



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

19 June 2015

Case Document No. 7

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

**OBSERVATIONS OF
UNIONE NAZIONALE ITALIANA MAGISTRATI ONORARI
(U.N.I.M.O.)**

Registered at the Secretariat on 26 May 2015

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UNIONE NAZIONALE ITALIANA MAGISTRATI ONORARI (U.N.I.M.O.)

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Associazione Nazionale Giudici di Pace (A.n.g.d.p.) v. Italy
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OBSERVATIONS

a) PREMISE

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With these observations the Italian National Union of Honorary Magistrates (UNIMO), in the person of its legal representative, Ms Rossana Ferrari, domiciled at the Chambers of John Romano, located in Rome on the Street Valadier n. 4 , intends to intervene in the complaint brought by the National Judges of the Peace against the Italian State to denounce the violation of art. of the European Social Charter which provides:

Art. 12 : right to social security.

To ensure the effective exercise of the right to social security, the Parties undertake:

1. to establish or maintain a system of social security;
2. to maintain the social security system at a satisfactory level or at least equal to that one required for ratifying the European Code of Social Security;
3. to endeavor to raise progressively the level of the social security system;
4. to take steps, by the conclusion of appropriate bilateral or multilateral agreements or by other means, subject to the conditions laid down in such agreements, to ensure:
 - a) an equal treatment between citizens of each Party and the citizens of the other Parties with regard to social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake among the territories of the Parties;
 - b) providing, maintenance and resumption of social security rights by such means as the aggregation of periods of insurance or employment completed under the legislation of each Party.

On the *locus standi* of the National Union of Italian non-professional magistrates to propose the present observations.

The UNIMO association is democratic, united and non-profit organization that has as its purpose the protection of the judiciary honorary. It consists of honorary judges, such as GOT and VPO, for the promotion and defense of common professional interests, economic, social and moral respect for the principles of democracy and freedom established by the Constitution of the Republic.

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Among the statutory purposes (art. 2) the UNIMO aims, in particular, to:

- a) ensure that the functions and prerogatives of the judiciary, to which non professional-Magistrates belong, are defined and secured in accordance to the constitutional provisions;
- b) represent the VPO and GOT in front of Government and public institutions as well as private and public parties;
- c) protect the moral and economic interests of the non-professional judges, the prestige and respect of the judicial function they perform in order to promote the proper administration of justice, also by ensuring their homogeneous use in the whole country;
- d) develop proposals that will help to reform the structure of the non professional-judiciary and to rielaborate its functions, skills and legal and economic status;
- e) promote the professional training and cultural initiatives of non professional-judges, meetings and debates on the subject of legal sciences;
- f) offer its professional experience to participate in drafting legislative proposals and reforms;
- g) manage the release of the online journal and a website.

The UNIMO, as a representative association of non-professional magistrates, keeps a role in consultations with Italian Government and the Parliament on any reform which has been in the making regarding non-professional judiciary, and, simultaneously, can proclaim strike, as a means of claiming social issues. In particular, UNIMO several times has been convened at the Ministry of Justice on matters of the reorganization of the non-professional judiciary. UNIMO also joins often the meetings of the Executive Committee of the National Association of Magistrates, which is the most representative association of professional magistrates. This shows how UNIMO's promotes any initiatives and project able to protect the economic and social interests of the category, which is in line with the provisions of the Constitution which guarantees the right to freely associate in order to protect workers' economic and social interests.

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a) The figure of non-professional magistrate.

The purpose of these observations is to draw European Committee of Social Rights' attention to the question of non-professional judges and non professional prosecutors members of the First instance Courts. These ones and Judges of Peace make up the system of non professional judiciary. As mentioned, the UNIMO is a trade association representing both non-professional judges and non-professional prosecutors applied on First instance Courts. These professionals, although playing an essential role in administration of justice, do not receive adequate safeguards welfare and social security - as well as judges of peace - since there is not, under Italian law, a comprehensive regulation of the honorary judiciary. The honorary magistrate is member of the judiciary who performs typical judge's or prosecutor's functions. The adjective "honorary" means that who carries out these functions in a non-professional, as he exercises jurisdiction during a specified period. The provision of the honorary judiciary derives directly from the Italian Constitution, where in the first paragraph of art. 106 it is stated that judges are recruited by means of open competitions, and in the second paragraph it is stated that "the law on the judiciary allows the appointment, even by election, of honorary judges as regards every functions performed by single judges." In general, the honorary magistrate is appointed by ministerial decree, selected on the basis of C.V. and specific qualifications, decreed by the Ministry of Justice in compliance with the resolution of the Council of the Judiciary, among law graduates who have obtained the qualification to practice as an advocate or have exercised judicial honorary functions, they must not be younger than thirty years and not older than seventy. There are, therefore, various types of honorary judges, basing on powers, duties, duration or compensation, but they all exercise judicial function. The most relevant figures are as follows: The justice of the peace; non-professional judges in First instance Courts (GOT); non-professional prosecutors in First instance Court (VPO). However, the second paragraph of art. 106 of the Constitution has not been fully implemented, as Italian law lacks comprehensive regulation of the honorary judiciary. It takes place a discipline which is conceived as a transitional and extended from year to year without any adoption of a harmonized legislation as duration, compensation and welfare and social security protection. Actually the demanded reform lies in Parliament. Currently the number of non-professional judges involved in

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judicial office, even for a limited period (which is, however, increasingly widening) is considerable and exceeds the stable professional judiciary; consisting slices of jurisdiction are now handled by judges of peace, GOT and VPO. They all play an appreciated role and, mainly, to be efficient they exercise mostly only judicial activities as judges or prosecutors, suspending or reducing other professional activity, with consequent negative repercussions on social protection. The work done by these judges with professionalism, perseverance, dedication and commitment paid piecemeal, as mentioned also in the main claim, without safeguarding the social security position during the term of office; indeed, any social security position depending on different professions is often suspended, interrupted or weakened, when they work as honorary judge or prosecutor. It must be underlined that very often honorary magistrates renounce to work as lawyers (and collect fees), just to reach requested standards of judiciary efficiency; this is more relevant considering that mainly they are not elderly lawyers, but young lawyers whose commitment honorary functions should be protected. **Besides, they can not practice both as honorary magistrate and as lawyer in the same First Instance Court.** The rules of civil liability of judges, moreover, also apply to the judiciary honorary. Moreover, if an accident occurs to the honorary magistrate on the way to the Court there is no chance to be compensated by the Government, because of the lack of the welfare protection. It is obvious that this situation undermines even further the independence of the non-professional judiciary. The GOT and the VPO are compensated by allowances based on the participation of a single hearing, regardless of the number of issued orders. The compensation amounts to € 75.00 for each hearing, from which must be deducted the 20% tax. NO fee is provided, however, for the updating task and examination of the cases, so that all the time spent in writing rulings both in civil and criminal proceedings is not compensated. In other words it is unfair that to honorary duties should not be recognized any protection of social security interests based on paid allowances: this determines inequalities.

Honorary Judge of the Court

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With significant reform in 1998 of the so-called Single Judge, drafted by d. lgs. n. 51 , two new roles were delineated: the honorary judge of the court and the deputy prosecutor. Actually, the suppressed function of the honorary magistrate was attributed to the two cited roles. The sparse regulation provided for this decree had to be supplemented by specific circulars of the Supreme Judicial Council published with Ministerial Decrees. The last decrees are Decree 6 September 2007 "Change and integration of criteria for the appointment and confirmation of public honorary prosecutors " and the Decree of 6 September 007 "Change and integration of the criteria by which appointing and confirming honorary judges of the first instance court" . The honorary judge of the first instance court (GOT) plays its role independently and has the same jurisdiction in civil and criminal law as every SINGLE JUDGE on First Instance Court, exception are the offenses for which is scheduled preliminary hearing and in general major offenses judged by the Single Judge. Terms of office is 3 years renewable for other three years. Under the current law GOT can applied following these two models:

- 1) Each professional judge may be assisted by a lay judge of the court in dealing with cases based on general and abstract criteria. To the professional judge must, in this case, be given an additional role to be assigned to the honorary one . The professional criminal judge celebrates the court appearance art. 555 of Criminal Procedure Code, in which he establishes cases to be assigned to the honorary judge connected to him. The civil professional judge, in respect of each procedure, can delegate the honorary judge specific tasks and activities, including not complex investigations and hearings, preferably reconciliation's efforts and the special proceedings under the art. 186bis and 423 , first paragraph of the CPC;
- 2) In case of significant lack on the staff of the office, which happens mostly, a proper independent slice of cases is assigned to the GOT, with the exception of the following: a) as the matter of civil cases - corporate and bankruptcy law; - Intellectual and industrial property. b) as the matter of criminal matters: - fast track trials *in flagrante delicto* . In this case, the President of the Chamber or, failing that, an appointed professional judge shall perform the duties of the coordinator of the GOT for each section civil and criminal section or promiscuous section.
- 3) The judges can still be used as alternate of professional judges as members of colleges. In any choice, objective and predetermined criteria must be followed and drafted both in

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case of devolving slices of procedures and of alternating professional judges, under art. 43bis of the Judiciary Act (See. *Circular on the formation of tables of organization of judicial offices for the years 2014/2016*).

The lay prosecutor in the Prosecutor's Office

Art. 71 of the Judiciary (rd 30.1.1941 nr.12.) provides that the Prosecutor's Office in the First Instance Court may involve honorary magistrates for all criminal case procedures listed in the following art. 72 as well as other functions assigned them by law. The honorary prosecutor (VPO) is an investigating magistrate who works for the prosecutor's office appearing before the Court, in all criminal cases pertaining to the First Instance Court, and to the Judge of peace (*giudice di pace*), as well as in specific civil cases such as in debarments' procedures.

They act as prosecutors appearing in Court depending on specific Chief prosecutor's delegations, to whom they are hierarchically. Finally, they may also coordinate the investigation in cases assigned to the justice of the peace. The duties described above can be empowered to honorary public attorneys under Article 72 of the Judiciary Act (r.d. 30.1.1941 nr. 12). This provision states outlines duties that can be delegated to lay prosecutors such as appearing in Court for ordinary hearing, or asking confirmation of the arrest on the act (only after at least 6 months from the appointment as lay prosecutor), or requesting of a criminal fine order under Article 459, 1st paragraph , and 565 of the Criminal Procedure Code, or representing prosecutor's office before the First Instance Court chambers under art. 127 CPPE, or in other duties as listed in the letter d) of art. 72. They are also delegated to exercise public prosecution in civil matters. The third paragraph of Art. 72 serves as a rule of closure, as it states that the duties to be delegated to the VPO should be normally those referred to First Instance Court's monocratic trials without preliminary hearing. This provision suggests to *"follow the policy not to apply lay magistrates to trials where direct criminal summon to Court is not provided*. This specification was necessary because of the Article 33 term 2nd paragraph of the Code of Criminal Procedure, which provides that the single judge of First Instance Court deals with all offenses which are not assigned by law to the court in collegiate composition. With the reform of the Single Judge of First instance the honorary prosecution is provided for even besides the F.I. Court. The current art. 71 Judiciary Act (Ordinamento Giudiziario) , entitled "Appointment and

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functions of honorary magistrates of the Public Prosecutor at the First Instance Court" lays down the same honorary judge's way of recruitment, incompatibilities, terms of office, causes of termination, revocation or cancellation, and also slices of judicial duties under the Article 72 and other specifically assigned to them by law. As the matter of fact, the lay prosecutors are recruited on the same ground of the lay judges in the F.I. court. as for the provisions of Articles 42-ter, 42-quater, 42-quinquies e 42-sexies". The VPO, such as GOT, are, therefore, honorary magistrates appointed for a limited period of time.

d) **Violation of Article. of the Revised European Social Charter.**

The progressive interpretation of the **Revised European Social Charter** derives first by the presence of different articles that oblige the States to move towards the implementation of rights. These undertakings relate to the progressive elevation of the level of social security (art. II- 12.3). The obligation to progress logically also include an obligation of non-regression, both on the material and personal Charter's purpose. According to this principle the Committee is authorized to call upon the States if a given policy, for example in the field of social security, may realize or reduce the object of protection, even considering assessment of the risk / benefit ratio. Compared to the substance of the rights, this interpretation leads to define the conditions of sufficiency and adequacy of the protected rights, and situations of direct and indirect discrimination, i.e. unlawful exclusion from the scope of the Charter. IT also leads to assess the progress on specific situations in terms demonstrable and measurable, and demands certain results reasonable time, even through the maximum use of available resources.

In the case brought to the attention of the European Committee of Social Rights, UNIMO argues- like what was stated by the National justices of the peace (ANGDP) - that the exclusion of any protection and social security in favor of the honorary judiciary represents a flagrant violation of Article 12 of the Revised European Social Charter. It should be noted that the lack of a comprehensive regulation of the honorary judiciary determines a total lack of protection for this category of professionals who constantly and daily complement in addition stipendiary magistrates in the administration of justice.

As repeatedly stated by the European Committee of Social Rights, it is the duty of States to realize the Charter's provisions not only from a formal or legal point of view, but also from a

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practical and effective, and even financial point of view (See: International Association Autism-Europe (IAAE) v. France, complaint n. 13/ 2002 , decision on the merits of 4 November 2003 , paragraph 53 ; Maragopoulous Foundation for Human Rights (MFHR) v. Greece, complaint n. 30/ 2005, decision on 6 December 2006, paragraph 228 ; International Movement ATD Fourth World v. France, complaint n. 33/ 2006, decision on the merits of 5 December 007, paragraph 61).

The legislature's silence on the point is moreover in contrast with European regulations' indisputable principles about employment relationship and the role of those who exercise judicial functions, including those dealing with constitutional matters.

The international ruling frame is the Recommendation CM / Rec (2010) of the Committee of Ministers to member states, which applies not only to professional judges, but also to judges.

One of the cardinal principles of the cited Recommendation concerns the independence of judges, which, as stated in Article 6 of the Convention, is to ensure that everyone has the fundamental right to have his case examined fairly, on the sole basis of the law and in the absence of undue influence. Independence is the basic prerequisite for the exercise of any judicial office, which, in the case of honorary judiciary, is put that in jeopardy by the system of pay for piecework based on the numbers of held hearings, which can affect in a decisive way the choices.

On this point, the Recommendation not only proclaims principles, but underlines that the authorities are in charge of organizing judiciary in order to help realizing an effective judges' mission, and to protect and respect independence and impartiality of judiciary.

In addition, the Recommendation of the Committee of Ministers, states unequivocally that the remuneration of judges should be commensurate with their professional role and their responsibilities, and be of sufficient level in order to keep them immune to any pressure which could influence their decisions.

It must be guaranteed the maintenance of a reasonable return in case of sickness, maternity or paternity, as well as the payment of a pension for retirement whose level must be reasonably compared to the remuneration of judges in service. There should be adopted specific legislation to avoid specific reduction of judges' remuneration. There should be avoided systems that base payment on performance, as they can influence the independence of judges.

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The words taken from this Recommendation do not allow ambiguous interpretations, as forbid pay for piecework which affects the lay judiciary's independence, and recognize the right to a pension based on the earnings achieved during all the years of service.

The lack of a specific rule of law is not decisive to exclude a social security scheme, because of the general principle that every work, carried out both as an employee and as self employed worker, must reach the required insurance coverage and contributions. There was isolated court's pronouncements to prove a certain openness to the problem but can not be considered sufficient the mere intervention of the judiciary in order to fill such legislative lackness.

With the ratification of the Social Charter, and in particular art. 12, the Italian government has pledged to guarantee the effective exercise of the right to social security to all workers.

The absence of structural reform which will safeguard the insurance status of the honorary judges, appears unjustifiable, considering that they exercise an indispensable judicial function such as the professional judges. On the question, it is almost necessary an institutional effort to recognize and protect the rights of individuals, victims of an illogical and unlawful deprivation of their basic rights.

Not only the honorary magistrates do not enjoy public social security system, but also are not entitled to welfare payments in case of sickness, accident and maternity, despite having the same duties of professional magistrates, even though for a certain period of time. They are asked to ensure high professionalism, but they are not entitled to appropriate supports, considering that they are paid by piecework based only on the number of held hearings and not on the number of rulings.

This unjustified difference in treatment with the professional judge must be overcome by an appropriate and necessary rule of law which will treat the social security rights of all honorary judges.

On these grounds, the National Union of Italian Honorary Magistrates alleges infringement, by the Italian State, of Article 12 of the European Social Charter, which guarantees the right to an effective social protection proportional to the work done.

e) Conclusions.

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In view of the above, UNIMO asks the European Committee of Social Rights to:

- Authorize the UNIMO to intervene in this process through these observations and to present additional written disclosures.
- Uphold complaint brought by the National Judges of Peace (ANGDP) (n. 102/2013) and in particular declare the infringement of art. 12 of the revised European Social Charter, with reference to the lack of protection and social security in favor of the honorary judiciary.
- Invite the Italian State to reorganize definitively the honorary judiciary system without any other prolongation of the transitional period, providing, in particular, the opportunity to enjoy an adequate protection and social security in proportion to the work effectively performed.

f) Contact for communications relating to this case the purpose of this procedure,

We want to receive any communication at such address of UNIMO, in Rome at Via Valadier 4 , at the offices of John Romano, or to the following address certified e-mail: giovanniromano@ordineavvocatibn.org, and, alternately, at the registered office of the UNIMO, located in Passo S. Caterina Fieschi Adorno 4th - d - GENOA, or at the following email address: info@unimo.eu.

a) List of Annexes:

UNIMO's Memorandum and Articles of association of the issuer

Rome, 5th February 2015

Legal Representative of UNIMO

President of UNIMO

Rossana Ferrari

