



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

11 April 2023

**Case Document No. 4**

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

**REPLY FROM THE GOVERNMENT  
TO ASSO.MIL. RESPONSE**

**Registered at the Secretariat on 24 March 2023**



*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*

**Replies of the Italian Government on the admissibility  
of the Collective complaint n. 213/2022**

Ct 36664/2022

Proc. Adele Berti Suman



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1. With the present notes, referring to all that has been explained in the observations on the admissibility of collective complaint of January 26, 2023, the Italian Government aim to replay to the applicant Association's observations on the admissibility of the present complaint.

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2. The Association contends that the Government misinterpreted the new domestic legislation, ignoring the transitional regime provided for those military unions which, like ASSO.MIL., had already been established and recognised by the Ministry of Defence when Law No. 46 of 2022 came into force.

3. In this regard, it should be noted that Law 46/2022 (henceforth referred to as the 'Law'), which came into force on 27.05.2022, provided in Article 3 for the procedure for the registration in the ministerial register of professional associations of a trade union nature among military personnel, expressly providing that, "*pending the aforementioned procedure, the exercise of trade union activities and the collection of trade union contributions are not permitted*".

4. Contrary to the assertions of ASSOMIL, the requirement of registration in the ministerial roll for the exercise of trade union activities is also necessary for professional associations of a trade union nature among military personnel that have received ministerial assent before the entry into force of the aforementioned law (such as ASSOMIL), pursuant to Article 1475 of the COM.

Article 19 of the law provides in fact that "*the APCSMs, that on the date of entry into force of the law have already obtained the assent of the competent Minister, shall adapt to the contents and prescriptions of this law within 90 days of the same date of entry into force. Once this period has elapsed, the competent Minister shall carry out on the aforementioned associations the controls provided for in Article 3*".

5. In fact, precisely in order to comply with this provision, the APCSMs that had already obtained ministerial approval, in order to comply with the contents of the law and obtain



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registration in the ministerial register, must necessarily file new bylaws in line with the law's standards.

6. Accordingly, the applicant association's interpretation that "*the prohibition to carry out trade union activities and to collect contributions from members, laid down in Article 3 of the law, refers only and exclusively to associations that are not yet constituted but have initiated the appropriate procedure*" is certainly erroneous and not in accordance with the law.

7. To confirm the above, it should be noted that the Circular of the Cabinet of the Minister dated July 8 2022, also sent to the ASSOMIL association (**Annex 1**) - pending the adoption of the implementing regulation provided for by art. 16, paragraph 3, of the law - in providing some preliminary indications of an applicative nature in order to facilitate the correct start-up of the new system of collective union protection of military personnel, provided, inter alia, that "*the preliminary investigation for registration on the register, preparatory to the exercise of trade union activities, must be carried out both for newly established APCSMs and for those that have already obtained ministerial approval*".

8. In the latter case, "*the APCSMs, within 90 days of the entry into force of the law, may submit a special request for registration in the Register, also filing the articles of association, if innovative, with the General Staff of the relevant Armed Force or General Command of the Carabinieri and, if inter-force, with the Defence General Staff, representing that they have been brought into line with all the provisions contained in the law*".

9. The application for registration in the register, correctly, was also submitted by the applicant Association itself on August 7 2022 and for that reason, it cannot fail to be subject to the application also of the provisions of Article 3 of the law, in addition to the Article 19, contrary to the assertions made by the Association.

10. In view of the above, it is clear that registration in the ministerial register constitutes, even for associations which have already obtained ministerial approval under Article 1475, a "constitutive act" of the right to operate as a military union and not a mere "act of recognition" of that right as claimed by the applicant association.



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11. Taking into account that the registration of the ASSOMIL association in the ministerial register took place by order dated **March 6 2023** (**Annex 2**), before that date the same association was not legitimised, in any way, either to carry out trade union activities or to collect trade union contributions as expressly provided for by Article 3(1) last sentence of the law.

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12. With regard to the asserted possession of the “effective representative capacity” of the ASSOMIL association, which would legitimise the association to bring the complaint pursuant to Article 1(c) of the Additional Protocol to the European Social Charter, it is pointed out that the very preclusion of the exercise of trade union activities and the collection of trade union contributions in the period prior to registration in the ministerial roll, as argued above, is a tangible sign of the failure to possess the requirement of the aforementioned representative capacity.

12. This was in consideration of the fact that prior to its registration on March 6 2023, the ASSOMIL Association could in no way have a “legal capacity” in the military legal system and be the holder of legal situations capable of protecting the rights of military personnel in the matters referred to in Article 5 of Law 46/2022.

13. Consequently, the Association could not even be ‘representative’ according to the notion proper to the case law of the European Committee of Social Rights as argued by the applicant itself. In fact, ASSOMIL, when it filed the complaint at issue, could not be the bearer of collective interests since it was not recognised in the legal system.

14. However, at the moment, the ASSOMIL Association, even though it has obtained registration, is not recognised as ‘representative’ even under national law, since it does not meet the requirements of Article 13 of the law, according to which “*professional associations of a trade union nature are considered representative at the national level..... when they reach a number of members at least equal to 4 per cent of the overall effective strength of the Armed Force or the Military Police Force*”... and for inter-force associations (as in the case of



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ASSO.MIL.) there must be a “*representativeness of not less than 3 per cent of the effective strength of the individual Armed Force or Military Police Force, as recorded on December 31 of the year preceding the year in which representativeness must be determined*”.

15. In view of the foregoing, and taking into account that the ASSO.MIL Association, at the time the complaint was lodged, was not registered in the ministerial register and, consequently, did not possess the requisites to be considered a representative association in the broad sense at the national level, it is reiterated that the present complaint is inadmissible for lack of standing, pursuant to Article 1 of the Additional Protocol to the European Social Charter on the system of collective complaints.

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

\* \* \*

**CONCLUSIONS**

In light of the present observations, the Italian Government insists that the Committee 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, March 23 2023.

Annexes:

1. Circular of the Cabinet of the Minister dated July 8 2022
2. Registration in the ministerial register of ASSOMIL on March 6 2023

Drafted by

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The Agent of the Italian Government

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