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EUROPEAN SOCIAL CHARTER

COMMENTS OF THE *FICIESSE ASSOCIATION* ON THE 20th SIMPLIFIED REPORT OF ITALY

Registered by the Secretariat
on 20 September 2021

For Findings 2021



ASSOCIAZIONE FINANZIERI CITTADINI E SOLIDARIETA'

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Rome, 2 september 2021

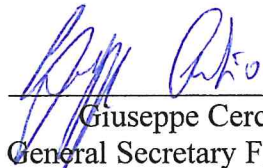
RE: Submission by FICIESSE on the 20th National Report of Italy on the implementation of the European Social Charter - Follow-up of the Complaint 140/2016: CGIL v. Italy

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

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

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

Respectfully pled,


Giuseppe Cerchio
General Secretary FICIESSE

Annex:

- 1. situation before the judgment of the Constitutional Court no. 120 of 11 April 2018*
- 2. the situation in Italy after judgment no. 120/2018 of the Constitutional Court*
- 3. the future perspectives*
- 4. the military status of the Finance Guard*
- 5. the military representative bodies inside to the Finance Guard*

PRESENTATION OF THE ASSOCIATION

FICIESSE is an apolitical, no-parties and non-profit cultural association established in Rome in 1999 by the Guardian of Finance's officers and by ordinary citizens to meet some of the most urgent needs felt inside and outside the Guardian of finance, including¹:

- 🌐 provide its own contribution, design and technical-professional, in drafting legislative reforms related to the Italian tax system, in accordance with the principles of the Constitution and treaties of the European Union;
- 🌐 promote initiatives and debates, cultural, information and promotional activities to support the legislative and organizational reform processes and improve security, legality and justice;
- 🌐 To work for the full and effective recognition of the staff of the Guardia di Finanza and other institutions with a military structure of trade union rights, association, free expression of thought and professional association in accordance with the provisions of articles: 52 of the Italian Constitution, 12 of the Charter of Fundamental Rights of the European Union and 11 of the European Convention on Human Rights and in line with what is happening in other European states for advanced democracy;
- 🌐 to stimulate the comparison of ideas on the organizational and management innovation of the Financial Administration, in order to make citizens public services characterized by quality, economy and productivity standards equal to or greater than those of other European Union countries;
- 🌐 Develop constructive and transparent relations between the Financial Administration and the citizens;
- 🌐 Contributing to study and project initiatives to counteract phenomena of corruption and bribery;
- 🌐 Contribute to the professional updating of the associates;
- 🌐 stipulate agreements with public and / or private entities for the benefit of the associates;
- 🌐 promote initiatives to affirm the principles of solidarity;
- 🌐 favoring a federation process between associations having similar purposes and purposes.

In pursuing our institutional goals, it is forbidden to national and regional bodies to put in place configurable behaviors as trade unions. In full respect of these limits, our mission is to create a permanent relationship between the Guardian of Finance workers and the rest of civil society, with the aim of strengthening the ties of horizontal and vertical solidarity among the citizens, developing a deep feeling belonging to the great common European home.

Finally, we are firmly convinced that in the current difficult and complex scenario around which Europe is called upon to respond to the security needs of its citizens, police-based associations are a solid foundation for building trust between citizens and administrations in charge of their security.

On 2 October 2017 FICIESSE requested to be allowed to submit observations to European Committee of Social Rights on the Complaint No. 140/2016. In accordance with Rule 32A of the Rules of the Committee, the President of the Committee invited FICIESSE to do so by 21 November 2017. The observations were registered on 29 November 2017.

¹ Rule 3 association statute (<http://www.ficiesse.it/upload/files/STATUTO%206%20aprile%202019.pdf>)

ANNEX 1

SITUATION BEFORE THE JUDGMENT OF THE CONSTITUTIONAL COURT No. 120 OF 11 APRIL 2018

In Italy, the freedom of association between military was regulated by art. 1475, co. 2, Legislative Decree 15.3.2010, n. 66 (Code of the military system) which provided as follows: "Art. 1475 (Limitations on the exercise of the right of association and prohibition of strike) 1. The constitution of associations or circles among military personnel is subject to the prior consent of the Minister of Defense . 2. The military may not form trade union professional associations or join other trade union associations. 3. The military may not join associations considered secret by law and those incompatible with the duties deriving from the sworn oath. 4. The military cannot exercise the right to strike. ". This provision, due to the combined provisions of articles 1 and 10 of the Law of 23 April 1959, n. 189, is still applied to the staff of the Finance Police.¹

The 2010 regulation follows the provisions of the suppressed Law of 11 July 1978, no. 382 "Rules of principle on military discipline"², which in turn had resumed the obligation of ministerial authorization provided for by art. 46, co. 4, of the previous Military Regulations (adopted not by law, but by Decree of the President of the Republic of 31 October 1964).

It should be noted that already in the Fascist period the associations between soldiers allowed were only those authorized for recreational or social protection purposes (Article 80 of the Royal Decree 24/6/1929 "Military discipline regulations of the army"³)

¹ However, the powers of the Minister of Defense are placed in the hands of the Minister of Economy, pursuant to art. 1350, co. 4, of Legislative Decree 15.3.2010, n. 66 ("The powers conferred on the Minister of Defense in matters of military discipline, as regards the armed bodies of the State, are devolved, in accordance with the respective regulations, to the Ministers under whose direct dependence the aforementioned Corps are placed.").

² Par. 8: "The military cannot exercise the right to strike, set up trade union professional associations, join other trade union associations. Military personnel in military service and those recalled in temporary service may register or remain associated with trade union organizations, but they are prohibited from carrying out trade union activities when they are in the conditions provided for in the third paragraph of article 5. The constitution of associations or circles among soldiers is subject to the prior consent of the Minister of Defense. "

³ *Associations between military personnel: In order to provide, in the best possible way, the material well-being and dignity of officers and non-commissioned officers, to cement more solidly the bonds between the members of the same body, and to foster intellectual development, associations are authorized between officers and non-commissioned officers to establish common canteens; clothing associations; the establishment of reading rooms, official clubs, meeting rooms for non-commissioned officers; associations for physical education purposes. In the corps, meeting rooms for corporals and soldiers, libraries for non-commissioned officers and for the troops are to be promoted; finally, all that is needed to keep the body and spirit in full efficiency and vigor. Any other association between military personnel, having purposes other than those set out above, is prohibited.*

Basically in Italy there has always been an absolute prohibition for the military (including the staff of the Guardia di Finanza) to form or join trade unions and, in any case, a prior authorization has always been imposed for the establishment of any other kind of association.

This denial of freedom of association was concretely realized through the refusal on several occasions by the Government to establish associations between military personnel; by way of example, reference can be made to the rejections, on the dates indicated, to requests for authorizations for the associations indicated in list 1.A.

From the reading of the deeds of refusal of the authorizations it is clear that these are often based on arbitrary assessments of the Government, or on the presumptively trade union nature of these associations; these decisions were adopted on the basis of internal administrative directives⁴, specified in list 1.B.

As for the staff of the Guardia di Finanza, there were only four authorized associations⁵, since none of them had a trade union character (List 1.C) but exclusively of social protection.

When a member of the Guardia di Finanza asked to be authorized to form a union among military personnel, he was denied that freedom⁶.

4 Copies of the rejections and directives are in our possession

5 The authorizations were granted by the Commander General of the Guardia di Finanza, delegated by the Minister of Economy and Finance

6 T.A.R. Rome, Sentence n. 08052 dated 18 June 2014

LIST 1.A

Associazioni tra militari
DINIEGO ASSENSO MINISTERIALE

DENOMINAZIONE	SEDE	ISTANTE	DATA
Associazione Carabinieri Uniti	Roma	App. Sc. Piero Antonio CAU	26 gennaio 2007
Associazione Culturale Difesa Onlus	Roma	Gen. B. CC Umberto ROCCA	10 ottobre 2007
Associazione Culturale Italiana per la Divulgazione della Storia e della Storiografia	Latina	Mar. Capo Stefano SUALE	24 gennaio 2006
Associazione Circolo Enalcaccia La Lucerna	Ravenna	M.llo Salvatore PERTOSA	11 settembre 2006
Associazione Faro Blu	Roma	Ten. Col. CC Riccardo RENDO	3 dicembre 2007
Associazione Pastrengo	Padova	M.llo Capo Vincenzo BONACCORSO	Revoca assenso 3 agosto 2007
Associazione Uniarma	non indicato	App. Sc. Antonio NICOLOSI	3 dicembre 2003
Associazione Assoarmamoderna	non indicato	Ten. Francesco SAGGIO	24 ottobre 2008
Associazione Primarma	non indicato	Ten. Col. Alessandro DIONISI. App. Sc. Ciro INGUI. App.Sc. Tonino D'OVIDIO	24 novembre 2008

DENOMINAZIONE	SEDE	FINALITA'	ENTE APPARTENENZA ISTANTE	DATA DECRETO
Associazione Nazionale Amici della Scuola di Artiglieria".	Bracciano	Protezione sociale	Scuola di Artiglieria di Bracciano (Esercito)	28 febbraio 2012
Associazione "Coordinamento per l'indipendenza sindacale Arma Carabinieri	Roma	Finalità sindacali	Nucleo CC Banca d'Italia di Venezia (Arma CC)	26 settembre 2012
Associazione FADALTO	Avellino	Proselitismo e sviluppo spirito di Corpo	232° reggimento Trasmissioni Esercito	27 novembre 2014
Associazione Nazionale Difesa (ANDIFE)	Roma	Previdenza complementare	Ispettorato delle infrastrutture dell'Esercito	26 gennaio 2015
Associazione Fanti del 66° Rgt "TRIESTE"	FORLI	Protezione sociale	66° Reggimento fanteria "Trieste" (Esercito)	24 febbraio 2015
Associazione Nazionale di Psicologia Militare	Roma	Studio ambito psicologia militare	Stato Maggiore dell'Esercito	25 giugno 2015
Associazione culturale tra militari denominata "Unione Forestali Carabinieri e Diritti" (UNFORCED)	ROMA	Associazionismo sindacale	Comando Unità Tutela Forestale Ambientale e Agroalimentare dell'Arma dei Carabinieri	4 settembre 2017

LIST 1.B

DIRETTIVE MIN.DIFESA N. 1/36211/11.7.0/02ML IN DATA 16/7/2003; N. 1/18802/11.7.141.3/95 IN DATA 18/3/1996; N. 1/1822/11.7.155/02R IN DATA 15.1.2002; NONCHE' OGNI ULTERIORE DIRETTIVA DEL MINISTRO COMUNQUE IN MATERIA DI ASSENSO EX ART. 1475 C. 1, DLGS 66/2010

LIST 1.C

NR.	NOME ASSOCIAZIONE	DATA AUTORIZZAZIONE	AUTORITA'	FINALITA' COSTITUZIONE
1	«Fiamme Gialle dello Stretto»	07/07/2011	Comandante Generale	gestione organismi di protezione sociale
2	«Il Grifone»	04/09/2014	Comandante Generale	affidamento in concessione dell'esercizio di attività connesse con gli interventi di protezione sociale
3	«San Matteo Lamezia Terme»	20/04/2015	Comandante Generale	affidamento in concessione dell'esercizio di attività connesse con gli interventi di protezione sociale
4	"Associazione Sportiva Grifone Gialloverde"	01/04/2016	Comandante Generale	affidamento in concessione del servizio di "scuola calcio" nell'ambito di organismi di protezione sociale

ANNEX 2

THE SITUATION IN ITALY AFTER JUDGMENT No. 120/2018 OF THE CONSTITUTIONAL COURT

The Constitutional Court, with sentence no. 120 of 2018 (Publication in G. U. 20/06/2018 n.25), innovating its previous and consolidated jurisprudential orientation, declared the constitutional illegitimacy of article 1475, paragraph 2, of legislative decree 15 March 2010, n. 66 (Code of the military order), as it provides that "The military may not form trade union professional associations or join other trade union associations" instead of providing that "The military may form trade union professional associations under the conditions and with the limits set by law; they cannot join other trade union associations".

In a nutshell, with sentence no. 120 of 2018 the Court:

- recognized the legitimacy of trade union professional associations of military personnel;
- deferred the definition of the conditions and limits of such recognition to a specific legislative provision.
- confirmed the legitimacy of paragraph 2 of article 1475 in the part in which it established the prohibition for military personnel to join 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".

a. The circular from the Ministry of Defense of 21 September 2018 and the Ministry of the Economy of 30 October 2020

The Ministry of Defense, with a circular dated 21 September 2018 ("Sentence of the Constitutional Court No. 120/2018. Procedures for the establishment of professional associations between soldiers of a trade union nature"), has taken steps to integrate the internal provisions on the subject of associations between military, indicating specific conditions to allow the start of procedures for the establishment of trade union professional associations.

The circular defines the time limits for examination (180 days), entrusting the preliminary activities to the Cabinet of the Minister, in particular on the draft articles

of incorporation and statute (to be sent in support of the request), also on the basis of the opinions of the top management military from time to time concerned.

It prescribes the following "subjective, objective and functional" conditions:

- prohibition to make use of the right to strike;
- prohibition to join or federate with other non-military trade union associations;
- use of a name suitable for highlighting the nature of a professional military association, albeit of a trade union nature, and which does not refer, in an equivocal way, to trade union acronyms for which membership is prohibited;
- membership of military personnel in service only;
- registration of military personnel of any role and grade to protect the interests of all members, regardless of their role;
- exclusion from the competences, or in any case from the statutory purposes, of the treatment of matters relating to organization, training, operations, logistic-operational sector, hierarchical-functional relationship and employment of personnel;
- extraneousness, even only in terms of participation and support, to community, national and territorial political and administrative competitions of any level and nature;
- compliance with the democratic principle of the Armed Forces pursuant to article 52 of the Constitution, also in order to make the recognized freedom of association effective, with particular attention to the electivity of managerial offices, for which a well defined and re-election only after an adequate period of time;
- observance of the principle of neutrality of the Armed Forces pursuant to articles 97 and 98 of the Constitution, valid for all public employment and even more so for the bodies appointed to defend the homeland;
- unequivocal clarity regarding the organizational structure, the methods of constitution and functioning as well as the sources of financing, consisting exclusively of the proceeds from the proxies connected with the payment of the shares by the members;
- absence of profit-making purposes and provision of annual balance sheets, with a character of maximum transparency and visibility;
- compliance with the principles of transparency and privacy, as dictated by the law.

As regards the staff of the Finance Police (Gdf), with a circular dated 30 October 2018, signed by the Head of Cabinet, the Ministry of Economy and Finance (MEF) reproduced the same provisions issued by the Minister of Defense on 21 September 2018.

Following the issuance of the aforementioned ministerial provisions, a series of administrative proceedings were initiated aimed at obtaining authorization for the establishment of trade union associations among the members of the Finance Police.

The procedure for obtaining prior authorization and, therefore, being able to establish a trade union is as follows:

- transmission to the General Command of the Guardia di Finanza of a draft statute of the union to be established;
- formulation by the General Command of an opinion and transmission to the Ministry of Economy and Finance (MEF), together with the draft statute;
- within 180 days of the request, issue of an authorization (or rejection) decree signed by the Minister;
- in case of authorization, formal constitution of the union.

b. Subsequent ministerial provisions

On 23.10.2018 the Ministry of Defense issued a second Directive with some clarifications always relating to the procedure for setting up trade unions necessary for the issue of consent.

On 22.12.2018 the Ministry of Defense issued a third Directive, with which it attributed the power of consultation to the Military Representation, granting the military unions the exercise of an unspecified activity of dialogue, and in any case limited to at the top of the Armed Force and only with reference to issues of a general nature.

On 19.01.2019 some of the established and being formed trade unions asked the then Minister of Defense Dr. Trenta to implement accessibility mechanisms for trade unions among the military.

On 31.01.2019 the third Directive already adopted by the Ministry of Defense was substantially reproduced through the adoption of its own circular by the Ministry of Economy.

On 30.04.2019, the Ministry of Defense issued the fourth Directive with which it reaffirmed the possibility of military unions for dialogue at a central level,

recognizing however that "the staff can issue a proxy in favor of the union for the collection of a monthly fee ..." .

On 29.05.2019 the fourth Directive of the Ministry of Defense was re-produced by the Ministry of Economy.

On 13.06.2019 some trade unions of the personnel of the Guardia di Finanza, in a meeting with the Commander General of the Guardia di Finanza, delivered a document in which, among other things, they renewed the invitation to create the conditions for exercising trade union activity in the hands of military unions.

On 22.08.2019 the Ministry of Defense issued the fifth Directive with which it instructed SMD to start talks with NoiPA aimed at making the payment delegation system operational with automatic collection of union proxies, as well as the possibility for union leaders to meet staff outside of service hours. Directive not implemented by the MEF. In fact, it appears that an exchange has been initiated between SMD and NoiPA for the definition of the procedures for the collection of proxies, an activity which, however, has not continued, considering that to date the members pay directly to the union the quota d 'signing up.

c. The lack of de facto union freedom

In the meantime, after the reorganization of the roles of the Guardia di Finanza with Legislative Decree 95/2017, the CoCeR had been consulted and a discussion was underway with the General Command on the corrective to the reorganization that would then be adopted, a comparison from which the unions were found to be excluded and not minimally involved.

On 13.02.2020, 18 unions of military personnel already established, wrote to the Minister of Public Function to ask to be summoned or otherwise consulted for the renewal of the 2019-2021 contract like the CoCeR.

Basically, except for the assent and the various circulars adopted, the Government does not recognize the union structures that act, it does not interface, it does not confront or speak with the trade union organizations, maintaining a behavior of complete indifference, not even taking care of the answer - where even negative - to the requests and solicitations of the union, continuing to recognize and make use of only the bodies of the military representation.

In all respects, even those favorably scrutinized by the Administration itself. In this sense, the question of the collection of proxies through the NoiPA system, almost abandoned with the advent of Minister Guerini, is valid.

In other words, and in a nutshell, the Government:

- has adopted provisions without any legislative value aimed at defining the authorization methods and limiting the exercise of trade union prerogatives, even against the rules of military representation deemed medium tempore applicable by the Constitutional Court;
- in point of fact, neither recognizes trade union subjectivity with its own aims and objectives, even though it has given its consent to the constitution;
- continues to relate and dialogue only with military representation bodies in the same way as the period during which the military was prevented from exercising trade union rights;
- does not recognize and does not respect trade union rights;
- does not meet the requests and communications of the trade union organizations;
- by failing to recognize trade union subjectivity, it inevitably denies the right of its employees to make use of the trade union structure to which they are registered for the defense and representativeness of their interests, to the detriment of the employees themselves whose trade union rights inevitably end up being denied.

All this, in contrast with the regulations in force, considered to exist and operating so as to allow the immediate establishment of unions between military personnel, in violation of the international standards in force, as repeatedly interpreted by the ECHR (ECHR) and by the ECHR (ECSR) as better clarified part that will follow.

Same attitude towards the trade unions in the local composition, as can be clearly deduced from the situation described in the parliamentary question in annex 2.A.

In light of the above facts, the anti-union conduct contested therein poses as a denial of any trade union activity with the elimination of any form of participation and dialogue, with preclusion of the exercise of trade union prerogatives, also prevented in the methods and matters pertaining to the bodies of the military representation, while at the same time the Government guarantees the bodies of the military representation to continue to operate without interruption compared to the past.

The circulars adopted by the Government, all in the direction of precluding the exercise of any even minimal trade union activity, are abusively operating in the vicarious function of the first degree legislation being adopted, and not only as obstacles - in addition to trade union activity at the central level as well - but as it is neither in line with the sentence of the Constitutional Court, nor with the

applicable *medio tempore* legislation as indicated by the Constitutional Court as well as constituting an express violation of supranational legislation.

In essence, the Constitutional Court, in removing the regulatory obstacle to the establishment of trade unions between the military, clearly felt the need to allow them to be able to immediately exercise the freedoms and prerogatives that are inherent in these associations. Otherwise, it would have made no sense to allow its establishment right away even in the absence of specific legislation governing its activity and limits, and the Court has been able to do so much given the recognition in our system of immediately applicable provisions.

For its part, the Government, after having given its assent to the constitution of the trade unions and dictated some certainly necessary rules, has in fact precluded any trade union action both at local and national level, continuing without interruption in the previous work that it sees as the only which is entrusted with the bland protection of the interests of the employees and those of the military representation which, indeed, with the birth of the trade unions, no longer have reason to exist.

In this reasoning, the position of employees and their trade union rights cannot be considered and they do not pose and express themselves only in the constitution of the union but in the use of its intermediation and dialogue.

d. Some considerations in law

As a necessary premise, it should be remembered that in 1978 the military representation bodies (COBAR, COIR, COCER) were established, including for the Guardia di Finanza, then imagined precisely as a substitute for the trade unions. This "substitute function" was openly declared in the reports presented to the Chamber of Deputies during the parliamentary debate on law 382/1978 (Atti Camera, VII leg., N. 407-526-625-A).

The military representation bodies are governed by arts. 1476 ff. of Legislative Decree 66/2010 and have consultative and propositional functions for the protection of the collective interests of the military condition, as regards the specific matters indicated in the following art. 1478. The discipline contained therein is integrated by the provisions of the D.P.R. 15 March 2010, n. 90. In addition, conciliation on other matters as detailed in Legislative Decree 195/1995 concur with these bodies.

As anticipated, the Constitutional Court, with the aforementioned sentence, not only allowed the constitution of the trade unions but considered the possibility of

immediate exercise of their prerogatives. Indeed and more, in the awareness of the possible delays, voluntary or otherwise, of the legislator, it has provided indications such as to be able to allow trade unions in the mean time to form and carry out trade union activities.

And in fact, the sentence reads:

- that the right of the military to form trade union professional associations must be recognized;
- the need for prior consent to the constitution of the trade union association, pursuant to art. 1475, paragraph 1, of the legislative decree n. 66 of 2010, considering that the trade unions are part of the common associations;
- the ban on exercising the right to strike;
- with reference to the limits of trade union association between military personnel, the Court, in affirming that a specific legislative discipline is indispensable, << ... in order not to postpone the recognition of the right of association, as well as the adaptation to conventional obligations >>, held that << pending the intervention of the legislator, the regulatory gap can be filled with the discipline dictated for the various bodies of military representation and in particular with those provisions (Article 1478, paragraph 7, of Legislative Decree no. 2010) which exclude from their competence "matters relating to organization, training, operations, the logistic-operational sector, the hierarchical-functional relationship and the employment of personnel". In fact, these provisions currently constitute an adequate guarantee of the values and interests mentioned above. >>.

Basically, the Constitutional Court, not being able and unwilling to postpone indefinitely and / or subordinate the trade union rights in favor of the military to the enactment of a necessary law, thus avoiding the persistent violation of supranational rules, has deemed it able to allow immediately the constitution of unions among military personnel, already finding in the current system the guarantees suitable to safeguard the specificity of the military sector and more specifically of the Armed Forces, expressly recalling the principles of democracy, neutrality and transparency, and clearly affirming the prohibition of exercise of the right to strike and the prohibition of membership in different trade unions or affiliation of military unions with other unions.

The Constitutional Court has shown certain foresight if, two years after the sentence, no legislation is adopted. Indeed, the, however very disappointing, so-called The "Corda Bill" was approved in the Chamber of Deputies and is awaiting

discussion in the Senate of the Republic. In the meantime, the establishment of trade unions among the military was allowed, but they were and are prevented from exercising any trade union activity: the Government did not allow the exercise of trade union prerogatives with the same limits imposed to military representation bodies, limiting themselves to opposing, foreshadowing and opposing any desire for trade union participation, at the same time leaving unchanged the activity and prerogatives of military representation bodies which - at present - continue to cover the only bodies capable of to exercise the collective powers and requests of employees.

The foreclosure of trade union activity and trade union prerogatives constitutes a clear circumvention of the ECSR, because it makes no sense to allow the establishment of trade unions which are not allowed and not recognized any right to action and participation in the areas of competence (ECHR, *Syndicat National de la Police Belge v. Belgique*, nr. 4464/70 - *Demir and Baykara v. Turkey* nr. 34503/97), while in the diametrically opposite direction the activities, dialogue and the consultation of the bodies of the military representation.

It is also useful to specify how the current behavior of the Italian Government is in evident contrast with the articles, 5, 6 paragraph 1, 2 and 4, of the European Charter of Human Rights, as expressly established by the CEDS (ECSR) with decision on the complaint n. 140/2016 relating specifically to the Finance Police.

In particular, in the aforementioned decision, the Committee noted that even the trade unions between military personnel of the Guardia di Finanza << must be able to benefit from most of the trade union prerogatives ... >>, both with reference to the constitution and in relation to trade union prerogatives and representatives (paragraph 75). Leaving aside the part of the decision concerning the constitution and affiliation of these unions to other organizations, with reference to trade union prerogatives, the Committee recalls that << the basic trade union prerogatives constitute the right to formulate requests regarding working conditions and remuneration , the right of access to the workplace, the right of association and expression >> (point 94).

In point 106, it states that << The Committee also recalls that, pursuant to Article 6, paragraph 1, of the Charter, the signatory States must adopt positive measures to promote joint consultation within the organizations, in which both Parties are represented on an equal footing and engage in consultations, regardless of the presence of government representatives. >> (point 106).

Point 124 states that the States, pursuant to art. 6, paragraph 2, of the Charter, are required << to promote, where necessary and appropriate, voluntary negotiation mechanisms, among other things, in terms of the discipline of working conditions (CESP v. sentence cited above, paragraphs 51 and 63). >> while in paragraph 125, that << The mere hearing of a Party on a predetermined outcome does not meet the requirements of Article 6, paragraph 2, of the Charter. On the contrary, it is imperative to regularly consult all the parties in the process of defining the terms and conditions of employment and therefore foresee the possibility of influencing the outcome. Especially in a situation where trade union rights have been limited, the bargaining mechanism must maintain its ability to argue and negotiate on behalf of workers through at least one effective mechanism. Furthermore, in order to satisfy this requirement, the collective bargaining mechanism must be such as to really offer the possibility of a negotiated outcome in favor of workers (EuroCOP v. Ireland, Appeal no. 83/2012, judgment cited above, paragraphs 176-177 ; EUROMIL v Ireland, Appeal no. 112/2014, decision cited above, paragraphs 87-88). >>.

At point 131 we read that, considering that the current arrangement of consultation that sees the military representation bodies as protagonists << does not present the characteristics of a real negotiation between the two parties ... >>, being mere consultation, << The Committee therefore believes that the current procedure envisaged by Articles 2, 4 and 7 of Legislative Decree no. 195 of 12 May 1995, and by Article 1478 of the Military Code, does not constitute a reasonable alternative to the bargaining process. Furthermore, the representative bodies of the Guardia di Finanza were not even able to formulate opinions and requests on issues of interest to their members such as training, the functional hierarchical relationship and the employment of staff. >> (paragraph 132). With the consequence (point 133) that << the representative bodies of the Guardia di Finanza are not provided with the means to effectively and effectively negotiate the methods and conditions of work, including remuneration. Therefore, the Committee considers that there is a violation of Article 6, paragraph 2, of the Charter. >> according to which all workers and employees have the right to collective bargaining. The Committee even went so far as to deny the legitimacy of an absolute ban on the exercise of the right to strike.

Evaluations reaffirmed in the subsequent decision on CEDS complaint no. 143/2017.

Despite the repeated requests, while the CoCeR, Guardia di Finanza section was allowed to continue to operate in ordinary mode in the period 2019/2020, the unions trade were barred - both nationally and locally - from any trade union activity, with total impairment of the exercise of their trade union powers and prerogatives. In addition, all requests and solicitations sent to the competent

Ministers and to the General Command of the GdF have not received any kind of feedback and consideration (except for the informal meeting with the Commander General of 13.06.2019), not even negative. , as a symptom of the undue lack of recognition of the trade union itself as an organization, with evident damage to the image and negative repercussions on proselytism because there is no one who does not see the widespread idea as a consequence of the procedures implemented by the Italian government in the relationship with the Union has ended up transmitting, in the persistent recognition of military representation alone, inevitably the idea of the uselessness of membership in the union.

Basically, the Government does not deal with the trade unions in anything and in any context, not even in the operational ones outlined by the Constitutional Court, keeping a behavior identical to what it could have towards other associations between employees with different purposes, operating a very evident denial of any role to the union.

ANNEX 2.A

Act of Chamber

Question for written answer 4-04640

presented by

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text of

Wednesday 5 February 2020, session no. 300

- To the Minister of Defense. - To know - premise that: with sentence no. 120/2018, the Constitutional Court, ruling on the issues of constitutional legitimacy raised by the Council of State and by the regional administrative court for Veneto, respectively on 4 May and 3 November 2017, declared article 1475, paragraph 2 of the legislative decree unconstitutional n. 66 of 2010 «Code of the Military Order», in the part which sanctioned the prohibition for the military to set up trade union professional associations or join other trade union associations; following this ruling, the defense minister's cabinet issued a series of circulars aimed at regulating the regulatory vacuum, given that the Court itself, in paragraph 18 of the judgment, had clearly stated that "[...] in order not to postponing the recognition of the right of association, as well as the adaptation to conventional obligations, this Court believes that, pending the intervention of the legislator, the regulatory gap can be filled with the discipline dictated for the various bodies of the military representation "; it appears to the questioner that the Air Force Staff, with the letter MD ARM001 REG2020 0007338 of 21 January 2020, responding to a specific request made by the Union of the Air Force (Siam) of 9 December 2019, which intended to hold a meeting with the staff of Poggio Renatico (FE), outside the hours of service, at the premises of common use for information activities, denied this possibility, citing as a reason the existence of a "joint investigation into the supplementary circular issued from the Cabinet of the Minister on 22 August last, in order to make unambiguous, among others, the methods of carrying out the propaganda activity of the assented associations ». It is also noted that, in the same letter, the Air Force Staff itself pointed out that "the issues being

discussed must have a general value or of general interest, if they refer to a local area" -:

whether the Minister is aware of the situation described in the introduction and what initiatives it intends to take to ensure the timely application of the circular referred to in the introduction issued on 22 August 2019, allowing the trade unions to carry out their own and legitimate information activities in the military and possibly also in other departments of the Defense Administration;

if and what initiatives it intends to take in order to avoid that, in this specific case, the Air Force staff from carrying out actions perceived as limiting by the trade unions;

if he intends to report whether actions similar to the circumstance described in the introduction have taken place with evidence in the other Armed Forces.

(4-04640)

ANNEX 3

THE FUTURE PERSPECTIVES

On Wednesday 22 July 2020, the Chamber of Deputies Chamber approved, at first reading, the new text of the proposed laws C. 875, 1060, 1702 and 2330 AR, containing "Rules on the exercise of trade union freedom of the personnel of the Armed Forces and of the military police forces, as well as delegation to the Government for regulatory coordination".

The examination of the text (Act no. 1893) is now underway at the Defense Commission of the Senate of the Republic

The draft law is to be considered completely unsatisfactory for the reasons analytically set out below:

- Article 1 (Right of trade union association)

The rule requires GDF staff to join trade unions closed to other categories; membership in general public employment unions is not permitted, unlike the penitentiary police.

Students from military schools and military academies cannot join: this is an unjustified absolute ban on enrollment for a significant part of the Guardia di Finanza staff. It should be borne in mind that the students in question are both those in first enrollment and those who take subsequent courses to advance in rank (we are also talking about staff with over thirty years of service). It is not clear why the students (especially those of the internal courses coming from those already belonging to the Corps) should not be protected.

- Article 2 (General principles concerning trade union professional associations between military personnel)

The reference to the principle of internal cohesion, efficiency and operational readiness is excessive for a police force like the Finance Police, which has no military defense duties.

The statutes must not have purposes contrary to the duties deriving from the oath taken by the military: this is too vague a requirement and which leaves room for arbitrary interpretations.

- **Article 3 (Establishment of trade union professional associations between military personnel)**

The whole article essentially subjects the unions of the Guardia di Finanza to perennial domination by the Government, which is the counterpart. Both preventive and periodic control is in fact not entrusted to a third body, but to the Ministry itself.

Moreover, the timing of the various stages of the procedure appear to be completely unbalanced in favor of the Ministries, which, however, unlike the trade unions, have a large number of qualified and paid personnel to handle the paperwork.

- **Article 4 (Limitations)**

The representation of a single category must not exceed the limit of 75 percent of its members: this is an unreasonable limitation, which places a ceiling on affiliations. This maximum category limit on the total number of members affects the freedom of union association, with serious effects on the union and on the rights of every citizen to join the union of his choice.

- **Article 5 (Competences of trade union professional associations between military personnel)**

Listing what the union can do by taking a cue from what the military representation can already do today is equivalent to circumscribing its action. The broad provision of exclusion of matters, in peacetime, has no basis. The political choice to limit so broadly the field of intervention of the trade unions may be motivated by the plan to relegate the interaction between public administrations and trade unions to the sole contractual matter. But such a limitation is unparalleled in any field of the civil service and for the unions of other police forces.

- **Article 6 (Peripheral articulations of trade union professional associations between military personnel)**

The whole article is a heavy interference in the associative freedom of trade unions and in the activity that they will be able to carry out. The indication of the subjects of intervention of the peripheral joints appears extremely reductive, without indicating the possibility of dialogue with the Commanders / Employers of the peripheral joints of the Ministry.

- Art. 7 (Financing and transparency of the financial statements of trade union associations between military personnel)

The associations cannot receive inheritances or bequests, donations or subsidies in any form: this is a unique limitation in the whole Italian legislative panorama regarding private entities.

- Article 8 (Elective positions of associations of a trade union nature among military personnel)

The whole article is a serious interference in internal associative life. Unacceptable limits and prohibitions are placed in a democratic state. The provision of 5 years of service required is unreasonably restrictive and without a legal basis. As such it is not only preclusive of trade union freedoms and the rights of military citizens, but also ends up unreasonably compressing the right to participate in the union life of each member. Furthermore, it precludes potential excellent military union representatives from representing colleagues: this serious limitation is not reflected in any union organization or in the current system of military representation. More generally, the article seems excessively restrictive of the military's trade union freedom and the organizational freedom of the association, placing unreasonable constraints on eligibility for executive positions or conditions that are too extensive. In particular, the requirement not to have been convicted for non-culpable crimes should either be limited to specific crimes that indicate an incompatibility ontology (crimes against the public administration, criminal association crimes; crimes against sexual freedom; against life, etc. , i.e. criminal hypotheses that denote the risk of abuse of the managerial position within the trade union organization) and / or provide for a lapse of time that renders the prohibition or express exclusion ineffective for minor sentences. In addition, the risk should be avoided that such stringent requirements induce the administration to arbitrarily use its inspection powers to outplay unwelcome union activists, for example by promoting criminal judgments aimed at making the accused military ineligible. It is also not clear why

the duration of the mandate should be regulated, where a similar case is not regulated for the State Police.

- Art. 9 (Performance of trade union activities and delegation to the Government for the regulation of the exercise of trade union rights by the personnel employed in the activity)

Only the maximum number of trade union secondments is indicated; a minimum number of secondments must be guaranteed by law in order to give concrete opportunities to carry out trade union activities

Between each secondment or unpaid trade union leave, at least three years of effective service must elapse: the mandatory alternation places the trade union delegate in the condition of being continuously conditioned by the administration.

- Article 10 (Right of assembly)

Please refer to the provision issued by the administration instead of the negotiation.

- Art.11 (Bargaining procedures)

There is no acknowledgment of bargaining issues comparable to those of civilian policemen. For example, without competence in the articulation of working time, the union is essentially useless.

- Art. 12 (Obligations of administrations)

Information is the minimum level of trade union participation. With bargaining, more incisive institutions can and must be envisaged: opinion, consultation, discussion, etc.

- Art.13 (Representativeness)

Unlike the whole world of work, both private and public (including the State Police), for the Guardia di Finanza trade union representation is not calculated on the total number of personnel enrolled in the various trade unions, but rather on the total

number of workers (even not registered). This makes it more difficult to reach the threshold and also makes it possible that there is no representative union.

- Art 14 (Protection and rights)

In essence, these are limits so general that they make freedom of expression virtually empty.

The transfer of the union delegate must be agreed, except in cases of absolute emergency which are certainly not related to command obligations. The rule essentially leaves a free hand to the military administration on the grounds of environmental incompatibility. Cases of environmental incompatibility can lead to discretionary proceedings for the military administration to expel trade union representatives who are freely elected, but not appreciated by the chain of command; in the last part of the paragraph, extraordinary cases of necessity and urgency open up to a discretion of the administration not supported by objective elements of emergency.

The manifestation of thought is allowed only in the matters provided for by law, from which many essential areas for trade union activity are excluded (eg working hours).

- Art. 15 (Information and publicity)

The manifestation of thought is allowed only in the matters provided for by law, from which many areas essential for trade union activity are excluded (eg working hours).

- Art. 17 (Jurisdiction)

The natural judge of disputes regarding anti-union behavior for all unions (including the State Police) is the labor judge. The special devolution of this matter to the administrative judge is not justified. Statistically, the administrative judges, especially the Council of State, have a very high percentage of rejections of appeals made by the military.

All appeals before the labor judge for anti-union conduct are free, without a unified contribution. Only the military unions will be obliged to pay a fixed contribution of 650 €.

- Art. 17-bis. (Conciliation procedures)

The functioning of the Commissions cannot be decided unilaterally by one party alone. If the President is to be the guarantor, his appointment must be shared by the parties.

The body in charge is hinged at the ministerial structure and not, for example, in any of the bodies accredited to carry out a conciliation activity (eg. Labor Inspectorate). In fact, there is a strong risk that the subjects chosen to be part of the central litigation commission will be induced to be closer to the top management requests for greater physical proximity. For this, it is emphasized that the article, as proposed, does not ensure the necessary impartiality of the conciliation body.

Also in this case an economic contribution is imposed on the military unions which is not asked of any other union.

4. THE MILITARY STATUS OF THE FINANCE GUARD

A. Introduction

1. The military status of the Guardia di Finanza (Gdf) is used by the Italian State as a reason for denying its staff full union rights, despite the fact that the activity carried out by the Financiers is in no way related to national defense or the service performed by the Forces Italian armies, but it is the same as that carried out by a police force.
2. There is an unjustified difference in treatment between the personnel belonging to the civil police forces, with full trade union rights, and the personnel of the Guardia di Finanza, for which a mere substitute for the trade union representative system has been recognized, in the same way as the Armed Forces.
3. Failure to recognize the personnel of the Guardia di Finanza of a trade union representative system with legal subjectivity capable of protecting the individual and collective interests of the Financiers, constitutes a very serious threat to the effective and effective exercise of worker protection activities.
4. The unreasonable limitations on the right of association and on the syndical freedoms imposed by the national law against military workers appear even more macroscopic and unjustified with reference to the Financiers, given that the Guardia di Finanza is assigned almost exclusive tasks of economic and financial police or, possibly, internal security, while in fact it does not perform defense functions as will be shown below.

B. Considerations regarding the military status of the Guardia di Finanza

Below are some elements that lead to the statement that, in fact, the Guardia di Finanza, although formally in military status, is alien to the Italian armed forces and the national defense system¹.

1. Historically, the birth of the Guardia di Finanza body can be traced back to the founding of the Kingdom of Italy (1861), when the various customs bodies of the pre-unitary states were merged into a single national organization.

In fact, with law 13 May 1862, n. 616, the Customs Guards Corps was set up under the Ministry of Finance, to which it entrusted the primary task of customs supervision as well as any eventual duty, in time of war, to defend the State. The legislature wanted to confer

¹ For a further discussion on the subject see Complaint ECSR No 140/2016:

Case-document no. 1, Complaint registered on 17 November 2016

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806cf118>

Case-document no. 4, Observations by the European Trade Union Confederation

<https://rm.coe.int/cc140casedoc4-en-etuc-s-observations/16807970ad>

Case-document no. 5, CGIL's response to the Government's submissions on the merits

<http://rm.coe.int/cc140-2016-case-doc-4-responnse-cgil-on-the-government-response-on-the/168075ff59>

military status on the newborn organism², without however inserting it in the ranks of the Armed Forces.

In particular, the Customs Guards were inserted into the structure of the civil administration through the Directorate General of the Taxes, reporting to the Minister of Finance³.

It was established that the Customs Guards were an integral part of the public force, contributing at the request of the authorities to maintaining order and public safety; task that still characterizes partly the activity of the Guardia di Finanza. It was also envisaged that only active guards could, in the event of war, be mobilized by Royal Decree and placed under the dependence of the Minister of War or that of the Navy subject to military laws and regulations for the entire mobilization period.

A mixed order was therefore chosen, with elements of militarism inserted in the context of a civilian body aimed at protecting tax interests and the integrity of borders within the civil financial administration⁴.

Therefore, from its origins, the Guardia di Finanza has been a separate and distinct Corps from the ordinary Armed Forces with which it was associated only in case of war.

- 2. THE FINANCIAMENT TO GUARDIA DI FINANZA ONLY BY THE MINISTER OF ECONOMY:** the financial statement budget for the year 2017 amounts to euro 4,169,578,715; this is a number exclusively borne by the Ministry of the Economy and Finance. No expenditure is incurred by the Ministry of Defense.

In fact, in the State Budget for the Guardia di Finanza are "dedicated" no. **2 missions and n. 2 Programs** completely disconnected from national defense:

- **Mission 29:** Financial and Budgetary Economic Policies and the Protection of Public Finance.

- **Program 3:** Prevention and repression of fraud and violations of tax obligations.

(€ 2,683,818,865)

- **Mission 7:** Public Order and Security.

- **Program 5:** support of the Public Security.

(€ 1,485,759,850)

It is evident, therefore, that even from the point of view of the State Accounting, no military function is attributed to the Guardia di Finanza or it is attributable to national defense, but exclusively civil tasks. In fact, the "**Explanatory Notes to the Financial Statements Bill for the year 2017 and the three-year period 2017-2019**"⁵ provide for the following action plan of the Financial Guard without any military defense function:

² "The Law on the Ordering of the Customs Guards of the Kingdom of Italy (1862-2012)", *Parliamentary debates and unpublished documents of the historical archive of the Chamber of Deputies, Rome, 2013*

³ *Ibid.*

⁴ *Ibid.*

⁵ http://www.rgs.mef.gov.it/Documenti/VERSIONE-I/Attivit--i/Bilancio_di_previsione/Note_integrative/Note-preli/2017/n-i-2017-agg/020.pdf

"" The 2017 Plan foresees that the Corps action, as a General Police Force for countering economic-financial offenses and other related illicit phenomena, is aimed at:

- To have a real impact on the spread of fiscal, financial and economic injustice and the negative effects that this results in harm to social equity and the rights to free enterprise and work;
- Fully oversee the areas of responsibility assigned to the institution and focus resources on more serious and significant fraud and crime phenomena;
- Strengthen intelligence, risk analysis with databases, economic control of the territory, and collaboration with tax agencies;
- Adopt in this context lines of action based on flexibility and dynamism, in a framework of simplification of internal requirements that are not strictly functional to operational activity and control.

The Guardia di Finanza therefore concentrated its action, even with ultranational projection, towards the most damaging phenomena for the budget of the European Union, the state, the regions and the local authorities, such as tax fraud, with particular emphasis tax and customs fraud, international tax evasion and undercover economy, tax evasion, with particular reference to aggressive tax planning, fraud in managing, disbursing and perceiving public funds, illicit fraud against the Public Administration, the recycling of illegal proceeds, smuggling, the infiltration of organized crime in the economy and the reinvestment of illicit capital, counterfeiting and other forms of criminal law with financial and financial implications that, by their characteristics and insidiousness, require a strong intelligence action, analysis of risk and intervention methods typical of a police force.

Against to internationally-economic-financial offenses, the Corps continued to develop the largest contribution of its network of foreign-deployed experts, which are also a reference point for other tax-system actors.

For the foregoing, the "Guardia di finanza"'s action plan has been divided into five objectives, three with a strategic and operational value, in the area of the protection of revenue and expenditure and of other economic-financial offenses, one of strategic importance, but not operational, regarding the implementation of the normative provisions on "anti-corruption" and "transparency", and one of the structural nature of public security support. ""

- 3. ABSENCE OF NATIONAL DEFENSE OBJECTIVES AND MILITARY PLANNING:** while there are precise directives issued by the Minister of the Economy and Finance for the activity of the Guardia di Finanza⁶, exclusively of a civil nature, no provisions on military operations have been provided for the GDF by the Defense Minister⁷ or by the Defense chief⁸.

⁶ "Instruction for Policy Priorities for 2017", issued by the Minister of Economy and Finance on 29 July 2016, and "General Guidelines for Administrative Action and Management - 2017" on 10 February 2017 (http://www.mef.gov.it/ministero/oiv/documenti/DIRETTIVA_GENERALE_2017_opt.pdf)

⁷ "General Guidelines for Administrative Action and Management - 2017", issued by the Defense Minister on 12 January 2017 (https://www.difesa.it/Il_Ministro/Uffici_diretta_collaborazione/OIV/Documents/Direttiva_Generale_per_attivita_amministrativa_e_gestione_2017.pdf)

⁸ Multiannual Programming Document for Defense for the three-year period 2016 - 2018 presented to the Italian Parliament by the Minister of Defense

Through the portal⁹ of the Italian Government - Department of the Public Function - entirely devoted to the performance of public administrations, it is possible to know what the objectives of each Italian public administration are.

As for the Guardia di finanza, it is expected for the year 2017 (as in the previous ones) that it only pursues strategic objectives related to the Ministry of the Economy and Finance; in detail:

Preventing and combating financial crime of all kinds¹⁰

Description: *"The objective is to hinder the entry of criminal interests into entrepreneurial, financial and institutional matters. In particular, it will continue to pursue the aggression of assets illegally acquired by organized and common crime, while also combating the exercise of activities entrepreneurship in a typically mafious way or so to facilitate the aforementioned criminal organizations. In the protection of the capital market, Corps action will focus on the prevention and repression of money laundering and terrorist financing, as well as against financial violations, corporate and bankruptcy. In the goods and services market, the activity will continue to protect trademarks, copyright, made in Italy and the consumer Cooperation will be ensured with the reference authorities "*

Mission 029 - Economic-financial and budgetary policies and protection of public finances
Program 003 - Prevention and repression of fraud and violations of tax obligations

Preventing and countering the violations of the EU budget, state, regions and local authorities that damage public finances, resulting in wasteful management and undue enrichment, both by the perceptors and by the operators / dispensers¹¹

Description: *"The objective will be to identify and repress the behaviors that cause serious and concrete damage to the public finances of the European Union, the state, the regions and local authorities and the economic-productive system, resulting in waste, bad management and undue enrichment, made by the perceptors as well as by the operators / distributors. In addition, the role of the Guard of Finance as a reference body for all institutional actors in the sector will be strengthened. Finally, the prevention and repression of illicit activity in the public sector will be strengthened through the development of judicial police investigations by the judiciary in the area of offenses against public administration and intensification of operational synergies with the national authority anti-corruption in the field of public contracts and control of the fulfillment required by law n. 190/2012 and related Legislative Decrees. "*

Mission 029 - Economic-financial and budgetary policies and protection of public finances
Program 003 - Prevention and repression of fraud and violations of tax obligations

Prevent and suppress evasion, avoidance and tax fraud in all their different manifestations¹²

Description: *"The objective will be pursued through a substantial, concrete and more effective action, in terms of ability to contrast the spread of fiscal illicit. In order to identify the targets at the highest risk of evasion, even international, the investigative activity carried out in all sectors, information research and risk analysis carried out through*

⁹ <https://performance.gov.it/performance/obiettivi-strategici>

¹⁰ <https://performance.gov.it/performance/obiettivo-strategico/7647>

¹¹ <https://performance.gov.it/performance/obiettivo-strategico/7646>

¹² <https://performance.gov.it/performance/obiettivo-strategico/7649>

databases will be exploited, guaranteeing the aggression of the perpetrators of the crimes taxes. Particular attention will be given to the containment of the impact of auditing on taxpayers, through the constant use of contradictory methods and calibrated inspection methods on illicit phenomena to counteract. Support will be provided for the implementation of the law plans and cooperation with the other institutional actors involved. Confirms the flexibility of the number of planned interventions, ensuring a minimum number of executions and inspection modules. "

Mission 029 - Economic-financial and budgetary policies and protection of public finances

Program 003 - Prevention and repression of fraud and violations of tax obligations

Support to the country's internal and external security¹³

Description: *"GDF will also ensure, by 2017, a goal for the country's internal and external security support, which includes: 1. actions taken to support the prevention work associated with the recent recurrence of terrorism international; 2. the activities of combating illicit trafficking in human beings, including by sea, including drugs and weapons; 3. the activities to combat the facilitation of illegal immigration, including the movement of migrants by sea; 4. interventions for the protection of the territory and the environment and the phenomena of economic-financial illegality often related to the violations in the matter; 5. the support to civil protection interventions; 6. participation in international missions; 7. the support to the protection of the order and public security, including at sea, pursuant to art. 16, Act 1 April 1981, no. 121. It will also be implemented in addition to the provisions referred to artt. 2, paragraph 1, 3, paragraphs 2 and 4 of Legislative Decree 177/2016 "*

Mission 007 - Public Order and Security

Program 005 - Support of the Guardia di Finanza in public security

Regarding the strategic objectives assigned to the Ministry of Defense, among the 16 planned for 2017¹⁴, no one is for Guardia di Finanza¹⁵.

Therefore, there is no military objective for the Guardia di Finanza¹⁶.

4. The Minister of Economy and Finance is a member of the Supreme Defense Council but this membership has no bearing on the Guardia di finanza; in fact, the law 624 of 1950 governing this body originally provided for the participation of the Minister for the Treasury.

The Ministry of Economy and Finance (MEF) was born from the suppression and merger of some ministries (Legislative Decree 300/1999): the functions of the Treasury Ministries, Budget and Economic Planning, as well as those of the Minister, were transferred to the Ministry of Finance (on which the Gdf already depended).

Among the functions transferred there is therefore also that of a member of the Supreme Defense Council which was the responsibility of the Minister for the Treasury and not that of the Finance Ministry.

¹³ <https://performance.gov.it/performance/obiettivo-strategico/7603>

¹⁴ *The same situation occurs for all the years (2013 to 2016) for which the above information is available*

¹⁵ *Also refer to press releases of the Guard of Finance of 21 June 2017 and 21 June 2016*

¹⁶ <http://video.gdf.gov.it/podcasts/professione-finanziere/professione-finanziere-inglese>

It should be emphasized that the law expressly provides that the Chiefs of Staff of the Italian Army, the Navy and the Air Force may be summoned to the meetings of the Supreme Defense Council, while the convocation of the General Commander of the Gdf is not foreseen, to once again to signify the non-involvement of the Gdf in the Italian national defense system.

Only on two occasions, both dating back to 1986, did the Commander General of the Gdf participate as a consultant, moreover together with the Head of the State Police¹⁷.

5. Guardia di finanza would formally include among the tasks envisaged by the law **"to contribute to the border political and military defense"** (Law 189/1959); this is a task already entrusted to the previous law no. 415/1942, approved by the Fascist regime **in full war conflict**, and reproduced in 1959.

It is therefore a purpose that has roots in those particular historical periods. Indeed, prior to 1942, the ordinance laws did not envisage military defense of borders but only participation in military operations in the event of war.

In fact, this task has been devoid of practical application, both for the long period of peace but also for the progressive overcoming of national boundaries due to the process of European integration: the Guardia di Finanza, therefore, is currently not used in military operations at the borders¹⁸ and the Italian Defense Ministry has not planned its employment¹⁹.

The inexistence of this function was certified by the Italian Government, which officially gave the following definition: *"The Corps is therefore, first of all, the operational instrument through which the financial administration provides for the global defense of the tax system in its multiple as a unitary strategy, which overcomes sectoral solutions often adopted in other jurisdictions, and assures the link between tax protection and the rules that give concrete form to public control of economic activities. As part of the organizational solution now described - which does not seem to be to question the rationality and coherence with a modern conception of the role of the State in the economic life of the country - the "support" activities based on criteria that are essentially functional economics. **The concept of "support to the political – military defense of the border", for example, at a time of peace - in the conduct of generic information and military police at the border, intimately tied to that of the customs police and that does not, however, not involve any use of personnel and means other than those of a fiscal nature.**"*²⁰

The few strictly military tasks entrusted to the Guardia di Finanza were described in Royal Decree no. 126/1926 on the "Organic Regulation for the Guardian of Finance"; in particular

17 "THE SUPREME DEFENSE COUNCIL", Riccardo Bellandi, University of Florence, 2010

18 Also in the "Report on the State of Military Discipline and the State of the Armed Forces Organization" (2015) submitted by the Government to the Italian Parliament on 21 November 2016, no mention is made of the Guardia di Finanza.

19 In publications published by the Center for Defense Innovation (CID), which is part of the Third Department of the Defense Staff, never refers to the Guardia di Finanza
http://www.difesa.it/SMD/_Staff/Reperti/III/CID/Dottrina/Pagine/default.aspx

20 Government report to bill no. 756, submitted to Parliament on 22 February 1980, entitled "Operational adjustment of the Financial Guard for the Fight against Tax Evasion" - <http://www.parlamento.it/service/PDF/PDFServer/DF/290650.pdf>

Chapter II "Military Attributes of the Body" lists those in peace time²¹ (Articles 9-16), those relating to the mobilization²² and use of war²³ (Articles 17-22).

From January 1, 2017, this law was repealed (by Article 47 of Legislative Decree 95/2017), and thus formally abolished all the above-mentioned military tasks, albeit already outdated.

6. Article 2136 of Legislative Decree 66/2010, included in the special provisions (chapter II of the ninth book), provided for a list of "provisions provided to the staff of the Guardia di Finanza" "insofar as they are compatible". It follows that not all the Military Order Code is applicable to GDF personnel but only if expressly provided for.

In addition, the art. 2136, in addition to all the provisions of the code provided to the staff of the Guardia di Finanza, expressly replaces the competence of the Minister of Defense with that of the Minister of Economy.

7. The Law of June 3, 2010, no. 79 envisioned the possibility of appointing the General Commander of the Guardia di Finanza also among the ranks of its Generals, whereas previously it was foreseen that only a General of the Army would be appointed. Since the introduction of this novelty, the General Commanders who have succeeded have always come from the Corps itself and never again from the Army.
8. The military training for personnel of the Guardia di Finanza is minimal. In 2016 the inspectors students, for whom the training course lasts for a total of three years, have been trained by Army for military use for only two weeks.²⁴

For recruited staff, post-training activities do not involve military training, but didactic activities that are consistent with the Minister of Economic Affairs '*policy addressing his priorities*'.²⁵

On the other hand, the Italian Republic with the Peace Treaty signed in Paris on February 10, 1947 (made enforceable by Legislative Decree No. 1430 of 28 November 1947, still in force), undertook not to provide any instruction military to personnel not embedded in the Army or Carabinieri²⁶, meaning "*military education*" "*the study and practice of the use of arms specially designed or adapted for military purposes and related training resources; the study and execution of exercises or of direct movements to teach or practice the maneuvers carried out by combatants on the battlefield; and the organic study of tactics, strategy and state-of-the-art services.*"²⁷

21 *Information and news, garrison services, shows and parades, honors and precedents, disciplinary and hierarchical relations with the bodies of the Royal Army and Navy, anniversaries of the Corps*

22 *Preparing for mobilization, inspections, mobilization*

23 *Use in war, cadres of mobilized wards*

24 <http://www.esercito.difesa.it/comunicazione/pagine/addestramento-alla-scuola-di-fanteria-per-gli-allievi-marescialli-della-guardia-di-finanza-160912.aspx>

25 Magazine "Il Finanziere", June 2017, p. 64

26 "Art. 63. No personnel other than the one incorporated in the Italian Army or the Armed Forces of the Carabinieri may receive any form of military instruction as defined in Annex XIII B. "

27 Annex XIII B to the Treaty of Paris

9. Since World War II, the Guardia di finanza has no longer been employed in war operations, as has been demonstrated in the same Gdf annual report of 2016 and earlier. **The reference to international missions is tendentious because it is not real from the military point of view.**

Indeed, if the two world conflicts of the 20th century are excluded, the Guardia di Finanza occasionally took part in operations outside the national territory²⁸ and, in any case, with negligible forces; these missions were mainly aimed at **customs or police assistance** to countries in contingent political crisis situations and nevertheless have never involved the use of personnel of the Corps in military operations²⁹. Below is the detail of missions over the past ten years:

- **KOSOVO** (ended): this is the **EULEX** civilian mission decided in 2008 by the European Union in the framework of the European Security and Defense Policy (ESDP). The main objective of the Community Initiative is to provide assistance and support to the Kosovo Authorities, with particular reference to the police, judicial and customs sectors, while maintaining a limited number of enforcers. Gdf has been present in the mission with only **10 units (!), covering specific job positions, in the economic-financial and customs police sectors**. Previously, a limited part of GDF staff participated in the mission called the United Nations Mission in Kosovo (UNMIK), an international UN force delegated to the Kosovo civil administration³⁰. In the UNMIK mission, the Guardia di Finanza had taken part as a UN Border Police and later in the Financial Intelligence Center (FIC), set up to counter the forms of recycling and illegal activities associated with it. In 2002, F.I.U. - Financial Investigation Unit - with the task of curbing the economic and financial crime phenomena in Kosovo³¹. He was also involved in UNMIK's Central Intelligence Unit (CIU), which was entrusted with the task of monitoring financial transactions in Kosovo's territory, in order to detect illicit fraud using financial channels.

- **AFGHANISTAN** (ended): it is the operation that is referred to with more emphasis by the Corps. Under the **ISAF** UN mission, in January 2006, the Italian Defense Forces requested the cooperation of the Guardia di Finanza with the activities of the Afghan mission, with particular reference to the possibility of sending a team of **customs specialists with training tasks** with regard to organizations locals³². It was therefore decided to send to Herat, a contingent (called "Grifo"), to entrust exclusively

28 Publication "The International missions of the Guardia di Finanza (1899-2009)" - by the Gdf Historical Museum –

29 Legislative Decree 68/2001 - Article 5 (Participation in international economic and financial transactions) 1. The Finance Guard's Corps shall, within its competence, contribute to the national contribution to the activities promoted by the international community or deriving from international agreements, with particular regard to the activities aimed at the reconstitution and restoration of the operativeness of the police bodies and the local institutional structures represented in contrast to the violations in economic and financial matters.

30 Report of the Italian Government to bill no. 1288 of July 5, 2006 "Provisions for the Italian participation in international missions".

31 Commander General Gdf Roberto Speciale: "... he also recalled the mission in Kosovo," composed solely of our military, with the task, carried out with flattering results, to investigate against economic and financial crime and corruption in the use of aid that the international community is destined to the martyred region "(news Ansa - 02/02/2006)

32 "The GRIFO Task Force in Afghanistan, by T.Col. Gdf F. Lamberti, XXXIX ICMH CONGRESS, Turin, 2013

traineeships to Afghan Border Police (ABP), a police force carrying out supervisory tasks at frontiers for the contrast and repression of smuggling and illicit trafficking.³³ The small contingent of Gdf has change the number of components from time to time, from a **minimum of 10 units up to a maximum of 20 (!) (Compared to a total of 60,000 remaining in Italy).** The mission ended on June 12, 2013.

- **HAITI** (ended): the **MINUSTAH** (United Nations Stabilization Mission in Haiti) mission was to assist the Haitian government in local police reform, the Haitian National Police, according to democratic standards. In February 2007, **five people (!)** Gdf were charged to Haiti in Haiti's maritime, aviation, frontier and migration department reform³⁴.
- **LIBYA:** on 29 December 2007, the Italian and Libyan Governments signed a Protocol on cooperation for the fight against illegal immigration; on May 20, 2009, three naval units of the Guardia di Finanza sold to Libya with the Libyan crews and, in total, **six Italian "observers"** arrived at the Zuwarah port; over the same period **10 GdF officers** arrived in Libyan territory to ensure the ordinary maintenance of naval units sold by the Italian Government to the Libyan government and to carry out training activities for Libyan Coast Guard personnel.

The "joint patrol" activity for the **clandestine immigration contrast** began on May 25, 2009, and it ended suddenly two years later³⁵ for "security reasons"³⁶.

On 31 January 2017, the Guardia di Finanza signed an agreement with the EU operation **Eunavfor Med** - "Sophia" for the purpose of co-operation to the training of personnel of the Libyan Coast Guard³⁷.

Under this agreement, the Guardia di Finanza currently trains, on board Italian vessels in international waters, the Libyan Coast Guard³⁸; **however, there is no provision for the use of Gdf personnel for military operations.**

The situation remained the same even after the Italian government decided³⁹ on 28 July 2017 for Italy's participation in the international mission to support the Libyan coast guard, with the objective of *"providing support to Libyan security forces for the*

33 "... the participation of the staff of the Financial Guard Corps at the ISAF mission, with the task of carrying out teaching activities in favor of Afghan personnel, specializing in the field of conflict and repression of customs violations through courses held in Herat ". - Report of the Italian Government to bill no. 1288 of July 5, 2006 "Provisions for the Italian participation in international missions".

34 "The Guard of Finance in International Missions", brochure by the Gdf Historical Museum, Rome, 2009

35 " In fact, the treaty between Italy and Libya is no longer, it is inoperative, it has already been suspended ', said Defense Minister Ignatius La Russa ...' 'For example - added La Russa - the guard men of finance, who were on the trawlers, to control what the Libyans did, are now in our embassy. " (ANSA news - 26/02/2011).

36 http://www.repubblica.it/solidarieta/immigrazione/2015/03/05/news/finanziata_una_missione_che_non_c_e_-108810163/

37 Magazine "Il Finanziere", supplement in June 2017, p. 15

38 https://eeas.europa.eu/headquarters/headquarters-homepage/19613/eunavfor-med-and-italian-guardia-di-finanza-sign-technical-agreement-libyan-training_it

39 <http://documenti.camera.it/apps/commonServices/getDocumento.ashx?sezione=lavori&idLegislatura=17&tipoDoc=doc&idDocumento=250&ramo=C>

activities control and contrast of illegal immigration and human trafficking through an aeronautical device and integrated by ISR capabilities (Intelligence, Surveillance, Reconnaissance). " It is therefore a mission which is not aimed at military defense, but is of a humanitarian nature and for the management of migratory flows (Parliamentary Resolution no. 6-00338 approved on August 2, 2017).⁴⁰

The activity Gdf for this mission was specified in the deliberation, adopted by the Italian Council of Ministers no. 8 of January 14, 2017⁴¹, which states (TABLE 24) as objectives: *"Fight the phenomenon of illegal immigration and trafficking in human beings through: a. the use of staff of the Guardia di Finanza in Libya for the conduct of training cruises in favor of the Libyan Coast Guard and for the patrol on board of naval units sold by the Corps to the Libyan government between the end of 2009 and the beginning of 2010. b. the ordinary maintenance and efficiency of the said naval units ... "*

The resources of the Finance Guard⁴² to be used are: *"a) logistics and training activities in Libya: land vehicles and materials consisting of 3 cars and 1 van, b) technical, logistical and training activities in Italy: means and materials terrestrials consisting of technical and logistical structures of the Naval Center, headquartered in Cape Miseno (Naples), to maintain the four Libyan naval units in power. ". As far as the maximum number of staff is concerned, it is a contingent irrelevant: "a) logistics and training activities in Libya: 20 military ... b) technical, logistical and training activities in Italy: No. 30 Military ... "*

- **ALBANIA AND IN THE COUNTRIES OF THE BALCANIC AREA:** Participation of police force staff (State Police, Carabinieri, Guardia di Finanza) in the bilateral cooperation mission without military duties: *"In this reference area the following activities are aimed the improvement and development of support for the rhythm and stabilization processes of Albania and the countries of the Balkan area: assistance and support for police and judicial institutions aimed at developing organizational and operational capacities; strategies to prevent and combat criminal phenomena in the area by strengthening bi-lateral and multilateral cooperation; strategic policy analysis for the option of common security policies; implementation of the information exchange for operational cooperation with particular regard to the identification of illegal criminal control assets, the location and capture of fugitives of greater criminal depth and the fight against drug trafficking. "⁴³*

As of 16 October 1997, the Corps is present in Albania with the Maritime Border Unit, made up of 32 military personnel and 3 naval units, in Durres and Vlora. The Frontier Unit was organized specifically for the implementation of the tasks entrusted to the Corps as part of the assistance of the Italian Police Forces to the Albanian counterparts. In particular, the Corps contingent is entrusted with the task of providing assistance, advice and training to the Maritime Border Police.

⁴⁰ <http://aic.camera.it/aic/scheda.html?numero=6-00338&ramo=C&leg=17>

⁴¹ http://www.camera.it/_dati/leg17/lavori/documentiparlamentari/IndiceETesti/250/001/INTERO.pdf

⁴² <https://www.senato.it/service/PDF/PDFServer/BGT/01002580.pdf>

⁴³ http://documenti.camera.it/_dati/leg18/lavori/documentiparlamentari/IndiceETesti/026/003/00000002.pdf

From 1 January 2002, the contingent operates in a functional relationship with the Police Inter-force Liaison Office, inserted in the office of the Central Directorate of Criminal Police of the Department of Public Security. This office is responsible for: - systematically organizing bilateral cooperation in the fight against crime, especially organized crime, and illicit trafficking affecting the two countries; - ensure the necessary informative and investigative link with the Albanian Police structures.

Also in this case there is no connection with the national defense or with the Italian armed force, which, in fact, do not participate in this activity⁴⁴.

In fact, the duty of the staff of the Finance Guard in Albania is aimed at combating illicit trafficking, mainly drugs.

It is the Italian government itself to admit it in its report to Parliament⁴⁵:

"7.2 Mission of assistance to the Albanian Police of the Guardia di Finanza

A. ANALYTICAL REPORT

The activity carried out in Albania by the Guardia di finanza, in close coordination with the Ministry's International Police Cooperation Service, has two purposes:

- the advice and training of the Albanian border police to combat illicit trafficking by sea, entrusted to the "Maritime Border Unit" of the Guardia di Finanza with offices in Durres and Valona;

- the collaboration with the aforementioned Albanian Police for the surveillance of the stretch of sea close to the coasts of Albania and the prevention and repression of illicit trafficking from the Albanian coasts, conducted through naval units under the aforementioned "Maritime Border Unit ", which operates seamlessly throughout the year;

- the aerial exploration of the Albanian territory aimed at the detection of cannabis plantations, normally conducted between the months of May and September of each year.

... In this regard, it should be remembered, in addition to the data listed above, as an effective info-operational synergy established between the Albanian Police, the Maritime Border Unit of the Guardia di Finanza of Durres and the Air and Naval Departments and the investigations of the Corps on the Apulian side, in the first 10 months of the year they blocked over 35 tonns narcotics at sea. "

- 10.** The staff employed in the air-navy service is estimated at about 10% of the total. About the aerial fleet, all of which are the means of transporting people or goods⁴⁶. As for the naval fleet, this is for most non-high-powered boats.

The most important boats are the two "Monte Sperone" and "Monte Cimone" patrol boats, launched in October 2013 the Vittoria di Adria shipyards, based on the design of the Damen Stan 5009 "Sea Ax" type patrol class. This kind of patrol was designed by Damen for the

44 Cooperation agreement between the Government of the Italian Republic and the Council of Ministers of the Republic of Albania in the fight against crime (signed in Tirana on 19 June 2007) and Operating Protocol between the Italian Public Security Department and the Directorate General of the State Police Albanian (signed in Tirana on 16 May 2012) "ITALY-ALBANIA ACTION PLAN. FIXED WING AERIAL SURVEILLANCE. "

45 "ANALYTICAL REPORT ON THE CURRENT INTERNATIONAL MISSIONS AND ON THE STATE OF THE DEVELOPMENT COOPERATION INTERVENTIONS IN SUPPORT OF THE PEACE AND STABILIZATION PROCESSES, DELIBERATED BY THE COUNCIL OF MINISTERS ON DECEMBER 28, 2017"

46 <http://www.gdf.gov.it/chi-siamo/organizzazione/specializzazioni/comparto-aeronavale/servizio-aereo/chi-siamo/flotta-aerea>

following uses⁴⁷: customs patrols, maritime security, economic security, search and rescue; they are obviously non-military tasks.

The construction of these naval units was funded by the European Maritime Border Management Agency (Frontex), which has no military purpose⁴⁸ but exclusively civilian purpose. Frontex is an EU institution which has as its objectives to coordinate patrol missions at the external, maritime, land borders of EU states and to support Member States in common repatriation operations for irregular migrants.

Concerning the concrete use of the Corps aeronautical means, it is clear from the annual reports 2016⁴⁹ that they are civil and not military. For a general overview on their use by Guardia di finanza, please refer to the General Screpanti hearings⁵⁰ at the Parliament of the Italian Republic⁵¹, which on 5 July 2017 clarified that the GdF does not have national defense tasks: "*... the institutional mission of the Guardia di Finanza, which is now fixed in a legislative decree, no. 68 of 2001, which, in addition to the tasks of the economic-financial police on the mainland, also assigned the task of the economic-financial police on the sea and the fight against illicit traffic under the system of national police forces provided by law no. 121 of 1981. To carry out this function both on land and at sea, those belonging to the Guardia di Finanza have the status of a general police law, that is, extended to all kinds of offenses, of the Tax Police, Public Security and Police currency. Public order and security services at sea are those reserved to the police. It is well to distinguish right from now on two fundamental functions on the sea, which invest different responsibilities: the police function, the fight against illicit traffic and the protection of public order; the rescue function in the sea, the safety of navigation ... We are talking about, exactly, a preventive watchfulness on international waters, essentially carried out by the Navy, an investigative repressive activity in the territorial sea, entrusted until recently it does the to three police forces, and coordinated activities in the adjacent area, 12 miles from the territorial sea limit, to the Finance Guard. I have said recently by the police forces, because Legislative Decree no. 177 of the past year, the famous Madia reform, rationalized the functions of the police forces, in specialty areas, entrusting to the Guardia di Finanza with the sea safety specialty. For this purpose it is expected that the naval forces of the State Police, the Carabinieri and the Penitentiary police will be abolished, and that their naval units, except for a few exceptions (smaller islands, Venice and more), will pass to the Guardia di Finanza. This is a process still under way, with the Guardia di finanza in the territorial sea obviously the Sea Safety Police. By summing up, the areas of intervention at Sea of the Guardia di Finanza are economic-financial police, contrast to illicit traffic, order and*

47 http://products.damen.com/-/media/Products/Images/Clusters-groups/High-Speed-Crafts/Stan-Patrol-Vessel/Stan-Patrol-5009/Documents/Product_Sheet_Damen_Stan_Patrol_5009_Sea_Axe_07_2012.pdf

48 <http://frontex.europa.eu/about-frontex/mission-and-tasks/>

49 "Aeronautical- navy compartment activity and contrast to illicit traffic" - p. 34 and 35

50 https://www.senato.it/application/xmanager/projects/leg17/attachments/documento_evento_procedura_commissione/files/000/005/014/Intervento_generale_Screpanti_Guardia_di_finanza_.pdf

http://www.camera.it/leg17/1079?idLegislatura=17&tipologia=indag&sottotipologia=c30_confini&anno=2017&mese=07&giorno=05&idCommissione=30&numero=0052&file=indice_stenografico#stenograficoCommissione.tit00030

51 Stefano SCREPANTI, Head of the 3rd Department - Finance Guard Operations, Division General - http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/html/30/indag/c30_confini/2017/07/05/indice_stenografico.0052.html

public safety at sea, support in rescue operations at sea. The institutional mission entrusted to the Corps is united, in the sense that it is identical whether it is developed at sea or whether it is developed on the ground. As well as our departments in the land, the aircraft component also ensures the economic and financial interests of the State and the European Union and the contrast of illicit traffic within the objectives assigned by the Minister of the Economy and Finance, from which Corps depends ... The navy fleet of the Guardia di Finanza consists of 352 naval vehicles, consisting of 3 patrols, 7 fast patrols, 67 guarders and many other units. We have two patrols of this class: Multiruolo Monti class, the flagship of the Guardia di Finanza, which is able to do a lot of naval exploration activities, which is now close to the outer boundary of Libyan territorial waters for activities of patrolling in contrast to illicit traffic; this is the fastest interceptor between those provided to the police in the Mediterranean and Europe, which the Guardia di Finanza has precisely for very fast sea pursuits. This is the aerial fleet, which, above all in its fixed wing component, is used for the patrolling of the sea, both of the Tyrrhenian Sea and of the Adriatic Sea, and is based on 84 aircraft. The aircraft we use for exploration of the high seas, the open sea, is essentially this, the ATR 42, which in addition to having high passenger cargo capacity, allows to accommodate highly advanced video surveillance systems. This is with regard to the organizational structure ... "

- 11.** Even the Corps chief during the various hearings before the Italian parliamentary bodies confirms that, real, the staff of the Guardia di finanza does not carry any military or national defense tasks. General Commander Saverio Capolupo was in fact able to declare officially *"... The Guardia di Finanza is a police force ordered militarily, directly dependent on the Minister of Economy and Finance, which as an institutional mission presiding over the fundamental freedoms of the economic constitution . Following the review of the legislative work carried out by the legislator in 2001, our prerogatives have been considerably expanded, ranging from the priority protection of the taxes to the broadest economic-financial police function ... Operational projections aim to strike in their entirety all phenomena which are connoted by the ability to at the same time jeopardize more economic and financial interests by adopting typical police investigative techniques. In this perspective, the Ministry of Economic and Financial Affairs identified, as the priority activities for policy and the general guidelines for administrative action and management for the year 2013, which priority areas intervention, the further strengthening of the fight against evasion and tax evasion, and the strengthening of the fight against illicit activities which cause harm to national and Community public expenditure. The fight against tax evasion has always been the prime mission of the Finance Guard ... Mr President, ladies and gentlemen, I conclude by confirming the commitment of the Guardia di Finanza to continue with force, method and determination the mission of the fight against evasion and economic crime according to the objectives, priorities and programs assigned by the Minister of the Economy and Finance. The Body is assigned a major responsibility: the state budget guarantee on revenue and expenditure side. This is an even more important task in the current economic crisis period, where convergence is required of all institutions' efforts to implement the financial, social, and social equity principles of the country ... "*⁵² **No reference has been made to hypothetical national defense tasks.**

- 12. There is no connection between the currency control activities carried out by the staff of the Gdf and the national defense tasks of an armed force.**

⁵² "Hearing of the General Commander of the Guardia di Finanza, on issues related to the workings of the Corps" - parliamentary report of 16 July 2013

At European level, Directive 91/308 / EEC of 10 June 1991 entrusted banks and financial intermediaries with a crime prevention role through the task of examining financial transactions. With Directive 2001/97 / EC, the obligations have been extended to some non-financial and professional activities.

Directive 2005/60 / EC repealed the two previous ones, summarizing their contents and extending their action to combat terrorist financing.

With the EC Directive of 2005, new identification obligations have been introduced by financial operators, based on the risk of common money laundering or terrorist financing.

The Legislative Decree n. 231 of 21 November 2007, bears "Implementation of Directive 2005/60 / EC concerning the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and of Directive 2006/70 / EC which bears it enforcement measures ": in practice, it disciplines the obligations for financial operators for Italy and lays down the procedures for checking the bodies in charge.

Decree 231/2007 therefore defines the functions of the Italian authorities responsible for the prevention of the anti-money laundering and anti-terrorism system, dividing them between:

- the Minister of Economy and Finance;
- the Financial Security Committee;
- the sector supervisory authorities;
- the Financial Intelligence Unit (U.I.F.),
- the Guardia di Finanza;
- the Anti-Mafia Investigation Department;
- the other police forces, as far as they are concerned;
- professional associations (lawyers, accountants etc)

It is clear that all these subjects, who participate in the fight against money laundering and terrorist financing, have nothing in common with the bodies responsible for national defense or with the organization of the Italian armed forces.

13. With regard to the connection with the Chief of Defense, it is guaranteed by the presence of a General of the Army assigned to the General Command which has a special office. From the reading of the official magazine Gdf "*Il Finanziere*", it turns out that the activity of this office is not essentially aimed at pursuing military operations by the Guardia di Finanza⁵³, merely imposing provisions on uniforms, ceremonial and training in weaponshooting.

At present, military operations that, in theory, could be entrusted to the Guardia of Finance are only those provided by law no. 79/2010 (Article 1, paragraph 2) where it provides: "*In carrying out the activities of military action in the event of war and military missions abroad, the Corps is functionally dependent on the Defense Minister.*"

It is evident, therefore, that in the time of peace, in national territory or in civil missions abroad, the staff of the Guardia di Finanza continues to depend on the Ministry of the Economy and Finance and therefore no concrete military function is assigned to him.

⁵³ Magazine "*Il Finanziere*", June 2016 (page 58) and June 2017 (page 58)

Also (July 13 and 18, 2017), the Chief of Defense, hearing in the Senate of the Republic on the reorganization of the defense ministry summits and delegations to the Government for the reform of the military instrument, did not even mention the Guardia di finanza⁵⁴ as a component of the inter-forces system of Italian Defense⁵⁵. The same is true for a similar hearing by the Defense Minister (18 July 2017)⁵⁶.

On the other hand, by examining the organization of the Corps (Circular No. 240000/310 - 2013 edition, entitled "Order of the Guardia di Finanza")⁵⁷ it is noted that **there are no departments that have tasks in national defense, there is not the presence of representatives of the Guardia di Finanza in national defense inter-forces bodies.**⁵⁸

Moreover, gold medals for the military value granted to the Guardia di finanza are only three, dating back to World War II, while gold medals with civil value are nine.

The rewards to the Guardia di Finanza for strictly military operations are all dating back to the first or second world war or even to the previous Risorgimento conflicts. From 1946 to today, the sporadic rewards for military value, both to the Corps and to individual members, refer to facts that have no bearing on national defense tasks⁵⁹.

Overall, the flag of the Guardia di Finanza has been awarded twenty military rewards, in fact almost all recognized for periods of war, compared to 41 civil rewards⁶⁰, mainly for events after 1945, to signify the substantial civil nature of the functions performed by the Corps in peacetime.

The analysis of the military rewards achieved by individuals belonging to the Guardia di Finanza also confirms the above: by way of example, of the 12 gold medals for military worth achieved individually, only two refer to the post 1945 peace period and, in any case, have not no relevance to national defense tasks.

14. The Strategic Counter-Terrorism Analysis Committee (C.a.s.a.) is a permanent table coordinated by the Minister of the Interior for the sharing and evaluation of information on the internal and international terrorist threat. Its meetings are attended by representatives of the Police Forces (State Police and Carabinieri), and intelligence agencies (Aise, Aisi). Specialist contributions from the Guardia di Finanza and the Department of Prison Administration are also possible. The composition and working methods of the Committee are foreseen by a decree of the Minister on May 2004. **This is evidence of subjects that**

54 http://webtv.senato.it/4621?video_evento=3922

55 On the occasion of the National Day of the Italian Armed Forces on November 4, no reference is made to the Guardia di finanza - https://www.difesa.it/Content/Manifestazioni/4novembre/2016/PublishingImages/4_nov_2016.jpg - <http://webtv.difesa.it/Video/?v=3e666d9b>

56 http://webtv.senato.it/4621?video_evento=3940

57 <http://www.gdf.gov.it/documenti-e-pubblicazioni/circolari/disposizioni-general-che-regolano-l2019ordinamento-del-corpo-lineamenti-general-dell2019organizzazione-descrizione-dell2019assetto-organizzativo-dei-reparti-cartografia-linee-di-dipendenza-e-circoscrizioni-di-servizio.-edizione-2013/circolare-n-240000-310-edizione-2013.pdf>

58 Articles 28-31 Legislative Decree no. 66/2010

59 <http://museostorico.gdf.it/i-simboli/la-bandiera-di-guerra/ricompense-alla-bandiera-di-guerra/valor-civile>

60 <http://museostorico.gdf.it/i-simboli/la-bandiera-di-guerra/ricompense-alla-bandiera-di-guerra/ricompense-alla-bandiera-di-guerra>

concern matters other than national defense, in fact there is no participation of the Italian Armed Forces .

The Financial Security Committee (FSC) is chaired by the Director General of the Treasury, is composed of the Ministry of Administration and Finance, the Ministry of International, the Ministry of Justice, the Ministry of Foreign Affairs, the Bank of Italy, of the National Commission for Society and the Stock Exchange, the Institute for the Supervision of Private and Collective Interest Insurance, the Financial Intelligence Unit, the Guardia di Finanza, the Anti-Mafia Investigation Directorate, the Carabinieri Corps and the National Directorate antimafia.

The CSF is complemented by two designated representatives, from the Ministry of Economic Development and the Customs Agency for the purpose of carrying out the tasks related to combating the proliferation of weapons of mass destruction.

The CSF has the task of monitoring the functioning of the terrorist financing and money laundering prevention and control system. It acts as the link between all administrations and operating entities in this sector and is endowed with particularly penetrating powers, such as that of acquiring information in the possession of the administrations represented in it, also in derogation of professional secrecy. Finally, within the framework of the powers of article 5 of Legislative Decree 231/2007, the CSF conducted in 2014 the first national analysis of the risks of money laundering and terrorist financing.

It is clear that, also in this case, the interested parties and the activities carried out are not attributable to the national defense; in fact even in this committee the armed forces do not participate.

C. Data about the real use of guardia di finanza's staff

1. The Financial Guard's institutional missions⁶¹ are divided into homogeneous areas in the following strategic segments⁶²:

(1) economic-financial police area:

- (a) "revenue" (of the European Union, of the State, of the Local Authorities);
- (b) "expenses" (of the European Union, of the State, of the Local Authorities);
- (c) "capital market";
- (d) "goods and services market";

(2) area of the supporting missions and service to third parties:

- (a) "security";
- (b) the political-military "defense" of the country;
- (c) "on-demand services".

61 <http://www.anorc.it/documenti/II%20PIT%20della%20Guardia%20di%20Finanza%20Lecce.ppt>

62 Circular n.122951 / 3102 of April 28, 2015 <http://www.gdf.gov.it/documenti-e-pubblicazioni/circolari/funzioni-dei-reparti-speciali.-edizione-2011/circolare-n-340000-3121-edizione-2011.pdf>

2. Data on the use of human resources of the Guardia di Finanza feed an information system called S.I.Ris. (Human Resource Management System)⁶³. This information system is aimed at monitoring and tracking the activities of the organization for homogeneous functions and for centers of responsibility; the data are also included in the "man hours" of the various codes referring to institutional activities⁶⁴.
3. **The reading of data S.I.Ris. referring to each of the above mentioned segments, in particular the "defense", can clear that the staff of the Guardia di Finanza does not substantially carry out military or national defense tasks.**
4. On 26 September 2017, an application for access pursuant to legislative decree no. 97/2016 (Freedom of Information Act). Specifically, data was required in the S.I.Ris archive of the Body for the exact number of hours per person occupied in 2014, 2015 and 2016, by all staff of all departments of the Guardia di Finanza. The data will therefore cover the nine "Segments": revenue; expense; capital market, goods and services markets; security; defense; intersectoral activities, support for institutional administration, training and recruitment.
5. The analysis of the body's annual reports suggests that for the mission to support for defense activities are used every year by the Guardia di Finanza, compared to all other missions and functions, hours per person less than 0.5 per cent.
6. On 24 October 2017 a negative response from the General Finance Guard Command was given, arguing that knowledge of the information could present a concrete and current prejudice to national security, defense and military issues, security and public order; the answer, however, does not indicate the reasons for such injury. **This supports the hypothesis that the use of staff in national defense activities is actually less than 0.5% of the total.**

63 "... In other words, the S.I.Ris system. enables them to develop knowledge about how human resources are used in direct and indirect production processes and to define performance measures that can be linked to the result responsibilities assigned to the various management levels of the structure. Data flows monthly into a centralized archive and are immediately available to the various management levels as a "telematic" report, guaranteed by the "tracking procedure" available at the terminal. Through this procedure, it is possible to analyze human resource uses starting from a maximum aggregation for institutional missions, to reach the maximum level of detail represented by the single employment code. "-" Strategic control in P.A. central and local offices "by G.Mariella, Chief of Staff Guardia di Finanza, forum Forum P.A., Rome, May 10, 2001 - http://archive.forumpa.it/forumpa2001/convegni/3/3/2/giovanni_mariella/home.htm

64 Court of Auditors of the Italian Republic, Deliberation no. 13/2002 / G of 12 March 2003

5. THE MILITARY REPRESENTATIVE BODIES INSIDE TO THE GUARDIA DI FINANZA

- ✓ The Italian laws in 1978 has established military representation bodies (COBAR, COIR, COCER), also for the Guardia di finanza, imagining them as a substitute for the denied union freedom. This "substitute function" was explicitly declared in the Majority Statements submitted to the Chamber of Deputies during the parliamentary debate on Law 382/1978 - Acts Camera, VII leg., No. 407-526-625-A.
- ✓ Military representation bodies are governed by art. 1476 of Legislative Decree 66/2010 and have mainly consultative and propositional functions for the protection of collective interests of the military condition, limited to the specific subjects specified in the following art. 1478. The discipline contained therein is supplemented by regulations within the d.P.R. March 15, 2010, no. 90 (Unique text of the provisions governing military ordinance, pursuant to Article 14 of Law No 246 of 28 November 2005). The three levels of representation bodies are, in all respects, organs of a public nature, directly "instituted" by State law. Consider that organizations meet within military sites or in any case serve the service and components have presence coins, as provided for in art. 1, d.P.R. January 11, 1956, no. 5, with the consequence that the carrying out of representative activities is considered in all respects as "service activity".
- ✓ Military representation in the implementing regulation has been defined as an institute of military order, which has consolidated the denying presupposition of the right of a free and autonomous representative structure. The size of the base units and the electoral procedures are determined by the commands of the respective structures. This is the case for intermediate (COIR) and central (COCER). Elections of delegates at various levels are then initiated by the respective commands. Commanders also establish the organizational criteria for the elections and designate the presidents of the polling stations. Commanders must be handed over all the charts and documentation relating to voting operations. The obligation to deliver to the respective commanders the documents, declarations, agenda and motions also applies during the activities of the representations. The relationships between the different levels of representation (central, intermediate and base) have not been regulated. Therefore, such reports and even military hearings, which must only confine themselves to providing information only on their request, are not possible unless authorized by the respective commands, to which, in the case, a copy of the documentation subject of the discussion must be submitted.
- ✓ **The council president is not elected, but is the highest in the hierarchy.** The exercise of representation, meetings, assemblies is always subject to the agreement between the chairman of the representative structure and the corresponding commander. The right to speak at the assemblies of the delegations, and only on the items on the agenda, can only be exercised if they are asked before starting the discussion, considering the possibility of enrolling in speaking at work at the discretion of the president. The secret ballot is not adopted for the approval of the day's orders, motions, resolutions and documents. The performance of the duties of representation is considered to be all service activities; expenditure on the operation of the representations (permanent, missions, travel, publicity, various services) is thus fully borne by the Corps.

- ✓ The competences of the representative bodies are very limited, they generally deal with the matters identified by art. 1478 of Legislative Decree 66/2010 and, in particular: I) the preservation of jobs during military service; II) professional qualification; III) inclusion in the job of those who cease to serve; (IV) Provisions for injuries suffered and sicknesses contracted for service and for reasons of service; V) welfare, cultural, recreational and social promotion activities, also in favor of family members; VI) Organization of meeting rooms and canteens, hygiene and sanitary conditions, housing. In addition to these general competencies, individual organizations of representation are invested, at each level, in certain specific functions governed by art. 879 and 880 of the d.P.R. 90/2010. On the one hand, the COCER (the representative body at national level) can formulate opinions, proposals and requests on all matters that are subject to legislative or regulatory provisions regarding the condition, treatment and legal, economic, welfare, health, culture and morals of the military. However, legislation does not introduce a real confrontation between the parties, but a simple consultation. Indeed, the COCER have no real negotiating power - unlike what is happening within the civilian police force - but only an advisory role. Their approval is not even necessary, so it is true that failure to reach agreement means that, instead of a bilateral act, a mere unilateral act by the administration belongs to it.
- ✓ In order to contain the activities of representative bodies within the military disciplinary framework, delegates are required, pursuant to art. 882, d.P.R. 90/2010 to comply with the following bans (a) Prohibition to make opinions and proposals or to make requests that are outside the subjects and fields of interest referred to in Article 1478 of the Code; b) prohibition of releasing statements and declarations or adhering to meetings or performing activities outside the organs of belonging; c) Prohibition of having any kind of relationship with foreign bodies to the Armed Forces, except as provided for in Book IV of Title IX of Chapter III of the Code and by the Regulation; (...) (e) prohibition to promote and collect petitions for the purposes of performing representation activities. In summary, military representation is completely precluded from dealing with matters relating to ordering, training, operations, the logistics-operational sector, the hierarchical-functional relationship and the employment of staff. In other words, there is no union confrontation on issues that are the very essence of the Armed Forces.
- ✓ Failure to comply with the rules governing the activities of representation is considered to be a serious lack of discipline. Even in the performance of their duties of representation, the members of the organs remain rigidly subject to the military discipline regulations, which is free from the principle of strict legality and tassativity of disciplinary violations. This is the fundamental reason why the Presidents of the bodies are not elected but the highest rank. They must ensure the functioning of representation by applying the criteria of military discipline, which they are responsible for, and are also required to inform military hierarchies in the event of any violation. The president is given the disciplinary power of recall and censorship, as well as the expulsion from the military meeting guilty of having disturbed the order or failing to comply with the limits and faculties of his mandate.
- ✓ The representative mandate may cease only for: (a) termination of the service; b) switch to another category or degree; c) transfer; d) loss of eligibility requirements; (e) have suffered two deliveries of penalty. As we can see, as the institute of recall is not included for trade union reasons, the mandate is considered indefinitely within the four-year term, thus removing all representative responsibilities from the delegate. The Italian Government has repeatedly extended the duration of the military representation bodies, postponing the elections for years. The remission of the mandate by qualifying, in fact, denies the delegate

the role of collegial representative. This observation is reinforced, in fact, by the electoral norm which considers the vote to be given to candidates who are not members of the category of null vote. Significant data as to the absence of a truly unional character of the representative bodies emerges, moreover, from Art. 887, d.P.R. 90/2010, which provides that the military has the duty¹ (not the right) to participate in the election of the representative. No delegate may abstain from the meeting room unless authorized by the chairman; this provision denies the military the right to freedom of association.

- ✓ The non-recognition of delegates of the rights of freedom of representation and autonomy makes the military representations a no distinct personality from the military institutional organization, producing a dangerous mix and confusion of roles and functions between military representations and institutions.

- ✓ **In the light of the foregoing, it is evident that there is no compatibility between European and Italian legislation as the latter violates the principles. It is clear that the military representation bodies of the Guardia di Finanza can not constitute a valid alternative to the absolute deprivation of union freedom. In summary, military representation bodies are the farthest away from a trade union organization.**

¹ *Failure to participate in the vote is punished*