



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

25 February 2015

**Case Document No. 5**

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

**SUBMISSIONS OF THE GOVERNMENT  
ON THE MERITS**

**Registered at the Secretariat on 12 February 2015**





REPUBBLICA ITALIANA

Rappresentanza permanente d'Italia presso il Consiglio d'Europa  
Ufficio dell'Agente del Governo dinanzi alla Corte europea dei Diritti dell'Uomo

Strasburgo

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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS**



**Associazione nazionale giudici di pace v. Italy**

**(n. 102/2013)**



**GOVERNMENT'S OBSERVATIONS  
ON THE MERITS OF THE COMPLAINT**



### **The applicant's complaint**

1. The applicant (*Associazione nazionale giudici di pace*, hereinafter “ANGdP”):

- complains about the violation of Article 12 of the European Social Charter due to the lack of any social security or welfare protection provided by the State (“*l’Associazione nazionale dei Giudici di Pace lamenta la violazione, da parte dello Stato italiano, dell’articolo 12 della Carta sociale europea che garantisce l’erogazione, il mantenimento ed il ripristino dei diritti alla sicurezza sociale [...]*”);

- requests the Committee to find a violation of Article 12 of the Charter and to order to Italy to reorganize without delay the legislation concerning lay judges, providing the latter with the possibility to benefit of social security and welfare protection (“*Ingiungere allo Stato italiano di riorganizzare in via definitiva e senza la possibilità di adottare ulteriori proroghe la legislazione riguardante la funzione della magistratura onoraria, prevedendo in particolar modo la possibilità di godere di una idonea tutela previdenziale e assistenziale proporzionata al lavoro effettivamente prestato*”): see page 10 of the collective complaint.

2. The applicant is an association who is representative of a certain number of Italian lay judges. The ANGdP has declared to be representative of around 600 *giudici di pace*, that is almost 10% of the Italian lay judges currently in force, as at the end of January 2015 in Italy there were:

- 1.876 *giudici di pace* (non-professional judges regulated under Law 21 November 1991, n. 374, as amended);
- 2.080 *giudici onorari di tribunale* (non-professional judges in First instance Courts);
- 1.716 *vice procuratori onorari* (non-professional prosecutors in the Prosecutor’s Office).

3. In order to find whether or not any violation of Article 12 of the Charter may arise from the current Italian legislation in force, it is therefore necessary to investigate whether or not the latter raises to any kind of discrimination between *giudici di pace* and other lay judges, or – in general - between lay judges and professional judges.

### **The legal status of “*giudici di pace*” in the framework of the Italian legal system: differences from the legal status of professional judges**

4. Article 102, § 1 of the Italian Constitution provides that judicial functions are normally exercised by professional judges (“*magistrati ordinari*”).

5. Article 106, § 2 of the Italian Constitution provides for the possibility to appoint non-professional judges (“*magistrati onorari*”: lay judges) for the exercise of judicial functions, pursuant to the Judiciary Act (“*Legge sull’ordinamento giudiziario*”).

6. 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 (“*Regioni*”) in the organisation of services related to “*justice of peace*” (lay justice).

7. The Judiciary Act (regio decreto [Law] 30 January 1941, n. 12, as amended) and the following special legislation provide for several kinds of non-professional judges or prosecutors who exercise judicial functions:



a) private experts in First Instance Juvenile Courts and in Juvenile Courts of appeal;  
b) non-professional judges in First instance Courts (“*giudici onorari di tribunale*”);  
c) non-professional prosecutors in the Prosecutor’s Office (“*vice procuratori onorari*”);  
d) non-professional judges named “*giudici di pace*”, who deal with civil matters (small claims) and criminal matters (misdemeanours): see Law 21 November 1991, n. 374 as amended;

e) non-professional judges appointed for the removal of backlog before the First Instance Courts (“*giudici onorari aggregati*”): see Law 22 July 1997, n. 276;

f) 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.

**8.** The legal status of lay judges is different from the legal status of professional judges.

**9.** Non-professional judges and prosecutors are selected only on the grounds of their curriculum (“*concorso per titoli*”), while professional judges and prosecutors are selected on the grounds of written and oral examination (“*concorso per esami*”).

**10.** Unlike professional judges and prosecutors, non-professional judges and prosecutors (and *giudici di pace* among them) are appointed for a limited period of time.

**11.** In particular, non-professional judges named “*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), for the time necessary to the Parliament to pass the general reform of the statute of non-professional judges: the mandates so renewed will in any case end on 31 December 2015.

**12.** Unlike professional judges and prosecutors (who are engaged in full-time and cannot exercise any other job or profession) non-professional judges and prosecutors (and *giudici di pace* among them) are not engaged in full-time. The majority of them are lawyers before courts (“*avvocati*”), who are allowed to continue to practice their profession as lawyers 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).

**13.** Unlike professional judges and prosecutors, no employer-employee relationship (“*rapporto di lavoro*”) is established between non-professional judges or prosecutors 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).

**14.** Non-professional judges (and *giudici di pace* among them) exercise their judicial functions as a honorary service. Therefore the relationship with the State is just 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.** As the honorary exercise of judicial functions is qualified as a service relationship, 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.** Due to the honorary nature of the service, non-professional judges and prosecutors (and *giudici di pace* among them) don’t receive any salary.

**17.** The Law nevertheless provides them for some allowances (“*indennità*”), due to the commitment that may be required in the exercise of judicial functions. The allowance is granted on the grounds of the effective exercise of their judicial functions and of the number of proceedings they end. The allowance granted is not determined by a collective bargaining, but is determined by law.

**18.** As regards *giudici di pace*, 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 ended. 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 (please note that it is extremely rare for a non-professional judge to achieve this amount).

**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: nobody would doubt that maintenance granted by ex-spouses is not a “salary”).

**20.** Unlike professional judges, retired persons who are appointed as non-professional judges or prosecutors can draw their pension with the allowance they receive for the exercise of judicial functions.

**21.** As a consequence of the honorary nature of the service given, non-professional judges and prosecutors (and *giudici di pace* among them) are not employees or professionals: therefore they don’t have any annual leave and they don’t benefit of social security on the grounds of the service given. Please note that in any case they will benefit of social protection granted to lawyers (if they are still working as lawyers) or to retired persons (if they are retired).

**22.** From the above-mentioned it results that:

a) no discrimination arises, from the current legislation in force, between *giudici di pace* and other categories of non-professional judges (their legal status is the same);

b) the legal status of non-professional judges (and *giudici di pace* among them) is different from the status of professional judges, due to the different nature of their service;

c) it is untrue that those who are appointed as *giudice di pace* may be considered as professional judges: their service is not a “job” or a “profession” and they are not “workers” (employees or professionals), but only persons who have been appointed for the temporary exercise of honorary judicial functions.



### **The grounds of the alleged violation of Article 12 of the European Social Charter**

**23.** Recalling Article 12, § 4b of the European Social Charter, the applicant complains the lack of any legal provision on social security for *giudici di pace* (“*Il punto centrale del presente reclamo riguarda [...] la mancata previsione da parte della legge italiana di una norma che regoli in maniera organica e coerente la tutela previdenziale di coloro che esercitano la professione di giudice di pace*”): see page 7 of the collective complaint.

**24.** The alleged violation should arise, in particular, from:

1) the violation of the Recommendation CM/Rec(2010)12 - *Judges: independence, efficiency and responsibilities* (see page 8 of the collective complaint);

2) the lack of implementation of Article 11, § 4-*bis* of Law n. 374 of 1991 (see page 7 of the collective complaint);

3) the lack of a social security system similar to the social security system provided for non-professional judges (“*giudici onorari aggregati*”) pursuant to Law 22 July 1997, n. 276 (see page 9 of the collective complaint).

**25.** Article 12, § 4b of the European Social Charter is not applicable in the case at hand, because it concerns the conclusion of bilateral or multilateral agreements between the Parties the Charter in order to ensure the granting, maintenance and resumption of social security rights when persons move from one State to another.

**26.** As regards the other provisions in Article 12 of the European Social Charter, no violation should be found in the case at hand, because:

a) non-professional judges (and, among them, *giudici di pace*) are not “workers” in the meaning of the European Social Charter (see above, §§ 4 and following);

b) the applicant did not complain about the lack of social security or welfare protection in Italy: the *ANGdP* complained about the lack of social security or welfare protection for non-professional judges, which are in the same position of professional judges and shall benefit of the same rights.

**27.** Although the applicant complains about the violation of the Recommendation CM/Rec(2010)12 - *Judges: independence, efficiency and responsibilities* (adopted by the Committee of Ministers on 17 November 2010), the latter clearly focus the difference between professional and non-professional judges. Article 2 of the Recommendation 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*”.

**28.** This means – on one hand - that provisions concerning the independence of 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 – provisions concerning discrimination on selection of judges.

**29.** On the other hand, 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 workers (professional judges) who exercise judicial functions in a stable, continuous and exclusive manner (see the Recommendation, §§ 53-55).



**30.** There shall be no doubt that §§ 53-55 of the recommendation, especially invoked by the applicant, do not apply to non-professional judges. Those provisions refers to all aspects of remuneration (including the payment of a retirement pension and the maintaining of a reasonable remuneration in case of illness, maternity or paternity leave) and § 53 clearly refers to the rules of the system of remuneration “*for professional judges*”. As to the scope of the recommendation, § 11 of the explanatory memorandum clearly states that “*provisions on recruitment, remuneration, selection and career do not relate to non-professional judges*”.

**31.** The applicant is of the opinion that pension rights for non-professional judges 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 page 7 of the collective complaint). This allegation is completely ill-founded and is based on 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.

**32.** Eventually, the applicant complains the lack of a social security system similar to the social security system provided for non-professional judges (“*giudici onorari aggregati*”) pursuant to Law 22 July 1997, n. 276 (see page 9 of the collective complaint). This allegation is also completely ill-founded and is based on a total misunderstanding of that legislation. In 1997 the Parliament approved an extraordinary recruitment of 1.000 of honorary judges for the removal of backlog of civil proceedings pending before the Italian First instance Courts. Due to the scope of this extraordinary recruitment the Law provided that the exercise of judicial functions was incompatible with any other professional job (as a lawyer) or with any other employment (as a professor at university): see Article 9 of Law n. 276 of 1997. Therefore, a special social security regime was provided for those (lawyers or professors) who had to suspend their job because appointed as honorary judges: see Article 8 of Law n. 276 of 1997.

### **The future reform of legal status of non-professional judges**

**33.** On 13 January 2015 a bill for the global reform of the legal status of non-professional judges and prosecutors has been submitted by the Government before the Parliament. The bill is being currently examined by Senato della Repubblica (see disegno di legge AS 1738 attached).

**34.** The reform is aimed to a global revision of the status of non-professional judges and prosecutors (recruitment, functions, competence, allowances, etc.).

**35.** In this context the reform will provide for a social security and welfare protection system, bearing in mind the honorary nature of the judicial service given by non-professional judges (Article 2, § 13e of the draft), by mean of a mechanism based on individual contributions on a voluntary basis (Article 2, § 16e of the draft).





### **Conclusions**

In the light of the aforementioned, the Italian Government asks for the dismissal of the collective complaint at hand.

The application falls out of the scope of Article 12 of the European Social Charter, because non-professional judges are not “workers” in the meaning of the Charter.

There is no discrimination between professional and non-professional judges, as their different legal status is justified on the grounds of the different nature of their charge.

The future reform of legal status of non-professional judges will allow the latter to benefit to a new form of social security and welfare protection.

Eventually, should the applicant lodge with the Committee any pleading in response to the present observations, the Government asks to be authorized to lodge a responding pleading.

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