



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

12 April 2017

Case Document No. 1

UGL-CFS and SAPAF v. Italy
Complaint No.143/2017

COMPLAINT

Registered at the Secretariat on 9 February 2017

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

*Department of the European Social Charter
and the European Code of Social Security
Directorate General of Human Rights and Rule of Law*

Conseil de l'Europe - *Council of Europe*
F-67075 Strasbourg Cedex

COLLECTIVE COMPLAINT

General Labour Union, National Federation of State Forestry
Workers (UGL – CFS) and Autonomous Trade Union of
Environmental Forestry Police (SAPAF) versus Italy

The UGL – CFS, General Union of Labour, National Federation State Forestry Corps, represented by its current legal representative, Danilo Scipio, and the S.A.P.A.F. - Autonomous Trade Union of Environmental Forestry Police, represented by its current legal representative, Marco Moroni, represented and defended by lawyers Egidio Lizza and Marco Lo Giudice and domiciled, for the purposes of this complaint, at the chambers of Egidio Lizza, located in Rome, Via Valadier n. 43, hereby request the European Committee of Social Rights to ascertain and declare that the Italian legislation on “Streamlining of police functions and incorporation of the State Forestry Corps” (Legislative Decree No. 177/2016), applying the mandate set out in Article 8(1)(a) of Law No. 124 of 7 August 2015 “*Powers delegated to the Government concerning the reorganisation of the public administration*” violates the following articles of the Revised European Social Charter:

Article 1

The right to work

With a view to ensuring the effective exercise of the right to work, the Parties undertake:

1. to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment;

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

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

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.

The Italian legislation recently introduced by Legislative Decree No. 177/2016 provides for the incorporation of the State Forestry Corps (CFS) into the Carabinieri Force, through the dissolution of the former and the assumption of its functions by the latter in a manner intended to be comprehensive, with virtually all the former members of the CFS being transferred to the Carabinieri Force. In brief, this Italian legislation, which fails to take account of the standards established by European sources of law, with particular reference to the interpretations provided by the EUROPEAN COMMITTEE OF SOCIAL RIGHTS and the EUROPEAN COURT OF HUMAN RIGHTS, blatantly contravenes the revised European Social Charter in two respects: firstly, members of the State Forestry Corps (CFS) are being forcibly militarised, in the sense that no choice is offered based on free will and conscience with regard to their acquisition of the status of a soldier, and secondly, this measure disproportionately restricts (to the point of abolishing them) any form of trade union protection, right to bargain or protection of association representatives for members of the State Forestry Corps due to their very acquisition of military status (which is moreover, as will be seen below, highly dubious based on their functional profile).

What is more, this complaint is clearly urgent, and the Committee is therefore requested to adopt any measures deemed essential to prevent the violations of the above-mentioned articles of the Social Charter, given that, as from 1 January 2017, the unions making the complaint will no longer be able to represent their members once they have become part of the Carabinieri Force.

ADMISSIBILITY

The active legal capacity of the UGL – CFS and SAPAF to submit this claim.

The UGL – CFS and S.A.P.A.F. are two democratic, non profit-making trade union organisations, having their registered offices in Rome, made up of serving and retired staff of the State Forestry Corps (CFS).

In accordance with Article 3 of its Statutes, the UGL – CFS *“pursues the achievement of full enjoyment of civil, political and trade union rights for workers and, in particular, for the serving staff of the State Forestry Corps”; “pursues the protection of its members, representing their legitimate expectations and numerous needs and strives in general to enhance further the skills of the members of the State Forestry Corps”; “encourages and supports the promotion, at all levels, of any initiative deemed conducive to the formulation and adoption of legislative, regulatory and contractual norms in line with the trade union’s policies and the interests of members”; “seeks and pursues the most appropriate solutions for resolving regulatory and financial difficulties and for improving the working and living conditions of the members of the State Forestry Corps, constantly striving to achieve the highest degree of protection of the rights of this category of worker and more effective purchasing power”.*

In accordance with Article 10 of its Statutes, the aim of S.A.P.A.F. is to *“protect, before all public and private agencies, the economic, regulatory, legal, professional, welfare, assistance, moral and material interests of its members”.*

The legal representation of the trade unions is entrusted to their General Secretary, who coordinates all the activities of the General Secretariat (see Article 11 of the Statutes of UGL – CFS and Article 15 of the Statutes of S.A.P.A.F.).

By virtue of the above, the complaint lodged here is to be considered admissible, since it is being submitted by two trade union organisations which are representative at national level, in compliance with the requirements of Article 1 of the Additional Protocol to the European Social Charter.

Passive legal capacity of the Italian State against which the collective complaint is being lodged.

As is known, Italy (the respondent State under the present complaint) ratified and brought into force the European Social Charter through Law No. 30 of 9 February 1999 entitled "Ratification and implementation of the revised European Social Charter and the appendix thereto, signed in Strasbourg on 3 May 1996". Similarly, through Law No. 298 of 28 August 1997, the same State ratified and implemented the Additional Protocol to the European Social Charter providing for a system of collective complaints.

RELEVANT NATIONAL LAW

The reference legislative framework relating to the incorporation of the State Forestry Corps (CFS)

Legislative Decree No. 177 of 12 September 2016 entitled "*Streamlining of police functions and incorporation of the State Forestry Corps*" (hereafter referred to as Legislative Decree No. 177/2016) triggered the application of the mandate set out in Article 8(1)(a) of Law No. 124 of 7 August 2015 concerning the reorganisation of the public administration.

Article 8 of the aforementioned Law No. 124/2015 provides, as far as is of interest here, that: "*The Government is hereby delegated authority for adopting, within eighteen months of the date of entry into force of the present law, one or more legislative decrees amending the rules of the Presidency of the Council of Ministers, the Ministries, national government agencies and national non-commercial public institutions. The legislative decrees shall be adopted in accordance with the following guiding principles and criteria: ...reorganising the functions of the police handling protection of the environment, the territory and the sea, as well as in the area of safety and of controls applicable in the agri-food industry, subsequent to the restructuring of the CFS and its possible incorporation into another police force, apart from the competences of this corps for actively fighting forest fires and extinguishing them using airborne resources, which are to be assigned to the national fire brigade with the associated resources, without prejudice to the guarantee of the current levels of protection of the environment, territory and sea and of agri-food safety and safeguarding the existing professional skills, specialities and the unity of the functions to be assigned, thereby ensuring the required equivalence between the functions transferred and the transfer of the relevant staff; subsequent amendments to the staff regulations of the police forces, including Article 16 of Law No. 121 of 1 April 1981, in compliance with the new functional and organisational structure, also through: 1) revision of the rules on recruitment, legal status and career progression, taking into account merit*

and professional skills, with the aim of simplifying the relevant procedures, thereby providing for the possible merger, abolition or introduction of rolls, ranks and grades and the redefinition of the relevant staff complement, including the total number of staff of each police force, on the basis of functional requirements and actual numbers on the date when this law enters into force, without prejudice to the recruitment capacities envisaged on the same date, while also maintaining the substantial equivalence of the personnel of the police forces and the related salaries and benefits, also in relation to the necessary transitional provisions, without prejudice to the special regulatory and functional arrangements for the staff of each police force, as well as the contents and principles of Article 19 of Law No. 183 of 4 November 2010, and having taken into account the delegation criteria of the present law, mutatis mutandis; 2) in the event of the CFS's incorporation, also with the aim of rationalising costs, the transfer of the personnel to the relevant police force, as well as the possible transfer of personnel, in a limited number, before determining the relevant arrangements, to other police forces, resulting in matching of the functions assigned to those forces and those already being performed by the same personnel, with the relevant status being assumed; or else to other public administrative departments, as specified in Article 1(2) of Legislative Decree No. 165 of 30 March 2001, as subsequently amended, within the scope of the relevant staff complements and with the corresponding financial resources being transferred. This shall be without prejudice to the payment, in the form of a personal bonus, which can be resorbed through subsequent increases, whatever the grounds therefore, of the difference between the remuneration of which they are in receipt and that corresponding to their legal and economic status following reassignment, confined to fixed and permanent payroll components."

According to the explanatory memorandum to the draft legislative decree, "Among the police forces, the carabinieri can be seen to be functionally the most appropriate for incorporating the CFS and permitting the full application of the principle governing the delegation as regards the reorganisation of the functions it performs in environmental and agri-food matters and its associated functions, the streamlining, reinforcement and effectiveness of policing functions and the redistribution of police resources across the country, also with a view to avoiding overlaps and achieving cost savings."

Articles 7 to 17 of Legislative Decree No. 177/2016 regulate the incorporation of the CFS's staff and the relevant functions into the Carabinieri Force, with the sole exception of limited contingents assigned to the State Police Force, the financial police, the national fire brigade and the

Ministry of Agricultural, Food and Forestry Policies, in keeping with the principle governing the delegation, intended to guarantee that the incorporation of the CFS will not compromise the unity and continuity of the functions it performs.

Article 7 of Legislative Decree No. 177/2016 provides for the incorporation of the State Forestry Corps (CFS) into the Carabinieri Force and the assignment to the latter of the functions carried out by the CFS, with the exception of the following: a) the competences granted to the national fire brigade by the subsequent Article 9 (active measures for tackling forest fires and extinguishing them by aerial means); b) the competences granted to the State Police Force (public order and safety and tackling organised crime on an inter-force basis) and c) the competences granted to the financial police by the subsequent Article 10 (mountain rescue, surveillance of the open seas adjoining protected natural areas and combating, within customs areas, violations relating to the illegal trade in endangered flora and fauna); d) the activities carried out directly by the Ministry of Agricultural, Food and Forestry Policies (representing and protecting national forestry interests at the EU and international levels and the link with regional forestry policies, certifications provided for under the Washington Convention (CITES) and compliance in terms of monumental trees), in accordance with the subsequent Article 11. In accordance with the subsequent paragraph 1 of Article 18, concerning transitional and final provisions, the Carabinieri Force is also subrogated in the implied and explicit legal relations of the CFS.

POSITION OF THE STATE FORESTRY CORPS (CFS)

For the purpose of outlining the relevant domestic law, it would seem relevant to describe the position of the CFS and its members within the legal system prior to the entry into force of Legislative Decree No. 177/2016 and the corresponding framework governing the Carabinieri Force. According to Article 1 of Law No. 36/2004, the State Forestry Corps is the civilian branch of the State Police Force specialised in defending Italy's agroforestry assets and protecting the environment, landscape and ecosystem. It contributes to the performance of services for the maintenance of order and public safety, in accordance with Law No. 121/1981, and to territorial supervision, particularly over rural and mountainous areas. The CFS carries out criminal investigation activities and monitors compliance with national and international regulations concerning the conservation of agri-environmental, forestry and landscape resources and the protection of national natural assets, as well as agri-food security,

engaging in the prevention and repression of related offences. In addition, it is the national operational structure for civil protection. The CFS's institutional competences are accordingly varied and involve carrying out activities in the areas of: a) prevention and repression of environmental offences; b) protecting the environment and conserving biodiversity, including through: c) the management and enhancement of the natural resources entrusted to it; d) enforcement of the Washington Convention for the protection of endangered species of flora and fauna through the CITES service run by this corps; e) territorial supervision, particularly over rural and mountainous areas; f) its competence for fighting forest fires, in agreement with the regions; e) mountain safety; f) enforcement of compliance with international environmental agreements and treaties; g) updating the national forestry inventory and environmental monitoring, also with the aim of preventing a hydrogeological imbalance; h) safety and controls in the agri-food sector. It is quite obvious, therefore, that it is not a police force with any military remit. This is also borne out by historical fact. Indeed, the period of the Fascist dictatorship in Italy, between the First and Second World Wars, was the only time when the Forestry Corps (or, to be more accurate, the body which was to become it) was attributed military status. In fact, in accordance with Law No. 3141 of 13 December 1928 and Royal Decree No. 1997 of 3 October 1929, the National Forestry Militia was part of the State's armed forces, operating as a militarised technical corps, whose members were subject to all the provisions applicable to voluntary militia regarding national security. This body was not demilitarised, quite deliberately, until 1948, when Legislative Decree No. 804/1948 was issued, Article 8 of which stipulated "the personnel of the CFS are, for all intents and purposes, civilian personnel of the State and are subject to the provisions corresponding to the relevant legal status. Officers, non-commissioned officers, select guards and forestry guards are exempted from being called up for military service by order or mobilisation." Moreover, confirmation of its exclusion from the military branch is provided by Article 14 of the decree, which reads as follows: "*the accommodation, military, domestic and supplementary allowances paid until 31 July 1947 to Forestry Corps personnel shall be abolished*".

In 2004 Law No. 36 was passed, entitled "Reorganisation of the CFS", Article 1 of which provides: "The CFS is the civilian branch of the State Police Force, specialised in defending Italy's agroforestry assets and protecting the environment, landscape and ecosystem. It contributes to the performance of services for the maintenance of order and public safety, in accordance with Law No. 121/1981, and to territorial supervision, particularly over rural and mountainous areas."

With regard to the role of protecting public order, public safety, public property and public interests carried out by members of the CFS, it should be mentioned that, on the basis of Law No. 36/2004, entitled "Reorganisation of the State Forestry Corps (CFS)", the Italian legislature has defined the CFS's legal nature and institutional duties, functions, organisation and links with the regions and with local authorities. The institutional duties of the CFS, as the civilian branch of the police force according to the above-mentioned legislation, include defending Italy's agroforestry assets and protecting the environment, landscape and ecosystem. Its main task is to exercise territorial supervision, particularly over rural and mountainous areas. The functions specifically assigned to the CFS are listed in Article 2 of Law No. 36/2004. It results from this list that the areas entrusted by the legislature to the CFS, under Law No. 36/2004, as part of its exclusive remit range from protecting environmental assets to civilian bio-security in general, linked with overall control over the agri-food industry. In particular, the CFS has always been characterised as a police force with technical and scientific competences, entrusted mainly with combating environmental offences, a role which has recently been specifically implemented and recognised through Law No. 68 of 2015, updating the Criminal Code with the introduction of new forms of environmental offences. It is not by chance that the legislator introduced via the above-mentioned law, having an impact, for example, on Legislative Decree No. 152/2006, instruments and procedures aimed at enabling more effective criminal prosecutions of environmental offences, many of which are carried out using innovative means, to which the CFS has always had recourse (see, for instance, the activities carried out by the CFS in the area known as "Terra dei Fuochi" (Land of Fire), the parts of southern Italy where organised crime has buried hazardous waste in the subsoil for years).

Conversely, the Carabinieri Force has an autonomous position within the Ministry of Defence, classified as one of the Armed Forces, and is the military police force with general competence and a permanent role in protecting public security using the special powers granted by the legislation in force (see Article 155 of Legislative Decree No. 66/2010). In accordance with Article 3 of Law No. 84 of 14 May 2010, it is the military branch of the Italian police force, included in the European Gendarmerie Force (Eurogendfor). It is important to note that, according to Article 89 of Legislative Decree No. 66/2010: "The priority task of the Armed Forces is to defend the State".

Mention should also be made that, according to Article 156 of Law No. 66/2010, entitled "Military duties of the Carabinieri Force":

"1. The Carabinieri Force, based on orders issued by the Chief of the Defence Staff:

a) contributes to initiating the mobilisation arrangements for the Armed Forces, as specified in Article 88;

b) contributes to the integrated defence of national territory...;

c) participates in military operations abroad.

2. Within the scope of the operations referred to in paragraph (1)(c), the Carabinieri Force:

a) also participates in operations to maintain and restore peace and international security, with the particular aim of establishing conditions offering safety and orderly co-existence in the areas of intervention;

b) helps to ensure the national contribution to activities launched by the international community or arising from international agreements, intended to re-establish and reactivate the operational activity of local police agencies in areas where the Armed Forces are present, performing training, advice and assistance, and monitoring duties.

In accordance with Article 157 of Legislative Decree No. 66/2010, "The Carabinieri Force performs the functions of a military criminal investigation police," and according to Article 158, "it provides security services for diplomatic and consular representations, as well as for the offices of military attachés abroad".

RELEVANT INTERNATIONAL LAW

With regard to the relevant international law, reference is made in full to the Committee's Decision of 27 January 2016 concerning Complaint No. 101/2013 *European Council of Police Trade Unions (CESP) v. France* (pages 14 to 18).

THE LAW

VIOLATION OF THE RIGHT OF A WORKER TO EARN A LIVING IN AN OCCUPATION FREELY ENTERED UPON, DUE TO THE FORCED APPLICATION OF MILITARY LEGAL STATUS TO MEMBERS OF A CIVILIAN BRANCH OF THE POLICE FORCE

There is no question that every citizen of a State which is part of the Council of Europe and is a signatory of the revised European Social Charter has the sacrosanct right to earn a living in an occupation freely entered upon (Article 1).

This is obviously such a fundamental guarantee that it is placed right at the beginning of the Charter.

Similarly, it is undoubtedly the case that freedom to choose one's work is expressed and arises not only when citizens begin to work, but also when they see, while they are working, that far-reaching changes are being made to the content of their job.

In such a context, it is clear that a unilateral and mandatory modification of legal status (from civilian to military) is in stark contrast to the freedom of choice of an individual having passed the competitive examination to join the civilian branch of a State police force, which is what the CFS is (cf. Article 1, Law No. 36/2004).

With regard to the legal status of the personnel transferred to the Carabinieri Force, the new Article 2214a (introduced by Legislative Decree No. 177/2016), comprising various paragraphs, establishes the general principle on the basis of which the above-mentioned personnel assume the legal status of military personnel (paragraph 2 of the new Article 2214a). The transfer will be made according to equivalence between military ranks as specified in Article 632 of Legislative Decree No. 66/2010, based on the length of service in the rank held and maintaining the roll order acquired in the originating roll (paragraph 1 of the new Article 2214a). According to paragraph 20 of Article 2214a, at the time of the transfer, CFS personnel will attend a special military training course.

It is also worth pointing out that, under the legislation in force prior to the introduction of Legislative Decree No. 177/2016, access to employment as a member of military personnel (known as "permanent service") was possible solely based on a voluntary act made by the candidate at the

time of participating in the competitive examinations, whether public or internal, advertised to fill the various positions available for military careers. Participation in the competitive examination is indeed the only way for prospective candidates to express their wish to engage in an employment relationship which is regulated unilaterally and in all its aspects by law and characterised by acquiring military legal status. Under the current system, the passing of Law No. 331 of 2000 on the process of professionalising the Armed Forces (subsequently merged into Legislative Decree No. 66/2010), meant that compulsory conscription was abandoned and is now suspended (see nowadays Article 1929 of Legislative Decree No. 66/10). To be more accurate, following this change, resorting to compulsory conscription has been "suspended", and it is enforced only in exceptional cases such as a state of war decreed in accordance with Article 78 of the Constitution, or the outbreak of a serious international crisis in which Italy is involved either directly or because of its membership of an international organisation, thereby justifying an increase in the numerical composition of the Armed Forces.

It is precisely because of the lack of any such voluntary act that the imposition of military status introduced by Legislative Decree No. 177/2016 assumes aspects which are contrary to Article 1 of the Social Charter.

If a candidate who passed the competitive examination and is therefore now a member of the CFS has never given his or her consent to assuming military status, there is no reason why it must be assigned to him/her by means of a compulsory act (*manu militari*, to continue on the same theme).

It must also be noted that, in accordance with Article 621 of Legislative Decree No. 66/2010, "any citizen engaged in armed service in defence of the homeland is a soldier ... as specified by the provisions of the present code" (see paragraph 1), "the status of a soldier includes the observance of the duties and obligations relating to military discipline, stipulated by the present code and by the regulations (see paragraph 5) and "the soldier is obliged to swear an oath upon taking up his/her duties" (see paragraph 6). Under the relevant regulations, Presidential Decree No. 545/1986, the combination of Articles 6 and 9 requires that soldiers swear a solemn oath, whereby they undertake to carry out the institutional tasks of the Armed Forces with absolute loyalty to the Republic's institutions, with discipline and honour, with a sense of responsibility and conscious involvement, and without sparing any physical, moral and intellectual effort in facing, if necessary, even the risk of sacrificing their life.

Consequently, the series of restrictions and conditions ensuing from military status are relevant to the extent that, if this status is acquired not as a result of a free choice but is forced, this situation is in direct breach of the Social Charter.

By way of example, it should be pointed out that assuming military legal status entails:

- 1) the armed defence of the State and its use in time of war. Soldiers are required to swear a solemn oath, whereby they undertake to carry out the institutional tasks of the Armed Forces with absolute loyalty to the Republic's institutions, with discipline and honour, with a sense of responsibility and conscious involvement, and without sparing any physical, moral and intellectual effort in facing, if necessary, even the risk of sacrificing their life.
- 2) the enforcement of military criminal law, by virtue of the provisions of the military criminal code in time of peace and of the military criminal code in time of war and being subject to military jurisdiction: taking into account the immediate effect of the regulatory modification under consideration, it is appropriate to highlight briefly some aspects of the military criminal law in time of peace which is routinely applied to all individuals who assume the special status of a soldier. The aspects which are typical of the above-mentioned special status can be listed as follows: - aggravated penalties for offences, which are similar to civilian offences but described as military; - application of military criminal law in time of peace by means of a special judicial authority, separate from the ordinary judicial authority; - criminal proceedings for failure to fulfil disciplinary and duty obligations, including very specific obligations not requested of any other citizen, such as courage, honour and loyalty; - unlike the ordinary criminal code, it is also enforceable beyond the territorial boundaries of the State; - provision is made for a special procedure which has particular connotations in relation to the ordinary criminal procedure; - establishment of a set of rules subject to criminal law protection within the military branch: the resulting offences imply the protection of interests specific to the military branch, such as the *"the fundamental rule for citizens belonging to the army"* (Article 1346(1) of Legislative Decree No. 66/2010); - the obligations of loyalty, obedience and official secrecy and the exclusivity clause governing the work performed, which are specific to a public service relationship, assume greater and particular seriousness, reflected in the severity of the response in terms of both disciplinary and criminal sanctions.

- 3) loss of trade union protection. Article 1475(2) of Legislative Decree No. 66/2010, which will apply to the members of the complainant trade union organisations as from 1 January 2017 provides: *"Soldiers cannot form professional associations akin to trade unions or join other trade union associations"*.
- 4) a serious and blatant restriction of freedom of assembly, albeit protected by Article 17 of the Constitution, according to which "Citizens have the right to assemble peaceably and unarmed. No previous notice is required for meetings, including those held in places open to the public. In case of meetings held in public places, previous notice shall be given to the authorities, who may prohibit them only for proven reasons of security or public safety".

The above situation can therefore be considered as seriously detrimental to the right of the personnel of the State Forestry Corps to conserve the professional status they acquired by successfully passing a public competitive examination and which has matured during their years of service and is the outcome of a professional choice which does not include armed service to defend the State and does not provide for them to be subject to onerous duties and obligations which are specific to members of the Armed Forces.

This clearly violates the provision set out at the beginning of the Social Charter.

Nor can it be argued that the legislator has offered, through the already mentioned Legislative Decree No. 177/2016, an alternative to members of the CFS, granting them the possibility to transfer to another State civil administrative department.

Although the legislative decree provides for an alternative transfer to the one being imposed, the choice available to the CFS personnel can be deemed, in substance, inexistent. The relevant provision is Article 12 of Legislative Decree No. 177/2016, paragraph 3 of which reads: *"a decree of the President of the Council of Ministers has identified, preferably among those carrying out functions relevant to the professional skills of the personnel to be redeployed, the State administrative departments to which the transfer specified in paragraph 4 can be made, resulting in the granting to the relevant personnel of the salary bonus ... The same decree has also defined the criteria to be applied to the mobility procedures and the equivalence tables"*, and according to paragraph 4: *"CFS personnel may submit, within twenty days following the publication of the decree of the President of the Council of Ministers referred to in the first sentence of paragraph 3, a request for a transfer to another State administrative department among those identified by the decree of the President of the*

Council of Ministers, referred to in the first sentence of paragraph 3, and in the manner specified therein. In the same request the person concerned may indicate whether, if it is not accepted, they still wish to be assigned to the target administrative department identified as provided for in paragraph 2(e), in which case non-acceptance of the request shall result in the finalisation of the assignment measure. If the person concerned does not indicate that they still wish to be assigned to the target administrative department, non-acceptance of the request shall have the consequences specified in paragraph 6". The subsequent paragraph 6 provides: "If, by 15 November 2016, the personnel who submitted a request, as described in paragraph 4, have not been redeployed to another State administrative department among those identified in the first sentence of paragraph 3 of the decree of the President of the Council of Ministers, and have not opted to be reassigned as described in the second sentence of paragraph 4, other forms of redeployment will be determined, based on a joint prior analysis with the trade union organisations. If they are not incorporated by 31 December 2016, the above-mentioned personnel will cease to belong to the security and defence branch and the provisions of Article 33(8) of Legislative Decree No. 165 of 30 March 2001 will be applied to them. The personnel redeployed as described in the present paragraph will receive the remuneration stipulated by Article 30(2)(d) of the above-mentioned Legislative Decree No. 165 of 2001."

In accordance with the decree of the President of the Council of Ministers of 23 November 2016, the CFS's personnel may express to the Department of Public Administration, via the "*Mobilita.gov*" portal and within a deadline of 20 days from the date of publication of that decree, their own preferences among the posts available, which will then be assigned according to territorial orders of preference and taking into consideration the social and financial circumstances of the applicant.

Upon reading all the provisions taken together it can be seen that the alternative option granted to those subject to the measures laid down in Legislative Decree No. 177/2016 is such that it cannot be associated, even remotely, with the concept of free choice. First and foremost, those choosing a different administrative department among those listed in the decree of the President of the Council of Ministers are, at the same time, required to abandon their grades as, depending on the circumstances, a higher-ranking criminal police officer, substitute public safety officer, criminal police officer or public safety employee. Secondly, as mentioned, any choice to be transferred to a different State administrative department could in fact be rejected by the Public Administration. Therefore, from this standpoint it cannot be said that there is a free, unconditional choice, since the final decision regarding the

transfer to a different State civil administrative department is always left to the Public Administration. The further choice to which the individual was entitled then takes on significance: indicating whether they wish to remain assigned to the target administrative department specified by the decree of the Head of the Corps, or, and in this latter case resulting in the outcome specified in paragraph 6, initiating the redeployment procedure to be concluded by 31 December 2016 and therefore their assignment to non-active status, as provided for in Article 33(8) of Legislative Decree No. 165/01. It is therefore clear, from a dual angle, that members of the complainant trade unions have in any case been confronted with an excessively restrictive choice in terms of their rights, while still being subject to the obligation to join the ranks of the Carabinieri Force. On the one hand, they have been obliged to abandon their jobs, and this is the first indication of the blatant irrationality of these rules and their inconsistency with Article 1 of the Charter, in terms of the right to pursue work which is freely chosen, in contrast with forcing members of a civilian branch of the police to discontinue their jobs. On the other hand, the choice has exposed the individual, in the event of a negative outcome, to assignment to non-active service as from 31 December 2016, which entails the suspension of the employment relationship and the risk of its termination, as well as severe financial restrictions.

Therefore, it cannot be said that the individuals subject to the transfer measures have been offered a reasonable alternative. This is because those who have been given the Carabinieri Force as their target appointment have not had any choice other than to abandon their jobs as, depending on the circumstances, a higher-ranking criminal police officer, substitute public safety officer, criminal police officer or public safety employee. In this connection, it should be borne in mind that in accordance with Legislative Decree No. 201/1995: *“Personnel performing the role of agents and assistants are assigned the rank of public safety employee or criminal police officer”* (Article 3); *“Personnel performing the role of superintendents are assigned the rank of public safety employee or higher-ranking police officer”* (Article 8); *“Personnel performing the role of inspectors are assigned the rank of public safety officer or higher-ranking police officer”* (Article 14). It should also be borne in mind that, in accordance with Article 2(1) of Legislative Decree No. 155/2001, personnel performing managerial-level administrative functions in the CFS: *“assume the ranks of substitute public safety officer or higher-ranking criminal police officer”*; and that in accordance with Article 7(5) of Legislative Decree No. 155/2001: *“Those performing the role of managers, without prejudice to the functions provided for by presidential Decree No. 748 of 30 June 1972, assume the ranks of*

substitute public safety officer. Senior managers also assume the rank of senior criminal police officer."

The transfer to another State administrative department results in exclusion from the security branch and the loss of the associated financial remuneration and the various substantive elements of the employment relationship, as well as the loss of career progression and, lastly, the application of a different retirement scheme.

VIOLATION OF ARTICLE 5, ALSO IN CONJUNCTION WITH ARTICLE G, OF THE EUROPEAN SOCIAL CHARTER. THE MILITARY STATUS ASSIGNED TO MEMBERS OF THE STATE FORESTRY CORPS PREVENTS THEM FROM ENJOYING THE GUARANTEED TRADE UNION RIGHTS.

VIOLATION OF ARTICLE 5, ALSO IN CONJUNCTION WITH ARTICLE G OF THE EUROPEAN SOCIAL CHARTER. THE LEGISLATIVE REFORM GREATLY RESTRICTS THE PROTECTION OF THE MEMBERS AGAINST POSSIBLE REPRIALS.

The reform carried out in Italy, which includes the incorporation of the State Forestry Corps into the Carabinieri Force, also entails a violation of the trade union rights of the individuals who will be transferred to the Carabinieri (military police force).

This restriction is assumed to be without justification as it is unnecessary.

While it is certainly true, with regard to police forces, that the right to organise may be restricted in line with Article G of the Charter, it is also the case that this right cannot be completely denied to members of police forces who must be free to participate in organisations seeking to safeguard their material and moral interests (on this point, see Decision CESP v. France of 27 January 2016, Complaint No. 101/2013, § 62: *"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. Members of police forces must be free 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 [...]. These are basic guarantees 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 (European Council of Police Trade Unions (CESP) v.*

Portugal, complaint No. 11/2001, decision cited above, §§26-27; European Confederation of Police (EuroCOP) v. Ireland, complaint No. 83/2012, decision cited above, §73)".

In marked contrast with such a simple assessment, the compulsory transfer to the Carabinieri Force, with the acquisition of military status, excludes and eliminates the right to join a trade union association which safeguards their rights against the public employer. Indeed, in accordance with Article 1475(2) of Legislative Decree No. 66/2010: *"Soldiers cannot form professional associations akin to trade unions or join other trade union associations"*.

Under Article 751(1)(a) of Presidential Decree No. 90 of 15 March 2010, in the case of the regime applicable by virtue of the transfer, the following specific conducts are punishable by strict confinement:

- soldiers' membership of trade union associations and involvement in trade union activities;
- handling by military representative bodies of matters not permitted by law;
- sending or releasing to the press or news media communications or statements on behalf of a military representative body. An exception has been made for bodies belonging to COCER (the central military representative council) with regard to matters under the remit of that representative body;
- involvement, by those presenting themselves as belonging to a military representative body, in initiatives, meetings or agendas, or appeals, demonstrations or debates without the prior authorisation of the competent hierarchical authority, if this action is detrimental to the interests of the Armed Forces.
- representation activities carried out outside the bodies of which they are members without obtaining prior authorisation from the competent hierarchical authority;

- the ongoing pursuit, as a member of a military representative body, of relations with agencies outside the Armed Forces, without obtaining the prior authorisation of the competent hierarchical authority;
- non-compliance with the provisions concerning the operation of the military representative body to which they belong.

The bodies belonging to the representative system (COCER), under the regulations governing the Carabinieri Force, are competent to handle two types of problems: those relating to issues which, based on their importance and complexity, need to be handled by COCER, and those relating to local collective bodies which can find solutions through the sole link between the units of the Armed Force or Armed Corps, the intermediate bodies and the basic representative bodies and the competent military authorities. The specific nature of the matters which, by law, come within the remit of the representative bodies is specified in the articles indicated below. However, it in any case excludes matters relating to the structure, training, operations, logistical-operational sector, hierarchical and functional relationship and the employment of personnel (Article 878 of Presidential Decree No. 90 of 15 March 2010). COCER formulates opinions, proposals and requests concerning all matters which are subject to legislative regulations or rules concerning the condition, treatment, legal, economic, social security, health, cultural and moral protection of soldiers (Article 879 of Presidential Decree No. 90 of 15 March 2010).

The position of chairperson is assumed by the delegate who is highest in rank or has the longest period of service in any representative body (Article 884(1) of Presidential Decree No. 90 of 15 March 2010).

Apart from the competences specified in Articles 878 and 879 of Presidential Decree No. 90/2010, the representative bodies also have the function (Article 880(1) of Presidential Decree No. 90 of 15 March 2010) of presenting to the relevant hierarchical authorities collective requests relating to the following matters:

- retention of jobs during military service, professional qualifications, integration into working life of those who are no longer doing military service;

- benefits for those who have suffered accidental injuries or illnesses contracted during service or for service-related reasons;
- integration of female military personnel;
- activities providing support, of a cultural and recreational nature, promoting civic education and social welfare, as well as for the benefit of families;
- organising conference rooms and dining facilities;
- conditions of hygiene and health;
- accommodation.

Individual representatives, in their capacity as members of the representative body, are prohibited from:

- expressing opinions and proposals or submitting requests and applications which do not concern the matters and fields specified in Article 1478 of the Code;
- issuing communiqués and statements or attending gatherings or carrying out representational activities outside the bodies to which they belong;
- having relations of any kind with agencies outside the Armed Forces, apart from in exceptional circumstances;
- carrying out activities assigned to the collective competence of the relevant council;
- soliciting signatures for the purposes of carrying out representational activities;

- taking initiatives which may invalidate the complete neutrality of the Armed Forces in political contests.

However, the representatives must be guaranteed the freedom to express opinions when carrying out tasks related to their specific assignment, without prejudice to the fact that non-compliance with the above-mentioned regulations is considered, for all intents and purposes, a serious disciplinary failing (Article 882 of Presidential Decree No. 90 of 15 March 2010).

In the case of personnel belonging to the police forces with a military structure, the areas subject to consultation as specified in Article 2(1)(B) relate to:

- basic and additional financial remuneration;
- severance pay and supplementary pension schemes;
- the maximum duration of the working week;
- licences;
- leave of absence for personal reasons and illness;
- short periods of leave for personal requirements;
- financial remuneration in connection with missions, transfers and extra duties;
- the main criteria of professional retraining for the police services;
- the criteria for setting up bodies to monitor the quality and hygiene of catering services and staff stores, for developing social protection and welfare activities for personnel, including raising their cultural awareness, as well as for managing personnel support units;

- establishing insurance funds in connection with the national health service.

Consequently, there are vital distinctive features in terms of rights and protection which were guaranteed from a trade union perspective prior to the transfer being made.

Above all, candidates to become a trade union representative can be appointed not only by the trade union organisations but also by at least 20 employees from the Office or Structure where the elections are taking place. All employees of the CFS assigned to the Office or Structure where elections of safety representatives are taking place are eligible to vote, except for temporary staff, staff on probation and apprentices (Appendix B, second paragraph, National Framework Agreement of 18 February 2010).

In accordance with Article 18 of the Constitution, the members of the CFS are entitled to freedom of association. They are free to form trade unions. No obligation can be imposed on the trade unions apart from the need for them to register with local or central offices, according to the legal provisions in force, and, above all, guaranteeing a democratically based internal structure. In this way, the trade unions operating within the CFS have a legal personality.

Their powers include, based on the proportional representation of their members, establishing binding collective employment contracts for all the members of the categories which the contract refers to. They can represent individual employees (for instance, before the Disciplinary Board). Among the contractual tools available, they enjoy the right to prior and subsequent information and they participate in conciliation proceedings, consultations and commissions. They have legal personality and independent economic resources. The representatives are entitled to secondments, leave of absence and unpaid leave for union business and trade union leaders are not subject to hierarchical subordination when performing their trade union mandates.

As in the case of the other civil police forces, the following elements are subject to bargaining on behalf of CFS personnel:

- basic and additional financial remuneration;

- severance pay and supplementary pension schemes;
- the maximum duration of the working week;
- criteria for arranging compulsory daily and weekly working hours and duty rosters;
- measures for encouraging efficiency at work;
- ordinary leave and special leave;
- leave of absence for health and family reasons;
- short periods of leave for personal requirements;
- leave of absence, secondments and unpaid leave for union business;
- financial remuneration in connection with missions, transfers and extra duties;
- main criteria for professional retraining;
- the criteria for setting up bodies to monitor the quality and hygiene of catering services and staff stores and for managing personnel support units;
- establishing insurance funds in connection with the national health service.

Based on what has been said above, the impact of the transfer in terms of the loss of the freedoms and protection previously guaranteed and no longer provided as from 1 January 2017 is quite clear.

This situation is in flagrant breach of Article 11 of the European Convention on Human Rights (ECHR). In view of the rules laid down by

the contested Legislative Decree No. 177/2016, it is therefore obvious fact those lodging the complaint will be deprived of their right to join a trade union association.

Moreover, the deprivation of this right is total, in blatant violation of the last sentence of Article 11(2) of the ECHR, according to which the rights to form and to join a trade union may be made subject to "lawful restrictions", but not fundamentally denied.

It is quite obvious that the blanket ban on forming and joining trade unions resulting from Article 1475(2) of Legislative Decree No. 66 of 15 March 2010, combined with the different and unfavourable position regarding the protection of staff rights within the new target administrative department, is a blatant violation of Article 11 of the ECHR, based on the interpretation which the Court has given to the provision and the permitted "lawful restrictions".

In this regard, it is sufficient to refer to the explicit statements made only recently by the European Court of Human Rights, indicating:

a) "... trade union freedom is one form or a special aspect of freedom of association" as addressed by Article 11 ECHR;

b) paragraph 2 does not exclude any professional category from the scope of Article 11; it mentions the armed forces and police among those whose members may, at most, be made subject to "lawful restrictions" imposed on them by the member states, but without it being possible to infringe members' freedom to form a trade union;

c) "the restrictions imposed on the three groups mentioned in Article 11 [members of the armed forces, the police and other members of the administration of the State - editor's note] are to be construed strictly and should therefore be confined to the "exercise" of the rights in question (freedom to form a trade union - editor's note]. These restrictions must not impair the very essence of the right to organise (a trade union - editor's note]";

d) as a result of the foregoing, "... the Court does not accept restrictions that affect the essential elements of trade-union freedom, without which that freedom would become devoid of substance. The right to form and

join a trade union is one of these essential elements" (cf. case of Matelly v. France, judgment of 2 October 2014; case of Adefdromil v. France, judgment of 2 October 2014 - docs. 11 and 12).

Regarding this key point, in its very recent decision, adopted on 27 January 2016, regarding collective complaint No. 101/2013, submitted by the European Council of Police Trade Unions (CESP) against France, the Committee found a violation of Articles 5 and G of the Social Charter (§§ 62 and 64), asserting *"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 on the merits of 21 May 2002, §25; European Confederation of Police (EuroCOP) v. Ireland, complaint No. 83/2012, decision cited above, §§71-72). Members of police forces must be free 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 [...]. These are basic guarantees 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 (European Council of Police Trade Unions (CESP) v. Portugal, complaint No. 11/2001, decision cited above, §§26-27; European Confederation of Police (EuroCOP) v. Ireland, complaint No. 83/2012, decision cited above, §73). [...]*

64. *the blanket prohibition of professional associations of a trade union nature and of the affiliation to such associations set out in Article L4121-4 of the Defence Code in force until 30 July 2015 (see paragraph 17) runs counter to these requirements. It takes note of the grounds put forward by the Government to justify the prohibition under Article G of the Charter, but considers they are neither relevant where the National Gendarmerie is functionally equivalent to a police force, nor necessary in a democratic society for the protection of, inter alia, national security within the meaning of that provision. Indeed, pursuing aims such as maintaining the availability, discipline and loyalty required to ensure permanency in the administrative and judicial civil service does not require the complete abolition of the right to organise (European Confederation of Police (EuroCOP) v. Ireland, complaint No. 83/2012, decision cited above, §116)".*

In other words, there was not in France and there is not in Italy, *mutatis mutandis*, any restrictive requirement (among those considered in Article G) to justify the abolition/elimination of the trade union rights of the members of the State Forestry Corps. It should indeed be pointed out that members (represented to date by the trade union which submitted the complaint) who will be transferred to the Carabinieri Force, will maintain their previous functions (i.e. those carried out by the civilian police), since provision is made for an independent roll (in organisational terms) as compared with that of the Carabinieri Force.

In other words, with reference to the functional criterion used for interpretation purposes by the Committee (on this point, see the Decision of 27 January 2016, European Council of Police Trade Unions (CESP) v. France §§ 54-60), the members of the CFS who will be transferred to the Army (or, to be more precise, those integrated into the forestry roll within the Army) will carry out their previous functions, in other words activities which are far removed from military activities.

It is hard to understand what national requirement entails the weakening/abolishment of the trade union rights of the former members of the CFS.

What is certain is that the "*aim of avoiding overlaps and making cost savings*" mentioned in the draft legislative decree cannot in any way override the fundamental guarantees enshrined in the European Social Charter and the ECHR.

VIOLATION OF ARTICLES 6 §§ 1 AND 2 OF THE EUROPEAN SOCIAL CHARTER WITH REGARD TO THE RIGHT TO BARGAIN.

At a domestic level, Legislative Decree 195/1995, amended in 2000, draws a clear distinction between bargaining and consultation, and between an agreement attained by a trade union delegation whose collective representativeness can be measured and the signature of a "draft measure" in the context of "meetings" (classified as such by law to distinguish them from trade union assemblies in the proper sense).

This shows that the legislative reform entails a blatant violation of Article 6§2 of the Charter with regard to the right to bargain.

On this point also, for reasons of simplicity, reference is made to the reasons given for the Committee's decision of 27 January 2016 "With regard to Article 6§2 of the Charter, the Committee notes that, in accordance with Law No. 2015-917, representative APNMs may take part in the dialogue organised at national level by the Ministries of Defence and the Interior, as well as by the military authorities, on questions of a general nature concerning the conditions applying to military personnel (Article L4126-9, paragraph 1 of the Defence Code). However, their activity is restricted by the fundamental principles of military service set out in Article L4111-1, paragraphs 1 and 2 or the obligations set out in Articles L4121-1 to L4121-5 and L4122-1 of the Code (Article L4126-6, paragraphs 1 and 2 of the Defence Code), limitations which are excessive with regard to Article 6§2 of the Charter».

The restrictions specific to the Carabinieri Force that will be imposed on the bargaining rights of the former members of the State Forestry Corps (a civilian police force for all intents and purposes) constitute a violation of the Revised European Social Charter.

Conclusions

In light of the complaint set out above, and subject to reservation of the right to make subsequent additional submissions, the European Committee of Social Rights is requested to:

- Find a violation of Article 1 of the European Social Charter due to the impossibility of choosing one's own work as part of a civilian police force;
- Find a violation of Articles 5 and G of the European Social Charter due to the blatant restrictions of trade union rights;
- Find a violation of Article 6§2 with regard to the right to bargain;

AS A MATTER OF URGENCY, given the existence of consolidated and very recent case law relating to very similar situations (CESP V. France of 27 January 2016), ADOPT ANY MEASURE DEEMED ESSENTIAL TO PREVENT THE VIOLATIONS OF THE ABOVE-MENTIONED ARTICLES OF THE SOCIAL CHARTER;

Order the Italian State to bear the costs and fees incurred for the present procedure.

Use of Italian

The complainant requests to be able to use Italian in any defence document pertaining to the present proceedings.

Contact details for communications concerning the present proceedings

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Appendices: 1) Statutes of UGL; Statutes of SAPAF; 2) and 3) Minutes relating to the appointment of the General Secretary; 4) Legislative Decree No. 177/2016; 5) Decree of the President of the Council of Ministers 23/11/2016.

Secretary of UGL Danilo Scipio

Secretary of SAPAF Marco Moroni

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