



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

15 November 2022

Case Document No. 2

Associazione Sindacale Militari (ASSO.MIL.) v. Italy
Complaint No. 213/2022

**OBSERVATIONS BY THE GOVERNMENT
ON ADMISSIBILITY**

Registered at the Secretariat on 10 November 2022



*Ufficio dell' Agente del Governo
davanti alla Corte europea dei diritti dell' uomo*

AVVOCATURA GENERALE DELLO STATO

European Committee of Social Rights (ECSR)

Collective complaint n. 213/2022

ASSOCIAZIONE SINDACALE MILITARI (ASSO.MIL.) C. ITALY

**OBSERVATIONS OF THE ITALIAN GOVERNMENT
ON THE ADMISSIBILITY OF COLLECTIVE COMPLAINT**

Ct 36664/2022

Proc. Adele Berti Suman



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1. With the letter dated 19 September 2022, the Secretariat of the General Directorate of the European Social Charter, requested the Italian Government to present its observations on the admissibility of the collective complaint n. 213/2022 (“the complaint”), submitted by *Associazione Sindacale Militari* (ASSO.MIL.) (“the complainant”).
2. In compliance with the Secretariat of the European Social Charter request, the present observations are limited to the admissibility of counterparty complaint.

- I -

Subject Matter of the Complaint

The complaint of the ASSO.MIL. Association alleges a declaration of violation of Article 12 of the European Social Charter in connection with Article E of the Charter by reason of the Italian State's failure to set up complementary pension funds in favour of civil servants belonging to the Armed Forces with military status, as provided for by Legislative Decree No. 124/1993 and other relevant legislation. The complainant argues that there has been an initial compression of the social and economic rights of military personnel with the non-establishment of supplementary pension funds, aimed at compensating for the economic loss resulting from the application of the contributory pension scheme, which exposes workers to a considerable difference in economic availability compared to that which they had at their disposal during the receipt of their salary, as compared to the previous scheme retributive regime. In addition, Asso.Mil. claims that there has been a further compression of the economic rights of the same due to the failure to compensate for the damage thus caused.

- II -

Admissibility of the complaint

The complaint is inadmissible.

The *Associazione Sindacale Militari* (ASSO.MIL) received ministerial approval, pursuant to Article 1475 of Legislative Decree No. 66/2010 (Code of Military Order) by Ministerial Decree dated 19 March 2021 (**Annex 1**).



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Law No. 46 of 28 April 2022 setting forth “*Rules on the exercise of trade union freedom by personnel of the Armed Forces and Police Forces with military regulations, as well as delegation to the Government for regulatory coordination*” provides in art. 2 that “*the competent Department, having ascertained the existence of the requirements of the above-mentioned law, shall provide for the registration of professional associations of a trade-union nature among military personnel in a special register for the purpose of exercising the activities provided for by the statute.....no trade-union activities or the collection of social contributions shall be permitted during the above-mentioned procedure*”.

The Ministry of Defence, at the request of the ASSO.MIL Association, has commenced the preliminary investigation procedure, aimed at registering the Association in the ministerial role pursuant to the aforesaid legislation, which has not yet been completed. Therefore, the ASSO.MIL Association is not currently registered in the aforementioned role.

Article 13 of the law provides that “*professional associations of a trade union nature are considered to be representative at a national level.....when they reach a number of members equal to at least 4 per cent of the total effective strength of the Armed Force or of the Police Force with military regulations [...] Inter-Forces Associations (as in the case of ASSO.MIL.) shall have a representativeness of no less than 3 per cent of the effective force on the basis of the individual Armed Force or Military-organised Police Force, as recorded on 31 December of the year preceding the year in which the representativeness is to be determined*”.

So that, according to the law, only professional associations of a trade-union nature meeting the above-mentioned requirements may be recognised as representative at a national level by a special decree of the Minister for Public Administration, after consulting the Ministers for Defence and for the Economy and Finance, pursuant to paragraph 6 of the above-mentioned Article 13. However, for the reasons stated above, this decree cannot yet be adopted.

In view of the foregoing, since ASSO.MIL does not have the requirements to be considered a nationally representative association, the proposed complaint is inadmissible for lack of



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standing, pursuant to Article 1 of the Additional Protocol to the European Social Charter on the Collective Grievance System.

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The above considerations lead to the conclusion that the counterparty complaint should be declared inadmissible.

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CONCLUSIONS

In light of the present observations, the Italian Government request the Committee to dismiss the case by declaring the Complaint inadmissible, pursuant to Article 1 of the Additional Protocol of 1995 for a system of collective complaints, since the Applicant's lack of standing.

Rome, 10 November 2022

Drafted by

Adele Berti Suman – Procuratore dello Stato

The Agent of the Italian Government
Lorenzo D'Ascia – Avvocato dello Stato