COMITÉ EUROPÉEN DES DROITS SOCIAUX
EUROPEAN COMMITTEE OF SOCIAL RIGHTS

Confidential[1]

Associazione Sindacale Militari (ASSO.MIL.) v. Italy

Complaint No. 213/2022

REPORT TO THE COMMITTEE OF MINISTERS

Strasbourg, 10 September 2025

[1] It is recalled that pursuant to Article 8§2 of the Protocol, this report will not be made public until after the Committee of Ministers has adopted a recommendation, or no later than four months after it has been transmitted to the Committee of Ministers, namely 4 March 2026.

Introduction

1. Pursuant to Article 8§2 of the Protocol providing for a system of collective complaints ("the Protocol"), the European Committee of Social Rights, a committee of independent experts of the European Social Charter ("the Committee") transmits to the Committee of Ministers its report[2] on Complaint No. 213/2022. The report contains the Committee's decision on the merits of the complaint (adopted on 10 September 2025); the decision on admissibility (adopted on 23 May 2023) is appended.

2. The Protocol came into force on 1 July 1998. It has been ratified by Belgium, Croatia, Cyprus, the Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal and Sweden. Furthermore, Bulgaria, Slovenia and Spain are also bound by this procedure pursuant to Article D of the Revised Social Charter of 1996.

3. The Committee's procedure was based on the provisions of the Rules of 29 March 2004 which it adopted at its 201st session and last revised on 11 September 2024 at its 343rd session.

4. The report has been transmitted to the Committee of Ministers on 3 November 2025. It is recalled that pursuant to Article 8§2 of the Protocol, this report will not be made public until after the Committee of Ministers has adopted a recommendation, or no later than four months after it has been transmitted to the Committee of Ministers, namely 4 March 2026.

[2] This report may be subject to editorial revision.

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

DECISION ON THE MERITS

Adoption: 10 September 2025

Notification: 3 November 2025

Publication: 4 March 2026

Associazione Sindacale Militari (ASSO.MIL.) v. Italy

Complaint No. 213/2022

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 350th session in the following composition:

Aoife NOLAN, President
Tatiana PUIU, Vice-President
George THEODOSIS, Vice-President
Kristine DUPATE, General Rapporteur
Karin Møhl LARSEN
Yusuf BALCI
Mario VINKOVIĆ
Miriam KULLMANN
Carmen SALCEDO BELTRÁN
Franz MARHOLD
Alla FEDOROVA
Grega STRBAN
Olivier DE SCHUTTER
Kristina KOLDINSKÁ
Carmen Constantina NENU

Assisted by Henrik KRISTENSEN, Executive Secretary

Having deliberated on 2 July and 10 September 2025,

On the basis of the report presented by Grega STRBAN,

Delivers the following decision adopted on this latter date:

PROCEDURE

1. The complaint submitted by *Associazione Sindacale Militari* (ASSO.MIL.) against Italy was registered on 29 August 2022.

2. The complainant organisation alleges that the failure by the Italian State to establish a complementary pension fund in favour of civil servants belonging to the Armed Forces and Military Police Forces, as provided for by Legislative Decree No. 195/1995 and other relevant legislation, is in breach of Article 12 as well as of Article E read in conjunction with Article 12 of the revised European Social Charter (“the Charter”). ASSO.MIL. maintains in particular that the establishment of a complementary pension fund is among the measures aimed at maintaining and even strengthening the social security system that the Italian State is required to establish under Article 12 of the Charter. ASSO.MIL. also asserts that the failure to establish a complementary pension fund for security and defence workers constitutes discrimination in comparison with all other public sector workers, who already benefit from such provisions.

3. On 23 May 2023, the Committee declared the complaint admissible.

4. Referring to Article 7§1 of the 1995 Protocol Providing for a System of Collective Complaints ("the Protocol"), the Committee asked the Government to submit written submissions on the merits of the complaint by 31 July 2023.

5. Referring to Article 7§§1, 2 of the Protocol and in application of Article 32§§1, 2 of its Rules of Procedure ("the Rules"), the Committee invited the States Parties to the Protocol, the States having submitted a declaration pursuant to Article D§2 of the Charter, as well as the international organisations of employers or workers referred to in Article 27§2 of the 1961 Charter, if they so wished, to submit observations on the merits of the complaint before 31 July 2023.

6. On 25 July 2023 the Government requested an extension of the deadline for presenting written submissions. The President of the Committee granted an extension until 15 September 2023.

7. The Government's submissions on the merits of the complaint, as well as information on the implementation of immediate measures, were registered on 14 September 2023.

8. In accordance with Rule 31§2 of the Rules, the complainant organisation was invited to submit a response to the Government's submissions by 22 November 2023.

9. The complainant organisation's response was registered on 22 November 2023.

10. In accordance with Rule 31§3 of the Rules, the Government was invited to submit a reply to the complainant organisations' response by 15 February 2024.

11. On 15 February 2024 the Government requested an extension of the deadline to submit its reply. The President of the Committee granted an extension until 15 March 2024.

12. The reply from the Government was registered on 5 March 2024.

SUBMISSIONS OF THE PARTIES

A – The complainant organisation

13. The complainant organisation ASSO.MIL. requests the Committee to find the situation in Italy is in violation of Article 12 and of Article E read in conjunction with Article 12 of the Charter, because Italy fails to set up a complementary pension fund in favour of public sector workers working in the Armed Forces and the Military Police Forces. More specifically, according to the complainant organisation, pursuant to Legislative Decree No. 195/1995 the establishment of a complementary pension fund is among the measures aimed at maintaining and even strengthening the social security system that Italy is required to establish under Article 12 of the Charter. ASSO.MIL. asserts that the failure to establish such a complementary pension fund for security and defence workers constitutes a violation of Article 12 and of Article E in conjunction with Article 12 and a discrimination in comparison with all other public sector workers, who already benefit from such provisions.

14. Furthermore, ASSO.MIL. claims that the failure to set up a complementary pension fund has caused unfair harm to the members of the Italian Armed Forces and Military Police Forces. This is because:

- the Government failed to pay into the fund the portion due from the employer administration since the time the funds should have been set up;
- the Government did not give the workers the opportunity to qualify for a relief from income tax on payments made into the funds by the worker;
- the Government's inability to transfer to the fund all or part of the end-of-service lump sum payment or the end-of-service allowance resulted in an economic loss to the Italian Armed Forces and Military Police forces.

15. The complainant organisation argues that all the above constitute a violation of Article 12 and of Article E in conjunction with Article 12 of the Charter.

B – The respondent Government

16. The Government states that the provision for the establishment of a complementary social security has been a part of the structural reforms of the pension sector, that have been undertaken in recent decades and provide for a system based on the so-called three pillars system. This contains compulsory public pensions, complementary social security, which has not been activated for the Defence – Security Sector workers and supplementary private pension provision, through discretionary and individual forms of savings.

17. The Government alleges that the establishment of a complementary pension fund is subject to a complex plurilateral procedure, the completion of which depends on both the trade union and the public counterpart. The Government also states that there is no provision in the regulations of the Security and Defence sectors that allows the unilateral establishment and implementation of complementary pension schemes by the employer's administration.

18. Furthermore, the Government alleges that Article 26 par. 20 of Law 448/1998 merely provides that the negotiation and concertation procedures referred to in Legislative Decree No. 195/1995, may define the rules on severance pay, as well as the establishment of forms of complementary pensions schemes.

19. The Government highlights that in the context of an inter-ministerial technical roundtable, "a specificity package" of proposals was drawn up for inclusion in the Budget Law for the year 2022. In this context there was a strong consensus with trade union organisations and military representatives on the intention to create an alternative to the complementary pension scheme, through the establishment of a special fund aimed at adopting the compensatory measures, provided for in Article 24 of Presidential Decree No. 255/1999.

20. With regard to the alleged damage, the Government asserts that the recognition of the liability of the public administration requires the ascertainment of the violation of the terms of the procedure, that the failure to observe the procedural deadlines is attributable to the fault and wilful misconduct of the administration itself, that the damage is a direct and immediate consequence of the delay and proof of the damage. None of these elements exist, in the Government's view, in this case.

21. On this basis, the Government asks the Committee to reject the complaint.

RELEVANT DOMESTIC LAW AND PRACTICE

22. In their submissions, the parties refer to the following provisions of domestic law:

A – Constitutional provisions

23. Article 38 of the Constitution of the Italian Republic of 1 January 1948 reads as follows:

> "Every citizen unable to work and lacking the necessary means of subsistence is entitled to welfare support and social assistance. Workers have the right to be assured adequate means for their needs and necessities in the case of accidents, illness, disability, old age and involuntary unemployment. Persons with disabilities have a right to education and vocational training. Responsibilities under this article are entrusted to entities and institutions established by or supported by the State. Private healthcare shall have the right to operate freely."

B – General legislative provisions related to the pensions system and the social security

24. In Italy Law No. 335/1995 (Dini Reform) introduced significant reforms to the Italian pension system, transitioning from a defined benefits system to a defined contribution system. Under the previous defined benefits system, pensions were calculated as a percentage of the worker's final salary, with the amount determined by the contribution history and the remuneration received during the last years of employment. In contrast, the defined contribution system calculates pensions based on the total contributions made throughout a worker's career.

25. The reform categorized workers into three groups based on their contribution history. Workers with at least 18 years of contributions as of 1995 remained under the defined benefits scheme. Workers with less than 18 years of contributions as of 1995 were subject to a mixed scheme, where the defined benefits scheme applied to contributions made until 1995 and the defined contribution scheme applied thereafter. Workers hired after 1995 were fully transitioned to the defined contribution scheme.

26. Articles 2 and 7 of Legislative Decree No. 195/1995 outline that negotiation procedures for Armed Forces and Military Police Forces personnel (excluding managerial staff and conscripts) must be initiated, developed, and concluded simultaneously, culminating in separate Presidential Decrees. The relevant trade unions or professional associations and the Inter-Force Central Representative Council (COCER) may submit proposals during these procedures. The Ministry for Public Administration, along with the Ministries of Defence and Economy and Finance, oversee the process, which includes the development and signing of draft agreements with representative delegations (Article 7, Legislative Decree No. 195/1995; Title I, Presidential Decree No. 254/1999).

27. Moreover, recent legislative developments (Article 16, Law No. 46/2022) delegate the Government to adopt coordinated legislation to enhance the efficiency of negotiation processes in the security and defence sectors. This law provides for two levels of negotiation: one for common issues across Armed Forces and Military Police

Forces, and another for branch-specific matters, including productivity and accessory pay. It also provides for a dedicated negotiation area for managerial staff in the military and militarily organized police forces to ensure parity with their civil counterparts.

28. Negotiation topics under Article 3 of Legislative Decree No. 195/1995 include basic and ancillary salary, severance pay, and complementary pensions. In particular Article 26(20) of Law 448/1998 provides that these negotiations may define the rules for severance pay and establish complementary pension schemes for the relevant personnel, referencing Legislative Decree No. 124/1993 (now largely abrogated), Law No. 335/1995, and subsequent amendments.

29. Article 67 of Presidential Decree No. 254/1999 further details these procedures, stating that the initial application should lead to the establishment of national complementary pension funds for military and police personnel. These procedures must also define the contribution rates for both administration and workers, and the transformation of severance pay into severance treatment, including allocation rules for complementary pensions.

30. Legislative Decree No. 252/2005, which abrogated Article 3 of Legislative Decree No. 124/1993, confirms that complementary pension schemes for public sector workers under Article 1 paragraph 2 of Legislative Decree No. 165/2001 can be established through collective agreements. For those covered under Article 3 paragraph 1 (e.g., magistrates, military personnel, diplomatic and prefectural corps), these schemes follow the rules of their legal frameworks or, where absent, can be established through associations' initiatives (Article 3 paragraph 2, Legislative Decree No. 252/2005; also Article 3 paragraph 2, Legislative Decree No. 165/2001).

31. Law No. 234/2021 (Article 1, paragraphs 95–96) introduced a dedicated fund in the Ministry of Economy and Finance for the Armed Forces, Police Forces, and the National Fire Brigade. Starting in 2022, this fund aims at progressively aligning their social security regimes, both by compensating pension differences upon retirement and by reinforcing the complementary pension schemes as originally established under Law No. 448/1998.

32. **Article 1 paragraph 1 of Law No. 335/1995** reads as follows:

> “This law redefines the social security system in order to guarantee the protection provided for by Article 38 of the Constitution, defining the criteria for calculating pension benefits through the measurement of treatments to contributions, the conditions of access to benefits with the affirmation of the principle of flexibility, the harmonization of pension systems in compliance with the plurality of insurance bodies, the facilitation of complementary pension schemes in order to allow additional levels of prevention coverage, the stabilisation of pension expenditure in relation to the gross domestic product and the development of the social security system itself”.

33. **Legislative Decree No. 195/1995** reads as follows:

Article 1
"The procedures governing the contents of the employment relationship of the personnel of the Police Forces, including those under military law, and of the Armed Forces, excluding the respective civilian managers, (general officers, senior officers) and army conscripts as well as auxiliary army conscripts, are established by this Legislative Decree. The employment relationship of civilian and military personnel with managerial qualifications remains governed by the respective legal frameworks, pursuant to art. 2, paragraph 4, and the other provisions of Legislative Decree No. 165 of 30 March 2001".

Article 3
"1. For the purposes referred to in Article 2(1)(A), the following shall be the subject of negotiation for personnel belonging to civilian police forces:
a) the basic and ancillary salary.
b) severance pay and complementary pension schemes, pursuant to Article 26, paragraph 20, of Law No. 448 of 23 December 1998; […]"

Article 7
"The procedures for issuing the decrees of the President of the Republic referred to in Article 2 are initiated by the Minister for Public Administration at least four months before the deadlines set by the previous decrees. Within the same deadline, the trade unions of the personnel of the Police Forces with a civil organization or the professional associations of a trade union nature between military personnel of the Police Forces with a military organization and of the Armed Forces, each for the profiles concerning the relevant trade union agreements, may submit proposals and requests relating to the matters covered by the procedures themselves. The Inter-Force Central Representative Council (*Consiglio Centrale di Representanza* - COCER) may submit within the aforementioned deadline, also separately for the *Carabinieri, Guardia di Finanza* and Armed Forces sections, the related proposals and requests to the Minister for the Civil Service, to the Minister of Defence and, for the *Guardia di Finanza* Corps, to the Minister of Economy and Finance, through the Defence General Staff or the corresponding General Command.
1-bis. The procedures referred to in Article 2 begin at the same time and develop contextually in the subsequent phases, including that of the signing of the draft trade union agreements, with regard to, respectively, the civil Police Forces, the Military Police Forces and the Armed Forces.
7. The work for the formulation of the draft measure concerning the Armed Forces is carried out in meetings attended by the delegates of the Defence General Staff and the representatives of the COCER (Army, Navy and Air Force sections) and concludes with the signing of the agreed draft measure."

34. **Article 26 paragraph 20 of Law No. 448/1998** reads as follows:

"For the purposes of harmonisation with the general regime of severance pay and the establishment of complementary pension schemes for public workers, the negotiation and consultation procedures provided for by Legislative Decree No. 195 of 12 May 1995 may define, for the personnel contemplated therein, the discipline of severance pay pursuant to Article 2, paragraphs 5 to 8, of Law No. 335 of 8 August 1995, and subsequent amendments, as well as the establishment of complementary pension schemes, pursuant to Article 3 of Legislative Decree No. 124 of 21 April 1993, and subsequent amendments. For the purposes of the first application of the provisions set out in the preceding paragraph, the negotiation and consultation procedures will be activated in derogation from the provisions of Article 7, paragraph 1, of the aforementioned Legislative Decree No. 195/1995".

35. **Title I and Article 67 of Presidential Decree No. 254/1999** read as follows:

"**Title I**
Having regard to Articles 1, 2 and 7 of the aforementioned Legislative Decree No. 195/1995, which govern the negotiation and consultation procedures, to be initiated, developed and concluded at the same time, for the purpose of adopting separate decrees of the President of the Republic concerning, respectively, the personnel of the Police Forces, including those under military law, and that of the Armed Forces, with the exception of civilian and military leaders, as well as conscripts and auxiliary conscripts;
Having regard to the provisions of Articles 2 and 7 of the aforementioned Legislative Decree No. 195/1995, which identify the delegations of the public sector, the trade union delegations and the representatives of the Central Council of Representation who participate in the aforementioned negotiation and consultation procedures, respectively, for the civilian Police Forces (State Police, Penitentiary Police Corps and State Forestry Corps), for the Military Police Forces (*Carabinieri* Corps and *Guardia di Finanza* Corps) and for the Armed Forces;"

Article 67
1. The negotiation and consultation procedures activated, for the first application, pursuant to the aforementioned Article 26, paragraph 20, of Law No. 448/1998, shall define:
a) the establishment of one or more national complementary pension funds for personnel of the Armed Forces and Police Forces under civil and military law, pursuant to Legislative Decree No. 124/1993, Law No. 335/1995, Law No. 449/1997, and subsequent amendments and additions, also verifying the possibility of unifying it with similar funds established pursuant to the aforementioned regulations for public sector workers;
b) the percentage of the share of the contribution to be paid by the Administrations and that due by the worker, as well as the remuneration useful for determining the shares themselves;
c) the procedures for transforming end-of-career compensation into severance pay, the salary items useful for the provisions of the severance pay, as well as the portion of the severance pay to be allocated to complementary pensions.
2. The recipients of the pension funds referred to in paragraph 1 are the personnel who freely subscribe to the funds themselves."

36. **Legislative Decree No 165/2001**

Article 3 paragraphs 1 and 2
"1. Notwithstanding Article 2 paragraphs 2 and 3, the following shall remain governed by their respective legal orders: ordinary, administrative and accounting magistrates, lawyers and State prosecutors, military personnel and State Police Forces, diplomatic and prefectural career personnel, as well as workers of bodies carrying out their activities in the matters referred to in Article 1 of the Legislative Decree of the Provisional Head of State of 17 July 1947, 691, and by laws No. 281 of 4 June 1985, and subsequent amendments and additions, and No. 287 of 10 October 1990."
2. For staff employed by the public administrations referred to in Article 1 paragraph 2 of Legislative Decree No. 165 of 30 March 2001, complementary pension schemes may be established by means of the collective agreements referred to in Title III of the same Legislative Decree. For the workers referred to in Article 3, paragraph 1, of the same Legislative Decree, complementary pension schemes may be established according to the rules of the respective legal systems or, failing that, through agreements between the workers themselves promoted by their associations."

37. **Legislative Decree No. 252/2005** (abrogated article 3 of Legislative Decree No.124/1993) reads as follows:

Article 3 paragraph 2
"2. For staff employed by the public administrations referred to in Article 1 paragraph 2 of Legislative Decree No. 165 of 30 March 2001, complementary pension schemes may be established by means of the collective agreements referred to in Title III of the same Legislative Decree. For the workers referred to in Article 3, paragraph 1, of the same Legislative Decree, complementary pension schemes may be established according to the rules of the respective

legal systems or, failing that, through agreements between the workers themselves promoted by their associations."

38. **Article 1 paragraphs 95 and 96 of Law No. 234/2021** reads as follows:

"95. In relation to the specific nature of the personnel of the Armed Forces, the Police Forces and the National Fire Brigade, recognized pursuant to Article 19 of Law No. 183 of 4 November 2010, a fund is established in the budget forecast of the Ministry of Economy and Finance with an allocation of 20 million euros for the year 2022, 40 million euros for the year 2023 and 60 million euros starting from the year 2024.
96. The fund referred to in paragraph 95 is intended for the adoption of regulatory measures aimed at the progressive equalization of the relevant social security system, through the introduction, starting from 1 January 2022, within the institutions already provided for the same personnel, of measures:
a) compensatory with respect to the effects deriving from the liquidation of pension payments for personnel who cease to serve.
b) complementary to the complementary pension schemes referred to in Article 26, paragraph 20, of Law No. 448 of 23 December 1998, for personnel employed in the Armed Forces, the Police Forces and the National Fire Brigade, starting from the date of entry into force of the relevant regulatory provision".

39. **Article 16 of Law No. 46/2022** reads as follows:

"1. The Government is delegated to adopt, within eighteen months of the date of entry into force of this law, one or more legislative decrees for the regulatory coordination of the provisions of Legislative Decree No. 195 of 12 May 1995, Article 46 of Legislative Decree No. 95 of 29 May 2017, as amended by Article 5, paragraph 5, of this law, and of the Military Code, pursuant to Legislative Decree No. 66 of 15 March 2010, in compliance with the following principles and guidelines: [...] d) simplification and greater efficiency of the negotiation procedures of the security and defence sector, through the provision of a first level of negotiation in which to regulate the aspects common to all the Armed Forces and the Police Forces with military organization, as well as a second level through which to regulate the most characteristic aspects of the individual Armed Forces and Police Forces with military organization, including the distribution of accessory and productivity remuneration;
e) establishment of a negotiation area for the managerial staff of the Armed Forces and the Police Forces with military organization, in compliance with the principle of equal rank with the Police Forces with civil organization.

40. In their submissions the parties make reference to Judgment No 8440/2021 of the Council of State Sec II 20 Dev 2021 where *inter alia* the following is stated:

"It is clear from this provision that there is no independent obligation on the part of the public administrations to take action, in the absence of the definition of the matter in collective bargaining and, in the case of the military, of the specific consultation procedures pursuant to Legislative Decree No. 195/1995.
Furthermore, the appellant's argument that the defendant Administrations have a legal duty to start the consultation process, pursuant to Article 7 of Legislative Decree No. 195 of 1995, cannot be accepted either." […]
"In any case, the determination of the content of the subsequent trade union agreement remains within the competence of the parties during the negotiation and concertation stages, since the trade unions and the inter-force COCER have the power to submit proposals and requests also, in the phase preceding the start of the procedure, while paragraphs 4, 6 and 8 provide for the transmission of observations to the Presidency of the Council of Ministers and to the competent Ministers by the trade unions and the COCER sections dissenting with respect to the draft agreement (for the civilian Police Forces) or measure (for the military Police Forces and the military)."[…]

> "It follows that even the reference to the provisions of Article 7 (of Legislative Decree No. 195/1995) is entirely irrelevant in the present case, since no obligation to provide can be inferred from it, but the competence of the trade union negotiations is fully confirmed."

41. In Judgment No. 2593/2022 of the Council of State April 8, 2022, as regards the claims for damages, the following is stated:

> "It was further clarified, with regard to similar claims for damages, that the complementary pension scheme was fully subject to the procedures of negotiation and consultation, with the result that the defendant Administrations are under no independent obligation to provide, since they cannot unilaterally regulate the matter nor, moreover, are there any deadlines within which the complementary pension scheme must be implemented; with the consequent groundlessness of the claim for a declaration of the obligation to provide and consequently of the claim for damages, since there is no delay on the part of the defendant Administration and since the workers have no immediately protectable position vis-à-vis the Administration, but the entire discipline is left to the negotiating activity within the scope of trade union representation".

42. In Judgment No. 22807/2020 of the Joint Divisions of the Italian Court of Cassation, regarding the administration's liability for compensation for the damages suffered, the Court stated:

> "4. The dispute in question directly and immediately concerns the employment relationship and, as a matter of priority, the employer's obligations in respect of the commencement of the necessary procedures for the negotiation and negotiation of end-of-service and/or end-of-contract benefits, and the consequent establishment of complementary pension schemes, the failure to comply with which is, according to the applicant's submissions, a source of contractual liability. In other words, we are in the presence of an action for damages, in which both the *petitum* (the object of the claim) and the *causa petendi* (the set of reasons in fact and in law that form the basis of the claim) find their justification in a breach of contract, thus going beyond the strictly pension-related matters."

43. In Judgment No. 9186/2011 of the Regional Administrative Court of Lazio, Rome (TAR Lazio) as regards the obligation of the administration to act, the following is stated:

> "It should also be pointed out that in the present case, the defendant administrations are obliged to act on the applicants' requests, given that this obligation derives directly from the law, which has identified the procedures for the activation of the procedure aimed at implementing the complementary pension scheme for the personnel of the Security and Defence sector".

44. In Judgment No. 8286/2019 of the Regional Administrative Court of Lazio, Rome (TAR Lazio) as regards the refusal of the administration to act for the complementary pension the following is stated:

> "The actual transition to the new regime can only take place on the date of the presidential measures transposing the trade union agreements and consultation platforms. This suggests that the delay in the procedures cannot be ascribed to the inertia of the defendant ministries, but rather to the slowness of a concertation table of which the union representatives of the labour categories concerned are also part."

45. In Judgment No. 207/2020 of the Court of Auditors of Puglia of 18 May 2020, as regards the claims for damages, inter alia stated the following:

"The instrument to compensate for the negative economic repercussions that the appellant claims to suffer from the inertia in the implementation of complementary pension provision is represented by compensation for damages, since the legitimate expectation of the extension of the complementary pension regime for the public sector becomes a subjective legal situation worthy of protection also before the single-judge Pensions Judge of the Court of Auditors. From the point of view of jurisdiction, first of all, art. 3 of the Accounting Justice Code provides that the principle of effectiveness is achieved within the scope of accounting jurisdiction, through the concentration of "every form of protection... of the subjective rights involved". It is therefore clear that the *volontas legis* (the intention of the law) is to grant the single judge for pensions jurisdiction on compensation for pecuniary and non-pecuniary damage.

RELEVANT INTERNATIONAL MATERIAL

A – The United Nations

International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966)

46. The International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966), which was ratified by Italy on 15 September 1978 (Official Gazette n. 328/23.11.1978), by virtue of Law No. 881, of 25 October 1977, includes the following provision:

Article 9

"The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance."

United Nations Committee on Economic, Social and Cultural Rights

47. General Comment 19 on the right to social security (Article 9 quoted above) (Thirty-ninth session, 2007), U.N. Doc. E/C.12/GC/19 (2008) reads as follows as regards social security:

"11. The right to social security requires, for its implementation, that a system, whether composed of a single scheme or variety of schemes, is available and in place to ensure that benefits are provided for the relevant social risks and contingencies. The system should be established under domestic law, and public authorities must take responsibility for the effective administration or supervision of the system. The schemes should also be sustainable, including those concerning provision of pensions, in order to ensure that the right can be realized for present and future generations. (…)

15. States parties should take appropriate measures to establish social security schemes that provide benefits to older persons, starting at a specific age, to be prescribed by national law. (…) States parties should, within the limits of available resources, provide non-contributory old-age benefits, social services and other assistance for all older persons who, when reaching the retirement age prescribed in national legislation, have not completed a qualifying period of contributions or are not otherwise entitled to an old-age insurance-based pension or other social security benefit or assistance, and have no other source of income. (…)

29. The obligation of States parties to guarantee that the right to social security is enjoyed without discrimination (Article 2, paragraph 2, of the Covenant), and equally between men and women (Article 3), pervades all of the obligations under Part III of the Covenant. The Covenant thus prohibits any discrimination, whether in law or in fact, whether direct or indirect, on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation, and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to social security. (…)

65. Violations through acts of omission can occur when the State party fails to take sufficient and appropriate action to realize the right to social security. In the context of social security, examples of such violations include the failure to take appropriate steps towards the full realization of everyone's right to social security; the failure to enforce relevant laws or put into effect policies designed to implement the right to social security; […]"

48. The concluding observations of the UN Committee on Economic, Social and Cultural Rights of 7 December 2022 on the sixth periodic report of Italy regarding the Old-age pensions read as follows:

"41. The Committee is concerned that the medium- to long-term financial sustainability of the pension system is negatively affected by the lack of sufficient measures to adjust to the relatively rapidly ageing population, and that this may negatively affect retirees' enjoyment of economic and social rights. The Committee is also concerned that the minimum requirements for obtaining the right to an earlier retirement age for those working in particularly strenuous and heavy activities may not be adequately flexible (Article 9).

42. The Committee recommends that the State party ensure the medium- to long-term financial sustainability of the old-age pension system without negatively affecting retirees' enjoyment of economic and social rights. Measures could include, for example, reducing the number of exceptions to the increased retirement age and allowing it to rise gradually, for all categories of persons, in tandem with the increase in the average lifespan. Simultaneously, the Committee recommends that the State party adapt the requirements for early retirement to allow for more flexibility in individual cases."

B – Council of Europe

Parliamentary Assembly

49. Parliamentary Assembly (PACE) Recommendations on social security and social protection, in particular:

Recommendation 1796 (2007) on the Situation of elderly persons in Europe, where it is stated that:

"The Assembly accordingly recommends that the Committee of Ministers request the member states to:
11.1. regarding social protection systems:
(…)
2. take the consequences of demographic trends into account in their social and economic policies;
3. take the necessary steps to ensure the funding and long-term viability of social protection systems (pension systems, health care and other social benefits) so as to avoid the risk of economic dependency;"

Recommendation 2000 (2012) on Decent pensions for all, where it is stated : “Referring to Resolution 1882 (2012) on decent pensions for all, and Resolution 1752 (2010) on decent pensions for women, the Parliamentary Assembly calls on the Committee of Ministers to urge member States to:

- 2.1 ratify the revised European Social Charter (ETS No. 163), which is the only binding Council of Europe instrument that refers to the right of the elderly to “adequate resources enabling them to lead a decent life”;

- 2.2 make it a political priority to review and, if necessary, revise their pension systems;

- 2.3 take, particularly in the light of the current economic and financial crises, resolute measures not only to ensure the sustainability of pension systems but also to guarantee adequate pensions for all, having regard to the specific situation of groups requiring special protection;

- 2.4 provide clear information that everyone can understand on the options available within national pension systems, which are often complex, to enable everyone to take their own measures to provide for themselves according to their means.”

C – International Labour Organisation

50. ILO Convention No. 102 (Social Security - Minimum Standards, 1952 PART V. OLD-AGE BENEFIT)

Article 25
Each Member for which this Part of this Convention is in force shall secure to the persons protected the provision of old-age benefit in accordance with the following Articles of this Part.

Article 26
1. The contingency covered shall be survival beyond a prescribed age.
2. The prescribed age shall be not more than 65 years or such higher age as may be fixed by the competent authority with due regard to the working ability of elderly persons in the country concerned.
3. National laws or regulations may provide that the benefit of a person otherwise entitled to it may be suspended if such person is engaged in any prescribed gainful activity or that the benefit, if contributory, may be reduced where the earnings of the beneficiary exceed a prescribed amount and, if non-contributory, may be reduced where the earnings of the beneficiary or his other means or the two taken together exceed a prescribed amount.

THE LAW

PRELIMINARY CONSIDERATIONS

As to the provisions of the Charter at stake

51. The Committee notes that the specific issue raised by this complaint concerns the Government’s failure to establish a complementary pension fund for the personnel of the Armed Forces and the Military Police Forces after the changes made to the traditional redistributive system of Italy to the defined contribution model. ASSO.MIL. claims that the Government's delay in creating such a fund has led to an outcome that

is "unreasonable and discriminatory compared to other public servants". ASSO.MIL. asserts that this situation is contrary to Article 12 read alone and Article E read in conjunction with Article 12 of the Charter.

52. With regard to Article 12 (the right to social security), ASSO.MIL. does not specify whether the alleged violations fall under paragraph 1, 2, 3 or 4 of this Article. In view of the information provided, which concerns the delay in the establishment of a complementary fund for the personnel of the Armed Forces and the Military Police Forces, the Committee decides to examine the allegations under Article 12§3.

As to the alleged violation of the European Convention on Human Rights

53. The Committee notes that ASSO.MIL. also alleges violation of Article 14 of the European Convention on Human Rights (ECHR) and Article 1 of the Additional Protocol No. 1 to the Convention regarding the protection of property. In this respect, the Committee points out that it is competent neither to assess the conformity of national situations with the ECHR nor to deliberate on violations of Article 14 of the ECHR and Article 1 of the Additional Protocol No. 1 to the Convention. These provisions fall within the jurisdiction of the European Court of Human Rights (ECtHR), which is competent for interpreting and enforcing the ECHR.

ALLEGED VIOLATION OF ARTICLE 12§3 AND ARTICLE E READ IN CONJUNCTION WITH ARTICLE 12§3 OF THE CHARTER

54. Article 12§3 and Article E of the Charter read as follows:

> **Article 12 – The right to social security**
>
> Part I: "All workers and their dependents have the right to social security."
>
> Part II: "With a view to ensuring the effective exercise of the right to social security, the Parties undertake:
> […]
> 3. to endeavour to raise progressively the system of social security to a higher level; […]
>
> **Article E – Non-discrimination**
>
> "The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status."

A – Arguments of the parties

1. The complainant organisation

55. ASSO.MIL. alleges that there has been a de facto reduction of the social and economic rights of the military personnel working in the Armed Forces and Military

Police Forces by the failure of the Government to establish complementary pension funds.

56. The Italian pensions reform started with Law No. 335/1995. Article 1 paragraph 1 of the law provides for the harmonization of pension systems in compliance with the plurality of insurance bodies, the facilitation of complementary pension schemes in order to allow additional levels of coverage, the stabilisation of pension expenditure in relation to the gross domestic product and the development of the social security system itself. This legislation provides that pensions are to be calculated according to the defined contribution system, which replaced the defined benefits system, including for personnel from the Armed Forces and the Military Police Forces, as well as for public sector workers working under contracts governed by private law ("*impiego contrattualizzato*"). Before the reform, defined benefit pensions were calculated as a percentage of the worker's salary and the amount due was based on the contribution history and the remuneration received over the last few years of employment.

57. ASSO.MIL. asserts that complementary pension schemes are not a mere optional benefit, but a necessary compensatory mechanism designed to mitigate the negative financial impact that workers have suffered due to the legislatively imposed transition from the wage-based (redistributive) pension system to the defined contribution system. These schemes, which operate under a capitalization financing model, establish individual accounts for each member. Into these accounts flow contributions, jointly funded by the worker and the respective public administration. These funds are then invested by professional asset managers in diversified financial instruments—such as stocks, government and corporate bonds, and mutual fund shares—generating variable returns depending on market conditions and investment strategies. Over time, complementary pension schemes enable the worker to enhance their pension entitlements, ultimately receiving, at the point of retirement, an annuity derived not only from the cumulative contributions but also from the investment returns. This annuity serves precisely as the corrective mechanism for the erosion of pension benefits caused by the shift away from the redistributive system.

58. ASSO.MIL. asserts that the failure of the Italian State to fulfil its legal and financial obligations—namely, the omissive and *contra legem* conduct regarding the non-establishment and non-financing of the complementary funds—has resulted in manifestly unjust damage to the members of the Italian Armed Forces and Military Police Forces.

59. The complainant organisation's claim of unjust harm is based on three main arguments: first the Government failed to contribute the employer's share to the fund since the fund's intended creation; second, the Government did not allow workers to qualify for a relief from income tax on their own contributions, and third, the Government's inability to transfer into the fund all or part of the end-of -service lump

sum or the end -of- service allowance, resulted in an economic loss for the Italian Armed Forces and Military Police Forces.

60. ASSO.MIL. alleges that this systemic inaction by the State not only constitutes a breach of the principles of legal certainty and legitimate expectations but also infringes upon the financial rights and future security of the workers concerned. It is therefore essential to recognize complementary pensions as a legally grounded and fiscally necessary safeguard within the broader pension framework, and to remedy the injustices stemming from the State's failure to uphold its obligations.

61. In view of all the above, ASSO.MIL. asks the Committee to find a violation of Article 12 read alone and Article E read in conjunction with Article 12 of the Charter.

2. The respondent Government

62. The Government maintains that the establishment of a complementary pension fund is subject to a complex procedure, according to the relevant law, and its completion depends on both the trade union and the Italian state.

63. The Government believes that there is no provision in the regulations of the Security and Defence sectors that allows the unilateral establishment and implementation of complementary pension schemes by the employer administration. The Administration cannot act unilaterally—negotiations are essential and must result in a regulatory act.

64. In this regard the activation of complementary pension schemes falls within the scope of consultation and contractual negotiations, as provided for in Article 26, paragraph 20, of Law No. 448/1998. Consequently, the administrative procedure could not be initiated or concluded unilaterally by the Administration. The Government's central argument is that this provision grants the Administration the *option*, but not the *obligation*, to initiate such negotiations. In other words, while the law permits the establishment of complementary pension schemes, it does not mandate their implementation.

65. The Government also highlights that, as part of the inter-ministerial roundtable discussions, a package of measures (referred to by the Government as the "specificity package") was proposed for inclusion in the 2022 Budget Law. There was broad consensus among trade unions and military representatives in favour of alternative pension measures—distinct from the general complementary pension model—through the creation of a special fund to support compensatory benefits.

66. The Government refers to the relevant case law of the Italian administrative courts that have consistently held that complementary social security in this sector is subject to consultation and agreement, and the Administration cannot be held liable for not initiating or completing these processes on its own. The Government maintains

that later legislative developments, such as Legislative Decree No. 252/2005, confirm this interpretative approach. Specifically, for personnel belonging to the Armed Forces and Military Police Forces, the establishment of complementary pension schemes is permitted either through the applicable legal framework or, in the absence thereof, through agreements promoted by the workers' associations. However, such schemes may only be introduced following a process of negotiation, thereby excluding any possibility of unilateral action by the Administration.

67. As regards the inability to initiate the negotiation, the Government states that this is also related to the change of the regulatory framework regarding representation of Armed Forces and Military Police Forces. Law No. 46/2022 provides for the establishment of professional associations with a trade union character among military personnel.

68. Furthermore, the Government claims that for the liability of the Public Administration to be established, it is necessary not only to verify the violation of procedural deadlines, but also to demonstrate that such violation is due to fault or wilful misconduct on the part of the Administration, that the damage is a direct and immediate consequence of the delay, and that the harm claimed is duly proven (*ex multis* TAR Campania, Section I, 27 September 2019, No. 4634). In the instant case, there exists no legal obligation for the Administration either to initiate or to conclude the procedure in the manner invoked by ASSO.MIL.

69. With regard to the alleged damage resulting from the failure to activate the complementary pension scheme, the Government maintains that the administrative case law has consistently excluded the existence of any harm. In particular, the Administrative Court (TAR Lazio, decision No. 8286 June 2019) has clarified that any delay in the relevant procedures cannot be attributed solely to the inertia of the Ministries concerned, but rather to the protracted pace of the technical roundtable—of which the trade union representatives of the relevant personnel categories are an integral part (see TAR Lazio, Rome, Section I bis, 25 June 2019, No. 8286). Consequently, the Government claims that the delay cannot be attributed exclusively to the Administration, as alleged by ASSO.MIL., given that the process inherently involves the participation of the social partners.

70. In view of the foregoing, the Government asks the Committee to find no violation of the Charter.

B – Assessment of the Committee

As to the alleged violation of Article 12§3

71. As to the obligation of the State to maintain a social security system covering the traditional branches of social security, the Committee points out that it assessed the reform introduced in Italy by Law No. 335/1995 over several monitoring cycles in the framework of the reporting procedure (Conclusions XIV-1(1998), Italy (Article 12§3), Conclusions XV-1(2000), Italy (Article 12§3), Conclusions 2006, Italy (Article 12§1)).

72. The Committee recalls that States Parties must ensure the right to social security through the existence of a social security system established by law and functioning in practice (Finnish Society of Social Rights v. Finland, Complaint No. 172/2018, decision on the merits of 14 September 2022, §§ 68-70). Social security, which includes universal schemes as well as professional ones, includes contributory, non-contributory and combined benefits and allowances related to certain risks.

73. The Committee further recalls that even if specific restrictive measures may in isolation be in conformity with the Charter, their cumulative effect may amount to a violation of Article 12§3 of the Charter (Federation of employed pensioners of Greece ((IKA –ETAM) v. Greece, Complaint No. 76/2012, decision on the merits of 7 December 2012, §§ 78-83). Therefore, any changes to a social security system must maintain in place a sufficiently extensive system of compulsory social security and refrain from excluding entire categories of workers from the social protection offered by this system (General Federation of employees of the national electric power corporation (GENOP-DEI) / Confederation of Greek Civil Servants Trade Unions (ADEDY) v. Greece, Complaint No. 66/2011, decision on the merits of 23 May 2012, §47).

74. The Committee has also stated that the principle of collective funding (i.e. funded by contributions of employers and workers and/or by the state budget) is a fundamental feature of a social security system as foreseen by Article 12 as it ensures that the burden of risks are spread among the members of the community, including employers, in an equitable and economically appropriate manner and contributes to avoiding discrimination of vulnerable categories of workers (Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on the merits of 9 September 2014, §58, Conclusions XVIII-1 (2006), The Netherlands, Article 12§1).

75. In the context of the present case, the Committee assesses whether the obligation under Article 12§3 to progressively improve the system of social security has been fulfilled. To this end, it assesses whether the measures taken — or the failure of the respondent State to create a complementary fund for the Armed Forces and Military Police Forces — pursued a legitimate aim and complied with the principle of proportionality, ensuring that any restriction of the right protected under Article 12§3 was suitable of achieving the pursued aim, was in public interest and was not excessive in relation to the objective pursued.

76. The Committee reiterates that under Article 12§3 of the Charter, States Parties are required to endeavour to raise progressively the system of social security to a higher level. It establishes the minimum standards that must be respected by the States Parties. The expansion of schemes, protection against new risks or increase of benefit levels are examples of improvement (Statement of interpretation on Article 12, Conclusions XVI-1). In this sense, Article 12§3 lays down an obligation to regularly adjust social security benefit rates in order to compensate for any rise in the cost of living (see Finnish Society of Social Rights v. Finland, Complaint No. 172/2018, decision on the merits of 14 September 2022, §71; *Sindacato Autonomo Pensionati* Or.S.A. v. Italy, Complaint No. 187/2019, decision on the merits of 17 October 2023,

§113; *Sindicato Autonomo Pensionati* Or.S.A. v. Italy, Complaint No. 167/2018, decision on the merits of 7 December 2022, §§ 35-36; see also European Committee of Social Rights: "Social Rights and the Cost of Living Crisis - A review of States' Parties Ad Hoc Reports, 2025, p. 63).

77. The Committee points out that Article 12§3 of the Charter imposes a positive and dynamic obligation on States Parties to ensure that the social security system evolves towards improved coverage and adequacy. States Parties must demonstrate that they are taking concrete, coordinated, and timely steps to improve the enjoyment of social rights, including pensions. Despite Italy's legislative reform with regard to pensions, the Government has not established complementary pension schemes for personnel in the Armed Forces and Military Police Forces and has not demonstrated that all possible measures to establish and successfully conclude a dialogue procedure were taken.

78. The Committee notes that the absence of compensatory mechanisms—despite being foreseen in the law—results in a net loss of protection for the affected workers. These workers have experienced economic disadvantage, including the absence of employer contributions to such funds, loss of tax benefits, and inability to transfer end-of-service entitlements. These cumulatively undermine their social protection. This is contrary to the object and purpose of Article 12§3, which seeks continuous improvement in social security systems. Each country is free to define its own social security system. The European Social Charter neither imposes a common model, nor seeks to harmonise social security legislation. It aims at ensuring minimum common standards. States Parties however are not exempt from their obligation under Article 12§3 to progressively enhance the level and effectiveness of social security protection.

79. Specifically, to be consistent with Charter requirements, the first pillar of public pension system, typically structured on a pay-as-you-go (PAYG) basis and founded on the principles of solidarity and equality must continue to guarantee adequate benefits (on adequacy see for example Conclusions 2013, Hungary, Article 12 § 1 or Conclusions 2013, Finland, Article 12 § 1. Any reform resulting in benefit levels falling below the adequacy standard, without effective compensatory measures or justifications, constitutes a regression contrary to the object and purpose of the Charter's continuous improvement mandate.

80. The Committee considers that even if the Government argues that it cannot unilaterally establish such schemes due to the need for prior negotiations with trade unions, as per Law No. 448/1998 and Decree No. 252/2005, States cannot invoke domestic legal or administrative complexity to justify failure to implement Charter rights. The fact that a consultation mechanism exists at the national level does not absolve the State of the responsibility to ensure that effective and timely negotiations take place and that outcomes are achieved. Consequently, requirements—such as prior negotiations with trade unions under Law No. 448/1998 and Decree No. 252/2005—cannot be used by the Government to justify delays or inaction in the implementation of rights guaranteed under the Charter. The responsibility to give full

effect to Charter rights remains with the State, which must take the necessary measures to ensure that the compensatory pension schemes are applied in a manner consistent with the objectives and binding nature of the Charter.

81. The Committee notes that it has been three decades since the 1995 reform, and no effective complementary pension fund has been established for the relevant categories. This prolonged delay—despite repeated discussions—amounts to inertia, incompatible with the progressive improvement obligation imposed by Article 12§3 of the Charter.

82. The Committee therefore considers that Italy's failure to implement complementary pension funds for Armed Forces and Military Police Forces personnel, has led to the deterioration of acquired social protection levels and manifestly reflects lack of progress, contrary to the obligations arising under the Charter. The Italian Government's reliance on legal constraints and negotiation requirements cannot serve as justification under international law. The Committee therefore holds that the above situation constitutes a violation of Article 12§3 of the Charter.

As to the alleged violation of Article E in conjunction with Article 12§3

83. As regards Article E of the Charter, the Committee notes that the principle of equality and non-discrimination in the enjoyment of social rights requires that comparable groups of workers receive comparable treatment, unless objective and reasonable justification exists. The principle of equality that is reflected therein means treating equals equally and unequals unequally. Article E of the Charter not only prohibits direct discrimination but also all forms of indirect discrimination that may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all (International Association Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §52). The grounds of prohibited discrimination listed in Article E of the Charter are not exhaustive (*Associazione Nazionale Giudici di Pace* v. Italy, Complaint No. 102/2013, decision on the merits of 5 July 2016, §70).

84. Furthermore, distinction is discriminatory in terms of Article E of the Charter where it lacks objective and reasonable justifications (European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, §40). A difference in treatment is not justifiable in terms of Article E if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realized.

85. In the instant case, it appears that other categories of public sector workers (e.g. civil servants under contractual status) have access to complementary pension mechanisms, while Armed Forces and Military Police Forces personnel, despite being

subject to the same legislative pension reform, remain excluded from such compensatory schemes due to Government's inaction. This differential treatment—based solely on their status as Armed Forces or Military Police Forces personnel—results in a less favourable position for this category of workers without a legitimate aim and without reasonable justification.

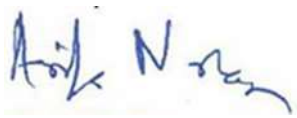
86. The Committee therefore holds that the failure to extend access to complementary pension mechanisms to Armed Forces and Military Police Forces personnel, despite the availability of such schemes to other comparable categories of public sector workers, constitutes a violation of Article E read in conjunction with Article 12§3 of the Charter due to the unjustified and disproportionate differential treatment based solely on professional status.

CONCLUSION

For these reasons, the Committee concludes:

- unanimously that there is a violation of Article 12§3 of the Charter;

- unanimously that there is a violation of Article E read in conjunction with Article 12§3 of the Charter.



Grega STRBAN	Aoife NOLAN	Henrik KRISTENSEN
Rapporteur	President	Executive Secretary

APPENDIX

Decision on admissibility

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

European Social Charter | Charte sociale européenne

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

DECISION ON ADMISSIBILITY

23 May 2023

***Associazione Sindacale Militari* (ASSO.MIL.) v. Italy**

Complaint No. 213/2023

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 334th session in the following composition:

Aoife NOLAN, President
Eliane CHEMLA, Vice-President
Tatiana PUIU, Vice-President
József HAJDÚ
Karin Møhl LARSEN
Yusuf BALCI
Paul RIETJENS
George THEODOSIS
Mario VINKOVIC
Carmen SALCEDO BELTRÁN
Franz MARHOLD
Alla FEDOROVA

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having regard to the complaint registered on 29 August 2022 as number 213/2022, lodged by *Associazione Sindacale Militari* (ASSO.MIL.) against Italy and signed by Federico Menichini, President of ASSO.MIL., assisted by Egidio Lizza, lawyer, requesting the Committee to find that the situation in Italy is not in conformity with Article 12 as well as Article E read in conjunction with Article 12 of the Revised European Social Charter ("the Charter");

Having regard to the documents appended to the complaint;

Having regard to the observations of the Government of Italy ("the Government") on the admissibility of the complaint, registered on 10 November 2022;

Having regard to the response from ASSO.MIL. to the Government's observations, registered on 26 January 2023;

Having regard the reply of the Government to the response from ASSO.MIL. on the admissibility of the complaint, registered on 24 March 2023;

Having regard to the Charter, and in particular to Articles 12 and E, which read as follows:

> **Article 12 – The right to social security**
>
> Part I: "All workers and their dependents have the right to social security."
>
> Part II: "With a view to ensuring the effective exercise of the right to social security, the Parties undertake:
>
> 1. to establish or maintain a system of social security;
> 2. to maintain the social security system at a satisfactory level at least equal to that required for ratification of the European Code of Social Security;
> 3. to endeavour to raise progressively the system of social security to a higher level;
> 4. to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:
> a. equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;
> b. the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties."
>
> **Article E – Non-discrimination**
>
> "The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status."

Having regard to the Additional Protocol to the European Social Charter providing for a system of collective complaints ("the Protocol");

Having regard to the Rules of the Committee adopted by the Committee on 29 March 2004 at its 201st session and last revised on 6 July 2022 at its 328th session ("the Rules");

Having deliberated on 23 May 2023;

Delivers the following decision, adopted on that date:

1. ASSO.MIL. alleges that the failure by the Italian State to establish a supplementary pension fund in favour of civil servants belonging to the armed forces and police with military status, as provided for by Legislative Decree No. 124/1993 and other relevant legislation, is in breach of Article 12 as well as of Article E read in conjunction with Article 12 of the Charter. ASSO.MIL. maintains in particular that the establishment of a supplementary pension fund is among the measures aimed at maintaining and even strengthening the social security system that the Italian State is obliged to adopt under Article 12 of the Charter. ASSO.MIL. also asserts that the failure to establish a supplementary pension fund for security and defence workers constitutes discrimination in comparison with all other public sector workers, who already benefit from such provisions, in violation of Article E in conjunction with Article 12 of the Charter.

2. In its observations, the Government objects to the admissibility of the complaint. It argues, on the one hand, that the procedure for registering ASSO.MIL. as a professional association of a trade union nature has not yet been completed and, on the other, that its membership does not reach the required minimum percentage of the total workforce of the armed forces and police with military status. For these reasons the Government considers that ASSO.MIL. does not meet the conditions provided for by national legislation for being recognised as a representative professional association of a trade union nature at national level. The Government asks the Committee to declare the complaint inadmissible, since the complainant organisation cannot be regarded as a representative national trade in the meaning of Article 1 (c) of the Protocol either.

3. In its response to the Government's objections, ASSO.MIL. states that the lack of registration observed is the result of a failure by the competent Ministry to decide on the application for registration within reasonable time, which the Government cannot rely on to deprive the association of its right to be heard by the Committee. It further stresses that its activity and the number of its members must be assessed in the light of the fact that ASSO.MIL., like all armed forces trade unions, was founded very recently, given that prior to the Constitutional Court Judgment No. 120/2018 it was prohibited to form a military trade union. It also asserts that the actual functioning of such unions, including the gathering of members, was negatively affected by an unjustifiable delay in the adoption of Law No. 46/2022 which came into force on 27 May 2022. Finally, ASSO.MIL. considers that representativeness at national level is not a decisive factor within the meaning of Article 1 (c) of the Protocol and stresses that the Committee has recalled on several occasions that the representativeness of national trade unions for the purposes of the collective complaints procedure is an autonomous concept, not necessarily identical to the national notion of representativeness. ASSO.MIL. maintains that it fully meets the requirements of Article 1 (c) of the Protocol, as interpreted by the Committee.

4. In its reply to ASSO.MIL., the Government acknowledges that ASSO.MIL. was finally registered in the ministerial roll on 6 March 2023 as a professional association of a trade union nature, but reiterates its objections to the admissibility of the complaint on the grounds that ASSO.MIL. was not enrolled in the ministerial roll when it lodged the complaint and that its membership still does not meet the required minimum percentage of the total workforce of the armed forces and police with military status to be considered as a representative professional association of a trade union nature at national level. It reiterates that in its view the complaint should therefore be declared inadmissible pursuant to Article 1 (c) of the Protocol on grounds of the complainant organisation's lack of standing under the complaints procedure.

THE LAW

As to the admissibility conditions set out in the Protocol and the Committee's Rules

5. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Italy on 3 November 1997 and entered into force for this State on 1 July 1998, the complaint has been submitted in writing and concerns Article 12 of the Charter, provision accepted by Italy when it ratified the Charter on 5 July 1999, as well as Article E. Italy is bound by these provisions since the entry into force of this treaty in its respect on 1 September 1999.

6. The Committee observes that the complaint is signed by Federico Menichini, President *pro tempore* of ASSO.MIL., who according to Article 11 of its Statutes has the power to legally represent the organisation concerning all matters and within legal action. The complaint is also signed by Egidio Lizza, a lawyer mandated by the Legal Representative to this effect. The Committee considers, consequently, that the complaint complies with Rule 23 of its Rules.

7. Moreover, the Committee notes that the grounds of the complaint are indicated, detailing in what respect ASSO.MIL. considers that Italy has not ensured the satisfactory application of the Charter. On this basis, the Committee considers that the complaint fulfils the requirements set out in Article 4 of the Protocol for the purposes of admissibility.

As to the objections raised by the Government

8. As to the Government's first objection, according to which ASSO.MIL. was not registered in the ministerial roll as a professional association of a trade union nature when it lodged its complaint, the Committee recalls that it rules on the legal situation that applies on the date of its decision (European Council of Police Trade Unions (CESP) v. France, Complaint No. 57/2009, decision on the merits of 1 December 2010, §52). The Committee notes that ASSO.MIL. was registered in the said roll as of 6 March 2023 and considers that it can be regarded as a trade union which is engaged in activities within the jurisdiction of Italy in accordance with Article 1 (c) of the Protocol.

9. As to the Government's second objection according to which ASSO.MIL. is not a representative national trade union organisation, the Committee recalls that the representative nature of a complainant organisation for the purposes of the collective complaints procedure is an autonomous concept, not necessarily identical to the national notion of representativeness (*Confédération Française d'Encadrement "CFE-CGC"* v. France, Complaint No. 9/2000, decision on admissibility of 6 November 2000, §6). Although the Committee may take into account the number of members represented by the trade union and its role in collective bargaining at the national level as criteria of representativeness, it stresses that the number of members and the role performed in national negotiations are mentioned in the Explanatory Report to the Additional Protocol to the Charter providing for a system of collective complaints by way of illustration and not as conditions of an exclusive or absolute nature. The Committee, accordingly, makes an overall assessment to establish whether or not a trade union is representative within the meaning of Article 1 c) of the Protocol (*Fellesforbundet for Sjøfolk* (FFFS) v. Norway, Complaint No. 74/2011, decision on admissibility of 23 May 2012, §20).

10. The Committee further recalls that the application of criteria of representativeness should not lead to automatic exclusion of small trade unions or those formed recently to the advantage of larger and longer-established trade unions, thereby prejudicing the effectiveness of the right of all trade unions to bring a complaint before the Committee (FFFS v. Norway, Complaint No. 74/2011, op. cit., §21). The Committee examines representativeness in particular with regard to the field covered by the complaint, to the aim of the trade union and to the activities which it carries out (see *Syndicat de Défense des Fonctionnaires* v. France, Complaint No. 73/2011, decision on admissibility of 7 December 2011, §6). It also considers that, to be regarded as representative under the collective complaints procedure, a trade union must be real, active and independent (FFFS v. Norway, Complaint No. 74/2011, op. cit., §22).

11. The Committee notes that ASSO.MIL. is a trade union which, according to Article 2 of its statutes, organises staff of the armed forces and police with military status, in particular within the *Carabinieri*, the *Guardia di Finanza* and the *Corpo delle Capitanerie di Porto*.

12. The Committee also notes that according to Article 3 of its statutes the aims of ASSO.MIL. include inter alia: securing protection for its members and representing their legitimate expectations and needs, advocating enhanced professional development for all armed forces workers; proposing legislative, regulatory and contractual initiatives as well as initiatives aimed at improving the working and living conditions of those workers, and ensuring their representation in all relevant bodies and by all appropriate means. The Committee notes that ASSO.MIL. at present has 194 members throughout the country.

13. The Committee notes that ASSO.MIL. is mainly made up of former members of the unions that were active in the State Forestry Corps, a civilian administration which was incorporated into the *Carabinieri* and the *Guardia di Finanza* following the entry into force of Legislative Decree No. 177/2016. ASSO.MIL. states that it has set itself the goal of being able to reproduce in the framework of the armed forces the results already achieved in a civilian administration and that within its membership it thus possesses a unique trade union experience in this sector.

14. On the basis of an overall assessment of the information at its disposal, the Committee notes that ASSO.MIL. is an organisation having a trade union nature open to armed forces and police with military status staff and that it can be considered as a representative trade union for the purposes of the collective complaints procedure.

15. Therefore, the Committee considers that the objections of the Government must be dismissed.

16. On these grounds, the Committee, on the basis of the report presented by Paul RIETJENS and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE

In application of Article 7§1 of the Protocol, requests the Deputy Executive Secretary to notify the complainant organisation and the respondent State of the present decision, to transmit it to the parties to the Protocol and the states having submitted a declaration pursuant to Article D§2 of the Charter, and to publish it on the Internet site of the Council of Europe.

Invites the Government to make written submissions on the merits of the complaint by 31 July 2023.

Invites ASSO.MIL. to submit a response to the Government's submissions by a deadline which it shall determine.

Invites the Parties to the Protocol and the States having submitted a declaration pursuant to Article D paragraph 2 of the Charter to make comments by 31 July 2023, should they so wish.

Pursuant to Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the European Social Charter to make observations by 31 July 2023.

Paul RIETJENS	Aoife NOLAN	Henrik KRISTENSEN
Rapporteur	President	Deputy Executive Secretary