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

9 August 2013

**Case Document No. 1**

***Associazione Nazionale Giudici di Pace v. Italy***  
Complaint No.102/2013

**COMPLAINT**

**Registered at the Secretariat on 2 August 2013**



ASSOCIAZIONE NAZIONALE GIUDICI DI PACE  
www.angdp.it

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX  
COMITATO EUROPEO DEI DIRITTI SOCIALI**

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

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

**COLLECTIVE COMPLAINT  
RECLAMO**

**Associazione Nazionale Giudici di Pace**  
(Via Teulada n. 40 – 00196 – Roma)

**Service address for the purposes of this complaint: Via Valadier n. 43, Rome, c/o  
the office of Avvocato Giovanni Romano**

**v.**

**Italy**

a) **Introduction**

With this complaint, the Associazione Nazionale dei Giudici di Pace (for the purposes of this complaint using as its address Via Valadier n. 43, Rome, c/o the office of Avvocato Giovanni Romano), an organisation representing the workers belonging to the category concerned, wishes to complain about the situation experienced by the *Giudice di Pace* (justice of the peace) in Italy's national system, within the meaning of the Additional Protocol to the European Social Charter, under which international organisations of employers, international trade unions, representative national organisations of employers and trade unions and non-governmental organisations may submit complaints about violations directly to the European Committee of Social Rights.

The *Associazione Nazionale dei Giudici di Pace* is the body at national level most representative of the workers performing the duties of *Giudice di Pace* within Italy's judicial system, and therefore wishes to complain to the European Committee of Social Rights about a violation of Article 12 of the European Social Charter.

In practice, the *Giudice di Pace*, as well as payment on a fixed basis, receives compensation which takes account of the number of hearings held and decisions delivered, **without any social security and welfare protection**. It is clarified in this respect that the rules and regulations governing the *Giudice di Pace* extend across more than 51 articles, and the basis for their compensation is dealt with superficially only in Article 11, which simply enumerates compensation payments with a view to a remuneration system which is in itself unlawful, in that it is based on prevailing piecework rates, in complete contravention of the comprehensive national rules and regulations based on the Constitution of the Italian Republic.

b) **The legal framework for the *Giudice di Pace*.**

The term *Giudice di Pace* has been adopted in Italy to designate a judge appointed on what is referred to as an honorary basis (commonly known in the previous, now abolished, rules and regulations as a "non-professional judge", but now wholly definable as a professional judge, in that consolidated legislation obliges him or her not only to wear a judge's robes, but also to be in substance a professional judge insofar as he or she interprets and applies the law on the same footing as any other judge of the Republic of Italy), appointed by the President of the Republic following a competitive examination based on qualifications and a subsequent probationary period, proclaimed by the Ministry of Justice, after deliberations in the *Consiglio Superiore della Magistratura*, chosen from those law graduates who have achieved the right to exercise the

profession of judge or prosecutor or who have exercised judicial functions, and who are aged not less than 30 and not more than 60.

Honorary judges are provided for in the Constitution, which, in the second sentence of Article 106, states that the law on regulation of the judiciary allows the appointment, including by election, of honorary judges to carry out all the functions performed by single judges, it also being necessary to specify for the sake of completeness that, following appropriate adjustments within the judicial and codified system, the honorary judge is firmly included in the leading position in the ordinary courts, both civil and criminal.

Law 374 of 21/11/1991 introduced, in every district capital, the role of the *Giudice di Pace*. Article 1 of the law states that: “The office of *Giudice di Pace* shall be introduced, a judge who exercises jurisdiction in civil and criminal matters and conducts conciliation in civil matters in accordance with the provisions of this law. The office of *Giudice di Pace* shall be held by an honorary judge, who is a member of the judicial system”.

Introduction of the office, however, was several times delayed, until the government decided that the start date would be 1 May 1995 (Art. 49 L. 21.11.91 n. 374, as amended first by Art. 1 L. 4.12.1992 n. 477 and subsequently by Art. 13 D.L. 7.10.1994 n. 571 converted by L. 673/1994).

*Giudici di Pace* are appointed following a competitive examination based on qualifications, from those law graduates who have achieved the right to exercise the profession of judge or prosecutor or who have exercised judicial functions, who are aged not less than 30 and not more than 60, who cease, or have already ceased, to work, and who, if they are lawyers, nonetheless do not exercise the profession of lawyer or prosecutor in the area of jurisdiction of the court where the office of *Giudice di Pace* to which they belong is based. The law, however, provides for appointees to be persons able to fulfil the role of honorary judge properly, through their independence and reputation and sound legal and cultural experience.

The regulatory framework of an institutional law, Law 374 of 1991, also provides, in Article 3, for such judges to have a staff role, making provision for a staffing plan for each judicial office.

*Giudici di Pace* currently play a role of prime importance in the national judicial framework, being vested with wide-ranging powers in civil cases and lesser powers in the criminal sphere. **Furthermore, they are subject to the same duties as those provided for ordinary judges, as established in Article 10 of Law 374 of 1991; in particular, they are required to exercise the functions assigned to them with impartiality, diligence, industriousness, accuracy, discretion and balance, respecting human dignity during the exercise of their functions.**

Their role makes a decisive contribution to the proper functioning of the Italian justice system, which is burdened by an excessive number of pending cases, swamping and slowing down the judicial system as a whole, which finds it increasingly difficult to apply the principle of reasonable length of proceedings underlying the Italian Constitution and the European Convention on Human Rights.

The professional role of the *Giudice di Pace* is in practice to perform a fundamental function within the Italian judicial system, now representing the largest body of judges with the widest geographical presence.

These judges have now taken on a role which is vital to the functioning of the justice system (with a presence of approximately 65% in the civil justice system, and around 15 to 18% in the criminal system), and instead of provision being made for the stabilisation of such a professional role, by providing for adequate remuneration commensurate with the work effectively done, accompanied by suitable social security and insurance measures, their role is increasingly demeaned through renewal of their responsibilities by means of annual extensions – provided for by a regularly recurring decree, known as the “decree of a thousand extensions” – and complete exclusion from any kind of social security protection.

The responsibility of the *Giudice di Pace* is in practice subject to a time limit, and Law 168 of 17 August 2005 (which converted and amended Legislative Decree 115 of 30.6.2005), Article 9.2 of which superseded Article 7.1 of Law 374 of 21.11.1991, extended the length of the term of office of *Giudice di Pace*, honorary court judges and honorary deputy prosecutors.

And in fact, the aforementioned law (Article 9.2) states that, pending comprehensive reform of the *Giudice di Pace* system, an honorary judge exercising these functions fulfils that responsibility for four years, and may be confirmed for a second four-year term of office and again for a third four-year term. A *Giudice di Pace*'s “term of office” is already 12 years, in practice. The same law (Article 9.1) provides that *Giudici di Pace* confirmed for a subsequent two-year period in pursuance of Article 20 of Law 48 of 13.2.2001 may, at the end of the two years, be confirmed for a further term of four years.

Still with institutional reform of the honorary judiciary in mind, the legislature, in Legislative Decree 193 of 2009, had provided that all honorary judges whose terms of office expired on 31 December 2009, and for whom another confirmation was not planned, would have the exercise of their respective functions extended until 31 December 2010. That date was subsequently extended to 31 December 2011 by the effect of the subsequent extension contained in Legislative Decree 10 of 26 February 2011.

As of today, there has still been no institutional reform of the honorary judiciary, albeit desired by the legislature, and honorary judges at the end of their terms of office will, presumably, have their terms extended again through the effect of a new legislative decree.

That seriously damages the dignity, autonomy and independence of *Giudici di Pace*, whose role is expressly provided for in Article 106 of the Constitution, and on whom the same duties are incumbent as on career judges.

c) **The relevant international texts**

**Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities (adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies)** considers judges' role. The relevant parts thereof are reproduced below:

“Chapter I – General aspects

Scope of the recommendation

1. This recommendation is applicable to all persons exercising judicial functions, including those dealing with constitutional matters.

2. The provisions laid down in this recommendation also apply to non-professional judges, except where it is clear from the context that they only apply to professional judges.”

“4. The independence of individual judges is safeguarded by the independence of the judiciary as a whole. As such, it is a fundamental aspect of the rule of law.

5. Judges should have unfettered freedom to decide cases impartially, in accordance with the law and their interpretation of the facts.

6. Judges should have sufficient powers and be able to exercise them in order to carry out their duties and maintain their authority and the dignity of the court. All persons connected with a case, including public bodies or their representatives, should be subject to the authority of the judge.

7. The independence of the judge and of the judiciary should be enshrined in the constitution or at the highest possible legal level in member states, with more specific rules provided at the legislative level.

8. Where judges consider that their independence is threatened, they should be able to have recourse to a council for the judiciary or another independent authority, or they should have effective means of remedy.”

“11. The external independence of judges is not a prerogative or privilege granted in judges' own interest but in the interest of the rule of law and of persons seeking and expecting impartial justice. The independence of judges should be regarded as a guarantee of freedom, respect for human rights and impartial application of the law. Judges' impartiality and independence are essential to guarantee the equality of parties before the courts.

12. Without prejudice to their independence, judges and the judiciary should maintain constructive working relations with institutions and public authorities involved in the management and administration of the courts, as well as professionals whose tasks are related to the work of judges in order to facilitate an effective and efficient administration of justice.

13. All necessary measures should be taken to respect, protect and promote the independence and impartiality of judges.”

“30. The efficiency of judges and of judicial systems is a necessary condition for the protection of every person’s rights, compliance with the requirements of Article 6 of the Convention, legal certainty and public confidence in the rule of law.

31. Efficiency is the delivery of quality decisions within a reasonable time following fair consideration of the issues. Individual judges are obliged to ensure the efficient management of cases for which they are responsible, including the enforcement of decisions the execution of which falls within their jurisdiction.

32. The authorities responsible for the organisation and functioning of the judicial system are obliged to provide judges with conditions enabling them to fulfil their mission and should achieve efficiency while protecting and respecting judges’ independence and impartiality.”

“42. With a view to contributing to the efficiency of the administration of justice and continuing improvement of its quality, member states may introduce systems for the assessment of judges by judicial authorities, in accordance with paragraph 58.”

“44. Decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities. Such decisions should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity.

45. There should be no discrimination against judges or candidates for judicial office on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, disability, birth, sexual orientation or other status. A requirement that a judge or a candidate for judicial office must be a national of the state concerned should not be considered discriminatory.

46. The authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers. With a view to guaranteeing its independence, at least half of the members of the authority should be judges chosen by their peers.



47. However, where the constitutional or other legal provisions prescribe that the head of state, the government or the legislative power take decisions concerning the selection and career of judges, an independent and competent authority drawn in substantial part from the judiciary (without prejudice to the rules applicable to councils for the judiciary contained in Chapter IV) should be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice.

48. The membership of the independent authorities referred to in paragraphs 46 and 47 should ensure the widest possible representation. Their procedures should be transparent with reasons for decisions being made available to applicants on request. An unsuccessful candidate should have the right to challenge the decision, or at least the procedure under which the decision was made. ...”

“53. The principal rules of the system of remuneration for professional judges should be laid down by law.

54. Judges’ remuneration should be commensurate with their profession and responsibilities, and be sufficient to shield them from inducements aimed at influencing their decisions. Guarantees should exist for maintaining a reasonable remuneration in case of illness, maternity or paternity leave, as well as for the payment of a retirement pension, which should be in a reasonable relationship to their level of remuneration when working. Specific legal provisions should be introduced as a safeguard against a reduction in remuneration aimed specifically at judges.

55. Systems making judges’ core remuneration dependent on performance should be avoided as they could create difficulties for the independence of judges.

56. Judges should be provided with theoretical and practical initial and in-service training, entirely funded by the state. This should include economic, social and cultural issues related to the exercise of judicial functions. The intensity and duration of such training should be determined in the light of previous professional experience.

57. An independent authority should ensure, in full compliance with educational autonomy, that initial and in-service training programmes meet the requirements of openness, competence and impartiality inherent in judicial office.

58. Where judicial authorities establish systems for the assessment of judges, such systems should be based on objective criteria. These should be published by the competent judicial authority. The procedure should enable judges to express their view on their own activities and on the assessment of these activities, as well as to challenge assessments before an independent authority or a court.”

As is clear from the aforementioned text, judges, whether professional or honorary, have the right to remuneration commensurate with their profession and responsibilities, so as to shield them from inducements aimed at influencing their decisions. It is in fact emphasised that systems making judges' core remuneration dependent on performance should be avoided, as they could create difficulties for the independence of judges.

Furthermore, the Council of Europe recommendation cited states that such a professional category is entitled to a reasonable remuneration in the event of illness or maternity or paternity leave, as well as to the payment of a retirement pension, which should be in a reasonable relationship to their level of remuneration when working.

While, in Italy, such provisions are ensured for professional judges, they are by no means respected for *Giudici di Pace*, who find themselves working in a position of extreme uncertainty, both professional and financial. Professional because continuity of service is not guaranteed, and financial because their remuneration is commensurate with their work, and they have no right to any welfare or social security protection.

The current status of *Giudici di Pace*, judges who are members of the judicial order, thus conflicts with the fundamental principles enshrined in Recommendation CM/Rec (2010) 12 of the Committee of Ministers, insofar as that recommendation is intended to ensure, for both professional and non-professional judges, remuneration appropriate to their profession and unconnected with the quantity of work done, and, in particular, an adequate social security and welfare system.

#### **d) Violation of Art. 12 § 4.b of the European Social Charter**

The focal point of this complaint is, as already stated, the lack of provision under Italian law for legislation governing on a systematic and consistent basis the social security protection of those who exercise the profession of *Giudice di Pace*.

Article 11.4bis of Law 374 of 21 November 1991 clearly establishes that the compensation payments for which that article provides for *Giudici di Pace* may be combined with retirement pension payments, by any name.

That legal basis, however, has never been applied within the Italian system, de facto leaving all who exercise the aforementioned profession without an adequate retirement pension.

A strong signal of this kind of need, arising out of the lack of recognition of a fundamental economic and social right essential for all workers, has been given through announcements of strike action and complaints by various organisations within the category, vis-à-vis former Minister of Justice Paola Severino, due precisely to lack of action on the problem by various governments, without definitively stabilising and – consequently – granting to *Giudici di Pace* adequate social security and welfare protection.

The legislature's silence on this point also contrasts with European regulations laying down irrefutable principles relating to the regulation of labour relations and the role of those who exercise judicial functions, including those who deal with constitutional issues. The international text which provides a reference point is Recommendation CM/Rec (2010) 12 of the Committee of Ministers to member states, which applies not only to professional, but also to honorary judges.

One of the cardinal principles of the Recommendation concerns the independence of the judiciary, which, as laid down in Article 6 of the Convention, is intended to ensure for everyone the fundamental right to a hearing, on the sole basis of the law and in the absence of any undue influence.

Independence is the fundamental prerequisite for the exercise of any judicial responsibility, which, in the case of *Giudici di Pace*, is called into question by the provisions of a piecework remuneration system, which may decisively influence the decisions made by the judges, whose compensation payments are based on the number of decisions delivered. On this subject, the Recommendation does not just set out declarations of principle, but reiterates that it is for the authorities responsible for the organisation and functioning of the judicial system to create conditions enabling judges to carry out their task and to achieve efficiency, while protecting and respecting judges' independence and impartiality.

**Furthermore, the Recommendation of the Committee of Ministers unequivocally establishes that judges' remuneration should be commensurate with their profession and responsibilities, and be sufficient to shield them from inducements aimed at influencing their decisions. Guarantees should exist for maintaining a reasonable remuneration in the event of illness or maternity or paternity leave, as well as for the payment of a retirement pension, which should be in a reasonable relationship to their level of remuneration when working. Specific legal provisions should be introduced as a safeguard against a reduction in remuneration aimed specifically at judges. Systems making judges' core remuneration dependent on performance should be avoided as they could create difficulties for the independence of judges.**

The wording used in the Council of Europe Recommendation leaves no room for ambiguous interpretations, in that it prohibits remuneration on a piecework basis, which might negate judges' independence, recognising their right to receive a pension proportionate to their remuneration during their years of service.

This association, the *Associazione Nazionale dei Giudici di Pace*, observes an obvious incompatibility between the Council of Europe Recommendation and the conduct of the Italian state, which persists in depriving *Giudici di Pace* of an adequate social security system and an equitable remuneration system.

The European Social Charter, furthermore, is intended to safeguard fundamental economic and social rights applicable to all individuals, one of the inalienable ones being the right to social security, as provided for in Article 12.

Through the European Social Charter, in fact, the Parties have committed themselves to guarantee the provision and maintenance of pensions for all their workers, by means such as the accumulation of insurance or employment periods completed under the legislation of each state.

Article 12 § 4(b) establishes clearly and incontrovertibly the right to social security and the principle of the accumulation of insurance periods for all workers of the states which are Parties to the European Social Charter. Hence it seems all the more unjustifiable for there to be no structural reform or legislative instruments to safeguard the social security situation of honorary judges, who perform an essential role as judges within the Italian judicial system, on the same footing as professional judges. With regard to this question, there is a need for an institutional effort to protect and recognise the rights of the persons concerned, who are being illogically and illegitimately deprived of their own fundamental rights.

In this specific case, *Giudici di Pace*, as well as not benefiting from any social security system, have no entitlement to assistance in the event of illness, accident or maternity, or to paid holidays, while having the same duties as professional judges, albeit without continuity of employment. *Giudici di Pace* are thus required to ensure a high level of professionalism, but without any support in their day-to-day task. They are paid on the basis of piecework and per hearing and receive no allowances for research or for updating their knowledge. They enjoy no social security protection like that recognised in certain ways for honorary auxiliary judges, as well as, of course, for “professional judges”.

It is pointed out in this context that Law 276 of 22 July 1997 (published in Official Gazette No. 192 of 19 August 1997) sets out “Provisions for the determination of pending civil proceedings: appointment of honorary auxiliary judges and creation of clearing sections of ordinary courts”. In order to reduce the backlog of civil cases, calculated at the time to be approximately 500,000 pending cases (Ministry of Justice data), a body of honorary judges known as honorary auxiliary judges (*Giudici Onorari Aggregati*, often shortened to GOA) was set up, 1,000 strong, each responsible for a specific clearing section. As they were introduced to eliminate the backlog, they were due to operate for five years, with a single possible extension of one year, but they remain active, with several extensions. Their task may now be described as finished, although some remain for cases which are still pending.

However, it is enough to point out in this context that this category of honorary judges, all of them lawyers, has been able to benefit from social security protection. The law which introduced that role in fact establishes that the compensation payments made to the lawyers included on the professional register were considered for all the purposes of Law 576 of 20.9.1980 to be professional income, and that the Ministry of Justice reimbursed to their organisation the social security contributions for which the law provided for honorary auxiliary judges appointed from among the lawyers included on the relevant register. In essence, the Ministry of Justice reimbursed directly to the lawyer his or her contributions, relating to its compensation payments on a pro rata basis, to the national social security and assistance fund. Thus all the compensation received by the honorary auxiliary judge was included in the social security contributions to the Cassa Forense

(lawyers' and prosecutors' fund), for the purposes of both the payment of contributions to the fund and the determination of the basis for the calculation of the pension (Cf. INPS circular No. 67 of 24.3.2000, in which provision is made for the possibility of combining pension payments with the compensation payments received by honorary auxiliary judges for the exercise of their duties; similarly, see Ministry of Labour and Social Policies memorandum No. 7/60385/l. 662/96 of 15.3.2000).

Such considerations are all the more valid for those lawyers who exercise the duties of a *Giudice di Pace*. All in fact perform a role that is appreciated, and most of them dedicate their working time exclusively to the duties of judge, suspending or reducing their professional work, which has negative effects on their social security protection. In fact the reduction of their professional activity may give rise to a reduction in their professional income to below the level set for continuing professional activity, and such activity is a prerequisite for registration with the lawyers' and prosecutors' fund and for the taking into account of years worked for pension purposes. In substance, the role of honorary judge could lead to a lawyer being excluded from social security protection, or could impede his or her access thereto.

Finally, it is impossible to describe as autonomous a judge whose remuneration is based directly on work done (there is a 19th century feel about work remunerated predominantly as piecework), who receives all (or a substantial part) of his or her income from that work, and who nevertheless does not know, over a period of time and in the context of a legislative seesaw which is as ridiculous as it is annoying, whether he or she will be allowed to continue to perform that role or be obliged to look elsewhere. The principle of accumulation of insurance contributions and of a single social security situation involving a single body is systematically flouted by Italy, to the detriment of *Giudici di Pace*, who are subject to unjustified discrimination as compared to other professional categories of judges.

**It is unthinkable for the work done by honorary judges not to lead to the provision of social security protection proportionate to the remuneration (or compensation payments) received; social security protection cannot entail inequality of treatment.**

In view of this unjustified inequality of treatment, it seems completely appropriate and necessary for there to be legislation giving equal social security rights to all honorary judges, who currently make up a significant portion of the judiciary and perform a fundamental role in despatching both civil and criminal cases.

*Giudici di Pace* are thus an indispensable part of the Italian judicial system.

In the light of the arguments adduced here, the *Associazione Nazionale dei Giudici di Pace* complains of the violation by the Italian state of Article 12 of the European Social Charter, which guarantees the provision, maintenance and reinstatement of social security rights through means such as the accumulation of insurance or employment periods completed under the legislation of each state which is a signatory to the Charter.

**e) Conclusions**

In the light of the facts set out in this complaint, and with the reservation that supplementary statements may be submitted, the European Committee of Social Rights is requested to:

- find that there has been a violation of Article 12 of the European Social Charter (revised), with reference to the lack of social security and welfare protection for *Giudici di Pace*;
- enjoin Italy to reorganise definitively, and without any scope for the adoption of further extensions, the legislation concerning the role of honorary judges, making particular provision for the possibility of the benefit of appropriate social security protection proportionate to the work effectively done;
- order Italy to pay a total sum of EUR 2,000 to the *Associazione Nazionale dei Giudici di Pace* for its expenses and services during these proceedings.

**f) Use of the Italian language**

The complainant requests to be allowed to use its own language, namely Italian, in all written material submitted in its defence during these proceedings.

**g) Addresses for communications relating to these proceedings**

For the purposes of these proceedings, it is requested that all communications be received at the association's service address in Rome at Via Valadier n. 43, c/o the office of Avvocato Giovanni Romano, or at the following declared e-mail address: [giovanniromano@ordineavvocatibn.org](mailto:giovanniromano@ordineavvocatibn.org), or, alternatively, c/o the statutory headquarters of the *Associazione Nazionale Giudici di Pace*, in Rome (00196), at via Teulada n. 40, or at the following e-mail address: [segreteria nazionale angdp@virgilio.it](mailto:segreteria nazionale angdp@virgilio.it) or fax number: 045-8026736.

Enclosures:

- 1- Constitution of the *Associazione Nazionale Giudici di Pace*;
- 2- Articles of association of the *Associazione Nazionale Giudici di Pace*;
3. Letter to the former Minister of Justice, Paola Severino;
4. Article by Vincenzo Crasto published in Italia Oggi;
5. Article by Leonardo Carbone on "Social security for lawyers and prosecutors";
6. INPS circular No. 67/2000;
7. Recommendation CM/Rec(2010)12 of the Committee of Ministers on judges: independence, efficiency and responsibilities

The Chair of the *Associazione Nazionale dei Giudici di Pace*

Avv. Vincenzo Crasto