



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

12 October 2017

Case Document No. 5

Confederazione Generale Italiana del Lavoro (CGIL) v. Italy
Complaint No. 140/2016

**RESPONSE OF CGIL TO THE GOVERNMENT'S
SUBMISSIONS ON THE MERITS**

Registered at the Secretariat on 28 September 2017

Department of the European Social Charter

Directorate General Human Rights and Rule of Law Council of Europe

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Object: reply by the *Confederazione generale italiana del lavoro (CGIL)* to the observations submitted by the Italian Government on the merits of Complaint no. 140/2016.

1. The Confederazione generale italiana del lavoro (CGIL) submitted a collective complaint alleging that Italy is in violation of articles 5 and 6 of the European Social Charter, due to the fact that Italian law impairs the freedom of members of the *Guardia di Finanza* to form organisations for the protection of their economic and social interests, to join those organisations, and provides for a total prohibition of the right to strike. In particular, Italian law does not only impair the right of members of the *Guardia di Finanza* to organise themselves and to bargain collectively, but violates as well their freedom of association: in fact, members must obtain a formal authorization to associate and their associations are subject to an administrative control.
2. The Italian Government acknowledges that Italy impairs the freedom of members of the *Guardia di Finanza* to form organisations for the protection of their economic and social interests, to adhere to those organisations, and provides, at the same time, for a total prohibition of the right to strike.

However, the respondent State submits that the violation of article 5 and 6 of the European Charter is justified because the members of the *Guardia di Finanza* are entrusted with a military status.

This argument shall need to be rejected.

3. First, pursuant to Legislative Decree n. 68-2001, the *Guardia di Finanza* is a «*police force*» with the task of assuring «*law enforcement in economic and financial fields*».
- Furthermore, Legislative Decree n. 177-2016 (which disposes a general re-organization of law enforcement) includes the *Guardia di Finanza* into the Police Forces, with the «*principal or exclusive task*» of water police and financial police. Moreover, this Body is under the command of the Minister of Economy (and not of the Ministry of the Defence).
- Therefore, pursuant to Italian law, the *Guardia di Finanza* actually is a police force and not an armed force.

4. On the other side, in accordance with the case law of the Committee, the civilian or military nature of an organisation depends on the tasks entrusted to members: such nature must be assessed on the basis of whether they perform tasks (such as to supervise the execution of laws; criminal investigation; and to ensure public security and order) that are primarily the same as those traditionally assigned to the police or are in charge of military defence (European Council of Police Trade Unions (CESP) v. France, Complaint No. 101/2013, pt. 54-58).
5. In our case, members of the *Guardia di Finanza* are generally involved in law enforcement and do not perform military tasks.
6. The Italian Government points out that members of the *Guardia di Finanza* perform a military training. The CGIL acknowledges this, but rebuts that it should be considered that such training is just a small portion of their educational itinerary and that, after graduation, they don't perform any military activity.

The respondent State submits also that members of the *Guardia di Finanza* are involved in military missions. The CGIL acknowledges this, but points that it must be considered that, under such missions, they don't perform any military tasks. For instance, members of the *Guardia di Finanza* participated to the *Uenavfor Med – Operation Sophia* mission, but their only task was limited to instruct the Libyan water police on the strategy to contrast the trafficking in persons (page 38 of the *2016 Report*).

Moreover, it is true that this Body has a fleet, but it uses the boats only to perform water police tasks, while, according to Legislative Decree n. 66-2010, the Italian Coast Guard is in charge of military defence in the sea, and this under the command of the Minister of Defence.

Eventually, members of the *Guardia di Finanza* are under the command of the Minister of Economy and perform tasks that are primarily the same as those traditionally assigned to the police; they are not, as a matter of fact, in charge of military defence and do not operate under the command of the Minister of Defence.

7. In other words, the situation of the Italian *Guardia di Finanza* is comparable to the situation of the French *Gendarmerie*; they have a military organisation but, given the civilian nature of the tasks performed, the duties assigned and the hierarchic authority are functionally equivalent to those of a police force.

Therefore, while it is correct that the Italian law can determine *the extent* to which the guarantees provided for in article 5 of the European Social Charter shall apply to members of the *Guardia di Finanza*, it cannot completely deny their freedom to form a local, national or

international organisation for the protection of their economic and social interests and to join those organisation.

Considering that Italy totally impairs this freedom, there is a violation of article 5.

8. From another point of view, the Italian Government submits that the restriction of the freedom of association of the members of the *Guardia di Finanza* is justified because this Body is involved in the fight against international terrorism.

This argument shall need to be rejected.

First, Italy has not availed itself of the right of derogation in time of public emergency provided by article F of the European Social Charter, therefore, it has all the duties and obligations provided by article 5.

Furthermore, the respondent State ensures trade union rights to the members of the Police, which are involved in the fight against international terrorism, and it demonstrated that law enforcement is not incompatible with the respect and compliance with social rights (and of human rights in general).

In addition, the Italian Government claims that in the event the Committee would uphold that there is a violation of article 5, this would determine a discrimination between members of the *Guardia di Finanza* and the members of the *Carabinieri*, because Italian law would impair the freedom of organisation of the member of both Corps.

This argument shall need to be rejected.

First, the situation of the *Guardia di Finanza* is not comparable with that of the *Carabinieri*, because, according to Legislative Decree n. 66-2010, only the last Body is included into the armed force. In light thereof, it is clear that Italy cannot impair the right to organise of the members of the *Guardia di Finanza* only because it impairs the same right of the members of the *Carabinieri*.

Finally, the Government refers to two decisions of the Italian Constitutional Court that are not relevant, because they do not relate to with the problem of violation of the European Social Charter (but only of the Italian Constitution as a matter of fact).

9. Therefore, the CGIL requests this Committee to uphold that Italy is in violation of article 5 of the European Social Charter due to the fact that it impairs the freedom of members of the *Guardia di Finanza* to form local, national or international organisations for the protection of their economic and social interests and to join those organisations.

10. The CGIL requests , moreover, for the recognition of Italy's violation of article 6 for the reason that it neither promotes joint consultation between workers and employers, nor provides for procedures for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to regulate the terms and conditions of employment by means of collective agreements and because it totally forbids the right to strike.

11. In fact, the representative bodies provided by Italian law cannot guarantee the right to bargain collectively, because they operate only in few fields (for instance, they do not have any jurisdiction on staff management) and have only advisory tasks: they can present claims, proposals, advices and requests, but they do not really *negotiate* with the employer the regulation of terms and conditions of employment.

Eventually, Italy does not promote a fair and equal joint consultation between workers, on the one side, and the employer, on the other side.

From another point of view, Italy totally forbids the right to strike (even the Government admits that situation).

Therefore, there is also a violation of article 6.

12. On these grounds, the European Committee of Social Rights is requested :

- to hold that Italy is in violation of article 5 of the European Social Charter as it impairs the freedom of members of the *Guardia di Finanza* to form local, national or international organisations for the protection of their economic and social interests and to join those organisations even if they perform tasks that are primarily the same as those traditionally assigned to the police;

or, in a subordinate manner,

- to hold that Italy is in violation of article 5 of the European Social Charter whereas it impairs the freedom of members of the *Guardia di Finanza* to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, regardless of the civilian or military nature of the Body;

the European Committee of Social Rights is also requested:

- to hold Italy violates article 6§1 of the European Social Charter as it does not promote joint consultation between members of the *Guardia di Finanza* and their employer, the Minister of Economy;

- to hold that Italy violates article 6§2 of the European Social Charter because it doesn't promote machinery for voluntary negotiations between members of the *Guardia di Finanza* (or their organisations) and their employer, the Minister of Economy, with a view to the regulation of terms and conditions of employment by means of collective agreements;
- to hold that Italy violates article 6§4 of the European Social Charter because it totally forbid members of the *Guardia di Finanza* to strike.

Roma-Strasbourg, 27th September 2017



Susanna Lina Giulia Camusso

Secretary General