



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

12 August 2017

Case Document No. 4

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

**OBSERVATIONS BY THE EUROPEAN TRADE UNION
CONFEDERATION (ETUC)**

Registered at the Secretariat on 17 July 2017



Collective Complaint

from the
Confederazione Generale Italiana del Lavoro (CGIL)
 against Italy

Complaint No. 140/2016

Observations by the **European Trade Union Confederation (ETUC)**

(18/07/2017)

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- 1 In availing itself of the opportunity provided in the Collective Complaints Procedure Protocol (Article 7(2)) the European Trade Union Confederation (ETUC) would like to present the following observations on the case dealing with alleged violations of Articles 5 and 6 of the Charter¹ concerning the members of the *Guardia di Finanza* are denied most of these rights. Dealing with the fundamental collective rights of (a specific category of) public servants this case is important also for ETUC because of the necessity to effectively secure the enjoyment of fundamental (collective) rights throughout the public service.
- 2 The ETUC acknowledges and welcomes the specifically important role the Republic of Italy has played and continues to play in the framework of the Charter. In particular, the original Charter has been signed in Turin (Italy) in 1961. Thirty years later, in 1991, the Amending Protocol has also been signed in Turin (thus denominated, in practice, the 'Turin Amending Protocol').² Finally, the newest impetus for strengthening the Charter has again started in Turin (thus denominated the 'Turin Process').³
- 3 Against this background, it is not surprising but still much welcomed that Italy has ratified both the Charter and the Collective Complaints Procedure Protocol.⁴ It has also accepted the relevant provisions of the Charter.

1. As to the attribution of the *Guardia di Finanza* to the police

- 4 The focus of this case is concentrated on the attribution of the *Guardia di Finanza* either to the armed forces (from the domestic legal point of view) or to the police (from the substantive point of view). If it is considered as being part of the latter it will nearly automatically follow from this assessment that Italy violates the collective rights referred to in the complaint.

A. International law

- 5 The ECSR has dealt with this question in detail in its decision on the merits in the case of the (French) *Gendarmerie* in which it attributed this organisation to the police (at least in so far as it is 'functionally equivalent to a police force').⁵ In particular, it described the pertinent international legal framework. All international instruments mentioned therein have also been ratified by Italy:
 - European Convention on Human Rights (ECHR),⁶ ratified by Italy on 26 October 1955,

¹ The following references to Articles without further indications are related to the Revised European Social Charter (CETS No. 163) as ratified by Italy (5.7.1999, accepting 97 out of 98 paragraphs).

² Protocol amending the European Social Charter (CETS No.142), ratified by Italy on 27.1.1995.

³ 'The Turin process for the European Social Charter', in: <http://www.coe.int/en/web/turin-process> containing all relevant references and links. As to the latest developments, see 'Report of the Parliamentary Assembly of the Council of Europe on the "Turin Process"', 3.7.2017 (Doc. 14343, 12.6.2017).

⁴ Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (CETS No. 158) ratified by Italy on 3.11.1997.

⁵ ECSR, Decision on the merits, 27.1.2016, no. 101/2013 - *European Council of Police Trade Unions (CESP) v. France*.

⁶ *Ibid.*, para. 20; the relevant ECtHR's case law is reproduced in paras. 21 - 22. Concerning the Recommendation CM/Rec(2010)4 to member states on human rights of members of the armed forces, adopted on 24 February 2010 at the 1077th meeting of the Ministers' Deputies (see paras. 27 and 28), it is interesting to take also into account the Explanatory Memorandum published together with the text of the Recommendation

- International Covenant on Civil and Political Rights (ICCPR),⁷ ratified by Italy on 15 September 1978,
 - International Covenant on Economic, Social and Cultural Rights (ICESR),⁸ ratified by Italy on 15 September 1978,
 - ILO Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organise,⁹ ratified by Italy on 13 May 1958,
 - ILO Convention (No. 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively,¹⁰ ratified by Italy on 13 May 1958.
- 6 As regards the ECHR, the complaint refers to the most important judgments the ECtHR has delivered in this area. Indeed, it would appear from this case law that there is a tendency in of recognition of collective rights in areas which in former times were considered as non-existent. The landmark judgment was the ECtHR's unanimously adopted Grand Chamber judgment in the *Demir and Baykara*¹¹ case which reversed the Court's previous jurisprudence by recognising for the first time the right to collective bargaining as being enshrined in the protection of freedom of association guaranteed by Article 11 ECHR. Based on this judgment the Third Section has also recognised in *Enerji Yapi-Yol Sen*¹² the right to strike as an aspect of the same human right. This was followed by a series of further judgments.¹³ More specifically, this tendency also concerns the security forces. More and more trade union rights are recognised also in this field.¹⁴
- 7 In this context, it appears important to highlight that both, the ICCPR (Article 22) and ICESCR (Article 8), only allow 'lawful restrictions' of collective rights of members of police forces. In any event, the latter may not be denied in full.

B. Considerations

- 8 Against this background the complaint explains in detail the reasons why the situation in Italy is the same in relation to the *Guardia di Finanza*.

(<http://policehumanrightsresources.org/wp-content/uploads/2016/06/CoE-Guidelines-on-Human-Rights-of-members-of-the-armed-forces.pdf>) under K. bearing in mind that the Charter differentiates between the armed and police forces providing better protection of the right to organise for the latter.

⁷ *Ibid.*, para. 30.

⁸ *Ibid.*, para. 31.

⁹ *Ibid.*, para. 32.

¹⁰ *Ibid.*, para. 33.

¹¹ ECtHR (Grand Chamber [GC]), 12.11.2008, no. 34503/97 *Demir and Baykara v. Turkey* [2008] ECHR 1345.

¹² ECtHR 21.4.2009, no. 68959/01 - *Enerji Yapi-Yol Sen v. Turkey*.

¹³ In the meantime, the right to strike has been recognised by all five Sections of the ECtHR:

- First Section: 27.11.2014, no. 36701/09 - *HLS v Croatia*;
- Second Section: 15.9.2009, no. 30946/04 - *Kaya and Seyhan v Turkey*, 15.9.2009, no. 22943/04 - *Saime Özcan v. Turkey*, 13.7.2010, no. 33322/07 - *Çerikci v. Turkey* (see also 27.3.2007, no. 6615/03 - *Karaçay v. Turkey*);
- Third Section: see above;
- Fourth Section: 8.4.2014, no. 31045/10 - *RMT v UK*;
- Fifth Section: 2.10.2014, no. 48408/12 - *Tymoshenko v Ukraine*.

¹⁴ ECtHR 2.10.2014, no. 32191/09 - *AFEDROMIL* („les restrictions pouvant être imposées aux trois groupes de personnes cités par l'article 11 appellent une interprétation stricte et doivent dès lors se limiter à l'« exercice » des droits en question. Elles ne doivent pas porter atteinte à l'essence même du droit de s'organiser", para. 43), 2.10.2014 - 10609/10 - *Matelly*.

9 Referring to the interpretation framework which the ETUC has described more in detail in its Observations in the *LO/TCO v. Sweden* case¹⁵ the ETUC would like to support fully the assessment contained in the complaint on all pertinent provisions of Articles 5 and 6, i.e. paras. 1, 2 and 4 of the Charter. In order to further strengthen the arguments developed therein it would like to add the following sources:

10 From a domestic perspective, in an internet description of 'The Public Security System in Italy' by the most pertinent organisation, the 'Polizia di Stato', it is clearly stated that the *Guardia di Finanza* is part of the police forces (and not of the armed forces):

The National Authority for Public Security is the Minister of the Interior, responsible for public order and security, and the coordination of police forces. In Italy there are five police forces: Polizia di Stato, Arma dei Carabinieri, **Guardia di Finanza**, Polizia Penitenziaria and Corpo Forestale dello Stato.¹⁶
[Emphasis added]

11 Taking into account also the international perspective, it is interesting to note that the UN has published a Country Survey on Italy concerning 'Public Administration'. It qualifies this Agency just as 'tax police':

Although there are no agencies with a specific legal mandate on corruption, the "prevention, search and denunciation" of economic criminality (in general) is one of the main tasks of the tax police (**Guardia di Finanza**). This agency is effective and employs more than 60,000 full-time officials.¹⁷
[Emphasis added]

12 From these official sources, the conclusion in the complaint that the *Guardia di Finanza* is to be considered as part of the police force is further strengthened.

II. As to the alleged violations of Articles 5 and 6 of the Charter

A. General considerations

13 Concerning Articles 5 and 6 paras. (1) and (2) and on basis of the *CESP v. France* decision finding a violation of Articles 5 and 6(2), the complaint provides the relevant information and legal assessment. As regards Article 6(1), it explains that the conclusion of conformity in the *CESP v. France* case does not apply to this case and provides the respective reasoning.

14 At least concerning Article 5, there is an additional element which the ECSR may wish to take into consideration in its legal assessment. Notwithstanding the fact that the complaint does not explicitly mention Article E the ECSR might consider that there is a discrimination element also in relation to Article 5. Indeed, under point 3.4. the complaint addresses the lack of justification for treating the *Guardia di Finanza* differently from the other police forces.

¹⁵ *Collective Complaint from the Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden* (No. 85/2012), Observations by the European Trade Union Confederation (ETUC), 3.5.2013, paras. 26 – 39.

¹⁶ (<http://poliziadistato.it/articolo/964-The-Public-Security-System-in-Italy>)

¹⁷ United Nations (Division for Public Administration and Development Management (DPADM) Department of Economic and Social Affairs (DESA)), Republic of Italy - Public Administration - Country Profile, May 2006, p. 13, quoting from "Global Integrity – Italy (2005)".

A. Specific considerations concerning Article 6(4)

- 15 The complaint also provides pertinent arguments in relation to the non-conformity on the total ban concerning the right to strike. Additionally, the ETUC would like to refer to the decision in the case *EuroCOP v. Ireland* in which the ECSR has recognised the right to strike for police forces. Indeed, it has stated:

210. From this point of view, Section 8 of the Industrial Relations Act not only amounts to a restriction but to a complete abolition of the right to strike. In this regard, the Committee has held that “[...] national legislation which prevents a priori the exercise of the right to collective action, or permits the exercise of this right only in so far as it is necessary to obtain given minimum working standards would not be in conformity with Article 6§4 of the Charter, as it would infringe the fundamental right of workers and trade unions to engage in collective action for the protection of economic and social interests of the workers. In this context, within the system of values, principles and fundamental rights embodied in the Charter, the right to collective bargaining and collective action is essential in ensuring the autonomy of trade unions and protecting the employment conditions of workers.” (*Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden*, Complaint No. 85/2012; decision on the admissibility and merits of 3 July 2013, §120).

211. Since this applies in respect of restrictions on the exercise of the right to strike for the purpose of improving conditions of work beyond a given minimum level, it *a fortiori* applies also for every absolute prohibition of the right to strike established a priori by law. In other words, the Committee holds that restrictions on human rights must be interpreted narrowly. As a consequence, in the context of the regulation of the collective bargaining rights of police officers, states must demonstrate compelling reasons as to why an absolute prohibition on the right to strike is justified in the specific national context in question, as distinct from the imposition of restrictions as to the mode and form of such strike action.

212. Thus, in this case, the margin of appreciation of the state party is restricted, because the abolition of the right to strike affects one of the essential elements of the right to collective bargaining, as provided for in Article 6 of the Charter, and without which the content of this right becomes void of its very substance and is therefore deprived of its effectiveness.

213. In the situation at issue in this complaint, the Government as previously noted has not presented such a compelling justification for the imposition of the absolute prohibition on the right to strike set out in Section 8 of the 1990 Industrial Relations Act. As a result, the Committee considers that this statutory provision is not proportionate to the legitimate aim pursued and, accordingly, is not necessary in a democratic society.

214. The Committee consequently holds that the **prohibition of the right to strike of members of the police force amounts to a violation of Article 6§4 of the Charter.**¹⁸ [Emphasis added]

- 16 For the ETUC, there is no reason why this should not apply to in full to the present case. Accordingly, it would like to ask the ECSR for the possibility of further observations if, in its observations, the Government would provide information which would require specific information and assessments in particular under Article 6(4).

¹⁸ ECSR, Decision on admissibility and the merits, 2.12.2013, Complaint No. 83/2012 - *European Confederation of Police (EuroCOP) v. Ireland*; however, it is well noted that the decision on Article 6 para. 4 was not unanimously adopted (see Dissenting opinion by Schlachter, Nyström and Wujczyk).

III. Conclusions

- 17 In accordance with the complaint's conclusions the ETUC would also consider that, as regards the *Guardia di Finanza*, the Charter has been violated by Italy in relation to Articles 5 and 6(1), (2) and (4).