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

15 September 2016

Case No. 1

**Movimento per la liberta' della psicanalisi – associazione culturale italiana v.
Italy**
Complaint No 122/2016

COMPLAINT

Registered at the Secretariat on 7 June 2016

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

**DGI – Directorate of Human Rights
Department of the European Social Charter
Collective Complaints Division
Council of Europe
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COLLECTIVE COMPLAINT

Filed by

MOVIMENTO PER LA LIBERTA' DELLA PSICANALISI – ASSOCIAZIONE CULTURALE ITALIANA [MOVEMENT FOR THE FREEDOM OF PSYCHOANALYSIS - ITALIAN CULTURAL ASSOCIATION], with its registered office in Via Col di Lana 24, Ravenna, represented by its President pursuant to Article 10 of its Articles of Association and Memorandum of Association (doc. 1), Mrs Alessandra GUERRA, born in Ravenna on 4 March 1961 (doc. 47), with chosen address for service at the office of the law firm of Counsel Antonella MASCIA of the Verona and Strasbourg bars, based Via Calatafimi 5/a, Verona,

Complainant

versus

The Italian State,

Respondent State

Seeking a declaration and in any case a ruling that the situation regarding the practice of the profession of psychoanalyst in Italy is not compliant with Article 1(2) of the European Social Charter (hereafter “the Charter”).

THE FACTS

I. The object of this complaint

1. The present case has been brought by a representative association of a group of psychoanalysts not enrolled in the Register of Psychotherapists (hereafter referred to as the “psychoanalysts”), who are unable to practise, or in any case encounter objective and serious difficulty in practising their profession in Italy.
2. As will be seen below, their psychoanalytic activity has been considered by the national courts to constitute a psychotherapeutic activity, understood as healthcare, which activity may only be carried out by physicians or psychologists enrolled in the respective professional registers.
3. Consequently, the psychoanalysts, who according to the case-law interpretation which has become consolidated over time are artificially regarded as equivalent to psychotherapists, are now objectively unable to practise their profession outside the ambit of the “protected” professions, namely those of psychologist and physician.
4. It thus appears appropriate, after having identified the *association* as a body with standing to file this complaint, to set out the characteristic features of the *activity of psychoanalyst* and the *difference between that discipline and psychotherapy*. Reference will thus be made to *internal judicial standards and practices considered to be relevant and their consequences for the free practice of psychoanalytic activity*, before moving on to an analysis of the *legal aspects* characterising the violation complained of.

II. The association "Movimento per la libertà della psicanalisi - associazione culturale"

5. The Association "**Movimento per la libertà della psicanalisi - associazione culturale**" (hereafter “the Movement”) was established by a group of psychoanalysts on 17 June 2012 under a memorandum of association concluded between the founders (doc. 1).
6. On 4 October 2012 the Movement was duly registered with the Italian Revenue Agency (doc. 2).
7. The Movement has established its purposes in Article 2 of its Articles of Association, namely “... *the aim is to promote, disseminate and defend the practice of psychoanalysis as a speech-based practice, ongoing intellectual research and practical experience, using the instruments that may be deemed appropriate, such as for example the promotion of conventions, seminars and conferences etc., awareness-raising initiatives within political and judicial circles, media and cultural campaigns, initiatives to secure legal protection, support and assistance including in relation to any proceedings to uphold the freedom to practise psychoanalysis and the*

freedom of the psychoanalyst. The association also aims to combat any attempt at the medicalisation and sanitisation of mental life and of psychoanalysis.”

8. The Movement pays considerable attention to the professional affairs of its members. For this reason it is part of the Coordinamento Libere Associazioni Professionali – COLAP [Coordination of Free Professional Associations], (<http://www.colap.eu>) (doc. 3) and regularly attends conventions organised by this body.
9. Finally, and with particular regard to the issue which will be examined below, the Movement participated in the event held in Rome on Friday 13 November 2015 concerning the professions not regulated under Italian Law no. 4 of 2013 (docs. 4 and 5).
10. The Movement has always run regular internal activities, comprising both the numerous assemblies of its members – which have in all cases also involved a training element for participants – and the many meetings of its board.
11. The activities carried out by the Movement are as follows:
 - a. The Movement organised a gathering on 17 February 2013 (Ravenna, NH Hotel) entitled: "*Formazione dello psicanalista e legge 56/89*" ["Training for psychoanalysts and Law no. 56 of 1989"] (doc. 6). This one-day conference involved the provision of information and training concerning psychoanalytic and legal issues relating to psychoanalysis, how it differs from psychotherapy and the almost insurmountable legal difficulties experienced by psychoanalysts not enrolled in the professional register of psychotherapists with regard to the practising of their profession;
 - b. On 17 March 2013, several members of the Movement attended a study day in Barcelona organised by the association *Umbral Red* concerning psychoanalysis and brought to the attention of the Spanish audience the difficult situation in Italy for psychoanalysts who are not enrolled in the professional register of psychotherapists (doc. 7).
 - c. The Movement organised a conference (Loggetta Lombardesca, Ravenna) on 18/19 May 2013 entitled: "*La formazione in atto dello psicanalista, Devenir Psychanalyste...et le rester*" [Practical training for psychoanalysts, becoming a psychoanalyst ... and remaining so] in conjunction with the Inter-associatif Européen de Psychanalyse (docs. 8 and 9). This gathering was attended by psychoanalysts from various European countries, who discussed issues related to the training of psychoanalysts within the individual countries. In particular, the members of the Movement underlined the difficulties in working encountered by psychoanalysts who are not enrolled in the register of psychotherapists. The conference proceedings were drawn up by the Movement and the other participant associations.
 - d. On 31 May 2013, the Movement presented a report to the Lacanian psychoanalysis movement "*Convergencia*" in Paris concerning the situation of extreme professional difficulty encountered by psychoanalysts not enrolled in the register of psychotherapists in Italy (doc. 10). "*Convergencia*" brings together around fifty Lacanian associations of

psychoanalysts from around the world. The Movement's presentation aroused a great deal of interest and concern, as psychoanalysts from different countries around the world fear that the situation in their own countries could become similar to that in Italy.

- e. On 30 October 2013, along with other associations, the Movement organised the presentation of a book in Venice entitled "*Un bambino viene agitato*" ["A child is agitated"] (published by ETS) (doc. 11). The book addresses the difference between psychoanalysis and psychotherapy.
- f. On 30 October 2013, the Movement participated in the presentation in Udine of the book entitled "*Un bambino viene agitato*" ["A child is agitated"] (published by ETS) (doc. 12).
- g. The movement is also part of a federation of psychoanalytic associations, known as Lunipsi – Libera Universitas Psicanalitica [Free Psychoanalytic Universitas], based in Turin (doc. 13). Each year, Lunipsi organises a convention on psychoanalysis related themes. Several members of the Movement have attended these annual conventions, starting from the second Lunipsi convention held in Turin on 10 November 2012, in order to stress the legal problems and practical difficulties in practising the profession of psychoanalyst encountered in Italy by those not enrolled in the register of psychotherapists. Members of the Movement attended the conventions held in 2012, 2013, 2014 and 2015. At this last meeting, the aim of the Movement's participation was to stress the difficulties which Italian psychoanalysts not enrolled in the register of psychotherapists have encountered following the judgments of the Court of Cassation (see sections 86 et seq. below).
- h. On 25 January 2014, some members of the Movement attended the event held by Lunipsi to present the book "*Un bambino viene agitato*" ["A child is agitated"] (doc. 14).
- i. On 6 April 2014, some members of the Movement gave an introductory presentation for a study meeting in Paris (Faculty of Protestant Theology), organised by the association *Dimension de la psychanalyse* (doc. 15). The presentation specifically concerned the difficulties encountered in the practice of psychoanalysis in Italy by those not enrolled in the register of psychotherapists. This issue is a cause for concern for French colleagues, out of fears that the position in France might become similar to that in Italy.
- j. On 17 May 2014, several psychoanalysts from the Movement attended a convention of the *Fondation Européenne pour la Psychanalyse*, at which they emphasised the professional difficulties encountered by Italian psychoanalysts not enrolled in the register of psychotherapists (doc. 16). These presentations gave rise to a significant debate on the subject between psychoanalysts from various European and Latin American countries.
- k. On 6 June 2014, several members of the Movement attended a presentation in Pordenone of the book "*Un bambino viene agitato*" ["A child is agitated"] to reiterate the issues presented in the book, namely the difference between the professional practice of psychoanalysis and the practice of psychotherapy (doc. 17).

- l. On 3 October 2014, several members presented the activities of the Movement in Turin at an evening event held by the psychoanalytic association Accademia Platonica delle Arti e delle Scienze [Platonic Academy of the Arts and Sciences] (doc. 18).
 - m. On 4 October 2014, some members of the Movement attended a presentation in Turin (Belgravia bookshop) of the book by Stefania Guido entitled "Il primo *scibboleth* della psicanalisi" ["The first Shibboleth of psychoanalysis"] (doc. 19). The book forcefully underlines the specific features of psychoanalysis, including when practised by psychoanalysts not enrolled in the register of psychotherapists.
 - n. On 11 October 2014, several members of the Movement attended the presentation in Florence, at the association Psicanalisi Critica [Critical Psychoanalysis], of the book by Jacques Derrida entitled: *Stati d'animo della psicanalisi* [*Resistances of psychoanalysis*] (doc. 20). This book points out, *inter alia*, how harmful the assimilation with psychotherapy has proved to be for psychoanalysis.
 - o. On 23 October 2014, along with other associations, the Movement organised a presentation in Venice of Jacques Derrida's book *Stati d'animo della psicanalisi* (doc. 21).
 - p. On 17 and 18 January 2015, the President of the Movement attended a European colloquy organised by the French association *Dimension de la psychanalyse* concerning the legislation on psychoanalysis in various European countries (doc. 22). Here too the Movement's contribution proved to be decisive for raising awareness of the issue of practice of the profession by persons not enrolled in the registers of psychotherapists in various European countries.
 - q. On 28 March 2015, the President of the Movement gave a presentation in Paris concerning the difficult situation in Italy of psychoanalysts not enrolled in the register of psychotherapists at the Paris offices of the association *Analyse Freudienne* (doc. 23).
12. Finally, the Movement has drawn up a declaration, which has been translated into a number of languages (doc. 24) and has been signed by 30 associations and 1,505 supporters (doc. 25), against the theoretical, cultural and legal assimilation of psychoanalysis with psychotherapy and against the veiled threats encountered on a daily basis by psychoanalysts who are not registered.
 13. It is important at this juncture to explain what constitutes psychoanalysis, what psychotherapy is, what the differences are between psychoanalysis and psychotherapy, along with the regulatory framework governing the practice of these activities, in addition to its interpretation in the case law.

III. The classification of psychoanalysis

14. Psychoanalysis is a discipline founded by Sigmund Freud, who defined it in 1926 in the publication *Die Frage der Laienanalyse. Unterredungen mit einem Unparteiischen* ["*The Question of Lay Analysis. Conversations with an Impartial Person*"], and which has a specific tradition of thought.
15. According to Sigmund Freud, psychoanalysis focuses on learning the difficult art of "knowing how to live", as experienced by the person concerned (S. Freud, *The Question of Lay Analysis*, in *Opere* [Italian version], vol. X, p. 368).
16. As regards the difficult art of "*knowing how to live*", psychoanalysis uses discussion and conversation in a liberal sense.
17. "*The course of an analysis is most inconspicuous, it employs neither medicines nor instruments and consists only in talking and an exchange of information*" (S. Freud, *The Question of Lay Analysis*, in *Opere*, vol. X, p. 402). Psychoanalysis is thus classified as a humanistic discipline.
18. Psychoanalysis draws on its extremely rich cultural tradition, originating in the works of Freud and Lacan, which has been enriched by hundreds of authors over the course of more than a century; the texts written by these authors demonstrate the specific features of psychoanalytic thought.
19. Psychoanalysis seeks to grasp the importance of the unconscious within human existence.
20. With the psychoanalyst, the person undergoing analysis finds a very special space for self-expression, analysing his/her experiences, opinions, lapsus, dreams, he/she freely expresses his/her thoughts ("free association") and everything that comes to mind, and questions his/her choices; all of this is done with the aim of appreciating the uniqueness of the formations of the unconscious in relation to his/her individual case, which is unique and unrepeatable.
21. Psychoanalytic work turns on the interpretation of the unconscious experiences of the person undergoing analysis, who is the protagonist of his own psychoanalytic journey.
22. In particular, the Associazione Italiana di Psicanalisi [Italian Association of Psychoanalysis] (hereafter "A.I.Psi.") has indicated that "*Analysis may be defined as a theory of the unconscious aimed at investigating those instances of mental elaboration that lie outside the conscious realm through analysis of free association, intentions not acted upon and dreams.*"¹
23. Psychoanalysis is thus a "*humanistic*" practice that is interpretative in nature.
In this sense psychoanalysis, as the conduct of psychoanalytic activity, does not involve any active therapy, nor does it promise or provide any cure. In the same way, psychoanalysis does not provide any type of psycho-diagnosis and/or prognosis.

¹ Definition taken from the official website of the Associazione Italiana di Psicoanalisi (A.I.Psi.), www.aipsi.it

24. Again according to the A.I.Psi., *“This discipline does not involve any strictly therapeutic intent: there is no commanding or influencing by the professional, nor any diagnosis, and even less any suggestion of behavioural models. Indeed, the typical scenario, still applicable today, of psychoanalytic care involves the patient lying down on a couch with the analyst sitting behind his shoulders listening in silence, adopting a stance of abstinence (not gratifying impulses and desires) and neutrality (avoiding making any suggestions or passing judgment). That strictly curative intent, which is typical of all therapy, is entirely lacking.”*²

25. It is also appropriate to recall the writings of Giacomo B. Contri:³ *“Psychoanalysis is not psychotherapy, first in its genesis, second in its definition, and doctrine and third in its technique. Psychoanalysis in its technique is not therapy because “therapy” – if it is necessary for the word to have meaning, i.e. that it is not once again consigned among the principles of ambiguity and ignorance – means direct action (whether of the type “cause” in the cause-effect relationship, as within medicine, or of the type “command” in the command-execution relationship, as with hypnosis, within behavioural, cognitive and other therapies), along with specific action by one subject towards another subject, with a view to achieving a predefined result. It is in fact entirely evident that this is not the case for the Freudian psychoanalytic technique. Not only does it not amount to therapy, but (to repeat) this is even prohibited in its genesis, in its doctrine and in its technique. That this is the case is one of the fundamental, preliminary certainties of the psychoanalyst, and also of any one who takes note of this easy elementary information ... For any person who reasons in terms of therapy, the void in (direct and specific) therapeutic action between A. psychoanalytic technique and B. expected recovery is evident if not outrageous... What we are saying is especially evident from the very genesis of psychoanalysis: that it was born at the precise point in time and logical moment when Freud, who had started by doing therapy – hypnosis, suggestion, consciencisation, i.e. direct and specific actions – abandoned therapy, i.e. direct and specific action (involving a cause, advice, persuasion or a command). (...)*

A psychoanalyst qualifies as such precisely by virtue of having abandoned therapy, that is direct action and the intention to carry it out, within the psychology of his psyche or psychic reality. The training of psychoanalysts is “didactic” precisely with the aim of curing them of such an intention, that is the pathological and arrogant presumption of assigning to their own actions the goal of altering the psychic reality of another person, even if it is pathological (not that this is not possible, and with the flagrant violence objected to by Freud: however, it is this possibility

² Definition taken from the official website of the Associazione Italiana di Psicoanalisi (A.I.Psi.), www.aipsi.it

³ Giacomo B. Contri is a Lacanian analyst and the first translator of Lacan in Italy. He has written widely on psychoanalysis. The citation is taken from the paper *“Libertà di psicologia: costituzione e incostituzionalità: psicologia, psicoterapia, psicoanalisi”* [“Freedom from psychology: constitution and unconstitutionality: psychology, psychotherapy, psychoanalysis”], written for Studium Cartello, Milan, Sic 1999. The paper may be found at the following address: <http://website.lacan-con-freud.it/laienanalyse/liberpsi.pdf>

that psychoanalysis prohibits, and rightly so). In other words it is didactic not for the purpose of turning it into psychotherapy but rather of overcoming psychotherapy”.

26. For further detailed information in this area, see the authors and papers mentioned in the enclosed bibliography (doc. 26).

IV. The training of psychoanalysts

27. Psychoanalysis is also characterised by the *process of training the psychoanalyst*. During the history of psychoanalysis it very quickly emerged that the central element of the training of the psychoanalyst is first and foremost a personal analysis, which is in this case referred to as "*didactic*". Didactic analysis is conducted for several years with a suitably trained psychoanalyst and enables the future psychoanalyst to gain knowledge of the mechanisms that shape the unconscious.

28. This is the fundamental condition for the training of the psychoanalyst.

29. After a certain number of years of didactic analysis and engagement with the reference analyst, the candidate analyst may start meeting "*persons undergoing analysis*". In this case the candidate must hold sittings referred to as "*supervision*", in order to discuss his/her experience with that of other psychoanalysts.

30. To be appropriate, the training must also include a period of theoretical instruction: it is fundamentally important to be familiar with psychoanalytic knowledge, as transmitted within texts and by associations.

31. Throughout the history of psychoanalysis it has been the psychoanalytic associations that have guaranteed the transmission of psychoanalysis. The training of psychoanalysts, as described above, occurs within psychoanalysis associations.

32. The analyst with whom "*didactic*" analysis is carried out is a member of a psychoanalysis association and the analyst with whom "*supervision*" sittings are carried out is a member of a psychoanalysis association; theory is transmitted at meetings of psychoanalysis associations.

33. Analysts are therefore trained within psychoanalytical associations.

V. Psychotherapy

34. As the name suggests, psychotherapy sets itself explicitly therapeutic aims; it is practised by psychologists or by physicians who have completed specific training and deals with a series of psycho-pathological disturbances described in the fifth edition of the DSM (Diagnostic and Statistical Manual) and the tenth edition of the ICD (International Classification of Diseases).

35. The following two citations are proposed in order to define psychotherapy:

1. Psychotherapy is “...a form of care for psychological suffering and discomfort which does not involve the use of pharmaceuticals and is provided through the relationship and interaction between a patient and a therapist...” (L. Mecacci, *Manuale di Psicologia Generale*, Giunti, Florence 2001);
2. Psychotherapy is “In a broad sense, any method for treating mental or somatic disorders that uses psychological means and, more specifically, the relationship between the therapist and the patient” (J. Laplanche e J.B. Pontalis, in *Enciclopedia della psicanalisi*, Bari, Laterza 2007, p. 458).
36. In these different citations there is agreement among the authors regarding certain key concepts: psychotherapies are a form of care and their aim is also the “healing” of the “patient”.
37. The most important way of achieving “healing” is the patient-therapist relationship, which is defined as a “therapeutic relationship”, understood as a “relationship aimed at recovery”.
38. All psychotherapies, of which there are numerous types, are inspired by these key concepts. Those most widely practised are individual, cognitive, behavioural, cognitive-behavioural, systemic-relational, psycho-dynamic, group, psycho-analytical, brief, active, corrective, phenomenological-existential, psycho-synthetic, humanistic, interpersonal, gestalt and bodily psychotherapy and bio-energetic analysis.
39. Since the stated and practised aim is “recovery”, the theoretical paradigm of psychotherapies has been borrowed from the healthcare model.
40. The healthcare model: 1) involves determining a diagnosis and a prognosis and implementing a therapy; 2) understands recovery as the elimination of symptoms, and 3) is based on a largely unilateral relationship between the therapist and the patient.
41. Starting from these principles of the healthcare model, psychotherapy, involving conversation with the patient, first and foremost makes a diagnosis: in this sense it identifies the type of “disorder” suffered by the “patient”, classifying it under one of the diagnostic categories established by the theories of psychopathology (one of the reference instruments is the DSM IV- Diagnostic and Statistical Manual of Mental Disorders); it then makes a prognosis, in that it assesses the time-scale for and ways of achieving recovery, and finally implements the actual therapy, which may so to speak be “administered” directly by the psychotherapist in a unidirectional manner from professional to patient.
42. In order to achieve their healing objectives, psychotherapies thus use discussion for healthcare purposes and discussion is aimed at resolving the symptoms.

VI. Psychoanalytic psychotherapy

43. Fairly recently, forms of psychotherapy inspired to varying degrees by psychoanalytic theories, or that use some of their concepts, have been proposed within psychological circles. In terms

of their implementation and goals these are in any case forms of psychotherapy, and are thus classified within the various forms of psychotherapy.

44. Psychoanalytic psychotherapy is not psychoanalysis.

VII. The substantive differences between psychoanalysis and psychotherapy

45. As has been noted in the previous sections, the reference framework for psychoanalysis is the humanistic field. In this sense neither psychoanalysis nor its practice involves psycho-diagnosis or prognosis, nor does either pursue the aim of healing; psychoanalysis makes free use of discussion and conversation as its objective is to gain knowledge of the unconscious. It is thus entirely separate from the medical-healthcare paradigm.

46. To summarise, unlike psychoanalysis, psychotherapies are almost completely borrowed from the medical-healthcare paradigm centred on *(i)* the triad of *diagnosis-prognosis-therapy*, *(ii)* recovery as the elimination of symptoms and *(iii)* the largely unilateral physician-patient relationship.

47. In contrast to psychoanalysis, psychotherapy, involving conversation with the patient *(i)* identifies the type of "disorder", classifying it under one of the diagnostic categories elaborated by the theories of psychopathology (one of the reference instruments is the DSM IV- Diagnostic and Statistical Manual of Mental Disorders), *(ii)* assesses the time-scale for and ways of achieving recovery, and *(iii)* implements the actual therapy, which may so to say be "administered" directly by the psychotherapist in a unidirectional manner, from professional to patient.

48. In contrast to psychoanalysis, in order to achieve their healing objectives, psychotherapies use discussion as a healthcare measure as if it were a pharmaceutical product. Discussion is thus aimed at recovery and the immediate resolution of symptoms. Psychoanalysis by contrast makes free use of discussion and conversation, in the sense that it uses them in isolation from any medical diagnostic-therapeutic applications, as means more akin to paths for growth and for self-awareness.

VIII. The national legislative framework

a. The entry into force of Law no. 56 of 18 February 1989 establishing the order of psychologists and regulating psychotherapy

49. The Italian parliament considered that the activity of psychologists should be "protected", i.e. regulated through inclusion in dedicated registers or lists. The lawmakers accordingly regulated

the practice of that profession, in accordance with Article 33(5) of the Constitution,⁴ thus setting aside the general principle laid down in Article 4 of the Constitution.⁵

50. After a long and detailed debate, the parliament enacted Law no. 56 of 18 February 1989 (hereafter “Law no. 56 of 1989”), known as the “Ossicini Law”, establishing the order of psychologists.

51. Article 1 of Law no. 56 of 1989 defines the *profession of psychologist*, stipulating that:

“1. The profession of psychologist shall include the use of cognitive and intervention tools for the purposes of prevention, diagnosis, habilitation-rehabilitation activities and psychological support directed at persons, groups, social bodies and communities. It shall also include experimentation, research and didactic activities in that area.”

52. Article 2 of Law no. 56 of 1989 lays down the prerequisites applicable to the practice of the psychological profession, namely the holding of a qualification in psychology and enrolment in a dedicated professional register.

53. In particular, Article 3 of Law no. 56 of 18 February 1989, (known as the “Ossicini Law”), entitled “**Practice of psychotherapy**”, provides in the first paragraph that:

“1. The practice of psychotherapy shall be subject to specific professional training, which must be completed after the award of a degree in psychology or medicine and surgery through attendance of specialisation courses of at least four years in duration, providing appropriate education and training in psychotherapy, held pursuant to Italian Presidential Decree no. 162 of 10 March 1982 at university specialisation schools or institutes recognised to that end in accordance with the procedures laid down in Article 3 of the aforementioned Presidential Decree.

2. Psychotherapists who are not physicians shall be prohibited from carrying out any activity falling under the exclusive competence of the medical profession.

3. (...).”

54. As can be seen, this legislative provision addresses and regulates only the practice of psychotherapies. However, it does not stipulate which meaning, for the purposes of the application of the law, must be ascribed to the term “psychotherapy”.

55. In addition, mindful of the difference between psychoanalysis and psychotherapies, the Italian parliament intentionally failed to refer to psychoanalysis within the aforementioned provision, thereby intending to leave its practice unregulated.

56. As confirmation of this, see the preparatory works⁶ for Law no. 56 of 1989, which constitute documentary proof of the debate held on this issue, which concluded with the decision not to include psychoanalysis amongst psychotherapies (doc. 26, 27, 28, 29, 30, 31, 32 and 33).

⁴ Article 33(5) of the Constitution, insofar as relevant, provides: “*State examinations shall be prescribed ... for qualification to exercise a profession*”.

⁵ Article 4 of the Constitution provides:

“1. The Republic recognises the right of all citizens to work and promotes those conditions which render this right effective.

2. Every citizen has the duty, according to personal potential and individual choice, to perform an activity or a function that contributes to the material or spiritual progress of society.”

57. In this regard some of the salient passages from the preparatory works are highlighted (doc. 34, page 255 et seq).⁷

On 12 May 1988 the 12th Committee on Social Affairs of the Chamber of Deputies initiated the discussion of three draft bills on the regulation of the profession of psychologist: that proposed by Senator Ossicini and others (2405), which had already been approved by the Senate; that proposed by the Honourable Armellini and others (483), and that proposed by the Honourable Gelli and others (1205) (see doc. 26).

In the Committee's session of 1 June 1988 (see doc. 28), Bianca Gelli stated:

"Drawing to a conclusion, I can only stress that this text does not purport to reach beyond the task that has been set for it (the legal regulation of the profession of psychologist), in the sense that it does not seek to enter into the merits (as some have nonetheless feared), nor moreover could it do so, of the dimension of psychoanalysis understood in a broad sense, that is as an instrument for acquiring knowledge and a code for reading the real situation in its entirety. It is hoped that developments, reflection and research in this area will continue to be the free prerogative of individuals, or of national or international associations, whether or not their paths cross with the world of the universities".

During the course of that session, the Honourable Luigi Benevelli made the following statement in relation to psychoanalysis:

"(...) Then there is the problem of not scrambling and not confusing the question of psychotherapies with that of psychoanalytic courses and training, which represent another aspect."

At the session of 8 June 1988 (see doc. 29), the Honourable Gigliola Lo Cascio Galante stressed with greater emphasis the difference between, firstly, a psychologist or a psychotherapist (which he considered difficult to distinguish) and, secondly, a psychoanalyst:

"(...) I have difficulty in drawing such a clear distinction between the two professional identities of psychologist and psychotherapist, although, for a series of reasons of expediency, it has been decided that they must be differentiated. For several years, above all in Italy, the profile of psychotherapist has been identified and specified in an attempt to create an intermediate area between the psychoanalyst and the psychologist (...)"

At the session of 9 June 1988 (see doc. 30) it was decided to create a select committee to examine the three draft bills that had been tabled in this field. Several months later, the select committee drew up a unified text, which was presented to the committee at its session of 27 October of that year.

The Ossicini Law, as originally approved by the Senate, provided in Article 5 (*Prerequisites for the practice of psychotherapy*):

⁶ The preparatory works for Law no. 56 of 1989 may be found at the following address:
http://legislature.camera.it/chiosco.asp?source=/altre_sezionism/10195/10207/10208/documentotesto.asp&content=/_dati/leg10/lavori/schedela/trovaschedacamera.asp?pdl=2405

⁷ The text set out here is a summary given by Counsel Nicla Picchi in his presentation to the Convention on *Psicanalisi laica* [Secular Psychoanalysis] held in Milan on 12 and 13 April 1997.

“1. Without prejudice to the provisions of Article 3 above, psychotherapy may only be performed by a person who has successfully passed the State examination in psychology or medicine and surgery and has been enrolled in one or both of the respective professional registers.

2. A person who does not hold a degree in psychology is not permitted to practise professionally in fields of psychology other than psychotherapy.”

However, this text was not incorporated into the law.

No further reference to psychoanalysis was made in the subsequent discussions (see docs 31 to 33) following the presentation of the unified text or at the final session approving the definitive text, which took place on 18 January 1989, with the sole exception of a statement by the Honourable Mariella Gramaglia who, in proposing a sub-amendment to Article 33 (Special session of the State examination), said the following:

“Since we have only dealt with psychologists, we have set aside the significant problem of the regulation of the practice of the psychology of the unconscious (...).

I believe that if these schools – which have such an important historical tradition and are of such importance for all of us – cannot be covered by the legislation under examination, this will lead to a kind of discrimination against the most authoritative psychoanalytic societies in our country, such as the SPI, the AIPA and the CIPA”

The sub-amendment proposed by the Honourable Gramaglia sought to bring about a situation where *“also graduates in disciplines other than psychology, who have received training from authoritative schools with a tradition of at least ten years”* could be permitted to enrol in the register of psychologists. The speech by the Member of Parliament continued as follows:

“In fact, I consider that those in this position should fall squarely under the legislation, whilst, at current, if the text under examination were to be approved, that possibility would not exist”.

The sub-amendment in question was not approved, based on the following arguments advanced by the Honourable De Lorenzo:

“(...) through the measure under consideration we are seeking to establish a profession based on knowledge resulting from the study of a discipline, as provided for by the provision determining the psychologist's profile. The Honourable Gramaglia refers in her sub-amendment to graduates in disciplines other than psychology: I would find it difficult to accept a person enrolling with the register who was, for example, an engineer, a mathematician or a physicist.”

58. Finally, as proof of the fact that Italian Law no. 56 of 1989 regulates purely activity that is strictly healthcare-related, the wording of the legislation reserves access to psychotherapy only to those who have qualified as a physician and/or a psychologist, after completion of specific training and enrolment in the specific section dedicated to psychotherapists within the register of doctors and surgeons or psychologists.

59. Ultimately, the only distinction drawn by Italian Law no. 56 of 1989 is that between *“doctor-surgeon psychotherapists”* and *“psychologist psychotherapists”*, which fulfils the more than understandable need to reserve the right to prescribe pharmaceuticals to physicians only.

60. However, after the entry into force of Italian Law no. 56 of 1989, as they were able to take advantage of the transitory provisions,⁸ a large number of psychoanalysts applied for and

⁸ The transitory provisions contained in Italian Law no. 56 of 1989

31. Establishment of the register and creation of the regional and provincial councils of the order.

1. *During the initial period of application of this Law, the president of the court of the regional capital, or the capital of the autonomous province, shall within thirty days of publication of the law appoint a commissioner who shall attend to the creation of the professional register of individuals entitled to enrolment in accordance with the following Articles.*

2. *Within three months of the publication of the results of the special session of the State examination for the qualifications specified under Article 33(1), the commissioners shall call elections for the regional or provincial councils of the order, acting in accordance with the provisions laid down in this Law. They shall also appoint a polling station president, a vice-president, two tellers and one secretary, who shall be chosen among officials from the public administration.*

32. Enrolment in the register during the initial period of application of the Law.

1. *Without prejudice to the provisions of letters a), b) and d) of Article 7, enrolment in the register shall be granted upon lodging of an application, which must be filed within sixty days of the appointment of the commissioner pursuant to Article 31:*

a) *by full, extraordinary, associate, temporary or retired professors who teach or have taught psychology disciplines at Italian universities or institutions of particular scientific importance, including internationally, and by tenured researchers and university assistants in psychology disciplines and graduates who hold or have held a tenured position at a public institution in the area of psychology, access to which is currently conditional upon holding a degree in psychology;*

b) *by any person who holds or has held a tenured position at a public institution, the service activities of which relate to psychology and access to which is currently conditional upon holding a degree in psychology, and who have passed a public examination or who have relied on the provisions establishing retrospective eligibility;*

c) *by graduates who have worked as a staff member or consultant for at least seven years on an effective and continuous basis in the area of psychology with public or private entities or institutions;*

d) *by any person who has worked for at least three years in the psychological disciplines, obtaining national or international recognition within the specific field.*

33. Special session of the State examination.

1. *During the initial period of application of the Law, a special session of the State examination based on qualifications will be held, in which the following shall be entitled to participate: a) any person who holds or has held a position at a public institution in the area of psychology, access to which was conditional upon holding a degree; b) any person who has been the holder of a degree in psychology for at least two years, or a graduate holding a university diploma in psychology or one of its branches awarded after a specialisation course with a duration of at least two years, or an advanced studies or qualification course with a duration of at least three years, or who has been the holder for at least two years of an academic qualification in psychology awarded by a university institution that has been recognised by decree of the Minister for Public Education, having obtained the opinion of the National University Council, of particular scientific significance at an international level, even if the holder of such a qualification has not requested a declaration of equivalence with the degree in psychology awarded by an Italian university, and provided that the person can produce documentary evidence of the completion of at least two years of activity comprising the object of the psychology profession; c) a graduate in a discipline other than psychology who has completed at least two years of activity comprising the object of the psychology profession after graduating that are contractually recognised by the university, and a graduate who is able to produce documentary evidence of the practice of such activity on an ongoing basis at entities or institutes subject to control or oversight by the public administration for at least two years after graduation; d) any person who has, following a public competition, been declared fit to hold a position in the area of psychology at a public institution, access to which was conditional upon holding a degree.*

34. Eligibility for the State examination of persons enrolled in a specialisation course.

1. *Notwithstanding the provisions of Article 2(3), any person who upon the entry into force of this Law is enrolled in a specialisation course with a duration of at least three years in psychology or one of its branches, and provided that the person can produce documentary evidence of the completion of at least one year of activity comprising the object of the psychology profession shall be eligible to take the State examination provided for under paragraph 2 of the said Article, upon completion of the specialist diploma (1).*

(1) See also Article 1(4) of Italian Law no. 4 of 14 January 1999.

35. Recognition of activity as a psychotherapist.

obtained full enrolment in the register of psychotherapists. That course of action involved a substantial change in relation to the activity they had previously carried out and was also prompted by the consideration that, in this way, they enabled their patients to receive treatment covered by State health insurance, or in any case to treat the expenses incurred as tax deductible.⁹

61. Specialisation schools in psychoanalytic psychotherapy were thus established to provide training to psychotherapists-psychoanalysts who practised psychoanalysis in the sense understood under the healthcare model.
62. In other words, they carry out their activity in accordance with the healthcare model, and thus no longer perform psychoanalysis but rather psychoanalytic psychotherapy.
63. In this way psychoanalysis, as conceived by its founder Sigmund Freud, has become a minority practice and, as will be seen below (see paragraphs 114-152), since it falls outside the order's rules governing healthcare activities, is no longer adequately protected under the internal system.

b. The training of psychotherapists and psychoanalysts

64. The **training of psychotherapists** was regulated by Decree no. 509 of 11 December 1998, which approved the regulations laying down the rules governing the recognition of institutes accredited to provide specialisation courses in psychotherapy pursuant to Article 17(98) of Law no. 127 of 15 May 1997. The training programme envisages attendance of 400 hours per year, including 200 hours of theory and 200 of practical training. The 200 hours of theory are

1. Notwithstanding the provisions of Article 3, the activity of psychotherapist may be practised by any person who is either enrolled with the order of psychologists or by a physician enrolled with the order of physicians and dental practitioners who graduated prior to the final ordinary or extraordinary degree session of academic year 1992-1993 and who declares, under his own responsibility, that he has acquired specific professional training in psychotherapy, documenting his training experience including details of the institutes, dates and duration, along with his scientific and professional curriculum vitae, which must show the predominant and continuous practice of the profession of psychotherapist (2) (3).

2. It shall be for the orders to establish the validity of the said certification.

3. The provisions of paragraphs 1 and 2 shall be applicable until the end of the fifth year following the entry into force of this Law (4).

(2) Paragraph as amended by Article 1(2) of Italian Law no. 4 of 14 January 1999. See also Article 24-sexies of Italian Decree-Law no. 248 of 31 December 2007, introduced by the respective conversion law.

(3) By judgment no. 412 of 20-27 July 1995 (Official Journal no. 35 of 23 August 1995, special series), the Constitutional Court ruled unfounded questions concerning the constitutionality of Article 35(1) raised with reference to Articles 3, 35 and 32 of the Constitution.

(4) On the extension of the time limit, see Article 1(3) of Italian Law no. 4 of 14 January 1999. See also Article 2(3) of Italian Law no. 401 of 29 December 2000.

36. Financial cover.

1. The financial burden resulting from the implementation of Articles 31, 32 and 33 shall be covered by dedicated expenditure items within the budget of the Ministry of Justice.

⁹ See also the judgment of the Constitutional Court of 1 March 1995 on the tax deductibility of psychoanalytic treatment.

dedicated largely to psycho-diagnosis, psychology, developmental psychology and the model of psychotherapy followed.

65. The training also covers psychoanalytic psychotherapy, envisaging a certain number of hours of "individual psychotherapy", i.e. personal analysis, with the aim of learning something about oneself.
66. On the other hand as regards the **training of psychoanalysts**, reference is made to paragraphs 27-33 above, namely the central element of the psychoanalyst's training is first and foremost personal analysis, which in this case is referred to as "*didactic*". It is conducted for several years with a suitably trained psychoanalyst and enables the future psychoanalyst to gain knowledge of mechanisms by which the unconscious is formed. After a certain number of years of didactic analysis and engagement with the reference analyst, the candidate analyst may start meeting "*persons undergoing analysis*". In this case the candidate must hold sittings referred to as "*supervision*", in order to discuss his experience with those of other psychoanalysts. For it to be adequate, the training must also envisage a period of theoretical instruction: familiarity with psychoanalytic knowledge, as transmitted within the literature and by associations, is of fundamental importance.
67. It should again be underlined that, throughout the history of psychoanalysis it has been the psychoanalytic associations that have guaranteed the transmission of psychoanalysis. The training of psychoanalysts, as described above, occurs within psychoanalysis associations.
68. The analyst performing "*didactic*" analysis is a member of a psychoanalysis association and the analyst with whom "*supervision*" sittings are carried out is a member of a psychoanalysis association; theory is transmitted at meetings of psychoanalysis associations.
69. Analysts are therefore trained within psychoanalytical associations.

c. Legislation applicable to the activity of a psychoanalyst

70. The psychoanalytic profession has always fallen within the class of unregulated intellectual professions and is practised in accordance with the principles laid down by Article 4 of the Constitution¹⁰ and Articles 2229-2238 of the Civil Code.
71. Law no. 4 of 14 January 2013 (hereafter "Law no. 4 of 2013") on professions not subject to organisation, which entered into force on 10 February 2013, was enacted with the aim of regulating the numerous professions which had emerged in Italy with growing intensity over the years.

¹⁰ Article 4 of the Italian Constitution provides:

"The Republic recognises the right of all citizens to work and promotes conditions which render this right effective.

Every citizen has the duty, according to personal potential and individual choice, to perform an activity or a function that contributes to the material or spiritual progress of society."

72. The Law defines in particular the unregulated professions, and provides the necessary indications for the establishment and regulation of the related sectoral associations.
- Article 1 of Law no. 4 of 2013 defines a "*profession not organised into orders or colleges*"¹¹ as an economic activity, whether organised or not, directed at the provision of services or works to third parties, carried on habitually and predominantly through intellectual work, or otherwise with the contribution of such work, excluding those activities reserved by law to persons enrolled in registers or lists pursuant to Article 2229 of the Civil Code, the healthcare professions and artisanal, commercial and public service activities and trades governed by specific legislation.
73. The law introduces the principle of the free practice of professions based on the autonomy, competence and independence of intellectual and technical judgment of the professional.
74. It enables the professional to choose the manner in which his/her profession is to be practised, recognising its practice in individual, associate, corporate or cooperative form or through employment. Professionals may form professional associations governed by private law, which may be established on a voluntary basis without any requirement of exclusive representation, with the aim of enhancing the skills of members, disseminating amongst them the rules of practice and promoting user choice and protection in accordance with the rules on competition.
75. The Movement now wishes to establish a sectoral association in accordance with the provisions of Law no. 4 of 2013, although this option does not at present appear to be feasible as there have already been previous situations in which other professional associations not governed by professional orders, such as the Associazione Psicanalisti Europei – A.P.E. [Association of European Psychoanalysts] and the Associazione Europea di Psicanalisi [European Psychoanalysis Association], have had negative experiences (docs. 35 and 36).

¹¹ Article 1 of Law no. 4 of 2013 - Object and definitions:

"1. The present Law, adopted in implementation of Article 117(3) of the Constitution and in accordance with the principles of European Union law in the area of competition and freedom of movement, governs the professions not organised into orders or colleges.

2. For the purposes of this law, "profession not organised into orders or colleges", hereafter referred to as "profession", means an economic activity, whether organised or not, directed at the provision of services or works to third parties, carried on habitually and predominantly through intellectual work, or otherwise with the contribution of such work, excluding the activities reserved by law to persons enrolled in registers or lists pursuant to Article 2229 of the Civil Code, the healthcare professions and artisanal, commercial and public service activities and trades governed by specific legislation.

3. Any person who practises any of the professions falling under paragraph 2 shall identify his activity, in every document and written contact with clients, by an express reference to this Law, as regards the applicable legislation.

Failure to do so shall constitute an unfair business practice between a professional and a consumer within the meaning of Title III of Part II of the Consumer Code laid down in Legislative Decree no. 206 of 6 September 2005 and shall be sanctioned in accordance with that Code.

4. The practice of the profession shall be free and shall be founded upon autonomy, competence and independence of intellectual and technical judgment, in accordance with the principles of good faith, the legitimate expectations of the public and clients, correctness, the expansion and specialisation of the range of services offered and the responsibility of the professional.

5. The profession shall be practised in individual, associate, corporate or cooperative form or through employment."

76. These associations indeed requested their inclusion in the list provided for under Article 2(7) of Law no. 4 of 2013. However, the Ministry for Economic Development rejected their requests as the Ministry of Health had issued an unfavourable opinion, concluding that the activity of psychoanalysts fell within the ambit of psychotherapy, which is regulated by Law no. 56 of 1989.

IX. The interpretation and evolution of criminal case law concerning the activity of psychoanalysts following the entry into force of Law no. 56 of 1989

77. The Italian criminal courts have been required to deal with the question whether the activity of a psychoanalyst could be classed among those for which a special licence is required and thus whether, where no licence has been obtained, this may constitute commission of the offence provided for under Article 348 of the Criminal Code.¹²

78. This question has been brought before the courts above all as a result of the large number of complaints filed by various orders of psychologists, which took action with the aim of protecting their own members,¹³ arguing that the activity carried out by psychoanalysts constituted unlawful practice of the psychology or psychotherapy profession.

79. For many years, when examining the specific cases brought before them, the national criminal courts, once it had been established that the suspect or defendant had carried on merely the activity of psychoanalysis, without therefore prescribing medicines and without providing clients with behavioural indications, concluded that this type of activity did not fall under those governed by law, and in particular by Law no. 56 of 1989.

80. In this connection, see **judgment no. 148 of 15 January 2001 of the Court of Brescia** (doc. 37), whereby the accused was acquitted of the offence of unlawful practice of the psychology profession. In this case the Court of Brescia found that the accused worked as a psychoanalyst and not as a psychologist. The Court of Brescia observed in particular that the applicable legislation provided for a register of psychologists but not of psychoanalysts. In particular, Law

¹² Article 348 of the Criminal Code: “Any person who practices unlawfully a profession, for which a special State licence is required [2229] (2), shall be punished by a term of imprisonment of up to six months and by a fine of between one hundred and three euros and five hundred and sixteen euros”.

¹³ See for example the articles published at the following addresses:

<http://www.altrapsicologia.it/regioni/piemonte/scusate-lassenza-siamo-stati-occupati/>

<http://www.altrapsicologia.it/regioni/lazio/assistenza-legale-gratuita-alle-vittime-di-abuso-professionale/>

<http://www.altrapsicologia.it/articoli/i-travestimenti-dello-psicologo-abusivo/>

<http://www.altrapsicologia.it/sicilia/sicilia-programma/sicilia-tutela/>

<http://www.altrapsicologia.it/piemonte/piemonte-progetti/piemonte-osservatorio-tutela-e-deontologia-dello-psicologo/>

<http://www.altrapsicologia.it/regioni/lazio/commissione-tutela-psicologo/>

<http://www.altrapsicologia.it/tag/atti-tipici/>

<http://www.altrapsicologia.it/tag/assocounseling/>

<http://www.ipocpress.it/catalogo/libri/la-psicoanalisi-assistita-dal-cavallo/>

no. 56 of 1989 did not make any provision governing the activity of psychoanalysts and such activity could not be identified with that of psychologists.

81. See also the ***nolle prosequi order no. 2273/02 RG by the Judge for Preliminary Investigations at the Court of Pordenone*** (doc. 38) of 12 July 2003, whereby the judge concluded that the activity of the accused, which was limited merely to psychoanalysis, could not be regarded as a form of psychotherapy subject to the regime laid down by Law no. 56 of 1989. The Judge for Preliminary Investigations considered that “*precisely because the professional activities regulated and protected by law (including criminal law, pursuant to Article 348 of the Criminal Code, which is known to be a variably definable criminal law provision) must be expressly indicated by the legislator, in particular in cases involving activities for which discussion concerning their classification and placement is ongoing: in other words, as things stand, the mere activity of psychoanalysis does not fall under those governed by the Ossicini Law and the legislator may at any time adopt at least interpretative legislation, should it wish it to covered by that Law*”.
82. See, consequently, the ***judgment of 31 October 2003 of the Court of Florence*** (doc. 39), whereby the accused were acquitted. In this case the main defendant performed traditional analysis of dreams and there was no indication that he had made diagnoses or prescribed therapies or stipulated forms of behaviour. The Court of Florence endorsed the view that Law no. 56 of 1989 was not applicable to the activity of traditional psychoanalysis, which thus remained unregulated and could lawfully be carried out also by persons not enrolled in the register of psychologists or who did not hold a degree in medicine or psychology.
83. See also ***judgment no. 86/05 of 23 March 2005 of the Court of Parma*** (doc. 40), whereby the accused was acquitted on the ground that the act in question did not constitute a criminal offence. In this case, the Court found that the accused had not graduated in medicine or psychology, was not enrolled with any order and declared that he was a psychoanalyst. It was also found that the accused limited himself to listening, without suggesting behaviour or prescribing pharmaceuticals and without ever establishing any activity constituting psychotherapy. The Court also found that “*psychology*”, “*psychotherapy*” and “*psychoanalysis*” were clearly different and distinct activities, highlighting their different characteristics. It thus concluded that the accused had carried on the activity of “*psychoanalyst*”, having limited himself only to listening to the persons undergoing analysis. Furthermore, the Court held that Law no. 56 of 1989 was not applicable to psychoanalysts as it regulated the professions of “*psychologist*” and “*psychotherapist*” and could not be applied by analogy or broadly. Psychoanalysis should thus be regarded as a “*free and unregulated profession*”.
84. See also ***judgment no. 1616/08 of 26 November 2008 of the Court of Ravenna*** (doc. 41), where the accused, had been charged with the unlawful provision of psychology and psychotherapy services, although she did not hold any professional qualification, consisting in

holding therapy sittings for patients suffering from psychological disorders, adopting psychoanalytic and psychotherapeutic techniques notwithstanding that she was not entitled to practise the profession of psychologist or psychotherapist.

The Court of Ravenna held that the accused had performed the activity of a psychoanalyst and not of a psychologist or psychotherapist. In particular, she had simply conducted discussions in the psychoanalytic-existential area, which was not an exclusive prerogative of any regulated profession, and which could thus be conducted freely. The Court of Ravenna further held that *“the objective of the psychoanalysis or analysis is not to diagnose an illness or find a cure: the analyst's role does not include the prescription of behaviour for the patient within the multiple situations with which he may be confronted. The analyst specifically limits himself to listening to the patient without intervening, to helping him within a deeper process of gaining awareness of himself, and this type of service lacks any aspect involving psychological assessment that is typical of the regulated activities of the psychologist and psychotherapist, whose objective is by contrast curative, namely the elimination of the psychological disorder affecting the patient, which is ascertained through a precise diagnosis and embarked upon with the aim of recovery, involving the prescription of behaviour by the professional (and, if the psychotherapist is also a physician, also of supporting pharmacological therapy).”* According to the Court, all of these elements were absent from the professional activity carried on by the accused. The Court went on to observe that *“the offence provided for under Article 348 of the Criminal Code sanctions the conduct of a person who unlawfully practises a profession for which a special State accreditation is required”* and that this constituted *“a variably definable criminal law provision”*. In other words, that Article presupposed the existence of other provisions to supplement the criminal law principle, which determined the applicable objective and subjective conditions. Where such conditions did not obtain, it was not permitted to practise particular professions, with the consequence that their violation resulted in a violation of the criminal law provision. In the specific case under consideration, referring to Articles 1, 2 and 3 of Law no. 56 of 1989, the Court held that the impugned conduct could not be considered significant from a criminal law standpoint.

85. See also ***judgment no. 1413/09 of 7 May 2009 of the Bologna Court of Appeal*** (doc. 42), which upheld the trial court's judgment acquitting the accused of the offence of unlawful practice of the psychology profession. In that case the accused had carried on solely an activity which involved listening to the persons undergoing analysis and for that reason, in consideration of the fact that Law no. 56 of 1989 regulated the profession of psychologist and psychotherapist, but did not extend to psychoanalysis, he was acquitted by the Bologna Court of Appeal. In particular, the Court of Appeal considered it clear that analysis might not necessarily be related to any illness or to serious psychological disorders of the person undergoing analysis.

86. This position changed as a result of **judgment no. 22268/2008 of 24 April 2008 of the Court of Cassation** (doc. 43). The Court of Cassation examined a case in which the accused had been committed for trial for the offences of aggravated theft and for having unlawfully practised the psychotherapy profession, and in addition for having engaged in sexual relations with four girls who had approached him in order to resolve existential problems in the conviction that he was a psychotherapist. The accused was convicted at first instance of the offence of theft, whilst he was acquitted for the offence of the unlawful practice of the profession. The offence of sexual violence was procedurally barred due to the fact that no complaint had been lodged. At second instance, the Florence Court of Appeal found the accused guilty of the unlawful practice of the profession and sexual violence. In particular, the Court of Cassation asserted the principle that *“As far as the offence provided for under Article 348 of the Criminal Code is concerned, it is to be noted that practising the activity of a psychotherapist is conditional on specific professional training of a duration of at least four years and enrolment in the register of psychologists or physicians (within which a special section is dedicated to psychotherapists); psychoanalysis is a form of psychotherapy which is distinguished from other types by the methods used to eliminate mental, emotional and behavioural disorders”*. In addition, *“... the activity of a psychoanalyst cannot be classified among the unregulated professions provided for under Article 2231 of the Civil Code, but requires special State accreditation”*.
87. In this way the Court of Cassation ruled that psychoanalysis was equivalent to psychotherapy and thus brought its practice, which had previously been unregulated, within the scope of Article 3 of Law no. 56 of 1989.
88. The lower courts followed the new principle established by the Court of Cassation, which for the first time considered psychoanalysis to constitute a form of psychotherapy, thereby substituting for the profile of the psychoanalyst not enrolled in the register of psychotherapists that of the psychoanalyst qualified as a psychotherapist. Consequently, that profession could not be considered unregulated, as provided for under Article 2231 of the Civil Code, but required State licensing.
89. Indeed, by **judgment no. 11804/10 of 12 May 2010, the Bologna Court of Appeal** (doc. 44), referring to judgment no. 22268/2008 of 24 April 2008 of the Court of Cassation, notwithstanding that the case involved an entirely different offence, applied the new principle laid down and held that the activity carried on by the accused constituted psychotherapy, had been carried on without the necessary enrolment in the relevant register, and was thus punishable under criminal law. Consequently, the Bologna Court of Appeal ordered the accused to pay a fine of 340 euros, in addition to the procedural costs at both instances, along with the payment of damages and legal costs to the civil claimant.

90. Subsequently, in **judgment no. 14408 of 23 March 2011** (doc. 45), whilst annulling the contested judgment on the ground that it was time-barred, **the Court of Cassation**, referring to judgment no. 22268 of 24 April 2008, reiterated the legal principle whereby “*for the purposes of the offence provided for under Article 348 of the Criminal Code, the conduct of activity as a psychotherapist is subject to specific professional training of a duration of at least four years and to enrolment in the register of psychologists or physicians*”. In addition, the Court of Cassation held that the activity carried on by the accused was to be classified as psychotherapy, which could be distinguished from the rest on account of the methods used to eliminate mental, emotional and behavioural disorders. This activity could not fall among those provided for under Article 2231 of the Civil Code, as it by contrast required specific State accreditation.
91. The Court of Cassation again held that the method of “*discussion*” used during the course of the sittings should be regarded as a genuine form of therapy, typical of the medical profession. Accordingly, that method constituted an activity aimed at healing a genuine illness, which was the preserve of the medical profession, and the conditions establishing entitlement to carry on such an activity were not met. The court consequently held that the offence provided for under Article 348 of the Criminal Code had been committed.
92. In particular, by that judgment the Court of Cassation held that “*(...) psychoanalysis, such as that corresponding to the conduct of the appellant, is nonetheless a form of psychotherapy which is distinguished from other types by the methods used in order to eliminate mental, emotional and behavioural disorders. It follows that the argument advanced by counsel for the appellant cannot be accepted, since the activity of a psychoanalyst cannot be classified among the unregulated professions provided for under Article 2231 of the Civil Code, but requires special State accreditation*”.
93. This did not remain an isolated finding, but was subsequently reiterated and applied by the lower courts.
94. By a **judgment of 11 April 2012** (doc. 46), **the Court of Turin** held with reference to the new approach that, notwithstanding that she had carried out psychoanalysis, the accused had performed psychotherapy. The proceedings had been instigated following a complaint by the Council of the Order of Psychologists alleging that the accused had “*practised psychoanalysis privately in her own home (...), as a psychotherapist (...) which activity is reserved for graduates in Psychology and Medicine and Surgery who are enrolled in the respective registers*”. The Court first held that the manner in which the sittings were conducted could be classified as a discussion between the analyst and the person undergoing analysis, and thus that they could be classified under the doctrines of psychoanalysis. That circumstance had been confirmed both by the technical expert and by the assertions made by the person undergoing analysis. Consequently, the Court reiterated that the relationship that had been

established between the parties had involved a process of psychoanalysis. However, the Court held that the activity of psychoanalyst should be regarded as a “*protected*” activity and that its practice should require enrolment in a professional register establishing entitlement to work as a psychotherapist. In the specific case under consideration, the provision supplementing the variably definable criminal law provision laid down in Article 348 of the Criminal Code was found to be Article 3 of Law no. 3 of 1989.

95. The Court referred to the parliamentary works when assessing whether psychoanalysis should constitute a form of psychotherapy and concluded that it did not appear unreasonable to assert that the legislature had not considered psychoanalysis to be a particular form of psychotherapy. The Court also took into account the scientific debate concerning psychoanalysis and whether or not it could be classified as a form of psychotherapy. Finally, it referred to the precedent established by the Court of Cassation in judgment no. 14408 of 23 March 2011 (see doc. 45), which recognised that psychoanalysis constituted a form of psychotherapy; as well as the favourable case law cited by the defendant – namely judgments no. 148 of 19 January 2001 of the Court of Brescia, no. 1616 of 26 November 2008 of the Court of Ravenna, no. 86 of 22 April 2005 of the Court of Parma and no. 4798 of 7 December 2003 of the Court of Florence – which had held that psychoanalysis did not constitute a form of psychotherapy due to its non-curative aim.
96. The Court thus held that the wording of Law no. 56 of 1989 had incorporated psychoanalysis into the concept of psychotherapy and that the arrangements governing the training of psychoanalysts should be treated within a strictly political context only.
97. It thus found that the accused had indeed committed the offences alleged, as she had provided not an informational-cultural service but genuine therapeutic treatment, basing its conviction on the fact that the victim had asked for the “*discussions*” to be classified as medical services at the time the invoice was issued, since she had not previously been informed of the fact that she was receiving a merely informational-cultural service. The Court also deemed it relevant that the victim was convinced that she had been undergoing psychotherapy, due to the long duration of the professional relationship in place and the considerable price paid.

POINTS OF LAW

I. Violation of Article 1(2) of the European Social Charter (revised)

98. Invoking Article 1(2) of the revised Social Charter, the complainant Movement contends that the Italian State has disregarded its commitment to ensure the effective exercise of the right to work by psychoanalysts not enrolled in the register of psychotherapists and who do not

practise a healthcare activity, on the ground that it fails to afford effective protection to them, *de facto* preventing them from earning a living through an occupation freely entered upon.

Article 1(2) of the revised Social Charter provides as follows:

“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 Parties undertake:

(...)

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

(...)”

1. The admissibility conditions to be met under the Protocol and the Rules of the Committee

99. The complainant Movement considers that the complaint filed is admissible, as all of the conditions required under the Protocol and the Rules of the Committee are met.

100. First and foremost, according to Article 4 of the Protocol (CETS no. 158), in the version ratified by Italy on 3 November 1997 which entered into force on 1 July 1998, the complaint was filed in writing and concerns Article 1(2) of the Social Charter, a provision which has been accepted by Italy.

101. Secondly, the Movement is an association which may be considered in any case to be equivalent to a national trade union which is representative of the category of psychoanalysts, in accordance with Article 1§c of the Protocol.

102. In this regard, the Movement wishes to make the preliminary point that Italian law recognises freedom of association (Article 16 of the Constitution) and does not prescribe any organisational model for trade unions and unrecognised associations regulated by Articles 36 to 38 of the Civil Code.

103. As noted above (see paragraph 7), the purpose of the Movement, as stated in its Articles of Association consists principally in the aim *“... to promote, disseminate and defend the practice of psychoanalysis as a speech-based practice, ongoing intellectual research and practical experience, using the instruments that may be deemed appropriate, such as for example the promotion of conventions, seminars and conferences etc., awareness-raising initiatives within political and judicial circles, media and cultural campaigns, initiatives to secure legal protection, support and assistance including in relation to any proceedings to uphold the freedom to practise psychoanalysis and the freedom of the psychoanalyst. The association also aims to combat any attempt at the medicalisation and sanitarianisation of mental life and of psychoanalysis.”*

104. The association was duly established in 2012 and since then has been active in protecting the category it represents, both through the organisation of and participation in conventions

and also through the organisation of numerous assemblies of members and board meetings (see paragraphs 5-12 above, which are referred to in full here).

105. In addition, the Movement is representative of the category since it has assumed the role of promoter of a Manifesto. This declaration has been endorsed by around thirty associations and 1,505 supporters (see paragraph 12 above).
106. The Movement now wishes to establish a sectoral association in accordance with the provisions of Law no. 4 of 2013, although this option does not at present appear feasible, as there have already been previous situations in which other professional associations not corresponding to professional orders and operating within the same area have had negative experiences (docs. 35 and 36). As noted above, the Associazione Psicanalisti Europei – A.P.E. [Association of European Psychoanalysts] and the Associazione Europea di Psicanalisi [European Psychoanalysis Association] requested inclusion in the list provided for under Article 2(7) of Law no. 4 of 2013. However, the Ministry for Economic Development rejected their requests as the Ministry of Health had issued an unfavourable opinion, concluding that the activity of psychoanalyst fell within the ambit of psychotherapy, which is regulated by Law no. 56 of 1989 (see paragraphs 75 and 76 above).
107. Finally, the complainant Movement is also representative of its own category with regard to professional training. The Movement in fact carries out regular internal activities, providing the training necessary for the conduct of psychoanalysis (see paragraph 10 above). The training activity is in fact a decisive element, as it is a fundamental prerequisite for becoming a psychoanalyst (see paragraphs 27-33 above).
108. All of the above activities may indeed confer on the complainant Movement the prerogatives of representation and trade union activity. It is therefore a representative association for the purposes of Article 16 of the Constitution, which provides that citizens shall be entitled to establish associations freely, without any requirement for authorisation, for all purposes not prohibited by criminal law. This also applies to all the trade unions in Italy, such as for example the CGIL [Italian General Confederation of Labour], CISL [Italian Confederation of Workers' Unions], UIL [Italian Labour Union] and UGL [General Labour Union] which, like the complainant Movement, are unrecognised associations.
109. Finally, the fact that there is no contractual relationship between the Movement and its members cannot be regarded as precluding recognition of its entitlement to represent psychoanalysts before the Committee (see, *mutatis mutandis*, *Associazione Nazionale Giudici di Pace v. Italy*, no. 102/2014, decision on admissibility of 2 December 2014, § 9; and *Associazione Nazionale sindacale “La Voce dei Giusti” v. Italy*, no. 105/2014, decision on admissibility of 17 March 2015, § 10).
110. The complainant Movement also considers that it is representative of the category.

111. In this connection, it points out that, according to the Committee, the concept of representativeness is an autonomous concept, as compared to the notion applied at national level (see *Confédération française de l'Encadrement CFE-CGC* v. *France*, no. 9/2000, decision on admissibility of 6 November 2000, § 6).
112. In this regard, the Movement underlines that its objective is the interests of psychoanalysts, that it pursues this purpose in an active manner and by various means, and that it is indisputably independent from the public authorities (see *Associazione Nazionale sindacale "La Voce dei Giusti"* v. *Italy*, cited above, § 14 and the case law referred to therein). All of the activities to which the Movement has dedicated itself since it was established must be considered in this context.
113. The Movement therefore asks the Committee to declare the complaint admissible, as the prerequisites are met, and asks, in any case, that the criteria of representativeness, as set out, should not prejudice the effectiveness of the right of all trade unions to file a complaint (see *Associazione Nazionale sindacale "La Voce dei Giusti" v. Italy*, cited above, § 15 and the case law referred to therein).

2. Merits

114. The complainant Movement contends that the Italian State has disregarded its commitment consisting in the guarantee of the effective exercise of the right to work of psychoanalysts in that it fails to provide effective protection to them, *de facto* preventing them from earning a living through an occupation freely entered upon. The Italian State has placed this category of professionals in a situation that is liable to result in discrimination against them compared to other categories in the area of the mental sciences.
115. Before moving on to the examination of the present case, the complainant Movement recalls first and foremost the general principles of the Committee's case law, namely the principle of the efficacy of the rights guaranteed by the Charter. According to the Committee "*the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact*" (see *International Commission of Jurists v. Portugal*, complaint no. 1/1998, § 32). Consequently, again according to the Committee, the due application of Article 1(2) may only be achieved through legislation that is effectively applied in practice.
116. The complainant Movement goes on to recall that "*the States parties [are required] to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter*" (see *Autism Europe v. France*, complaint no. 13/2002, decision on the merits of 4 November 2003, § 53).

117. The complainant Movement also recalls that, for the purpose of ensuring the effective exercise of the right to work, the States parties have undertaken to provide effective protection to the right of workers to earn a living through an occupation freely entered upon. In particular, Article 1(2) of the Charter covers three aspects, namely 1) the prohibition of any form of discrimination in employment; 2) the prohibition of forced or compulsory labour and; 3) the prohibition of any other practice that may have a negative effect on the right to earn a living through an occupation freely entered upon (see Conclusions II, Statement of Interpretation on Article 1(2), p. 4; and Conclusions XVI-1, Statement of Interpretation on Article 1(2), p. 9)
118. The Movement now asks that, in the light of the principles referred to above, the Committee examine the present case and assess whether the situation brought to its attention is compliant with the Charter, and in particular whether the legal framework enables the effective respect of the right invoked, specifying whether it is the legislative provisions that are not correct or whether, notwithstanding that they are suitable for guaranteeing the right invoked, they are not being applied correctly or comprehensively.
119. Moving on to the examination of the merits, the complainant Movement recalls that psychoanalysis has always been understood and conceived as having no relationship with medicine as it focuses on learning by the individual who engages in it of the difficult art of “*knowing how to live*”. Psychoanalysis uses discussion and conversation in a liberal sense, and may be classed as a humanistic science. It seeks to grasp the importance of the unconscious in human existence.
120. As noted above, with the psychoanalyst, the person undergoing analysis finds a very special space for self-expression: he analyses his experiences, opinions, lapsus, dreams, freely expresses his thoughts (“free association”) and everything that comes to mind, and questions his choices; all of this is done with the aim of appreciating the uniqueness of the formations of the unconscious in relation to his case, which is unique and irreproducible. Psychoanalytic work turns on the interpretation of the unconscious experiences of the person undergoing analysis, who is the protagonist of his own psychoanalytic journey. Finally, it should be recalled that “*Analysis may be defined as a theory of the unconscious aimed at investigating those instances of mental elaboration that lie outside the conscious realm through analysis of free association, intentions not acted upon and dreams.*”. Moreover, “*This discipline does not involve any strictly therapeutic intent: there is no commanding or influencing by the professional, nor any diagnosis, and even less any suggestion of behavioural models. Indeed, the typical scenario, still applicable today, of psychoanalytic care involves the patient lying down on a couch with the analyst sitting behind his shoulders listening in silence, adopting a stance of abstinence (not gratifying impulses and desires) and neutrality (avoiding making any suggestions or passing judgment). That strictly curative intent, which is typical of all therapy, is entirely lacking.*” (see paragraphs 14-26 above).

121. As already mentioned, psychoanalysis and the conduct of psychoanalytic activity are clearly distinct from psychotherapy as they are detached from the medical-healthcare paradigm centred on the triad of *diagnosis-prognosis-therapy*. In other words, such activity does not constitute healthcare (see paragraphs 14-26, 34-44 and 45-48 above).
122. Conversely, psychotherapies are distinct from psychoanalysis as they involve a patient and not a person undergoing analysis; discussion with the patient has the goal of identifying the type of disorder, which is classified under one of the diagnostic categories established by the theories of psychopathology; they assess the time-scale and ways of achieving a cure and implement the actual therapy, which may so to speak be “administered” directly by the psychotherapist in a unidirectional manner from professional to patient. In particular, the discussion is used for a “healthcare” purpose as if it were a drug.
123. This distinction has been incorporated as a guiding principle also into Italian law, at least on a legislative level.
124. As mentioned above, upon the entry into force of Law no. 56 of 1989, in regulating the practice of the psychological profession, parliament intended to provide specific indications regarding the practice of psychotherapy through the creation of orders and the respective registers (see paragraphs 49-63 above).
125. Indeed, the legislation under consideration reserved access to psychotherapy solely to those holding a qualification as a doctor or surgeon and/or psychologist who have completed specific training and have registered within the section dedicated to psychotherapists of the register of physicians or psychologists. The only distinction drawn has been that between “*doctor-surgeon psychotherapists*” and “*psychologist psychotherapists*”, which fulfils the more than understandable need to reserve the right to prescribe pharmaceuticals to physicians only.
126. The preparatory works for Law no. 56 of 1989 confirm that parliament intended to deal exclusively with the practice of psychotherapy, while wishing to exclude psychoanalysis (see paragraphs 56-58 above).
127. Notwithstanding the existence of this legislative framework, at least two factors are behind the confusion and uncertainty objected to today; they are linked firstly to the subsequent development of the case law and secondly to the shift in the practice of psychoanalysis towards psychoanalytic psychotherapy by most psychoanalysts, who have in the meantime enrolled in the registers of psychologists or physicians.
128. In the first place, following various complaints originating largely from the different orders of psychologists (see paragraphs 78 and 94 above), the national courts have assessed whether the psychoanalysts' activity could constitute commission of the offence of unlawful exercise of the psychotherapy profession.
129. In this connection, over the course of the last decade, the national courts have developed the theory that psychoanalysis should be regarded as a form of psychotherapy and thus that

enrolment in the register of psychologists or physicians should be necessary in order for it to be practised (see paragraphs 86-97 above).

130. As already mentioned, to begin with, when examining the specific cases brought before them, the national courts, once they had established that the suspect or defendant carried on merely the activity of psychoanalysis, without therefore prescribing medicines and without providing clients with behavioural indications, concluded that this type of activity did not come among those governed by the law, and in particular by Law no. 56 of 1989.
131. The case law from that period had also recognised that Law no. 56 of 1989 could not be applied by analogy or broadly and that psychoanalysis should be regarded as a “free unregulated profession”.
132. In this connection, see the cases ruled upon by judgment no. 148 of 15 January 2001 of the Court of Brescia, *nolle prosequi* order no. 2273/02 RG of the Judge for Preliminary Investigations at the Court of Pordenone, the judgment of the Court of Florence of 31 October 2003, judgment no. 1616/08 of 26 November 2008 of the Court of Ravenna and finally judgment no. 1413/09 of 7 May 2009 of the Bologna Court of Appeal (see paragraphs 80-85 above).
133. This position subsequently changed, resulting *de facto* in an impairment of the right to work of psychoanalysts in an entirely disproportionate and arbitrary manner.
134. Indeed, by **judgment no. 5568/2008 of 24 April 2008**, the Court of Cassation held that “As far as the offence provided for under Article 348 of the Criminal Code is concerned, it is to be noted that practising the activity of a psychotherapist is conditional on specific professional training of a duration of at least four years and enrolment in the register of psychologists or physicians (within which a special section is dedicated to psychotherapists); **psychoanalysis is a form of psychotherapy** which is distinguished from other types by the methods used to eliminate mental, emotional and behavioural disorders”. In addition, “... the activity of a psychoanalyst cannot be classified among the unregulated professions provided for under Article 2231 of the Civil Code, but requires special State accreditation”.
135. As already mentioned, this new interpretation had a negative effect on the cases subsequently decided. See for example judgment no. 11804/10 of 12 May 2010 of the Bologna Court of Appeal, judgment no. 14408 of 23 March 2011 of the Court of Cassation and the judgment of 11 April 2012 of the Court of Turin (see paragraphs 89, 90-93, 94-97 above).
136. As a result of this change in the case law, in order to be able to practise their profession, psychoanalysts are in a situation of constant uncertainty, as their activity has been considered to be equivalent to psychotherapy under a case-law interpretation. They therefore run a serious risk of criminal prosecution when practising their profession.
137. The complainant Movement points out that, based on the elements of the offence provided for under Article 348 of the Criminal Code – a variably definable criminal law provision, which

thus entails reference to another source in order to determine the specific nature of the offence – the national courts have referred to Article 3 of Law no. 56 of 1989 so as to be able to establish the type of offence at issue. However, when interpreting that provision, they have departed in an entirely unpredictable and unforeseen manner from the intentions of the legislators – who had ruled out that psychoanalysis should be regulated by Law no. 56 of 1989 – reaching the conclusion that psychoanalysis is psychotherapy (in this regard see the preparatory works).

138. The national courts have thus applied expansively and by analogy a law which, by its nature, cannot regulate a non-healthcare profession such as psychoanalysis, under examination in this case.
139. This circumstance has had and continues to have a direct impact on the right to work of psychoanalysts and in addition has violated and continues to violate the principle of legal certainty, as it has only been through the subsequent judicial interpretation of Law no. 56 of 1989 that it has been possible to declare psychoanalysis to be equivalent to psychotherapy. This has violated and continues to violate the principle of legal certainty and the principle of the rule of law.
140. In this connection, the complainant Movement refers to the principles laid down by the European Court of Human Rights (hereafter “the Court”) whereby legal certainty is implicit in all the articles of the European Convention on Human Rights (hereafter “the Convention”) and constitutes one of the basic elements of the rule of law. The principle of legal certainty thus also applies in relation to the fairness of criminal proceedings, in particular where there are contradictions within the case law (see with regard to this particular aspect *Beian v. Romania*, (n. 1) judgment of 6 December 2007, § 39).
141. The complainant Movement goes on to recall that the specific content of the Convention law requires that all legal provisions should not only be accessible but also be foreseeable. In this respect the complainant Movement refers to the principles laid down by the Court, according to which a law may only be deemed to be foreseeable if it is formulated with sufficient precision to enable the citizen to regulate his conduct, namely to be able to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see *Sunday Times v. United Kingdom*, judgment of 26 April 1979, § 49).
142. Both of the above principles may be applied also in relation to the interpretation of the Charter, given that this treaty pursues the objective of providing effective protection to fundamental rights.
143. As already mentioned, in this case Article 348 of the Criminal Code has been interpreted, and only since 2008, in such a manner as to render reprehensible a gainful activity that had been commonly and openly practised prior to that time, namely psychoanalysis.

144. In judgment no. 2268/2008 of 24 April 2008, the Court of Cassation held for the first time that psychoanalysis was equivalent to psychotherapy and from that moment the right of the psychoanalyst to practise his profession was seriously undermined.
145. The second circumstance that resulted in further confusion and uncertainty is the fact that, over a period of around fifteen years after the entry into force of Law no. 56 of 1989, driven also by the difficulty in classifying their profession in the clearest manner possible and in accordance with the provisions of the applicable law, many psychoanalysts decided to enrol in the registers of the healthcare professions, acquiring the specialist qualification of psychoanalytic psychotherapist, thereby framing their psychoanalytic activity in healthcare-related terms and no longer in cultural and humanistic terms.
146. The uncertainty has also been fuelled by the Ministry of Economic Development's recent rejection of the request by two psychoanalytic associations due to the unfavourable opinion of the Ministry of Health, concluding that the activity of psychoanalysts fell within the ambit of psychotherapy, which is regulated by Law no. 56 of 1989.
147. All of these circumstances must be construed as confirmation that genuine pressure is currently being exerted against psychoanalysts in order to induce them to make major changes to their work, by classifying it as healthcare and thus requiring them to enrol in specialist registers, which renders it *de facto* impossible for them to practise their profession and to earn a living from it.
148. Article 1(2) of the Charter may be considered to have been violated also in this respect.
149. The complainant Movement underlines that all of its members are fully entitled to continue to practise their free profession of psychoanalyst, an activity which enables their valuable cultural and spiritual contribution to society, without being required to make any substantial change to their work, as they have no intention to transform the contents of their work into "healthcare".
150. Moreover, the Movement considers that there may be aspects of genuine discrimination in a work context, to the detriment of the category which it represents.
151. Indeed, through a stringent and systematic campaign, which has led to a judicial interpretation that considers psychoanalysis to be equivalent to psychotherapy, psychologists have been able to sideline psychoanalysts in a field where it is increasingly difficult to work and where earning a living through work freely chosen is becoming increasingly uncertain and risky.
152. Psychoanalysts have every entitlement to exist and to work, given that their professionalism has always been recognised and is without doubt comparable to that of other professionals practising in the mental sciences, albeit according to a learning and cultural approach that is completely different to their own since, by virtue of a different choice in terms of training, the other professionals (psychologists and physicians) have decided to operate within the area of

healthcare (see *mutatis mutandis*, *National Union of the Tourism Professions v. France*, complaint no. 6/1999, decision on the merits of 10 October 2000, §§ 24-48).

CONCLUSIONS

153. In the light of the considerations set out in this complaint, and reserving the right to file supplementary written observations, the complainant Movement requests the Committee to:

- Find a violation of Article 1(2) of the Charter, or of any other provision that may be considered to apply to this case;
- Request the Italian State, providing any indications that may be appropriate, to adopt all measures suitable for putting an end to the situation of uncertainty faced by psychoanalysts not enrolled in the register of psychotherapists, who accordingly do not engage in a healthcare activity, so as to enable them to earn a living through an occupation freely entered upon;
- Request, *inter alia*, the Italian State to take steps to ensure that the inclusion of the complainant association within the list of professions not subject to a requirement of inclusion in a professional register as provided for under Italian Law no. 4 of 2013 is effectively and specifically possible.

USE OF THE ITALIAN LANGUAGE

154. The complainant Movement requests that it be able to use the Italian language in any submission relating to these proceedings.

CONTACT DETAILS FOR COMMUNICATIONS RELATING TO THIS COMPLAINT

155. For the purposes of this procedure, the complainant Movement asks that it receive all communications at its chosen service address at Via Calatafimi 5/a, Verona, c/o the law firm of Counsel Antonella MASCIA of the Strasbourg and Verona bars, or at the following email address: antonellamascia@ascarisegala.com, and alternatively at the registered office of the Movement at Via Col di Lana 24, Ravenna.

ANNEXES

1. Copy of the memorandum of association of the *Movimento per la libertà della psicanalisi – associazione culturale* dated 17 June 2012 and corresponding articles of association;
2. Copy of the certificate allocating an Italian tax reference to the Movement dated 4 October 2012;
3. Copy of the webpage stating that the Movement is registered with CoLAP;
4. Copy of the CoLAP flier concerning the event held on 13 November 2015;
5. Copy of the CoLAP press release of 13 November 2015;

6. Copy of the document concerning the study day held on 17 February 2013;
7. Copy of the minutes containing the speech by the President of the Movement at the event held on 17 March 2013;
8. Copy of the flier concerning the event held on 18 and 19 May 2013;
9. Copy of the acts of the seminar held on 18 and 19 May 2013: "*The training of psychoanalysts. Devenir psychanalyste... et le rester*" [Practical training for psychoanalysts, becoming a psychoanalyst ... and remaining one], edited by Alessandra Guerra Edizioni ETS;
10. Copy of the minutes containing the speech by the President of the Movement at the event held on 31 May 2013;
11. Copy of the flier relating to the presentation in Venice on 30 October 2013 of the book entitled "*Un bambino viene agitato*" ["A child is agitated"] (ETS);
12. Copy of the flier relating to the presentation in Udine on 30 October 2013 of the book "*Un bambino viene agitato*" ["A child is agitated"] (ETS);
13. Copy of the Lunipsi brochure in Italy, of which the Movement is a member (see the following address: www.lunipsi.com);
14. Copy of the notice relating to the event held on 25 January 2014, organised by Lunipsi, at which the book "*Un bambino viene agitato*" ["A child is agitated"] (ETS) was presented;
15. Copy of the flier relating to the meeting organised by the association *Dimension de la psychanalyse* in Paris on 6 April 2014;
16. Copy of the flier concerning the event held in Rome on 16/18 May 2014;
17. Copy of the flier relating to the presentation in Trieste on 6 June 2014 of the book "*Un bambino viene agitato*" ["A child is agitated"] (ETS);
18. Copy of the minutes containing the speech by the President of the Movement at the event held on 3 October 2014;
19. Copy of the flier concerning the presentation in Turin on 4 October 2014 of the book by Stefania Guido entitled "*Il primo scibboleth della psicoanalisi*" ["The first Shibboleth of psychoanalysis"];
20. Copy of the flier for participation at the event held in Florence on 1 October 2014 by the association *Psicanalisi Critica*;
21. Copy of the flier concerning the event held on 23 October 2014;
22. Copy of the flier concerning the event held in Paris on 17 and 18 January 2015;
23. Copy of the flier concerning the event held in Paris on 28 March 2015;
24. Copy of the declaration "*Manifesto per la difesa della psicanalisi*" ["*Manifesto for the defence of psychoanalysis*"], in the original version in Italian along with translations into French, English, German, Spanish and Portuguese;
25. Copy of the list of the 30 associations and 1,505 supporters who signed the declaration "*Manifesto per la difesa della psicanalisi*" ["*Manifesto for the defence of psychoanalysis*"];

26. Copy of the record of the session of the 12th Committee of 12 May 1988;
27. Copy of the record of the session of the 12th Committee of 19 May 1988;
28. Copy of the record of the session of the 12th Committee of 1 June 1988;
29. Copy of the record of the session of the 12th Committee of 8 June 1988;
30. Copy of the record of the session of the 12th Committee of 9 June 1988;
31. Copy of the record of the session of the 12th Committee of 27 October 1988;
32. Copy of the record of the session of the 12th Committee of 11 January 1989;
33. Copy of the record of the session of the 12th Committee of 18 January 1989;
34. Text of the presentation given by Counsel Nicla Picchi to the Convention on *Psicanalisi laica* [Secular Psychoanalysis] held in Milan on 12 and 13 April 1997;
35. Copy of the communication from the Italian Ministry for Economic Development to the Associazione Psicanalisti Europei – A.P.E. [Association of European Psychoanalysts] dated 23 September 2013 including enclosure;
36. Copy of the communication from the Italian Ministry for Economic Development to the Associazione Europea degli Psicanalisti [European Association of Psychoanalysts] dated 3 October 2013;
37. Copy of judgment no. 148 of the Court of Brescia of 15 January 2001;
38. Copy of *nolle prosequi* order no. 2273/02 RG issued by the Judge for Preliminary Investigations at the Court of Pordenone;
39. Copy of the judgment of the Court of Florence of 31 October 2003;
40. Copy of judgment no. 86/05 of the Court of Parma of 23 March 2005;
41. Copy of judgment no. 1616/08 of the Court of Ravenna of 26 November 2008;
42. Copy of judgment no. 1413/09 of the Bologna Court of Appeal of 7 May 2009;
43. Copy of judgment no. 22268/2008 of the Court of Cassation of 24 April 2008;
44. Copy of judgment no. 11804/10 of the Bologna Court of Appeal of 12 May 2010;
45. Copy of judgment no. 14408 of the Court of Cassation of 23 March 2011;
46. Copy of the judgment of the Court of Turin of 11 April 2012;
47. Copy of the identity card of the President of the Movement, Ms Alessandra Guerra.
Verona, 25 May 2016

Ms Alessandra Guerra
President of the Movimento per la Libertà della Psicanalisi – Associazione culturale