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

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Case Document No. 4

Associazione nazionale giudici di pace v. Italy
Complaint No.102/2013

**OBSERVATIONS BY THE GOVERNMENT
IN REPLY TO THE COMMITTEE'S QUESTIONS**

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REPUBBLICA ITALIANA
Rappresentanza permanente d'Italia presso il Consiglio d'Europa
Strasburgo

EUROPEAN COMMITTEE OF SOCIAL RIGHTS



**Associazione nazionale giudici di pace v. Italy
(n. 102/2013)**



**QUESTIONS TO PARTIES
RESPONSE OF THE ITALIAN GOVERNMENT**



With reference to the Committee's request submitted on 15 May 2014, the Italian Government is pleased to provide the following information.

A) Legal status and functions of “*giudici di pace*” in the framework of the Italian legal system

1. As a general rule, Article 102, § 1 of the Italian Constitution provides that judicial functions are normally exercised by professional judges (“*magistrati ordinari*”). Article 106, § 2 of the Italian Constitution nevertheless provides for the possibility to appoint non professional judges (“*magistrati onorari*”: lay judges) for the exercise of judicial functions, according to the Judiciary Act (“*legge sull’ordinamento giudiziario*”).

2. The Judiciary Act (regio decreto [Law] 30 January 1941, n. 12, as amended and integrated by following special legislation) provides for several kinds of non-professional judges or prosecutors who exercise judicial functions: private experts in First Instance Juvenile Courts and in Juvenile Courts of appeal; non-professional judges at First instance Courts (“*giudici onorari di tribunale*”); non-professional prosecutors at the Prosecutor’s Office (“*vice procuratori onorari*”); non-professional judges appointed for the removal of backlog before the First Instance Courts (“*giudici onorari aggregati*”: see Law 22 July 1997, n. 276); non-professional judges appointed for the removal of backlog before the Courts of appeal (see Articles 63 and following of decreto-legge [Law] 21 June 2013, n. 69).

3. Also the so called “*giudici di pace*” are a kind of non-professional judges - regulated under Law 21 November 1991, n. 374, as amended - who currently exercise judicial functions in civil and criminal matters. In particular:

a) as regards civil matters, they deal with small claims (e.g.: disputes on mobile goods, when the value does not exceed 5.000 EUR; disputes arising from car or boat accidents, when the value does not exceed 20.000 EUR; judicial opposition to administrative penalties, mainly arising from the violation of the Traffic Act);

b) as regards criminal matters, they deal with misdemeanours.

4. No specific status or privilege to *giudici di pace* arises from Article 116, § 3 of the Italian Constitution: that rule only regulates the legislative competence between the State and local administrations (so called “*Regioni*”) in the organisation of services related to “*justice of peace*” (lay justice).

5. Unlike professional judges, all non-professional judges and prosecutors (and *giudici di pace* among them) are appointed for a limited period of time. They are selected on the basis of their *curriculum* (“*concorso per titoli*”), while professional judges and prosecutors are selected on the basis of a public competition (“*concorso per esami*”).

6. Unlike professional judges (who are engaged in full-time and cannot exercise any other job or profession) all non-professional judges and prosecutors (and *giudici di pace* among them) are not engaged in full-time. The majority of them are lawyers (“*avvocati*”), who are allowed to continue to practice their profession as a lawyer in the period of time they exercise judicial functions as non-professional judges.



7. Unlike professional judges, retired persons who are appointed as non-professional judges can draw their pension with the allowance they receive for the exercise of judicial functions (see below).

8. Unlike professional judges and prosecutors, no employer-employee relationship (“*rapporto di lavoro*”) is established between the non-professional judge and the State. Non-professional judges (and *giudici di pace* among them) are not required to carry a minimum of work: their duties depend on the amount of disputes pending before their court and they have a large autonomy in the organisation of their job (the experience is widely different, as there are *giudici di pace* who deal with a very small number of cases per year and *giudici di pace* who deal with a great number of cases).

9. As a consequence of the aforementioned, those who are appointed as *giudice di pace* don't receive any salary (but only an allowance - “*indenmità*” – granted on the basis of the effective exercise of their judicial functions and of the number of proceedings they close); the allowance they receive is not determined by a collective bargaining, but is determined by law; they don't have any annual leave; they don't have any pension or social security (see § 18 for further details).

10. It is therefore clear that the status of non-professional judges (and *giudici di pace* among them) is completely different from the status of professional judges and it is untrue that those who are appointed as *giudice di pace* may be considered as professional judges (see the application, page 2).

11. The difference between professional and non-professional judges has been clearly focused by the Committee of Ministers of the Council of Europe. Article 2 of *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) states that “*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*”.

12. It is therefore clear that provisions concerning the independence of individual judges should be applicable to all professional and non-professional judges (because the purpose of independence, as laid down in Article 6 of the European Convention on human rights, is to guarantee every person the fundamental right to have their case decided in a fair trial, on legal grounds only and without any improper influence: see the Recommendation, § 3), as well – for example – those provisions concerning discrimination on selection of judges.

13. Instead, provisions concerning remuneration of judges, the right to pension and social security are only applicable to professional judges, because they are aimed to protect a category of employees (professional judges) who exercise judicial functions in a stable, continuous and exclusive manner (see the Recommendation, §§ 53 and following).

B) The service relationship's rules of *giudici di pace* (“*statut d'emploi*”) and how they exercise their job

14. We have already explained that non-professional judges (and *giudici di pace* among them) don't have any employer-employee relationship (“*rapporto di lavoro*”) with the State. They only have a service relationship (“*rapporto di servizio*”), as they exercise judicial functions on behalf of the State. This relationship is entirely regulated by law (see Law 21



November 1991, n. 374, as amended): no collective agreements are stipulated among the State and trade unions; no individual agreement is stipulated among the State and the appointed non-professional judge.

15. Only qualified lawyers can be appointed as *giudice di pace* (see Article 5 of Law 21 November 1991, n. 374): the large majority of them are lawyers who practice before national Courts (“*avvocati abilitati all’esercizio della professione forense*”) or retired employees or professionals.

16. Lawyers who are appointed as *giudice di pace* are not engaged in full-time. Those who practice as lawyers before Courts (“*avvocati*”) may continue to practice their profession during the time they exercise judicial functions as non-professional judges (territorial incompatibility is provided by law). The aim of the legislator is to enable the State to avail of expert lawyers (still working or retired), giving them the opportunity to exercise an honorary and prestigious function (i.e. the exercise of judicial functions during a limited period of their career or at the end of their career).

17. These non-professional judges (*giudici di pace*) are appointed for a time period of 4 years. The mandate is renewable, but only twice: the renewal of each mandate is not automatic, and is subject to a positive assessment of the individual capacity to exercise judicial functions. An extraordinary renewal of current mandates have been lastly stated by law (see Article 2-bis of Law 27 February 2014, n. 15), with view to a general reform of the statute of non-professional judges: the mandates so renewed will in any case end on 31 December 2015.

18. Like all non-professional judges, also *giudici di pace* have no salary. Although judicial functions exercised by non-professional judges are honorary functions, nevertheless the Law provides for some allowances (“*indennità*”), due to the commitment that may be required in the exercise of judicial functions. A monthly amount of 258 EUR *forfait* is granted for the reimbursement of general costs and expenses for professional training; specific allowances are granted due to the effective exercise of judicial functions and the number of proceedings closed. The effective amount of the allowances is therefore extremely various, and it depends from the number of cases managed by each single judge: the global amount of the allowances cannot exceed, in any case, the global amount of 72.000 EUR per year.

19. Whatever is the amount of the allowances, they cannot be in any case considered as a salary. The equalization to salaries of employees provided by Tax Law (d.P.R. 22 December 1986, n. 917) is only for tax purposes (please note that the Italian Tax Law also makes an equalization for tax purposes among maintenance granted by ex-spouses and salaries of employees).

20. As they are non-professional judges (and therefore they are not employees), *giudici di pace* don't have any annual leave, they don't receive any pension and don't have any other social security.

21. The applicant alleges that pension rights are already provided under Article 11, § 4-bis of Law 21 November 1991, n. 374, and complains that this provision has not been applied yet (see the application, page 7). This allegation is completely unfounded and carries to a total misunderstanding of the legislation: Article 11, § 4-bis only states that non-professional judges who are retired employees or professionals (and therefore already have a social security) will continue to receive their pension during the period of time of their mandate as non-professional judges.



C) Possibility for judges to set up an organization for the protection of their economical and social rights

22. No specific legal provision regulates the possibility for judges to set up an organization for the protection of their economical and social rights: organizations of judges (both professional or non-professional) are set up in the exercise of the right of freedom of association.

23. These associations are not entitled to protect the economical and social interests of the associated (unlike a trade union). All non-professional judges (and *giudici di pace* among them) don't have any employer-employee relationship with the State, and all their duties and service relationship are entirely regulated by law (see above, § 14).

24. In this context is irrelevant that the statute of these associations of judges provides, among the scopes of the association, the protection of collective interests (also economical) of all members of the association. In fact, these associations have no contractual power and are not the opposite party in the contractual relationship, for the simple reason that there is no contractual relationship because everything is regulated by law.

25. These associations of judges are normally consulted by the Parliament and the Government about proposals on reform of justice, like it normally happens with other trade associations in other fields.

26. These associations of judges can also organize strikes, but they are to be considered as political strikes, insofar they are not organized in the framework of the employer-employees relationship (they are not aimed to have better contractual condition of work, because the statute of judges is not regulated by collective and individual contracts) but they are simply aimed to put under political pressure the Government and the Parliament, with the aim of the amendment of the legislation in force.

Conclusions

27. As for the aforementioned, the collective complaint brought by the Associazione nazionale *giudici di pace* shall be declared inadmissible. The applicant is not a national trade union, but an association of non-professional judges who are not in employer-employees relationship with the State. The applicant cannot be considered in any case adequately representative of the alleged economical and social interests, because it represents only a minority part of *giudici di pace* currently in force and – in general – of the Italian non-professional judges [the number of *giudici di pace* currently in force in Italy is less than 2.000, while there are more than 2.000 non-professional judges at First instance Courts (“*giudici onorari di tribunale*”) and more than 1.700 non-professional prosecutors at the Prosecutor's Office (“*vice procuratori onorari*”)].

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