

DECISION ON ADMISSIBILITY

2 December 2014

Associazione Nazionale Giudici di Pace v. Italy

Complaint No.102/2013

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 275th session attended by:

Luis JIMENA QUESADA, President
Monika SCHLACHTER, Vice-President
Petros STANGOS, Vice-President
Colm O’CINNEIDE, General Rapporteur
Lauri LEPPIK
Birgitta NYSTRÖM
Rüçhan IŞIK
Jarna PETMAN
Giuseppe PALMISANO
Karin LUKAS
Eliane CHEMLA
Jozsef HAJDU
Marcin WUJCZYK

Assisted by Régis BRILLAT, Executive Secretary

Having regard to the complaint dated 2 August 2013, registered on the same day as number 102/2013, lodged by the *Associazione Nazionale Giudici di Pace* (the National Association of Justices of the Peace) and signed by its President, Vincenzo Crasto, requesting the Committee to find that Italy is not in conformity with Article 12 of the Revised European Social Charter ("the Charter");

Having regard to the documents appended to the complaint;

Having regard to the observations of the Government of Italy ("the Government") on admissibility, registered on 4 November 2013;

Having regard to the observations in reply to the Committee's questions of 15 May 2014, by the ANGdP registered on 24 June 2014;

Having regard to the Observations by the Government in reply to Committee's questions, registered on 21 August 2014;

Having regard to the Charter, and in particular to Article 12 which reads as follows:

Article 12 – The right to social security

"Part I: All workers and their dependents have the right to social security."

"Part II: 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."

Having regard to the Additional Protocol to the European Social Charter providing for a system of collective complaints ("the Protocol");

Having regard to the Rules of the Committee adopted by the Committee on 29 March 2004 at its 201st session and last revised on 9 September 2014 at its 273rd session, (“the Rules”);

Having deliberated on 2 December 2014;

Delivers the following decision, adopted on the above-mentioned date:

1. The *Associazione Nazionale Giudici di Pace* (“ANGdP”) alleges that the situation in Italy is in violation of Article 12§4b of the Charter because Italian law does not provide social security, such as sickness benefit, maternity benefit, or retirement pensions for justices of the peace (*giudici di pace*).

2. In its observations, the Government raises two objections:

- Firstly, it highlights that the ANGdP is not on the list of international non-governmental organisations entitled to lodge a complaint; further Italy has not made a declaration enabling national non-governmental organisations to submit collective complaints.

- Secondly, the Government agrees that the ANGdP cannot be considered as a national trade union but is rather an association of non-professional judges who are not in an employer – employee relationship with the state. According to the Government, there is no contractual relationship governing their terms and conditions of employment. Any strikes that the association may have called can only be characterised as political strikes. Further, the association cannot be considered representative as they represent a minority of the non-professional judges.

3. In response, the ANGdP argues that it is an organisation established in the same way as trade unions such as *Confederazione Generale Italiana del Lavoro* (CGIL) (Italian General Confederation of Labour), *Confederazione Italiana Sindacati Lavoratori* (CISL) (Italian Federation of Workers’ Trade Unions), *Unione Italiana del Lavoro*, (UIL) (Italian Labour Union) and *Unione Generale del Lavoro*, (UGL) (General Labour Union). It is consulted by Parliament on issues relating to the administration of justice and has called strikes and work stoppages. ANGdP has approximately 600 members out of approximately 2000 justices of the peace in total. Consequently, the ANGdP can be considered as a representative body which defends the economic interests of its members performing in effect trade union type functions.

THE LAW

As to the admissibility conditions set out in the Protocol and the Committee’s Rules

4. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Italy on 3 November 1997 and entered into force for this State on 1 July 1998, the complaint has been submitted in writing and concerns Article 12 of the Charter, which was accepted by Italy when it ratified this treaty, on 5 July 1999, and by which it is bound since the entry into force of this treaty on 1 September 1999.

5. The Committee must consider whether in accordance with Article 1§c of the Protocol, ANGdP is a national trade union and, if so, whether it is representative for the purposes of the complaint.

6. As to whether the ANGdP can be considered as a trade union, the Committee recalls that there is no registration requirement for trade unions in Italy, and that formally trade unions do not possess legal personality; they have the status of "non-recognised associations" subject to ordinary law (Articles 36, 37 and 38 of the Civil Code).

7. The Committee notes that, according to the statute of the ANGdP, the scope of the ANGdP is "to define the functions and prerogatives of *Giudici di Pace* in the judicial system, to protect the reputation and the interests of the category of *Giudici di Pace*, to promote professional training and to formulate proposals to ensure the resources and facilities necessary for the better functioning of the Office of *Giudici di Pace*".

8. The Committee notes from the information before it that the ANGdP has made representations, *inter alia*, to the Ministry for Justice and Superior Council of Judges regarding its members' working conditions, including their lack of social protection, and has in fact also called for strikes.

9. The fact there is no contractual relationship between those represented by the association and the employer – the Government – as their terms and conditions are laid down by law, is not decisive for the Committee, often civil servants terms and conditions of employment are laid down in law however this does not prevent them from forming and joining trade unions. The Committee recalls that Article 5 of the Charter guarantees workers' and employers' freedom to organise. This covers not only workers in activity but also persons who exercise rights resulting from work such as pensioners, unemployed persons (Conclusions XVII-1 (2004), Poland).

10. The Committee finds that the ANGdP exercises functions which can be considered as trade union prerogatives, and therefore it can be considered as a trade union for the purposes of the current complaint.

11. As regards whether ANGdP can be considered as representative within the meaning of Article 1§c of the Protocol, the Committee recalls that, for the purpose of the collective complaints procedure, representativeness is an autonomous concept, not necessarily identical to the national notion of representativeness (*Confédération française de l'Encadrement "CFE-CGC" v. France*, Complaint No. 9/2000, decision on admissibility of 6 November 2000, §6).

12. The Committee recalls that it makes an overall assessment to establish whether or not a trade union is representative within the meaning of Article 1§c of the Protocol" (*Fellesforbundet for Sjøfolk (FFFS) v. Norway*, Complaint No. 74/2011, decision on admissibility of 23 May 2012, §20).

13. In order to qualify as representative, an employers' organisation or a trade union must be real, active and independent (FFFS v. Norway, cited above, §22). Representativeness is furthermore examined in particular with regard to the aim of the complainant organisation and the activities it carries out (*Syndicat de Défense des Fonctionnaires v. France*, Complaint No. 73/2011, decision on admissibility of 7 December 2011, §6).

14. The Committee further recalls that it has stated that the number of members and the role performed in national negotiations are mentioned in the Explanatory Report to the Additional Protocol to the Charter providing for a system of collective complaints by way of illustration and not as conditions of an exclusive nature (FFFS v. Norway, cited above, §20).

15. The overall assessment of the information in its possession, leads the Committee to consider the ANGdP as a representative trade union for the purposes of the collective complaints procedure. The Committee will, in any case, at the merits stage, examine the various arguments put forward and the observations made by the Government insofar as they relate to the merits of the case.

16. Consequently, the Committee considers that the complaint complies with Article 1§c of the Protocol.

17. The complaint submitted on behalf of the ANGdP is signed by Vincenzo Crasto, Chair of the ANGdP who, according to Article 17 of its Statutes, is entitled to represent the association. Moreover, the grounds for the complaint are indicated.

18. The Committee therefore considers that the complaint complies with Rule 23 of its Rules.

19. The Committee notes that ANGdP alleges a violation of Article 12§4 b of the Charter. However the Committee recalls that this provision of the Charter is concerned with the granting, maintenance and resumption of social security rights when persons move between states parties. The allegations made by the ANGdP raise issues under Article 12 of the Charter, however the Committee will, at the merits stage, decide which is the most appropriate paragraph under which to examine the complaint.

20. For these reasons, the Committee, by 12 votes to 1, on the basis of the report presented by Rüşhan IŞIK, and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE

In application of Article 7§1 of the Protocol, requests the Executive Secretary to notify the complainant organisation and the respondent State of the present decision, to transmit it to the parties to the Protocol and the states having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter, and to make it public.

Requests the Executive Secretary to publish the decision on the Internet site of the Council of Europe.

Invites the Government to make written submissions on the merits of the complaint by 12 February 2015.

Invites the ANGdP to submit a response to the Government's submissions by a deadline which it shall determine.

Invites parties to the Protocol and the states having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter to make comments by 12 February 2015, should they so wish.

In application of Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the Charter to make observations by 12 February 2015.



Rüçhan IŞIK
Rapporteur



Luis JIMENA QUESADA
President



Régis BRILLAT
Executive Secretary