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

23 September 2015

**Case Document No. 8**

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

**OBSERVATIONS BY  
*ORGANISMO UNITARIO MAGISTRATI ONORARI UNITI*  
(O.U.M.O.U.)**

**Registered at the Secretariat on 29 May 2015**





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**Associazione Nazionale Giudici di Pace (A.n.g.d.p.) v. Italy  
Complaint No. 102/2013**

**OBSERVATIONS**

a) **Introduction**

With these remarks, the Unitary Authority of the United Honorary Magistrates - United non-professional Magistrates, in the person of its Chairman and legal representative, Mr. Avv. Giuseppe Finamore, domiciled at the law firm of the Lawyer Giovanni Romano, in Rome at st. Valadier No. 43, intends to intervene in the complaint brought by the National Association of the Judges of Peace against the Italian State, in order to denounce the violation of art. 12 of the European Social Charter which provides:

**Art. 12: right to social security.**

With a view to ensuring 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 at least equal to that necessary for the ratification of the European Code of Social Security;
3. to endeavour to raise progressively the system of social security to a higher level;
4. to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:

a) equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of

social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;

b) the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties.

**b) On the “standing to sue” of the Unitary Authority of the United -  
Honorary Magistrates – United non-professional Magistrates**

The present association is a democratic, united and non-profit organization which aims to safeguard the honorary judiciary. It is composed by non-professional (honorary) magistrates, such as G.O.T (Honorary Judge of the Court) and V.P.O. (Honorary Deputy Prosecutor), and its purpose is to promote and defend the common interests, not only professional but also economical, social and moral interests, according with the principles of democracy and freedom expressed by the Constitution of the Republic.

The Unitary Authority of the Honorary Magistrates – United non-professional Magistrates, as a representative association of non-professional magistrates, has a role of consultation with the Central Italian Government and the Parliament concerning any kind of reforms the State wants to work on and, at the same time, this association can proclaim the strike as an instrument useful for claiming social requests.

In particular, the Department of Justice often convened the Association in order to talk about different matters including the reorganization of the non-professional judiciary; the Unitary Authority has also made some proposed law in order to reform the honorary judiciary.

All of this is important to demonstrate the real and constant work done by the Unitary Authority of the Honorary Magistrates in order to safeguard, in the best way is possible, the social and economical interests of the category, according to the prevision of the Constitution. This last mentioned Law, ensures the right of "*freedom of association*" to protect the economical and social interests of the workers.

### **c) The role of the non-professional magistrate**

With the present observations we want the attention of the European Committee for Human Rights to be focused on all the problems linked to the Honorary Court Magistrates that, together with the Judges of Peace, are a large parte of the Honorary Judiciary.

In between the problems of the Italian Justice System there is, as we already said, the reform of the Honorary Judiciary and of the Judges of Peace. It is important to underline that all the requests done by this trade association, so far, have been completely ignored by the Institutions, especially concerning the total lack of social security and welfare protection.

This condition causes the maintenance of the role of Honorary Magistrates and of the Judges of Peace, marked by a growth in precariousness - not only from the economical point of view – that does not help to guarantee the needs of reliability, impartiality and independence which are the bases for the protection of private parties and their counsels.

As we said before, the Unitary Authority of the United - Honorary Magistrates – United non-professional Magistrates is a non - recognized trade association that represents both the Honorary Magistrates than the Honorary Deputy Prosecutor.

These roles do not receive adequate safeguards in assistance and social security – even though they have an important complementary role, finalized to the well functioning of the Justice.

This condition of lack in assistances depends on the absence of a regulation in this field (the one of the honorary judiciary).

It means that there are no law addressed to regulate the role of an honorary judge.

The honorary magistrate is a member of the judiciary and he has the typical duties of the Judge or of the prosecutor.

The adjective “honorary” shows that he works as a non-professional; it means, in other words, that usually he works as a judge only for a lapse of time and not full-time.

The origins of this professional role goes back to the Constitution; the article n. 106 affirms at the first paragraph that the judges are recruited by means of open competitions and the second paragraph states that “*the law on the judiciary allows the appointment, even by election, of honorary judges concerning every functions performed by ordinary judges*”.

The honorary magistrates have been able, during the years, to make up for the big amount of lacks of the judiciary – especially concerning the number of ordinary judges. In this way, they gave a big help to the judiciary system without receiving the adequate economical safeguards.

For these reasons they are called “*temporary justice employee*”, considering the total lack of social security and welfare protection and considering that they have no guarantees about the renewals of the assignments.

Because of the postponing of the reforms of the honorary judiciary there are many non-professional magistrates who have this role for more than ten years without receiving something back.

This is the reason why the Unitary Authority of the Honorary Magistrates – United non-professional Magistrates wants to support the reclaim proposed by the national trade association of the Judges of Peace, to highlight the big administrative and regulatory gap linked to this role.

**The honorary magistrates are experts and professional figures in the field of law (for instance, many of them are lawyers) who – often in a silent way - make up for many of the inefficiencies of the system, avoiding, as mentioned, the risk of a collapse of the judiciary. In other words, their work is useful in order to work off a large part of the load of Justice.**

The honorary magistrates have a temporary assignment, renewed time to time; they are common people who get a low salary and who have less safeguards than the others workers; it is possible to say that they get less than what they give to the population and to judiciary system.

The honorary magistrates are waiting for a turning point in the history of the art. 245 D. Lgs 51/1998, never came till today. The failure to implement (in the sense of a necessary overall reorganization of the sector) has been going sensationally over eleven years, in the awareness of unsustainable situation created in the Court and in the Judicial System, especially concerning the difficult situation, already explained, of the honorary judiciary, so indispensable for the justice system but with so less safeguards.

It is important to underline that the 97% of the criminal proceedings before the Single Judge, is managed by a prosecutor who is an honorary judge, while almost all of the enforcement proceedings are entrusted to honorary judges.

These number underline the need of substantial reforms in this field and they are a parameter to better understand the infringement of the fundamental social rights that has to be recognized to the honorary judiciary.



For many years, in Italy, the remedy to the concrete objective failure of the system to cope with the load of justice is to “use” the honorary judges: this judges are graduated in law, however in many cases, they are obliged to play only the public office because of the restrictions due to professional incompatibility's schemes.

Actually, because of the postponement, we came at the end of the working period according in the contract and the “temporary justice employee” are still handling the justice system. We can barely understand what we are saying focusing the attention on the numbers and the percentages; the 97% of the Criminal trials before the Single Judge on First Instance Court have a Honorary Deputy Prosecutor instead of a Public Prosecutor and the 100% of the enforcement proceedings is handled by the Honorary Judges of the Court.

In 2008 in the First Instance Court there were 1861 GOT (Honorary Judges of the Court) and 3681 Professional Judges and moreover there were 1544 magistrates working as Public Prosecutor and 1669 VPO (Honorary Deputy Prosecutor).

These numbers give enough reasons in order to deeply understand the real situation; the Honorary Judiciary should have an additional role however they have, nowadays, a primary function.

The condition of the honorary judiciary shows and highlights the hypocrisy of the system that on one side still relegates them - after fifteen years of their establishment (D. Lgs nr. 51/1998, *called Carotti Law*) - in a role not only auxiliary and accessory but also highly mortified under the economic point of view, devoid of the minimum protections that now belong also to many workers not stabilized (maternity, sickness, holidays, thirteenth); on the other side, this system allowed that they took an exceptional and decisive position, able to ensure the disposal of a large number of processes in the field of criminal and civil law.

The legislative passiveness, also in this specific field of justice, degrades the condition of the individual, but above all, penalizes the project for modernization and

for improving the efficiency of the service: we can talk about a kind of “paralysis of the system” that not only suspends thousands of individual destinies, but that also prevents any possibilities of reorganization and rationalization.

### **The Honorary Judge of the Court**

According with the significant reform of the Single Judge, done in 1998 and drafted by D.Lgs nr. 51/1998, two different role, among the honorary judiciary have been delineated: the Honorary Judge of the Court and the Honorary Deputy Prosecutor.

These two roles come from the role of the Deputy Honorary Magistrate (praetor) called off in the above mentioned reform.

The spare regulation included in this act had to be supplemented by specific and dedicated circulars signed by the Supreme Judicial Court and published with Ministerial Decrees: the Decrees 26 September 2007 “Modification and integration of the criteria for the appointment and confirmation of the Deputy Honorary Prosecutor” and the Decrees 26 September 2007 “Modification and integration of the criteria for the appointment and confirmation of the Honorary Judge of the Court”.

The Honorary Judge of the first instance Court (GOT) plays its role independently and he has the same jurisdiction, in both civil than criminal law, as every single judge of the First Instance Court. The only difference is in the criminal law filed and it is linked to the offenses that need a scheduled preliminary hearing or only a Single Judge, according with the regulation.

The GOT plays his role for 3 years, renewable for 3 years more.

According to the present regulation, the Honorary Judge of the First Instance Court can apply following these models:

1) Each professional judge can be assisted by an Honorary Judge of the Court in dealing trials characterized by general and abstract criteria.

In this situation, the professional judge has to have an “extra” role to be assigned to the Honorary Judge.

The professional criminal judge, right after the celebration of judicial hearing regulated by the art. 555 Criminal Procedure Code, establishes which hearing and which special proceeding has to be assigned to the Honorary Judges.

In the Civil law field, the professional Judges delegates the honorary judges some specific tasks and activities, including not complex investigations and hearings. In many cases they are in charge of reconciliation's efforts and all the special proceeding regulated by the articles 186 bis and 423, 1<sup>st</sup> par., Civil Procedure Code;

2) In case of significant vacancies in the office, that happens mostly, a big amount of trials is assigned to the Honorary Judges of the Court, except for these matters:

a) in the civil law field:

- corporate and bankrupt law
- intellectual and industrial property

b) in the criminal law field:

- fast track trials in *flagrante delicto*.

In this case the President of the Chamber or, failing that, any other Professional Judge shall perform as Coordinator or spokesperson of the GOT in each civil and criminal section or in the promiscuous section;

3) The Honorary Judges can still be used in substitution of professional judges including within colleges.

Anyway, in all the suggestions objective and predetermined criteria must be followed and drafted in assigning the honorary judges the trails, according with the art. 43 bis of the law on the judicial system and according to all the disposition

prevue in this matter (*see Circular on the formation of tables of organization of judicial offices for the years 2014/2016*)

### **The Honorary Deputy Prosecutor**

Art. 71 of the judiciary (r.d. 30.1.1941 nr. 12) provides that the Honorary Deputy Prosecutor 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, as well as in specific civil cases such as in debarments' procedures.

They absolve the same functions of Public Prosecutor appearing in Court and this “power” comes from Chief's prosecutor's delegation, to whom they are hierarchically. They can also coordinate the investigations in trials assigned to the Judge of Peace.

The functions of the prosecutor described above, can be delegated to Honorary Deputy Prosecutor according with the provisions of Article 72 of the Judiciary Act (rd 30.1.1941 nr. 12).

This article establishes that the Public Prosecutor can be delegated to the Honorary Deputy Prosecutor some typical functions, such as appearing in Court for ordinary hearing, or asking confirmation of the arrest occurred in *flagrante delicto* (in this case the VPO has to have at least 6 months of experience in the role), requesting of a criminal fine order under Art. 459, 1<sup>st</sup> par., and art. 565 of the Criminal Procedure Code, or representing prosecutor's office before the First Instance Court Chamber according to the art. 127 Civil Procedure Code, or in other duties listed in the art. 72, letter d).

Also some functions of the Public Prosecutor in the civil field can be delegated to the VPO.

The 3<sup>rd</sup> par. of the art. 72 can be considered as a rule of closure in referring to the functions the Public Prosecutor can delegate to the VPO; it is stated that the functions delegated to VPO must be normally those referred to First Instance Court's monocratic trials without preliminary hearing. In particular the proceedings in which the prosecutor has the function to institute the trials.

The legal provision suggests to *“follow the policy to apply lay magistrates to trials where direct criminal summon to Court is not provided”*.

This specification is necessary because Art. 33 ter, par. 2, Code of Criminal Procedure provides that the court judges, in the composition of single judge, all the offenses that are not assigned by law to the court in collegiate composition; in other words it is a residual jurisdictional criterion, which is based on the list contained in the Art. 33 bis, Code of Criminal Procedure.

With the reform of the Single Judge of First Instance, the role of the honorary Prosecution is provided also in beside the First Instance Court and it is considered equal to the role of the Honorary Judges of the Court.

The current art. 71 Judiciary Act, entitled “Appointment and 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 art. 72 and other specifically assigned them by law.

As the matter of the fact, the Honorary Deputy Prosecutor are recruited on the same ground of the Honorary Magistrates of the First instance Court, as for the prevision of Articles 42-ter, 42-quater and 42-sexies.

The VPO, such as the GOT, are, therefore, honorary magistrates appointed for a limited period of time.

#### **d) Infringement of the art. 12 of the revised European Social Charte**

The progressive interpretation of the Revised European Charter is authorized by the existence of different articles that obliges the States to move towards the implementation of rights.

These commitments relate to the progressive elevation of the level of social security (art. II-12.3).

The obligation to progress, logically, includes also an obligation of non-regression, both for the material aim than for the personal field of the Charter.

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 produce an extension or, instead, a contraction of the final purpose of protection of the population and protected, even according to an overall 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, or unlawful exclusion from the final aims of the Charter.

Compared to the substance of the obligations of States, this interpretation leads to assess the progress of specific situations in terms demonstrable and measurable, and this interpretation demands the obtaining of valuable and reasonable results in a short time, even through the maximum use of the available resources.

In the case brought to the attention of the European Committee of Social Rights, the association supports – according to what was stated by the National Association of the Judges of peace - that the **exclusion from any protection and social security in favor of the judiciary honorary constitutes a flagrant violation of the art. 12 of the Revised European Social Charter.**

**It is important to underline that the total absence of a regulation of the honorary judiciary determines a void of safeguards for this category of professionals that used to work side by side, each day, with the professional magistrates.**

As the European Committee of Social Rights said many times, it is a duty of the States to realize the Charter's provision from the legal, practical and effective point of view and, moreover from the financial point of view (See.: International Association Autism-Europe (IAAE) v. France, complanit n. 13/2002, decision on the merits, 4 november 2003, point 53; Maragopoulous Foundation for Human Rights (MFHR) v. Greece, complaint n. 30/2005, decision on the merits, 6 december 2006, point 228; International Movement ATD Fourth World v. France, complaint n. 33/2006, decision on the merits, 5 december 2007, point 61)

The legislature's silence on the point fight against the European Regulations which establish some fundamental principles concerning the regulation of the employment relationship and the role of those who has to 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 honorary magistrates.

One of the cardinal principles of the Recommendation CM/Rec (2010) approved by the Committee of Ministers and directed to the States, concerns the independence of judges, which as stated in Article 6 of the Convention, aims to ensure to everyone 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 of any judicial office, which is questioned by the provision of a system of “pay by the piece” based on the number of

held hearings, which can affect in a decisive way the choices of the judge, and in this case of the honorary magistrates.

Under this point, the Recommendation does not only proclaims principles, but underlines that the authorities are in charge of the organization and functioning of the judiciary system, in order to create the conditions that allow the judges to carry out their mission and reach 'effectiveness, without the protection and respect for the independence and impartiality of judiciary.

**Moreover, the Recommendation of the Committee of Ministers, establishes that the salary of the honorary magistrates has to be commensurate with their expertise, their professional role and responsibilities. It also has to of sufficient level in order to keep them immune to any kind of 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 ensure that a reduction in remuneration of the honorary judiciary could not be disposed.**

**There should be avoided systems that let the payment depend on the performance, as they can cause problems to the independence of judges.**

The words adopted do not leave space to misunderstanding linked to the interpretation, as it is forbidden to base the payment on the “pay by the piece” system because of the reason already explained. It is also established to recognize the right to receive a reasonable pension based on the earning achieved during all the years of service.

A mirror of the situation of the honorary judiciary is the pronouncement of the First Instance Court of Turin, Work Section, dated 7 July 2014, in which the Court has condemned the INPS to enroll 10 Honorary Deputy Prosecutors of Turin to the



“separate management” and the Ministry of Justice to pay them "the social security contribution due by law".

The lack of a specific regulation is not decisive - according to the considerations of the Court - to exclude a social security scheme, because of the general principle of the Italian system that every work, carried out both as an employee and as a self employed worker, must reach the required insurance coverage and contribution.

This Court's pronouncement, even though useful to prove a certain openness to the problem, appears isolated and, in any case the mere intervention of the judiciary in order to fill such legislative lackness can be considered sufficient.

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

So, it is unjustifiable the absence of structural reform and legislative instruments that will safeguard the insurance status of the judges, who exercise a judicial function indispensable within the Italian judicial system, like the professional judges do. Concerning this question, it is necessary that the institutional effort to recognize and protect the rights of individuals, recipients of an illogical and unlawful deprivation of their basic rights.

The honorary magistrate has the same functions and responsibilities of the professional magistrate but with the big differences highlighted so far.

The unjustified difference in treatment with the professional judges 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 Unitary Authority of the United - Honorary Magistrates – United non-professional Magistrates alleges infringement, by the Italian State, of

Art. 12 of the European Social Charter, which guarantees the right to an effective social protection, proportional to the work done.

#### **e) Conclusions**

According to what we said above, we asks the European Committee of Social Rights to:

- Authorize the Unitary Authority of the Honorary Magistrates – United non-professional Magistrates to intervene in this procedure through these observations and to present additional written disclosures;

- Accept the complaint presented by the National Judges of Peace (n. 102/2013) and, in particular, to verify 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 judiciary honorary;

- Invite Italy to reorganize the legislation concerning the function of the honorary judiciary, both Justices of Peace that the GOT and the V.P.O., providing, in particular, the opportunity to enjoy an adequate protection and social security in proportion to the work actually performed, definitively and without the possibility of a further postponement.

#### **f) Contacts for communications**

For the purposes of this procedure, any communications has to be sent to the domicile elected by the Association, in Rome at n. 43 Valadier st., at the Attorney at law of Giovanni Romano, or to the following address of certified mail: [giovanniromano@ordineavvocatibn.org](mailto:giovanniromano@ordineavvocatibn.org), and, in alternative, at the registered office of the Association, located in n. 41 Piave st., - 00187 ROME.

**i) Index of the attachments:**

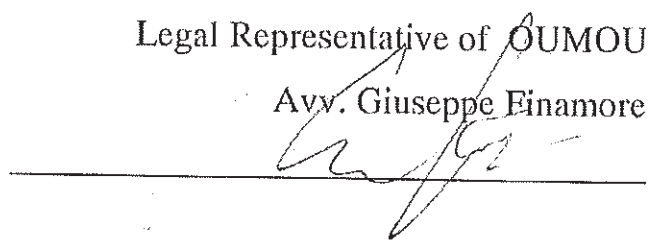
Association Memorandum

Charter of the Association

Rome, 2nd February 2015

Legal Representative of OUMOU

Avv. Giuseppe Finamore

A handwritten signature in black ink is written over a solid horizontal line. The signature is stylized and appears to be the name 'Giuseppe Finamore'.