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

Confidential¹

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

Complaint No. 143/2017

REPORT TO THE COMMITTEE OF MINISTERS

Strasbourg, 3 July 2019

¹ It is recalled that pursuant to Article 8§2 of the Protocol, this report will not be made public until after the Committee of Ministers has adopted a resolution, or no later than four months after it has been transmitted to the Committee of Ministers, namely 26 November 2019.

Introduction

1. Pursuant to Article 8§2 of the Protocol providing for a system of collective complaints (“the Protocol”), the European Committee of Social Rights, a committee of independent experts of the European Social Charter (“the Committee”) transmits to the Committee of Ministers its report² on Complaint No. 143/2017. The report contains the Committee’s decision on the merits of the complaint (adopted on 3 July 2019); the decision on admissibility (adopted on 13 September 2017) is appended.
2. The Protocol came into force on 1 July 1998. It has been ratified by Belgium, Croatia, Cyprus, the Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal and Sweden. Furthermore, Bulgaria and Slovenia are also bound by this procedure pursuant to Article D of the Revised Social Charter of 1996.
3. The Committee’s procedure was based on the provisions of the Rules of 29 March 2004 which it adopted at its 201st session and last revised on 26 January 2018 at its 297th session.
4. The report has been transmitted to the Committee of Minister on 25 July 2019. It is recalled that pursuant to Article 8§2 of the Protocol, this report will not be made public until after the Committee of Ministers has adopted a resolution, or no later than four months after it has been transmitted to the Committee of Ministers, namely 26 November 2019.

² This report may be subject to editorial revision.



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

DECISION ON THE MERITS

Adoption: 3 July 2019

Notification: 25 July 2019

Publicity: 26 November 2019

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 307th session in the following composition:

Giuseppe PALMISANO President
Karin LUKAS, Vice-President
Eliane CHEMLA, General Rapporteur
Petros STANGOS
József HAJDU
Krassimira SREDKOVA
Raul CANOSA USERA
Barbara KRESAL
Kristine DUPATE
Aoife NOLAN
Karin Møhl LARSEN
Yusuf BALCI
Ekaterina TORKUNOVA
Tatiana PUIU

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having deliberated on 22 May 2019 and 3 July 2019,

On the basis of the report presented by József HAJDU,

Delivers the following decision adopted on this last date:

PROCEDURE

1. The complaint dated 30 December 2016 lodged by the *Unione Generale Lavoratori - Federazione Nazionale Corpo forestale dello Stato* (UGL–CFS) and *Sindacato autonomo polizia ambientale forestale* (SAPAF) was registered on 9 February 2017.
2. UGL–CFS and SAPAF allege that by applying the Legislative Decree No. 177/2016 which incorporates the civilian State Forestry Corps into the military *Carabinieri* Force, thus changing the status of Forestry Corps' personnel from civilian to military, Italy violates their right to earn their living in an occupation freely entered upon and deprives them of their trade union rights in violation of Articles 1§2, 5, and 6§2, taking into account Article G, as well as Article E read in conjunction with Articles 5, and 6§2 of the Revised European Social Charter ("the Charter");
3. On 13 September 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 15 November 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 wished to make on the merits of the complaint before 15 November 2017.
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 15 November 2017.
7. On 7 November 2017, the Government asked for an extension of the deadline for presenting its submissions on the merits. The President of the Committee extended this deadline until 8 January 2018. The Government's submissions on the merits were registered on 5 January 2018.
8. The deadline set for the complainants' response to the Government's submissions on the merits was 12 March 2018, date at which the complainants' response was registered.

9. The President of the Committee set 14 May 2018 as the deadline for the Government's further response.

10. On 30 April 2018, the Government asked for an extension of the deadline for the submission of its further response. The President of the Committee extended this deadline until 31 May 2018. The Government's further response was registered on 30 May 2018.

SUBMISSIONS OF THE PARTIES

A – The complainant organisations

11. UGL–CFS and SAPAF allege that the incorporation of the (formerly civilian) State Forestry Corps into the *Carabinieri* (military police) Force violates the rights of the personnel concerned, in particular as regards:

- their right to earn their living in an occupation freely entered upon, in violation of Article 1§2 of the Charter, as the contested measure substantially affects the conditions of work of the personnel concerned, whether they accept to acquire military status or opt for a reassignment to a civilian post;

- their right to organize, in violation of Article 5 of the Charter, taken separately or together with Article G of the Charter, because the trade union rights of the individuals transferred to the *Carabinieri* Force and the *Guardia di Finanza* are restricted as a result of their acquiring military status;

- their right to bargain collectively, in violation of Article 6§2 of the Charter, on account of the excessive restrictions imposed to the individuals transferred to the *Carabinieri* Force and *Guardia di Finanza*, as a result of their acquiring military status.

B – The respondent Government

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

RELEVANT DOMESTIC LAW AND PRACTICE

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

14. Constitution of the Italian Republic of 1 January 1948

Article 52

“The defence of the country is a sacred duty for every citizen. Military service is obligatory within the limits and in the manner set by law. Its fulfillment shall not prejudice a citizen's job, nor the exercise of political rights. The organisation of the armed forces shall be based on the democratic spirit of the Republic.”

a) Situation before the absorption of the State Forestry Corps into the Carabinieri Force as regards their respective legal status and tasks

15. Law No. 36 of 6 February 2004, New State Forestry Corps regulations (GU No. 37 of 14 February 2004), entered into force on 29 February 2004.

Art. 1. Legal status and official tasks

“1. The State Forestry corps (CFS) is a 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.

2. The State Forestry Corps shall perform criminal investigation activities and monitor compliance with national and international law on the safeguarding of agri-environmental, forestry and landscape resources and the protection of national natural assets and agri-food security, engaging in the prevention and punishment of related offences. It shall also be a national operational arm of the civil protection service.”

16. Law No. 121 of 1 April 1981 on the Reform of the Administration of Public Security, entered into force on 25 April 1981

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 Force*, 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. [...]”

b) Situation after the absorption of the State Forestry Corps into the Carabinieri Force as regards their legal status and tasks and mechanism governing the transferral of former State Forestry Corps staff to other state administrations

17. 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 – entered into force on 13 September 2016.

Article 7 – Absorption of the State Forestry Corps into the Carabinieri Force and assignment of functions

"1. The State Forestry Corps shall be absorbed into the *Carabinieri* Force, which shall perform the functions previously performed by the above-mentioned Corps as provided for under the legislation applicable upon the entry into force of this Decree, without prejudice to the provisions of Article 2, paragraph 1, and with the exception of powers in relation to the active tackling and extinguishing of forest fires by aerial means, which are assigned to the National Fire Service in accordance with Article 9, the functions assigned to the State Police and the *Guardia di Finanza* Corps pursuant to Article 10 and the activities that are to be carried out by the Ministry for Agriculture, Food and Forestry Policy pursuant to Article 11.

2. With regard to the provisions of paragraph 1, the *Carabinieri* Force shall perform the following functions:

- a) the prevention and punishment of fraud undermining the quality of agri-food produce;
 - b) agricultural and forestry and environmental controls required under Community law and contribution to the activities aimed at ensuring compliance with legislation on consumer food safety and bio-security in general;
 - c) monitoring, prevention and punishment of damage to the environment, with specific reference to protection of national fauna and natural resources and the assessment of environmental damage, in addition to co-operation in the performance of the functions provided for under Article 35 of Legislative Decree no. 300 of 30 July 1999;
 - d) monitoring and establishment of breaches of provisions on the protection of waters against pollution and the related environmental damage;
 - e) punishment of unlawful trafficking in and disposal of waste;
 - f) assistance in the prevention and punishment of violations committed to the detriment of animals;
 - g) prevention and punishment of violations committed in relation to forest fires;
 - h) monitoring and oversight of the implementation of international conventions on the environment, with particular reference to the protection of forests and plant and animal biodiversity;
 - i) monitoring of territories comprising protected natural areas of national and international significance as well as other protected areas in the manner provided for under applicable legislation, with the exception of marine waters adjacent to such areas;
- ...
- l) protecting and safeguarding state national reserves recognised as being of national and international importance, as well as other resources designated for the conservation of animal and plant biodiversity;
 - m) combating the illegal trade in and controlling the international trade in and the possession of specimens of endangered fauna and flora protected under the CITES Convention, implemented by Law no. 874 of 19 December 1975 and the related national, Community and international legislation, except as provided for under Articles 10, paragraph 1, sub-paragraph b), and 11;
 - n) contributing to the monitoring and control of the territory for the purposes of preventing hydrogeological instability, and co-operating in the conduct of extraordinary water policing activity;
 - o) monitoring snow cover and the forecasting of the risk of avalanches, along with related advisory and statistical activity;
 - p) study activities related to the powers transferred with particular reference to the qualitative and quantitative recording of forestry resources, including for the purpose of creating the national forestry inventory, monitoring the phytosanitary condition of forests, monitoring pollution levels in forest ecosystems, and monitoring the territory in general through the collection, processing, archival and dissemination of data, including in relation to areas affected by fire;
 - q) action required in relation to the management and development of the links referred to in Article 24 of Law no. 97 of 31 January 1994;
 - r) the provision of support to the Ministry for Agriculture, Food and Forestry Policy in representing and protecting national forestry interests at Community and international level and liaison with regional forestry policies;
 - s) environmental education;

- t) contributing to public emergency services and civil protection deployments of national significance throughout the country, with the exception of mountain rescue;
- u) protecting the landscape and the ecosystem;
- v) assisting in the monitoring of compliance with the provisions of Law no. 363 of 24 December 2003.

[...]

Article 12 Quotas of State Forestry Corps Personnel (summary)

“Paragraph 1 redefines the increase in the staffing levels of the receiving forces and bodies (*Carabinieri* etc.) on a scale corresponding to the CFS personnel assigned to the functions transferred to them, as defined in a table appended to the Legislative Decree No. 177/2016.

Paragraph 2 provides that the Head of the CFS must adopt a measure within 60 days of the date of entry into force of this decree stipulating the administration – out of the *Carabinieri* force, the National Fire Service, the State Police, the *Guardia di Finanza* and the Ministry for Agriculture, Food and Forestry Policy – to which staff member is to be assigned on the basis of the service performed and the functions carried out at the time of entry into force (for example: all staff exercising the functions transferred to the *Carabinieri* shall be transferred to the *Carabinieri* force, staff in the maritime and naval units as well as those in the alpine rescue units shall be transferred to *Guardia di Finanza*) and taking into account the functions performed in the last five years, the work experience, specialized competences developed, age etc. of the staff concerned.

Paragraph 3 provides that, within the same deadline, the posts available for transfer to other branches of the (civil) administration shall also be identified, taking into account the competences of the CFS staff concerned, who will be granted an ad hoc salary supplement. The transfer orders for these posts, the criteria to be applied to the mobility procedures and the job equivalence tables shall be defined in a decree of the President of the Council of Ministers, upon proposal of the Minister for simplification and Public Administration, in agreement with the Minister of Economy and Finance.

Paragraph 4 provides that personnel from the dissolved CFS may file a transfer request, within 20 days of the publication of the abovementioned Decree of the President of the Council of Ministers, to another state administration identified in the decree, and indicate if, should their request not be accepted, they intend to keep the post to which they had been initially assigned (in which case the transfer will be final).

Paragraph 6 provides that alternative transfer options shall be examined in consultation with the trade unions as regards the former CFS staff who had unsuccessfully filed a transfer request, without explicitly accepting the possibility to revert to their initial assignment, and have not been transferred by 15 November 2016. CFS staff thus transferred shall only be granted the economic treatment corresponding to their new post (in accordance with Article 30§2*quinquies* of Legislative Decree No. 165/2001). In case of failure to find an alternative transfer solution by 31 December 2016, the staff concerned shall cease their service in the security sector and their employment contract will be suspended for a maximum period of 24 months (48 months in certain cases), during which the worker shall be granted an allowance equivalent to 80% of the salary and of the special supplementary allowance (in conformity with Article 33§8 of Legislative Decree No. 165/2001).”

Article 14 *Carabinieri* Force

“[...]

2. Personnel from the State Forestry Corps transferring to the *Carabinieri* Force shall acquire military legal status.

[...]

21. Pending the election of new military representative bodies pursuant to Article 2257, personnel from the State Forestry Corps transferring to the *Carabinieri* Force shall be called upon to elect, pursuant to an extraordinary procedure and in accordance with the criteria laid down by Article 935 of Decree of the President of the Republic no. 90 of 15 March 2010, delegates to the basic representation committees pursuant to Article 875 of that Decree established at the Command Unit provided for under Article 174-bis, paragraph 2, sub-paragraph a), and at the Central Service of the Forestry Corps School and the Regional Command Centres incorporated into the *Carabinieri* Force, which shall be classed together, solely for electoral purposes, into three basic units according to geographical area.

22. Pending the election of new military representative bodies pursuant to Article 2257, the delegates from the basic committees elected in accordance with the procedure provided for under paragraph 21 shall elect eight representatives, two for each of the categories provided for under Article 872 of Decree of the President of the Republic no. 90 of 15 March 2010, who shall constitute the intermediate representative committee established at the Command Unit provided for under Article 174-bis, paragraph 2, sub-paragraph a).

23. Pending the election of new military representative bodies pursuant to Article 2257, the delegates from the intermediate committees elected in accordance with the procedure provided for under paragraph 22 shall elect one representative, who shall participate with voting rights in the meetings of the *Carabinieri* Section of the Central Military Representative Council and the inter-force committees of all categories. The delegate receiving the highest number of preference votes shall be elected, and shall represent the category of forestry workers on a unitary basis.”

Article 18 Transitory and final provisions

“1. The *Carabinieri* Force shall subrogate into the legal rights and obligations of the State Forestry Corps, including those resulting from the signature of agreements relating to the monitoring of territories comprising protected natural areas of national and international significance and the individual employment contracts concluded with personnel hired pursuant to Law no. 124 of 5 April 1985, without prejudice to co-operation agreements concluded with administrations and public bodies performing the functions provided for under Articles 9, 10 and 11, into which the administrations referred to therein shall subrogate

[...]”

18. Decree of the President of the Committee of Ministers (DPCM) of 21 November 2016

Article 1 (Purpose and object)

1. This Decree lays down:

- the quota of State Forestry Corps personnel who may exercise the right to transfer to another state administration pursuant to mobility procedures;
- the equivalence tables for Forestry Corps personnel for the purposes of incorporation into roles in the state administrations pursuant to the professional regulations of the Ministerial Branch;
- the number of available positions in state administrations to which any Forestry Corps personnel submitting a request may transfer, broken down according to administration, local

headquarters, status of the personnel to be reassigned, area of employment and financial band in the administration of destination;
- the criteria to be applied to mobility procedures.

Article 2 (Determination of the quota)

“1. Based on the identification of available positions and of the respective needs at the state administrations established by the Department of Public Administration from the Office of the President of the Committee of Ministers, the quota of State Forestry Staff personnel who may exercise the right to transfer to another administration pursuant to Article 12, paragraph 3, of the Legislative Decree of 19 August 2016 is set at 607 positions.

2. The quota provided for under paragraph 1 shall include 59 members of personnel falling within the categories provided for under Article 18, paragraph 9, of Legislative Decree no. 177 of 2016, who must be included automatically within the quota eligible for assignment to the state administrations specified in this Decree, and who shall be assigned on a preferential basis to the Ministry for Agriculture, Food and Forestry Policy.”

Article 5 (Mobility request)

“1. The General Inspectorate of the State Forestry Corps shall inform the Department of Public Administration electronically in order for the data to be acquired on the “*Mobilità.gov*” portal regarding the measures adopted pursuant to Article 12, paragraph 2, of Legislative Decree no. 177 of 2016, indicating the place of service of each employee along with any other information that may be useful for the conduct of mobility procedures in accordance with this Decree. The personnel indicated in the said measures may participate in the mobility procedures provided for under this Decree, excluding any staff retiring before 31 December 2016.

[...]”

Article 6 (Preferences regarding assignment)

“1. The personnel falling under Article 5, paragraph 2, shall inform the Department of Public Administration through the “*Mobilità.gov*” portal of their preferences regarding assignment by filling in the form available on that portal in accordance with the arrangements and procedures specified therein, taking account of the fact that the Offer by the Ministry for Agriculture, Food and Forestry Policy shall be reserved for the personnel referred to in Article 2, paragraph 2, in view of the provisions of Article 18, paragraph 9, of Legislative Decree no. 177 of 2016, which establishes a preference for the assignment of the said personnel to roles in the Ministry for Agriculture, Food and Forestry Policy.

2. The preferences concerning assignment must be stated within a mandatory time limit of 20 days of publication of the Offer. Any preferences stated after the said time limit shall be inadmissible.

3. State Forestry Corps personnel shall state the order of preferences between the administrations amongst the available positions in the province or metropolitan area in which their place of work is situated. Employees may state preferences not only for available positions at administrations based in their own province or metropolitan area but also for those based in other provinces or metropolitan areas throughout the country. The assignment shall take account of the criteria provided for under Articles 7 and 8.

4. Personnel referred to in Article 5, paragraph 1, may state within their preferences concerning assignment whether, in the event that their request is not accepted, they intend to continue to be assigned to the administration of destination identified by the measure adopted pursuant to Article 12, paragraph 2, of Legislative Decree no. 177 of 19 August 2016 and, if so, failure to accept the preference shall have the effect of rendering the assignment decision definitive. If no indication is provided to the effect that they intend to continue to be assigned to the administration of destination, the failure to accept the request shall have the effects provided for under Article 12, paragraph 6, of Legislative Decree no. 177 of 19 August 2016.

5. Any personnel referred to in Article 5, paragraph 1, who do not state any assignment preferences within the time limit and in the manner provided for under this Article shall be deemed to have been definitively assigned to the administration of destination identified by the measure adopted pursuant to Article 12, paragraph 2, of Legislative Decree no. 177 of 19 August 2016.

6. Any personnel referred to in Article 2, paragraph 2, who do not state any assignment preferences within the time limit and in the manner provided for under this Article, or who are not granted retirement in accordance with the procedures provided for under this Decree, shall be assigned unilaterally by the Department of Public Administration, taking account of vacant positions in the workforce of the administrations of destination in the same province/metropolitan area or, alternatively, the same region.”

19. The Constitutional Court, in its Decision No. 170/2019 of 16 April 2019 considered that Law No. 124/2015 and its implementing decree No. 177/2016, which provide for the reorganisation of the Forestry Corps and the incorporation of their personnel into different branches of the Public administration, including military forces, was not incompatible with the Constitution, insofar as a fair balance has been struck between the the conflicting needs to reorganise the forestry administration and that to safeguard the relevant jobs.

c) The respective rights and duties of civilian police and military forces staff, notably with regard to their representation

20. 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”, entered into force on 11 June 1995

Article 2 Provisions

“1. The presidential decree, referred to in Article 1, paragraph 2, concerning [the employment relationship of] the personnel of the police forces shall be 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, shall be 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 3 Civil police forces

"1. For members of civil police forces, the matters to be agreed upon referred to in Article 2, paragraph 1, sub-paragraph A), 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 weekly working hours;
- d) the criteria for establishing mandatory daily and weekly working hours and shifts;
- e) measures to incentivise the efficiency of the service;
- f) annual and special leave;
- g) leave from work for personal or health reasons;
- h) short periods of leave for personal reasons;
- i) leaves of absence or secondment and absences for trade union purposes;
- l) pay for missions, transfers or overtime;
- m) the general criteria for professional refresher courses for the purposes of policing;
- n) the criteria for the establishment of bodies to monitor the quality and hygiene of canteens and shops, for the management of staff assistance bodies;
- o) the establishment of supplementary funds for the national health service, pursuant to Article 9 of Legislative Decree No. 229 of 19 June 1999.

2. The bargaining procedures provided for under Article 2, paragraph 1, sub-paragraph A), shall regulate the matters falling under paragraph 1, trade union relations and the duration of national collective agreements for the administration, the contractual structure and relations between different levels. Each administration shall by agreement adopt independent levels of bargaining in accordance with the budgetary constraints resulting from the annual and multi-year programming instruments of each administration. Supplementary collective bargaining shall be conducted in relation to the matters provided for under paragraph 1, subject to the limits laid down by the national collective agreement, between the parties and according to the bargaining procedures stipulated by such parties. It may be local in extent. The public administrations may not sign any local agreements that are in conflict with the restrictions stipulated in the terms of the agreement resulting from the above-mentioned bargaining procedures or that entail any burdens not provided for in the annual and multi-year programming instruments of each administration. Any clauses that do not comply with this requirement shall be void and may not be applied. The local agreements signed shall, along with a dedicated technical and financial report, be transmitted to the Office of the President of the Council of Ministers – Department of Public Administration – and to the Ministry for the Treasury, the Budget and Economic Planning, which shall jointly establish their economic and financial compatibility within thirty days of receipt.

3. The foregoing shall be without prejudice to the decision-making autonomy of the administrations in areas not covered by collective bargaining.

4. The bodies entitled to engage in trade union relations at local level shall be recognised on the basis of representativeness, which shall be ascertained taking account of electoral results in accordance with the criteria laid down in the dedicated agreement defining the arrangements for expressing electoral results and the related forms of representation. Pending the entry into force of the Decree of the President of the Republic implementing the above-mentioned agreement, the provisions laid down in this area by the legislation applicable prior to the entry into force of this Decree shall remain valid.

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 weekly 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."

Article 7. Procedures

"1. The procedures for the issuing of the decrees of the President of the Republic provided for under Article 2 shall be set in motion by the Minister for the Public Administration at least four months prior to the expiry dates specified under the previous decrees. In accordance with the same time limit, the trade union organisations for personnel from civilian police forces may submit proposals and requests relating to the matters covered by the procedures. The inter-force Central Military Representative Council may present, in accordance with the above-mentioned time limit, the proposals and requests in question, which may also be separate for the *Carabinieri*, *Guardia di Finanza* and Army armed forces sections, to the Minister for the Public Administration, the Minister of Defence and, for the *Guardia di Finanza* Corps, to the ((Minister for the Economy and Finance)), through the Defence Chiefs of Staff or the corresponding general command unit.

1-bis. The procedures provided for under Article 2 shall begin at the same time and shall be pursued in parallel within subsequent phases, including the signature of the prospective trade union agreement as regards civilian police forces, and the signature of the related draft measures for military police forces and the armed forces.

(...)

3. Negotiations concerning the conclusion of the trade union agreement concerning civilian police forces provided for under Article 2, paragraph 1, sub-paragraph a), shall be conducted in meetings which shall be attended by representatives of the trade union organisations entitled to participate under the provision mentioned and shall conclude with the signature of a single prospective trade union agreement.

(...)

5. Work on the drafting of the draft measure concerning military police forces provided for under Article 2, paragraph 1, sub-paragraph B), shall be conducted in meetings which shall be attended by delegates from the general command units of the *Carabinieri* Force and the *Guardia di Finanza* Corps and representatives of the respective Central Military Representative Council sections and shall conclude with the signature of the draft measure agreed upon.

(...)"

21. Presidential Decree No. 90 of 15 March 2010, entered into force on 9 October 2010

Article 751 Conducts which are punishable by strict confinement

"1.a) The following specific conducts are punishable by strict confinement:

[...]

11) soldiers' membership of trade union associations and involvement in trade union activities [...] (Article 1475§2 of the Code);

[...]

45) handling by military representative bodies of matters not permitted by law;

46) sending or releasing to the press or news media communications or statements on behalf of a military representative body. An exception applies to bodies belonging to COCER (the central military representative council) with regard to matters under the remit of that representative body;

47) 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;

48) representation activities carried out outside the bodies of which they are members without obtaining prior authorisation from the competent hierarchical authority;

49) 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;

[...]

55) non-compliance with the provisions concerning the operation of the military representative body to which they belong."

Article 878 General provisions

"1. The bodies relating to the representation system shall be competent to consider two types of problem: those relating to questions which, based on their importance and complexity, need to be handled by the Central Military Representative Council, and those relating to collective and local bodies that can be resolved only through liaison between the units of the armed forces or armed corps, the intermediate and basic representative bodies and the competent military authorities.

2. The specific nature of the matters which by law come within the remit of the representative bodies is specified in the articles indicated below. Matters concerning organisation, training, operations, the logistical and operational sector, the hierarchical functional relationship and the deployment of personnel shall under all circumstances be excluded therefrom.”

Article 879 Competences of the central military representative council (COCER)

“1. The COCER shall formulate opinions, proposals and requests in relation to the matters covered by legislation or regulations concerning the status, treatment and legal, economic, pension, healthcare, cultural and moral protection of military personnel.”

22. Legislative Decree No. 66 of 15 March 2010 – Military Code, entered into force on 9 October 2010

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.* [*amended as of 21/06/2018 as a result of the Constitutional Court decision No. 120/2018*]

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 – ((A) officers, B) warrant officers/inspectors, C) sergeants/superintendents and D) permanent/fixed-term enlisted personnel, without prejudice to the total number of representatives)) - 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: ((A) officers, B) warrant officers/inspectors, C) sergeants/superintendents and D) permanent/fixed-term enlisted personnel, without prejudice to the total number of representatives)). 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 ((twice)) 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."

Article 1929 Suspension of obligatory conscription and circumstances under which it might be restored

"1. Call-up for the conduct of compulsory military service shall be suspended with effect from 1 January 2005.

[...]"

Article 2214-quater Transfer of personnel belonging to the Forestry Corps to the *Carabinieri* Force

"1. Personnel shall be transferred from the State Forestry Corps to the *Carabinieri* Force in accordance with the criteria establishing equivalence with military ranks provided for under Articles 632, 2212-octies and 2212-nonies, with length of service in the position held and maintaining the ranking order of eligibility for promotion acquired in the role of origin. The status of lieutenant attributed to adjutant warrant officers acting as substitute law enforcement officials shall correspond to the designation of "senior" attributed to chief inspectors.

2. Personnel from the State Forestry Corps transferring to the *Carabinieri* Force shall acquire military legal status.

[...]

20. Personnel from the State Forestry Corps transferring to the *Carabinieri* Force: a) shall attend a specific military training course specified by decision of the Commander General of the *Carabinieri* Force; b) shall be confirmed upon transfer, insofar as compatible with the new organisational framework, within the same place of service, having regard to the need to maintain the special and unitary nature of safeguarding the environment, the territory, water resources and agri-food safety.

21. Pending the election of new military representative bodies pursuant to Article 2257, personnel from the State Forestry Corps transferring to the *Carabinieri* Force shall be called upon to elect, pursuant to an extraordinary procedure and in accordance with the criteria laid down by Article 935 of Decree of the President of the Republic no. 90 of 15 March 2010, delegates to the basic representation committees pursuant to Article 875 of that Decree established at the Command Unit provided for under Article 174-bis, paragraph 2, subparagraph a), and at the Central Service of the Forestry Corps School and the Regional Command Centres incorporated into the *Carabinieri* Force, which shall be classed together, solely for electoral purposes, into three basic units according to geographical area.

22. Pending the election of new military representative bodies pursuant to Article 2257, the delegates from the basic committees elected in accordance with the procedure provided for under paragraph 21 shall elect eight representatives, two for each of the categories provided for under Article 872 of Decree of the President of the Republic no. 90 of 15 March 2010, who shall constitute the intermediate representative committee established at the Command Unit provided for under Article 174-bis, paragraph 2, sub-paragraph a).

23. Pending the election of new military representative bodies pursuant to Article 2257, the delegates from the intermediate committees elected in accordance with the procedure provided for under paragraph 22 shall elect one representative, who shall participate with voting rights in the meetings of the *Carabinieri* Section of the Central Military Representative Council and the inter-force committees of all categories. The delegate receiving the highest number of preference votes shall be elected, and shall represent the category of forestry workers on a unitary basis. [...]

23. 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

24. 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."

25. 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)

26. 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 forming 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

27. 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 765th 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. [...]”

“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.”

28. 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 1077th 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

29. 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.

[...].”

30. 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

31. Convention No. 168 concerning Employment Promotion and Protection against Unemployment

Article 7

“Each Member shall declare as a priority objective a policy designed to promote full, productive and freely chosen employment by all appropriate means, including social security. Such means should include, inter alia, employment services, vocational training and vocational guidance.”

32. Recommendation No. 169 concerning Employment Policy

“10. Members should adopt policies and take measures which, while taking account of national law and practice, should-

(a) facilitate adjustment to structural change at the global, sectorial and enterprise levels and the re-employment of workers who have lost their jobs as a result of structural and technological changes; and

(b) safeguard the employment or facilitate the re-employment of workers affected in the case of sale, transfer, closure or relocation of a company, establishment or equipment”.

33. Convention No. 29 concerning Forced or Compulsory Labour

Article 2

“1. For the purposes of this Convention the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

2. Nevertheless, for the purposes of this Convention, the term forced or compulsory labour shall not include--

(a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character [...].”

34. 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. [...].”

35. 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

36. 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.

[...]”

37. EU Directive 2001/23 of March 12, 2001 relating to the safeguarding of employees' rights in the event of the transfer of undertakings

(...) **Article 1**

“1. (a) This Directive shall apply to any transfer of an undertaking, business, or part of an undertaking or business to another employer as a result of a legal transfer or merger.

(b) Subject to subparagraph (a) and the following provisions of this Article, there is a transfer within the meaning of this Directive where there is a transfer of an economic entity which retains its identity, meaning an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary.

(c) This Directive shall apply to public and private undertakings engaged in economic activities whether or not they are operating for gain. An administrative reorganisation of public administrative authorities, or the transfer of administrative functions between public administrative authorities, is not a transfer within the meaning of this Directive.”

THE LAW

PRELIMINARY CONSIDERATIONS

As to the relevant domestic legislation and practice

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.

39. The Constitutional Court has been seized (by the Administrative Tribunal of *Abruzzo*, Order No. 235 of 17 August 2017, the Administrative Tribunal of *Veneto*, Order No. 210 of 22 February 2018 and the Administrative Tribunal of *Molise*, Order No. 690 of 7 December 2018) concerning the constitutionality of the incorporation of the Forestry Corps into the *Carabinieri* force. In its decision N. 170/2019 of 16 April 2019, the Constitutional Court held that the relevant legislation was in conformity with the Constitution, insofar as a fair balance had been struck between the need to reorganise the forestry administration and the need to preserve the jobs concerned.

40. Furthermore, 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 as follows: “*military staff can form trade unions within the conditions and restrictions provided by the law; they cannot join other trade unions.*”

41. The Committee 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 must 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 upheld the prohibition to strike for military personnel. The Court decided that as regards other restrictions, a specific law is necessary. 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.

42. 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 consider the implications of this decision for the case at hand.

As to the status of the Forestry corps and the personal scope of the complaint

43. The Committee notes that, before 1 January 2017, the Forestry Corps constituted a civilian branch of the State Police Force, specialised in defending Italy’s agroforestry assets and protecting the environment, landscape and ecosystem, contributing to the performance of services for the maintenance of order and public safety, and to territorial supervision, particularly over rural and mountainous areas. It furthermore performed activities of judicial police and monitored the implementation of national and international treaties concerning the safeguard of agricultural, environmental, forestry and landscape resources, the protection of the national natural heritage, agri-food safety and civil protection (Article 1 of Law No. 36/2004).

44. As from 1 January 2017, the Forestry Corps have been incorporated into the *Carabinieri* military police force, by effect of Article 7 of the Legislative Decree No. 177 of 19 August 2016. As a result, the former Forestry Corps is henceforth an integral part of the armed forces of the State and the law enforcement authorities and

its members shall be subject to the military discipline applicable to the Army and to military criminal law.

45. As an exception, the competences of the former Forestry Corps concerning the fight against forest fires have been transferred to the National Fire Service, a civilian institution which depends on the Ministry of the Interior. Certain competences have furthermore been devolved to the National Police, the *Guardia di Finanza* and the Ministry of Agricultural, Food and Forestry Policies. According to the figures indicated in the transferral decrees of 7 November 2016, out of 7,601 members of the former Forestry Corps, 7,013 were transferred to the *Carabinieri* military force, 40 to the *Guardia di Finanza* military force, 123 to the Police civilian force, 379 to the National Fire Service and 46 to the Ministry of Agricultural, Food and Forestry Policies.

46. With regard to the hierarchical authority, the Committee notes that the Command of units for Forestry, Environment and Agri-food protection depends directly on the Commandant General of the *Carabinieri* and functionally on two Ministries: it depends on the Ministry of Agricultural, Food and Forestry Policies for activities pertaining the food security and the forest protection; on the other hand, the Command functionally depends on the Ministry of the Environment, Protection of Land and Sea for activities related to the Ministry's own tasks. The Command is subdivided into the following sub-Commands:

- *Carabinieri* Command for the Forest Protection (*Comando Carabinieri per la Tutela Forestale*);
- *Carabinieri* Command for the Protection of Biodiversity and Parks (*Comando Carabinieri per la Tutela della Biodiversità e dei Parchi*);
- *Carabinieri* Command for the Environmental Protection (*Comando Carabinieri per la Tutela Ambientale*);
- *Carabinieri* Command for the Agri-food Protection (*Comando Carabinieri per la Tutela Agroalimentare*).

The specialised duties of this Command, which counts around 8,500 military personnel, include arresting poachers, investigating environmental violations, illegal building, counterfeit foods, safeguarding protected animal species, enforcing endangered species laws, preventing and fighting wildfires and managing activities related to the Convention on International Trade in Endangered Species in Italy.

47. Taking into account the arguments submitted by the parties, the Committee considers that the current complaint concerns the persons who belonged to the Forestry corps before 1 January 2017 and who, after that date, have acquired military status (*Carabinieri, Guardia di Finanza*) or have been transferred to civilian branches of the administration, other than those covered by the public security branch collective agreement, or whose employment contract has been suspended and/or terminated as a result of the reform of the Forestry corps.

As to the provisions of the Charter at stake

48. The Committee notes that in their complaint registered on 9 February 2017, UGL–CFS and SAPAF refer to Articles 1, 5 and 6 of the Charter as well as Articles G and E of the Charter. However, in their arguments they specify their request as concerning Article 1§2, Article 5 and G and Article 6§2 of the Charter. While in their response to the Government’s submissions they again mentioned Article E, no arguments were submitted in this respect.

49. The Committee will accordingly limit its assessment to the following provisions: Articles 1§2, Article 5 and G and Article 6§2 of the Charter.

I. ALLEGED VIOLATION OF ARTICLE 1§2 OF THE CHARTER

50. Article 1§2 of the Charter reads:

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;

(...)

A – Arguments of the parties

1. The complainant organisations

51. UGL–CFS and SAPAF allege that Legislative Decree No. 177/2016 violates Article 1§2 of the Charter on the grounds that the incorporation of the Forestry corps, a civilian branch of the State police force, into the military police force of *Carabinieri* has disregarded the right of the personnel concerned to choose freely a civilian occupation.

52. UGL–CFS and SAPAF refer to the institutional competences and functions of the Forestry Corps under Article 1 of Law No. 36/2004 and insist on their longstanding civilian nature.

53. They recall that, since the suspension of compulsory conscription in Italy (Law No. 331/2000, later merged into Legislative Decree No. 66/2010, see Article 1929), access to employment as a member of military personnel has been possible solely on a voluntary basis, in time of peace.

54. They maintain that the imposition of military status resulting from Legislative Decree No. 177/2016 does not correspond to the free choice of the personnel concerned and entails substantial changes to their employment rights and obligations, including notably their obligation to participate in the armed defense of the country and to be subject to any territorial transfer as ordered, their submission to military discipline, legislation and jurisdiction, and the restriction of their trade union rights and freedoms, also in respect of staff exercising exclusively technical and administrative tasks.

55. In their response to the Government's argument that some 600 posts were made available for transfer to civilian administrative departments and that only one third of such posts were eventually filled, UGL-CFS and SAPAF refer to judicial decisions (Administrative tribunal of *Abruzzo* No. 235 of 17 August 2017 and Administrative tribunal of *Veneto* No. 210 of 22 February 2018) finding that the conditions for transfer to another State civil administrative department were too restrictive to offer a real alternative choice: staff opting for civilian transfer should renounce the job, qualifications and grades they had in the Forestry Corps and, should the transfer not be accepted by the administration, the person concerned might be suspended from work and classified as available for reassignment (*collocamento in disponibilità*) with a 20% salary reduction for up to 24 months, after which the contract might be terminated.

56. UGL-CFS and SAPAF claim that the transfer to another civilian administration (with the exception of the police) involves for the persons concerned the loss of certain advantages which they enjoyed under their previous collective agreement, concerning the public security/safety branch, in relation to remuneration (for example in case of overtime or missions), career progression and retirement conditions and point out that the loss of these advantages and career perspectives is not covered by the mere safeguarding of the salary level enjoyed at the time of the transfer.

57. UGL-CFS and SAPAF argue that the personnel concerned should have been left free to choose their transfer to civilian or military employment, as it was the case in the past when other civilian public security corps were dismantled (Law No. 121/1981 Articles 23, 26, 36, 107-112 and Presidential decree [dPR] No. 551/1981).

58. In view of these arguments, UGL-CFS and SAPAF claim that the transfer of former members of the Forestry corps either to a military force or to a civilian administration not covered by the public security/safety collective agreement constitutes a disproportionate interference with their right to earn their living in an occupation freely entered upon.

59. In their response, they furthermore argue that the personnel at issue has been discriminated in comparison to military staff who have freely chosen their status, and that this applies in particular to female personnel, insofar as no obligatory conscription would apply to them, even in time of war.

60. They also claim that the transfer either to a military force or to an administration other than a civilian police force constitutes forced labour insofar as the personnel concerned did not enjoy an effective freedom of choice in this respect.

2. The respondent Government

61. The Government asks the Committee to reject the allegations put forward by UGL–CFS and SAPAF in their entirety.

62. With reference to the Opinion No. 1183/93 2016 expressed by the Council of State on Legislative Decree No. 177/2016, the Government considers that the incorporation of the State Forestry Corps into the *Carabinieri* force is justified by the similarities which exist between the civilian police forces, including the former Forestry corps, and the military forces. It stresses that police forces, whether they have civilian or military status, have specific features which make them different from other branches of the administration.

63. In response to the complainants' claim that the militarization of the former Forestry corps has involved their obligation to participate in the armed defense of the country and to be subject to any territorial transfer as ordered, the Government recalls that the obligation to participate in the armed defense of the country applies to any citizen, in time of war, under Article 52 of the Constitution, and that the Forestry corps were already subject to possible territorial transfers. Similarly, as regards the submission to military discipline, legislation and jurisdiction, the Government explains that, as public employees and members of a police force, the staff of Forestry corps was already subject to provisions similar to the ones mentioned by the complainant organisations.

64. On a more general level, the Government contests the complainants' allegation that the contested reform of the Forestry corps has had any significant impact as regards the employment conditions (in particular with regard to remuneration, training, promotion, transfer and dismissal) covered by Article 1§2 of the Charter.

65. In this respect, the Government states that pursuant to Articles 12, 14 and 18 of Legislative Decree 177/2016 (as well as Article 2214-quater of the Military Code) the personnel of the former Forestry Corps which has been incorporated into the *Carabinieri* force continue to perform the same tasks, have maintained the same grade and are subject to the same age limits and retirement scheme.

66. The Government firmly rejects the allegation that the persons concerned have been forced to acquire military status and points out that, pursuant to Article 12 of Legislative Decree 177/2016, they could ask to be transferred to another state administration, to be selected between those identified in the Decree of the President of the Committee of Ministers of 21 November 2016, without any loss of salary. Only if the requested transfer would not be possible, the person would need either to accept the incorporation to the *Carabinieri* or the suspension and, eventually, the

termination of the contract. The Government indicates that out of the over 600 alternative posts available for transfer, only one third was filled by former Forestry Corps staff which chose this option.

67. While the Government admits that the transfer to a civilian administration implies a change in grade and functions for the persons concerned, it considers that this does not constitute a discrimination under Article 1§2 of the Charter, insofar as it results from a personal choice and it does not imply a salary reduction. In response to the complainants' claim concerning the loss of certain advantages provided under the collective agreement applicable to the former Forestry corps, the Government points out that such advantages relate to hypothetical situations, subject to certain conditions (for example, as regards career progression), which means that no effective loss can be demonstrated.

68. The Government also recalls that another civil body, the harbour guards, changed their status from civilian to military in 1919 and explains that the examples of dismantlement of police forces mentioned by the complainants did not concern, as it is the case for the Forestry corps, a specialized sectorial body, and that in fact certain limits applied to the transfer. In response to the complainants' claim that the Forestry corps personnel should have been free to choose their transfer without any conditions or limits, the Government notably objects that the merging of the Forestry corps into the *Carabinieri* force is the most appropriate in order to preserve the competences of the personnel concerned, limit their territorial transfer, enhance the constitutional protection of environment and allow important economies.

69. In the light of the specific characteristics of the former Forestry corps personnel, the Government considers that their situation cannot be compared to that of any other category of workers, and therefore that there is no discrimination.

70. In particular, the Government considers that the reform affecting the former Forestry corps personnel has not involved any loss of rights, although it admits that certain legitimate restrictions apply on account of their military status.

71. Consequently, the Government maintains that Legislative Decree No. 177/2016 has not infringed Article 1§2 of the Charter.

B – Assessment of the Committee

72. The Committee notes that the main issue of this complaint is whether the incorporation of the Forestry corps into military forces, under the conditions provided by Legislative Decree No. 177/2016, has violated the right of the personnel of the former Forestry corps to earn their living in an occupation freely entered upon.

73. It notes that, as a result of the reorganization of public administration activities and structures related to the protection of agri-environmental, forestry and landscape resources, the great majority of the personnel concerned have been transferred to the military forces (over 7,000), while a minority of them have been transferred to different branches of the civilian administration (around 550) (see §45). Out of the latter group, only the 123 persons who have been transferred to the civilian State police, which is covered by the same collective agreement as the former Forestry corps, have maintained both their civilian status, functions and employment conditions equivalent to those they had in the Forestry corps. All the other persons concerned have either maintained, to the extent possible, their functions but have acquired military status and the consequent obligations, including a number of restrictions to their trade union rights (see below under Articles 5 and 6), or they have maintained their civil status, but with changes to their functions and working conditions, including relocation or, in case of failed transfer, termination of employment.

74. According to the complainants, this reorganization has disproportionately affected the rights of the former Forestry corps personnel, who could not effectively and freely express their choice due to the imbalance between the options offered and particularly due to the risks of losing their grades, functions and career perspectives, including the risk of termination of employment. For the same reason, they also consider that the transfer of personnel, notably to military forces, violated their right to protection against forced labour and discrimination.

75. The Government considers that adequate possibilities to contest the transfer were available, and thus that no forced labour issue arises. It also rejects the allegation related to discrimination, asserting that the situation of the personnel concerned is not comparable to other workers. It admits that the trade unions' rights of the personnel transferred to military forces have been restricted but it considers these restrictions to be justified and proportionate, considering the legitimate aim of the reform (to ensure a more efficient and cost-effective protection of agri-environmental, forestry and landscape resources) and the efforts made to preserve to the extent possible the employment, competences and salary of the personnel concerned.

76. The Committee recalls that Article 1§2 covers the prohibition of all forms of discrimination in employment, the prohibition of forced or compulsory labour and the prohibition of any practice that might interfere with workers' right to earn their living in an occupation freely entered upon.

77. This right does not imply however that the worker's occupation, freely entered upon, shall be preserved in all circumstances from any changes, including those resulting from a reorganization of activities in the public sector, as it is the case in the present complaint. Having assessed the arguments of the parties, the Committee considers that the contested measures do not fall within the scope of Article 1§2 of the Charter.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CHARTER

78. 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.”

79. 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 organisations

80. UGL–CFS and SAPAF allege that the transfer of the former members of the civilian State Forestry corps to military police forces (*Carabinieri* and *Guardia di Finanza*) as a result of Legislative Decree No. 177/2016 violates the rights of the individuals concerned, who have acquired *ope legis* military status and, for this reason, may not form or join trade unions (Article 1475§2 of Legislative Decree No. 66/2010 and Article 751§1(a) of Presidential Decree No. 90/2010).

81. They recall that before the entry into force of Legislative Decree No. 177/2016, the Forestry corps enjoyed full trade unions rights; their trade union leaders were not subject to hierarchical subordination when performing their trade union mandates and could bargain on behalf of the Forestry corps staff.

82. By contrast, after 1st January 2017, the individuals who have acquired military status are only entitled to a limited form of representation by the representative bodies provided by the law, which have a merely advisory function, and only on specific, limited, areas (Article 879 of Presidential Decree No. 90/2010, Article 1478 of Legislative Decree No. 66/2010), but have no bargaining competence and no effective autonomy, according to the complainant organisations.

83. UGL–CFS and SAPAF allege that the loss of trade unions rights suffered by the Forestry corps personnel who have acquired military status is not justified or necessary in the light of the case-law of the Committee (European Council of Police Trade Unions (CESP) v. France, Complaint No. 101/2013, decision on the merits of 27 January 2016, §62) and the European Court of Human Rights (*Matelly v. France*, application No. 10609/10 and *ADEFDROMIL v. France*, application No. 32191/09, judgments of 2 October 2014, final on 2 January 2015). In their response, they insist on the fact that while certain restrictions can be admitted under international law to the trade unions' rights of military forces, the full exclusion from such rights is not justified.

84. In particular, they point out that such loss of rights is not justified by a change in the nature of the functions of the individuals concerned, as they continue to perform essentially civilian police tasks after their transfer to the *Carabinieri* force. In this respect, they consider that, even admitting that the *Carabinieri* force performs both civilian and military tasks, this should not be a reason to deprive the transferred Forestry corps personnel of their rights, and that either the *Carabinieri's* rights should be extended or their civilian and military functions should be better identified and split between different bodies.

85. Furthermore, the complainant organisations consider that the mere objective of reducing organizational costs cannot justify the loss of trade unions' rights for an entire category of workers.

2. The respondent Government

86. The Government asks the Committee to reject the allegations put forward by UGL–CFS and SAPAF in their entirety.

87. It confirms that, as of 1 January 2017, personnel previously belonging to the Forestry Corps and incorporated into the *Carabinieri* cannot join a trade union in application of Article 1475 of Legislative Decree No. 66/2010, which contains the Military Code.

88. On the one hand, the Government recalls that the personnel concerned could maintain their full trade unions' rights by opting for a transfer to non-military branches of the administration (see the arguments presented in respect of Article 1§2 of the Charter).

89. On the other hand, the Government insists on the fact that restrictions to trade union rights for military personnel are admitted not only by the Charter, but also the European Convention on Human Rights (see *Engel & others v. Netherlands*, application No. 5100/71, judgment of 8 June 1976; *Matelly v. France*, application No. 10609/10, judgment of 2 October 2014, final on 2 January 2015) and other

international instruments (see Parliamentary Assembly Recommendation No. 1572/2002 of 2 September 2002 and doc. CM/AS(2003)Rec. 157 fin of 16 July 2003, Committee of Ministers' Recommendation CM/REC(2010)4 of 24 February 2010, Article 22 of the UN International Convention on civil and political rights, Article 8 of the UN International Convention on economic, social and cultural rights, ILO conventions Nos. 87 and 98).

90. The Government further contests the argument that, for military bodies exercising both military and civil functions, a different treatment should be granted when civil functions are exercised and underlines the exclusive competence of the State as regards the organization and functions of its military forces. The Government therefore demands that the compatibility of the legislation in question with the European Social Charter 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.*"

91. In this connection, the Government points out that the *Carabinieri* force is not a police force equivalent to the French "Gendarmerie" but a special military elite corps, together with Army, Naval Forces and Aeronautic Forces.

92. 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).

93. 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.

94. In this respect, the Government points out that, pursuant to Article 14, paragraphs 21 to 23 of Legislative Decree No. 177/2016, specific representative bodies were immediately created in order to protect the interests of the Forestry corps staff who had been transferred to the *Carabinieri* force (five Representative Councils attached to the *Carabinieri* Forest, Environmental and Agri-food Protection Units Department, the *Carabinieri* Forestry Corps, three attached to the Territorial Commands located in the North, Centre and South of Italy and an Interim

Representative Council attached to the *Carabinieri* Forest, Environmental and Agri-food Protection Units Department) and the representatives of these bodies were elected, including a representative within the Central Representative Council – *Carabinieri* Division.

95. The Government also claims that these military representative bodies are in fact very similar to trade unions of civil police forces. In this connection, with reference to *CESP v. France*, Complaint No. 101/2013, decision on the merits of 27 January 2016 (§68), it notes that Italian law allows military forces to create professional associations, subject to Ministry of Defense's authorization, as long as they are not secret or affiliated to a political party, and that they do not contravene the military oath and the legislation.

96. In its additional submissions, the Government points out that the Constitutional Court, by its Decision No. 120/2018 has declared unconstitutional the first part of Article 1475 (2) of the Legislative Decree No. 66/2010 (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 read "*military staff cannot form trade unions or join other trade unions*" should henceforth read instead as follows: "*military staff can form trade unions within the conditions and restrictions provided by the law; they cannot join other trade unions.*" (see also §§40-41 above as regards the implications of this decision).

97. Consequently, the Government maintains that the legislation applicable to the military and in particular to the Forestry corps personnel transferred to *Carabinieri* does not infringe Article 5 of the Charter.

B – Assessment of the Committee

98. The Committee recalls that the right to organise under Article 5 of the Charter includes the freedom to form and to join a trade union, and it applies to the entire public sector (*Confederazione Generale Italiana del Lavoro (CGIL) v. Italy*, Complaint No. 140/2016, decision on the merits of 22 January 2019, §69).

99. With regard to members of the armed forces, it is the Committee's task to examine the conformity with the Charter of national legislation or regulations determining the principle governing the application of the guarantees provided by Article 5 of the Charter and the extent to which they apply to them (*CGIL v. Italy*, Complaint No. 140/2016, op. cit., §69).

100. In this respect, Article 5 of the Charter allows States Parties to impose restrictions upon the members of armed forces, subject to the terms set out in Article G of the Charter, which provide that any such restriction must be prescribed by law and be necessary in a democratic society for, inter alia, the protection of national security. Furthermore, these restrictions may not go as far as to suppress entirely the right to organize (*European Organisation of Military Associations (EUROMIL) v. Ireland*, Complaint No. 112/2014, decision on the merits of 12 September 2017, §47).

101. The Committee notes that, in conformity with Legislative Decree No. 177/2016, the great majority of former members of the Forestry corps, who had

civil status, have acquired military status as a result of their transfer to the *Carabinieri* force or the *Guardia di Finanza*.

102. It is not contested that all the persons concerned by such transfer to military forces cannot join a trade union in application of Article 1475 of Legislative Decree No. 66/2010, which contains the Military Code, and this regardless of the nature of their tasks before and after the transfer.

103. The Committee has already examined the application of Article 1475 of Legislative Decree No. 66/2010 in respect of the members of the *Guardia di Finanza* and found a violation of Article 5 of the Charter, “*irrespective of the civilian or military nature of the tasks assigned to them*”, on the ground 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*” (CGIL v. Italy, Complaint No. 140/2016, op. cit., §98).

104. In particular, the Committee found that the restrictions provided by the legislation at issue were excessive because 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 because of the complete prohibition on members of the *Guardia di Finanza* to join other trade unions (CGIL v. Italy, Complaint No. 140/2016, op. cit., §§83, 93).

105. As the provisions at issue have not changed and apply to the former members of the Forestry corps who have been incorporated not only in the *Guardia di Finanza*, but also into the *Carabinieri*, the Committee maintains its finding and holds that there is a violation of Article 5 of the Charter, on the same grounds.

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

106. 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;

[...]”

A – Arguments of the parties

1. The complainant organisation

107. UGL–CFS and SAPAF claim that as a result of the transfer of former Forestry corps personnel to the *Carabinieri* force, the bargaining rights of the staff concerned have been unduly restricted.

108. In this respect, they point out that the military representative bodies are not entitled to bargain, but only to be consulted and refer to Legislative Decree No. 195/1995 (see Articles 2-4 and 7), as amended, which 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.

109. In particular, they state 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 qualifications, 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 and they have only advisory tasks in the sense that they can present claims, proposals, advice and requests.

110. UGL–CFS and SAPAF argue that the military representative bodies do not really negotiate with the employer on the regulation of terms and conditions of employment of members of armed forces. Indeed, regardless of the opinion of the representative bodies, the working terms and conditions of the military forces can be regulated unilaterally by the State.

111. In light of the Committee's decisions cited above (*CESP v. France*, Complaint No. 101/2013, *op. cit.*, and *EUROMIL v. Ireland*, Complaint No. 112/2014, decision on the merits of 12 February 2018), the complainants consider that the restrictions of bargaining rights suffered by the Forestry corps staff who have acquired military status are not compatible with Article 6§2 of the Charter.

2. The respondent Government

112. The Government underlines the similarities existing between the competences exercised by the trade unions of civil police forces (covered by Article 3 of Legislative Decree No. 195/1995) and those of the representative bodies of the military personnel.

113. It argues that the latter do not exercise only advisory functions, but also provide for the consultation on working conditions of the members of police forces with military status. In this respect, the Government refers to Articles 2 and 4 of Legislative Decree No. 195/1995, 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.

114. The Government also 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

115. In its further response, the Government also points out that the military representative bodies in Italy have real representative powers and play an active role in the negotiation of the working conditions, contrary to the situations at issue in the abovementioned ECtHR cases of *Matelly v. France* and *ADEFDROMIL v. France* and the Committee's decision in *EUROMIL v. Ireland*, Complaint No. 112/2014.

B – Assessment of the Committee

116. The Committee 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 (*European Confederation of Police (EuroCOP) v. Ireland*, Complaint No. 83/2012, decision on the admissibility and merits of 2 December 2013, §159; *CESP v. France*, Complaint No. 101/2013, op. cit., §118; *EUROMIL v. Ireland*, Complaint No. 112/2014, op. cit., §85 ; *CGIL v. Italy*, Complaint No.140/2016, op. cit., §105).

117. 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, op. cit., §§51 and 63).

118. 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, op. cit., §§176-177; EUROMIL v. Ireland, Complaint No. 112/2014, op. cit., §§87-88).

119. The Committee has previously had the opportunity to consider the issue of collective bargaining in respect of the police and the armed forces in Italy, under the procedure provided by Articles 2, 4 and 7 of Legislative Decree No.195/1995 and Article 1478 of the Military Code.

120. It notes that the same provisions apply to the former members of the Forestry corps who have been transferred to military forces - the *Carabinieri* force and the *Guardia di Finanza* - by effect of the entry into force of Legislative Decree No. 177/2016.

121. The Committee recalls that it has already found that the abovementioned procedure did not represent a reasonable alternative to the bargaining process. In particular, it found that the representative bodies of the *Guardia di Finanza* are not able to formulate opinions and requests on matters of interest for their members such as: training, the hierarchical functional relationship and the deployment of personnel. It accordingly found a violation of Article 6§2 of the Charter (CGIL v. Italy, complaint No. 140/2016, op. cit., §132).

122. As the provisions at issue have not changed and apply to the former members of the Forestry corps who have been incorporated not only in the *Guardia di Finanza*, but also into the *Carabinieri*, and the arguments presented by the parties do not disclose any new element which would justify a different assessment, the Committee holds that the situation amounts to a violation of Article 6§2 of the Charter.

CONCLUSION

For these reasons, the Committee concludes:

- by nine votes to five that Article 1§2 of the Charter is not applicable;
- by twelve votes to two that there is a violation of Article 5 of the Charter;
- by thirteen votes to one that there is a violation of Article 6§2 of the Charter.



József HAJDU
Rapporteur



Giuseppe PALMISANO
President



Henrik KRISTENSEN
Deputy Executive Secretary

APPENDIX

Decision on admissibility



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 Sjøfolk (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 European Social Charter to make observations 15 November 2017.



József HAJDU
Rapporteur



Giuseppe PALMISANO
President



Henrik KRISTENSEN
Deputy Executive Secretary