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Resolution CM/ResChS(2017)3  
*Associazione Nazionale Giudici di Pace v. Italy*  
Complaint No. 102/2013

*(Adopted by the Committee of Ministers on 5 April 2017  
at the 1283<sup>rd</sup> meeting of the Ministers' Deputies)*

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The Committee of Ministers,<sup>1</sup>

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint lodged on 2 August 2013 by the *Associazione Nazionale Giudici di Pace* against Italy;

Having regard to the report transmitted by the European Committee of Social Rights containing its decision on the merits, in which it concluded:

- ***unanimously, that there is a violation of Article E in conjunction with Article 12 § 1 of the Charter;***

Article E of the Charter not only prohibits direct discrimination but also all forms of indirect discrimination that may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by all. The grounds of prohibited discrimination listed in Article E of the Charter are not exhaustive (*International Association Autism Europe (AIAE) v. France*, Complaint No. 13/2002, §§ 51-52). Moreover, States Parties enjoy also a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law. However, it is ultimately for the Committee to decide whether the difference lies within this margin (*Confédération française démocratique du travail (CFDT) c. France*, Complaint No. 50/2008, decision on the merits of 9 September 2009, § 39).

*As to comparability*

Pursuant to Section 1, paragraph 1 letter a) of Royal Decree No. 12/41, Justices of the Peace are lay judges who, as members of the judiciary, administer justice and have jurisdiction in civil and criminal matters. The situation of persons who perform the duties of Justice of the Peace must be examined, not with regard to their legal status or labelling under domestic law, but in an autonomous manner and depending on the duties assigned, hierarchical authority and tasks performed, the latter being determinant in this regard (*European Council of Police Trade Union (CESP) v. France*, Complaint No. 101/2013, decision on the merits of 27 January 2016, §§ 54-59). The mission of Justices of the Peace is to contribute to the administration of justice and to exercise jurisdiction. Their similarities with tenured judges have increased with regard to recruitment; jurisdiction, income taxation and with their budgetary and personal management, to the extent that the Supreme Court of Cassation (Civil Branch, United Sections, Order No. 21582) describes them as judges who are “mid-way between lay and professional judges”. They are fully integrated in the

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<sup>1</sup> In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints the following Contracting Parties to the European Social Charter or the revised European Social Charter have participated in the vote: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, “the former Yugoslav Republic of Macedonia”, Turkey, Ukraine and United Kingdom.

civil and criminal court staff under the 2014 Performance Plan established by the Department of Judiciary Organisation, Personnel and Services in the Ministry of Justice.

Considering the duties assigned, the tasks performed and their integration within the judiciary, persons who perform the duties of Justice of the Peace are functionally equivalent to tenured judges with regard to Article 12 § 1 of the Charter, regardless of whether Justices of the Peace are termed professional or lay judges under domestic law.

*As to the existence of differential treatment*

Persons who perform the duties of Justice of the Peace do not constitute a homogeneous category with regard to social security. In practice, they may enjoy social security under a pension scheme, employment contract or a self-employed professional activity. It cannot be disregarded that, for reasons of legal incompatibility, needs of the courts or even personal choice, some persons who perform the duties of Justice of the Peace suspend or reduce their other professional activity beyond the level required for registration with the *Cassa Forense* or for the accrual of retirement annuities.

However, Law No. 374/91 neither prescribes any social security coverage on the basis of honorary activity, nor does it verify effective alternative social security coverage, and therefore some persons who perform the duties of Justice of the Peace as a main activity, and suspend or reduce their other professional activity, could find themselves excluded from social security coverage. Since Law No. 374/91 allows persons who exercise the duties of Justices of the Peace to exercise these duties as a main activity, and to keep secondary their other professional activity, a position for which tenured judges and other categories of lay judges such as the *giudici onorari aggregati* are excluded because of their legal duties solely to exercise public duties and to enrol with social security, that Law creates differential treatment with regard to social security.

The government does not deny the existence of such differential treatment.

In this respect, it is noted that Section 2, paragraph 16, letter e) of Bill AS1738 initially provided for the possibility to subscribe to a voluntary social security coverage, however this possibility was not retained in the subsequently adopted Law No. 57/2016. Under this law, the government is however empowered to adopt regulations within one year of 18 May 2016 to establish and regulate a welfare and assistance scheme that meets the terms set out in Section 2, paragraph 13, letter l) of the same Law.

Where persons who perform the duties of Justice of the Peace enjoy social security coverage under a pension scheme or an employment contract. The differential treatment might not affect their right to social security under Article 12 § 1 of the Charter. However, the government has not established that all persons who perform the duties of Justice of the Peace enjoy such social security coverage in practice, including where these persons suspend or reduce their professional activity beyond the level required for registration with the *Cassa Forense* or for the accrual of retirement annuities.

*As to the justification for the differential treatment*

The government puts forward a series of grounds to justify the differential treatment, in particular the selection procedure, the fixed term in office, part-time work, honorary service or remuneration by compensation and the fact that persons who perform the duties of Justice of the Peace are appointed as service-providers while tenured judges and the other categories of lay judges such as the *giudici onorari aggregati* perform their duties in a stable, continuous and exclusive manner. These arguments concern only modalities of work organisation and do not constitute an objective and reasonable justification for the differential treatment of persons whose functional equivalence has been recognised.

Consequently, there is a violation of Article E read in conjunction with Article 12 § 1 of the Charter in respect of persons who perform the duties of Justice of the Peace and who have no alternative social security coverage.

Having regard to the information communicated by the Italian delegation at the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of 17 January 2017 (see Appendix to the resolution),

1. takes note of the statement by the respondent government and the information it has provided on the follow-up to the decision of the European Committee of Social Rights (see Appendix to this resolution) and welcomes the measures envisaged by the government;
2. looks forward to Italy reporting on the implementation of the measures announced and the progress made at the time of the submission of the next report concerning the relevant provisions of the European Social Charter.

*Appendix to the Resolution CM/ResChS(2017)3*

**Address by the Representative of Italy at the meeting of the Rapporteur Group on Social and Health Questions (GR-SOC) of 17 January 2017**

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

"Let me first and foremost underscore the paramount role played by the almost 5,000 Italian Justices of the Peace in the administration of justice in civil and criminal disputes.

Within the framework of the current restructuring of the Italian judiciary system, which has already brought significant improvements – some of which were highlighted in the last CM-DH meeting held in December – the Italian Government has been working on a long-awaited reform plan concerning the Justices of the Peace, also in order to make sure that their rights be fully recognised.

At the end of April, the Italian Parliament approved a wide range of legislative measures extending the term of their reappointment to four years rather than the former annual basis criteria of the previous legislation. Moreover, under this new bill, the Italian Government was entitled to adopt regulations also to establish and implement an enhanced welfare and assistance scheme.

The ongoing constructive dialogue – characterised by frequent meetings and contacts – between the Italian authorities and the European Commission would allow for the enactment of effective measures in the near future that Italy will introduce by means of legislative decrees. Among them:

- a) the replacement of the current recompense model on piecemeal basis with a fixed honorary salary that would reduce the weekly service of Justices of the Peace to one working day, allowing them to exercise other professional activities more easily;
- b) the introduction of objective and unbiased criteria in their economic treatment, in accordance with the "*pro rata temporis*" principle;
- c) the establishment of a selection process for new Justices of the Peace based on effective and certified skills that would be followed by a two year training period; and lastly and more interestingly for today's debate;
- d) the effective acknowledgment of rights to paid holidays and maternity leave, as well as access to personal pension schemes either via "*Cassa forense*" or "*INPS Gestione separata*" (a special fund for self-employed workers) that would also protect Justices of the Peace against illness or injuries.

It is in the interest of the Italian Government to continue an open and frank dialogue with Judges of the Peace's representatives, also with the objective to find shared solutions on current issues and make sure the Italian judicial meet the standards set out in the European legislation and the European Social Charter."