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EUROPEAN SOCIAL CHARTER

Response by the Government of Italy to the comments submitted by the *Sindacato Italiano Lavoratori Finanzieri* (SILF) on the 22nd National Report on the implementation of the European Social Charter

Follow – up to the Collective Complaint No. 140/2016

Response registered by the Secretariat

on 2 October 2023

REPORT FOR FINDINGS 2023

In relation to the content of the observations produced by SILF, the elements provided with the "XXII Report on the application of the European Social Charter" and the "XXI Report on the application of the European Social Charter "submitted by the Government of Italy, are confirmed and recalled in full. (annexed to this report)

With regard to the considerations formulated by the SILF trade union organization, it is considered appropriate to point out, among other things, that:

In relation to the **procedure for registration in a specific ministerial register** of professional associations of a trade union nature between military personnel (hereinafter APCSM) established and for verifying the continuation of the requirements provided for by **law 28 April 2022, n.46**, hereinafter Law, **four APCSM** composed exclusively of soldiers of the Corps have been registered in the Ministry of Economy and Finance, called:

a)**S.I.M. - Guardia di finanza** ("*Sindacato Italiano Militari Guardia di finanza")*;

b) **SI.NA.FI.** ("*Sindacato Nazionale Finanzieri"*);

c)**U.S.I.F.** ("*Unione Sindacale Italiana Finanzieri"*);

d)**S.I.L.F.** ("*Sindacato Italiano Lavoratori Finanzieri"*).

Furthermore, four joint APCSM - **U.S.M.I.A**. were registered in the Ministry of Defense. ("Associated Military Interforce Union"), **S.I.U.L.M.** ("Military Workers Unitary Union"), **ASSO.MIL** ("Military Trade Union Association") and **S.U.M**. ("Single Union of the Military") - and also considering the Financial Police.

As far as the examination of the SILF, which complains of a sort of interference in the preparation of its statutory document by the Administration - which, in the specific case, would have imposed "an important modification" for the purposes of a positive evaluation for registration - the Department of general administration, personnel and services (DAG) of the Ministry of Economy and Finance (department responsible for managing the examination in question) has asked the association to adapt the statute as some provisions did not comply with the provisions of the law.

In this sense, the trade union organization made the requested changes without resorting to the ordinary administrative and jurisdictional remedies provided, and was consequently **registered on the 25th of May 2023.**

In this regard, it is reiterated that the Law delegates the investigation aimed at registering the APCSM to the competent Ministry, which proceeds to verify the compliance of the statutes with the expected subjective, objective and functional requirements, this is to guarantee impartiality with respect to the military administrations on which the personnel registered with the trade unions are directly employed.

This is an objective and non-discretionary verification of the possession of the requirements foreseen for professional associations of a trade union nature among soldiers due to the absolute specificity that characterizes the military system, which justifies, without calling into question the right to freedom of association, « the exclusion of forms of association deemed not to respond to the consequent needs of compactness and unity of the bodies that make up this system" (**paragraph 13.3 of the ruling of the Constitutional Court n.120/2018**).

To that effect, the principles to which the statutory documents of the professional associations of a trade union nature between military personnel must be "based", aimed at excluding forms of association "in fact" irreconcilable with the military administrations, are essential in order for the institutional tasks (of national security, public order, crime prevention) entrusted to the Financial Police are ensured in the most efficient way possible, in the paramount interest of the entire community;

With reference to the **prohibition for military personnel to join trade union associations other than those established pursuant to the Law**, it is worth highlighting that a similar limit is also foreseen for «members of the **State Police** [who, although not holding the status of military personnel,] cannot join unions other than those of police personnel, nor assume the representation of other workers" (**art.82, paragraph 2, of law n.121 of 1981**).

Furthermore, to speculate on the provision referred to in article 83, paragraph 2 of the aforementioned law no. 121 of 1981, according to which the state police personnel unions «cannot join, affiliate or have organizational relationships with other associations trade unions", is the limitation foreseen

for professional associations of a trade union nature among military personnel referred to in art. 4, paragraph 1, letter. i) of the Law. This limitation is aimed at ensuring the aforementioned principles of neutrality, impartiality and internal cohesion of the military administrations which, as mentioned, constitute necessary prerequisites to ensure that the tasks of national security, public order, crime prevention, entrusted to the staff of the Financial Guard of finance, are carried out profitably;

In relation to the impossibility for the APCSMs to participate in the negotiation/bargaining procedures, without prejudice to the provisions established by the law which subordinate this possibility to the identification of the representative APCSMs, the Minister of Defense himself, in a press release following the meeting held on the 8th of May 2023, between the aforementioned Government Authority and the APCSM enrolled in the register of the relevant Administration, " underlined that a process has been started **to involve the Associations to negotiations for the next contractual renewal"**.

As proof of this, **Legislative Decree no. 206 of 2022** was issued - adopted in implementation of the delegation conferred by art.16, paragraph 1, letter. d) and e), of **Law n. 46 dated the 28th of april 2022** which introduces provisions:

-to adapt the bargaining procedures for the personnel of the Armed Forces and of the Military Police Forces, according to models similar to those in force for the personnel of the Civil Police Forces, in compliance with the specificity of the respective regulations;

- concerning the composition of the delegations responsible for stipulating trade union agreements and the updating of the matters subject to negotiation;

- for the establishment of the so-called «negotiating areas» for the relevant managers;

In particular, it is envisaged, with reference to personnel:

- « under contract» (for the Financial Police, from financier to captain and equivalent ranks) of the military armed and police forces (whose negotiation procedures are governed by **Legislative Decree no. 195 dated 1995** ;

- that the renewal of the relevant contracts takes place with a trade union agreement, stipulated as a result of negotiations between a "public party" delegation (composed of the Ministers concerned and in which the top positions of the Administrations involved participate) and a trade union delegation (comprising representatives of the APCSMs representing the personnel concerned at national level);

- the inclusion among the matters subject to negotiation (in compliance with the regulatory provisions of **art. 9, paragraph 4, of the aforementioned law**);

- the "maximum quota" of **secondments** that can be authorized for each military Administration and the "maximum annual number" of paid trade union **leaves**.

-the "measure" of unpaid union leave and **time off work** that can be granted to union representatives.

Instead, the following are remitted:

- to the legislation to be adopted with the regulation implementing the Law (referred to in art. 16, paragraph 3) the information and consultation procedures of the representative APCSMs;

- the decision-making autonomy of individual military administrations in matters not subject to negotiation.

The "new" contractual regulations, as described above, will apply from the date of adoption of the first decree of the Minister for Public Administration with which the representative APCSMs will be invited to designate their representatives authorized to participate in the negotiation procedures as members of the union delegation;

-«manager» (from major to general of the army corps and equivalent ranks) of the aforementioned military administrations (whose negotiating discipline is provided in **art.46 of Legislative Decree no. 95 of 2017**).

- the establishment - within six months from the date of entry into force of the provision in question - of specific **"negotiating areas"** (separately for the managers of the Armed Forces and for those of the military police forces), within which regulate the regulatory institutions regarding the employment relationship and ancillary treatments;

- that the relevant trade union agreement - to be implemented with a specific Presidential Decree - is stipulated following negotiations between the "public party" delegations, composed of the Ministers concerned and in which the top positions of the Administrations involved, and the "union representatives" participate.

On this point, it is established that the aforementioned trade union delegations are made up of representatives - "of management-level" - of the APCSMs representative at a national level "also of the management staff" of the Administrations concerned. To this end, it is provided that the percentage measures for calculating the representativeness referred to in art. 13 of the Law refers "to management personnel only".

-a specific **«transitional»** regime, by virtue of which - until the adoption of the decrees of the Minister for Public Administration which identify the negotiating trade union delegations - the mechanism for extending the negotiation agreements stipulated between the civilian police forces and their respective unions remains unchanged.

With reference to the "**ban on the exercise of the right to strike"** for military personnel [the legitimacy of this ban was described in the context of the observations already submitted by the Authorities to which full reference is made], nonetheless the provision is necessary in order to avoid the implementation of trade union protest activities which, although not falling within the classic form of collective abstention from work, could nevertheless interfere with the regular performance of duties.

In this regard, it seems appropriate to reiterate that the ban on strikes for Armed Forces and police personnel responds to the need to guarantee the fundamental constitutional interests of citizens, in terms of adequate protection of the democratic institutions and defense of internal and external order safety and security , which cannot be placed on the same level of strengths and weaknesses typical of a collective workplace conflict.

In the light of such a personal limitation as well as the further peculiarities that characterize the employment relationship of members of the Administrations of the **"Security-Defense"** sector, the law recognizes the "specificity" of the status, with related valorization for the purposes, among other things, of an economic, pension and social security protection.

COUNCIL OF EUROPE. **COLLECTIVE COMPLAINT NO. 140/2016** REGISTERED WITH THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS BY CGIL (CONFEDERAZIONE GENERALE ITALIANA DEL LAVORO) V. ITALY RELATING TO THE ACKNOWLEDGEMENT OF TRADE UNION RIGHTS FOR *GUARDIA DI FINANZA* STAFF. **"*REPORT XXII ON THE APPLICATION OF THE EUROPEAN SOCIAL CHARTER*".**

INTRODUCTION: HISTORY OF THE CASE

On 15 November 2016, the Italian General Confederation of Labour (*Confederazione Generale Italiana del Lavoro*, CGIL) registered a Collective complaint (**Case No. 140/2016**) to the European Committee of Social Rights (ECSR) alleging a violation of Articles 5 and 6 of the European Social Charter by the Italian Government in relation to the circumstances of employees of the Italian Tax Police (*Guardia di Finanza*).

Under the scope of this case, CGIL asked the ECSR to declare violation of the specified Articles of the European Social Charter (ESC) by the Italian Government insofar as, specifically:

- members of the *Guardia di Finanza* are allegedly prohibited from establishing or joining professional and military or other trade unions **(violation of Art.5)**;

- no joint consultations are allowed between the members of the *Guardia di Finanza* and the Ministry for the Economy and Finance, as employer **(violation of Art.6(1))**.

- no voluntary negotiations are promoted between the military members of the *Guardia di Finanza* and the Ministry for the Economy and Finance to regulate working conditions through collective agreements **(violation of Art.6(2))**.

- members of the *Guardia di Finanza* are allegedly prohibited from exercising the right to strike **(violation of Art.6(4))**.

Upon completion of the procedure, the ECSR drafted its report whereby, in partly agreeing with the reasons of the complainants, it considered that Italian legislation governing military staff (both where considered as police officers and military status) violated Articles 5 and 6(2)(4) of the *revised European Social Charter*, despite the loss of effect of the prohibition to form trade unions or join other trade unions sanctioned by the Constitutional Court by the **known judgement No. 120/2018.**

In this regard, on 11 September 2019, the Committee of Ministers of the Council of Europe delivered Resolution CM/ResChS(2019)6 whereby, taking into consideration the observations submitted by the Italian Government in respect of such ECSR Report, it asked that the measures taken to bring the situation into conformity with the relevant provisions of the Charter be reported in the next report on application of the ESC.

Therefore, in its Report XX on the incorporation of the ESC, the Italian Government reported the progressive adjustment of national legislation to bring it into conformity with the provisions of such Charter, presenting, in particular, the contents of the bill of law, which established "*Rules governing the exercise of the freedom to join and form trade unions of members of the military and police forces and delegation to the Government for legislative coordination*", whereby it

allegedly set forth the lawful limitations *("conditions and limits")* to joining and forming trade unions for military personnel, which the Council, **in compliance with the parameters established** as underlying its decision (including Article 5 of the ESC), deemed "*necessary from a national perspective, to exclude the possibility of a regulatory gap, which would prevent the acknowledgement of the right to form and join trade unions*".

In acknowledging the report given by the Italian Government, however, the Committee considered that at least partly, the violation of Articles 5 and 6(2)(4) of the ESC continued to exist, asking that reference be made once again, in the following Report (XXII) on the parliamentary progress made on such bill of law and to provide more information on the contested aspects considered non-compliant with the ESC.

In **recalling and reiterating in full**, in these circumstances too, what had already been extensively explained in the **observations** specifically set forth in the brief dated 19 April 2019, **as also duly acknowledged by the Committee of Ministers of the Council of Europe**, it is now necessary to provide **additional, detailed, timely information** in response to the requests.

The **elements** detailed below will, once again, be **extremely useful in** clearly **demonstrating the correct application** and absolute **respect, by Italy, of the rules established** internationally **by Articles 5 and 6 (points 2 and 4) of the ESC**, and even more so after the articulated measures, very much desired over the years by the national legislator, aiming to launch a **unitary, innovative provision** on military associations and trade unions; indeed, recently, such efforts have resulted in the **approval of an "epochal" scope law, Law No. 46 of 28 April 2022**, provision published in Official Journal of the Italian Republic No. 110 of 12 May 2022 and, consequently, which **came into force on 27 May 2022**.

This is the law that, in compliance with the provisions of Art. 5 of the ESC, introduces *"the principle governing the application to the members of the armed forces* [of these organisational] *guarantees"* and determines *"the extent to which they* [shall] *apply to persons in this category",* conditions that are necessary in order to safeguard the neutrality and impartiality of the armed forces, in compliance with Articles 52, 97 and 98 of the Italian Constitution, whose importance for the national legal system is such as to set them as "counter-limits" to the international obligations with which domestic law must conform in accordance with Art. 117 of the Constitution. They are, in fact, necessary, essential instrumental conditions, just like internal cohesion and operative readiness, by which to assure the effectiveness of the action of the military force set up to protect a "primary" (constitutional) value, namely the defence of the country and its citizens (in complete compliance with the principle laid down by Article G of the *European Social Charter*).

More specifically, the provision approved, with which the Legislator sought to achieve a reasonable balancing of juxtaposed interests, all of constitutional relevance, envisages:

a. the possibility for military personnel to form professional trade union associations and to join such freely, in compliance with the limits and conditions legitimately applied **(Art.1)**;

b. the principles with which the associations must conform, including, in particular, the democratic nature of the organisation (to be achieved through the elective nature of offices), neutrality, the absence of the pursuit of profit and purposes incompatible with the obligations arising from their oath **(Art.2)**.

c. the transcription of the associations in a specific register held by the Ministry of Defence (for associations referring to the armed forces, including the *Carabinieri* corps) and by the Ministry of Economy and Finance (for the reference associations of the *Guardia di Finanza*), after verification that the legal requirements are met by means of a procedure also regulated by the law, including as regards timing **(Art.3)**.

d. certain limits to the activity of military trade union associations, essential in order to guarantee the institutional function and compliance with the principles confirmed by the Constitutional Court (and indeed the law) as necessary to the purpose **(Art.4)**, including the regulation of the forms of financing **(Art.7)**.

e. the collective protection of the rights and interests of personnel in the matters of competence of military trade union associations, duly listed by the provision **(Art.5)**, the definition of the peripheral dialogue level with the military administration **(Art.6)** and acknowledgement of the right of assembly, with the possibility of doing so during service hours, for up to 10 individual hours per year **(Art.10)**.

f. the rules relating to association roles, also necessary to safeguard the specific needs of the military forces **(Art.8)**.

g. the criteria for identifying representative associations **(Art.13)**, which have:
   - powers of negotiation, given that those associations will make up the trade union delegation acting as counterpart to that of the public employer in defining the contents of the contract of employment of military personnel **(Art.11)**.
   - rights of prior information about the contents of circulars and directives to be issued in relation to the matters of their competence **(Art.12)**.

   facilitation of the exercise of trade union activities, through the provision, in the favour of military personnel holding managerial roles, of paid union transfers and permits **(Art.9)**, as well as of specific forms of protection **(Art.14)**.

h. forms of publicity of association activity (resolutions, etc.), acknowledgement of the possibility, for union managers, to make declarations to the press, exclusively on the matters of competence, and the inclusion, in the teaching subjects at all levels of military training, of *"elements of labour law and trade union law in a military context"* **(Art.15)**.

i. some delegations to the Government for decreeing descending details **(Articles 9 and 16)**.

j. the submission to the administrative court of military union disputes, potentially preceded by a conciliation attempt brought before Commissions specifically established at a central and peripheral level **(Articles 17 and 18)**.

k. the abrogation of Military Representation only at the end of a transitional period that is necessary to offset any interruption in the protection of the rights and interests of military personnel, allowing for the concrete start of the new system of military union associations and envisaging the switch from the old system to the new one when the "negotiating delegation" is formed for the first contracts **(Art.19)**.

Matters relating to the **military system**, **training**, **operations**, the **logistics-operative sector**, the **hierarchical-functional relationship** and use of personnel in service are in any case **excluded** from the competence of the APCSM (professional military trade union type associations).

Associations have the faculty to:

- **present** the competent Ministries with **observations** and **proposals** on the **application** of **laws** and **regulations**, reporting the initiatives for any **changes** as may be considered appropriate.

- be **heard** by the **Parliamentary Commissions**.

- ask to be **received** by the **competent Ministries** and **senior bodies** of the reference administrations.

THE REGULATORY IMPACT ON THE VIOLATIONS RECORDED BY THE COMMITTEE. THE TRADE UNION RIGHTS OF MILITARY PERSONNEL **(ART.5 OF THE *EUROPEAN SOCIAL CHARTER*)**.

After examining Report XX, the Committee noted the continued violation of Art. 5 of the ESC and asked for detailed insights into the procedure for registration of military trade union associations today envisaged by Art. 3 of Law No. 46 of 2022 and in respect of the prohibition of joining non-military trade union associations.

a. Registration with the Ministry register of military trade union associations

In the 2019 report on complaint No. 140/2016, the ECSR informed the Italian Government that it believes that the provision for the prior Ministerial consent to the establishment of associations or clubs between military personnel, at the time envisaged for all types of unions (regardless of nature) and considered by the Council as necessary *a fortiori* for military trade unions, deprives such personnel of the freedom to *"establish organisations [...] to protect their social and economic interests"*. The new law on military trade union associations has therefore envisaged **the express derogation from the obligation to obtain prior ministerial consent to the establishment of trade union associations only**, which are today accordingly able to be freely established. However, in complete compliance with the principle

laid down by Articles 5 and G of the *revised European Social Charter*, the exercise of the pertinent activity is subject to registration with a register specifically established by the Ministry of Defence or the Ministry for the Economy and Finance (limited to associations for *Guardia di Finanza* personnel only).

This legitimising condition, moreover, is backed by the constitutional Charter, where, under Art. 39 envisages, generally, for all trade union organisations, the possibility of establishing an obligation to registration, on the condition that their internal organisation is established on a democratic basis. And if this is true for civil trade unions, for military trade unions it becomes essential: the imposition with primary legislation of a legitimising condition (consisting of registration with the special register) must also entail forms of control that the relevant requirements are met, in order to satisfy such condition.

The new legislation, therefore, in making registration compulsory, has duly regulated the administrative procedure established to this end, including potential legal remedies in the event of a negative outcome.

Art.3 of Law No. 46 of 2022 in fact establishes that:

- within 5 days of being established, professional military trade unions shall deposit their statutes with the reference Ministry (Ministry of Defence or Ministry for the Economy and Finance);

- the competent Ministry will have 60 days within which verify (objectively, without discretion) that the legal requirements are met;

- if the legal requirements are met, the Ministry shall rule on the registration of the association, which from that point on shall be fully entitled to perform trade union activities in the manners envisaged by the law;

- if any statutory provisions should be noted that are in conflict with the law, the Ministry shall promptly notify the applicant association, which shall have 15 days within which to submit any relevant formal, written observations. The Ministry shall then have a further 30 days within which to issue its final ruling;

- as it is an administrative measure, the association can seek the ordinary remedies envisaged by the national legal system (petitioning the administrative court, which, by virtue of Art. 17 of Law No. 46 of 2022, will rule with the abbreviated trial procedure pursuant to Art. 119 of Legislative Decree No. 104 of 2010, or extraordinary petitioning of the President of the Republic in accordance with Articles 8 *et seq.* of Presidential Decree No. 1199 of 1971) to appeal against the Minister's final ruling.

In this regard, the danger of *"arbitrary refusal of registration"* is extremely remote, considering the fact that the control assigned to the Ministry is intended, where successfully passed, to allow for registration and is linked to the provisions of the law (which, as seen, is extremely detailed), without any room left for discretion.

b. The prohibition on military personnel to join non-military trade unions

In its report on complaint No. 140/2016, the ECSR considered the prohibition on military personnel to join non-military trade unions was *"disproportionate since it deprives them of an effective means to assert their economic and social interests, which is not therefore necessary in a democratic society"*, further declaring that in this way, the offer of representativeness for such personnel was excessively limited and not fitting.

In this respect, it should not be forgotten, first and foremost, that trade union associations (including military ones!) are private in nature, insofar as they protect and promote the *specific* interests of their members. The compactness of the armed forces - which first and foremost results in the non-negotiability of the attributions of command and related responsibilities - is the operative consequence of the need, there again essential for a democratic society, for the party with the legal monopoly over the force and means of coercion of citizens to **always, in any case and circumstance, remain neutral with respect to political dialectics and the party's interests**, namely economic and commercial, or those potentially supported by trade union associations also open to non-military personnel.

In addition, in pointing out how this provision directly meets with the principle of neutrality of military organisations, it should be clarified that Law No. 46 of 2022 (Art. 1(1), which novates Art. 1475(2) of the Military Code) allows for the establishment of military trade union associations that are not necessarily limited to a single armed force or military police force, but rather, which are also open to joint forces (and which potentially also allows both Armed Forces and *Guardia di Finanza* personnel to join), thereby indefinitely extending the choice of associations personnel can choose to join, to protect their collective interests and rights.

Moreover, it must be considered that the provision for a "closed" union system, again dictated by the necessary respect of the principle of neutrality in specific contexts, is not new to the national legal system, as it has existed for some time now in other civil contexts (e.g. the *Polizia di Stato*, which is the civil general police force, for which Art. 82 of Law No. 121 of 1981 establishes *"Members of the Polizia di Stato are entitled to join trade unions. They cannot join trade unions other than those established for police personnel, nor* ***represent other workers****").*

Nor can the fact be ignored that the potential joining of non-military trade unions would constitute a sort of *escamotage* by which to avoid the lawful limitations to military trade union associations, imposed in compliance with the principles of Art. 5 of the ESC.

In this respect, it should also be noted that the absolute specificity of the military system in particular and the specificity of the defence - security - public safety sector in general (this latter being expressly recognised by Art. 19 of Law No. 183 of 2010) also results in the specificity of the contents of the contracts of employment of such personnel, regulated in a completely different way to what would be termed "contracted" public employment.

For defence-security sector personnel, in fact, the procedure involved in negotiating a renewal of contract is expressly regulated by Legislative Decree No. 195, by way of example,

for defence-security sector personnel, the renewal of the contents of the contract of employment:

- concerns only the matters indicated positively by Articles 3, 4 and 5 of the specified Legislative Decree No. 195 of 1995;

- takes place through a trade union agreement reached between the delegation of the public party (made up of the Ministers indicated at Art.2 of said Legislative Decree No. 195 of 1995) and that of the trade union (made up of the unions representing the police forces and, today, the representative military trade union associations);

- becomes executive following the incorporation of the trade union agreement reached into Decrees of the President of the Republic.

By contrast, for "contracted" public employment, renewal of the contract of employment:

- takes place upon completion of the negotiations in which the Ministers concerned do not participate on the public employer side, but rather the Italian Agency for the contractual representation of the Public Administration (ARAN);

- covers all aspects relating to the contract of employment, with the exception of a few residual subjects specifically listed (Art. 40 of the specified Legislative Decree No. 165 of 2001);

- results in a trade union agreement that constitutes the reference national collective agreement not incorporated into regulatory deeds.

Therefore, clearly any involvement in negotiations for the renewal of the contract of employment of defence/security sector personnel of an extraneous trade union organisation would not assure greater negotiating power precisely due to the specificity and nature of the sector in question.

That set forth thus far, therefore, shows, without doubt, complete compliance with the principles laid down by Art. 5 of the ESC, including in respect of the prohibition on military personnel to join external trade unions.

THE REGULATORY IMPACT ON THE VIOLATIONS RECORDED BY THE COMMITTEE. THE RIGHT TO BARGAIN COLLECTIVELY **(ART.6 OF THE *EUROPEAN SOCIAL CHARTER*)**

In its report on complaint No. 140/2016, the ECSR claimed that there was violation of Art. 6(2) of the ESC insofar as, according to the legislation in force at the time, the contents of the contract of employment of the *Guardia di Finanza* personnel (and of military personnel in general) was not determined as a result of a collective bargaining procedure but rather was agreed by the Ministers involved (the public employer) with the participation, in representation of personnel, of representatives of the Central Military Representation Council and then incorporated by a Decree of the President of the Republic.

On this basis, the ECSR considered that there was no effective negotiation of the contents of the contract of employment, a situation that was made even less effective by the absolute prohibition of the exercise of the right to strike for military personnel, intended as a tool by

which to strengthen the negotiating power of the workers' representatives, with consequent alleged unjustified violation also of Art. 6(4) of the ESC.

a. The negotiating power recognised to military trade union associations

With the coming into force of Law No. 46 of 2022, the representative military trade union associations were in fact **acknowledged** as having **full power of negotiation** in determining the contents of the contract of employment of military personnel, ensuing from collective bargaining (to be incorporated into two separate Decrees of the President of the Republic, one for the armed forces and one for the military police force) between the public employer delegation (consisting of the reference Ministers) and the trade union delegation (as mentioned, representatives of the recognised, nationally representative military trade unions), according to procedures borrowed from the regulations currently in force for civil police forces (Art. 11 of Law No. 46 of 2022, which recalls Legislative Decree No. 195 of 1995, for non-managerial personnel and Art. 46 of Legislative Decree No. 95 of 2017, for managerial personnel).

Moreover, the Committee requested clarification as to the recognition of negotiating power to military trade unions, or its conferral to the military representatives whilst awaiting approval of Law No. 46 of 2022.

In this respect and in once again reiterating that the contents of Art. 11 of such legislative provision have made the national legal system compliant with the provisions of Art. 6(2) of the ESC, it should be clarified that what the Committee had requested would not have been possible without specific regulatory provisions, as the matter is entirely regulated by primary law (the specified Legislative Decrees No. 195 of 1995 and No. 95 of 2017), as confirmed, back in 2018, by the Council of State too (opinion No. 2756 given on 23 November 2018).

b. The prohibition on the exercise of the right to strike for military personnel

As mentioned, the ECSR considered the absolute prohibition of the right to strike of the *Guardia di Finanza* personnel as disproportional, insofar as it is a tool that is intrinsically linked to collective bargaining and, therefore, to be granted at least in the minimum form envisaged for public employment (consisting of the guarantee of what are termed "minimum essential services"), or through alternative institutes such as *"an effective procedure of negotiation or conciliation"*.

In this regard, it must be stressed that this assessment is entirely incomprehensible, as there is **an absolute incompatibility** between the possibility, for the military personnel (including members of the *Guardia di Finanza*) to abstain autonomously from work and the duties and obligations deriving from the status of military personnel, confirmed by oath and whereby the personnel carry out the military duties of defending the country and its citizens, protecting the constitutionally-guaranteed assets.

The absolute exclusion of this right, in fact, fully satisfies the institutional need to safeguard the specific characteristics of the military organisation and the fact cannot be ignored that the national system excludes the right to strike for the civil police force too (Art. 84 of Law

No. 121 of 1981 for *Polizia di Stato* and Art. 19 of Law No. 395 of 1990, for *Polizia Penitenziaria* (Prison Officers), without any complaints ever having been made as to the limitation of their bargaining power).

This provision, moreover, is also in line with the previous approach taken by the ECSR, which considered the prohibition on the exercise of the right to strike for military personnel to be legitimate, as long as prescribed by law, insofar as necessary to maintain the institutional duties of defending the democratic order and, in particular, to maintain national security and public order and the morals and freedoms of others (see complaint No. 112/2014 "**EUROMIL vs Ireland**", paragraph 117: *"... therefore and having regard to the specific nature of the tasks carried out by members of the armed forces, the special circumstances of members of the armed forces who operate under a system of military discipline, the potential that any industrial action could disrupt operations in a way that threatens national security, the committee considers that there is a justification for the imposition of the absolute prohibition on the right to strike set out in section 8 of the 1990 industrial relations act. The statutory provision is proportionate to the legitimate aim pursued and, accordingly, can be regarded as necessary in a democratic society".*

Therefore, in order to preserve the operative readiness of the military organisation (of which, it is stressed, the *Guardia di Finanza* personnel are members), the prohibition of the exercise of the right to strike, already set forth in the ***Military Code*** (**Art. 1475(4) of Legislative Decree No. 66 of 2010**), has also been confirmed by the repeatedly mentioned **Law No. 46 of 2022 (Art. 4(1), letter b)**, under the scope of the prohibitions applying to military trade unions, on the basis of that expressly confirmed *in primis* by the Constitutional Court (called to rule by the Council of State with the known **judgement No. 120 of 13 June 2013**), which, in establishing the limits of military trade union action, clarified that it should *"in any case be recalled that there is a prohibition of the exercise of the right to strike. This is without doubt a major impact on an essential right, affirmed with the immediate implementation of Art. 40 of the Constitution and always recognised and protected by this Court,* ***but justified by the need to guarantee the exercise of other freedoms that are no less essential and to protect constitutional interests****".*

There is therefore no doubt that the alleged violation of Art. 6(4) is not grounded ~~insofar as~~ it comes under the scope of the matters sanctioned by Article G of the ESC to the extent that it is prescribed by law and "*necessary, in a democratic society, for the protection of the rights and freedoms of others*" and "*for the protection of the public order, national security, public health, or morals and to protect the country".*

It should also be pointed out that the prohibition on striking of the armed and police forces comes under the context of the articulated **system of guarantee created** in Italy **as a bastion and safeguard of the essential rights of all citizens**, aiming to assure and protect the **essential interests of the national community**.

The consideration is clear on which basis, in an effectively democratic society, suitable protection of public and national order and safety must be guaranteed. In this respect, the **national defence and public safety segment cannot**, nor indeed should, **be assessed similarly to any other public service**, given their unique specificity.

It is by no coincidence that the Constitutional Court established to guarantee constitutional rights - by its **judgement No. 449** given on 17 December **1999** - highlighted the special nature, in the context of public employment, of the Italian **armed forces** and its members (classed as having military status), which ***"differ from other government structures"*** insofar as they must act in compliance with the need to guarantee the specific ***"needs of organisation, internal cohesion and maximum operation"***.

Indeed, if in other public sectors, the regulation governing the calling and conduct of **strikes** (assuring a minimum service level) allows citizens to organise themselves in any case to go about their activities, **in the public safety sector**, to put it simply, such a possibility **would result**, *ex se*, in the radical **elimination** or, in any case, a significant weakening **of the effectiveness of the measure to deter and repress crime**, thus guaranteeing anyone intending to commit a crime the awareness of running a lesser risk of being identified and punished. Not to mention the lesser possibility of preventing more serious crimes, such as those against human life.

In comparative terms, moreover, **all the main European legal orders** limit the right to strike in the defence and security segment similarly to Italian legislation.

This principle derives from the very reason for which the armed and police forces exist: the concrete method of exercising the freedom to join trade unions must be carefully balanced with the essential tasks of protecting public safety and order and national defence.

In light of all of the foregoing, it is believed that the **absolute legitimacy, proportionality and necessity of the current legislation in force in Italy on the** absolute **prohibition of striking for military personnel** and members of the **police forces**, as per Art.1475(4) of the Military Code has been indisputably shown, as it is an essential, fundamental principle of guarantee, protecting the whole of the country system.

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.

EVALUATIONS AND COMMENTS ON THE OBSERVATIONS PRODUCED BY **S.I.L.F.** (Sindacato Italiano Lavoratori Finanzieri) IN ORDER TO THE "XXI REPORT ON THE APPLICATION OF THE EUROPEAN SOCIAL CHARTER" (EDITION 2021).

Preliminarily, from a "subjective" point of view, it is noted that the request of the SILF is presumably inadmissible, made by a party lacking - unless proven otherwise, not provided here - of representativeness pursuant to letter c) of article 1 of the Additional Protocol of the European Social Charter on the collective complaint system.

It is evident that in its document SILF carries out a critical examination of **law n.46 dated 28th of April 2022**, focusing on aspects and issues that have actually already been addressed and properly examined during the long and articulated parliamentary process of approval of the aforementioned provision, during which extended rounds of hearings were also held which also involved the CO.CE.R., the newly formed APCSM as well as organizations representing civilian workers and other sector associations.

Specifically, with regard to:

The Issue concerning the provision of a **closed trade union system** responds to the need for internal cohesion and neutrality of the military forces. Moreover, a similar limit is also provided for the State Police, which is a civil police force but with general competence (unlike the Penitentiary Police, cited by the SILF, which has sectorial jurisdiction), whose staff can join trade unions exclusively aimed at belonging to that police force (Article 82 of Law No. 121 of 1981, according to which "The members of the State Police have the right to associate in labor unions. They cannot join trade unions other than those of the police personnel or assume the representation of other workers".

The **prohibition** for the students of the basic training courses of military schools and academies to enroll in the APCSM (Article 1), stems from the need to guarantee the performance of the (indispensable and mandatory) initial training and the pre-eminent interest in study and didactic continuity of the activities, within which the **law n.46 / 2022 foresees**, moreover, the inclusion of the teaching of "elements of labor law and trade union law in the military field" (in the following art. 15).

The **legal status** of "Cadets" as such, are not yet bound by an employment relationship within the military administration, so much so that, for example, they dot not even receive a salary determined as a result of negotiation / concertation procedures , but a daily wage established by law (art.1798 of the COM). It is therefore clear that the registration ban only applies to military personnel who have the legal status of cadets.

The circular of the Ministry of Defense which dictates the first implementing provisions of the aforementioned law n. 46 of 2022, where it highlights that "the limitations on the

exercise of trade union freedoms towards "cadets" (Article 6, paragraph 1) must be understood as referring to staff attending a **basic training course** at Schools, the Military academies or other training bodies without holding any of the degrees provided by the system of the Administration to which they belong "

In any case, it should be considered that the prohibition of enrollment in the APCSM for the aforementioned purposes would exist only for a **limited period** immediately following enrollment (six months for student financiers and student inspectors and two years for student officers).

This foreclosure is also extended to military staff who have passed through the categories of reserve and absolute leave, as they can carry out other work activities, so that the provision of their adherence to the APCSM would involve circumventing - on a substantial level - the principles expressed by the Constitutional Court with ruling n.120/2018, regarding the exclusion of non-military personnel from these associations.

In this regard, the State Council, with its opinion n.2756 / 2018 , highlighted that "the limitation to military personnel in active and auxiliary service appears consistent with the nature of the associations and **does not conflict** with the principle of **freedom of association.** In fact, the rule under examination (Article 1475 of Legislative Decree no.66 / 2010), as interpreted by the ruling of the **Constitutional Court**, includes the qualification of associations as professional, so as to connote a foundation in the exercise of the duties of 'current or at least potential institution with a reasonable probability of effect (for the auxiliary), which cannot be found either for military reserve personnel or, much less, for those on leave ".

The need for the activity of the **APCSM** (trade union professional associations between military personnel) to comply with the principles of **internal cohesion**, **efficiency, neutrality** and **operational readiness** of the military administrations, the Constitutional Court itself, in the context of ruling n. 120/2018, specified how :

1) the aforementioned principles constitute **necessary and indispensable instrumental preconditions to ensure the effectiveness of the action of the armed and police forces** with military regulations, aimed at protecting a value of the order of a supreme and primary nature, which is the military defense of the nation.

2) the **restriction imposed on the trade union freedoms** of military personnel pursue a **legitimate aim**, having regard to the tasks and purposes of the relevant institutions, which are based on internal cohesion and on the hierarchical order, which would otherwise risk being compromised by internal conflicts;

3) **the prohibition for the military personnel to join other trade union associations** (other than those made up of members of the military armed and police forces) is justified by the specificities of the military system which implies, among other things, the need to avoid inadmissible conditioning in the pursuit of institutional goals.

Precisely by virtue of the **uniqueness and specific nature** of the military system, the APCSM constitute a "**new model of trade union**" not comparable to those traditionally already exsisting, which has been regulated by a provision of legal status which establishes, positively, **the rights and the prerogatives.**

For the purpose of guaranteeing the protection of other primary values which are also of constitutional rank (such as the principles of democracy, transparency and participation), the **full legitimacy**, as well as the absolute **reasonableness**, of some **limitations** imposed derives in a clear and unequivocal manner to all military personnel and, consequently, to the related APCSM.

Even in carrying out the trade union role the military staff are however bound primarily by the peculiar juridical status, which implies compliance with the duties deriving from the **sworn oath.**

"**The power of control and interference in the exercise of trade union freedom**" which would be attributed to the Administrations from the wording of the law and which "essentially and perennially subjects the unions of the Guardia di Finanza to the dominion of the Government", **has no legal basis** in the rationale of the provision which, on the other hand, complies with the principles established by Judges of the law, where it was clearly highlighted that, with reference to the constitution of the APCSM, "the uncensored provision of art. 1475, paragraph 1, of the legislative decree n. 66 of 2010, according to which "The constitution of associations or clubs among military personnel is subject to the prior consent of the Minister of Defense". This is a general condition valid for those of a trade union nature, both because they are of the kind considered by the law, and because of their particular relevance ".

In this regard, it should be noted that **article 39 of the Italian Constitution** draws up a mechanism which, although never implemented, should have allowed registered unions (paragraph 2), and therefore equipped with an "internal system on a democratic basis" (paragraph 3), to acquire legal status and conclude collective agreements "with mandatory effect for all members of the relevant category" (paragraph 4).

In this sense, **the registration of the established APCSM** in the register constitutes a condition to be met in order to accomplish and fulfill their interests in relating with the relevant Administration.

Furthermore, the provision according to which the procedure for verifying the compliance of the statutes with the requirements of the law in preparation for registration in the ministerial register and the subsequent periodic control are entrusted to the relevant Ministries, is to be understood, contrary to what is asserted by the party, as a guarantee of impartiality with respect to the military administrations on which the personnel registered with the trade unions directly depend.

The reference not only to **announcing a strike** but also to actions to replace it, without however any indication of what these replacement actions are, with obvious worrying implications for the real possibility of an overlap - and therefore prohibited - freedom to express ones thought, it should be noted that the provision of the aforementioned prohibition is necessary in order to avoid that union activities related to disputes, although not falling within the classic form of collective abstention from work, may still interfere with the regular performance of the work to be carried out by military staff.

In this regard, it seems appropriate to reiterate - as already widely anticipated - that the ban on strikes for the personnel of the Armed Forces and police responds to the need to guarantee the fundamental interests of citizens, in terms of adequate protection of democratic institutions and defense of the order and internal and external security, which cannot be placed on the same level of the typical labour market collective conflict relations. This forecast is also in line with previous guidelines of the CEDS itself, which considered the ban on exercising the right to strike legitimate for the military personnel required by law, as necessary for maintaining of the high institutional functions of defense of the democratic order (see **complaint n°. 112/2014 "EUROMIL Vs Ireland"**, para. 117: "…*therefore and having regard to the specific nature of the tasks carried out by members of the armed forces, the special circumstances of members of the armed forces who operate under a system of military discipline, the potential that any industrial action could disrupt operations in a way that threatens national security, the committee considers that there is a justification for the imposition of the absolute prohibition on the right to strike set out in section 8 of the 1990 industrial relations act. The statutory provision is proportionate to the legitimate aim pursued and, accordingly, can be regarded as necessary in a democratic society*").

Faced with such a personal limitation as well as the additional peculiarities that characterize the employment relationship of members of the Administrations of the "Security-Defense" Section, the law recognizes the **"specificity"** of their status, with related enhancement carried for purposes, including, **economic protection, pensions and social security.**

In relation, then, to the identification of limits to the hiring of the representation of individual categories of military personnel, the same responds to the need to avoid internal conflicts between different roles and possible gaps in the protection of certain categories of personnel with respect to others, profiles, these, that are likely to undermine the internal cohesion and functionality of the military administrations.

Similarly, **the ban on "creating federations, affiliations or relationships of an organizational or conventional nature with trade unions other than those of military personnel"** is aimed at ensuring the aforementioned principles of neutrality, impartiality and internal cohesion of military administrations, avoiding that, through the establishment of these relations, on the one hand, the prohibition for members of the military armed and police forces to join trade unions other than those of a military nature

is potentially violated and, on the other, cause potential problems in terms of incompatibilities, in relation to the possibility that the agreements in question can be stipulated with profit-making entities (and this applies in particular to the APCSM representing the staff of the Guardia di Finanza).

The **"prohibition to interfere** with the **regular performance of institutional services"**, the same, as repeatedly highlighted, is absolutely justified by the particular needs of **efficiency** and **operations** of the military organization.

Likewise, the **exclusion** of some **matters from the competence of the APCSM** "without making substantial changes" compared to those of the Military Representation is not "motivated with the aim to confine the interaction between public administrations and trade unions to the sole contractual purpose" as asserted by SILF , but it is aimed at **safeguarding** - in the **exclusive public interest** - the aforementioned needs, to which these matters are indissolubly connected.

In fact, if the purpose of the union in general is the representation and protection of the collective interests of the category of workers to which it refers to, such principle must be brought back (in compliance with art. 5 of the European Social Charter) within the context of reference, namely the military system. It is therefore necessary to achieve **the right balance** that allows to represent and protect the collective rights and interests of military personnel without causing harm to the performance of **high institutional functions** to be carried out by members of the military armed forces.

The statement according to which the law provides for **"territorial articulations**, **which however would not seem** comparable to regional ones, provincial trade union structures or other territorial structures, endowed with their **own autonomy"**, does not find any legal basis given that the law without prejudice shall not affect the right for the APCSM to **establish territorial articulations at any level** and to **define their competences** in the relative statutes. The provision referred to in paragraph 3 of article 6 introduces, rather, a level of dialogue "not lower than the regional level" in order to regulate the **dialogue between** the APCSM and the military administrations, identifying a place of confrontation with the aforementioned peripheral articulations - also in terms of uniform application at the local level of national sectorial collective bargaining - so as to avoid burdening the central structures of military administrations for dealing with issues of merely peripheral importance.

Moreover, any provision aimed at allowing a direct comparison with the lower command levels could have resulted **in multiple and uncoordinated flows of communications**, with **uneven applications** of the same provisions. This negatively affecting the efficiency of the administrative action of the various military institutions and causing likely effects of "disorientation" for the military staff;

The **ban on "receiving inheritances or bequests, donations or subsidies in any way"** is necessary in order to ensure compliance with the principle of neutrality

referred to in Articles 97 and 98 of the Constitution and so that the financing of the APCSM meets the criteria of **absolute transparency** of the means of financing and exclusive referability to the members.

It is therefore essential that the associations support themselves autonomously with the contributions of the members, with the **absolute exclusion of any external financing** that could affect trade union activity through the influence of forces and interests divergent to the military structure, possibly antithetical to the aforementioned principles of democracy and neutrality.

These claims appear increasingly compelling for the Italian financial police force/custom officers such as the Guardia di Finanza;

The **requirements** of the military staff who intend to hold **elective positions** in the APCSM , it should be noted that having carried out service activities for a minimum period allows union representatives to acquire **adequate experience** and **knowledge** of the **dynamics** of the military administration to which they belong, ensuring the most effective **safeguarding** of their collective rights and interests to all members of the associations.

In line with the aforementioned reasons, the provision of a **maximum duration** of **managerial appointments** (equal to four renewable years) is based on the need to guarantee an **adherent knowledge** of the changing problems subject to trade union protection, while avoiding the deterioration of the technical information of high profile of the personnel concerned, ensuring the maximum efficiency and professionalism of a modern military instrument.

On the other hand, as regards **the exclusion** of eligibility for personnel subject to **state disciplinary sanctions**, this is **consistent** with the function of the measures in question, which entail the termination (temporarily or definitively) of the employment relationship at hand. This provision, therefore, relates to breaches of regulations that make it irreconcilable (even if only temporarily) the stay of the individual within the military administration.

The absence of any limitation to the eligibility of personnel to the managerial positions of the APCSM would be completely inconsistent with the sensitivity and relevance of the role entrusted to these experts, who would thus be authorized to represent the staff and to deal with the Administrations (in all the envisaged locations, including the contractual one) despite being in incompatible conditions of status that are with active service (by way of example, suspension from employment, convicted of non-culpable crimes, etc.).

Therefore, the allegations made by SILF (which are serious) about possible arbitrary uses of the **inspection powers** by the Military Administration aimed at initiating criminal proceedings pretexts whose purpose would be to determine the forfeiture of the "inconvenient" manager of the APCSM: the principle of neutrality, transparency and good

performance is unequivocally imposed on the Administration by the Italian Constitution itself (articles 97 and 98) and constitutes its founding basis.

The "**provision for the equalization of the posting to service activity**", cannot in any way be admitted as it would allow the advancement of soldiers in trade union activity (up to the rank of lieutenant colonel or equivalent) on the basis of only minimum periods of seniority, regardless of the other requirements and inclusion in rates and advancement frameworks, in excess of the number of promotions established annually.

This is a **claim** of unjustified favor for the military staff concerned, **in contrast** to the current **system of promotions** to the higher military rank (in particular for the personnel of the officer category), which in addition to the minimum periods of seniority also provides for other requirements accrual for the purposes of career progression (eg: periods of command; degree title; etc.) as well as access to certain military ranks through a specific merit scrutiny (so-called "optional" advancement).

The number of maximum promotions that can be conferred annually, set by law, also responds to the need to ensure a harmonious career development of personnel, taking into account the limits imposed by the military structure, characterized by a "pyramidal" configuration.

As regards the provision of **limits to the duration of posting** and unpaid **trade union leave** of personnel who hold managerial positions in the APCSM, this necessary in order **to avoid the progressive de-skilling** of those who take on a trade union role sine die, with consequent detriment to the efficiency of military administrations. Moreover, the provision of a period of active service between each posting or unpaid trade union leave allows the staff in question to maintain an effective and updated knowledge of the changing problems subject to collective protection.

In any case, the possibility of making use of paid trade union posting, leave and permits, as well as unpaid trade union leave and permits will be established within the limits of the quota set by decree adopted by the Minister for Public Administration to be issued pursuant to article 16, paragraph 4 , of the aforementioned law no. 46 of 2022 "after consulting the Ministers of Defense and the Ministers of Economy and Finance […], and trade union professional associations among the military administrations".

The **procedures for carrying out trade union meetings**, the law provides that these are **agreed with the Commanders in order to make them compatible with the needs of military service activity**. The authorization required by law, far from exercising a "preventive control" as improperly asserted by SILF, has rather the purpose of **facilitating the orderly conduct of the meetings** in question, in the event that the use of the premises is required by the Administration, also due to any simultaneous service needs.

The lack of **minimum recognition of contractual matters comparable to that of the police forces**. For example, without any competence in the articulation of working hours, this is justified by the need to guarantee the **operational, organizational and functional needs** of the military administrations, which must have the necessary flexibility in regulating these aspects according to the contingent needs connected to the performance of the relevant and delicate activities assigned.

The provision of **consultation** on the articulation of the **working hours** (that is, on the methods of daily work and duty shifts) of military personnel would have constituted an element of **strong rigidity** with respect to the need to ensure permanently and in all conditions - in the exclusive public interest - a device aimed at guaranteeing **national defense** and the maintenance of **public order** and **security**.

The **procedures and matters subject to information and consultation** by the military administrations, these will be properly **laid down** in the regulation to be issued pursuant to Article 16, paragraph 3, of Law 46 of 2022;

The statement according to which "throughout the working world, both private and public (including the State Police)", **representativeness** "is calculated on the total number of personnel as trade unions members", this **does not correspond to the truth**. In fact, article 43, paragraph 1, of Legislative Decree no. 165 dated March 30th 2001, containing "General rules on the organization of work for those employed by public administrations", allows "to national collective bargaining the trade unions that have a **representativeness not less than five percent**, **considering for this purpose the average between the associative data and the electoral data** "expressed by the latter" **by the percentage of votes obtained** (by each trade union) in the elections of the unitary staff representatives, compared to the total of the votes cast in the considered area ".

Procedures and parameters for ascertaining trade union representativeness in the public sector which are also fully applicable to the personnel of the civil police forces, such as the **State Police** towards whom, however, such personnel do not have any forms of elective representation , only the associative data is considered for the purpose of determining the representativeness and in the percentage measure, as mentioned, of 5% (higher than that envisaged for the APCSM).

The argument regarding "**the transfer of the union delegate** [...] gives a free rein to the military administration for **reasons of incompatibility**. Cases of incompatibility can lead to discretionary proceedings for the expulsion by the military administration of trade union representatives who are freely elected, but not appreciated by the chain of command", this issue lacks any legal basis.

First of all, the provision concerning the possibility of transferring union leaders for reasons of " incompatibility with the surrounding environment" is necessary, on the one hand, to ensure that the performance of these functions is free from limitations or constraints and, on the other hand, **to avoid** that, by virtue of the trade union mandate

exercised, actual situations may be classified that **undermine** that role of exemplary **legality**, **impartiality** and **neutrality** that must characterize of belonging to a military body.

Secondly, the recognition of **rights and protections** only to the APCSM representative at national level, in addition to avoiding the instrumental use of the provision, through the ad hoc constitution of associations for the sole purpose of being able to benefit from the regime established by Article 14, it **is consistent** with the regulations in force on the subject of **State Police** trade unions which establish similar guarantees in favor of the union leaders of the nationally representative associations only.

The "**manifestation of thought** [...] permitted only in the matters envisaged by the law", the legislative provision is aimed at avoiding a circumvention of Article 5 (which defines the matters falling **within the competence** of the APCSM), with respect to which Article 15 is coordinated.

On the other hand, as regards the ways in which the trade unions intend to **advertise** their activities, the law leaves absolute discretion, since the law has the sole purpose of making the members **aware** of the contents of the resolutions, votes, reports, etc. of the APCSMs to which they are members.

The attribution of trade union disputes in the military sector to the **administrative judge** instead of the **labor judge**, it should first of all be noted that the choice of the Legislator was determined by the need to avoid excessively fragmented and divergent pronouncements between them (due to the smaller fragmentation of the administrative judge on the territory compared to the "labor" judge), who could have undermined the **compactness**, **readiness**, **operational homogeneity** and **cohesion** of the military instrument.

On this point, there are now numerous **rulings** of the ordinary Courts, relating to disputes promoted before the entry into force of the law, which **recognized the jurisdiction of the administrative judge** by reason of the **specialty and specificity** of the military system, such as not to allow a analogous application to the APCSM of the provisions governing trade union freedom in general;

The functioning of the Commissions cannot be decided unilaterally by a single party, given that **the procedures for setting up and functioning of the central and peripheral conciliation commissions** will be defined in the context of a specific **regulation** to be issued by decree of the Minister of the defense, in agreement with the Minister of Economy and Finance, as far as is of interest, it is noted that the **impartiality** of these collegial bodies is guaranteed by a **president**, appointed, "after consulting the competent parliamentary committees official for this area", by decree of the Minister of Economy and Finance and "chosen from among those enrolled in a list specifically established at" the Ministry of Economy and Finance "and including magistrates, lawyers

enrolled in the special register of lawyers admitted to legal aid before the higher courts and university professors ".

This taking into account, on the one hand, **the peculiarity** of the issues referred to the evaluation of the commissions (deriving from the specificities of the military systems) and, on the other hand, the need to ensure that the presidency of the commissions is entrusted to subjects with suitable professional experience.

The **continuation of the mandate of the delegates of the Military Representation**, the law ensures the necessary **continuity** of the representation of military personnel even in the **transition phase** related to the entry into force of the law, specifying that the repeal of the provisions of the " military regulations governing the functioning of the military representation bodies as well as the forfeiture of the delegates of the aforementioned bodies occurs from the entry into force of the ministerial decree by which the contingents of detachments and trade union permits are determined for each armed force and police force with military order, to be allocated among the representative APCSMs pursuant to article 13.

With this in mind and in order to facilitate the progressive process of organizing unionisation of military personnel as well as avoiding possible criticalities, **there is no foreclosure to the delegates of military representation**, of all levels, from simultaneously **holding managerial positions in the APCSM.**