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LA LIBERTA' DI MANIFESTARE NON SI PROCESSA



Nazionale, 12/09/2017

Mr. Michel Forst, Special Rapporteur on the situation of human rights defenders

Mr. David Kaye, Special Rapporteur on the promotion and protection the right to freedom of opinion and expression

Ms. Annalisa Ciampi, Special Rapporteur on the rights to freedom of peaceful assembly and of association.

Mr. Vitit Muntarbhorn
Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

10th August 2017

Dear Mr Muntarbhorn, Mr Forst, Mr Kaye and Ms Ciampi,

Re: Constantino Saporito (Italy)

First of all, I wish to thank you for your joint intervention in relation to LGBT human rights defenders in Honduras (as publicised on the OHCHR website on 8th August 2017).

I am writing to you in relation to the case of **Mr Costantino Saporito**. Mr Saporito is an Italian firefighter and trade unionist (national coordinator) of the Italian union USB (Unione Sindicale di Base) who took part in a Pride parade in Rome on 10th June 2017.

Mr Saporito was apparently one of about 40 fire fighters who took part in the Pride parade in uniform. During the Pride march, he addressed the media stressing the indivisibility of human rights (which was placed on youtube[1] by the USB on the day of the Pride Parade) and held a sign reading 'My liberty protects yours' (La mia liberta protegge la tua).[2]

As a number of media clips on youtube corroborate, Mr Saporito is an outspoken unionist who has addressed issues of public concern including workers' rights[3] and operational issues such as a shortage of helicopters[4] for fire fighters.

It was reported that he is now subject to disciplinary proceedings by his employers (the public institution of the Italian National Fire Corps) on the basis that - as a result of his

1

www.youtube.com/watch

2

www.youtube.com/watch

(see 0:48)

3

www.youtube.com/watch

4

www.youtube.com/watch

participation in the Pride march in uniform[1] - his wearing of the uniform is "***considered as damaging to the dignity*** with which all workers of the National Corps are urged to wear the service uniform". It is reported that Mr Saporito is now awaiting a disciplinary hearing and sanctions could include his dismissal.

I am concerned that Mr Saporito is now being subjected to disciplinary measures predominantly for having participated in the Pride March and effectively for speaking up for and seeking to protect and promote the human rights of LGBTI people. One of the articles on the internet also expressed its concern that a motivation behind the institution of disciplinary measures against Mr Saporito (as the only individual firefighter who was singled out for disciplinary action) may also be his prominent union activism.

Apart from the dampening effect as such an action on freedom of opinion and expression and on the rights to freedom of assembly and association, and the effect on Mr Saporito himself as a human rights defender, it is also (I believe) of concern that a public body such as the Italian National Fire Corps (which, I understand, falls within the responsibility of the Interior Ministry in Italy) not only initiates disciplinary proceedings for a participation in a peaceful public demonstration but does so on grounds that clearly discriminate against LGBTIQ individuals (in that the **issue** of LGBT rights **itself** is equated with unacceptability, frivolity and ridiculousness by the authorities).

In the words of Sebastiano Secci, spokesman for Roma Pride, "it is of unprecedented concern that the proximity to the LGBTQI community could be considered as exposing the institution of firefighters to public ridicule".

Mr Saporito himself stressed that as a fire service, its public duty is to save human beings and their sexual orientation, race, sex, nationality, religious belief etc is entirely irrelevant.[2]

The public position taken by the Italian National Fire Corps is hence of considerable concern in relation to an institution which should value and protect human life equally. Furthermore, it is also of concern that since this occurrence Mr Saporito has been subjected to homophobic threats.[3]

I would be extremely grateful if you could kindly take this matter up with the Italian authorities.

Yours sincerely,

Jan Doerfel
Barrister
Chambers of Jan Doerfel
Parkshot House

References:

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3

www.youtube.com/watch

Mr. Michel Forst, Special Rapporteur on the situation of human rights defenders

Mr. David Kaye, Special Rapporteur on the promotion and protection the right to freedom of opinion and expression

Ms. Annalisa Ciampi, Special Rapporteur on the rights to freedom of peaceful assembly and of association.?

Mr. Vitit Muntarbhorn
Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

11th September 2017

Dear Ms de Preux De Baets, dear Mr Muntarbhorn, Mr Forst, Mr Kaye and Ms Ciampi,

Re: Constantino Saporito (Italy)

Further to my letter of 10th August 2017, please find enclosed my answers to your questions of 14th August 2017:

1.

In your submission, you indicate that Mr. Saporito may face disciplinary proceedings on the basis that he allegedly subjected the institution of the Fire Corps and his colleagues to "public ridicule" ('L'accusa sarebbe di aver esposto "l'uniforme d'istituto" al "pubblico ludibrio"). Can you please indicate how the Italian National Fire Corps conveyed to Mr. Saporito that he was subject to a disciplinary proceedings.

By letter (please see **Chronology** below).

2.

Do the accusations of "public ridicule" were mentioned in a letter addressed to Mr.Saporito?

3.

Would you have updated information on the disciplinary proceedings?

Mr Saporito has now been summoned to a disciplinary hearing tomorrow on **Tuesday, 12th September 2017 at noon**.

Chronology

On Mr Saporito's suggestion, the USB agreed to support the Gay Pride in Rome 2017. Around **21st May 2017**, the USB (Unione Sindicale di Base) announced their decision to take part in the Pride parade on 10th June 2017 in Rome and stated publicly that they would hold a press conference on this issue on 31st May 2017.

By communication dated **29th May 2017**, the Department of Firefighters, Civilian Rescue and Civil Defense of the Ministry of Interior sent round the following memo under the subject matter/heading "The Use of uniform provided to CNVVT personnel":

"Section 1 of Article 31 of the legislative decree of 8th March 2006, number 139, provides that staff belonging to operative roles in the national corps of firefighters wear uniforms in the execution of their duties/service for the institution.

The Decree of the President of the Republic of 28th February 2012, no.64, lays downs the "Regulation of the service of the national corps of firefighters". At article 8(3) it clarifies that the uniform given to the individual, in relation to the nature of the institutional duties & environmental & temporal context in which the staff operates, is functional to the safety of the staff and ensures that the role of the staff is recognisable.

Article 19 of the same decree provides in section 1 that the staff of the operative roles during working hours wear the uniform in all circumstances and following the manner indicated by the administration.

Having said that, the staff of firefighters who intend to participate in demonstrations/events ("manifestazioni") or similar events in whatever capacity or in external communication activities wearing the uniform must necessarily and pre-emptively be authorised by the Department as the usage of the uniform is reserved to the occasions in which the administration (through its staff on duty) takes part in events organised or promoted by the Department.

In consideration of the importance of the subject in question, we recommend mass circulation of this memo among all staff in service in all the offices."

As previously announced earlier in May, on **31st May 2017**, the USB – represented by Mr Saporito (in uniform) on the panel – held a press conference[1] announcing the rationale behind the participation in the Pride Parade, in particular the indivisibility of human rights and the need to fight all injustices and inequalities, including – but not limited – to workers' rights.[2] This was also reported on the official statement on the USB website which shows Mr Saporito in front of a rainbow flag and Pride flag held by his colleagues (also in uniform) behind him.[3]

The official statement[4] for the occasion on the USB website read as follows and stresses the USB's commitment to workers' rights including the right to health and their role as human rights defenders stressing the indivisibility of human rights:

"The Roma Pride Coordination announces with pride that the USB Firefighter's Union adheres to the political document of Roma Pride 2017 and will participate with a delegation at the Great Parade of Saturday, June 10th.

Always at the forefront of human rights, USB intends with its participation to stress its commitment to in the promotion of the rights of both workers and non-workers. USB is a trade union open to new social instances, "contaminated"/affected by experiences from other struggling realities: home, environment, for the public good, equality of rights and the protection of immigrants.

"We are witnessing a time of the weakening of social status and of the relative loss of rights related to the person, USB VVF is at the forefront of and in defense of the rights of a category, that of the firefighters, which more than all stress the lack of fundamental rights: that of health, since we do not have access to INAIL[5] (the National Institute for Insurance against Accidents at Work, a public non-profit entity safeguarding workers against physical injuries and occupational diseases), insecurity in the workplace, lack of contracts which are extreme expressions of our malaise.

All over Italy, the USB is pursuing the struggle through strikes, demonstrations, flash mobs, because only in this way, through public action, can one recapture the right to work and of workers.

But it is impossible to think about winning the right to work without being side-by-side of those who struggle for the essential rights of their own existence. We at USB believe that "those who struggle for freedom and rights must not surrender until they have won their future respecting the constitutional values ??of our Republic."

"It is a cause of satisfaction and pride," says the Spokesman of Rome Pride Sebastiano Secci, "to have the support of such an important component of the Fire Brigade Body, as it shows how the values ??of pride exceed the boundaries of the LGBT community to become values of all."

On **6th June 2017**, Mr Saporito took part in the programme Tagada on La7 in which he addressed matters of public concern as well as issues of workers' rights such as raising that fire personnel were not treated equally in relation to other workers and the shortage of fire fighters, and expressed concerns that fire fighters were not sufficiently used as a resource in dealing with natural catastrophes such as earthquakes and flooding.

By note/letter of **15th June 2017**, the head of the Department of Firefighters, Civilian Rescue and Civil Defense of the Ministry of Interior stated (under the subject matter of "USB VVF – participation in the Gay Pride parade in Rome on 10th June 2017") as follows:

"With this note we flag that on 12th June 2017, we learnt that a small number of firefighters attended in uniform the manifestation Gay Pride in Rome on 10th June 2017. Amongst these was Costantino Saporito, former Secretary General of the USB and a certain number of staff possibly members of the same trade union considering the banner they were holding. The staff mentioned above, while attending the rally in their own individual/personal capacity to express their agreement with the goals of the event "marched" wearing their uniform which, in contrast, identifies immediately their belonging to the national corps. In addition to that, the above mentioned fire fighter [Constantino Saporito] released an interview broadcast on TG3 on the same day) in which he expressed personal views while wearing his uniform, risking – as already mentioned – by you [the Chief of Department] in the letter sent to all trade unions on 1st June – that the **improper usage** of an element showing the belonging to the national corps [comment: the uniform] generates an inappropriate identification between the individual who freely expresses his own opinion and the institution he works for, to which institution must be granted the autonomy to give priority to neutral behaviours and non-ideological and non-political behaviour.

Moreover, it is important to stress that during the event, there is a lot of photographic evidence that shows the uniform worn together with ***"accessories" that are certainly to be considered as damaging to the dignity with which all workers of the National Corps are urged to wear the service uniform***."

(As stated in the initial submission, Mr Saporito was – at some stage - holding a sign reading 'My liberty protects yours' (La mia liberta protegge la tua[6]), however it is notable that the letter does not identify the alleged 'accessories' in question.

On **20th June 2017**, Mr Saporito was formally written to in relation to having taken part in the programme Tagada[7] on La7 on 6th June 2017 in uniform without preauthorisation of the Department. The letter asserted that the conduct of Mr Saporito was "manifestly in breach" of articles 8(3) and article 19(1) and (4) of the Regulation of the service of the national corps of firefighters as well as that he had contravened the Memo of 29th May 2017.

On **26th June 2017**, the Chief of the Department wrote to the Central Director for Human Resources (subject matter: "non-authorised use of the fire fighters uniform – demonstration 'Gay Pride'") stating:

"With reference to the "Gay Pride" event held in Rome on the 10th June, we inform you that the national USB coordinator, V.C. Constantino Saporito participated in the same wearing the service uniform as evidenced by numerous images in the media.

The same images in the media show the presence of other personnel of the national corps who – as yet - unidentified who were also wearing their uniform.

On **15th June**, a note to the national corps (herewith attached) flagged that the wearing of the uniform was not authorised and therefore violates the memo of 29th May." [see note above]

The letter requests that for these reasons that the envisaged disciplinary proceedings be initiated.

On **4th July 2017**, the Department of Firefighters, Civilian Rescue and Civil Defense of the Ministry of Interior wrote to Mr Saporito (under the heading of violation of article 37 of the CCNL (national contract) signed on 5th April 1996 and modified by article 11 of the national contract (of 26th May 2004) stating that the Chief of Department had communicated on 24th June 2017 that Mr Saporito had participated in the Gay Pride March in Rome on 10th June 2017 wearing the uniform as proved by numerous images in the media without having previously received authorisation by the Department, and by doing so had acted "manifestly in breach" of article 8(3) and article 19(1) and (4) of the Regulation of the service of the national corps of firefighters as well as that he had contravened the Memo of 29th May 2017.

Mr Saporito has now been informed that a disciplinary hearing will take place on **Tuesday, 12th September 2017.**

4.

Can you please confirm that none of the other fire fighters who took part in the Pride parade in uniform were subject to disciplinary proceedings?

This is correct. The official reason given in one of the letters is that no-one else has been recognised. However, there has been a whole internet campaign of firefighters publishing their photos and stating that they have also attended[8] and have expressing their unwavering support for freedom of expression.

Nonetheless, Mr Saporito remains the only individual subject to disciplinary proceedings.

5.

Can you please indicate whether it was the first time ever that Italian fire fighters participated in a pride parade in Italy. In the past, has there been any other examples of public servants/law enforcement officers placed under the Ministry of Interior participating in a pride parade in uniform in Italy?

In terms of public servants, Mr Saporito believes that neither police officers nor firefighters have ever participated in uniform in a Pride parade in Italy.

6.

According to some of the news articles, the National Fire Corps argues that the reason for disciplinary proceedings is the fact that Mr. Saporito had not obtained the authorization to wear the uniform from the Fire Corps institution which, "according to the rules of service can only be used in operation or with the prior consent of the administration". Would you have more information on this?

The only provisions relating to the uniform are those quoted in the memo of the Department of Firefighters, Civilian Rescue and Civil Defense of the Ministry of Interior of **29th May 2017** entitled “The Use of uniform provided to CNVVT personnel” (please see the exact wording

of the Memo in the **Chronology** above).

None of the legislative provisions quoted therein (i.e. article 31(1) of the legislative decree of 8th March 2006, number 139) nor para.8(3) and 19 of the Decree of the President of the Republic of 28th February 2012 entitled “Regulation of the service of the national corps of firefighters” provide that permission to wear the uniform is required.

It is hence arguable that the memo itself is *ultra vires* and unlawful and that the restriction of Mr Saporito’s freedom of expression is neither provided by law nor necessary contrary to article 19 ICCPR. Furthermore, his public statements both during the Pride March and on the television programme Tagada are clearly in the public interest and serve the rights of others.

Furthermore, Mr Saporito is convinced that the Memo (requiring permission) was issued in response to the USB’s announcement that they would take part in the Pride March.

There are numerous reasons which support this belief:

1. that the Memo was issued within days of the USB’s announcement,

2. that Mr Saporito is a high-ranking representative of the USB (former Secretary General of the USB and currently National Coordinator of the Firefighting Sector and National Public Employment Sector) and hence that his announcements and actions attract attention,

3. that permission to wear a uniform at public manifestations had never previously been required (for any kind of public manifestations including religious, social and Union events nor television events),

4. that Mr Saporito (and other union officials) have taken part and still continue to take part in numerous televised programmes and public demonstrations/protests in uniform and this has never resulted in the issuing of a request for pre-authorisation of the wearing of the uniform

5.

that (relating to public events that took place after the Pride parade on 10th June 2017) no such authorisations are being insisted upon, required or enforced

It is furthermore notable that, contrary to police officers and nurses and doctors, firefighters have never previously been required to ask for permission to take part in public events.

To this day no particular procedure has been outlined to request such authorisation nor forms specified for such an application. There have never previously been any disciplinary proceedings (nor after) for the wearing of the uniform.

As stated above, since the memo, no such permission applications have been required or insisted upon in relation to any other demonstrations or manifestations (including of a religious or social nature) carried out in uniform including Union demonstrations and no disciplinary proceedings initiated in relation to a failure to apply for such an authorisation.

Nor have such authorisations ever been required before the announcement of the intention to take part in the Pride Parade. There have, for example, been 178 trade union manifestations in 2015 and 148 in 2016 by the USB Union alone and no such authorisation has ever been requested in relation to these. These trade union events pursued employment rights such as better wages and contracts.

Furthermore, since the Pride Parade in June 2017, there have been over a hundred events in which fire fighters participated in uniform without authorisation including religious events, patron saint days (during which firefighters carried figures of the Virgin Mary in uniform), festivals and trade union events. Mr Saporito himself has participated in such events in uniform but it appears that authorisation has ever only been insisted upon and led to disciplinary proceedings in relation to the Gay Pride parade.

In addition, as a high ranking union representative (former Secretary General of the USB and currently National Coordinator of the Firefighting Sector and National Public Employment Sector), Mr Saporito has always had many appearances on television/media – in the region of 200 per year – in relation to which he was never asked to receive pre-authorisation to wear his uniform nor had been subjected to disciplinary proceedings.

At strongly appears that it was the USB's and, in particular Mr Saporito's stance as their representative in relation to the importance of taking part in the Pride parade that led not only to the issuing of the Memo requiring pre-authorisation (which constitutes a restriction on freedom of expression, association and peaceful assembly in breach of articles 19, 21 and 22 of the ICCPR) but equally to the initiation of disciplinary proceedings against one of the Union's most high-ranking officers.

7.

In your submission, you indicate that since this occurrence Mr Saporito has been subjected to homophobic threats. Can you please provide greater details about these threats and the response provided by the authorities?

Threats were posted on Mr Saporito's facebook account (including by other firefighters in another trade union) which he only reported to facebook (which took no action).

Threats consisted in the posting of a Swastika symbol with the wording "Arbeit macht frei") and comments such as "Nazis were killing Jews, gypsies and gays and you should end up the same way".

Whilst Mr Saporito has not reported these firefighters (who have posted homophobic abuse online) to his employer, he is convinced that his employers are in any case aware of these insults but have not pursued any disciplinary actions against firefighters posting homophobic abuse.

This approach equally appears to be corroborated by another **incident** in which disciplinary actions were initiated against a firefighter **Giancarlo Gianca Damele** who posted a photo of a gay civil union between a male firefighter and his male partner on Facebook with a congratulatory message – but not against subsequent messages containing homophobic abuse in response by other firefighters.

Mr Saporito has been appointed as the Union representative of the individual who had posted the message.

Giancarlo Gianca Damele posted the following message on facebook accompanied by a photo of the couple:

"This Morning a gay marriage was celebrated in Florence between a colleague and his partner. I believe this is the first time in our corps. Since this was not given enough relevance, I think this is the right occasion to publish the pictures and let everyone participate in this very joyful event. Congratulations to the spouses."

The couple itself was happy that the picture and message were posted and have confirmed that they have not complained against Mr Damele. In fact, the couple thanked him for the sensitive message and stated that, if any disciplinary proceedings were to be taken, they should be taken against the firefighters who posted abusive and homophobic messages against them and Mr Damele's message.

Mr Damele subsequently received a letter by the Department of Firefighters, Civilian Rescue and Civil Defense of the Ministry of Interior, dated 11th August 2017, notifying him that disciplinary proceedings had been initiated against him. The letter asserts that Mr Damele's behaviour in placing this message "violates article 12 of the national contract; conduct non-conforming to the principle of correctness towards other employees and in addition to that in contrast to the duties of particular fairness that are required of a member of the National Fire Brigade Body also considering the delicacy of the tasks carried out by the same body".

It is submitted that the disciplinary proceedings are clearly in breach of Mr Damele's right to freedom of expression on a personal platform such as Facebook.

Furthermore, no disciplinary actions were taken against (named) fire fighters who posted homophobic abuse in response to Mr Damele's message such as comments such as "at this point I can say… firefighters = blowjobs" ("pompieri … pompini"), "and now people feel scandalized when an Arab marries a child …". The person making these comments is shown making a Hitler salute as his facebook picture. One of the homophobic comments were made by a firefighter working for the Ministry of the Interior and were reported but no disciplinary actions have been taken.

The willingness by the Department of Firefighters, Civilian Rescue and Civil Defense of the Ministry of Interior to initiate disciplinary proceedings for the private posting of a very respectful message relating to a civil ceremony and its failure to indicate disciplinary proceedings against gross instances of homophobia not only show a worrying level of homophobia and willingness to breach ICCPR rights but furthermore indicates corroboration for the conviction that the Memo referred to above constitutes a measure utilised in a discriminatory manner regarding LGBT issues.

I would be extremely grateful if you could kindly take this matter up with the Italian authorities.

Please do not hesitate to contact me if you have any further questions. I also enclose Mr Saporito's phone number: +39 342 8630740. He is also copied into this email.

Mr Saporito has furthermore confirmed that he is happy for his name and details here mentioned to be published within UN correspondence and UN reports.

Yours sincerely,

Jan Doerfel
Barrister
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Parkshot House

1

www.youtube.com/watch

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www.usb.it/index.php

www.usb.it/index.php

www.usb.it/index.php

5

www.inail.it/cs/internet/multi/english.html

6

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(see 0:48)

7

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8

www.publicnow.com/view/CFAEBF7644AD29C8B73B65D57C5FD91652BF5837

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