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EUROPEAN SOCIAL CHARTER

RESPONSE FROM ITALIAN GOVERNMENT TO *EUROMIL'S* COMMENTS ON THE 20TH SIMPLIFIED ITALIAN GOVERNEMNT'S REPORT

About Complaint:

***Confederazione Generale Italiana del Lavoro* v. Italy, Complaint No 140/2016**

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SUBJECT: Case 140/2016 - Collective complaint to the C.E.D.S. (European Committee of Social Rights) presented by the C.G.I.L. (Italian General Confederation of Labor) vs. the Italian State.

European Council. "XX Report on the application of the European Social Charter" by Italy, by the Ministry of Labor and Social Policies.

Observations presented by EUROMIL ("*European Organization of Military Associations and Trade Unions*").

Following an in-depth examination carried out on the observations made by **EUROMIL** (*"European Organization of Military Associations and Trade Unions"*) in relation to the *"XX Report on the application of the European Social Charter"* by Italy, **is hereby confirmed and refer what has already been widely counter-argued** by the Italian Government **in the context of case n°. 140/2016** , **expressly referring** to the detailed and precise content of **all the articulated defense briefs** with which the *"reasons"* have been refuted, point-by-point, regarding the complaint and the consequent, unacceptable, critical reservations raised by the CEDS in its " *report"* of January 2019 (in this regard, see report n°.226200 / 2020 of 10 September 2020 and the relevant documentation attached).

Moreover, it is considered appropriate to point out that the considerations expressed by EUROMIL , by own confession of the trade union organization in at issue, were presented after the deadline.

The Italian Government spoke on the position of CEDS in the "20th National Report on the implementation of the European Social Charter", highlighting the specificity of the military system, also with particular regard to the tasks performed by the Guardia di Finanza, and illustrating the legislative initiatives undertaken in order to regulate military union associations, along the lines with **ruling n°120 dated 2018 of the Italian Constitutional Court.**

In this regard, EUROMIL (European Organization of Military Associations and Trade Unions) presented its observations which are essentially centered on the content of the law proposal containing " Rules on the exercise of trade union freedom of the personnel of the Armed Forces and military Police, as well as delegation to the Government for regulatory coordination ", approved in its" first reading " by the **Chamber of Deputies on the 22nd of July 2020** and currently being examined , as **AS 1893** , by the 4th Commission (Defense) – for debate - as well as by the 5th Commission (Budget) - in consultative session - by the **Senate of the Republic.**

In this regard - apart from any consideration regarding the exclusive jurisdiction of the national legislator to regulate the matter concerned - it should be noted that in the course of the aforementioned parliamentary proceedings numerous amendments were presented, still under consideration by the aforementioned 4th Commission, aimed at intervening,

among the other, on the aspects subject to the considerations of EUROMIL. Further indications could then come from the 5th Commission for the profiles of competence, essentially related to the financial repercussions of the legislative initiative. Therefore, first of all bearing in mind of the circumstance that the proposed law in question is being discussed in parliament, it is believed that the observations of EUROMIL are entirely unfounded, referring to profiles not yet defined on a legal basis and, indeed, susceptible to probable, further changes during the process of approval of the legislative initiative.

On the sidelines, given that the initiative taken by EUROMIL in the C.E.D.S. however, it appears related to the ongoing parliamentary debate and to the **approval process of the A.S. 1893**, there is also the obligation to represent how in this context - both in the Chamber of Deputies and in the Senate - extended rounds of hearings have been carried out, in the context of which the interested parties - Co.Ce.R., professional associations of a trade union nature between military personnel as well as organizations representing civilian workers and other associations, **including EUROMIL itself** - have already had an adequate opportunity to provide their contributions (the representatives of EUROMIL have been heard at the assembled Committees IV (Defense) of the Chamber of deputies and 4th (Defense) of the Senate **on 12 March 2019**).

In relation to paragraph 1

a. art. 1475, paragraph 1, of the legislative decree n. 66 of 2010 provides that the establishment of associations and circles among military personnel is subject to the prior ministerial consent. However, in order to facilitate the rapid start-up of the new system, the Ministry of Defense, in dictating the guidelines on military union membership, has ordered the **simplification of the procedures** already provided for the prior consent to non-union military associations, circumscribing the opinions of the hierarchical scale (limited to those of the military top management) and bringing the deadline by which the consent procedure must be concluded **to 90 days** (instead of 180);

b. the draft law on military union membership (AC 875 and abb.) was actually approved by the Chamber of Deputies in July 2020, and then passed to the Senate where it was assigned to the 4th "Defense" Commission for debate (AS 1893). The examination in the Senate began in September 2020: after a rapid round of committee hearings of academic personalities, military commanders, representatives of the Central Council of Military Representation and of the professional associations of a military nature, some amendments were introduced, to whose examination it is necessary to await the opinion of the 5th "Budget" Commission.

paragraph 2

As mentioned, the prior ministerial assent to the establishment of military trade unions was expressly indicated as necessary by the Constitutional Court itself, which listed it among the conditions that, under the current legislation, allows the launch of the new form of associations. However, the draft law AS 1893 provides, in article 3, a different

form of qualification for military trade unions which, once constituted, in order to start their own activity must submit the statutory documents to the ministerial examination for the verification of the compliance with legal requirements and, if so, for registration in a specially constituted register.

paragraph 3

In order to allow the rapid start of the military trade union associations pending the issuance of the specific legislation, the Minister of Defense (and, in parallel, the Minister of Economy and Finance on which the Guardia di Finanza depends) has adopted its own procedure in an administrative way, in compliance with the principles dictated by the Constitutional Court, and with a specific view expressed by the Council of State. The military trade unions, therefore, were able to set up and start their activities through the registration of military personnel, the collection of membership contributions and dialogue with the Administrations of reference, possible only at central level, where all the General Staff (including the General Command of the Guardia di Finanza) have set up internal organizational units specifically dedicated to trade union relations. The choice to allow dialogue only at central level was necessary to ensure uniformity of treatment by the various military administrations, as well as for the absence of specific regulations on how to measure representativeness, also in order to avoid to compromise the functionality of the peripheral departments.

paragraph 4

In order to maintain the internal cohesion of the military armed forces (a fundamental principle reiterated several times by the Italian Constitutional court), provisions regarding military union associations can only be applied univocally by all military administrations. For this reason, every provision adopted by the political body must then be shared between the individual Armed Forces and the Financial/Custom Police (Guardia di finanza). In this regard, it should be noted that two appeals have been filed before the labor judge by two military trade union associations aimed at obtaining the recognition of higher levels of trade union activity. Of the two, one is still pending, while the other (hinged at the Court of Taranto) ended with the rejection due to the lack of regulatory provisions, and still being examined by Parliament, being of an administrative nature (the ministerial circulars) and not able to trace the channel of the competences of these associations, having the Constitutional court referred to regulatory sources necessarily of primary rank.

paragraph 5

a. As expressly indicated by the Costitutional court, the **draft law AS 1893** defines the conditions and limits to which military trade union associations must be subject to, in line with the provisions contained in the **same article 5 of the European Social Charter**, which allows legitimate limitations on trade union freedom for military personnel;

b. The aforementioned bill attributes jurisdiction in matters of military union associations to the administrative judge, according to the abbreviated procedure referred to in art. 119 of Legislative Decree n°.104 dated 2010 (containing the Administrative Process Code). Contrary to what EUROMIL claims, this does not constitute a deminutio in judicial protection in the particular matter, since, precisely by virtue of the reform of the administrative process adopted with the aforementioned legislative provision, the powers of investigation and supervision of the administrative judge may overlap like those of the ordinary judge under labour legislation, with the advantage of the expertise in matters regarding employment relationship under military public law. Furthermore, what was claimed by EUROMIL on the particular onerousness of the administrative procedure is unfounded, since the same bill AS 1893 provides for a limited unified contribution, and this provision, in the light of an amendment presented by the rapporteur, could be replaced by gratuitousness;

c. As already stated, in the bill being examined by Parliament, the prior Ministerial consent to the constitution of military trade unions is replaced by a sort of qualification to exercise trade union activity by registering with a specially constituted register, subject to verification of the legal and regulatory requirements. These requirements, however, comply with the principles dictated by the Constitutional court in light of the content of Article 5 of the European Social Charter, which allows for the imposition by States of legitimate limitations on trade union membership for military personnel;

d. The draft law AS 1893 does not place any limit on the number of mandates in statutory offices. What is foreseen, however, is a limit to the duration and number of secondments that can be arranged for individual military personnel. In particular, the secondments of union leaders (maximum five in their entire working life) cannot last more than three years for each individual, renewable after a minimum period of effective service, in order to avoid the decline of high-profile specialist skills of the military personnel concerned, aimed at ensuring the maximum efficiency and expertise in a modern military establishment, as well as a clear understanding regarding issues of the changing problems related to national security and public safety;

e. The reference made in the draft law AS 1893 regarding internal cohesion, efficiency and operational readiness of the military team, expressed and reaffirmed by the Constitutional court, also concerns the Guardia di Finanza, which is a military police force and which carries out also military duties;

f. The provision regarding a ceiling of a maximum percentage limit for each category of members of military trade unions is essential to the internal cohesion, as it is aimed at not unbalancing the trade union counterpower towards a single category, with the risk of undermining internal cohesion and the hierarchical principle on which the military organization is based;

g. Matters excluded from the competence of military trade unions are directly functional to safeguarding the tasks of the military personnel, coinciding with those already excluded from the competence of military representation, and considered suitable by the Constitutional Court to safeguard the values and interests related to the functioning of the military establishment.

h. Also the prohibition of joining trade unions other than military ones responds to the same needs of safeguarding the peculiarities of the military structure. It should not be forgotten, in fact, how trade unions have a private nature, as they protect and promote the particular interests of their members. The oneness of the Armed Forces - which translates in the first place into the non-negotiable powers of command and related responsibilities- is the operational consequence of the necessity, which cannot be renounced in a democratic society, that those who hold the legal monopoly of force and means of coercion of citizens must be neutral regarding political dialectics and vested interests, such as economic and commercial ones, or those potentially supported by trade union associations also open to non-military personnel, which is why national legislation provides for and confirms the prohibition for military personnel in service (including that of the Guardia di Finanza) to join non-military trade union associations. Moreover, a restriction which, in addition to operating, for the same reasons, also with reference to the **Italian State Police** (civilian police force, which has lost its military status since 1981), is addressed in the same interest for the military personnel, by reason of the specificity that characterizes it, as widely recognized by national legislation. It is important to say that the economic and social interests of military personnel are different from the rest of the workforce, even in the public sector civil servants are regulated under public law **(Article 3 of Legislative Decree no.165 of 2001**), in fact, they remain governed by their own legal system which highlights its absolute specificity, also characterized by peculiarities in the content of the employment relationship, built on the basis of special and different rules compared to other workers. In any case, the number of military trade unions so far established is in itself a guarantee of the possibility, for any military personnel, to choose whether and by which association to have their individual rights safeguarded;

i. The limit to the forms of financing respond to the provisions of the Constitutional court regarding compliance with the principle of financial transparency. This, in fact, constitutes one of the limits identified in the current legislation to allow the launch of the new system pending the adoption of the regulatory provision and also responds to the constitutional principle of neutrality and transparency pursuant to Articles 97 and 98 of the Italian Constitution.

j. The limit of 5 years minimum seniority imposed on military personnel in order to become a union representative, as well as the provision of the maximum duration of the mandates, responds both to the need to ensure a minimum of knowledge of military life and of everyday problems, and to the purpose of not losing the basic training received,

and is far from being considered a ploy as to allow the military administration to control and eliminate "inconvenient" military trade unions.

k. Contractual issues coincide with those already subject to consultation with the military representation. In fact, they are almost comparable to those provided for the civilian state police force, except for those whose contents are directly "interfering" with the effective performance of the typical tasks of the military organization;

l. The draft law AS 1893 provides that the representativeness of military trade unions is measured on the effective strength (and not on the "unionized" one) in order to determine an effective and real consistent representativeness, in compliance with the peculiarities of the military establishment also recognized by the Constitutional court. Otherwise, if the parameter to which it was related had been the total of payment proxies issued in the section, the latter figure could have turned out to be much lower than the number of staff on duty, especially in the case of joint associations.

m. Also the provision of removing from the preventive authorization of the association the transfer due to incompatibility of soldiers who hold statutory positions responds to higher demands, and in particular to that of protecting, not only the personnel involved, but the prestige and correct functioning of the military administration, and to safeguard the principle of neutrality valid for all public administrations.

n. also the limitation of the matters that the military union leaders can deal with in their declarations to the press must be read in the particular context of reference, in the case of military personnel, as such subject to the specific duties provided for by the military system, such as the prohibition to speak publicly on confidential matters of military or service interest without prior hierarchical authorization (**Article 1472 of Legislative Decree N°. 66 dated 2010);**

o. The draft law AS 1893, in relation to the basic text and the amendments presented, provides, in fact, the transition from the old system of protection of the rights and interests of military personnel, consisting of military representation, to the new system of military trade union associations. This transition can only take place gradually, in order to allow the effective launch of the new system without interruption in the representation of military workers. But until then, and precisely for greater protection of personnel, military representation cannot be replaced by military trade unions, maintaining the role and tasks dictated by primary-level regulatory provisions (Legislative Decree No. 66 of 2010) and regulations (Presidential Decree no. 90 of 2010) still in force and not affected by the well-known ruling of the Constitutional Court, as also specified by the Council of State with opinion no. 2756 of 2018.

Paragraph 6

The assessment carried out by the CEDS on the recognition of the right to strike in favor of military personnel is completely incomprehensible, as an absolute incompatibility

emerges between the possibility for the military (including members of the Guardia di Finanza) to abstain independently from work and their duties when their obligations derive from military status, also confirmed through an oath by which the personnel performs the primary tasks of the military administration regarding national security and public safety, that are constitutionally guaranteed. The ban in question, in fact, responds to the need to preserve public order, national security and the rights and freedoms of all citizens.

However, one cannot fail to highlight how the CEDS, in its decision, has specified that it considers the national legislation not in accordance with the principle expressed by art. 6, para. 4, and art. G as to the absolute ban on strikes for military personnel, there is no "parallel measure - of minimum essential services and / or an effective negotiation or conciliation procedure". In this regard, it should be noted that the draft law on military trade union issues, in addition to replacing the consultation with the negotiation of the content of the employment relationship for personnel belonging to the Armed Forces and military police, introduces conciliation procedures, which can be activated by professional associations of a trade union nature between military personnel, in front of specially constituted commissions both at central level, at the Ministry of Defense and at the Ministry of Economy and Finance (only for disputes relating to the personnel of the Guardia di Finanza), and to peripheral level (not less than regional), for the amicable settlement of disputes of general and peripheral relevance respectively. Having said this, all the considerations taken up to date are reiterated, fully suitable to support the unquestionable legitimacy and compliance of the current condition of the employees of the Guardia di Finanza with the precepts of primary, constitutional and international status in force, we trust in the positive outcome of the delicate dispute in review given that Italy is not violating the precepts established in articles 5 and 6 (paragraph 2 and 4) of the European Social Charter.