



Parliamentary inquiry into Mafia infiltration of Masonic lodges: search and seizure in breach of the Convention

In today's Chamber judgment¹ in the case of [Grande Oriente d'Italia v. Italy](#) (application no. 29550/17) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned a search of a Masonic association's premises ordered in the context of a parliamentary inquiry into the Mafia. Paper and digital documents, in particular a list of names and personal data of more than 6,000 members of the association, were seized during the search.

The Court found that there had been a lack of evidence or a reasonable suspicion of involvement in the matter being investigated which would have been sufficient to justify such a wide-ranging and indeterminate measure. Nor had the shortcomings in the search order been offset by sufficient counterbalancing guarantees, for example by an independent and impartial review. Indeed, as the system in Italy currently stands, Parliament has exclusive jurisdiction to rule on the validity of its decisions.

The Court concluded that such a significant interference with the applicant association's rights, involving the authorities examining and retaining a wide range of documents, including confidential information, had not been "in accordance with the law". Nor had it been "necessary in a democratic society".

Principal facts

The applicant is a Masonic association registered under Italian law, Grande Oriente d'Italia. It was founded in 1805 and groups together several lodges.

In 2013 the Parliamentary Commission of Inquiry on the phenomenon of mafias and other criminal associations, including foreign ones (*Commissione parlamentare d'inchiesta sul fenomeno delle mafie e sulle altre associazioni criminali anche straniere*) was set up. It was mandated, among other things, to conduct an inquiry into relations between the Mafia and Freemasonry because of revelations emerging from various criminal proceedings.

On several occasions in 2016 the parliamentary commission of inquiry asked Dr Bisi, the Grand Master of the applicant association, to provide a list of its lodges' members. He repeatedly refused, citing confidentiality. He observed that the request was "a fishing expedition" as it neither mentioned ongoing investigations, nor any specific crimes allegedly committed by members of the association. He again refused to disclose names when summoned as a witness in January 2017.

The parliamentary commission eventually, in March 2017, ordered a search of the applicant association's premises. The search aimed at obtaining a list of anyone who belonged or had belonged to a Masonic lodge of Calabria or Sicily starting from 1990, with their rank and role, as well

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

as information about all the lodges of Calabria and Sicily which had been dissolved or suspended from 1990 onwards, including the names of all their members and their personal files, any investigations carried out and decisions taken. The applicant association's premises, including its archives, the library, and the personal residence of the Grand Master, and several computers were searched. It resulted in the seizure of numerous paper and digital documents, including lists of approximately 6,000 persons registered with the applicant association, as well as hard disks, flash drives and computers.

The applicant association unsuccessfully challenged the search and seizure. The parliamentary commission made no ruling on a request to reconsider the search order under its own procedures, while the prosecuting authorities dismissed an application for a judicial review by the Constitutional Court of a conflict of jurisdiction between the powers of the State, and discontinued the investigation into a criminal complaint lodged by the applicant association.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicant association complained that the search of its premises and the seizure of the list of its members had been unlawful and grossly disproportionate. It argued in particular that if a judicial authority – and not a parliamentary commission of inquiry – had issued a search warrant without specifying, among other things, the allegations against the person under investigation or the objects to be seized, the warrant would have been considered void.

It also relied on Articles 11 (freedom of assembly and association) and 13 (right to an effective remedy).

The application was lodged with the European Court of Human Rights on 13 April 2017.

Judgment was given by a Chamber of seven judges, composed as follows:

Ivana **Jelić** (Montenegro), *President*,
Alena **Poláčková** (Slovakia),
Georgios A. **Serghides** (Cyprus),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),
Alain **Chablais** (Liechtenstein),
Artūrs **Kučs** (Latvia),

and also Liv **Tigerstedt**, *Deputy Section Registrar*.

Decision of the Court

Article 8

Firstly, the Court found that the search and seizure operation had had a significant impact on the applicant association's rights under Article 8 of the Convention. The search order had been formulated in broad terms, covering a very wide range of information and actions. It had resulted in the authorities examining and retaining a large number of paper and digital documents, including confidential information.

Despite the seriousness of that interference with the applicant association's rights as well as of the matter being investigated, namely infiltration by Mafia groups of masonic lodges, the parliamentary commission had made no reference in its search order to specific investigations, offences, individuals or items of evidence. The Court therefore considered that the search and seizure had not

been sufficiently justified. In particular there had been a lack of evidence or a reasonable suspicion of involvement in the matter being investigated.

Nor had those shortcomings been offset by sufficient counterbalancing guarantees against abuse or arbitrariness. Under Italian law the applicant association had no means of contesting the lawfulness of the search order or its execution before an independent and impartial authority. Indeed, as the system in Italy currently stands, Parliament has exclusive jurisdiction to rule on the validity of its decisions. The Court stated, however, that it was not for it to indicate what type of remedy should be provided in this situation, bearing in mind a State's discretion to decide on matters linked to the separation of powers.

Lastly, a copy of the seized documents is still being held in the archives of the Parliamentary Commission of Inquiry, whereas under the relevant domestic legislation and case-law, seized documents should be returned, or the copies of them destroyed, at the conclusion of an inquiry.

The Court concluded that the search and seizure had not been "in accordance with the law", nor "necessary in a democratic society".

Other articles

The Court held, by 6 votes to 1, that there was no need to examine the applicant association's complaints under Articles 11 and 13.

Just satisfaction (Article 41)

The Court held that Italy was to pay the applicant association 9,600 euros (EUR) in respect of non-pecuniary damage, EUR 5,344 in respect of costs and expenses.

Separate opinion

Judge Serghides expressed a partly dissenting opinion which is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.