



European  
Social  
Charter

Charte  
sociale  
européenne



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

**DECISION ON THE MERITS**

**Adoption: 22 January 2019**

**Notification: 6 February 2019**

**Publicity: 7 June 2019**

***Confederazione Generale Italiana del Lavoro (CGIL) v. Italy***

Complaint No. 140/2016

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 304th session in the following composition:

Giuseppe PALMISANO President  
Karin LUKAS, Vice-President  
Eliane CHEMLA, General Rapporteur  
Petros STANGOS,  
Jozsef HAJDU  
Krassimira SREDKOVA  
Raul CANOSA USERA  
François VANDAMME  
Barbara KRESAL  
Kristine DUPATE  
Aoife NOLAN

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having deliberated on 16 October 2018, 6 December 2018 and 22 January 2019,

On the basis of the report presented by François VANDAMME,

Delivers the following decision adopted on this last date:

## **PROCEDURE**

1. The complaint lodged by the *Confederazione Generale Italiana del Lavoro* (“CGIL”) was registered on 17 November 2016.
2. CGIL alleges that members of the *Guardia di Finanza* do not enjoy trade union rights, in violation of Articles 5, 6§1, 6§2 and 6§4 of the Revised European Social Charter (“the Charter”).
3. On 10 May 2017, in accordance with Article 6 of the 1995 Protocol providing for a system of collective complaints (“the Protocol”), the Committee declared the complaint admissible.
4. In its decision on admissibility, the Committee invited the Government to make written submissions on the merits of the complaint by 18 July 2017.
5. Referring to Article 7§1 of the Protocol, the Committee invited the States Parties to the Protocol and the States having made a declaration in accordance with Article D§2 of the Charter, to submit any observations they might wish to make on the merits of the complaint before 18 July 2017. No such observations were received.
6. Referring to Article 7§2 of the Protocol, the Committee invited the international organisations of employers or workers mentioned in Article 27§2 of the European Social Charter to make observations by 18 July 2017. Observations from the European Trade Union Confederation (“ETUC”) were registered on 17 July 2017.
7. The Government’s submissions on the merits were registered on 17 July 2017.
8. The deadline set for CGIL’s response to the Government’s submissions on the merits was 2 October 2017. CGIL’s response was registered on 28 September 2017.
9. On 2 October 2017 *Associazione Finanziari Cittadini e Solidarietà* (“FICIESSE”) requested to be allowed to submit observations on the complaint. In accordance with Rule 32A of the Rules of the Committee (“the Rules”), the President of the Committee invited FICIESSE to do so by 21 November 2017. The observations were registered on 29 November 2017.

10. The President of the Committee set 21 November 2017 as the deadline for the Government's further response. The Government's further response was registered on 20 November 2017.

11. On 22 January 2018, the Government requested a possibility to present a response to the observations of FICIESSE. The President of the Committee set 28 February 2018 as the deadline for the Government's response. The response was registered on 26 February 2018.

## **SUBMISSIONS OF THE PARTIES**

### **A – The complainant organisation**

12. CGIL invites the Committee to conclude that Italy :

- violates Article 5 of the Charter because it prohibits the members of the *Guardia di Finanza* from establishing professional trade unions or joining other trade unions;

- violates Article 6§1 of the Charter because it does not promote joint consultations between the members of the *Guardia di Finanza* and the Ministry of Economy and Finances/employer;

- violates Article 6§2 of the Charter because it does not promote voluntary negotiations between the members of the *Guardia di Finanza* and the Ministry of Economy and Finances/employer in order to regulate employment conditions by collective agreements;

- violates Article 6§4 of the Charter because it prohibits members of the *Guardia di Finanza* from exercising the right to strike.

### **B – The respondent Government**

13. The Government invites the Committee to find the complaint unfounded in all respects.

## **OBSERVATIONS BY WORKERS' ORGANISATIONS**

### **The European Trade Union Confederation (“ETUC”)**

14. The ETUC considers that, as regards the *Guardia di Finanza*, the Charter has been violated by Italy in relation to Articles 5, 6§1, 6§2 and 6§4. The ETUC supports the view in the complaint that the *Guardia di Finanza* is to be considered as part of the police force.

15. The ETUC is of the opinion that, notwithstanding the fact that CGIL does not explicitly refer to Article E of the Charter, the Committee might consider that there is a discrimination element in relation to Article 5, since the complaint addresses the lack

of justification for treating the *Guardia di Finanza* differently from the other police forces. With regard to the total ban on the right to strike in relation to Article 6§4, the ETUC refers to the decision on the merits in *European Confederation of Police (EuroCOP) v. Ireland*, Complaint No. 83/2012 in which the Committee has recognised the right to strike for police forces (§§210-214).

## **OTHER OBSERVATIONS**

### **Observations of *Associazione Finanziari Cittadini e Solidarieta* (FICIESSE)**

16. FICIESSE is an apolitical and non-profit cultural association established in Rome in 1999 by the officers of the *Guardia di Finanza* and by ordinary citizens to meet some of the most urgent needs of the *Guardia di Finanza*, such as providing its contribution in drafting legislative reforms related to the Italian tax system and working for the full and effective recognition of trade union rights, free expression of thought and professional association for the staff of the *Guardia di Finanza* and other institutions with a military structure.

17. FICIESSE states that the military status of the *Guardia di Finanza* has been used by Italy as a reason to deny the rights provided for in Articles 5 and 6 of the Charter. FICIESSE points out that the military status still allows the General Command of the *Guardia di Finanza* to authorise or prohibit military personnel from forming or adhering to associations if, according to the opinion of the General Command, they pursue trade unions purposes. It further states that the members of the *Guardia di Finanza* were denied the same rights granted to their colleagues of the State Police, even if *Guardia di Finanza* has almost exclusively given the task of economic - financial police or, where appropriate, internal security, and in fact it does not carry out national defence functions.

18. In its response to the observations of FICIESSE, the Government asks the Committee to reject the arguments put forward by FICIESSE as manifestly unfounded and totally incoherent.

## **RELEVANT DOMESTIC LAW AND PRACTICE**

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

20. Law No. 189 of 23 April 1959 on the Regulations for the *Guardia di Finanza*

### **Article 1**

The *Guardia di Finanza* is answerable directly and for all purposes to the Minister of Finance.

It is an integral part of the armed forces of the State and the law enforcement authorities and has the task of:

- preventing, investigating and reporting financial evasion and violations;
- patrolling the seas for financial policing purposes and contributing to maritime policing services; assistance and reporting;
- subject to the limits laid down in individual laws, overseeing compliance with the rules of political and economic interest;
- contributing to the political and military defence of borders and, during wartime, to military operations;
- contributing to the maintenance of public order and security;
- carrying out other supervisory and protection services for which its involvement is required by law. [...]

#### **Article 4**

The Commanding General of the *Guardia di Finanza* is selected from the generals of the army corps in permanent effective service of this corps or the army and is appointed by decree of the President of the Republic, after deliberation by the Council of Ministers, on a proposal put forward by the Minister for Economic Affairs and Finance, in agreement with the Minister of Defence.

The Commanding General oversees all activities concerning the organisation, staff, employment, technical, logistical and administrative services, financial resources and facilities of the *Guardia di Finanza*. He concludes agreements with the general staff of the armed forces as necessary regarding military training and the contribution of *Guardia di Finanza* units to military operations in emergency situations. He works closely with the Commanding General of the *Carabinieri*, the Chief of Police and all other central bodies of the state administration to ensure co-ordination between them and the activities of the *Guardia di Finanza*. [...]

#### **Article 10**

Members of the *Guardia di Finanza* shall be subject to the military discipline applicable to the army and to military criminal law.

They shall also be subject to the provisions regarding leave, specific registration documents and medical and legal verifications required for the army – the *Carabinieri* – with any modifications that may be necessary.

### **21. Law No. 121 of 1 April 1981 on the Reform of the Administration of Public Security**

#### **Article 16 Police forces**

For the purposes of upholding public order and security, the police forces shall include, alongside the State Police, without prejudice to their respective regulations and hierarchical structure:

- a) the *carabinieri corps*, a permanent armed force ensuring public security;
- b) the *Corpo della guardia di finanza*, insofar as it contributes to the maintenance of public order and security.

Without prejudice to their respective powers and the rules of the regulations in force, the Prison Wardens Corps and the State Forestry Corps are also police forces and shall be called upon to contribute to ensuring public order and security.

The police forces may also be called upon to provide public emergency assistance. [...]

#### **Article 84 Prohibition of the exercise of the right to strike**

Members of the State Police do not exercise the right to strike nor alternatives to this which, if carried out during service, may jeopardise the requirement to uphold public order and security, or the activities of the judicial police.

22. Updated text of Legislative Decree No. 195 of 12 May 1995 on “Implementation of Article 2 of Law No. 216 of 6 March 1992 on procedures to regulate the content of the employment relationship of police and armed forces personnel.”

#### **Article 2 Provisions**

1. The presidential decree, referred to in Article 1, paragraph 2, concerning the personnel of the police forces was issued:

A) with regard to civil-law police forces (State Police, Prison Police Corps and the State Forestry Corps), following a trade union agreement concluded between a public delegation comprised of the Minister for Public Administration, as chair, and the Ministers of the Interior, Treasury, Defence, Finance, Justice and Agriculture and Forestry, or comprised of under-secretaries of State representing each of these respectively, and a trade union delegation comprised of national union representatives who are staff members from the State Police, the Prison Police Corps and from the State Forestry Corps specified in a decree of the Minister for Public Administration in conformity with the provisions in force for public sector employment with regard to assessing the representativeness of unions, determined taking into account membership and election procedures; the form these procedures take, the related forms of representation and their powers shall be defined between the aforementioned public and trade union delegations by a specific agreement, confirmed in accordance with the procedures referred to in Article 7, paragraphs 4 and 11, by decree of the President of the Republic; pending its entry into force, the aforementioned decree of the Minister for Public Administration shall take account only of membership;

B) with regard to military police forces (the *Carabinieri* and *Guardia di Finanza*), following agreements made in consultations between the ministers listed in sub-paragraph A) or the undersecretaries of State representing each of these respectively, in which the Commanding Generals of the *Carabinieri* and the *Guardia di Finanza* or their delegates and representatives from the Central Representative Body (COCER – *Carabinieri* and *Guardia di Finanza* sections) participate as part of the delegations of the Ministers of Defence and Finance.

2. The presidential decree, referred to in Article 1, paragraph 2, regarding armed forces' personnel, was issued following consultations between the Public Administration, Treasury and Defence Ministers, or the undersecretaries of State representing each of these respectively, and the Chief of Staff, or his representatives, and representatives from the COCER (Army, Navy and Airforce) as part of the Minister of Defence's delegation.

3. Delegations from the trade unions referred to in paragraph 1, sub-paragraph A) shall be comprised of representatives of each union. In the delegations from the Ministries of Defence and Finance under paragraph 1, sub-paragraph B), and paragraph 2, military representation shall include representatives from each section of the COCER to enable all categories concerned to be represented. [...]

#### **Article 4 Military police forces**

1. For members of military police forces, the matters to be agreed upon referred to in Article 2, paragraph 1, sub-paragraph B), shall concern:

- a) basic and supplementary pay;
- b) severance pay and types of supplementary pension schemes, under Article 26, paragraph 20, of Law No. 448 (a) of 23 December 1998;
- c) the maximum duration of working hours;
- d) leave;
- e) leave from work for personal or health reasons;
- f) short periods of leave for personal reasons;
- g) pay for missions, transfers or overtime;
- h) the general criteria for professional refresher courses for the purposes of policing;
- i) the criteria for the establishment of bodies to monitor the quality and hygiene of canteens and shops, for the development of social protection and personal well-being activities, including development and cultural retraining, in addition to the management of staff assistance bodies;
- l) the establishment of supplementary funds for the national health service, pursuant to Article 9 of Legislative Decree No. 229(b) of 19 June 1999. [...]

[...]

3. Without prejudice to the contents of paragraph 2, the procedures for agreements through consultation referred to in Article 2, paragraph 1, sub-paragraph B) shall identify and regulate the manner in which information and types of participation concerning the matter to be agreed upon are used in respect of the COCER.

23. Legislative Decree No. 68 of 19 March 2001 on the Adjustment of the tasks of the *Guardia di Finanza*, in accordance with Article 4 of Law No. 78 of 31 March 2000

#### **Chapter I General Provisions**

##### **Article 1 Nature and Hierarchical Structure**

1. The *Guardia di Finanza* is a military police force with general competence in economic and financial matters based on the specific prerogatives conferred by law.

2. When the Ministry of Economy and Finance was established pursuant to Legislative Decree No. 300 of 30 July 1999, the *Guardia di Finanza* was made subordinate to the Minister for Economy and Finance as referred to in Article 1 of Law No. 189 of 23 April 1959.

#### **Chapter II Tasks of the economic and financial police**

##### **Article 2 Budgetary protection**

1. Without prejudice to the tasks provided for in Article 1 of Law No. 189 of 23 April 1959 and in other laws and regulations in force, the *Guardia di Finanza* shall carry out the functions of economic and financial police to protect the public budget for the regions, local authorities and the European Union.

2. To this end, the *Guardia di Finanza* is entrusted with the tasks of preventing, investigating and prosecuting violations of:

- a) direct and indirect taxes, levies, charges, fiscal monopolies and any other taxes whether of a fiscal or local nature;

- b) customs and border duties, other own resources and expenditure from the budget of the European Union;
- c) any other tax revenue, including those of a punitive or other nature, owed to the tax or local authorities;
- d) management activities carried out by private persons under concession, in order to perform public functions relating to the administrative power of taxation;
- e) public resources and financial means used in connection with public budget expenditures and public expenditure programmes;
- f) income and expenditure relating to separate accounts in the field of welfare, assistance and other compulsory forms of public social security;
- g) State property and assets, including the net business value of production units being privatised or disposed of;
- h) national, European and foreign currencies, bonds, securities and means of payment, in addition to financial and capital movements;
- i) financial and securities markets, including the exercise of credit and the promotion of public savings;
- [...]
- l) copyright, know-how, patents, trademarks and other industrial property rights relating to their exercise and economic exploitation;
- m) any other national or European Union economic or financial interest.

3. The *Guardia di Finanza*, using its own air and sea units, without prejudice to the provisions of Article 2, first paragraph, sub-paragraph c), of Law No. 979 of 31 December 1982, Articles 200, 201 and 202 of the Navigation Code and international agreements, and the institutional tasks assigned to the Port Authorities by law, shall exercise at sea exclusively economic and financial police functions, requesting the co-operation of other bodies for the exercise of their tasks and, without prejudice to the provisions of Law No. 121 of 1 April 1981, regarding police co-ordination of activities in the field of law and public order and security to combat illegal trafficking.

[...]

#### **Article 4 International activities to protect the State budget and the European Union budget**

1. The *Guardia di Finanza* promotes and implements, without prejudice to Article 1 of Presidential Decree No. 18 of 5 January 1967, as amended, and Law No. 121 of 1 April 1981, on police co-ordination in the field of public order and security, forms of operational co-operation with parallel foreign bodies at international level to combat economic and financial violations to protect the State budget and the European Union budget.

2. For the purposes of paragraph 1 and for the performance of support and consultancy activities in economic and financial matters, the *Guardia di Finanza* may assign, outside the national territory, in accordance with the procedures and arrangements provided for by Article 168 of Presidential Decree No. 18 of 5 January 1967, its own personnel to work as experts in diplomatic missions and consular offices.

[...]

#### **Article 5 Participation in international economic and financial operations**

1. Within the limit of its competences, the *Guardia di Finanza* participates in ensuring the national contribution to the activities promoted by the international community or deriving from international agreements, with particular regard to the activities aimed at rebuilding and restoring police operations and local institutional bodies responsible for combating economic and financial violations.



### **Chapter III Other tasks**

#### **Article 6 Police and public order and security functions**

1. The *Guardia di Finanza* exercises police functions in accordance with the laws and regulations in force and contributes to the functions of public order and security, pursuant to Article 16 of Law No. 121 of 1 April 1981. When contributing to the maintenance of public order and security, the functioning of the *Guardia di Finanza* is under the authority of the Minister of the Interior.\*

#### **Article 7 Contribution to military defence**

1. The Commanding General of the *Guardia di Finanza* and the Chief of Defence staff shall define, in the context of their joint operational planning, the general arrangements for the *Guardia di Finanza's* contribution to military defence as provided for by Article 1 of Law No. 189 of 23 April 1959. When contributing to military operations in the event of war and military operations abroad, the functioning of the *Guardia di Finanza* is under the authority of the Minister of Defence.

2. The procedures for implementing the contribution referred to in paragraph 1 shall be without prejudice to the provisions of Article 4, paragraph 2, of Law No. 189 of 1959, and Articles 14, 15 and 16 of Presidential Decree No. 556 of 25 October 1999.

3. For the implementation of the provisions of paragraph 1, links between the respective units may be provided for.

#### **Article 8 Military, security and judicial police functions**

1. The *Guardia di finanza*:

a) without prejudice to Article 6, paragraph 1, of Legislative Decree No. 297 of 5 October 2000 performs the functions of military police exclusively within its own field;

b) provides, upon request, the information required for the issuing of security authorisations for the purposes of economic and financial security to the authority identified by the Prime Minister in the exercise of the functions referred to in Article 1 of Law No. 801 of 24 October 1977;

c) carries out the functions of military police in accordance with the provisions laid down in the military criminal codes.

#### **Article 8 bis Roles of members of the *Guardia di Finanza***

1. Senior officers of the *Guardia di Finanza* shall be assigned the roles of police officer, excluding general officers, tax police officers and public security officers.

2. Inspectors shall be assigned the roles of police officer, tax police officer and public security officer.

3. Superintendents shall be assigned the roles of police officer, tax police officer and public security officer.

4. Corporals and customs officers shall be assigned the roles of judicial police officer, tax police officer and public security officer.

5. Pursuant to the provisions of Article 2, paragraph 1, sub-paragraph c), number 1) and Article 4 of Legislative Decree No. 177 of 19 August 2016, senior officers and inspectors of the *Guardia di Finanza* and commanders of naval units and vessels are public security officers, limited to the functions performed at sea.

6. The roles, powers and attributions assigned by law or other regulatory sources with regard to the specific tasks conferred upon the *Guardia di Finanza* or its units shall remain unchanged.

## 24. Legislative Decree No. 66 of 15 March 2010 – Military Code

### **Article 1475 Restrictions on the exercise of the freedom of assembly and prohibition of strikes**

1. The establishment of associations or clubs between military personnel is subject to the prior consent of the Minister of Defence.

2. Military personnel may not form trade union associations or join other trade union associations.

3. Military personnel may not join associations considered secret by law and those which are incompatible with the duties deriving from their oath.

4. Military personnel cannot exercise the right to strike.

### **Chapter III Bodies representing military personnel**

#### **Article 1476 Central body, intermediate body, basic body**

1. Bodies representing military personnel shall be established with the powers provided for in the articles of this Chapter.

2. Military representative bodies shall be as follows:

a) a national central inter-force body, divided, according to requirements, into inter-force category committees – officers, non-commissioned officers and volunteers – and into sections of the armed forces or armed Corps – Italian Army, Navy, Air Force, *Carabinieri* and *Guardia di Finanza*;

b) an intermediate body for the highest ranks;

c) a basic body among units at a minimum level compatible with the structure of each armed force or armed corps.

3. The central body and the intermediate bodies shall consist of a fixed number of representatives from each of the following categories: officers, non-commissioned officers and volunteers. The basic body shall be composed of the representatives of the above categories present at the level in question. In the central body, the representation of each armed force or corps shall be proportional to their respective numbers.

#### **Article 1477 Election procedure**

1. The election of representatives to the various basic bodies shall be by direct, personal and secret ballot.

2. The election of representatives to intermediate bodies shall be organised by the representatives elected in the basic bodies, chosen in their own category by direct, personal and secret ballot. Each basic representative shall express no more than two thirds of the votes compared with the number of representatives to be elected. By the same procedure, the representatives of the intermediate bodies shall elect the representatives to the central body.

3. Elected professional soldiers shall remain in office for four years and may immediately be re-elected once only.

4. Elected professional soldiers or conscripts who leave office early are replaced for the remaining period by military personnel who, in the votes cast, came immediately below them in the first or second level election rankings.

#### **Article 1478 Meetings, responsibilities, activities**

1. The central representative body shall normally meet in joint session with all sections established to draw up opinions and recommendations and to make requests, within the limits of the powers conferred.

2. This session shall meet at least once a year to draw up a work programme and to monitor its implementation.

3. Meetings of the sections established within the central representative body shall be convened whenever the opinions and recommendations to be drawn up and the requests to be made concern exclusively the individual armed forces or the armed corps. Meetings of the committees established within the central representative body shall be convened whenever the opinions and recommendations to be drawn up and the requests to be made concern individual categories.

4. The responsibilities of the central representative body shall cover the drawing up of opinions, recommendations and requests on all matters which are the subject of legislative or regulatory provisions concerning the legal, economic, social security, health, cultural and moral situation, pay and protection of military personnel. If the opinions, recommendations or requests concern matters relating to military service, the military conscripts elected in intermediate bodies shall be heard. These opinions, recommendations and requests shall be communicated to the Minister of Defence, who shall forward them for information to the Standing Committees from the two Chambers responsible for the subject matter, at their request.

5. The central military representative body may be heard, at its request, by the Standing Committees from the two Chambers responsible for the subject matter, on the matters outlined in paragraph 4 and in accordance with the procedures provided for by parliamentary rules of procedure.

6. The intermediate and basic military representative bodies shall reach an agreement with the military leaders and administrative bodies on the arrangements and procedures for dealing with the matters referred to in this article.

7. The responsibilities of the representative bodies shall not include matters concerning organisation, training, operations, the logistical and operational sector, the hierarchical functional relationship and the deployment of personnel.

8. Representative bodies shall also have the function of presenting collective requests, relating to the following areas of interest:

- a) retention of jobs during military service, professional qualification, entry into the job market of those leaving military service;
- b) benefits for injuries suffered and illnesses contracted during service and due to service;
- c) integration of female military personnel;
- d) welfare, cultural, recreational and social promotion activities, including for family members;
- e) organisation of meeting rooms and canteens;
- f) hygiene/sanitary conditions;
- g) accommodation.

9. The representative bodies shall be convened by the chair, at the latter's initiative or at the request of one fifth of their members, in accordance with service requirements.

10. For the measures to be adopted in the field of welfare, cultural, recreational and social promotion activities, including for family members, the relevant military administration may draw on the contribution of intermediate or basic representative bodies for relations with regions, provinces and municipalities.

25. Legislative Decree No. 177 of 19 August 2016 on Provisions concerning the streamlining of police functions and incorporation of the State Forestry Corps, pursuant to Article 8, paragraph 1, sub-paragraph a) of Law No. 124 of 7 August 2015, on the reorganisation of public administrations.

#### **Article 2 Specialist branches of the Police Forces**

1. The State Police, the *Carabinieri* and the *Guardia di Finanza* shall carry out, in a leading or exclusive manner, in accordance with the procedures established by decree of the Minister of the Interior pursuant to Article 1 of Law No. 121 of 1 April 1981, tasks in the following respective specialist branches, subject to the functions respectively assigned by the regulations in force for each police force, in addition to the provisions of said law:  
[...]

c) *Guardia di finanza*:

1) maritime safety, in relation to the police tasks assigned by this decree, and other functions already performed, in accordance with the legislation in force and without prejudice to the powers granted to the Port Authorities – Coast Guard – by the legislation in force;

2) security regarding the circulation of the euro and other means of payment.

26. The Constitutional Court has expressed its view on the military status of the *Guardia di Finanza* on several occasions:

Decision No. 70 of 25 March 1976. The Court has stated that "the *Guardia di Finanza* Corps, although functionally classified in the Financial Administration (the Commander of this Corps is attached to the Minister of Finance), presents the very marked military characteristics of a true armed body [...]"

The Court has declared inadmissible three requests for referendum on the demilitarisation of the *Guardia di Finanza* through its Decision No. 29 of 10 February 1981, Decision No. 30 of 30 January – 10 February 1997 and Decision No. 35 of 3 – 7 February 2000

Decision No. 449 of 17 December 1999. The Court affirmed compliance with the constitutional provisions of Article 8 of Law No. 382/1978 in force at the time, which is incorporated into Article 1475 of Legislative Decree No. 66/2010 prohibiting military personnel to form or join trade unions because the legislator sought to reconcile the right recognised by Article 18 of the Constitution to all citizens (right to form associations) with the need to ensure neutrality, internal cohesion and the optimal functioning of military structures, thus admitting that the law may envisage limitations on the exercise of certain rights by military personnel, as well as the respect of special obligations, provided that they are completed for the fulfillment of the mandate of the armed forces.

27. The Constitutional Court in its Decision No. 120/2018 of 11 April 2018 declared that Article 1475 (2) of the Legislative Decree No. 66 of 15 March 2010 (Military Code) is unconstitutional insofar as it provides that military staff cannot form trade unions. The Court decided that Article 1475 (2) shall read: "*Military staff can form trade unions within the conditions and restrictions provided by law; they cannot*

*join other trade unions.*” The Court therefore maintained the prohibition for military staff to join other trade unions.

## RELEVANT INTERNATIONAL MATERIALS

### A – The Council of Europe

#### 1. European Convention of Human Rights

28. The European Convention on Human Rights 1950 (“the Convention”) includes the following provision:

##### “Article 11 - Freedom of assembly and association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

29. According to the European Court of Human Rights (ECtHR), the characteristics of military life differ by nature from those of civil life (*Engel and others v. the Netherlands*, applications Nos. 5100/71, 5101/71, 5102/71, 5354/72, 5370/72, judgment of 8 June 1976, §§54, 57, 59, 73, 103). As to the restriction in Article 11§2 of the Convention concerning the rights of the members of the armed forces, the ECtHR has held in particular that:

“During the preparation and subsequent conclusion of the Convention, the great majority of the Contracting States possessed Defence forces and, in consequence, a system of military discipline that by its very nature implied the possibility of placing on certain of the rights and freedoms of the members of these forces limitations incapable of being imposed on civilians. The existence of such a system, which those States have retained since then, does not in itself run counter to their obligations. [...]” (§57)

“[...] Each State is competent to organise its own system of military discipline and enjoys in the matter a certain margin of appreciation. [...]” (§59)

30. In *Matelly v. France* (application No. 10609/10, judgment of 2 October 2014, §§56-58, 71, 75-77), the applicant contested the statutory prohibition against members of the Gendarmerie to form professional associations or trade unions. The Court held that Article 11 of the Convention allowed States Parties to restrict, even significantly, the actions and expressions of a professional association founded by the members of the armed forces, as well as those of the individual members of such an association. Such restrictions could nevertheless not entirely deprive the association’s members of their rights under Article 11 of the Convention. The grounds invoked by the Government in support of the imposed restrictions were

neither pertinent nor sufficient to justify an absolute prohibition to adhere to a professional association founded for the purpose of defending the members' professional and moral interests. Such a prohibition affected the essence of the freedom guaranteed under Article 11 of the Convention and constituted a violation of the provision (also *ADEFDROMIL v. France*, application No. 32191/09, judgment of 2 October 2014, §§55, 58, 60; *Junta Rectora del Ertzainen Nazional Elkartasuna (ER.N.E) v. Spain*, application No. 45892/09, judgment of 21 April 2015, §§28-33).

## 2. Recommendations of the Committee of Ministers

31. Recommendation Rec(2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics, adopted on 19 September 2001 at the 765<sup>th</sup> meeting of the Ministers' Deputies:

"recommends that the governments of member states be guided in their internal legislation, practice and codes of conduct of the police by the principles set out in the text of the European Code of Police Ethics, appended to the present recommendation, with a view to their progressive implementation and to give the widest possible circulation to this text."

Pursuant to its Appendix, the Code:

"[...] applies to traditional public police forces or police services, or to other publicly authorised and/or controlled bodies with the primary objectives of maintaining law and order in civil society, and who are empowered by the state to use force and/or special powers for these purposes."

"32. Police staff shall enjoy social and economic rights, as civil servants, to the fullest extent possible. In particular, staff shall have the right to organise or to participate in representative organisations, to receive an appropriate remuneration and social security, and to be provided with special health and security measures, taking into account the particular character of police work."

32. Recommendation CM/Rec(2010)4 of the Committee of Ministers to member states on human rights of members of the armed forces, adopted on 24 February 2010 at the 1077<sup>th</sup> meeting of the Ministers' Deputies

The Committee of Ministers recommended that the Governments of the member states:

"1. ensure that the principles set out in the appendix to this recommendation are complied with in national legislation and practice relating to members of the armed forces;

[...]"

The Appendix to the above Recommendation provides as follows:

"2. Whilst taking into account the special characteristics of military life, members of the armed forces, whatever their status, shall enjoy the rights guaranteed in the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter, "the Convention") and the European Social Charter and the European Social Charter (revised) (hereafter, "the Charter"), as well as other relevant human rights instruments, to the extent that states are bound by them.

[...]

53. No restrictions should be placed on the exercise of the rights to freedom of peaceful assembly and to freedom of association other than those that are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

54. Members of the armed forces should have the right to join independent organisations representing their interests and have the right to organise and to bargain collectively. Where these rights are not granted, the continued justification for such restrictions should be reviewed and unnecessary and disproportionate restrictions on the right to assembly and association should be lifted.

55. No disciplinary action or any discriminatory measure should be taken against members of the armed forces merely because of their participation in the activities of lawfully established military associations or trade unions.

[...]

57. Paragraphs 53 to 56 should not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces.

[...]"

## **B – The United Nations**

33. The International Covenant on Economic, Social and Cultural Rights (New York, 16 December 1966) includes the following provision:

"Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

[...]."

34. The International Covenant on Civil and Political Rights (New York, 16 December 1966) includes the following provision:

"Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right. [...]"

## **C – International Labour Organisation**

### **35. Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organise**

"Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

[...]

Article 5

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

[...]

Article 9

The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

[...]"

### **36. Convention (No. 98) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively**

"Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements."

Article 5

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

[...]"

## **D – European Union**

### **37. The Charter of Fundamental Rights of the European Union**



“Article 12 Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.

[...]”

## THE LAW

### PRELIMINARY CONSIDERATIONS

#### *As to the relevant domestic legislation*

38. As a preliminary remark, the Committee takes note of recent developments in the domestic legal order which have an impact on the case at hand. The Constitutional Court by its Decision No. 120/2018 has declared unconstitutional the first part of Article 1475 (2) of the Legislative Decree No. 66 of 15 March 2010 (Military Code) with regard to the prohibition for military personnel to form trade unions. The Court ruled that Article 1475 (2) of the Military Code which reads “*military staff cannot form trade unions or join other trade unions*” should be read instead “*military staff can form trade unions within the conditions and restrictions provided by the law; they cannot join other trade unions.*”

39. The Committee further notes that specific legislation implementing Decision No. 120/2018 of the Constitutional Court has not been adopted yet. As regards the right to form trade unions, the Court referred to Article 1475 (1) of the Military Code which has not been contested before the Court, and provides that military associations can be formed with the authorisation of the Minister of Defence. The Court stated that this condition also applies to military trade unions, emphasising that in any event the statutes of such trade unions will need to respect the requirements of democracy, neutrality and the structure, functioning and financing of the trade unions will have to be checked. As regards the limits, the Court held that the prohibition to strike for military personnel is maintained. The Court decided that as regards other restrictions, a specific law is needed. The Court considered that, pending the adoption of such law, the provisions applying to the representative bodies of military staff can be extended to trade unions, notably the provisions which do not concern the structure, training, the operations, the logistic-operational sector, the hierarchic relations and deployment of staff, as these fields are strictly connected to the safeguard of constitutionally protected values and interest.

40. The Committee recalls that it rules on the legal situation prevailing on the day of its decision on the merits (European Council of Police Trade Unions (CESP) v. France, Complaint No. 57/2009, decision on the merits of 1 December 2010, § 52). Since Decision No. 120/2018 was issued by the Constitutional Court after the date of lodging the complaint, the Committee will then consider the implications of this decision for the case at hand.

*As to the statute of the Guardia di Finanza*

41. The Committee notes that pursuant to Article 1 of the Legislative Decree No. 68 of 19 March 2001, the *Guardia di Finanza* is a military police force with general competence in economic and financial matters based on the specific prerogatives conferred by law. According to Article 1 of the Law No. 189 of 23 April 1959, the *Guardia di Finanza* is an integral part of the armed forces of the State and the law enforcement authorities and pursuant to Article 10 of the same Law members of the *Guardia di Finanza* shall be subject to the military discipline applicable to the Army and to military criminal law.

42. With regard to the hierarchical authority, the Committee notes that according to Article 1 of Law No. 189 of 23 of April 1959 and Article 1 of the Legislative Decree No. 68 of 19 March 2001, *Guardia di Finanza* was made subordinate to the Minister for Economy and Finance. However, the Committee notes that (i) when contributing to the maintenance of public order and security, the *Guardia di Finanza* is under the authority of the Minister of Interior (Article 6 of the Legislative Decree No. 68 of 19 March 2001) and (ii) when contributing to military operations in the event of war and military operations abroad, the functioning of the *Guardia di Finanza* is under the authority of the Minister of Defence (Article 7 of the Legislative Decree No. 68 of 19 March 2001).

**I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CHARTER**

43. Article 5 of the Charter reads as follows:

**Article 5 – The right to organise**

Part I: “All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.”

Part II: “With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.”

44. Article G of the Charter reads as follows:

**Article G – Restrictions**

“1. The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

2. The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.”

## **A – Arguments of the parties**

### **1. The complainant organisation**

45. CGIL alleges that the situation in Italy constitutes a of Article 5 of the Charter on the grounds that Italy 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 such organisations, even if they perform tasks that are primarily the same as those traditionally assigned to the police.

46. Should the Committee not consider that the *Guardia di Finanza* performs tasks of police nature, CGIL asks the Committee to find a violation of Article 5 of the Charter on the same grounds, regardless of the civilian or military nature of the body.

47. With regard to the nature and functions of the *Guardia di Finanza*, CGIL indicates that according to Article 1 of Legislative Decree No. 68 of 19 March 2001, the *Guardia di Finanza* is defined as a “military police force with general competence over economic and financial matters.” Furthermore, CGIL states that Legislative Decree No. 177 of 19 August 2016 includes the *Guardia di Finanza* into the Police Forces with the “principal or exclusive task” of carrying out the functions of water police and financial police.

48. CGIL states that given the military status granted to *Guardia di Finanza*, the Military Code (Legislative Decree No. 66 of 15 March 2010) is applicable to this body. Article 1475 of the Military Code provides that: “1.The establishment of associations or clubs of military personnel shall be subject to prior approval by the Ministry of Defence. 2. Military personnel may not establish professional trade union associations or join other trade union associations.”

49. CGIL states that even though the *Guardia di Finanza* is organised according to a military structure, from the viewpoint of its tasks, the force is essentially an administration performing public security and specialist investigating police tasks and does not perform the function of defending the state. CGIL refers to Article 1 of the Law No. 189 of 23 April 1959 which provides that the *Guardia di Finanza* is answerable “directly and for all purposes to the Ministry of Finance.” According to the same provision, the *Guardia di Finanza* is an integral part of the armed forces of the State and the law enforcement authorities and has the task of:

- preventing, investigating and reporting financial evasion and violations;
- patrolling the seas for financial policing purposes and contributing to maritime policing services; assistance and reporting;
- subject to the limits laid down in individual laws, overseeing compliance with the rules of political and economic interest;

- contributing to the political and military defence of borders and, during wartime, to military operations;
- contributing to the maintenance of public order and security;
- carrying out other supervisory and protection services for which its involvement is required by law.

50. CGIL also refers to Article 16 of Law No. 121 of 1981 which provides that, for the purposes of upholding public order and security, the police forces shall include, alongside the State Police, the *Carabinieri* and the *Guardia di Finanza*.

51. CGIL notes that *Guardia di Finanza* is also vested with tasks that are strictly military in nature, such as that of “contributing” to the defence of the borders (which are however monitored also by the State Police) and “during wartime” to military operations. CGIL argues that, however, the latter are not core tasks, but ancillary and merely incidental activities of a force which performs mainly policing functions. CGIL adds that the international operations of the *Guardia di Finanza* involve economic and financial policing activity, including efforts to combat excise and VAT fraud, counterfeit goods, drug smuggling and human trafficking. CGIL argues that within the military missions where Italy has been involved in recent years such as Afghanistan and Libya, the *Guardia di Finanza* has not carried out military tasks but rather policing activity such as providing training to the local border police in Afghanistan and maintaining six coastal surveillance vessels for combatting illegal migratory flows in Libya.

52. In its response to the Government’s statement that members of the *Guardia di Finanza* follow a military training, CGIL argues that such training is just a small portion of their educational itinerary and after graduation, they do not perform military tasks. CGIL acknowledges also that members of *Guardia di Finanza* are involved in military missions. However, it emphasises that under such missions they do not perform any military tasks. CGIL confirms that the *Guardia di Finanza* has a fleet; however it uses the boats only to perform water police tasks while the Italian Coast Guard is in charge of military defence in the sea under the command of the Minister of Defence.

53. CGIL argues that the situation of the Italian *Guardia di Finanza* is comparable to the situation of the French *Gendarmerie* as 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.

54. On the alleged violation of Article 5 of the Charter, CGIL recalls that this provision implies both a negative obligation and a positive obligation for States. The negative obligation entails that no national legislation and practice may contain any measure that impairs or restricts the right of workers and employers to establish or join a representative association, while the positive obligation requires States to take

the necessary action in order to ensure that this freedom may be effectively exercised (Conclusions I, Statement of Interpretation on Article 5).

55. CGIL argues that because the *Guardia di Finanza* is functionally equivalent to a police force, Italian law may 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*, however, it cannot completely deny their freedom to form local, national or international organisations for the protection of their economic and social interests and to join such organisations. Moreover, CGIL argues that even if *Guardia di Finanza* were to be considered to have military status, this could not in any case legitimise the complete negation of the right to organise to which the members of this force are subject in Italy.

56. CGIL emphasises that the right to organise was granted to members of the police but was not extended to members of the *Guardia di Finanza*. Such an exclusion cannot be considered justified by the fact that according to Law No. 189 of 1959, the *Guardia di Finanza* “is an integral part of the armed forces of the State”. The status of the *Guardia di Finanza* as one of the armed forces cannot imply that its members are excluded from the benefit of the right to organise. CGIL recalls in this sense that the Committee has considered itself not to be bound by categories under national legislations when classifying situations for the purposes of the application of Article 5, and verifies itself whether, aside from formulae used under national law, the workers to whom the right to organise has been denied have the “status” of military personnel and whether or not they perform tasks of a military nature (Conclusions 2006, France).

57. With regard to the existing representative bodies, CGIL claims that the presence of the “representative bodies for military personnel” within the *Guardia di Finanza* cannot be regarded as a sufficient implementation of the Charter because (i) their establishment is not voluntary, but imposed by law; (ii) the members of the force cannot choose whether to be represented by them or to establish different trade unions; (iii) members must obtain a formal authorisation to organise and their associations are subject to an administrative control; and (iv) the military representative bodies have a merely advisory function, which is limited only to certain areas.

## **2. The respondent Government**

58. The Government asks the Committee to reject the allegations put forward by CGIL in their entirety.

59. The Government argues that the alleged violations of Articles 5 and 6 of the European Social Charter, concerning only the members of the *Guardia di Finanza*, is based on a wrong principle, namely that the only possible status for a police force is the civil status. The Government recalls that according to Italian legislation the *Guardia di Finanza* is not the only police force with military status, given the existence of another body *Arma dei Carabinieri* whose military status is not challenged by the present complaint.

60. The Government rejects the allegation of CGIL that the situation of the *Guardia di Finanza* is comparable to the situation of the French *Gendarmerie*. It refers to the decision of Constitutional Court No. 449/1999 where the Court affirmed the compliance with the Constitution of Article 8 of Law No. 382/1978 in force at the time which is now incorporated in Article 1475 of Legislative Decree No. 66/2010 (see paragraph 26 above).

61. In its additional submissions, the Government states that the Constitutional Court has declared inadmissible three initiatives of *referendum* in 1981, 1997 and 2000 which aimed at abrogating the provisions of Law No. 189 of 23 April 1959 referring to the military status of *Guardia di Finanza* and therefore to a demilitarisation of the *Guardia di Finanza*. The Court considered that “*the military nature of the Guardia di Finanza determines to such a degree the structure, organisation, staff regulations, functions and modalities of the exercise of the institutional missions of this Corps ...*”

62. The Government submits that the military nature of the *Guardia di Finanza* is not questionable. Firstly, Article 1 of Law No. 189 of 23 April 1959 which establishes that the *Guardia di Finanza* directly reports to the Minister of Economy and Finance, is an integral part of the State's armed forces and of the public force and exercises, *inter alia*, the fundamental function of contributing to the politico-military defence of the borders and, in case of war, to military operations. Article 10 of the same law establishes that the members of the *Guardia di Finanza* are subject to the Military Discipline Regulations of the Italian Army and the Military Penal Law. Article 1 of Legislative Decree No 68/2001 also reaffirms the nature of a police force with a military status with general competence in economic and financial matters and Article 2 of that decree refers, *inter alia*, to the first paragraph, the military defence mission referred to in Article 1 of Law No. 189/1959 cited.

63. As for the actual functions performed, the Government states that while it is undeniable that the *Guardia di Finanza* performs highly technical and specialised police activities, it is certain that the military component - with regard to the tasks established by law – is sufficiently developed. Members of this corps benefit from military and police training (five years for officers, three years for inspectors and about a year for *finanzieri*, where military training is central) and they take an oath as military personnel. Moreover, *Guardia di Finanza* has participated in international missions, such as Afghanistan and Libya, and is currently participating in the military operation “Eunavfor Med”. It should also be noted that the *Guardia di Finanza* owns and uses one of the main naval aviation fleets in the Mediterranean, with several hundred naval and air units. The Government further states that while the functions of active defence of the national territory and participation in war operations do not occupy, fortunately, a dominant position in relation to the other functions, it is necessary to ensure the highest degree of cohesion, functioning and immediate response capacity in the event that the exercise of these functions is necessary because of an emergency situation.

64. The Government emphasises that in the specific context of the fight against terrorist threats, the *Guardia di Finanza* has the exclusive mission of investigating, detecting and blocking the supply and financing of international terrorism. The Government states that this is not just a simple police activity, but a function of internal and external security of the country and of the entire international community. The Government further claims that it is absolutely impossible to try to make a conceptual distinction between the police functions in the strict sense and the missions involving the defence of the state in view of the current geopolitical situation characterised by non-traditional, asymmetric and globalised forms of conflict.

65. The Government therefore demands that the compatibility of the legislation in question with the European Social Charter must be assessed in the light of the third part of Article 5 of the European Social Charter, which states that "*the principle of the application of these guarantees (the right to organise) to members of the armed forces and the extent to which they apply to this category of persons are also determined by national law or regulation.*"

66. With regard to the military representative bodies, the Government states that even if a military representative body cannot be assimilated to a trade union, the former do not have only advisory functions, but have the right to formulate opinions, recommendations and requests on all matters which are the subject of legislative or regulatory provisions concerning the conditions, pay and the legal, economic, social security, health, cultural and moral protection of the military personnel represented (Article 1478 (4) of the Legislative Decree No. 66/2010). Moreover, the military representative bodies may formulate collective requests on certain matters such as: retention of jobs during military service, professional qualification, benefits for injuries suffered and illnesses contracted during service and due to service; hygiene/sanitary conditions; accommodation (Article 1478 (8) of the Legislative Decree No. 66/2010).

67. The Government emphasises that according to Article 1477 of the Legislative Decree No. 66/2010, the bodies of military representation are elected by direct, nominative and secret suffrage, by the military personnel who thus have the right to choose their representatives within the meaning of the provisions currently in force.

68. Consequently, the Government maintains that the legislation applicable to the military and in particular to the *Guardia di Finanza* does not infringe Article 5 of the Charter.

## **B – Assessment of the Committee**

69. The right to organise under Article 5 of the Charter includes a positive and negative freedom to form or not to form a trade union and to join or not to join a trade union. It applies to the entire public sector. The Committee's task is to examine the conformity with the Charter of national legislation or regulations determining, for the police force, the extent to which the guarantees provided for in that article are

applicable to them and, for the armed forces, the principle governing the application of these guarantees and the extent to which they apply to them.

70. The Committee recalls that Article G of the Charter must also be taken into consideration. It provides that any restriction to the right to organise provided for under Article 5 of the Charter must be prescribed by law and [be] necessary in a democratic society for, inter alia, the protection of national security (see *European Council of Police Trade Unions (CESP) v. France*, Complaint No. 101/2013, decision on the merits of 27 January 2016, §61 and §80). In addition, the Committee takes note of the international instruments cited above (see paragraphs 28-37), in particular the Recommendation CM/Rec (2010)4 of the Committee of Ministers of the Council of Europe (Appendix, §53-57).

*As to the freedom to form, join or not join organisations*

71. The Committee notes that according to the Legislative Decree No. 68 of 19 March 2001, Article 1 (nature and subordination), paragraph 1, "the *Guardia di Finanza* Corps constitutes a police force subject to the code of military organisation, having general competence in economic and financial matters". The Committee notes CGIL's allegations according to which the provisions of Article 1475 (1) and (2) of the Military Code impair 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 such organisations.

72. With regard to the provisions of Article 1475 (2) of the Military Code, the Committee takes note that the Constitutional Court by its Decision No. 120/2018 has declared unconstitutional the first part of Article 1475 (2) of the Military Code with regard to the prohibition of military personnel to form trade unions. The Court ruled that Article 1475 (2) of the Military Code which reads "*military personnel cannot form trade unions or join other trade unions*" should be read instead "*military personnel can form trade unions within the conditions and restrictions provided by the law; they cannot join other trade unions.*"

73. Consequently, the Committee notes that according to the Constitutional Court's decision mentioned above, military personnel and thus members of the *Guardia di Finanza* are now able to form trade unions. However, the conditions and restrictions applicable to such trade unions will be further specified by a separate law which the Committee cannot examine at the time of this decision. Therefore, the Committee examines whether the current legal framework and practice in the light of the Constitutional Court Decision No. 120/2018 comply with the requirements of Article 5 of the Charter.

74. The Committee recalls having considered that the right to constitute trade unions can be effectively implemented only if the creation itself, the accession to an existing association, its hypothetical affiliation to other organisations and its internal organisation and internal operation are protected by appropriate guarantees (*European Council of Police Trade Unions (CESP) v. Portugal*, Complaint No. 11/2001, decision on the merits of 21 May 2002, §28).



## 1. *The freedom to form trade unions – a first guarantee of the right to organise*

### *Freedom to form organisations by members of police forces*

75. The Committee recalls that, with regard to police forces, if the right to organise may be restricted in accordance with Article G of the Charter, it may not be completely denied (Conclusions I (1969), Statement of Interpretation on Article 5; European Council of Police Trade Unions (CESP) v. Portugal, Complaint No. 11/2001, decision cited above, §25; European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, decision on the merits of 2 December 2013, §§71-72; European Council of Police Trade Unions (CESP) v. France, Complaint No. 101/2013, decision on the merits of 27 January 2016, §62). Members of police forces must be able to form or join genuine organisations for the protection of their material and moral interests and [...] such organisations must be able to benefit from most trade union prerogatives [...]. Basic guarantees must be given to the police members with regard to i) the constitution of their professional associations; ii) the trade union prerogatives that may be used by these associations; and iii) the protection of their representatives (CESP v. Portugal, Complaint No. 11/2001, decision cited above, §§26-27; EuroCOP v. Ireland, Complaint No. 83/2012, decision cited above, §73; CESP v. France, Complaint No. 101/2013, decision cited above, § 62).

76. The Committee recalls that, despite the formal categorization of a body adopted in domestic law, the right of police officers to establish trade unions may be restricted as long as they are given the right to establish professional associations having similar characteristics and competences as trade unions (EuroCOP v. Ireland, Complaint No. 83/2012, decision cited above, §§76-77; also CESP v. France, Complaint No. 101/2013, decision cited above, §68).

### *Freedom to form organisations by members of armed forces*

77. The Committee recalls that it has considered that Article 5 of the Charter allows States Parties to impose restrictions upon the right to organise of members of the armed forces and grants them a wide margin of appreciation in this regard, subject to the terms set out in Article G of the Charter.

78. The Committee notes that following the Constitutional Court's Decision No. 120/2018 of 11 April 2018 (see paragraph 27 above), military personnel shall be able to form trade unions.

79. The European Court of Human Rights held in *Matelly v. France* (see above §15) that "lawful restrictions [...] must be construed strictly and confined to the exercise of the right in question [and] must not impair the very essence of the right to organise; a mere suppression of the right to organise was not a "measure necessary

in a democratic society” (also *ADEFDROMIL v. France*, judgment cited above, §§55, 58, 60; *Junta Rectora del Ertzainen Nazional Elkartasuna (ER.N.E.) v. Spain*, judgment cited above, §§28-33). Moreover, if Article 8§2 of the International Covenant on Economic, Social and Cultural Rights, Article 22§2 of the International Covenant on Civil and Political Rights, and Article 9§2 of ILO Convention (No. 87) provide for the possibility to impose restrictions upon the right of members of the armed forces to organise, they do not allow for the full exclusion of that right. Also, Recommendation CM/Rec(2010)4 of the Committee of Ministers (Appendix, §54; see paragraph 32 above) emphasises that members of the armed forces should have the right to join independent organisations representing their interest and have the right to organise, and calls upon States Parties to lift disproportionate restrictions on the right to association of the members of the armed forces.

80. In the present case, the Committee notes the allegations of CGIL that the representation bodies for military personnel cannot be considered as equivalent to a trade union established on the basis of the free association of workers since their creation is not free and voluntary, but is rather provided for by law, members must obtain a formal authorisation to organise and their associations are subject to an administrative control. In this sense, it takes note that according to Article 1475 (1) of the Military Code, “*the establishment of associations or clubs between military personnel is subject to the prior consent of the Minister of Defence.*” By its Decision No. 120/2018, the Constitutional Court noted that Article 1475 (1) of the Military Code had not been contested. The Court held that this requirement shall also apply to military trade unions and that in any event the statutes of such trade unions will need to respect the requirements of democracy, neutrality and the structure, functioning and financing of the trade unions will have to be checked.

81. The Committee notes also the allegations of the Government that the ‘prior authorisation’ of the Minister of Defence represents an assessment of the legitimacy and compatibility of professional associations of military personnel with the democratic principles as well as with the principles of impartiality, neutrality and effectiveness in order to ensure the protection of the fundamental interests of all citizens.

82. The Committee recalls that trade unions must be free to organise without prior authorisation, and initial formalities such as declaration and registration must be simple and easy to apply (Conclusions 2010, Georgia). There must also be provision in domestic law for a right of appeal to the courts to ensure that these rights are upheld (Conclusions 2016, Malta). The Committee held that “the principle of compulsory registration of trade unions is not (...) incompatible with Article 5, so long as the persons concerned have adequate administrative and jurisdictional protection against abuse of the power to refuse to register a trade union (Conclusions II, p. 184). The Committee emphasised that judicial proceedings and, hence adversarial, afford an appropriate protection against arbitrary refusal of registration (*CESP v. Portugal*, Complaint No. 11/2001, decision cited above, §§30-34; also *CESP v. France*, Complaint No. 101/2013, decision cited above, §70).

83. Given that in the present case the establishment of trade unions or professional organisations by members of the *Guardia di Finanza* is subject to the prior consent of the Minister of Defence and considering the lack of provision for administrative and judicial remedies against the arbitrary refusal of registration, the Committee considers that this restriction on the right to organise of members of the *Guardia di Finanza* is excessive with regard to Article 5 of the Charter. It considers that the situation amounts to a violation of the said Article.

*2. The freedom to join or not to join organisations – a second guarantee of the right to organise*

84. Although the right guaranteed in Article 5 is the right of individuals to form and join trade unions, Article 5 provides that workers must be free to form local, national, or international organisations. The Committee has consistently held that this implies for the organisations themselves, the right to establish and join federations (see *CESP v. Portugal*, Complaint No.11/2001, decision cited above, §§37-38; *EuroCOP v. Ireland*, Complaint No. 83/2012, decision cited above, §§105-123).

85. The extent to which national law and regulations can apply these safeguards to police and armed forces must comply with the following principles and the restrictive requirements of Article G.

*Freedom to join or not to join organisations: police forces*

86. Regarding freedom to join organisations, Article 1475 (2) of the Military Code provides for a prohibition for the members of the *Guardia di Finanza* to join other trade unions. The restriction is therefore provided by law. The Government maintains that the restriction is necessary for the protection of the rights and freedoms of others and for the protection of public order and national security.

87. The Committee confirms its view that legislation or regulations which (i) forbid policemen to set up their own trade union or to join a trade union of their own choice or (ii) oblige policemen to join a trade union imposed by the statute, are contrary to the Charter because they completely suppress the freedom to organise ((Conclusions III (1973), Statement of Interpretation on Article 5). The Committee also takes note of the Recommendation Rec(2001)10 of the Committee of Ministers of the Council of Europe (see paragraph 31 above) providing that “police staff shall enjoy social and economic rights to the fullest extent possible and in particular, staff shall have the right to organise or to participate in representative organisations (...)”.

88. The Committee considers that the freedom to join or not to join trade unions or professional associations by each member of the police force as well as the freedom of the police associations/trade unions to affiliate to national or international organisations is at the essence of the right to organise under the Charter. In this case, a prohibition on the freedom to join other organisations against members of the *Guardia di Finanza* is disproportionate since it deprives members of the *Guardia di Finanza* of an effective means to claim their economic and social interests, and therefore it is not necessary in a democratic society.

89. For these reasons, the Committee holds that the prohibition on members of the *Guardia di Finanza* to join other trade unions, where the *Guardia di Finanza* is functionally equivalent to a police force, amounts to a violation of Article 5 of the Charter.

*Freedom to join or not to join organisations: armed forces*

90. The Committee has also held that in the case of military representative associations, a complete ban on affiliation to national employees' organisations is not necessary or proportionate and therefore does not fulfill the requirements of Articles 5 and G of the Charter, in particular as the restriction has the factual effect of depriving the representative associations of an effective means of negotiating the conditions of employment on behalf of their members, in so far as national umbrella organisations of employees possess significant bargaining power in national negotiations (European Organisation of Military Associations (EUROMIL) v. Ireland, Complaint No. 112/2014, decision on the merits of 12 September 2017, §§51-57).

91. The Committee notes that in the instant case the prohibition on joining other trade unions is prescribed by law, namely Article 1475 (2) of the Military Code and that, according to the Government, the restriction for military personnel to join other trade unions is necessary for the protection of the rights and freedoms of others and for the protection of public interest and national security. The restriction is intended to ensure the neutrality and the operational effectiveness of the armed forces.

92. In considering whether the restriction is necessary in a democratic society within the meaning of Article G of the Charter, the Committee considers that the members of the armed forces who can be excluded should be defined in a restrictive manner and that the complete suppression of the right to organise of members of the *Guardia di Finanza* (which involves freedom to establish organisations/trade unions as well as freedom to join or not to join trade unions) is not a measure which is necessary in a democratic society for the protection of, *inter alia*, national security. The Committee does not consider that a complete ban on affiliation to trade unions is necessary or proportionate, in particular as the restriction has the factual effect of depriving the members of the *Guardia di Finanza* themselves or the trade unions representing them of an effective means of negotiating the conditions of employment. Under Article 5, members of the *Guardia di Finanza* should be able to join a trade union of their own choice and trade unions should be able to affiliate with national and international organisations.

93. Thus, the Committee holds that the complete prohibition on members of the *Guardia di Finanza* to join other trade unions, where the *Guardia di Finanza* is functionally equivalent to an armed force, amounts to a violation of Article 5 of the Charter.

*3. As to trade union prerogatives – a third guarantee of the right to organise*

94. With regard to trade union prerogatives, the Committee recalls having held that basic trade union prerogatives mean the right to express demands with regard to working conditions and pay, the right of access to the working place, as well as the right of assembly and speech. Such definition applies to professional organisations of police officers as well as to other professional organisations (CESP v. Portugal, Complaint No. 11/2001, decision cited above, §40).

95. The Committee notes that, on the demands with regard to working conditions and pay, CGIL argues that the military representative bodies established by the Military Code have a merely advisory function and their competence is limited to particular matters which do not include for example remuneration as a whole. In this connection, the Committee considered previously that the right to express demands on working conditions is in parallel guaranteed under Article 6§2 as part of the right to bargain collectively (EuroCOP v. Ireland, Complaint No. 83/2012, decision cited above, §83). The Committee therefore decides to consider this matter under Article 6§2 of the Charter.

96. With regard to the right of access to the working place and the right of assembly and speech, the Committee notes that no particular allegations have been advanced by the complainant organisation.

*4. As to protection of representatives - a fourth guarantee of the exercise of the right to organise*

97. The Committee notes that the adequacy of the protection of the professional association representatives against outside interference has not been contested by either party. The matter will consequently not be examined by the Committee.

98. In light of the above, the Committee holds that the Military Code restricts the right to organise guaranteed by Article 5 of the Charter in a manner that is not necessary in a democratic society for the protection of, *inter alia*, national security within the meaning of Article G. Consequently, the Committee holds that there is a violation of Article 5 of the Charter in respect of members of the *Guardia di Finanza*, irrespective of the civilian or military nature of the tasks assigned to them.

## II. ALLEGED VIOLATION OF ARTICLE 6§1 OF THE CHARTER

99. Article 6§1 reads as follows:

### Article 6 – The right to bargain collectively

Part I: “All workers and employers have the right to bargain collectively.”

Part II: “With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

1. to promote joint consultation between workers and employers; [...]”

100. Article G of the Charter reads as follows:

### Article G – Restrictions

“1. The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

2. The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.”

## A – Arguments of the parties

### 1. The complainant organisation

101. CGIL argues that Italy does not in any way promote joint consultation between the members of the *Guardia di Finanza* and their employer, the Ministry of Economy and Finance, which amounts to a violation of Article 6§1 of the Charter.

### 2. The respondent Government

102. The Government contests that the functions exercised by the military representative bodies are only advisory. It argues that these bodies participate in consultation regarding working conditions of the personnel of the police forces with military status, including the *Guardia di Finanza*.

103. The Government maintains in its further response that the system of military representation established by Articles 1476 and following of the Military Code makes it possible to relay issues of well-being and conditions of personnel in the decision-making processes of the *Guardia di Finanza*.

104. The Government further states that parliamentary work is underway in order to evaluate the possibility of introducing amendments to the legislation regarding the military representative bodies.

## **B – Assessment of the Committee**

105. The Committee first recalls that, unlike in Article 5 of the Charter, nothing in the wording of Article 6 entitles States Parties to enact restrictions in respect of the police or armed forces in particular (CESP v. France, Complaint No.101/2013, decision cited above, §118 and EUROMIL v. Ireland, Complaint No. 112/2014, decision cited above, §85). Therefore, any restrictions must comply with the requirements set out in Article G of the Charter (EuroCOP v. Ireland, Complaint No. 83/2012, decision cited above, §159). Since unlike the wording of Article 5 of the Charter, the wording of Article 6 of the Charter draws no distinction between the rights police and armed forces may enjoy under its provisions, the Committee will not examine separately the situation depending on the civilian or military nature of the *Guardia di Finanza* with respect to Articles 6§1.

106. The Committee also recalls that under Article 6§1 of the Charter, States Parties must take positive steps to encourage joint consultation within bodies, in which both sides are represented on an equal footing and engage in consultation, regardless of the presence of Government representatives. If joint consultations do not take place spontaneously, the State concerned should establish permanent bodies and arrangements, in which unions and employers' organisations are equally and jointly represented, allowing the social partners to discuss and submit their views on all issues of mutual concern (*Centrale générale des services publics (CGSP) v. Belgium*, Complaint No. 25/2004, decision on the merits of 9 May 2005, §41).

107. Consultation must also cover the public sector (Conclusions III (1973), Denmark, Germany, Norway, Sweden). In case of officials bound by statutory regulations, consultations should particularly concern the drafting and implementation of these regulations, but States Parties are not required to submit amendments tabled during parliamentary proceedings for consultation with trade unions (CGSP v. Belgium, Complaint No. 25/2004, decision cited above, §§40-41).

108. The Committee notes that CGIL alleges that Italy does not promote a fair and equal joint consultation between workers, on the one side and the employer on the other side.

109. As regards the composition of the consultative bodies, the Committee notes that the system of representation of members of *Guardia di Finanza* consists in: (i) basic bodies among units at a minimum level compatible with the structure of each armed force or armed corps, (ii) intermediate bodies for the highest ranks and (iii) a national central inter-force body (COCER) divided into inter-force category committees (officers, non-commissioned officers and volunteers) and into sections of the armed forces or armed Corps (Italian Army, Navy, Air Force, *Carabinieri* and

*Guardia di Finanza*) (Article 1476 of the Military Code). The COCER shall meet at least once a year in joint session with all sections established to draw up opinions and recommendations and to make requests, within the limits of the powers conferred (Article 1478 (1)-(3) of the Military Code).

110. With regard to the scope of the issues to be discussed within the joint consultation, it shall include matters such as: retention of jobs during military service, professional qualification; benefits for injuries suffered and illnesses contracted during service and due to service; integration of female military personnel; welfare, cultural, recreational and social promotion activities, including for family members (Article 1478 (8) of the Military Code). Matters concerning organisation, training, operations, the logistical and operational sector, the hierarchical functional relationship and the deployment of personnel are excluded from the competence of military representative bodies and thus cannot constitute the object of joint consultation (Article 1478 (7) of the Military Code).

111. With regard to the process of joint consultation, the Committee notes that the Central Representative Body (COCER) can formulate opinions, recommendations and requests on all matters which are the subject of legislative or regulatory provisions concerning the legal, economic, social security, health, cultural and moral situation, pay and protection of military personnel. The COCER may also be heard, at its request, by the Standing Committees from the two Chambers responsible for the subject matter, on the matters outlined above and in accordance with the procedures provided for by parliamentary rules of procedure (Article 1478 (5) of the Military Code).

112. The Committee also notes that the intermediate and basic military representative bodies shall reach an agreement with the military leaders and administrative bodies on the arrangements and procedures for dealing with the matters referred to above [in their competence] (Articles 1478 (6) of the Military Code). For the measures to be adopted in the field of welfare, cultural, recreational and social promotion activities, including for family members, the relevant military administration may draw on the contribution of intermediate or basic representative bodies for relations with regions, provinces and municipalities (Article 1478 (10) of the Military Code).

113. The Committee notes that the military representative bodies (mostly COCER) may be involved in consultation on legislative and regulatory provisions concerning the social and economic rights of military personnel (Article 1478 (4) and following of the Military Code). Thus, the Committee further notes that mechanisms for the purpose of consulting members of the *Guardia di Finanza* on issues relevant to their professional lives exist. The existing consultation mechanisms enable discussions between representative bodies of members of the *Guardia di Finanza* and their employer on matters of mutual interest which is in line with Article 6§1 of the Charter.



114. The Committee considers that CGIL has not substantiated sufficiently how the Government has failed to promote joint consultations or to what extent the existing mechanisms are ineffective in practice.

115. Consequently, the Committee holds that there is no violation of Article 6§1 of the Charter.

### **III. ALLEGED VIOLATION OF ARTICLE 6§2 OF THE CHARTER**

116. Article 6§2 reads as follows:

#### **Article 6 – The right to bargain collectively**

Part I: “All workers and employers have the right to bargain collectively.”

Part II: “With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake: [...]

2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers and employers’ organisations and workers’ organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;

[...]”

117. Article G of the Charter reads as follows:

#### **Article G – Restrictions**

“1. The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

2. The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.”

### **A – Arguments of the parties**

#### **1. The complainant organisation**

118. CGIL alleges that Italy violates Article 6§2 of the Charter because it does not promote machinery for voluntary negotiations between members of the *Guardia di Finanza* (or their organisations) and their employer, the Ministry of Economy and Finances, with a view to the regulation of terms and conditions of employment by means of collective agreements.

119. CGIL states that the military representative bodies established by law cannot guarantee the right to bargain collectively, because their competence is limited to certain matters such as retention of jobs during military service, professional

qualification, benefits for injuries suffered and illnesses contracted during service and due to service; welfare, cultural, recreational and social promotion activities, including for family members or accommodation (which do not include, for example, remuneration as a whole and staff management) and they have only advisory tasks in the sense that they can present claims, proposals, advice and requests.

120. CGIL argues that the military representative bodies do not really negotiate with the employer the regulation of terms and conditions of employment of members of *Guardia di Finanza*, especially with respect to remuneration.

## **2. The respondent Government**

121. The Government argues that the representative bodies of the military personnel do not exercise only advisory functions. These bodies also provide for the consultation on working conditions of the members of police forces with military status, including *Guardia di Finanza*. In this respect, the Government refers to Articles 2 and 4 of Legislative Decree No. 195 of 12 May 1995, which establish that the representatives of the Central Body of Military Representation (COCER) are involved in consultation on matters such as: basic and supplementary pay; severance pay and types of supplementary pension schemes; maximum duration of working hours; leave; leave from work for personal or health reasons; short periods of leave for personal reasons; pay for missions, transfers or overtime; the general criteria for professional refresher courses for the purposes of policing etc.

122. In its further response, the Government states that according to Article 1478 of Legislative Decree No. 66/2010, the military representative bodies are authorised to formulate opinions, recommendations and requests on all matters which are the subject of legislative or regulatory provisions concerning the conditions, pay and the legal, economic, social security, health, cultural and moral protection of the military personnel represented. The military representative bodies are also authorised to bring collective claims/requests relating to the following areas: retention of jobs during military service, professional qualification, entry into the job market of those leaving the military service; benefits for injuries suffered and illnesses contracted during service and due to service; integration of female military personnel; welfare, cultural, recreational and social promotion activities, including for family members; organisation of meeting rooms and canteens; hygiene/sanitary conditions; accommodation.

## **B – Assessment of the Committee**

123. The Committee first recalls that nothing in the wording of Article 6 of the Charter entitles States Parties to enact restrictions on the right to bargain collectively on the part of the police or armed forces in particular (see paragraph 105 above).

124. Under Article 6§2 of the Charter, States Parties are obliged to promote, where necessary and appropriate, machinery for voluntary negotiations on, inter alia, the regulation of terms and conditions of employment (CESP v. Portugal, Complaint No. 11/2002, decision cited above, §§51 and 63).

125. The Committee also recalls that the extent to which ordinary collective bargaining applies to officials may be determined by law. Officials nevertheless always retain the right to participate in any processes that are directly relevant for the determination of procedures applicable to them (Conclusions III, (1973) Germany; CESP v. Portugal, Complaint No. 11/2002, decision cited above, §58). A mere hearing of a party on a predetermined outcome will not satisfy the requirements of Article 6§2 of the Charter. On the contrary, it is imperative to regularly consult all parties throughout the process of setting terms and conditions of employment and thereby provide for a possibility to influence the outcome. Especially in a situation where the trade union rights have been restricted, it must maintain its ability to argue on behalf of its members through at least one effective mechanism. Moreover, in order to satisfy this requirement, the mechanism of collective bargaining must be such as to genuinely provide for a possibility of a negotiated outcome in favour of the workers' side (EuroCOP v. Ireland, Complaint No. 83/2012, decision cited above, §§176-177; EUROMIL v. Ireland, Complaint No. 112/2014, decision cited above, §§87-88).

126. The Committee takes note that the regulatory and pay conditions with regard to the members of the police forces with civil and military status are established by way of Decree of the President of Italy (such as the Presidential Decree No. 39 of 15 March 2018). It further notes that Articles 2 and 7 of Legislative Decree No. 195 of 12 May 1995 lay down the procedures for regulating the contents of the employment relationship of personnel of the police and armed forces, including the negotiation procedure to be undertaken with representatives of these forces before the adoption of a Presidential Decree (respectively trade unions for police forces with civil status and the Central Representative Body (COCER) for police forces with military status). The procedures for issuing the Presidential decrees shall be initiated by the Minister for the Civil Service at least four months before the deadlines set by the previous decrees. Within the same deadline, the Central Representative Body (COCER) of military personnel (including through its separate sections of the *Carabinieri*, *Guardia di Finanza* and Armed Forces) can present proposals and requests to the Minister for the Civil Service, Minister of Defence, Minister of Economy, through the main Staff of the Defence or the corresponding General Command (Article 7(1) of Legislative Decree No. 195 of 12 May 1995).

127. The Committee notes also that, following meetings attended by the delegates of the General Command of the *Guardia di Finanza* and representatives of the respective COCER sections, a “scheme” is agreed and signed (Article 7(5) of the Decree 195 of 12 May 1995). In case of dissent, the COCER section of the *Guardia di Finanza* may, within five days from receipt of the “scheme” referred to above, transmit to the President of the Council of Ministers and the competent Ministers, their observations on the scheme, through the respective General Commands (Article 7(6) of Legislative No. Decree 195 of 12 May 1995).

128. The Committee notes that COCER may also formulate opinions, recommendations and requests on all matters which are the subject of legislative or regulatory provisions concerning the legal, economic, social security, health, cultural and moral situation, pay and protection of military personnel (Article 1478 (4) of the Military Code). However, under Article 1478 (7) of the Military Code, some of the terms and conditions of employment such as training, the hierarchical functional relationship and the deployment of personnel are completely excluded from the competence of representative bodies.

129. The Committee has previously had the opportunity to consider the issue of collective bargaining and more specifically negotiation over pay in respect of the police and the armed forces. It has examined under Article 6§2 of the Charter whether, based on practical examples, a police trade union or military professional association has effectively been consulted and its opinions taken into account (EuroCOP v. Ireland, Complaint No. 83/2012, decision cited above, §§161-178 and EUROMIL v. Ireland, Complaint No. 112/2014, decision cited above, §§84- 94).

130. In the present case, the Committee notes that legislation provides for a procedure of consultation of the representative bodies of the *Guardia di Finanza* before a Presidential Decree regulating pay and working conditions of its personnel is adopted. The Committee notes that little information has been provided on the above mentioned procedure and how it effectively ensures meaningful negotiation as opposed to a mere hearing. There are no concrete examples/evidence to show that the representative bodies of the *Guardia di Finanza* have frequently been able to meet the Ministers concerned or their representatives in order to negotiate on matters relating to working conditions and pay of the members of the *Guardia di Finanza*. No information on the final outcome of such consultations (if any) has been made available to the Committee.

131. The Committee further notes that according to the law, in case of disagreement, COCER may only send their observations to the respective Ministers within five days from receipt of the “scheme”. The Committee considers that the procedure described above does not present the characteristics of a real negotiation between two parties – the representative bodies of the *Guardia di Finanza* on one side and the representatives of the Ministries concerned on the other side – with the purpose of regulating the terms and conditions of employment including pay in the

sense of Article 6§2 of the Charter, but rather a mere consultation.

132. The Committee finds therefore that the existing procedure provided by Articles 2, 4 and 7 of Legislative Decree No.195 of 12 May 1995 and Article 1478 of the Military Code does not represent a reasonable alternative to the bargaining process. Moreover, the representative bodies of the *Guardia di Finanza* are not able to even formulate opinions and requests on matters of interest for their members such as: training, the hierarchical functional relationship and the deployment of personnel.

133. In view of the above, it follows that the representative bodies of *Guardia di Finanza* are not provided with means to effectively negotiate the terms and conditions of employment, including remuneration. The Committee consequently holds that there is a violation of Article 6§2 of the Charter.

#### **IV. ALLEGED VIOLATION OF ARTICLE 6§4 OF THE CHARTER**

134. Article 6§4 reads as follows:

##### **Article 6 – The right to bargain collectively**

Part I: “All workers and employers have the right to bargain collectively.”

Part II: “With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

[...]

and recognise:

4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into. “

##### **Appendix to Article 6§4:**

“Article 6, paragraph 4

It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G.”

135. Article G of the Charter reads as follows:

##### **Article G – Restrictions**

“1. The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

2. The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.”

## **A – Arguments of the parties**

### **1. The complainant organisation**

136. CGIL alleges that the prohibition on members of the *Guardia di Finanza* from exercising the right to strike laid down in Article 1475 (4) of Legislative Decree No. 66 of 15 March 2010 (Military Code), amounts to a violation of Article 6§4 of the Charter.

137. CGIL considers that the prohibition is not justified in view of Article G of the Charter. It accepts that the prohibition is provided for by law, but disputes that it is necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interests, national security, public health, or morals.

138. CGIL maintains that past experience in Italy shows that it is possible to reconcile the essential nature of a public service with the right of workers to strike, providing for a procedure for calling strikes and guaranteeing minimum service levels, and consequently an absolute prohibition is not necessary in a democratic society and may be replaced by a partial prohibition.

### **2. The respondent Government**

139. The Government rejects the allegations put forward by CGIL in their entirety.

140. The Government states that the prohibition from exercising the right to strike applies to all military personnel (Armed Forces and Police Forces with military status) according to Article 1475 (4) of Legislative Decree No. 66/2010, and to members of the State Police (civil status) according to Article 84 of Law No. 121/1981. The Government further states that the members of *Guardia di Finanza* do not suffer any unjustified discriminatory treatment and that, on the contrary, treating the members of the *Guardia di Finanza* differently will create inconsistency on the normative level.

141. The Government emphasises that in a democratic society, an appropriate level of protection of public and national order and security must be ensured. In this respect, the national defence and public safety sectors cannot be treated like any other public service, especially given the recent upsurge of international terrorism. Unlike other public sectors where strike is allowed if a minimum service is ensured, in the field of public safety, this possibility would simply make it easier for offenders to understand that they could act with less risk of being identified and punished and there will be less possibilities of preventing more serious offenses, including crimes against individuals.

142. In its further response, the Government maintains that the requirements of neutrality, cohesion, efficiency and absolute operational capacity of the *Guardia di Finanza* to defend the fundamental interests of the citizens - Italian and European - are totally incompatible with the recognition of the right to strike. The collective

abstention from work by the members of the *Guardia di Finanza* would jeopardise fundamental national and European interests as well as rights protected by the Constitution such as freedom, physical integrity and the [“sacred duty” of] defence of the national territory.

## **B – Assessment of the Committee**

143. The Committee recalls that the right to strike is intrinsically linked to the right to collective bargaining, as it represents the most effective means to achieve a favourable result from a bargaining process. It is therefore of specific relevance to trade unions. Consequently, restrictions on this right may be acceptable only under specific conditions (*EUROMIL v. Ireland*, Complaint No. 112/2014, decision cited above, § 111; *EuroCOP v. Ireland*, Complaint No. 83/2012, decision cited above, §201).

144. The Committee considers that 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 (*EuroCOP v. Ireland*, Complaint No. 83/2012, decision cited above, §212).

145. With regard to the public service, Article 6§4 of the Charter makes no distinction between the private and the public sector, nor any distinction between the restrictions or limitations on the rights guaranteed to the police and those guaranteed to the armed forces, as in Article 5 of the Charter. It is therefore for the Committee to give full effect to this article. The Committee recognised the right to strike of police forces (*EuroCOP v. Ireland*, Complaint No. 83/2012, decision cited above). It held, for example, 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 (*EuroCOP v. Ireland*, Complaint No. 83/2012, decision cited above, §§211-214). The Committee recalls that it has held that restrictions on the right to strike for members of the armed forces may be in conformity with the Charter provided that the requirements of Article G are met, namely the restrictions are prescribed by law, pursue a legitimate aim such as the protection of the rights and freedoms of others or the protection of public interest, national security, public health, or morals and are necessary in a democratic society (Conclusions I (1969), Statement of Interpretation on Article 6§4), *EUROMIL v. Ireland*, Complaint No. 112/2014, decision cited above, §§113-117).

146. As already noted above, the corps of the *Guardia di Finanza* is defined by the domestic legislation as a military police force with general competence over economic and financial matters (see paragraphs 41 - 42 above). The members of the *Guardia di Finanza* are subject to the military discipline applicable to the army and therefore the Military Code is applicable to them. Under Article 1475 (4) of the Military Code, military personnel are prohibited from striking.

147. The Committee notes that the Constitutional Court through Decision No. 120/2018 has maintained the prohibition to strike for military personnel as established by Article 1475 (4) of the Military Code.

148. The Committee considers that States have a wide margin of appreciation on how they may restrict the right to strike of the armed forces. For these reasons, it falls to states, within their margin of appreciation, to decide, in light of the circumstances of a given national system, whether a restriction upon the right to strike of the armed forces – with regard for example to the mode and form of collective action or to the establishment of a minimum service - is truly necessary with a view to achieving the legitimate objective pursued.

149. The Committee recalls that restrictions on fundamental rights and rights guaranteed by the Charter must be interpreted narrowly and must comply with the requirements of Article G. In the present case, it is not disputed that the prohibition of strikes is provided for by law, namely by Article 1475 (4) of the Military Code. It pursues a legitimate aim particularly related to the protection of the rights and freedoms of others (through the *Guardia di Finanza* mission of overseeing compliance with the rules of political and economic interest), and the objective of protecting public order (the contribution of the *Guardia di Finanza* to the maintenance of both internal security and the military defence of national and European borders and the fight against tax and financial evasion and various surveillance missions). The Committee is also called to examine whether the complete ban on the right to strike of the members of the *Guardia di Finanza* is proportionate to the aim pursued and therefore necessary in a democratic society.

150. The Committee notes that the ILO Committee on Freedom of Association has stated that where the right to strike is restricted or prohibited in certain essential undertakings or services, adequate protection should be given to the workers to compensate for the limitation thereby placed on their freedom of action with regard to disputes affecting such undertakings and services ILO, Compilation of decisions of the Committee on Freedom of Association, Sixth Edition, 2018, paragraph 853). As regards the nature of appropriate guarantees in cases where restrictions are placed on the right to strike in essential services and the public service, restrictions on the right to strike should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented (ILO, Compilation of decisions of the Committee on Freedom of Association, Sixth Edition, 2018, paragraph 856).

151. The Committee further notes that the ILO Committee on Freedom of Association held that the establishment of minimum services in the case of strike action should only be possible in: (1) services the interruption of which would endanger the life, personal safety or health of the whole or part of the population (essential services in the strict sense of the term); (2) services which are not essential in the strict sense of the term but where the extent and duration of a strike



might be such as to result in an acute national crisis endangering the normal living conditions of the population; and (3) in public services of fundamental importance. According to the interpretation of the ILO Committee on Freedom of Association, the armed forces are considered to be essential services in the strict sense of the term (ILO, Compilation of decisions of the Committee on Freedom of Association, Sixth Edition, 2018, paragraphs 840 and 866).

152. The Government argued that the need to be able to maintain the command operational in the most extreme situations of military exposure of the *Guardia di Finanza* justified the absolute prohibition of the right to strike. The Committee understands the practical importance of the argument but does not consider that it is a necessary ground in the light of Article G. Measures to compensate the prohibition must be found in practice compatible with the exercise of the missions. Minimum services may be imposed in the defence sector in the event of a strike. Other measures may be provided for by law, such as an effective and regular procedure of negotiation at the highest level between the members of the *Guardia di Finanza* Corps and the command authority regarding not only the material and salary conditions but also the work organisation, or conciliation or arbitration procedure. With such measures - minimum services and/or an effective procedure of negotiation or conciliation - the prohibition on the exercise of the right to strike would be proportionate. The Committee notes, on the one hand, that minimum services in the event of a strike are not organised in Italy in the national defence and public safety sector, unlike other public sectors; on the other hand, it has found in the present decision a violation of Article 6§2 of the Charter because of the lack of effectiveness of the collective bargaining reserved for members of the *Guardia di Finanza* (see paragraph 133 above). Consequently, the Committee considers that the absolute prohibition of the right to strike imposed on members of the *Guardia di Finanza* is not proportionate to the legitimate aim pursued and, therefore, is not necessary in a democratic society.

153. The Committee consequently holds that there is a violation of Article 6§4 of the Charter.

## CONCLUSION

For these reasons, the Committee concludes:

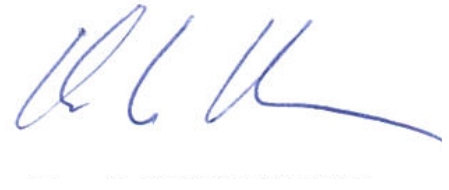
- by 9 votes to 2 that there is a violation of Article 5 of the Charter;
- unanimously, that there is no violation of Article 6§1 of the Charter;
- unanimously, that there is a violation of Article 6§2 of the Charter;
- by 9 votes to 2, that there is a violation of Article 6§4 of the Charter.



François VANDAMME  
Rapporteur



Giuseppe PALMISANO  
President



Henrik KRISTENSEN  
Deputy Executive Secretary