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

04/03/2021 RAP/RCha/ITA/20(2021)

EUROPEAN SOCIAL CHARTER

20th National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF ITALY

Follow-up to collective complaints:
No. 27/2004, No. 58/2009, No. 87/2012, No. 91/2013, No. 102/2013, No. 105/2014, No.140/2016

Report registered by the Secretariat on
4 March 2021

For Findings 2021

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Information on the follow up to the decisions of the ECSR (European Committee of Social Rights) relating to the following collective complaints against Italy

Update year 2020

Collective complaint No. 27/2004 European Roma Rights Centre v. Italy, decision on the merits of 7 December 2005.

Collective complaint No. 58/2009 Centre on Housing Rights and Evictions (COHRE) v. Italy, decision on the merits of 25 June 2010.

Response

In relation to the complaints in question, concerning the living conditions of the Roma and Sinti population on the national territory, an update and supplement of what is contained in the 2019 report is provided, as expressly requested by the Committee. It reports the follow up given to the initiatives already underway and to the new projects undertaken in the field of *social housing*, in compliance with the existing principles on housing rights and social protection of Roma, Sinti and Caminanti (RSC), as well as the last social and socio-economic inclusion measures and operational plans carried out to implement the National Strategy for the Inclusion of RSCs (2012-2020).

A) Living conditions in the camps, segregation, families' access to social housing.

The COVID-19 emergency and support to the RSC communities

As a preliminary point, the initiatives taken to tackle the serious epidemiological situation caused worldwide by Covid-19 are reported.

In this phase of emergency crisis, which has developed in Italy since March 2020, the RSCs represent a particularly fragile target group, especially in some camps characterized by a particular overcrowding and precarious hygienic-sanitary conditions, in which some difficulties in the distribution of essential goods have been registered.

In this regard, it should be recalled that, pursuant to Decree of the President of the Council of Minister dated the 9th of March 2020, measures have been introduced that significantly restrict the movement

of citizens within the national territory, thus limiting the performance of daily activities. In the emergency phase caused by Covid-19, the inadequate housing conditions have made even more difficult the ordinary continuation of inclusion and integration processes already started.

The generalized crisis caused by the long phase of social distancing to stem the pandemic risk has brought out numerous reports by associations belonging to the National Platform RSC, established by UNAR and other associations operating throughout the national territory. These reports concern the *socio-economic, housing and health* impact caused by the isolation of RSC families located in marginalised camps.

The spread of COVID-19 and the consequent and necessary restrictive provisions have worsened, in particular, some problems related to the survival of people living in camps or similar settlements (*authorised, unauthorised, micro-areas, collective centres*), affecting the most marginalised groups or at risk of RSC discrimination.

In such circumstances, the extreme hardship of families and children RSC, living in marginal settlements and/or with critical issues concerning their legal status, has emerged (the so-called *de facto* stateless persons: people without citizenship, those without registered residence and because of this they are excluded from any type of support and social security measures envisaged to fight the actual crisis).

For these reasons, the public project promoted by UNAR and known as PAL (Piani di Azione Locali) [1] has allowed to reach the RSC target group, also through a series of actions addressed to their camps (authorised and unauthorised). This project, aimed at realizing "*Leading interventions for the creation of working groups and networks of stakeholders involved in different ways with the RSC community, in order to encourage the participation of Roma in a social, economic, political and civic life* ", is financed by the PON Inclusion (axis 3 - specific objective 9.5 - action 9.5.4) and it is active in 8 metropolitan cities (Milan, Rome, Bari, Naples, Catania, Messina, Genoa and Cagliari). The project is realized in full connection with the concerned municipalities, the associations present in the territories and in synergy with other actions already implemented by UNAR, also financed by the PON Inclusion.

In addition to the central activities included in the PAL project, the actual health emergency has forced to extend it. To face the emergency, a series of low-threshold interventions have been encouraged and carried out by distributing basic necessities (drinking water, food, etc.), medical devices (sanitizing gels, face masks, hygiene products) as well as information, awareness and support interventions to ensure access for *hard-to-reach* subjects to ordinary and extraordinary measures, activated at national level by municipalities and regions. These initiatives have been focused on the cities of Milan, Rome, Naples and Giugliano, where the RSC settlements have manifested greater critical issues due to the pandemic emergency.

a.) As regards the city of **Milan**, activities have been promoted by *Casa della Carità*. The following are the actions taken:

[1] Local Action Plans

- Creation of a coordination table to map the most vulnerable situations and needs of Roma and Sinti families;

- Realization of a mapping of Roma and Sinti families living in conditions of extreme marginalisation such as those living in occupied social housing or in unauthorized camps, carnies (number of mapped families: 177);

- Mapping of families 'needs, such as food, educational aids for e-learning, products for children aged 0 to 3 (milk, diapers);

- Interventions deployed in response to food needs by distributing groceries in camps and at the beneficiaries' homes.

Casa della Carità, as a partner of PON children RSC inclusion and PARI project of the Foundation with children, has also promoted the reconversion of resources provided for educational materials on educational projects to purchase PC tablet. Thanks to this reconversion, 38 PC tablet have been purchased and distributed, while other 7 PC tablet are in delivery.

Reached target audience: 137 families for 758 individuals.

b.) As regards to **Giugliano** and **Naples**, where activities have been promoted by the *21st of July Association*, we highlight:

- Identification of needs and coordination activities with the third sector local bodies;

- Distribution of food packages; in Giugliano, in addition to groceries, personal hygiene and house cleaning products have been distributed. In Naples, moreover, recreational, and educational material have been provided to some families. 350 family packages have been delivered in Naples camps and 80 in Giugliano.

Reached target audience: Giugliano: 120 families for about 600 individuals.
Naples: 350 families for about 400 individuals.

c.) As regards to the Municipality of **Rome**, where activities have also been promoted by the *21st of July Association*, the following interventions are highlighted:

- Actions aimed at the privileged families' target with children aged 0 to 3. By the resources of this project, between May and June 2020, 630 baby packages have been distributed weekly. These activities continued until *last* September;

- To tackle forms of anti-Gypsyism, the packaging activity has involved Roma and non-Roma people. This activity has been supported by a nutritionist and a paediatrician. Each package, prepared according to the weekly requirements, contains diapers, wipes, powdered milk (where necessary), baby food, flour, pasta.

Reached target audience: about 250 children aged 0-3 and their families.

Surveys on the phenomenon of the transition to adequate forms of housing

In line with the 2019 report and the specific aim of monitoring the framework of local level interventions aimed at overcoming camps, UNAR, in collaboration with ISTAT, has adopted, in this context, another important initiative. This is a *qualitative-quantitative* survey for the definition of the number and methods through which, since the adoption of the Strategy, people belonging to the RSC communities have abandoned the so-called "*camps*" to move towards other forms of housing.

This project, financed by the PON Inclusion, relies on the support of the Statistical Working Group and the participation of a representative of the national RSC Platform.

The survey has filled a statistical and cognitive gap on the housing problem experienced by the Roma communities, providing timely data to central and local administrations to help them to overcome it.

At the end of the survey in February 2020, **745** municipalities with over 15,000 inhabitants have been involved and **126** cities have been identified, which have declared a total of **373** authorised and/or unauthorised settlements.

42 of these cities have started, from 2012 to 2020, **96** housing projects aimed at the transition to standard living quarters .

- **Details of the "Housing Transitions" Project (UNAR-ISTAT).** (Start: **28/02/2018**; End: **28/02/2020**; Amount: **200,000 euros** - Specific objective 11.1, PON Inclusion 2014-2020).

Housing interventions at the local level

Between 2019 and 2020, UNAR, through its own project entrusted to the **Research Institute on Population and Social Policies** of the National Research Council (CNR), has created an Evaluation plan of the Roma, Sinti and Caminanti National Strategy 2012-2020. Regarding the participations of the local administrations, many initiatives and concrete actions have been identified thanks to this project. The survey paid attention to the situations and projects relating to housing and alternative solutions to camps.

In this regard, it should be remarked that, although difficulties are still variously distributed throughout the national territory, several efforts are constantly made at various levels to take effective action, adopting different measures and solutions.

However, an update to the information previously reported, concerning several good practices adopted at the local level throughout the national territory, is given below.

ABRUZZO A multi-year project with the Caritas of Teramo Atri, called "Men get free together", was signed in the Municipality of Teramo in order to improve integration by: *a working group, specific educational support both at school and at home, the activation of training courses*.

CALABRIA During the year, the Region has approved the law entitled "*Integration and promotion of the Romanì minority and the amendment to the Regional Law of 19 April 1995, No. 19* ".

CAMPANIA In Naples, an agreement between the Municipality and the Prefecture for the construction of a reception centre for 450 people (total amount of € 10,400,000.00) has been signed.

In Giugliano, a preschool project between the Municipality, parish churches and competent associations, addressed to 50 Roma children aged between 5 and 10 years, has been activated. A local action plan aimed at identifying the guidelines for intervention and development of local policy in favour of the Romanì community, has been also adopted. An eco-village will also be built within the Municipality, with 44 housing modules, services, and inclusion projects (regional funds: € 900,000 and Ministry of the Interior: € 700,000).

Many local projects are active in Salerno, aimed at protecting camps' health conditions, school and work integration, access to public services and health care.

EMILIA-ROMAGNA The Municipality of Bologna has implemented the National Strategy with alternative solutions to camps, also promoting self-financed housing (Regional Law No. 14/2015). It has signed the "*National Project for the inclusion and integration of RSC children*" included in the National operational plan (PON) "Inclusion". In addition, it has approved a local program to identify small Roma and Sinti communities, aimed at providing them with alternative housing solutions to camps, such as temporary housing for marginalised people, regional housing projects or private houses for rent.

The Municipality of Budrio has planned interventions of local social services to avoid school dropout of RSC pupils. In San Lazzaro di Savena a *team* integrated in the territory, which meets monthly, has been appointed to find alternative housing solutions to "living in camps"; six families have been helped by the team to access public housing. Health and educational courses have been planned for each family. In Correggio, a social inclusion project has been carried out by the Social Services of the local authority in collaboration with the local voluntary organizations aimed at promoting school attendance for minors, making sure that adults know the available social facilities.

In Guastalla, the Municipality and the Emilia Romagna Region have financed a project for the creation of a camp equipped with technologies such as water and gas pipelines, water purifier and electricity supply. The project has been developed as indicated by Opera Nomadi (a charity active in the protection of RSC communities). A monthly contribution of 10 euros is required for each RSC household.

By funds allocated by the Regional Law No. 11/2015, the Municipality of Ferrara has dismantled large camps by promoting the creation of micro-areas; moreover, it has outlined and implemented the "Lanciodrom" project (started in 2002, but still ongoing), based on the four basic "axes" (*employment, education, health and housing*) as indicated in the National Strategy. The Municipality of Faenza has signed a project with the Region to promote school inclusion and find alternative housing solutions to camps. All RSC families live in public housing or Church-owned homes. Since 2017, a project to manage urban waste and wreck has been underway. This project, called "Protocol between the Romagna Faentina Union and the Consorzio Equo di Torino", financed by the Region, is aimed to offer job opportunities and educational interventions.

The Council of the Municipality of Rimini has approved a program to find alternative solutions to the existing large camp by assigning equipped micro-areas to 6 Italian Sinti families and public housing to 4 families. In Ravenna, adults are self-employed, and children attend compulsory school under the control of the local social services to avoid dropping out. Most of the families were granted public housing between 2005 and 2011, following the dismantling of the only existing camp.

In Parma 22 Roma households with 47 minors, have been identified. These households are living in public and/or private housing, sometimes owned. As regards to the Sinti Community, there are 9 households including 34 minors living in private parking areas. There are also 23 families, for a total of 104 residents including 34 minors, dwelling in scattered settlements. According to the Municipality and the province, about 40/50 households per year pass through the territory.

FRIULI VENEZIA-GIULIA In implementation of the National Strategy, the Municipality of Trieste has developed and carried out, together with the Local Health Service and ATER (municipal housing), the "*Micro Habitat Areas*" project. The Municipality of Udine has taken some initiatives to fight early school leaving (cultural mediators, after-school activities, *on-site* teachers, and professional training for young people under the age of 21). It has also established the "*European Project Roma-net*", in close collaboration with the Ministry of Justice, the Local Health Service and several non-governmental organizations (NGOs), in order to reduce the number of people living in camps, avoid evictions and promote a vast social inclusion plan. In compliance with the regional Law of March 14, 1988, the RSC communities have been authorized to purchase agricultural lands, owned by the Municipality, and prepared for this purpose, to repair their homes and install only mobile homes. In Pordenone, several families live in adequate houses, some in public housing, with a good level of social inclusion.

LATIUM On November 18, 2016 the Municipality of Rome approved an "*Inclusion Project*" (with the participation of UNAR, the Latium Region and the National Association of Municipalities of Italy), aimed at finding alternatives to 6 Roma camps by a European call for tenders. By the decision of the City Council No. 117 of 16/12/2016, a "Working group for cities' inclusion" has been approved. It includes the "Working Group for the school inclusion and the health conditions of Roma, Sinti and Caminanti", together with the Local Health authorities Rm1, Rm2, Rm3 and the National Institute for Health, Migration and Poverty. To dismantle camps and find alternative solutions, as well as to implement the National Strategy, the "Guidelines Plan" of Rome-Capital has been approved by Decision No. 105 of 16/5/2017. As already represented regarding the *Castel Romano* camp, it should be noted that its dismantling will take place by the end of 2021. The cost of this dismantling, which also includes the reclamation of the entire area, amounts approximately to 1,8 million euros (allocated by the European Union). Support interventions are foreseen for families who will rent an apartment (800 euros per month for the first two years), for those who accept assisted repatriation (3,000 euros) or for those who want to start a small business (5,000 euros).

At the same time, the PON Metro Project "Metropolitan Cities" 2014-2020 addressed to La Monachina camp has been activated by calls for tenders. In consideration of its dismantling, scheduled for October 2021, 86% of the occupants have accepted the responsibility pact for social inclusion, proposed by the Municipality of Rome.

Similarly, in the La Barbuta camp, in view of its dismantling, scheduled for 2020, over 60 families have accepted the responsibility pact proposed by the Municipality of Rome.

LIGURIA The Municipality of Genoa has developed: *local socio-pedagogical projects for educational inclusion addressed to minors,* as well as *extra-curricular inclusion paths; actions to promote preventive measures (family counselling, awareness-raising projects on the health risks associated with alcohol and drug addiction*) agreed by the Municipality and the Local Health Unit.

Local social services have taken care of families with children and elderly people. In addition, a memorandum of understanding has been signed between the Ministry of Labour and Social Policies and the Municipality, in implementation of Law No. 185/1997, to promote the rights of minors. The memorandum is renewed every three years. From 2017 to 2020, it has involved 81 schools and Roma and Sinti pupils aged between 6 and 14. *Pre-schooling* projects for children aged 3 to 5 are provided too. Following the flood that occurred in 2014, a further project called **"from the camp to the house"**, agreed with the Ministry of Labour and the Municipality, financed by the Ministry, aims to promote housing projects through incentives for families, such as *the payment of rent for one year*. Some Sinti families in La Spezia have moved into "*temporary housing*" pending the granting of public housing according to the local procedure, while other families already benefit from it. In Cornigliano, an authorized camp inhabited by 45 Italian Sinti households has been identified, further inspections have revealed the presence of about 100 households. In the municipality of Savona there is a community of about fifty Italian citizens of Sinti origin, where the right to study as well as the possibility to access professional training courses are ensured. The community, located in a special equipped area, is subdivided into posts for each household. There is the possibility to apply for social housing and health care system is also provided.

LOMBARDY The Municipality of Milan has paid close attention to the maintenance of the five authorized camps. Regular cleaning, sanitization, rat extermination and control of fire prevention systems are also carried out. The Municipality has entrusted to the third sector institutions the management of residential structures, such as a structure that can host 100 people: a structure with a capacity of 75 households and 35 places in collective structures and apartments. These structures host both members of the RSC communities and socially marginalised people. Among these projects, the following are highlighted: the "*National project for the inclusion and integration of children RSC*", implemented by the Municipality of Milan and the Ministry of Labour and Social Policies, as well as the projects "*Breaking the circle*" and "*Drifts and Landings*". The first project, financed by EU funds, is addressed to socially excluded young people who grew up in foster homes or communities and/or without a family of origin, to provide paths of inclusion and accompanied autonomy. The second project, financed by the Presidency of the Council of Ministers with funds for the trafficking of human beings, has been adopted to fight prostitution, exploitation, and marginalization. In particular, the "*Project for the identification of housing structures for the hospitality of marginalised families/people subjected to active evictions procedures*", between the Municipality of Milan and the Lombardy Region, is highlighted. This project aims to identify private sector properties to be allocated for the temporary reception of 20 socially marginalised households, occupying public housing in the Lorenteggio district, with no legal right. The purpose is to guide these households/people to achieve an autonomous and stable housing condition, thanks also to funds granted by the Ministry of the Interior.

In the province of Brescia and in the municipalities of Brescia, Bedizzole, Calcinato, Castenedolo, Cazzago San Martino, Desenzano, Manerbio, Paderno Franciacorta, Rezzato and Roncadelle, more

than 300 people, settled and split into different municipal areas or in private ones owned by residents, have been identified.

In the province of Bergamo and in the municipalities of Bergamo, Alzano Lombardo, Boltiere, Calcinate, Casazza, Ciserano, Dalmine, Grassobbio, Montello, Mornico al Serio, Pognano, San Paolo d'Argon, Trescore Balneario, Zandobbio, Zanica, Bagnatica , Boltiere, Capriate san Gervasio, Ciserano, Cologno al Serio, Dalmine, Montello, Romano di Lombardia, Spirano, Fara Gera d'Adda, Urgnano, the following is highlighted.

These are Roma and Sinti families, mostly Italian citizens, permanently settled both in the capital and in the province. There are also groups of Caminanti carnies, with a fair percentage of workers (especially traders). They have a good level of school inclusion.

In the province of Mantua there are RSC families not numerically identified, included in the policy programme guidelines of the Municipal Council of Mantua 2015-2020. Among its strategic objectives are, social inclusion activities in favour of these communities and the dismantling of existing camps.
MARCHE Many groups of Roma, Sinti and Caminanti families settled in the Municipality of Fano (Pesaro-Urbino) are lodged in private apartments or in *social housing* units.

PIEDMONT By a Regional Table for the inclusion and social integration of RSC, the Piedmont Region, with resolution n°. 22-7099 dated 10th of February 2014, has identified the Municipalities of Alessandria, Asti, Cuneo, Turin among the action priority areas.

In the Municipality of Turin, thanks to a "*Memorandum of Understanding concerning the joint initiative to overcome the nomad camps*", signed on the 16th of December 2019 and also financed by the Ministry of the Interior, the dismantling of the camp di Via Germagnano, 10 has been contemplated. 11 families, for about 95 people, have been lodged in alternative accommodation facilities. These initiatives are still ongoing. Currently there are Roma people living in the authorized camp of Strada Aeroporto 235/25, equipped with essential services (*water, electricity, sewage plant and waste collection*), and organized in pitches where wood and brick houses have been built.

There are also more than 150 Sinti people living in the municipality of Turin, residing in two other authorized camps (Corso Unione Sovietica and Via Lega). They are both equipped with essential services (*water, electricity, sewage plant and waste collection*), and organized in pitches, where brick houses have been built.

PUGLIA The Municipality of Bari has approved a local action plan for the social inclusion of Roma, Sinti and Caminanti. In addition, a national experimental project (between the Ministry of Labour, the Ministry of Education, University and Research and the Istituto degli Innocenti in Florence) aimed at fighting early school leaving is also underway in the municipal area. Currently, it is being tested in two nomad camps.

In Barletta, there are about 15 Montenegrin Roma people. A city camp has been set up on a confiscated land; it has been structured in 3 housing modules, which have been formally assigned by the Municipality and equipped with essential services.

SARDINIA In the municipality of Sassari there are 2 communities: 1 of Bosnian origin and Muslim religion and 1 of Serbian origin and Orthodox religion. The two communities are in the same area with different entrances (clean and tidy Serbian Orthodox area, degraded Bosnian area). An assisted voluntary return project is underway, as well as reintegration programs financed by the Ministry of the Interior and in collaboration with the World Organization for Migration.

In Olbia there are about 250 residents, including: Bosnian citizens, former Yugoslavs and Serbs, Italians. They live in a rest area equipped with 18 houses with sanitary facilities and 14 sites for caravans with water and electricity. A Protocol has been signed with the Local Health Authority Olbia 2, for health checks (vaccinations and prevention of infections). Primary and lower secondary school attendance is 90%. School bus, social, sporting, and cultural assistance services are available.

In addition, the "*Romani*" Project for social and work inclusion, financed by the Sardinia Region (concerning 10 Roma individuals engaged in work activities) is being implemented. In the planning phase, the overcoming of the camp has been achieved by the search for alternative intermediate and definitive solutions (restoration of ruined country houses, mobile homes on owned land, etc.). In 2018, two families left the camp (settling on a private land with mobile home). 9 groups will soon follow, for a total of 97 people (7 groups will settle on a private land with mobile homes, 2 in standard homes).

In Alghero there are more than 100 people. Minors are monitored by the municipal social services. School attendance is ensured. Between January 2015 (date of eviction of the previous nomad camp) and February 2017, 11 projects for housing inclusion or alternative to camps (*caravan, camper*) have been activated and financed by the Sardinia Region, providing a better awareness and mutual understanding in new living settlements.

In Porto Torres there are about 50 people. The support of the Social Services is active and school attendance is ensured (*school bus*). The project financed by the Sardinia Region is also applied here, to overcome the actual settlement and to find alternative solutions (participation of representatives of Roma communities).

In Oristano there are 9 families for a total of 24 people, including 7 minors attending school. The main livelihood of these people is relating to the collection of ferrous materials. Eight families are covered by social services and have occupied, since the nineties, a structure next to the hospital, equipped, however, with sanitary, water and electricity services. The Municipality periodically checks the occupants' personal status, whose minors attend school, and intervenes through social services to manage situations of hardship.

The municipality of San Nicolò d'Arcidiano hosts the largest Roma community in Sardinia: they are 85 people, 41 males, 44 females, inlcuding 33 minors, 45 Italians, 30 Serbs, 4 Macedonians, 4 Croats, 2 Bosnians, living in 14 prefabricated housing units located in an authorized camp perfectly equipped with all the necessary services. Minors attend school. Due to the health emergency, the Municipality has issued vouchers in favour of poor families, also provided for by the Regional Law 12/2020. The municipality has also asked a contribution of 220,000.00 euros to the Sardinia Region, aimed at finding definitive solutions to the housing situation by the "*Suitable paths*" Project.

TUSCANY Here the interventions that are implemented at regional level, before and after 2014, but they are still ongoing: the granting of social housing to 160 families (about 780 people); execution of

the 2007/2010 regional integrated social Plan, as indicated in the "*Action plan aimed at finding ordinary housing solutions alternative to living in camps for Roma and Sinti communities*"; the continuous implementation of specific actions, as required by both the Regional Law n°. 2/2000 "*Actions aimed at finding alternative solutions to living in camps for Roma and Sinti communities*" through the assignment of equipped areas, the renovation of existing buildings, the granting of public housing, and the Integrated Regional Plan for health and welfare 2012/2015 and following amendments. Important actions of the municipal social services to protect minors are reported (educational and school support services).

In Lucca there are about 150 people Roma and Sinti, divided in various ways. Interventions by municipal social services are foreseen to protect minors (educational and school support services). A part of their settlement is located on an area owned by residents, structured with wooden houses, and equipped with the necessary services; the other part is located on a state-owned area (*caravans)*.

At the provincial level, by the Resolution of the Tuscany Region n°. 2798/2015, the "**Prima la casa**" ("Home first") project has been approved. It provides for access to regional funds to overcome living in camps by the allocation of houses to families who come from campsites.

The Municipality of Massa Carrara has undergone specific inclusive actions. A project for alternative housing has been launched together with the Michelucci Foundation of Florence, which led to the assignment of social housing units and the purchase of lands for campers and caravans. In October 2018, the Municipality presented a new project to the Region for the school inclusion of minors aged from 6 to 16.

VENETO The Municipality of Padua has developed specific actions to support education and inclusion of RSC children. Many families live in public housing (they can access like any other citizen), built on municipal or private areas. In case of eviction, a special attention is paid to marginalised people who have been granted a temporary accommodation; many actions are carried out to optimize health and social services.

By the *"from the camp to city"* project, financed by the Municipality and the Ministry of Labour and Social Policies, 30 accommodations have been built in a municipal area. In Treviso about 250 Roma and Sinti people have been identified, most of the families live in public housing available as well as alternative solutions to the campsite.

In Castelfranco Veneto, where there are more than 30 RSCs, initiatives are underway to encourage school attendance, provide the elderly and the disabled people with professional training to carry out a job activity, in collaboration with local health authorities. The Municipality of Montebelluna, by a presence of more than 80 RSCs (divided into 5 communities), has launched three social integration projects involving the largest communities, primarily aimed at the minors' social inclusion. In the municipalities of Cavarzese and Santa Maria di Sala, in the province of Venice, RSC families live in public housing or in their own homes, and benefit of a good level of social inclusion.

In Trevignano, Sinti families, for a total of about 30 people, have been identified. They are settled on land by their-own to be reclaimed, based on agreements for a definitive resolution of the situation.

In Vicenza there are more than a hundred RSC families located in 22 municipalities, for a total of more than 600 people. Minors regularly attend schools. Municipal support interventions are foreseen (*integration of school fees, purchase of teaching material, canteen vouchers, after-school activities)*.

There are 9 camps in suitable good conditions, equipped with essential services and facilities. There are projects of numerous municipalities aimed at involving RSCs in voluntary activities.

Access to the rankings for the allocation of social housing units is provided as well as other citizens.

B) Eviction procedures and protection measures against acts of violence applied to Roma and Sinti.

With reference to the issue in question, it is necessary to refer to the written response provided by the Italian Government on the case of non-conformity, transmitted, in the current year, in relation to Article **31, par. 2,** of which the extract concerning the procedures in question is attached.

C) Participation of the RSC Community in decision-making and local processes.

The coordination of interventions for the RSC communities through the Local Action Plans (PAL).

The PAL project "*Leading interventions for the creation of working groups and networks of stakeholders involved in different ways with the RSC community, in order to encourage the participation of Roma in social, economic and civic policy*", as well as ensuring support necessary in the RSC settlements, in response to the COVID-19 emergency, continued, during 2019-2020, to provide important technical support to the administrations involved (the 8 metropolitan cities of Milan, Rome, Bari, Naples, Catania, Messina, Genoa and Cagliari), to promote the inclusion of RSC communities, the participation of Roma in social, political, economic and civic life and to promote models and guidelines for Local Action Plans and local sector networks.

The local working groups set up on their respective territories have achieved the dual purpose of ensuring a synergic and homogeneous implementation of the Strategy at the territorial level and carrying out an action of *information, awareness and monitoring* regarding the objectives envisaged in the individual areas of reference (Regions, Provinces, Municipalities).

The working groups represent the places of the programming of the "Local Action Plans".

The project activities were presented in a meeting, which was held on 13th of February 2019 in Rome, to provide:

- *a first impression of the different territorial realities involved in the project and related to the characteristics of the Roma and Sinti population*.

- *an action-research that collected quantitative and qualitative data on the expressed needs, on the stakeholders, on the policy tools and on the first results of the actions.*

Currently, the working groups of Messina, Bari, Cagliari, Milan, Catania, and Naples, established with municipal approval, carry out their coordination of interventions for the RSC communities. Only the Municipality of Genoa, which has already defined definitive transition processes from the RSC settlements to normal houses, is evaluating the activation of an *ad hoc* working group.

During 2020, 9 face-to-face and 7 *online* meetings were held at the working groups, with the overall participation of 177 local stakeholders.

Coordination activities of the National Contact Point with local administrations on the RSC housing issue

UNAR, as National Contact Point for the implementation of the National Strategy for the inclusion of RSC communities 2012-2020, to make a concrete contribution to overcoming the Roma camps, considered as places of isolation and physical and relational degradation, has launched various project actions and monitored the initiatives, still in progress, aimed at encouraging the advancement towards non-mono-ethnic housing methods and based on the housing distribution of families. These actions and initiatives have been adopted based on new territorial agreements and dialogue between the various social actors involved in the problem and with the direct participation of the beneficiaries of the actions.

It should be noted that, starting from 2016 until 2020, UNAR - in coordination with the Territorial Agency for Cohesion and with the Metropolitan cities, respectively the Managing Authority and the intermediate Organization of the PON Metro - has undertaken a direct activity to correct use of available resources in favour of housing policies for RSC communities, both through the PON Metro, and in synergy with the interventions contained in the PON Inclusion and in the Regional Operational Plans, through the periodic convocation of an Inter-institutional working group on the issue RSC housing.

A series of meetings have been held to date, with the participation of central administrations and the main Italian metropolitan cities and with the aim of giving a new impetus to local policies for the housing issue of Roma in large urban areas most affected by the presence RSC.

To strengthen this goal of greater coordination between central and local levels, UNAR will launch, by 2020, in collaboration with the Conference of Regions and Autonomous Provinces, the project called **P.A.R. (Regional Action Plans).**

This Project establishes, in synergy with what has been carried out at the municipal level, through the PAL project, to provide the Regions with direct technical support for planning and more effective access to financial resources available on ordinary and European funds, direct and indirect, as well as to a better regional operational coordination of social and economic inclusion interventions of the RSC communities and of those at greatest risk of social vulnerability.

The initiative is the result of a discussion started in 2018, when the issues related to the Housing Axis of the RSC Strategy were addressed in a synergic way with the local actors in an *ad hoc* meeting (held on November 27, 2018), with the participation about 20 representatives of the regions and the main metropolitan cities, with the analysis of proposals, critical issues and good practices.

The search for collaboration between the different levels of government with shared objectives made it possible to plan measures in line with the Strategy.

This meeting gave rise to the idea of the aforementioned project path, to be developed through a European tender and soon to be published, which provides for the elaboration of Regional Action Plans in five Italian Regions (Calabria, Emilia-Romagna, Lazio, Puglia, Sardinia). These Regions have formally adhered to the proposal and will participate in the activities, which provide mechanisms for

planning interventions aimed at improving the capacity for intervention between the local and regional levels, increasing the *capacity building* of associations, and involving Roma and Sinti mediators.

Detail of the P.A.R. project, "Regional Action Plans". (Estimated start**: end of 2020;** End: **2021;** Amount: **800,000 euros plus VAT).**

On the *governance* model of the P.A.L. project, UNAR has undertaken the necessary procedures to provide, also to regional authorities, a similar support and coordination tool.

The P.A.R. project financed with funds from the PON Inclusion will start in the next two-year period 2021-2022 and will affect the regions that want to make use of this instrument to set up the **regional dialogue tables**, also provided for by the RSC Strategy.

Furthermore, the activities started by the National RSC Platform - already mentioned several times - as an operational tool for dialogue with the RSC and sector associations and the central and local public administrations involved in the National Strategy, are continuing.
Among the objectives of the Platform there is the promotion and establishment of networks and the Forum of the RSC Communities, which constitutes a central core of the Platform (the Forum is envisaged by the Strategy "*with functions of interface, relationship and consultation with the National Contact Point, the National Tables, both with respect to the implementation of the Strategy and its periodic review and evaluation*".

The Platform and the Forum met constantly (14 meetings from 2017 to today), with discussions on specific situations and criticalities, at national and local level, also on the issue of evictions and the necessary housing alternatives for people living in the settlements.
In November 2019, during a plenary meeting, a consultation on some key issues was launched: the result is the acquisition of the contribution of 15 companies of the RSC Platform. These have also provided specific indications about housing and evictions, highlighting critical issues and proposals, which may provide inspiration for the development of *Guidelines* as part of the post-2020 Strategy.

D) Issue relating to the discriminatory phenomenon and xenophobic racist propaganda against Roma, Sinti and Caminanti (*hate speech*).

With regard to the issue in question, it must be reiterated that a significant part of the actions carried out at national level by UNAR concern **the collection and management of complaints of discrimination**, carried out, more specifically, by its *Contact Centre* - the Centre is contact point set up for reporting hate crimes, providing support and legal assistance to victims - and an Observatory on the *media* and on the *Internet*, to train Romani youth and to monitor, remove or report hate speech.

Appendix 1

Second ground of non-conformity

- ***evictions of Roma and Sinti continue to be carried out without due regard for the necessary procedural safeguards to guarantee full respect of every individual's human dignity.***

As a preliminary point, it should be noted, in relation to the issue under examination, that the numerous initiatives launched by local authorities, aimed at guaranteeing the right to housing of Roma, Sinti and Caminanti and amply illustrated in previous reports, continue, unabated, to be adopted throughout the national territory.

With specific reference to the Committee's request regarding the methods by which the evacuation procedures are carried out in the Roma and Sinti camp sites, reference is made to the guidelines contained in 2 circulars, previously mentioned, of the Ministry of the Interior dated 1st of September 2017 and 1st of September 2018, which, although not referring exclusively to interventions against RSC, must be strictly observed, under the firm control of the aforementioned Ministry.

Particularly, the Prefects plan all the operations necessary to carry out the aforementioned interventions, verifying the existence of the conditions that guarantee, primarily, public order, safety and public health, the protection of people's dignity, as well as the specific protections of those entitled to housing, in relation to each of the planned evacuation interventions.

Furthermore, the operations must be based on a fundamental principle, which is that of the utmost respect for persons in fragile conditions and the protection of families in situations of economic and social hardship. A priority condition for defining the methods of execution of clearing out the site camps.

With greater reference to the activity carried out in this area by UNAR, which, as it is known, constitutes the National Contact Point for the implementation of the National Strategy for the inclusion of Roma, Sinti and Caminanti communities (RSC) 2012-2020, the following is a description of these activities.

In consideration of the need for discussion with local administrations on the issue of international standards of respect for human rights in the event of forced evictions of Roma and Sinti settlements, UNAR has developed an internal strategy within the framework of previous social inclusion programmes and ongoing, promoting principles that make it possible to combine guarantees and protection of those subject to evictions with the needs of administrations, favoring alternative housing procedures and solutions in line with the main international standards of respect for human rights.

The choice of evictions of Roma and Sinti settlements by local administrations, insofar mandatory for justified reasons (sanitation and public safety considerations, security, and protection of all minors), **must take place in compliance with human rights and the principle of non-discrimination.**

The principles shared internally were subsequently discussed in the framework of the Platform of Roma, Sinti and Caminanti Forum (RSC) and the Local Action Plans promoted by UNAR with local administrations. Specifically, the areas of discussion promoted by UNAR on the issues under consideration are here highlighted.

1 Platform and RSC Forum, its prerogatives and forms of consultation about housing.

The National Platform RSC - national emanation of the European Roma Platform - promoted by the European Commission, was established, as is well known, in 2017, following an expression of interest with the admission of 79 associations from all over the national territory;

(http://www.unar.it/wp-content/uploads/2018/04/Decreto_Piattaforma-_Forum_RSC.pdf).

Among the objectives of the Platform is the promotion and establishment of networks and the Forum of the RSC Communities, which constitutes a central core of the Platform (the Forum is envisaged by the Strategy "with functions of interface, relationship and consultation with the NCP, the National Tables, both with respect to the implementation of the Strategy and with regard to its periodic review and evaluation ", See National Strategy RSC, Par 2.3.2).

The Forum is made up of 25 NGOs who in the expression of interest have self-declared to be mainly composed of RSC people and to express a common position on some relevant issues to be raised to the relevant institutions, **including housing issues and the overcoming of Roma settlements.**

The Platform and the Forum met constantly (14 meetings since 2017), with a discussion on specific situations and critical issues at national and local level, **including the issue of evictions and the necessary housing alternatives for people living in the settlements.**

The UNAR guidelines to which specific reference was made in the 2018 report have not yet been formally adopted. However, in November 2019, during a plenary meeting, a consultation on some key issues was launched: **the result is the acquisition of the contribution of 15 companies of the RSC Platform**. These have also provided specific indications about **housing and evictions**, highlighting critical issues and proposals that can provide inspiration for the development of guidelines as part of the post-2020 strategy.

2. Coordinating activities of the National Contact Point with local administrations regarding the RSC housing issues.

UNAR, in order to make a concrete contribution to overcoming the Roma settlements, intended as places of isolation, physical and social deterioration, has launched project proposals and monitored ongoing initiatives for the advancement towards non-mono-ethnic housing methods, and based on the housing displacement of families, elaborated on the basis of new agreements of territorial coordination and dialogue between the relevant social players concerned by the problem and with the direct participation of the beneficiaries of the actions themselves.

Among the aforementioned projects, of particular relevance in this context, is the one financed with European funds, called **L.A.P. (Local Action Plans),** which provides a support service to the municipal administrations involved for the establishment and animation of citizen's consultation in the metropolitan cities that have joined the proposal (Rome Capital, Cagliari, Milan, Genoa, Naples, Bari, Palermo and Catania). The initiative promotes greater coordination between regional and municipal

levels for the optimization of interventions and resources available. During the meetings with the Municipalities adhering to the L.A.P.s, one of the topics of discussion concerns the evictions of illegal settlements **and the key principles for the protection of housing rights and social protection of vulnerable individuals.**

The L.A.P. project (Local Action Plans https://pianiazionelocale-rsc.com /) provides for the activation and animation of citizen's consultation, that develop from the 4 main axes of the Strategy (housing, work, education and health) also touching on the subject of settlements and their overcoming as a key issue.

In the Local Action Plans, some of which have already been activated or approved through resolutions in the eight metropolitan Municipalities involved, **the development of methodologies and interventions on the subject of housing is envisaged, which include the issue of relocation of communities living in precarious or disadvantaged housing contexts in line with the National Strategy and the protection of people's rights and situations of fragility.**

3. Investigations on the phenomenon concerning the transition to modern forms of living.

Another important initiative, which it is considered appropriate to point out here, is the one adopted with the specific intent of **monitoring the framework of interventions activated at the local level, aimed at overcoming the settlements.**

In fact, in 2018, UNAR launched a two-year project - currently in progress and entrusted through an agreement with ISTAT - aimed at carrying out a qualitative and quantitative survey for the definition of the number and modalities through which - starting from the adoption of the Strategy - people belonging to the RSC communities have abandoned the so-called "Settlements", to transit to other forms of modern living.

The project, financed with funds from the PON Inclusion, relies on the support of the Statistical Working Group and the presence of a representative of the national RSC Platform. The survey will fill a statistical and cognitive gap on the housing problems experienced by the Roma communities, by providing timely data to central and local administrations for their overcoming.

The ISTAT survey (launched in 2019 as part of the PON Inclusion) **on housing transitions** (from settlements to ordinary homes), currently underway, is providing data and indications of interest to local administrators in dealing with the issue of settlements and their overcoming.

4. Information on forced evictions involving Roma and Sinti.

With reference to the request formulated by the Committee concerning specifically the number of forced evictions involving Roma and Sinti, it should be pointed out that as data is not currently collected, such information is not available.

However, the Office guarantees constant monitoring of the situation at the local level, both through the control of the press, web and social networks and through contact with the associative fabric and the constant meetings of the platform.

In cases referring to evictions reported to the Office (through the contact center, via e-mail or other channels), the procedure for dealing with the case itself is initiated with the proficiency evaluation,

insertion, investigation and direct dialogue with the relevant administrations (also through on-site missions).

Alternatively, a document provided by the Ministry of the Interior is attached, which lists the operations carried out most recently and those to be carried out, together with the solutions adopted, or in the process of being adopted, to remedy the inevitable inconveniences for the individuals involved in such proceedings.

Please find the attached document provided by the Ministry of the Interior, in which the most recent interventions carried out and those to be carried out are summarized, together with the solutions adopted or in the process of being adopted to remedy the inevitable inconveniences for those individuals involved in such proceedings.

RECENT PROCEDURES FOR THE CLEARANCE OF ROMA, SINTI AND TRAVELLERS SETTLEMENTS.

PIEMONTE REGION.

TURIN.

There are 4 regular settlements in the city for a total of about 1000 people, which are expected to be overcome by 2020. These are: road airport 235 people, Lega Street, Sangone and Le Rose. In via Germagnano, after an initial partial evacuation, about 80 people remain for whom we are trying to find a suitable accommodation.

In June 2018, the eviction of the Roma camp in Tazzoli Avenue was completed. Most of the families have returned to Romania to their residences. In Turin there are seven people belonging to three families relocated to the city.

In the Municipality of Moncalieri, the temporary parking area in Frayla Mezzi Street was closed in May 2018, where 28 people lived, including 13 minors. All the inhabitants of the center were relocated to private accommodation in neighboring municipalities, in healthcare or social-health facilities and in temporary social housing.

LOMBARDIA REGION.

MILAN.

In Sacile Street, next to the municipal reception center set up by the Municipality, following a fire that destroyed the buildings on April 15, 2019, an illegal camp occupied by about 50 people (including 15 minors) was dismantled. 27 people were greeted in the Municipality's facilities and one family independently proceeded to find a home. The remaining families requested a place in the dormitory

VARESE.

The settlement that housed 26 families in Gallarate (about 90 people including 36 minors), all Italian citizens recorded in the Register Office, was closed in December 2018. Their accommodation was

ensured in a hotel in the neighboring municipality of Somma Lombardo, for a period of thirty days at the end of which the municipal administration provided for the allocation of municipal housing to the families who had requested it and had the necessary requirements. Some families have decided to ask for hospitality from relatives who live in the same area.

UMBRIA REGION

PERUGIA

In the Municipality of Foligno (locality Sant'Eraclio) in March 2019 the dismantling of the traveller site located in Londra Sreet took place. About 20 people were removed without public order issues. For families who had requested it, the municipal administration has made suitable accommodation available

LAZIO REGION

ROME

During 2018, numerous actions were carried out for forced expulsions from irregular settlements, The "Camping River", closed in July 2018 in which about 450 people resided. Nine families accepted assisted voluntary repatriation, two families found accommodation in the town of San Vito Romano, four families were assisted by the Italian Red Cross in finding a suitable housing solution; some families, on the other hand, preferred to move to other traveller sites in the capital.

Below is a list of the traveller sites which an upcoming eviction is expected:

- **Castel Romano**: It is divided into 5 areas in which there are a total of 164 residential units that house almost 1,200 people, half of which are minors. 252 are those enrolled in compulsory schools. There is no electricity, there is little drinking water and the sewage system works only occasionally. It should be dismantled by November 30, 2021. The cost of the operation, which also includes the reclamation of the entire area, will be approximately 1.8 million euros (funds already allocated by the European Union). Support interventions have been provided for families who want to rent an apartment (800 euros per month for the first two y ears) or want to accept assisted repatriation (3,000 euros) or start a small business (5,000 euros).

- **La Monachina**: there are 90 families for a total of 85 people (46 adults and 39 minors). Because of the planned closure of the camp in October 2021, 80% have accepted the joint responsibility pact for social inclusion proposed by the Municipality of Rome.

-La Barbuta: hosts 101 families for a total of 580 people. 87 families live inside the camp while the other 14 are stationed in the yard outside as they are of Sinti origin. In view of the closure of the camp expected by 2020, 61 families have accepted the joint responsibility pact. 90% of the children attend compulsory school.

Collective complaint No. 87/2012 International Planned Parenthood Federation-European Network (IPPF-EN) v. Italy

Registered on the 9th of August 2012, the collective complaint No. 87/2012 was raised in relation to article 11 *(The Right to protection of health)*, read alone or in conjunction with article E *(Non-discrimination)* of the revised European Social Charter, for not protecting access to voluntary termination of pregnancy (IVG) by concerned women due to the high number of objecting doctors, nurses and paramedics.

Response

As required, an update of the information contained in the 19th report of the Italian Government on the follow-up given to collective complaint No. 87/2012, on voluntary termination of pregnancy (IVG) and conscientious objection, is provided.

Contents included in the previous report, such as article 9, Law dated 22nd of May 1978, n°. 194, containing *"Rules for the social protection of maternity and on the voluntary termination of pregnancy",* and article 43 of the Code of Conduct of the medical profession, which regulate in Italy the conscientious objection on voluntary termination of pregnancy, are confirmed.

As already reiterated, pursuant to Article 16 of the aforementioned Law 194/78, the Minister of Health submits every year a report to Parliament. The most recent was sent to Parliament on the 9th of June 2020. It analyzes and illustrates the definitive data relating to 2018. The report contains a specific chapter dedicated to conscientious objection and family planning services for IVG activity, based on information provided by Regions for all structures.

As already indicated in the previous report, a new system to collect data from investigations on reproductive health (and so, on IVGs too) has been activated by ISTAT. In order to facilitate Regions, it has set a new single web platform through which Regions, Local Health Authorities and structures can access and upload/update various data and information. The transition from the old systems to the new platform is gradually taking place so that the full use of this tool will be implemented by 2020-21.

To support the assessments on the collective complaint No. 87/2012, some data, taken from the latest IVG Annual Report, are provided below.

A decrease in IVG use by women of all childbearing years (76,328 cases of IVG registered by the Surveillance System in 2018, in reduction of about 5.5% compared to 2017) has also been registered in 2018. The constant decrease in IVG use in Italy is certainly a positive sign of a better information on responsible procreation and the activity carried out by services.

Waiting time between the issuance of the certification by health personnel and the intervention (possible indicator of services' efficiency) shows that the percentage of IVG carried out within 14 days of the release of the documents is slightly increased: it corresponds to 70.2% in 2018 compared to 68.8% in 2017. The percentage of IVGs carried out after more than 3 weeks of waiting time is decreased too: 10.8% in 2018 compared to 10.9% in 2017.

In 2018, Regions reported that 69% of gynaecologists, 46.3% of anaesthesiologists and 42.2% of non-medical personnel submitted conscientious objection. These values are slightly increased compared to those reported in 2017 and they show large regional differentiations for all three categories.

To monitor the full implementation of Law No. 194/78 concerning the exercise of the right to conscientious objection, according to the provisions of Article 9 and in continuity with the contents of the previous Reports to Parliament, also this year, three parameters have been identified. They concern the offer of the IVG service both in terms of structures present in the territory, either in absolute number or by reference to the female population in childbearing years, and in relation to the availability of the dedicated health personnel, considering the weekly workload for each non-objecting gynaecologist.

In order to identify any critical issues regarding the impact that the exercise of the right to conscientious objection by health personnel may cause to women wishing to access IVG and in compliance with the legal requirements, a valid indicator has been provided. It corresponds to the weekly average workload for Voluntary Termination of Pregnancy for non-objecting gynaecologist, counted over 44 working weeks per year, based on the relationship between the total number of IVG annually carried out and the number of non-objecting gynaecologists working in services for the termination of pregnancy.

In continuity with the last three years, a further in-depth study on the evaluation of the possible number of non-objecting gynaecologists assigned by administrations to different services, has been conducted.

The three parameters, showing the service offering according to demand and availability of instrumental and professional resources relating to 2018, are hereafter illustrated:

Parameter 1: IVG service offer in relation to the absolute number of available facilities

At national level, in 2018, the number of hospitals with a department of obstetrics and gynaecology was equal to 558, while the number of structures performing IVG was 362, i.e. 64.9% of the total. A slight increase in the percentage of available facilities has been recorded, almost certainly as a result of the reorganization of the hospital network following the implementation of Ministerial Decree 70/2015.

Parameter 2: IVG service offer in relation to the fertile population and maternity wards

According to Law No. 194/78, in order to verify the implementation level connected with the organization of the National Health-care System related to pregnancy, it is useful to connect data on abortion structures to the female population in childbearing years and maternity wards. Among 558 structures with obstetrics and gynaecology departments, registered at national level in 2018, 418 are public or accredited private maternity wards, equal to 74.9% of the total. The situation of the last year is accentuated: while the IVGs number is 17.6% compared to the number of births, the number of IVG points is equal to 87.8% compared to maternity wards. Considering therefore both the absolute number of IVG points and the normalized number to the population of women in childbearing years, **the number of IVG points appears more than adequate compared to the number of IVGs performed.**

Parameter 3: IVG's weekly average workload for each non-objecting gynaecologist

A specific survey, carried out by the Ministry of Health, shows that in 2018 the weekly average workload for each non-objecting gynaecologist is slightly different compared to previous years. In general, a stable or slightly decreasing data for almost all Regions has been recorded, except for Valle d'Aosta, P.A. of Bolzano and Trento and Emilia Romagna, where a slight increase has been registered. A weekly average workload analysis for each non-objecting gynaecologist and hospitalization facility highlights only 2 Regions marked by a weekly workload higher than 9 IVG per week (14.6 in Puglia and 9.5 in Calabria).

Data on family planning services for IVG has been collected in 2018 too. Collected data covered 79% of the total number of family planning services. As in the previous years, collected data required the number of women who carried out the interview pursuant to Law No. 194/1978; issued certificates; women who carried out checks after the Voluntary Termination of Pregnancy procedure (in order to prevent repeated IVGs). As in the past, the number of Voluntary Termination of Pregnancy interviews was higher than the number of issued certificates (44,222 interviews vs 31,234 issued certificates). This could indicate the effective action to help the woman "*to remove causes that could lead her to terminate her pregnancy*" (article 5, Law n°. 194/78).

In conclusion, the Report states that:

• in Italy IVG has been steadily decreasing since 1983;

• the increased use of emergency contraception, Levonorgestrel (Norlevo) – the morning-after pill and Ulipistral acetate (ellaOne) - 5 days-after pill, has positively affected the IVG reduction. No compulsory medical prescription is required for adult women;

• family planning services are an important reference for a lot of women and couples regarding IVG, according to Law n°. 194/78. They support women who use them when they decide to terminate their pregnancy;

• in general, waiting times are decreasing, although a not insignificant variability among Regions persists. An increase in pregnancy termination within the first 8 weeks of gestation has been registered. Probably, this is in part due to the increased use of pharmacological technique (Mifepristone + prostaglandins) in the early gestational period;

• mobility among Regions and P.A. of Bolzano e Trento is in line with that of other services offered by the National Health Service;

• data analysis on conscientious objection shows high values for all health professional categories, particularly among gynaecologists (69%). Although workload analysis for each non-objecting gynaecologist does not highlight particular critical issues relating to IVG services, at regional or single structure level, Regions must ensure that the organization of services and professional figures guarantee women the possibility of accessing the voluntary termination of pregnancy, pursuant to article 9, Law n°.194/78.

Collective complaint No. 91/2013 Italian General Confederation of Labour v. Italy.

Registered on the 17th of January 2013, the complaint No. 91/2013 relates to the violation of article 11 ("*The right to protection of health*"), 1§2 ("*The right to work*" - *protection of the worker from all forms of discrimination at work*), 26§2 ("*The right to dignity at work*" - *protection of workers against reprehensible or distinctly negative or offensive behaviour and actions in the workplace or in relation to work*) and Part V, article E ("*Non-discrimination*") of the Charter. Specifically, CGIL recognizes direct and indirect discrimination against non-objecting gynaecologists within the departments in which voluntary termination of pregnancy are carried out due to the excessive workload, the division of the assignments and the poor career opportunities.

Response

As required, an update of the information contained in the 19th report of the Italian Government on the follow-up given to collective complaint No. 91/2013, on voluntary termination of pregnancy (IVG) and conscientious objection, is provided.

It is represented that, at present, there have been no changes to Law dated 22nd of May 1978, n°. 194, containing "*Rules for the social protection of maternity and on the voluntary termination of pregnancy*". This law ensures both all women concerned to access the procedure of Voluntary Termination of Pregnancy (IVG) upon request within the deadline set out by the law and healthcare personnel the right to conscientious objection in accordance with article 9 of the same law.

As highlighted in the previous reports on the follow-up given to the complaint No. 91/2013, hospitals and accredited nursing homes are obliged to carry out the required pregnancy termination procedure according to methods provided for in articles 5, 7 and 8 of law No. 194/78. Regions must control and guarantee the correct application of the law, in accordance with the institutional structure defined by Title V concerning the reform of the Italian Constitution, which took place in 2001.

According to the data contained in the "*Report of the Minister of Health to Parliament on the implementation of the law containing rules for the social protection of maternity and on the voluntary termination of pregnancy (Law No 194/78)*", in 2018 the percentage of conscientious objection was high, especially among gynaecologists (69.0% compared to 68.4% of the previous year). Among the anaesthesiologists, the percentage of objectors was lower, with a national value of 46.3%, a slight increase compared to the previous year (45.6%). Even lower, compared to gynaecologists and anaesthetists, the proportion of non-medical personnel who had submitted conscientious objection in 2018: 42.2%. For all three professional categories, the data collected by the Surveillance System showed a significant variability by geographical area and by Region.

In order to identify any critical issues regarding the impact that the exercise of the right to conscientious objection may cause to concerned women in relation to the possible access to IVG, the Ministry of Health calculates a specific monitoring indicator: the weekly average workload for the Voluntary Termination of Pregnancy for non-objecting gynaecologist, counted over 44 working weeks per year.

With reference to this indicator, the final data collected for the year 2018, released through the Annual Report, showed a load of 1.2 IVG per non-objecting gynaecologist, stable data compared to the previous year. The number of IVGs for each non-objecting gynaecologist, on a weekly basis, ranged from 0.3 in Valle d'Aosta to 3.8 in Molise.

Deepening the analysis of the data for each hospitalization facility, only two specific criticalities were highlighted with values higher than 9.0 weekly IVG for non-objecting gynaecologist: a hospitalization facility in Puglia, with 14.6 IVG per week (compared to the regional of 2.0 IVG) and another one in Calabria, with 9.5 weekly IVG (see table 1).

TABLE 1 Weekly IVG average workload for non-objecting gynaecologist - years 2015-18 (considering 44 working weeks per year) and maximum values for single IVG facility - year 2018 - Data calculated through ad hoc monitoring conducted by the Ministry of Health.

Region	**Weekly IVG workload for non-objecting gynecologist**				
	YEAR 2015	**YEAR 2016**	**YEAR 2017**	**YEAR 2018**	**Maximum value for single IVG structure**
Piemonte	1.3	1.3	1.1	1.1	2.3
Valle d'Aosta	0.3	0.3	0.2	0.3	0.3
Lombardia	2.7	n.a.	1.2	1.1	8.3
P.A. Bolzano	1.1	1.2	2.3	2.4	8.4
P.A. Trento	0.8	0.8	0.7	0.9	1.6
Veneto	1.2	1.2	1.2	1.2	5.9
Friuli-Venezia Giulia	0.6	0.6	0.5	0.5	1.8
Liguria	1.2	1.3	1.0	1.0	3.4
Emilia-Romagna	0.8	0.7	0.7	0.8	7.9
Toscana	1.0	1.0	0.9	0.8	3.5
Umbria	1.0	1.1	1.1	0.8	4.8
Marche	0.8	0.8	0.9	0.8	2.8
Lazio	3.8	2.6	2.4	2.0	6.9

Abruzzo	2.4	2.4	2.1	1.7	3.0
Molise	8.1	9.0	8.6	3.8	3.9
Campania	0.0 (**)	1.4 (**)	3.6	N.R.	N.R.
Puglia	3.0	3.0	2.7	2.0	14.6
Basilicata	2.5	2.5	3.1	1.5	2.0
Calabria	1.9	1.9	1.7	1.6	9.5
Sicilia	2..1	1.7	1.9	1.2	6.3
Sardegna	0.6	0.6	0.5	0.4	1.3
TOTAL	**1.3**	**1.6**	**1.2**	**1.2**	

(**) data partially received

Data sources: Ad hoc monitoring on conscientious objection, carried out by the Ministry of Health in conjunction with the Regional Coordinators of the Technical Committee for the full application of Law 194/78; number of IVGs for each hospitalization facility detected by the ISTAT web platform "Gino ++" YEAR 2018.

Furthermore, it should be noted that some structures have declared that they have carried out IVG even though only objecting gynaecologists are available in their staff, demonstrating in this way the regional organizational capacity to guarantee the service, through the mobility of non-objecting personnel working in other structures.

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Regarding the protection of medical and health personnel who are not conscientious objectors against harassment and direct and indirect discrimination in the workplace, what is illustrated in the previous report on complaint No 91/2013 is confirmed, as no changes have occurred to the relevant legislation.

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In CGIL's Observation on the 19th report of the Italian Government, submitted on July 7, 2020, the absence of some information in the Report of the Minister of Health to Parliament on the implementation of Law n°194/78 was complained. In this regard, the following is represented.

1. Official statistics regarding the number of clandestine abortions

In this respect, referring to the data for 2018, the Report shows that: *"In 2016 a new estimation model with more updated and recent information on various aspects, e.g. the structure of the population in childbearing years, fertility trends, contraception, has been developed by ISTAT, in collaboration with*

ISS[2]. As regard contraception, emergency contraception was considered too. In 2015 and 2016, it was subjected to profound changes in use and dissemination, as a result of the recent provisions of the AIFA providing for the purchase without prescription for adult women. This aspect means that the new estimates presented unstable values, although within a narrow range from 10,000 to 13,000 cases. The low extension of the phenomenon is also confirmed by the conducted analyses associated with suspected cases of clandestine and spontaneous abortions. Detailed estimate was contained in the report of the Minister of Health relating to 2016 data".

2. Monitoring of family planning services

The data relating to 2018, published in the Report to Parliament, showed that the use of the family planning service was prevalent for the issue of the document/certification necessary for the IVG request (44.1%), compared to other services.

As indicated in a recent survey promoted by the Ministry of Health (CCM[3] Central Actions 2017) and coordinated by ISS, all Regions and the PA of Trento participated for 1557 family planning services out of a total of 1890. Family planning services not only offer the afore mentioned service but also play an important role in IVG prevention and in support provided to women who decide to terminate pregnancy, even if not uniformly in the territory.

Among services offered to women who intend to use IVG, pre-procedure counselling for termination of pregnancy, information on medical and surgical abortion, psycho-social *counselling*, post-surgery medical checks and *counselling* post-operative contraceptive are included.

Almost all the family planning services carry out *counselling* activities before the procedure and provide information on the intervention technique, without any difference relating to geographical area.

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As regards CGIL's further objections regarding the retired non-objecting medical staff replacement, the economic conditions monitoring and the non-objecting gynaecologists' career progress, information contained in the previous report is confirmed.

Detailed monitoring such as that one proposed in the Annual Report to Parliament on the Voluntary Termination of Pregnancy, developed on the basis of indicators shared with Regions, is a fundamental tool to verify the actual service offer and the non-objecting gynaecologists workload and, consequently, it supports Regions in planning their services, according to the autonomy that Italian Constitution recognizes to them.

1 National Health Institute

3 National Center for Disease Prevention and Control

This tool is aimed to grant a suitable planning of the health service supply network, through both forms of staff mobility and differentiated recruitment.

COLLECTIVE COMPLAINT No. 102/2013 - *Associazione Nazionale dei Giudici di Pace* (ANGdP) v. Italy. UPDATE YEAR 2020

In updating the 19th Report on the European Social Charter presented in 2019 (ANNEX 1), to which reference is made in full, the following is represented.

HEALTH PROTECTION

As stated in the Simplified Report of 2017 and reaffirmed in the 19th Report (ANNEX 2), it should be noted that for the purposes of social security and welfare protection, Justices of the Peace (except those who are members of the national bar association) are enrolled in the Separate Management Scheme of the National Social Welfare Institute (INPS). Rules for self-employed workers are applied for the payment of their insurance (art.25, Legislative Decree dated 3rd of July 2017 n°.116).

Based on this assumption, the social security protection granted to Justices of the Peace (serving lay judges) in case of illness corresponds to that of the other categories of workers enrolled in the Separate Management Scheme, namely:

- hospitalisation allowance (art. 51, paragraph 1, Law n°. 488/1999 and decree of the Ministry of Labour and Social Security 12.01.2001), in case of hospitalisation in a health facility;
- sickness allowance (art. 1, paragraph 788, Law n°. 296/2006), for absences on ground of illness lasting at least four days;
- sickness allowance (art. 8, paragraph 10, Law n°. 81/2017), for periods of certified illness in consequence of therapeutic treatments for oncological diseases or worsening serious chronic-degenerative pathologies or entailing, in any case, a temporary incapacity for work of 100%.

Allowances can be paid to workers enrolled in the Separate Management Scheme if they are not retired and they are not enrolled in any other compulsory social security scheme. They must pay an increased rate of 0.72% compared to the required contribution rate in order to finance maternity/paternity protection and parental leave, family allowances, hospitalisation and illness.

Both a minimum contribution to be verified in the 12 months preceding the beginning of the hospitalisation and a maximum income referring to the calendar year before the event, are required. Pursuant to Decree Law dated 3rd of September 2019, No. 101/2019, amended by Law dated 2nd of November 2019, n°.128, an extension of the protection in favour of these workers has been provided. The minimum required contribution is equal to 1 month (compared to 3 months previously expected) of the contribution paid to the Separate Management Scheme of INPS, with a full contribution rate. On the other hand, the individual income subject to contribution must not exceed 70% of the ceiling valid for the same year, as referred to in art. 2, paragraph 18, Law No. 335/1995.

Allowances have been increased by 100% compared to 2019, they are differentiated according to the months of paid contribution and depending on whether it is a hospitalisation or an illness.

In case of hospitalisation, the daily allowance is equal to the following rates, annually calculated on the amount resulting by dividing the contribution ceiling by 365, valid for the year in which hospitalisation begins (art. 2, paragraph 18, Law No. 335/1995):

- 16% of the amount obtained, if in the twelve months prior to the beginning of the hospitalisation, from one to four monthly contributions, have been paid;

- 24% of the amount obtained, if in the twelve months prior to the beginning of the hospitalisation, from five to eight monthly contributions, have been paid;
- 32% of the amount obtained, if in the twelve months prior to the beginning of the hospitalisation, from nine to twelve monthly contributions, have been paid.

In case of **illness** the amount of the allowance is equal to 50% of what is due in case of hospitalisation. The amount resulting by dividing the contribution ceiling by 365, valid for the year in which the illness begins (art. 2, paragraph 18, of Law No. 335/1995), is equal to:

• 8% of the amount, if in the twelve months prior to the beginning of the illness, from one to four monthly contributions, have been paid;

• 12% of the amount, if in the twelve months prior to the beginning of the illness, from five to eight monthly contributions, have been paid;

• 16% of the amount, if in the twelve months prior to the beginning of the illness, from nine to twelve monthly contributions, have been paid.

Illness is compensated for a maximum number of days equal to one sixth of the overall duration of the employment relationship and, in any case, not less than twenty days during the calendar year, except for illnesses lasting less than four days.

Pursuant to art. 8, paragraph 10, Law n°. 81/2017, sickness allowance is granted after the assessment produced by the relevant medical examiner's office on the documentation submitted by workers and it follows the same rules as well as the hospitalisation.

MATERNITY AND PATERNITY PROTECTION

Regarding maternity and paternity protection, please refer to the 19th Report, as there were no changes on this subject in 2020.

It should only be noted that the amount of the maternity allowance for atypical and discontinuous workers (**so-called State maternity allowance**) - revalued every year on the basis of the variation in the ISTAT consumer price index – in 2020, in full measure, is equal to 2,143.05 euros.

The amount of the basic maternity allowance (**so-called municipal maternity allowance**) - also revalued every year based on the variation in the ISTAT consumer price index – in 2020, is equal to 348.12 euros per month, for a total of € 1,740.60.

The Covid-19 world pandemic has forced the Italian government to introduce some measures in order to protect maternity and paternity in 2020.

Emergency measures include **Covid-19 leave**, which consists of a leave to take care of minors, compensated up to 50%, usable for a maximum period of 15 days starting from the 5th of March 2020.

The Covid-19 leave has been granted to parents who are private or public employees, to those who are enrolled in the Separate Management Scheme and to self-employed enrolled in INPS

The other parent belonging to the family unit must not receive an income support instruments in case of suspension or cessation of work or being unemployed or non-worker in order to benefit from this measure.

Parents cannot use the Covid-19 leave in the same days, but only in an alternating way, for a total of 15 days. It is incompatible with the simultaneous use of parental leave and daily rest addressed to the same child and used by the other parent belonging to the family unit.

On the other hand, the Covid-19 leave can be requested by a parent even if the other is on sick leave, vacation, unpaid leave, maternity or paternity leave or in *smart working*.

A **bonus to purchase baby-sitting services** up to a maximum of 600 euros can be requested instead of the Covid-19 leave. Pursuant to Article 72, Decree-Law 19th of May 2020, n°. 34 (so-called Relaunch decree), this bonus has been extended and reformulated up to 1,000 euros (2,000 euros for workers in the health sector, public aid and security sector).

The Covid-19 baby-sitting bonus has been granted to parents who are private employees, to those who are enrolled in the Separate Management Scheme and to self-employed workers. This contribution is also recognized to the public and accredited private health sector employees and to the personnel of the security, defence and public rescue sector employed for the needs caused by COVID-19. For these last categories, the amount of the bonus can reach a maximum up to 2,000 euros.

The Covid-19 baby-sitting bonus can be combined with the 2020 nursery bonus only if workers have already paid the fee and they have submitted the documents certifying the payment.

CONSIGLIO D'EUROPA. XIX RAPPORTO CARTA SOCIALE EUROPEA RIVISTA. RECLAMO COLLETTIVO N. 102-2013 – Associazione Nazionale dei Giudici di Pace (ANGdP) v. Italy

In riscontro alle richieste avanzate dal Comitato Europeo dei Diritti Sociali (CEDS) nelle conclusioni del 2018 in merito alle tutele riconosciute ai giudici onorari di pace – ad integrazione di quanto già rappresentato nel rapporto semplificato del 2017 – si espone quanto segue.

TUTELA DELLA MALATTIA

Si fa presente, in via preliminare – come già precisato nel Rapporto semplificato 2017 – che ai fini della tutela previdenziale e assistenziale, i giudici di pace (fatta eccezione per quelli che sono iscritti agli albi forensi) sono iscritti alla Gestione Separata istituita presso l'Inps e che, per il versamento del contributo, si applicano le modalità ed i termini previsti per i lavoratori autonomi (art. 25 del D. Lgs. 3 luglio 2017, n. 116).
Sulla base di tale presupposto, le tutele previdenziali riconosciute ai giudici di pace in caso di malattia sono le stesse previste per le altre categorie di lavoratori iscritti alla citata Gestione separata, ovvero:
• indennità di degenza ospedaliera (art. 51, comma 1, legge n. 488/1999 e decreto del Ministero del Lavoro e della Previdenza Sociale 12.01.2001), in caso di ricovero presso Struttura sanitaria;
• indennità di malattia (art. 1, comma 788, legge n. 296/2006), per eventi morbosi di durata non inferiore a quattro giorni.
• indennità di malattia (art. 8, comma 10, legge n. 81/2017), per i periodi di malattia certificata come conseguente a trattamenti terapeutici di malattie oncologiche o di gravi patologie cronico-degenerative ingravescenti o che comunque comportino una inabilità lavorativa temporanea del 100%.
Le suddette indennità possono essere erogate ai lavoratori iscritti alla Gestione separata che non siano titolari di pensione, non siano iscritti ad altre forme previdenziali obbligatorie e siano tenuti pertanto a versare, rispetto all'aliquota contributiva prevista, la maggiorazione dello 0,72% per il finanziamento dell'onere derivante dall'estensione agli stessi della tutela relativa alla maternità/paternità, al congedo parentale, agli assegni per il nucleo familiare, alla degenza ospedaliera e alla malattia.
E' richiesto un requisito contributivo minimo (nei 12 mesi che precedono la data di inizio del ricovero devono risultare accreditati almeno 3 mesi della contribuzione dovuta alla gestione separata con aliquota contributiva piena) e un requisito reddituale massimo (nell'anno solare che precede quello in cui è iniziato l'evento, il reddito individuale assoggettato a contribuzione non deve essere superiore al 70% del massimale contributivo, di cui all'art. 2, comma 18, della legge n. 335/1995, valido per lo stesso anno).
Le indennità sono differenziate in rapporto ai mesi di contribuzione versata e variano a seconda che si tratti di degenza o di malattia.
In caso di degenza ospedaliera, l'indennità giornaliera risulta pari alle seguenti percentuali, calcolate annualmente sull'importo che si ottiene dividendo per 365 il massimale contributivo di cui all'art. 2 comma 18 della legge n.335/1995, valido per l'anno di inizio della degenza:
• all'8% del suddetto importo, se nei dodici mesi precedenti la data di inizio del ricovero risultano accreditate da tre a quattro mensilità di contribuzione;

• al 12% del suddetto importo, se nei dodici mesi precedenti la data di inizio del ricovero risultano accreditate da cinque a otto mensilità di contribuzione;
• al 16% del suddetto importo, se nei dodici mesi precedenti la data di inizio del ricovero risultano accreditate da nove a dodici mensilità di contribuzione.
L'indennità è erogata per tutte le giornate di ricovero, per un massimo di 180 giorni nell'arco dell'anno solare.
In caso di malattia, la misura della prestazione è pari al 50% di quanto previsto a titolo di indennità per degenza ospedaliera, quindi, prendendo sempre come riferimento l'importo che si ottiene dividendo per 365 il massimale contributivo di cui all'art. 2 comma 18 della legge n.335/1995 valido per l'anno di inizio della malattia:
• al 4% del suddetto importo, se nei dodici mesi precedenti la data di inizio dell'evento risultano accreditate da tre a quattro mensilità di contribuzione;
• al 6% del suddetto importo, se nei dodici mesi precedenti la data di inizio dell'evento risultano accreditate da cinque a otto mensilità di contribuzione;
• all' 8% del suddetto importo, se nei dodici mesi precedenti la data di inizio dell'evento risultano accreditate da nove a dodici mensilità di contribuzione.
L'evento di malattia è indennizzato per un numero massimo di giornate pari ad un sesto della durata complessiva del rapporto di lavoro e comunque non inferiore a venti giorni nell'arco dell'anno solare, con esclusione degli eventi morbosi di durata inferiore a quattro giorni.
La prestazione della malattia di cui all'art. 8, comma 10, della legge n. 81/2017 è riconosciuta ai lavoratori all'esito della valutazione degli uffici medico legali di competenza, sulla base della documentazione prodotta dal lavoratore, e segue le medesime regole della degenza ospedaliera.

TUTELE DELLA MATERNITA' E DELLA PATERNITA'

Anche per quanto concerne la tutela della maternità, ai Giudici di Pace che non siano iscritti agli albi forensi sono riconosciute le medesime tutele previste per gli iscritti alla Gestione Separata INPS di cui all'art.2, comma 24, della legge 335/1995:

MATERNITA'

In caso di ***maternità,*** *le lavoratrici hanno diritto ad una indennità pari all'80% del Reddito medio Giornaliero (R.M.G.), pari ad 1/365 del reddito (utile ai fini contributivi) percepito nei 12 mesi precedenti l'inizio del periodo indennizzabile, purché non superiore al massimale previsto.*
L'indennità è corrisposta dall'INPS solo se nei 12 mesi precedenti l'inizio del periodo indennizzabile risultano versate almeno 3 mensilità di contribuzione, con l'aliquota maggiorata dello 0,72%.
L'indennità è riconosciuta per i 2 mesi antecedenti la data presunta del parto e per i 3 mesi successivi al parto, oppure, in caso di adozione/affidamento nazionale o internazionale, per un periodo di 5 mesi dall'ingresso del bambino in famiglia o in Italia (in caso di adozione internazionale).
In caso di flessibilità, l'indennità è riconosciuta per 1 mese prima della data presunta del parto e per i 4 mesi successivi al parto.
In caso di gravidanza a rischio l'ASL può disporre l'interdizione anticipata dal lavoro, per uno o più periodi, fino all'inizio del congedo di maternità. In caso di mansioni gravose o pregiudizievoli in relazione allo stato della gravidanza l'Ispettorato Territoriale del Lavoro può disporre l'interdizione dal lavoro a partire dai 3 mesi antecedenti la data presunta del parto e fino a sette mesi dopo il parto.

In caso di parto prematuro (avvenuto, cioè, prima dell'inizio del congedo di maternità) è indennizzato il periodo di cinque mesi di congedo di maternità (calcolato sulla base della data presunta del parto) e, in aggiunta, tutti i giorni intercorrenti tra la data effettiva del parto e l'inizio del suddetto periodo di maternità.
In caso di ricovero ospedaliero del neonato, è possibile sospendere e rinviare il periodo di congedo di maternità (o la parte residua), riprendendo quindi l'attività lavorativa.

PATERNITA'

I lavoratori iscritti alla Gestione separata INPS hanno diritto al ***congedo di paternità*** *nei soli casi di morte, grave infermità, abbandono o affidamento esclusivo del minore al padre. Il periodo di paternità decorre dal verificarsi di uno dei predetti eventi e per il periodo residuo di maternità che sarebbe spettato alla lavoratrice madre oppure per i tre mesi successivi al parto.*
Per quanto concerne il requisito contributivo necessario per il diritto alla prestazione e la misura dell'indennità di paternità, si applicano al padre le stesse condizioni previste per la lavoratrice madre, illustrate sopra nel paragrafo relativo alla maternità.

CONGEDO PARENTALE

Per ciascun figlio nato o adottato spetta un'indennità per ***congedo parentale*** *per un periodo massimo (continuativo o frazionato) di sei mesi, entro i sei anni di vita del bambino. I periodi di congedo parentale di entrambi i genitori, anche se fruiti in altra gestione o cassa di previdenza, non possono complessivamente superare il limite di sei mesi.*
In caso di adozione e affidamento preadottivo, sia nazionale che internazionale, l'indennità di congedo parentale è riconosciuta per massimo sei mesi, entro sei anni dall'ingresso in famiglia del minore adottato/affidato.
L'indennità è calcolata, per ciascuna giornata del periodo indennizzabile, in misura pari al 30% di 1/365 del reddito derivante da attività di lavoro a progetto o assimilata, percepito nei 12 mesi presi a riferimento per l'accertamento del requisito contributivo.
Per richiedere il congedo parentale occorrono i seguenti requisiti:

- *• iscrizione alla Gestione Separata INPS e non essere contemporaneamente percettori di pensione o iscritti ad altra forma di previdenza obbligatoria;*
- *• sussistenza di un rapporto di lavoro ancora in corso di validità nel periodo in cui si colloca il congedo parentale;*
- *• almeno tre mesi di contribuzione effettivamente versata con aliquota maggiorata dello 0,72% nei 12 mesi precedenti l'inizio del periodo di congedo parentale indennizzabile, oppure – nel solo caso di fruizione di periodi di congedo parentale entro il primo anno di vita o dall'ingresso in famiglia del minore – sussistenza di almeno tre mesi di contribuzione effettivamente versata con aliquota maggiorata nei 12 mesi presi a riferimento ai fini dell'erogazione dell'indennità di maternità/paternità;*
- *• effettiva astensione dall'attività lavorativa.*

ALTRE MISURE

In mancanza dei requisiti contributivi richiesti per l'indennità di maternità degli iscritti alla Gestione separata, i Giudici di Pace possono ricorrere alle seguenti tutele di maternità, alternative tra loro:

- ***A) Assegno di maternità per i lavoratori atipici e discontinui** (**cd Assegno di maternità dello Stato**). I requisiti generali richiesti per il diritto all'assegno sono la residenza in Italia e la cittadinanza italiana o di uno stato dell'Unione europea. Ai cittadini extracomunitari è richiesto il possesso del permesso di soggiorno CE per soggiornanti di lungo periodo.*

Per la madre sono previsti i seguenti requisiti:

- *• se lavoratrice, deve avere almeno tre mesi di contribuzione per maternità nel periodo compreso tra i 18 e i 9 mesi precedenti il parto o l'effettivo ingresso del bambino in famiglia, in caso di adozione nazionale o affidamento preadottivo, oppure in Italia in caso di adozione internazionale;*
- *• se ha lavorato almeno tre mesi e perso il diritto a prestazioni previdenziali o assistenziali, il lasso di tempo compreso tra la data della perdita del diritto e la data del parto o dell'effettivo ingresso in famiglia del bambino (in caso di adozione o affidamento) non deve superare né il periodo delle prestazioni godute né i 9 mesi;*
- *• se durante il periodo di gravidanza ha cessato di lavorare per recesso, anche volontario, dal rapporto di lavoro, sono necessari tre mesi di contribuzione nel periodo che va dai 18 ai 9 mesi antecedenti al parto.*

Per il padre sono previsti i seguenti requisiti:

- *• in caso di abbandono del figlio da parte della madre o di affidamento esclusivo del figlio al padre, al momento dell'abbandono o dell'affidamento esclusivo deve essere in possesso dei requisiti contributivi previsti per la madre;*
- *• se è affidatario preadottivo, in caso di separazione dei coniugi avvenuta durante la procedura di affidamento, al momento dell'affidamento deve essere in possesso dei requisiti contributivi previsti per la madre;*
- *• se è padre adottante, nel caso di adozione senza affidamento durante la separazione dei coniugi, al momento dell'adozione deve essere in possesso dei requisiti contributivi previsti per la madre;*
- *• se è padre adottante non coniugato, in caso di adozione pronunciata solo nei confronti del padre, al momento dell'adozione deve essere in possesso dei requisiti contributivi previsti per la madre;*
- *• se ha riconosciuto il neonato o è coniuge della donna adottante o affidataria preadottiva – in caso di decesso della madre naturale o di quella adottiva o affidataria – al momento della domanda sono necessari: il regolare soggiorno e residenza in Italia del padre o del coniuge della deceduta, la presenza del minore presso la sua famiglia anagrafica, la potestà sul minore, il non affidamento del minore presso terzi e che la donna deceduta non abbia già usufruito dell'assegno. In quest'ultimo caso non sono richiesti i requisiti dei tre mesi di contributi tra i 18 e i 9 mesi precedenti e della perdita del diritto da non più di nove mesi a prestazioni previdenziali o assistenziali, in quanto il diritto all'assegno deriva dalla madre o donna deceduta.*

La domanda deve essere presentata entro sei mesi dalla nascita del bambino o dall'effettivo ingresso del minore in famiglia nel caso di adozione o affidamento, oppure in Italia in caso di adozione internazionale.
L'importo dell'assegno è rivalutato ogni anno sulla base della variazione dell'indice dei prezzi al consumo ISTAT. L'Istituto pubblica ogni anno l'importo nella circolare sui salari medi convenzionali e per l'anno 2019 è pari, nella misura intera, ad euro 2.132,39.

• ***B) Assegno di maternità di base*** *(**cd Assegno di maternità dei Comuni**), prestazione assistenziale concessa dai Comuni e pagata dall'INPS.*

Hanno diritto all'assegno, nei casi di parto, adozione o affidamento preadottivo, i cittadini residenti italiani, comunitari o stranieri in possesso di titolo di soggiorno (per la tipologia di permesso di soggiorno utile per la concessione del beneficio è necessario rivolgersi al comune di residenza). L'assegno spetta solo entro determinati limiti di reddito. I richiedenti non devono avere alcuna copertura previdenziale oppure devono averla entro un determinato importo fissato annualmente. Inoltre non devono essere già beneficiari di altro assegno di maternità INPS ai sensi della legge 23 dicembre 1999, n. 488.
La domanda va presentata al comune di residenza, al quale compete la verifica della sussistenza dei requisiti di legge per la concessione della prestazione (articoli 17 e seguenti del decreto del Presidente del Consiglio dei ministri 21 dicembre 2000), entro sei mesi dalla nascita del bambino o dall'effettivo ingresso in famiglia del minore adottato o in affido preadottivo.
L'assegno non è cumulabile con altri trattamenti previdenziali, tranne che si abbia diritto a percepire dal comune la quota differenziale.
L'importo dell'assegno è rivalutato ogni anno sulla base della variazione dell'indice dei prezzi al consumo ISTAT. L'Istituto pubblica ogni anno l'importo nella circolare sui salari medi convenzionali e per l'anno 2019 è pari a 346,39 euro mensili per complessivi 1.731,95 euro.
Alla luce della disamina svolta delle misure accordate dall'ordinamento italiano in caso di malattia e maternità ai Giudici onorari di Pace – i quali, pertanto, non sono privi di tutela giuridica – si ritiene opportuno evidenziare che, ad una prima lettura, potrebbero apparire discriminatori i commi 1 e 2 dell'articolo 25 del decreto legislativo 116/2017 nella parte in cui prevedono che, in caso di malattia, infortunio e gravidanza/maternità, l'incarico è sospeso senza diritto all'indennità. Tuttavia, il successivo terzo comma dispone che "ai fini della tutela previdenziale e assistenziale, i giudici onorari di pace e i vice procuratori onorari sono iscritti alla Gestione Separata di cui all'articolo 2, comma 26, della legge 8 agosto 1995, n. 335" e, come tali, beneficiano delle tutele previste per gli eventi di malattia e maternità per tutti gli iscritti alla GS.
Non si rinviene, pertanto, alcuna discriminazione né disparità di trattamento dei giudici di pace rispetto agli altri iscritti alla Gestione separata.
Anche il differente trattamento economico e le diverse tutele riconosciuti ai giudici ordinari rispetto ai giudici onorari di pace non rappresentano, in verità, una discriminazione tra le due categorie di giudici, ma rispecchiano le differenze che, in generale, esistono in tutti i settori di attività tra i lavoratori dipendenti e i lavoratori autonomi iscritti alla Gestione Separata.
Dette differenze – come già ampiamente argomentato nel precedente Rapporto semplificato del 2017 –sono proporzionare e giustificate dalla diversità dei rapporti di lavoro in questione (a tempo pieno ed esclusivo per i giudici ordinari; a tempo parziale e senza obbligo di esclusività per i giudici di pace), anche tenendo conto delle modalità di accesso alle relative posizioni (concorso pubblico per esami per il magistrato ordinario, selezione per soli titoli per i giudici di pace).

Appendix 2

In data 2 agosto 2013 l'Associazione Nazionale dei Giudici di Pace (di seguito ANGdP) presentava al Comitato Europeo dei Diritti Sociali reclamo collettivo (registrato in pari data con n. 102/2013), adducendo la violazione da parte dello Stato italiano dell'articolo 12 della Carta Sociale, che riconosce il "diritto alla sicurezza sociale". In particolare, l'ANGdP asseriva la violazione dell'articolo 12, par. 3 e 4b della Carta, poiché la legge italiana non riconosce ai giudici di pace misure di sicurezza sociale, quali l'indennità di malattia, la tutela della maternità o la pensione di anzianità.

Risposta.

*Si ribadiscono le motivazioni già rappresentate dal Governo italiano in ordine alla non **ammissibilità** del ricorso. In particolare, si conferma che l'Associazione Nazionale dei giudici di pace – nata per tutelare gli interessi dei giudici di pace – non rientra tra i soggetti legittimati a presentare reclami collettivi ai sensi dell'articolo 1 del Protocollo addizionale alla Carta del 1995, non essendo un'organizzazione non governativa né un sindacato.*

*Per quanto concerne il **merito**, si ribadisce che il reclamo presentato dall'ANGdP non rientra nell'ambito di applicazione dell'articolo 12 della Carta e, in particolare, dell'articolo 12, par 4b, che si riferisce ai cittadini che hanno prestato lavoro all'estero, ai quali si riconosce il diritto di acquisire e mantenere i diritti di sicurezza sociale secondo la legge degli Stati in cui abbiano lavorato.*

Sotto il profilo della presunta disparità di trattamento rispetto ai giudici professionali, si ribadisce, in linea con quanto già sostenuto dal Governo nelle memorie difensive presentate al Comitato, che non vi è alcuna discriminazione tra le due categorie di giudici e la diversità di trattamento è dettata dalla diversa natura delle stesse.

Al riguardo si fa presente che è stato recentemente adottato il decreto legislativo 13 luglio 2017 n. 116, pubblicato in Gazzetta Ufficiale n. 177 del 31 luglio 2017, recante la "riforma organica della magistratura onoraria e altre disposizioni sui giudici di pace, nonché disciplina transitoria relativa ai magistrati onorari in servizio, a norma della legge 29 aprile 2016, n. 57".

L'articolo 1 del citato decreto distingue la magistratura onoraria tra giudici onorari di pace (magistrati onorari addetti all'ufficio del giudice di pace) e vice procuratori onorari (magistrati onorari addetti all'ufficio di collaborazione del procuratore della Repubblica).

Il comma 3 del medesimo articolo 1 prevede che "l'incarico di magistrato onorario ha natura inderogabilmente temporanea, si svolge in modo da assicurare la compatibilità con lo svolgimento di attività lavorative o professionali e non determina in nessun caso un rapporto di pubblico impiego. Al fine di assicurare tale compatibilità, a ciascun magistrato onorario non può essere richiesto un impegno complessivamente superiore a due giorni a settimana.

Il magistrato onorario esercita le funzioni giudiziarie secondo principi di autoorganizzazione dell'attività, nel rispetto dei termini e delle modalità imposti dalla legge e dalle esigenze di efficienza e funzionalità dell'ufficio.

Diversamente dai giudici professionali, i quali accedono mediante concorso (art. 102 Costituzione), ai giudici onorari di pace è conferito l'incarico secondo criteri e requisiti determinati dalla legge (art.

4 d.lgs. n. 116/2017). L'incarico viene conferito per un tempo determinato, della durata di quattro anni, rinnovabile, a domanda, per un secondo quadriennio (art. 18 del citato decreto legislativo).

Ai giudici di pace è corrisposta una indennità – il cui ammontare è determinato dalla legge (art. 23 d.lgs. n. 116/2017) – che si compone di una parte fissa e di una parte variabile di risultato. Tale indennità, che è cosa diversa dalla retribuzione, è cumulabile con i proventi derivanti da altre attività lavorative o con il trattamento pensionistico. Ai fini che qui interessano, si richiama, inoltre, l'articolo 25 del medesimo decreto legislativo, rubricato "Tutela della gravidanza, malattia e infortunio. Iscrizione alla gestione separata presso l'INPS", che riconosce una tutela sociale minima dell'attività dei magistrati onorari in relazione ad alcuni eventi della vita, precisando che la malattia, l'infortunio o la gravidanza non comportano, entro determinati termini, la dispensa dall'incarico. In particolare:

- il comma 1 prevede che, in caso di malattia e infortunio dei magistrati onorari, non vi è dispensa dall'incarico, la cui esecuzione rimane sospesa per un periodo non superiore a 6 mesi; in tale periodo, in ogni caso, non si ha diritto all'indennità fissa;
- il comma 2 prevede che – durante i 2 mesi precedenti la data presunta del parto e nel corso dei 3 mesi dopo il parto (o, alternativamente, a partire dal mese precedente la data presunta del parto e nei 4 mesi successivi al parto) – la gravidanza non comporta la dispensa dall'incarico (la cui esecuzione rimane sospesa), ma non dà diritto all'indennità prevista dall'articolo 23.

Per quanto concerne la tutela previdenziale, il successivo comma 3 dell'articolo 25 prevede l'obbligo di iscrizione alla gestione separata I.N.P.S. dei giudici onorari di pace e dei vice procuratori onorari. Per il versamento del contributo dovuto (pari al 25%) trovano applicazione le modalità e i termini previsti per i lavoratori autonomi di cui all'articolo 53, comma 1, del decreto Presidente della Repubblica 22 dicembre 1986 n. 917 (cosiddetto "T.U.I.R.").

Istituita dall'articolo 2, comma 26, della legge n. 335/1995, la gestione separata I.N.P.S. è un fondo pensionistico destinato ad erogare, in generale, le assicurazioni sociali obbligatorie per i lavoratori cd. atipici, autonomi con partita I.V.A. o parasubordinati. Ai sensi dell'articolo 1, comma 165, della legge n. 232/2016, l'aliquota contributiva dovuta dai lavoratori autonomi (titolari di posizione fiscale ai fini dell'I.V.A.), non iscritti ad altre gestioni di previdenza obbligatoria né pensionati, iscritti alla richiamata gestione separata è stata ridotta a regime in misura pari al 25%.

Infine, ai sensi del comma 4 dell'articolo 25 del citato decreto legislativo, le disposizioni previdenziali individuate in precedenza non trovano applicazione per gli iscritti agli albi forensi che svolgono le funzioni di giudice onorario di pace o di vice procuratore onorario, per i quali opera l'obbligo di iscrizione alla Cassa nazionale di previdenza e assistenza forense (ai sensi dell'articolo 21, commi 8 e 9, della legge n. 247/2012).

Alla luce di quanto sopra, si ribadiscono e confermano le osservazioni del Governo secondo cui non vi sarebbe alcuna discriminazione dei giudici onorari di pace neanche rispetto ai giudici onorari aggregati, i quali, per legge, non possono svolgere attività lavorative secondarie, essendovi incompatibilità (art. 9 della legge n. 276/1997) e, pertanto, esercitano la funzione giudiziaria in modo stabile, continuo ed esclusivo.

In virtù di quanto esposto nelle osservazioni del Governo italiano sia sull'ammissibilità che sul merito del reclamo stesso e alla luce dei recentissimi interventi normativi che hanno dettato la riforma

organica della magistratura onoraria e dei giudici di pace, non si ravvisano elementi di discriminazione nei confronti della categoria reclamante ai sensi degli articoli 12 ed E della Carta Sociale Europea.

Registered on the 22nd of April 2014, the complaint n°. **105/2014**, was raised in relation to the violation of the provisions contained in some parts of the revised European Social Charter (Part I, paragraph 10 according to which "*Everyone has the right to appropriate facilities for vocational training";* Part II, article 10 *" The Right to vocational training"*; Part V, letter E *"Non-discrimination"* in relation to article 10) relating to modalities and requirements needed regarding not qualified support precarious teachers included in the third category on aptitude lists in order to access to the specialization in support school activities addressed to pupils with disabilities.

Response

We provide to update and integrate information included in the 19th report of the Italian Government on the follow-up to collective complaint No. 105/2014, *"La voce dei Giusti"* vs Italy.
By Ministerial Decree dated 12th of February 2020, n°. 95 *"Activation of training courses for the achievement of the specialization in support school activities TFA 2019/2020"* (following the abolition, by Decree Law 9th January 2020, n°. 1, amended by Law 5th of March 2020, no.12[4], of the Ministry of Education, University and Research and the simultaneous establishment of the Ministry of Education and the Ministry of University and Research), training courses to achieve the specialization in support school activities have been activated, pursuant to Ministerial Decree 10th of September 2010, n°. 249[5].
At the same time, universities have been authorized for a total of 19,585 seats, referring, with regard to the procedures and admission requirements needed by training candidates at all school levels, to the Ministerial Decree 8th of February 2019, No. 92 "*Provisions concerning the specialization procedures in support teaching referred to in the decree of the Ministry of Education, University and Research No. 249/2010 and subsequent amendments".*
The epidemiological emergency caused by Covid-19 has forced to postpone the preliminary tests in order to access to the training courses which, the following Ministerial Decree 28 April 2020, no. 41[6], has rescheduled.

Decree Law dated 8th of April 2020, No. 22 "*Urgent measures on the regular conclusion and orderly start of the school year and carrying out of state exams, as well as the competition and qualification procedures and academic management continuity*", amended by Law dated 6th of June 2020, No. 41, provides, pursuant article 2, paragraph 8 that: "*To access training courses to specialize in support teaching provided by regulations referred to in the Decree of the Minister of Education, University and Research 10 September 2010, No. 249, in recognition of the specific gained experience, starting from the fifth cycle, subjects who have accrued at least three years' service, in the previous ten school years, even if not consecutive, evaluated pursuant to Article 11, paragraph 14, Law 3 May 1999, No. 124, on*

[4] *"Urgent provisions for the establishment of the Ministry of Education and the Ministry of University and Research".*
[5] *"Regulation concerning: 'Definition of the discipline of requirements and modalities of the initial teachers training of nursery, primary school, lower and upper secondary school, pursuant to article 2, paragraph 416, of Law no. 244 of 24 December 2007".*

[6] *"Postponement of the dates to carry out preliminary tests to access to training courses in support teaching".*

the specific support teaching seat of the level to which the procedure refers, can directly access to the written tests".
This regulation has been implemented by the Interministerial Decree dated 7th of August 2020 No. 90 "*Provisions concerning tests to access to specialist training courses in support teaching for pupils with disabilities*".
The same Decree Law, in order to improve the procedures relating to the identification of supply teachers, recently regulated by Ministerial Order 10th of July 2020, No. 60, has provided for the provincialization (and the contextual advocacy to the territorial offices of the referent school area), of the school lists, as well as their computerized management.
A specific provincial list has been provided too, aimed at assigning the related supply positions to teachers specialized in support teaching.
Previously, Decree Law 29th of October 2019, No. 126, "*Measures of extraordinary necessity and urgency regarding the school staff recruitment and research organizations and teacher qualifications*", amended by Law 20th of December 2019, No. 159, in Article 1, has authorized the Ministry of Education, University and Research to provide for ordinary and extraordinary selections, aimed at recruiting teaching staff in lower and upper secondary schools. At the same time, pursuant to Article 4, paragraph 1-quater, letter c), Decree Law 12th of July 2018, No. 87 *"Urgent provisions for the dignity of workers and companies"* amended by Law 9th of August 2018 No. 96 an ordinary selection has been planned for kindergarten and primary school.
The selections have been launched in 2020 by the following Departmental Decrees.

• D.D. 23rd of April 2020, No. 510 "*Extraordinary selection, based on qualifications and exams, to qualify teaching staff in the secondary school, first and second level on common and support positions*" as amended by Departmental Decrees May 27th, 2020, No. 639 (*Extraordinary selection, based on qualifications and exams to qualify teaching staff in the secondary school, first and second level on common and support positions. Postponement of application terms to participate*) and July 8th, 2020, No. 783 (*Extraordinary selection, based on qualifications and exams, to qualify teaching staff in the secondary school, first and second level on common and support positions. Amendments and supplements to Decree 23rd of April 2020, No. 510*).
• D.D. 21st of April 2020, No. 499 "*Ordinary selection, based on qualifications and exams, aimed at recruiting teaching staff on common and support positions in lower and upper secondary school*", as supplemented by D.D. 3rd of June 2020, No. 649 (*Modification of the ordinary selection, based on qualifications and exams, aimed at the recruiting teaching staff on common and support positions in lower and upper secondary school*) and D.D. 1st of July 2020, No. 749 *(Supplementary provisions to Decree 21st of April 2020 No. 499 "Ordinary selection, based on qualifications and exams, aimed at recruiting teaching staff on common and support positions in lower and upper secondary school").*
• D.D. 21st of April 2020, No. 498 "*Ordinary selection based on qualifications and exams, aimed at recruiting teaching staff on common and support positions in kindergarten and primary school*".

Candidates who, among school years: 2008/2009 and 2019/2020, have carried out, on common or support positions, at least three years' service in a public school, even if not consecutive, which can be evaluated pursuant to article 11, paragraph 14, Law 3rd of May 1999 No. 124, can access to the extraordinary selection aimed at qualifying support teaching staff. At least one year's service must have been carried out on the specific position along with the acquired specialization corresponding to the school level.

Candidates enrolled in teaching specialization courses on the specific position, started by 29th of December 2019, are admitted conditionally to the selection for support positions. This reserve is positively dissolved if the relative specialization title is obtained by July 15, 2020.

As part of the aforementioned case, the C.G.I.L (Labour union), invited the C.E.D.S. (European Committee of Social Rights) to declare the violation of the articles of the European Social Charter (CSE) by the Italian State as, in particular, *it would be forbidden for members of the Italian Finance Police to establish professional **trade union associations** among military members or to join other trade union associations (violation **of Article 5**); there would be no planned peer consultations between the members of the Military Corps and the Minister of Economy and Finance, as employer (violation **of Article 6, paragraph 1**); no voluntary negotiations would be promoted between the military members of the Finance Police and the Minister of Economy and Finance, in order to regulate the conditions of employment according to collective agreements (violation **of Article 6, paragraph 2**); members of the Corps would be prohibited from exercising the **right to strike** (violation **of Article 6, paragraph 4**).*

Answer

The conclusions of the C.E.D.S.

In its report, forwarded to the Committee of Ministers of the Council of Europe, the C.E.D.S. expressed its conclusions on the provisions of the European Social Charter in question.

In detail, the Committee:

in **relation to Article 5**, taking note, among other things, **ruling No. 120/2018** of the Italian **Constitutional Court**, in the light of which the personnel of the Armed Forces and the Military Corps of the State (including members of the Italian Finance Police) can now set up trade union professional associations among soldiers, has - in summary - **considered violated** this provision of the Charter, as:

“the constitution of trade unions or professional organizations by members of the Italian Finance Police is subject to the prior consent of the Minister (...), **and given the lack [in Italy] of administrative and judicial means of redress against the arbitrary refusal of registration** (...) "

“it does not believe that a total ban on membership of [other] trade unions is necessary or proportionate" and that, consequently, military members "must be able to join a union of their choice and **trade unions to be able to join national and international organizations**"

the trade union prerogatives cannot be equated to the functions currently disengaged by the Military Representation Organizations, as per articles 1477, 1478 and ff. of Legislative Decree dated 15th of March 2010, No. 66 (the so-called Military Code, hereinafter C.O.m.).

With specific reference to Article 6 of the C.S.E.

§1 (right to promote **joint peer consultations** between workers and employers), after recognizing the existence in Italy of the aforementioned Military Representation Organizations, (it) has decided that this rule **has not been violated**;

§2, evaluating the current collective negotiation procedures (articles 2, 4 and 7 of Legislative Decree n°. 195/1995 and art. 1478 of the C.O.m.) "unreasonable alternatives" to the negotiation process, **considered violated** the rule. In this, arguing that the aforementioned Representative Organizations would not be equipped with suitable tools to effectively negotiate the conditions of employment, including remuneration, of their members;

§4, (it) has - among other things - stated that the right to strike would be "intrinsically linked [to that] of collective negotiation", since it is the most effective tool for obtaining a favourable result (for employees) from negotiation.

The Committee, while **acknowledging that the** Italian **Constitutional Court** has already sanctioned - with the well-known ruling n°. 120, filed on 7 June 2018 - the unavoidable necessity that, for military personnel, the **absolute ban on strike** remains in force, legitimately established by Article 1475, paragraph 4, of the C.O.m., has otherwise concluded that the absolute prohibition on strike for the members of the Finance Police would not be proportionate "to the legitimate aim pursued and therefore not necessary in a democratic society".

To this end, the C.E.D.S. has represented, in support of the argument put forward on this point, that: The International Labour Organization (ILO) has established that when the right to strike is restricted or prohibited, adequate protection must be given to workers to compensate for this restriction, so that such "restrictions (...) should be accompanied by adequate, impartial and rapid conciliation and arbitration procedures(…) ";

"it includes **the practical importance**" of what is argued - on the basis of the observations made by this Administration - by the Italian Government about the need to maintain the **full operation and efficiency** of the Financial Police and the Armed Forces, considered "essential services in a narrow sense", but despite this it does not "believe that this is a necessary reason in the light of Article G. [as] in the event of a strike, minimum services in the defense sector can be imposed. ".

In other words, according to the C.E.D.S. the right to strike:

it would serve to balance the shortcomings that, at the time the decision was issued, in its opinion these existed in Italy at the level of negotiation;

it does not affect the functionality of the Armed Forces where "minimum services" are guaranteed.

Specifically, with the ruling in question it was stated that it would be necessary to adopt measures to compensate, by balancing it, the ban on strike in force as well as such methods (the so-called discipline of "minimum services") to guarantee, in any case, the exercise of the tasks institutionally delegated to the Financial Police (and, in general and by analogy, of the functions attributed to all the Armed Forces).

This could be achieved - according to the Committee - by identifying further measures by law, such as an effective negotiation at the highest levels between the members of the Military Corps and the Political Leadership, not only on wages and working conditions but also on the organization of work or procedures of conciliation and arbitration.

By resorting to such measures, the strike ban would be proportionate; nevertheless, it was observed, on the one hand, that there are no "minimum services" in the event of a strike in the defense sector and, on the other hand, that - as already indicated - **there is a violation of Article 6, point 2, of the Charter** only due to the **lack of effective collective negotiation** for the members of the Military Corps.

Therefore, the C.E.D.S. - **unlike what** was strictly **established by the** Italian **Constitutional Court** - expressed the opinion that there is also a **violation** on this point (Article 6§4).

For all purposes, it is finally pointed out that the Committee, in examining the various arguments introduced into the case, **never makes any remark** or expresses itself in the opposite direction **with regard to the military nature of the Financial Police**, the main exception vice versa adduced by the promoter union of the petition (according to which, unfoundedly, the Military Corps eminently perform civil police functions).

REMARKS

In recalling and reiterating in full, what has already been extensively deduced with the observations specifically formulated with the memorandum of 19 April 2019, **which the Committee of Ministers of the Council of Europe has also** duly **noted**, it is now considered necessary to provide **further, detailed** and timely **arguments contrary** to the conclusions reached by the C.E.D.S.

These arguments are **based on** a **current picture of the situation** in Italy, including **all the updates**, of every order and type, **which have occurred in the meantime after the decision of the Committee** in January 2019.

Through them, they will be analytically delineated, with reference to each norm of the C.S.E. at issue, the **measures taken by Italy**, both in the governmental and parliamentary fields, also illustrating the **relevant legislative initiatives launched** [bill by the Hon Corda + others, containing "Rules on the exercise of trade union freedom of the personnel of the Armed Forces and Police Forces with military

order, as well as delegation to the Government for regulatory coordination", already approved by the Chamber of Deputies (A.C. 875-AR) and currently being examined by the Senate of the Republic as A.S. 1893];

Furthermore, it is intended to demonstrate, unequivocally - within the drafting of the document concerning the "XX Report on the application of the European Social Charter" (to be processed "in simplified form" with reference to collective complaint n°. 140/2016) - the correct application and full compliance by Italy with the rules established at international level by articles 5 and 6 (§§ 2 and 4) of the C.S.E.

On the right to strike (Article 6§4, of the European Social Charter).

The orientation and consequent **determinations expressed by the C.E.D.S. on this point are unfounded**, totally **disengaged from a precise weighting of the** very important **profiles**, of constitutional status, **at stake** (so much so as to deserve their legitimate protection under state law), **even contradictory** if compared with the opposite pronouncement made by the same Committee on the occasion of another recent similar case.

It is stated, in general, that in Italy the absolute ban on strike for military personnel and members of the Armed Forces is expressly contemplated by Article 1475, paragraph 4, of Legislative Decree n°. 66/2010, still fully in force today, in the light of which "the military members cannot exercise the right to strike.".

However, as already highlighted in the report that follows, the regulatory framework in question was also examined by the Constitutional Court, which - called upon to rule by the Council of State – with known ruling n°. 120 dated 11th of April 2018, has already acknowledged its full legitimacy.

In particular, the Constitutional Court has:

- as a preliminary point, stressed that "**the principle of democracy of the Armed Forces is fundamental**, referred to in general by Article 52 [of the] Constitution";

- among other things, it was noted that "the **principle of neutrality** provided for by Articles 97 and 98 of the Constitution for the entire public administration, and **a vital value for the Military Corps responsible for the" defense of the homeland** ";

- with specific reference "(...) to the limits of trade union action, (...) **first of all recalled the prohibition of exercising the right to strike**";

- expressly stated that the **limitation of this right is connected to the mandatory "need to ensure the exercise of other equally vital fundamental freedoms and the protection of constitutionally relevant interests** (ruling n°. 31 of 1969)".

Given this regulatory framework, it is now considered appropriate to recall further specific observations that demonstrate - without any possibility of objection - the essential centrality and fundamental importance of the **interests of a constitutional nature which find necessary and adequate protection with the provision** in question.

First of all, it should be noted that the absolute ban on strikes by the Armed Forces and Police is part of that articulated **guarantee system created** in Italy **to protect and safeguard the inviolable rights of all citizens**, aimed at ensuring and protecting **the essential interests of the national community** (such as, for example, public security, order and public safety).

The consideration according to which, in a truly democratic society, cannot be ignored by ensuring adequate protection of public order and national security is extremely evident. From this point of view, **the national defense and public security sectors cannot**, nor should they, **be evaluated in the same way as any other public service**, given the uniqueness and peculiarities that distinguish them.

Not surprisingly, the Constitutional Court - with ruling n°. 449 dated 17th of December 1999 - highlighted the distinctive nature, in the panorama of public employment, of the Italian Armed Forces and its members (featured by military status), which "**are distinguished from other state structures**" in that they must conform their actions as well as guaranteeing the specific "**organizational needs, internal cohesion and maximum operations**".

In fact, if in the other public sectors the discipline of calling and carrying out the strike (ensuring a minimum level of services) allows citizens to organize themselves to carry out their activities in any case, in the public security sector, very simply, such a possibility would determine *ex se* the radical elimination or, in any case, a significant weakening, of the effectiveness of repression against crime, ensuring that those who intend to commit a crime are aware of a lower risk of being identified and sanctioned. Without considering the reduced possibility of preventing the most serious crimes, such as those against human life.

For this precise reason, a **legitimate limitation** on the effective exercise **of the right** to strike **in the sectors now considered** has been envisaged in the Italian legal system, since abstention from work would seriously compromise the most important of the constitutionally protected rights and assets, such as individual freedom, physical integrity, citizens' safety and, last but not least, national security.

It follows, therefore, that any Judge, national or supranational, who is called upon to evaluate the relevant profiles in question, cannot exempt himself from a **transversal and "integrated" weighting of the fundamental rights** that are called into question, in order not to incur an "injustice" deriving from the prevalence of one of these rights over the others, as explained in the so called "Theory of tyrants' rights", developed by the Constitutional Court with ruling dated the 9th of May 2013, n°. 85 and recently reminded by the Council of State with ruling n°. 4993, published on the 30th of October 2017.

According to this theory, in fact, **"All the fundamental rights protected by the Constitution are in a relationship of reciprocal integration and it is therefore not possible to identify one of them that has absolute prevalence over the others.** Protection must always be "systemic and not divided into a series of uncoordinated and potentially conflicting rules" (ruling n°. 264 of 2012). If this were not the case, there would be the unlimited expansion of one of the rights [editor's note: the right to strike, in this case], which would become a "tyrant" against other legal situations that are constitutionally recognized and protected", including, as specified by the Council of State "there is also the military defense of the State (which Article 52 of the Constitution defines as "sacred")" (Council of State, Section IV, ruling n°. 4993 dated the 30th of October 2017).

From the aim of guaranteeing the protection of other primary values which are also of constitutional status (such as the internal cohesion of organizations having a military nature, their character of absolute and mandatory **neutrality**, their **operational efficiency**) descends, in a clear and unequivocal manner, the **full legitimacy** as well as **the absolute reasonableness of the limitation** imposed on all military members by article 1475, paragraph 4, of the C.O.m..

As a corollary of the above, it is necessary to point out the **absolute incompatibility** existing both from a logical point of view and from a legal point of view (moreover, by no means resolved) between the aforementioned principles of neutrality, cohesion, efficiency and maximum effectiveness of the military administrations for the protection of fundamental interests of Italian and EU citizens and the recognition of the right to strike, that is the possibility for the relative members to decide independently to "abstain" from the duties and obligations imposed on them to defend the fundamental interests, the democratic life and integrity of the Nation "addressing if necessary, the risk of sacrificing one's life", as expressly dictated by article 712 of the decree of the President of the Republic n°. 90/2010 (T.U.O.M.).

Wanting to support an opposite view, in fact, means not only going against the now consolidated jurisprudence of the Constitutional Court - according to which "compliance with international obligations [can] never" determine "a reduction in protection compared to those already established by domestic law "- but above all to violate that cardinal principle expressly provided for by article 53 of the European Convention on Human Rights (ratified by Italy and enforced by law n°. 848 dated August the 4th , 1955), according to which **the rules thereof cannot be interpreted in such a way as to limit or undermine the levels of protection of essential values for the community in accordance with national laws.**

Essentially, **any collective abstention from work** by the military members of the Finance Police, like those of the other military Armed Force and military police (a distinctive category of public workers - as mentioned), is, therefore, certainly **inadmissible** because, as repeatedly highlighted, it would undermine the very foundations of the State, no longer able to guarantee relevant **constitutionally protected** values, as well as compromising fundamental **national interests** and the **European Union** itself, which are essential for the orderly and democratic carrying out of civilian life, such as **freedom**, **physical integrity** and the **duty** of **defending the Homeland.**

It must also be considered that the **right to strike**, which in Italy cannot be exercised by the military, **has been** duly **excluded** even with reference to **members** of the **State Police**, whose "civil" status was established by law in the early 1980s. (Law n°. 121/1981, enabling the “New system of the Public Security Administration”). The same, although since time were endowed with trade unions, "do not exercise the right to strike or actions in lieu of it which, if carried out during service, may prejudice the needs of protection of public order and security or the activities of the judicial police" (article 84 of law n°. 121/1981).

In this context, the maintaining of "basic services" in the defense, security and public order sectors in the event of a possible strike by the armed and police forces, as proposed by the Committee [and although the C.E.D.S. admits that the interruption of "essential services in the strict sense" (such are considered "the armed forces" by the Committee on Freedom of Association ILO, cited in support of the party's argument) "would endanger human life, personal safety, health of all or part of the population ”, and would in any case not be feasible in the Italian panorama also because of the same peculiarities that ontologically distinguishes the members of the Finance Police, such as those of the Armed Forces or other Police Forces. The existence of judicial police qualifications, for example - intrinsically and inseparably linked to the military status of the Corps - does not allow them to be suspended or "frozen" in the event of collective abstention from work, precisely by virtue of their permanent nature pursuant to current provisions of the criminal procedure code as well as their purpose of repression, necessarily instantaneous and immanent, of crimes committed to the detriment of the daily life of individuals and the domestic and supranational interests of the community.

Similarly, **"minimum services"** cannot be recognized with reference to national defence tasks, to which the Corps contributes by being an integral part of the Armed Forces and participating in the political-military defence of borders. In operations in the event of war or international missions abroad (pursuant to law n°. 189 dated 23rd of April 1959, and of legislative decree n°. 68 dated 13th of March 2001).

On the other hand, these statements, of a theoretical nature, appear all the more clear from the practical point of view when you consider the delicate, transversal and articulated institutional tasks entrusted to the **Finance Police**. A military body distinguished by a legal **system**, a **discipline** and a **peculiar structure** for the specificity of the needs to be covered, in terms of **immediacy of decision** and **action** as well as **structural flexibility**. These requisites are **essential to face, at any time and in any place, any type of threat and operational situation**, in order to effectively correspond to the primary purpose of the "internal" and "external" security of the Nation, the defense of national borders and democratic life of the State.

The application, proposed by the Committee, of a discipline of **"minimum services"** which is **impractical, in reality, in the Italian panorama** of the "Security-Defense" sector - clashes irremediably, and unacceptably, with the most **relevant constitutional values of which members of the financial police**, together with the other members of the Armed and Police Forces, **are** today a **bulwark and tireless guardians**, guaranteeing the most strenuous defense of these values in their daily performance of the **services for which they are in charge, which cannot be deferred, almost never pre-planned or contingent upon**.

In this regard, it is considered appropriate to recall, *ex multis*, the historic commitment of soldiers wearing the "Yellow Flames" **in control, surveillance** and security **tasks** on the national territory, guaranteed on the road **through patrols "117"**,"public utility and emergency intervention" devices at the service of citizens, **as well as the growing use of the Corps alongside the Italian Army, the Carabinieri and other police Forces** in the operation, on a national scale, called **"Safe Roads", implemented in a transversal perspective of "integrated defense" of the State.**

All of this responds - nor could one think otherwise - to the necessary needs to protect the individual and collective freedoms of the entire community, and is an **indispensable instrument of deterrence, prevention, repression and contrast to all illegal activities**, and not only of an economic-financial nature, which are **committed** (for example: **crimes against the person, predatory crimes, attempts on human life** and **social unrest**, crimes against property, etc.) **as well as a crucial defense to prevent** the spread of **common and organized crime nationwide.**

Moreover, in the current geo-political and social scenario, marked by non-traditional, asymmetrical and globalized forms of conflict (the terrorist threat in place is the testimony par excellence), the

Finance Police, as well as with the aforementioned control of the territory - as sanctioned by the legislative decree n°. 69/2001 - plays a decisive role by intervening exclusively with **the task of investigating, identifying and blocking the supply and financing channels of international terrorism.**

In this area, among other things, the Financial Police proceeds:

- to carry out money laundering **inspections and controls** regarding **of suspicious transactions related to alleged terrorist financing events**, pursuant to Legislative Decree n°. 231/2007;

- to carry out **checks on the cross-border circulation** of currency, **both at customs and with dynamic surveillance services on the territory;**

- to the urgent carrying out measures of freezing or **the automatic locking of the financial and economic resources** of individuals suspected of belonging to **terrorist organizations.**

In pursuing these **objectives of domestic and international security**, also by the exercise of its functions to combat international terrorism, the Financial Police ensures its operational contribution through its participation in the Antiterrorism Strategic Analysis Committee (C.A.S.A.), as well as in the Financial Security Committee (C.S.F.), which is, among other things, the Organization which suggests to the Minister of Economy and Finance, from which the Financial Police belongs, the adoption of special freezing measures "of funds and economic resources" in order **to counter and suppress the financing of terrorism, the financing of the proliferation of weapons of mass destruction and the activity of countries that threaten international peace and security** (pursuant to Article 4-bis of Legislative Decree n°. 109/2007, as amended by Legislative Decree n°. 90/2017).

In addition, it is necessary to recall - as part of this brief overview of the tasks carried out by the Financial Police - the significant contribution provided by its highly qualified and trained personnel [among all, **S.A.G.F.** (the Alpine Rescue of the Finance Police), **the A.T.P.I.** (Ready Anti-Terrorism Team) and that of the air-naval component], on the occasion - as recently occurred several times, regarding calamities and natural disasters (earthquakes, floods, avalanches, etc.), of "*search and rescue*" operations, (so called SaR), for the **rescue of people involved in situations of extreme danger** in hostile environments (at sea or in the mountains). **National and international health emergencies linked to the spread of outbreaks of disease**, **and, more generally, during the** multiple **activities of Civil Protection** coordinated by the Department established at the Presidency of the Council of Ministers.

Similar considerations regarding the **urgent and useful operations performed** by the Finance Police - and their consequent **incompatibility** with any **level** of **"minimum services"** - must, finally, be looked at with reference to those activities performed by the personnel such as office/logistics duties strictly functional to the effective and concrete deployment of the operational arrangements as well as its

support [by way of example, the number of soldiers employed (throughout the day) in the "**operating rooms**" at the Provincial Commands, in the "Operations Offices" of the Execution Departments and in the "Logistics Offices" responsible for the timely and efficient management of vehicles and infrastructures in the area]. In any case, a relevant **percentage of soldiers** employed in **"operational" duties**.

A different aspect that deserves to be considered concerns the comparison with the provisions of **the main European legal systems**, where the right to strike in the defense and security sector is subject to limitations like those of Italian legislation.

This principle derives from the very *raison d'être* of the Armed Forces and the police: the concrete ways of exercising the freedom of trade union association must necessarily and carefully be balanced with the fundamental functions **of national defense, order and public security.**

In particular, the common feature in the European continent appears to be **the incompatibility** of the delicate unique tasks to which the members of the Armed Forces are called to carry out with **the exercise** of the **right to strike**.

In detail:

In **France,** the right to strike is **subject to certain limitations** for specific categories of individuals, including the personnel of the **national police**, ordinary magistrates, **soldiers** (including members of the "Gendarmerie"), the personnel of the external services of the penitentiary administration and personnel who carry out activities at the transmission services of the Ministry of the Interior.

The *Conseil Constitutionnel*, while affirming the constitutional importance of the right to strike, has long recognized the **legitimacy** and **necessity** of the **limitation** to be imposed, under certain conditions, of **such right**, establishing that it would mean- as in Italy - into an absolute **ban on strike** "for agents whose presence **is essential** to ensure the proper functioning of the [public,] service whose interruption would violate the essential needs of the nation";

In **Germany,** the right to join trade unions belongs to all citizens (*ergo*, to the soldiers), without prejudice, in any case, to the full existence of limitations in relation to the different types of actions exercisable by trade unions, which are essential to balance the aforementioned law with other principles of constitutional status.

From this point of view, and for what is relevant here, there are specific **subjective limitations** imposed on the exercise of trade union freedom, including - in particular - the **prohibition of strikes** for certain individuals, primarily for **the soldiers** and members of the of **the police officers**.

This, in accordance with the consolidated orientation for which **all trade union associations** are in any case **bound,** by reason of the social and public function that characterizes them, to their **social obligations and responsibilities**, so that **unrest** and **strikes are not allowed** in the **sectors** that involve the protection of public safety or services of general interest (by way of example, even doctors are prohibited from striking).

In this regard, among the most significant German realities, **the German Trade Union Association** of the **Bundeswehr** (**Federal Defence**) deserves a mention, which statutorily provides for the **refusal** of the use of the **strike** by **soldiers** and **public officers** for the realization of social aims, on the assumption that there is an **absolute ban** on **mobilization** and **strike** for soldiers;

In the **United Kingdom**, members of the **Armed Forces** can organize themselves into **associations**, if they are not in the form of a trade union. The **soldiers** can **join civilian unions**, but for the sole purpose of **strengthening** their **professional skills** and facilitating **reintegration** into **civilian life**. **In no case can a soldier participate in trade union actions such as strikes**, as established in the so-called "**Queen's Regulations**", which govern operation activities of individual soldiers.

The military associations currently present in the area do not have a firm basis in law and are fragmented into numerous small associations, formed mainly by the self-organizing efforts of the soldiers and members of the police;

In **Spain**, based on the evolution of constitutional jurisprudence, the Legislator, in 2011, allowed the creation of professional associations, subject to strict discipline in order to avoid the creation of parasyndical organizations. The Spanish legislation in the sector, among other things, **expressly excludes** that the professional associations can **exercise the right to strike**, participate in collective negotiation as well as exercise forms of collective unrest of a trade union nature.

It is also considered appropriate to reiterate that the purpose of **Article 53** of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** (**E.C.H.R.**) - where it is specified that "**none of the provisions**" contained therein "**can be interpreted in a way to limit or prejudice [...] the fundamental freedoms** that can be recognized on the basis of the laws of each Contracting Party or on the basis of any other agreement in which it participates "- cannot be extended to the point of **undermining the** very **foundations** of the **State** in its role as **guarantor** of national security, of the **democracy** and of the **life** of its **citizens**, which are, ultimately, **the highest values of constitutional status.**

As far as it is relevant here, in confirmation of this approach, **Article 11** of the same **E.C.H.R.** can be referred to, which:

(a) on the one hand, it recognizes the right of every person to freedom of peaceful assembly and association, including the right to participate in the establishment of trade unions and to join them in the defense of their own interests;

(b) on the other hand, it establishes that the exercise of the aforementioned rights cannot be subject to restrictions other than those established by law and that they constitute "necessary measures, in a democratic society, for national security, public safety, defense of order and the prevention of crimes, the protection of health or morals and the protection of the rights and freedoms of others ". The **legitimate restrictions** allowed by this provision **include those "imposed on the exercise of these rights** by **members of the armed forces, the police** or the State administration".

In similar terms, the **European Social Charter**:

(c) in **Article 5**, leaves the task **to national legislation** of identifying the **association and trade union guarantees** to be "applied" to members of the Armed Forces and the police;

(d) in the related **Annex** it specifies, with reference to **Article 6, § 4** (of which the E.C.H.R. challenges Italy for the violation - see sub 1.d.), that "each party may, as far as it concerns it, **regulate by law, the exercise of the right to strike**, provided that **any other limitation** to this right can be justified" pursuant to **Article G** of the Charter.

This latter provision **does not allow for restrictions** or **limitations**, among other things, to be placed on the rights referred to in the aforementioned Article 6, § 4, **with the exception** of "those **established by law** and which are **necessary**, in a democratic society, to guarantee respect for the rights and freedoms of others or **to protect public order**, **national security**, public health or morality".

Lastly - but by no means least - it is useful to highlight a factual circumstance whose value is so significant as to represent, by itself and regardless of the further considerations made, a decisive element in the question, given that it reveals a **non-uniform orientation and contradictory of the Committee** precisely **on the subject of the right to strike** in the Armed Forces.

The E.C.H.R. - in clear contrast to the conclusions resigned on the occasion of case n°. 140/2016 [*see* sub 2.b. (3)] - expressed **considerations of a different nature and diametrically opposed to the strike** in another similar dispute, although the assessment was a substantially similar case to the Italian one.

In particular, the European Committee of Social Rights, in relation **to case n°. 112/2014**, established following the collective complaint **EUROMIL vs/Ireland**, presented by the "European Organization of Military Associations", issued the decision dated 12th of September 2017 (**published on 12 February 2018**) within which it has:

(a) preliminarily, noted that "the right to strike is intrinsically linked to the right to collective negotiation, as it represents the most effective means of obtaining a positive result in a negotiation process (...)

Restrictions on this right may only **be acceptable** under specific conditions ";

(b) underlined, in absolute compliance with the provisions of this Administration in the previous point, that "**most of the States of Council of Europe prohibit members of the armed forces from striking** (with the exception of Austria and Sweden)";

(c) acknowledged the "**specific nature of the duties** performed by members of the armed forces, the special circumstances of members of the armed forces operating under a **system of military discipline**, **the potential that any collective action could disrupt operations in a way that threatens the national security**";

(d) considering, in light of this, **the provision on the ban on strike "proportionate for the legitimate aim pursued** and, consequently", to be considered a **"necessary measure in a democratic society**";

(e) it resolved that **the prohibition of the right to strike of members of the Armed Forces does not constitute a violation of Article 6, point 4, of the European Social Charter**;

(f) essentially, therefore, the lack of proportionality of the prohibition of the right to strike has not been ascertained (nor pleaded), nor has it been noted that this measure of restrictive order must be, in some way, compensated by the existence of effective collective negotiation.

In light of all the above, it is believed to have amply demonstrated the **absolute legitimacy**, **proportionality and necessity of the legislation in force in Italy on the** absolute **ban on strikes for military personnel** and **police forces**, referred to in article 1475, paragraph 4, of the C.O.m., since it is a fundamental and essential principle of ensuring the **protection of the entire national system and State security.**

This, however, not to mention that the E.C.H.R. considers the violation of this right as a merely subordinate and ancillary circumstance to that relating to collective negotiation (article 6.2 of the C.S.E.), as it would represent "the most effective means of obtaining a positive result of a negotiation process" which, in its opinion, in Italy - at the time of issuing the decision - would not yet be fully effective.

Although analyzing the issue from this additional point of view, the erroneousness of the critical conclusions made by the Committee is evident, widely refuted by what will be detailed in the following paragraphs where, in a tangible way, **efficiency, proportionality, adequacy and equality of the collective bargaining process** are supported, and already existing in Italy.

Finally, it should be noted that the aforementioned **bill** now being examined by the Senate (A.S. 1893), in confirming, as already the case is for the State Police, the ban on strikes for military personnel, **attributes** to the **Professional Associations a trade union character among military personnel (APCSM)** the **role** of "**party**" in the context of **negotiation**, thereby **completely overcoming the observation of the E.C.H.R. on the basis of which the right to strike was considered a useful tool to compensate for the shortcomings identified in the domestic legislation in force with reference to the negotiation mechanisms for the soldiers.**

On the establishment of trade union professional associations (article 5 of the European Social Charter).

On this specific point, it has to be said that the Italian **Constitutional Court**, **even before** the decision of the **E.C.H.R.** (issued in January 2019), **had expressed itself favorably** on the subject of **freedom of trade union association** for military personnel, acknowledging its validity **with the well-known ruling n°. 120/2018** (with which, however, the scope of application of this right was rigorously outlined).

In this regard, it is first of all worth recalling that the **Committee of Ministers** of the Council of Europe was specifically provided with all the **information** on the subject **available up to that moment in Italy**, regarding the **successful establishment of three** trade union professional **associations** (the "SILF" , the "SI.NA.FI." and the "S.I.M.", all made up of military members operating in the Military Corps and all authorized with the prior consent of the Ministry of Economy and Finance).

To update this reconstruction, **at present, a total of seven Professional Trade Union Associations among Military Soldiers (APCSM) have been established**, made up **exclusively of personnel from the Military Corps**, called:

(a) **S.I.L.F.** ("Italian Union of Financial/Custom Police officers");

(b) **SI.NA.FI.** ("National Union of Financial/Custom Police officers");

(c) **S.I.M.** ("Italian Military Trade Union");

(d) **S.A.F.** ("Autonomous Union of Financial /Custom Police officers");

(e) **U.S.I.F.** ("Italian Union of Financial/Custom Police officers");

(f) **S.F.D.** ("Democratic Union of Financial/Custom police officers");

(g) **S.I.BA.S. Financiers** ("Basic Union of the Security Section – Financial/Custom Police officers").

Furthermore, **4 joint APCSMs interforce** have been set up - **S.I.U.L.M.** ("Unitary Union of Military Workers"), **FLM** ("Federation of Military Workers"), **UGM** ("General Military Union") and **AS.S.O.D.I.**

PRO MIL (“Union Association of Defense Interforce Military Professionals”) - also **aimed at Financial/Custom Police officers.**

From a **regulatory point of view**, the aforementioned **bill** aimed at regulating the **exercise** of **trade union rights of the military personnel** (including members of the Finance Police) - as mentioned above, already **approved** by the **Chamber of Deputies** and currently being **examined** by the **Senate of Republic** - contains **specific provisions** regarding the **procedures for setting up APCSMs**.

In particular, **article 3** of the legislative initiative provides that, before carrying out trade union activities, the **APCSMs, following the constitution**, **deposit** the **statute** with the **relevant Ministry**, which is required to ascertain its compatibility with the legal applicable framework and, if so, to arrange for a transcription in the appropriate register. In this context, **the participation of the APCSMs in the proceedings is also duly regulated**, in order to guarantee its legitimacy and transparency in the event of a refusal of the transcription or cancellation of the latter in the event of loss of the legal requirements.

Pending approval of this bill and in relation to what is indicated by the E.C.H.R. in § 83 of his report (absence - under current legislation - of protective measures in the event of "arbitrary refusal of registration" of the APCSMs), it should be noted that our legal system already today allows the participation of the promoters of the trade unions in question to the procedure aimed at granting prior consent to the establishment of the same, as well as their **right to use** all the **instruments of legal protection** provided for by the law in the event of a **refusal provision**.

It should finally be noted that, **pending the approval of the aforementioned legislative proposal on trade union associations amongst military personnel, all** the **requests regarding** the **establishment** of **associations** of the kind **presented so far for the Finance Police** have been concluded with a **favorable outcome**.

With regard to the assumption , pointed out by the E.C.H.R, for the military to "be able to join a trade union of [their] choice" or to join or adhere to other trade union organizations of a national and international character (such as, for example, C.G.I.L., the same C.I.S.L., etc.), an eventuality that, only according to the aforementioned Committee, would be a right to be recognized peacefully, can only refer, in this regard, observations of a totally opposite sign, given that:

(a) **the limitation in question is dictated by a rule of primary status**, to be identified in Article 1475, paragraph 2, of the C.O.M., in the part in which the military personnel are expressly prohibited from "joining other trade union associations";

(b) the legitimacy of such a limitation, however, was **broadly confirmed** by the Italian **Constitutional Court** in the aforementioned **ruling n°. 120/2018**, with which the right of trade union association was recognized to the military personnel.

In fact, the Judges of the Constitutional Court have:

- pointed out that "the **specificities** of the **military order justify**, therefore, the **exclusion** of **forms of association** deemed not to meet the **consequent needs** for **compactness** and **unity** of the organizations that make up this order";

- categorically confirmed **the absolute compliance** for military personnel of the "**ban on "joining other trade union associations**", a prohibition from which it follows the need for **the associations in question** to be **composed only of military personnel** and that they **cannot join different associations**";

(c) the Supreme Constitutional Court, already with ruling n°. 449/1999, in stating the precepts of a general nature (democracy, impartiality, neutrality and internal cohesion) that must distinguish the Italian Armed Forces and Police, has in fact recognized the **role of impartiality and *super partes* played by the military personnel**.

This crucial role, on the other hand, would be irremediably compromised by the presence in its ranks also of individual representatives of the Armed Forces who were allowed to affiliate or join associations which - by their very nature and for the purpose pursued - clash with the founding principles of the military institutions of which they belong, whose observance is not required of private citizens, but whose respect is ontologically inherent and demanded by military status;

(d) the hypothetical granting of this right, in fact, would be irreconcilable with the correct fulfillment of institutional services by military personnel, as well as acting as an unsuitable means to adequately preserve the necessary standards of readiness and operational effectiveness of Armed forces, which have always been guardians of national security, public health, morals and the individual freedoms of citizens.

Considering the aforementioned **principles of law**, precisely in order to ensure the **compactness** and unity of the **military Institutions**, the bill currently under examination by Parliament **expressly** establishes the prohibition:

(e) for **Professional Trade Union Associations among Military Personnel (APCSM) to assume** the **representation** of **workers who do not belong to the military or police forces**;

(f) for **military personnel to join trade union professional associations other than APCSM.**

Finally, it should be noted that the legislative initiative brings a **wide catalog** of **prerogatives** recognized to the **APCSMs**, to allow **the most complete exercise** of **the individual and collective protection** of the **rights** and **interests** of its representatives.

On voluntary negotiation procedures (Article 6, paragraph 2 of the European Social Charter).

As anticipated, the law proposal aimed at regulating the exercise of trade union rights of the personnel of the Armed Forces and of the military police provides, among other things, the **competence** of the APCSMs with regard to the **contents** of the employment report of the aforementioned personnel.

In concrete terms, this prerogative will be expressed in the **attribution** of **negotiating powers** to the **associations** that will be recognized - based on the number of members - **most representative at national level**, which will take part in the **negotiation procedures** for the stipulation of **trade union agreements** between the aforementioned APCSM and the so-called **delegations "Public part".**

The bill currently being examined by the Senate of the Republic (A.S. 1893) also introduces **an additional negotiation procedure** (so-called "**of Administration**" or of "**Level II**"), through which the APCSMs will be able **to settle with** the relevant Administrations **the most characteristic aspects** of the individual Armed Forces and Military Police Forces, including the **distribution** of **ancillary remuneration** and **productivity**.

In conclusion, in light of what has been argued as a whole and despite wanting to disregard the issuing sector legislation, which - as mentioned - when fully operational will expand, significantly enhancing it, the range of prerogatives of trade union professional associations among the military personnel, also including those negotiated, it should be pointed out that **already at the present time no "weakening" of the rights of the military worker in relations with his employer** (the military administration to which he belongs) has been noted.

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.).

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 the ministerial delegations and the Administrations concerned) of the **central representative**

organizations, direct expression of the military personnel as of an elective nature. The procedures in question are governed by legislative provisions which are completely similar to those used by the civil 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 organizations of the Armed Forces and the military police forces participate jointly.

Lastly, on closer inspection, the only, concrete and undesirable, **real risk of weakening of rights could, vice versa, occur** in another and different hypothesis, **to the exclusive detriment of citizens**, if we consider that **collective abstention from work by members of the Armed and Police Forces**, theorized as a tool for more efficient negotiation between the parties, **would crush the effectiveness, eliminating the effects in its entirety, of that articulated and necessary protection system so meticulously woven for the defense of collective and individual interests of constitutional status that are "at stake".**

CONCLUSIONS

Therefore:

a. based on what has been amply demonstrated with all the considerations illustrated so far, fully suitable to support the unquestionable legitimacy and compliance of the current condition of the employees of the Finance Police with the primary, constitutional and international precepts in force;
b. as already supported with the specific observations in reply to the E.C.H.R. provided to the Government with the memorandum, however fully acknowledged by the Committee of Ministers of the Council of Europe which made it an appendix to its resolution adopted on the 11th of September 2019;
c. in absolute continuity with what has already been declared by the Italian Ambassador Michele Giacomelli to the Committee of Ministers of the Council of Europe in the session of the 5th of September 2019, expressly attached to the documents of the case, **it is believed to have amply demonstrated - in all respects - that Italy has not violated the precepts established in articles 5 and 6 (paragraph 2 and 4) of the European Social Charter.**