

DECISION ON ADMISSIBILITY

13 September 2017

Unione Generale Lavoratori - Federazione Nazionale Corpo forestale dello Stato (UGL – CFS) and Sindacato autonomo polizia ambientale forestale (SAPAF) v. Italy

Complaint No.143/2017

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 294th session, in the following composition:

Giuseppe PALMISANO, President
Monika SCHLACHTER, Vice-President
Karin LUKAS, Vice-President
Eliane CHEMLA, General Rapporteur
Birgitta NYSTRÖM
Petros STANGOS
József HAJDU
Marcin WUJCZYK
Krassimira SREDKOVA
Raul CANOSA USERA
Marit FROGNER
François VANDAMME
Barbara KRESAL
Kristine DUPATE
Aoife NOLAN

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having regard to the complaint dated 30 December 2016 and registered on 9 February 2017, as number 143/2017, lodged by *Unione Generale Lavoratori - Federazione Nazionale Corpo forestale dello Stato* (UGL – CFS) and *Sindacato autonomo polizia ambientale forestale* (SAPAF) and signed by lawyers Egidio Lizza and Marco Lo Giudice, on behalf of the UGL-CFS and SAPAF, requesting the Committee to find that by applying the Legislative Decree No. 177/2016 which incorporates the State Forestry Corps into the *Carabinieri* Force, with the acquisition of military status, Italy deprives the State Forestry Corps of its trade union rights in violation of Articles 1§2, 5, and 6, taking into account Article G, as well as Article E of the Revised European Social Charter (“the Charter”);

Having regard to the documents appended to the complaint;

Having regard to the observations from the Government registered on 9 May 2017;

Having regard to the Charter and, in particular, to Articles 1§2, 5, and 6, as well as Articles E and G, which read as follows:

Article 1 – The right to work

Part I: “Everyone shall have the opportunity to earn his living in an occupation freely entered upon.”

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

...

2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;”

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.”

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;

2. to promote, where necessary and appropriate, machinery for voluntary negotiations 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;

3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;

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.”

Article E – Non-discrimination

“The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.”

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.”

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

Having regard to the Rules of the Committee adopted on 29 March 2004 at its 201st session and last revised on 6 July 2016 at its 286th session (“the Rules”);

Having deliberated on 13 September 2017;

Delivers the following decision, adopted on the above-mentioned date:

1. The complainant organisations *Unione Generale Lavoratori - Federazione Nazionale Corpo forestale dello Stato* (UGL – CFS) and *Sindacato autonomo polizia ambientale forestale* (SAPAF) allege that by applying the Legislative Decree No. 177/2016 which incorporates the State Forestry Corps into the *Carabinieri* Force, with the acquisition of military status, Italy deprives the State Forestry Corps of its trade union rights in violation of Articles 1§2, 5, and 6, taking into account Article G, as well as Article E read in conjunction with Articles 5, and 6, of the Charter.

2. The Government in its observations submitted objections related to the categories of workers represented by the complainant organisations.

THE LAW

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

3. The Committee notes that, in accordance with Article 4 of the Protocol, which was ratified by Italy on 3 November 1997 and entered into force for this State on 1 July 1998, the complaint has been submitted in writing and concerns Articles 1, 5 and 6 of the Charter, which were accepted by Italy when it ratified this treaty on 5 July 1999, and Articles E and G, and by which it is bound since the entry into force of this treaty on 1 September 1999.

4. Moreover, the grounds for the complaint are indicated.

5. The complaint submitted on behalf of the *Unione Generale Lavoratori - Federazione Nazionale Corpo forestale dello Stato* (UGL – CFS) and *Sindacato autonomo polizia ambientale forestale* (SAPAF) is signed by lawyers Egidio Lizza and Marco Lo Giudice, entitled to represent the complainant organisations in respect of this complaint, as established by the mandate signed by Danilo Scipio, Secretary General of UGL – CFS and Marco Moroni, Secretary General of SAPAF, who have capacity to bring or defend legal proceedings on their behalf, in accordance with Articles 11 and 15 of the organisations' statutes. The Committee therefore considers that the complaint complies with Rule 23.

6. The Committee recalls that under Article 1 (c) of the Protocol, Contracting Parties to the Protocol secure the right to lay complaints alleging unsatisfactory application of the Charter to "representative national (...) trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint".

7. Exercising their activities in Italy, the *Unione Generale Lavoratori - Federazione Nazionale Corpo forestale dello Stato* (UGL – CFS) and *Sindacato autonomo polizia ambientale forestale* (SAPAF) are trade unions within the jurisdiction of this country as required by Article 1 (c) of the Protocol.

8. The Committee recalls that for the purpose of the collective complaints procedure, representativeness is an autonomous concept, not necessarily identical to the national notion of representativeness (*Confédération française de l'Encadrement "CFE-CGC" v. France*, Complaint No. 9/2000, decision on admissibility of 6 November 2000, §6).

9. The Committee recalls that it makes an overall assessment to establish whether or not a trade union is representative within the meaning of Article 1 (c) of the Protocol (*Fellesforbundet for Sjöfolk (FFFS) v. Norway*, Complaint No. 74/2011, decision on admissibility of 23 May 2012, §20). Having made an overall assessment of the documents in the file, the Committee considers that *Unione Generale Lavoratori - Federazione Nazionale Corpo forestale dello Stato* (UGL – CFS) and *Sindacato autonomo polizia ambientale forestale* (SAPAF) are representative for the purposes of the collective complaints procedure.

As to the objection to admissibility raised by the Government

10. The Government argues that on the date when the complaint was registered, namely on 9 February 2017, the complainant organisations no longer represented staff formerly employed by the State Forestry Corps, who became part of the *Carabinieri* Force on 1 January 2017. The Government submits that hence, the complaint should be declared inadmissible as it pertains to categories of employees on whose behalf the complainant trade unions have no authority to act.

11. The Committee recalls that a trade union deemed to be representative for the purposes of the collective complaints procedure in accordance with Article 1 (c) of the Protocol, thereby has the right to lodge a complaint against the Party concerned on any point, within the bounds of Article 4 of the Protocol, on which it alleges unsatisfactory application of the Charter. This right of complaint is independent of which categories of employees the union according to its statutes is unionising, or which categories of employees it is authorised to represent or unionise in the framework of domestic law (SUD Travail Affaires Sociales, SUD ANPE and SUD Collectivités Territoriales v. France, Complaint No. 24/2004, decision on admissibility of 7 December 2004, §11). Even a trade union which is not considered representative at the national level for collective bargaining may be considered representative for the purposes of the collective complaints procedure.

12. The Government's objection on this point hence must be dismissed.

13. For these reasons, the Committee, on the basis of the report presented by József HAJDU, and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE

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

Invites the Government to make written submissions on the merits of the complaint by 15 November 2017.

Invites *UGL – CFS* and *SAPAF* to submit a response to the Government's submissions by a deadline which the Committee shall determine.

Invites Parties to the Protocol and the States having submitted a declaration pursuant to Article D, paragraph 2, of the Charter to make comments by 15 November 2017.

In application of Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the Charter to make observations 15 November 2017.

József HAJDU
Rapporteur

Giuseppe PALMISANO
President

Henrik KRISTENSEN
Deputy Executive Secretary