorous employee representation is ineffective;
l. Trade union representation is not calculated on the total number of staff members of the different trade unions, but rather on the total number of employees (including non-members). This makes it more difficult to reach the threshold and also makes it possible that there is no representative union;
m. Despite a provision requiring prior union approval for the transfer of the union delegate, the draft text essentially leaves a free hand to the military administration on the basis of certain incompatibility or specific functions. Such provisions could lead to discretionary procedures for the military administration to remove democratically elected union representatives who would be considered disruptive by commanding officials. Extraordinary cases of necessity and urgency are thus a discretionary power of the administration without being supported by objective elements of necessity;
n. Expressing thoughts is only allowed in the matters provided for by law, from which many essential areas for union activity are excluded (e.g. working hours);
o. The military trade unions, including those of the Guardia di Finanza, are not sitting around the table today for the further implementation and concrete implementation of trade union activities. In its report the Italian Government emphasizes: *" In concrete terms, the current, effective supervision for the protection of the rights of military workers is ensured by the current system of concertation procedures referred to in Legislative Decree n°. 195/1995, for the definition of the content of the relative employment report, and the role conferred in this area on the organizations of the Military Representation (in particular the CO.CE.R.)."* The Italian government is clearly using the existing internal military representation, CO.CE.R., as an argument not to pursue urgency to implement and enforce these rights. The question must be posed: Why give trade union resources and competences if in the meantime one can use a semblance of employee representation to obscure the need?

The Committee already considered that the current procedure provided for in Articles 2, 4 and 7 of Legislative Decree no. 1995 and 1478 of 12 May 1995 of the Military Code does not represent a reasonable alternative to the bargaining process and that the current internal representative bodies

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of the Guardia di Finanza are not provided with the means to effectively negotiate working methods and conditions, including remuneration. Consequently, the Committee considered that there is a breach of Article 6(2).

The reality is that the Italian Government has allowed the current, so called trade unions, to establish their organisation but without allowing them to carry out any activity.
In addition, the authorities continue to communicate exclusively with the military representations (CO.CE.R.), resulting in a real exclusion of the so called trade unions from the relevant consultations. Evidence of this can be seen within a letter dated 18 November 2020, in which the Ministry of Economy and Finance refused the request of the National Financiers Union (SI.NA.FI.) to participate in the consultation process for the renewal of the collective agreement for the period 2019 -2021. The ministry argued that, "*until the adoption of an ad hoc reform, it will not be possible for this department to deviate from the current regulatory framework and allow the request to convene this association, like any other professional body that has received recognition from the Ministry of Economy and Finance*"; and

6. As regards the absolute ban on the right to strike, still imposed on members of the Guardia di Finanza under Article 1474§7 of the Military Code, the Committee has already concluded that this total ban is "*not proportionate to the legitimate aim pursued and, therefore, is not necessary in a democratic society*" (ESCR, Confederazione Generale Italiana del Lavoro (CGIL) v. Italia, § 152).

The provisions outlined above are only some of the provisions of the pending draft legislation under discussion in the Italian Senate, used in the national report to demonstrate the developments in this particular area in the Italian armed forces, specifically in the Guardia di Finanza, are considered a flagrant violation of Articles 5 and 6 of the European Social Charter by EUROMIL and its Italian partners.

As such, the Committee is asked to reaffirm, within its 2021 findings, the existence of a violation of Articles 5 and 6 of the European Social Charter as to date, the violations found by the Committee in the case CGIL v. Italy have yet to be appropriately addressed by the Italian Government.