



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

17 April 2015

**Case Document No. 6**

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

**RESPONSE FROM *ASSOCIAZIONE NAZIONALE GIUDICI  
DI PACE* TO THE GOVERNMENT'S SUBMISSIONS ON THE  
MERITS**

**Registered at the Secretariat on 17 April 2015**



# **ASSOCIAZIONE NAZIONALE GIUDICI DI PACE**

Fondata nel 1994

*"La giustizia al servizio del cittadino"*

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

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**Associazione nazionale Giudici di Pace v. Italy**

Complaint No. 102/2013

**OBSERVATIONS ON THE MERITS OF THE COMPLAINT**

a) Premise.

With the present notes, the A.N.G.d.P. intends to respond at the Italian Government's observations on the merits of the complaint, made to denounce the violation of art. 12 of the European Social Charter which provides:

**Article 12 – The right to social security**

*With a view to ensuring the effective exercise of the right to social security, the Contracting Parties undertake:*

*to establish or maintain a system of social security;*

*to maintain the social security system at a satisfactory level at least equal to that required for ratification of International Labour Convention No. 102 Concerning Minimum Standards of Social Security;*

*to endeavour to raise progressively the system of social security to a higher level;*

*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:*

*equal treatment with their own nationals of the nationals of other Contracting 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 Contracting Parties;*

*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 Contracting Parties.*

**b) On the legitimacy of A.N.G.d.P..**

Preliminarily the A.N.G.d.P. wishes to reiterate that is the most representative Association of Justices of the Peace in the national scene, with forecast to reach 1,000 subscribers by the end of 2015.

However , the Association is repeatedly called by the Italian Government to discuss issues pertaining the non-professional judges and the last meeting was on 31 March 2015.

In light of the special features that differentiate the justice of the peace from the other figures of honorary judges, such as G.O.T. and V.P.O. (which at the same time do not enjoy adequate protection and social security), the Association has always considered opportune to reserve the inscriptions only to justices of the peace, while the other figures of non-professional judges converges in other associations.

However any question about the representativeness of the Association has been overtaken by the decision of the Committee on 2 December 2014, which considered admissible the complaint made against the Italian Government to denounce the violation of art. 12 of the European Social Charter

**c) The legal status of “giudici di pace”.**

The *giudice di pace*, from its creation to the present, has taken an important role for the Italian judicial system, coming closer and closer to the figure of the "ordinary" judge, which exerts its function in a stable, unflinching and unavoidable manner.

In the Italian judicial system is the first instance of the civil and criminal jurisdiction in matters which the law attributes to his competence.

The matters covered by the *giudice di pace* are very important for quality and quantity.

In civil matters deals in particular of the protection of consumers, of the opposition to the administrative sanctions, of the damages resulting from road accidents, as well as the delicate matters of immigration.

In criminal matters deals offenses prosecutable to complaint of the victim and a certain types of crimes prosecutable of office, such as: offenses under art. 10a (entry and illegal residence in the State) and art. 14 (non-compliance with the order of removal from the national territory) of Immigration Law (Legislative Decree no. 286/98); other cases provided for in Book Three, Title I, Section III of the Criminal Code; some offenses safety (TU 06/18/1931 n. 773, as amended); on elections to the House of Representatives (DPR 30/03/1957 n. 361, as amended); some criminal offenses provided for in the Code of Navigation; on the subject of the lottery, etc. (For a more complete listing, look art. 4 Legislative Decree 274/2000).

The *giudice di pace* have the power to reconcile disputes of any value and matter (art. 322 Code of Civil Procedure).

The *giudice di pace* in recent years has prevented the collapse of the Italian judicial system.

The *giudice di pace*, in Italy, defines 1 million and 500 thousand cases per year in the important areas of his competence: handles around 50% of civil litigation, about 25% of criminal trials. The judgments are appealed in a residual manner - 5% (dati del Ministero della Giustizia - Piano della Performance in 2014 - all. n. 1).

In confirmation that the competences of *giudice di pace* are ordinary the art. 1, paragraph 1 of the Law on the Judicial Ordinament (R.D. n. 12/1941), establish that: "Justice, in matters civil and criminal law is administered by the *giudice di pace*, by

the ordinary judge; by the the court of appeal; by the Supreme Court of Cassation; by the Tribunale dei minorenni; by the surveillance court.

This is confirmed from the title I of the Code of Civil Procedure, which is titled "Of the courts" and the heading of Article. 1 of the Code of Civil Procedure is entitled "jurisdiction of the ordinary courts." This article states: "the civil jurisdiction is exercised by the ordinary courts in accordance with the provisions of this code". Section II of the Code of Civil Procedure entitled "Jurisdiction subject and value" opens with the art. 7, whose section is titled "jurisdiction of the *giudice di pace*". Article. 7 Code of Civil Procedure governs the exclusive responsibility of the *giudice di pace*. It is a functional competence and is not delegated, but attributed directly by law.

The *giudice di pace* is holder of autonomous functions and is different from honorary judges, that take auxiliary functions of professional judges (art. 42-bis, co. I, ord. giud., introduced by art. 10, d. lg. 19.2.1998, n. 51).

The *giudice di pace* has its own unique role, is obliged to perform his duties and, like ordinary judges, if refuses to carry out its role can be indicted by the Italian criminal law, for the crime of "interruption of public service ".

Today the *giudice di pace* is a "technical" that in the celebration of hearings applies the provisions of the Civil Procedure Code (art. 316 and 322 of the Civil Procedure Code) and of the Criminal Procedure Code. He applies the law for the resolution of the disputes.

**Is, however, remarkable that the Italian Government does not consider "public workers" the *giudici di pace* while the law assigns them a public service.**

In this sense, the Court of Cassation affirmed that the *giudice di pace* is a semi-professional judge (Cass. civ., Sez. un., ord. 19 ottobre 2011, n. 21582, pag. 3 – All. n. 2).

The doctrine agrees that the legislative amendments to Law 374/91, have now "professionalized" the *giudice di pace*, especially in light of the participation in training decentralized at individual Appeals Courts and training at the *Scuola Superiore della Magistratura*, which takes place together with the professional judges (cfr. judiciary, laws, procedures and regulations, pag.841 Albamontes E. and P. Filippi).

Doctrine and jurisprudence come to these conclusions, because for *giudici di pace* there is a section of the Judicial Councils at the Courts of Appeal, established by Law July 30, 2007 n. 111.

In these sections is expected to be present from 2 to 4 *giudici di pace*, according to the size of the Court of Appeals, which are elected by the *giudici di pace* on the model of those for career judges. The Sections are a self-governing body of the *giudici di pace* at individual Appeals Courts.

The autonomy of the *giudici di pace* is evident, even in terms of management of the office, for the presence of a coordinator selected from among the *giudici di pace* assigned to the office of peace.

**Contrary to the Italian government, the giudice di pace is, for the Italian law, similar to a public employee, as stated by the art. 50 letter. f) DPR n. 917/86, that states that the giudice di pace is treated, for tax purposes, like the employees. Under this legislation, the giudice di pace pays taxes as a any ordinary public employee (All. N. 3).**

The *giudice di pace* is recruited through competitive examinations and, at the outcome of an internship with the final aptitude test, on the model of career judges, can be confirmed only after overcoming a double and severe assessment made by the Judicial Councils and the Council of the Judiciary, which can also determine the non-confirmation of the magistrate (cfr. art. 4, 4-bis, 5 November 21, 1991 Law n. 374).



The Supreme Court of Cassation has said that not only the appointment of giudice di pace takes place through a public competition, but also that the assessment procedures for the confirmation in the functions, envisaged by the law, have the nature of public competition (Supreme Court judgment of 3 February 2011, no. 4410 - All. n. 4).

Article. 10 of the law 374/91 establishing that the *giudice di pace* "is obliged to observe the duties imposed by the ordinary judges" and the C.S.M. (Consiglio Superiore della Magistratura) has established, with the new disciplinary code adopted with resolution of 14 September 2011 (all. n. 5), that the giudice di pace is subject to the same obligations of career judges.

The *giudice di pace* has the same duties of the ordinary judge but does not enjoy any social rights. Both are selected through a public competition: the giudici di pace with a competition based on qualifications, the ordinary judges with a competitive examination.

Each *giudice di pace* works on average a thousand cases and experience has shown that a trial before the justice of the peace lasts less than a year.

On average, each *giudice di pace* earns about € 45,000 gross per year.

**Current legislation determines that the majority of giudici di pace actually performing a judicial function in a stable, continuous and exclusive matter.**

Most of "*giudici di pace*" are in service from 20 years (from 2 May 1995) except they that have reached 75 years of age or have not been confirmed in their appointment.

Even for giudici di pace, as for public employee, there is the principle of exclusivity in the exercise of functions. In fact, among the requirements for the appointment provided by the law, there is to "have ceased, or undertake to stop prior

to assuming responsibility for giudice di pace, the exercise of any employee working activity, public or private" (art. 5, par. 1, letter g) L. 374/91).

In addition, for the lawyers are provided some incompatibilities listed in art. 8 of Law no. 374/1991.: *1- bis . Gli avvocati non possono esercitare le funzioni di giudice di pace nel circondario del tribunale nel quale esercitano la professione forense ovvero nel quale esercitano la professione forense i loro associati di studio, il coniuge, i conviventi, i parenti fino al secondo grado o gli affini entro il primo grado. 1- ter . Gli avvocati che svolgono le funzioni di giudice di pace non possono esercitare la professione forense dinanzi all'ufficio del giudice di pace al quale appartengono e non possono rappresentare, assistere o difendere le parti di procedimenti svolti dinanzi al medesimo ufficio, nei successivi gradi di giudizio. Il divieto si applica anche agli associati di studio, al coniuge, ai conviventi, ai parenti entro il secondo grado e agli affini entro il primo grado*

The CSM has added further incompatibilities, for example. with the rule of conciliator with the Chambers of Commerce and with the function of the ombudsman (CSM resolutions 11.11.2008, 9.6.2005 and Chapter IV, par. one third of the circular CSM P15880 1.8.2002 and later. mod.).

According to Art. 11 of Law no. 374/1991 the giudice di pace receives compensation only partly fixed and partly related to the performance.

Moreover, almost all of the giudici di pace, following the strong professionalization of the report, were forced to abandon the legal profession - or to exercise it in a marginal way - and they never gained any social security coverage for their work as judges.

Is not true that the giudici di pace enjoy other covers retirement, arising in the course of other activities. Indeed in fact the strong work of giudice di pace, prevents,

in practice, judges to performance as a lawyer (in any case severely limited by law) and then does not enjoy any social protection.

Also is not true that today there are *giudici di pace* who enjoy retirement for the exercise of previous activities. This was true until when the rule of *giudice di pace* was occupied by a pensioner, but today, with the modification of the criteria for recruiting, can be employed lawyers from thirty years old to fifty years old.

The law provides, however, that the appointment to honorary judge should fall on people capable of ensure the independence and prestige of jurisdiction with legal and cultural experience.

Therefore, almost all of them, for the hard work like *giudici di pace*, cannot perform the legal profession

While, therefore, the *giudici di pace* are equalized to the ordinary judges for obligations and responsibilities, on the other side they only receive compensation that does not include any protection and social security.

For all these reasons mentioned above, it appears that the *giudici di pace* are real "public employees" if not full time at least part-time and are entirely without merit the observations made by the Italian government that aim to affirm that *giudici di pace* are not workers.

In this sense the European Court of Justice, in the case *O'Brien c. United Kingdom* (C-393-10) affirmed that:

- 1. European Union law must be interpreted as meaning that it is for the Member States to define the concept of 'workers who have an employment contract or an employment relationship' in Clause 2.1 of the Framework Agreement on part-time work concluded on 6 June 1997 which appears in the Annex to Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, as*

*amended by Council Directive 98/23/EC of 7 April 1998, and, in particular, to determine whether judges fall within that concept, subject to the condition that that does not lead to the arbitrary exclusion of that category of persons from the protection offered by Directive 97/81, as amended by Directive 98/23, and that agreement. An exclusion from that protection may be allowed only if the relationship between judges and the Ministry of Justice is, by its nature, substantially different from that between employers and their employees falling, according to national law, under the category of workers.*

- 2. The Framework Agreement on part-time work concluded on 6 June 1997 which appears in the Annex to Directive 97/81, as amended by Directive 98/23, must be interpreted as meaning that it precludes, for the purpose of access to the retirement pension scheme, national law from establishing a distinction between full-time judges and part-time judges remunerated on a daily fee-paid basis, unless such a difference in treatment is justified by objective reasons, which is a matter for the referring court to determine.*

In this sense, the *giudici di pace* and the judiciary honorary, in the specific characteristics and diversity, suffer from a heavy and humiliating absence of legislation that provide in their favour the right to social security.

Furthermore, only with reference to the honorary judges Aggregates (cd. GOA) hired for a specified and limited period of time, the Italian State had expressly recognized, with the founding law of 22 July 1997, 276, a specific social protection (art. 8).

Considered, in conclusion, that the role and commitment of justice of the peace prevents, in fact, to properly exercise the legal profession and that this commitment is not temporary but it continues for most of the justices of the peace, as well twenty years, the Italian state fails to ensure adequate protection and social security to this

category in direct conflict with a fundamental and basic principle of social protection, such as the right to security.

**d) Violation of art. 12 of European Social Charter.**

The progressive interpretation of the Charter is authorized, first of all, by the presence of different items that assign to the State the obligation to continue to move forward in 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 also includes an obligation not to regress, both for the purpose material that the personal scope of the Charter.

In light of this principle, the Committee is authorized to ask the Member if a given policy, for example in the field of social security, or rather an extension produces a contraction of the scope of protection of the population and protected, even in the light of a 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, ie unlawful exclusion from the scope of the Charter. Compared to the substance of the obligations of States, this interpretation leads to assess the progress of concrete situations in terms demonstrable and measurable, requires obtaining results in a certain time and reasonable, even through the maximum use of available resources.

In the case brought to the attention of the European Committee of Social Rights, the National Association of Justices of the Peace argues that the exclusion of any protection and social security in favor of the judiciary of peace constitutes a flagrant breach of Article. 12 of the Revised European Social Charter.

It should be noted that on the point, the absence of a comprehensive regulation of the judiciary honorary determines a total lack of protection for this category of non-professionals judges who constantly and daily administer justice like the professional judges.

As repeatedly stated by the European Committee of Social Rights, it is the duty of States to implement the provisions of the Charter not only from a formal point of view, or legal, but also from a practical point of view and effective, and even financial (Cf .: International Association Autism-Europe (IAAE) v. France, complaint no. 13/2002, decision on the merits of 4 November 2003, paragraph 53; Maragopoulous Foundation for Human Rights (MFHR) v. Greece, complaint no. 30/2005, decision on on 6 December 2006, paragraph 228; International Movement ATD Fourth World v. France, complaint no. 33/2006, decision on the merits of 5 December 2007, paragraph 61).

The silence of the legislature on the point, it's more in contrast with the predictions European regulations that dictate the indisputable principles regarding the discipline of the employment relationship and the role of those who exercise judicial functions, including those dealing with constitutional issues. The text of the international reference 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 the honorary judges.

One of the cardinal principles of the Recommendation concerning 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 in a fair, on the sole basis of the law and in the absence of undue influence.

The independence, is the basic prerequisite for the exercise of any judicial office, which in the case of the judiciary honorary is questioned by the provision of a system of pay by the piece, which can influence decisively the choices of the judge, to which allowances are paid based on the number of hearings held.

On this point, the Recommendation does not stop to stating only the mere statements of principle, but insists that it is up to the authorities responsible for the organization and functioning of the judicial system 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 the judges.

In addition, the Recommendation of the Committee of Ministers, states unequivocally that the remuneration of judges shall be commensurate with their professional role and their responsibilities, and be of sufficient level to make them immune to any pressure aimed at influencing 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. Should be adopted specific legislation to ensure that it cannot be disposed a reduction in remuneration aimed specifically at judges. Should be avoided systems that do depend on the performance of the essential elements of pay, as they may cause difficulties to the independence of judges.

The words taken from this Recommendation does not leave space for ambiguity of interpretation, with regard to the ban of piecework that can affect the independence of the judge, recognizing the right of all judges to obtain a pension proportional to the earnings achieved during the years of service.

Emblematic of the situation of the honorary judges, is the judgment of 7 July 2014 in which the Court of Turin, Section Jobs, condemned the Ministry of Justice to pay "the contribution pension due to the law".

The lack of a specific provision of law is decisive to the exclusion of social protection, which is considered a general principle of 'Italian legal system.

This pronouncement - although showing a certain openness to the problem - appears isolated and in any case can not be only the judiciary to fill a legislative gap so strong.

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

The honorary judge besides not enjoy any social security system, is not entitled to sickness, accident and maternity, to paid leave, despite having the same duties of the magistrate toga.

Under this unjustified unequal treatment with the professional judge, seems entirely appropriate and necessary legislative provision that treats the social security rights of all honorary judges, that constitute an important part of the judiciary system, and play a key role both in civil both in criminal litigation.

The Government argues, finally, that he had presented in Parliament the reform of the judiciary honorary, currently before the Senate (bill AS 1738). It is a bill that follows the ordinary legislative process and, in the past, it has been submitted a lot of project of law, but none has ever been approved.

In any case, the reform sought by the government continues to exclude any social protection that have to ensure the state. In particular tha art. 2 co. 16 n. 5) states that "the honorary judges may provide for itself with voluntary forms of social security contribution with no cost to the public purse".



In conclusion, in the light of the reasoning so far produced, the ANGdP alleges the infringement by the Italian State of Article 12 of the European Social Charter, which guarantees the right to an effective social protection, proportional with the work done.

#### **e) Conclusions**

In the light of the facts set out in the complaint registered at the Secretariat on 2 August 2013, 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;

#### **f) Addresses for communications relating to these proceedings**

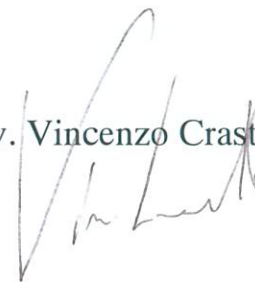
For the purposes of these proceedings, it is requested that all communications be received at the association's service address in Rome at Via Valadier n. 43, c/o the office of Avvocato Giovanni Romano, or at the following declared e-mail address: **giovanniromano@ordineavvocatibn.org**, or, alternatively, 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@gmail.com; presidenza angdp@gmail.com**.

**List of documents:**

1. Ministero della Giustizia – Performance 2014;
2. Ordinanza Corte di Cassazione n. 21582/2011;
3. Art. 50 Testo Unico Imposte sui Redditi;
4. Sentenza Corte di Cassazione n. 4410/2011;
5. Delibera C.S.M. 11.09.2011;
6. Sentenza Tribunale di Torino del 07.07.14
7. Legge istitutiva della figura del Giudice di Pace - estratto;
8. Legge istitutiva del Giudice Onorario Aggregato – estratto.

Roma, lì 14/04/2015

Avv. Vincenzo Crasto

A handwritten signature in black ink, appearing to read 'V. Crasto', is written over the typed name 'Avv. Vincenzo Crasto'.