EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

DECISION ON THE MERITS

Adoption: 26 January 2022

Notification: 4 March 2022

Publicity: 5 July 2022

***Unione sindacale di base* (USB) v. Italy**

Complaint No. 170/2018

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 325th session in the following composition:

Karin LUKAS, President
Eliane CHEMLA, Vice-President
Aoife NOLAN, Vice-President
Giuseppe PALMISANO, General Rapporteur
József HAJDU
Barbara KRESAL
Kristine DUPATE
Karin Møhl LARSEN
Yusuf BALCI
Ekaterina TORKUNOVA
Tatiana PUIU
Paul RIETJENS
George THEODOSIS
Mario VINKOVIC
Miriam KULLMANN

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having deliberated on 8 December 2021 and on 25 and 26 January 2022,

On the basis of the report presented by Karin LUKAS,

Delivers the following decision adopted on this date:

PROCEDURE

1. The complaint lodged by *Unione sindacale di base* (USB) ("USB") was registered on 9 August 2018.

2. USB alleges that the situation in Italy, where municipalities and public bodies in Sicily and Campania make abusive use of contracts for "socially useful workers, whereas these workers carry out regular work which should be assigned to employees under permanent or fixed-term contracts, amounts to a violation of Articles 1§1, 1§2, 4§1, 4§4, 5, 6§4, 12§1, 24 as well as E of the Revised European Social Charter ("the Charter").

3. On 3 July 2019, referring to Article 6 of the 1995 Protocol providing for a system of collective complaints ("the Protocol") the Committee declared the complaint admissible as far as it concerns Article 1§1, 1§2, 4§4 and 24 as well as E read in conjunction with 1§1, 1§2, 4§1, 4§4, 24 and 12§1 of the Charter. It declared the remainder of the complaint inadmissible.

4. In its decision on admissibility, the Committee invited the Government to make written submissions on the merits of the complaint by 6 September 2019.

5. Referring to Article 7§§1 and 2 of the Protocol, the Committee invited the States Parties to the Protocol and the States having made a declaration in accordance with Article D§2 of the Charter as well as the international organisations of employers or workers mentioned in Article 27§2 of the 1961 Charter, to notify any observations they may wish to make on the complaint by 6 September 2019.

6. The Government's written submissions on the merits of the complaint were registered on 5 September 2019.

7. Pursuant to Rule 31§2 of the Committee's Rules ("the Rules"), USB was invited to submit a response to the Government's submissions on the merits by 15 November 2019. USB's response to the Governments' submissions were registered on 14 November 2019.

8. Pursuant to Rule 31§3 of the Rules, the Government was invited to submit a reply to USB's response by 8 January 2020. The Government's reply was registered on 2 January 2020.

SUBMISSIONS OF THE PARTIES

A – The complainant organisation

9. USB alleges that Italian legislation and case law do not adequately protect "socially useful workers" in Sicily and Campania who carry out regular work which should be assigned to employees under permanent or fixed-term contracts. A permanent or fixed-term contract regime would enable stable employment, earn a living through work freely undertaken, sufficient remuneration, and career progress. In addition, USB alleges that "socially useful workers" do not enjoy a reasonable period of notice of dismissal, the right to protection against termination of their employment without a valid reason or to appeal against such termination and request compensation.

10. USB further alleges that this category of workers suffers discrimination in comparison with staff on permanent or fixed-term contracts as regards alternative social security protection and the right to be granted regular employment status with the public administration which uses their services.

11. In view of this, USB asks the Committee to find that the situation in Italy is in breach of Articles 1§1, 1§2, 4§1, 4§4, 5, 6§4, 12§1 and 24 read alone as well as of Article E read in conjunction with each of the aforementioned provisions of the Charter.

B – The respondent Government

12. The Government states that the situation of "socially useful workers" does not correspond to a genuine employment relationship as it does not entail removal from the employment lists or mobility lists. According to the Government, "socially useful work" is a social safety net used to avoid unemployment and continued use of this category of workers is not an abuse of contracts, but a driving force for the gradual integration of such workers into the regular labour market.

13. The Government accordingly requests the Committee to find the complaint unfounded in all respects.

RELEVANT DOMESTIC LAW AND PRACTICE

A – Constitutional principles

14. **Constitution of the Italian Republic of 1 January 1948**:

> Article 38, paragraphs 1 and 2
> "*Every citizen unable to work and without the necessary means of subsistence is entitled to welfare support.*
> *Workers have the right to be assured adequate means for their needs and necessities in the case of accidents, illness, disability, old age and involuntary unemployment.*
> (…)"

Article 97, paragraph 4
"Employment in public administration is accessed through competitive examinations, except in the cases established by law."

B – General legal framework concerning "socially useful workers"

15. Legislative Decree No. 244/1981 – Provisions on extraordinary wage integration interventions in favour of workers in the southern areas – as amended by the Law No. 380/1981

Article 1 provides that *"the salary integration treatment (…) can be further extended up to a maximum of six months in cases where public works are planned and financed (…). The assessment of the conditions referred to in the previous paragraph is carried out by the Committee of Ministers for the coordination of industrial policy (C.I.P.I), upon the proposal of the Minister of Labour and Social Security who adopts the consequent measures through his quarterly decrees".*

Article 1bis (as amended by Law No. 390/1981) provides that *"an amount equal to the difference between the sum paid by INPS [National Institute for Social Security] as a wage subsidy and the wage that would have been earned if the employment relationship continued, which shall not in any case be bigger than that of the workers carrying out the same tasks within the public administration concerned".*

16. Legislative Decree No. 747/1983 – Provisions on extraordinary wage integration interventions in favour of workers in the southern areas – as amended

Article 3§1 provides that the benefit provided in Article 1 of the Legislative Decree No. 244/1981 can be further extended under the same conditions for a maximum of twelve months.

17. Law No. 223/1991 – Provisions on the wage guarantee fund, mobility, unemployment benefits, implementation of European Community directives, job placement and other labour market provisions

The law provides that mobility lists include persons who have been collectively or individually dismissed by an undertaking as a result of the cessation, transformation or reduction of operations or of their specific jobs.

18. Legislative Decree No. 299/1994 – Provisions on extraordinary wage integration in respect of workers in the southern areas – as amended by the Law No. 451/1994

Article 14 provides (annulled by the Legislative decree No. 468/1997) that *"recipients of either extraordinary wage subsidies or the mobility allowance, or long-term unemployed persons could be assigned to socially useful work with the public administrations".* Article 14§2 provides that the use of socially useful workers does not result in the establishment of an employment relationship, does not imply the loss of the extraordinary wage subsidy and does not entail removal from placement lists or mobility lists. Article 14§4 provides that remuneration for unemployed persons who do not receive any social security benefits is set at 7,500 lire per hour.

19. Legislative Decree No. 510/1996 – Provisions on socially useful work, supplements to support income in the social security sector – as amended by the Law No. 608/1996

Article 1§3 provides that *"persons falling under paragraph 1 who do not receive any social security benefit may be used within a project for no longer than twelve months, and for such persons an allowance not exceeding 800,000 lire per month may be requested out of the fund provided for under paragraph 7. The allowance shall be paid by the National Institute for Social Security (INPS) and shall be governed by the provisions on mobility and the mobility allowance. The workers themselves may be paid an amount to supplement the said benefits by the sponsoring bodies or users in respect of the days actually worked".*

20. Legislative Decree No. 280/1997 – Provisions on the assignment of young people in the south

Article 1§2 introduced special rules of assignment of young people between 21 and 32 years of age, who had been in category 1 of the jobseekers register for over thirty months, to be used for work for public utility.
Article 1§5 provided that such assignment did not give rise to an employment relationship and did not mean the removal from the jobseekers register.

21. Legislative Decree No. 81/2000 – Consolidated provisions on employment contracts and review of the legislation on the duties of workers – as amended

Article 2§1 provided for continuation of the use of socially useful workers only for those who had been active for twelve months in the period between 1 January 1998 and 31 December 1999.

Article 4§1 provides that the use of socially useful workers does not mean the establishment of an employment relationship. Such workers must carry out tasks for no less than 20 hours per week and no more than 8 hours per day, and a monthly benefit of 850,000 lire is paid to them for their work.

Article 4§2 provides that the period of the use of socially useful workers, starting from 1 May 2000, cannot be longer than six months, and it can be renewable once for a further six-month period. In case of renewal, 50 per cent of the benefit is paid by the user body.

22. Law No. 388/2000 – Provisions for the formation of the annual and multiannual state budget

Article 78§2 provides that the use of a person by a public administration to carry out socially useful work cannot exceed a period of six months, renewable for a maximum period of eight months.

23. Law No. 296/2006 – Provisions for the formation of the annual budget for 2007

Article 1§1156(f, f-bis and g-bis) provided for and incentive to take on socially useful workers on open-ended contracts in municipalities with less than 5,000 inhabitants starting from 2007 and extraordinary funding to Calabria and Campania and also provided for additional funding of 50 million euros per year starting from 2008 financial year, in order to stabilise socially useful workers, to carry out active labour policy initiatives in the regions and to pay social security benefits.

24. Regional Law No. 5/2014 – Financial provisions

Article 30§1 provides that in order to favour the recruitment on open-ended contracts of the workers referred to in Article 2§1 of the Legislative Decree of 28 February 2000, No. 81 <…> which on 31 December 2013 are holders of fixed-term contracts or used in socially useful activities <…>, the Regional Department of Labour, Employment, Guidance, Services and Training Activities shall prepare the regional list <…> on the basis of the following priority criteria:
seniority of use;
in the event of greater family burden;
in the event of a further tie, seniority in terms of age.

25. Legislative Decree No. 150/2015 – Provisions for the reorganisation of rules on employment services and active labour market policies

Article 26§3 provides that the use of socially useful workers does not mean the establishment of an employment relationship. It establishes a limit of 20 hours per week and a remuneration equal to 460.28 euros, which is a social assistance measure granted to individuals with low income and deprived living conditions.

Article 26§4 provides that socially useful worker's remuneration for weekly hours corresponds to the proportion between the salary and the initial salary level, calculated net of social security and welfare deductions, provided for employees carrying out similar activities at the entity at issue.

Article 26§7 provides that the benefit paid for socially useful work is incompatible with direct pension payments that are paid by the compulsory general insurance for disability, old-age and survivors' and early retirement pensions.

In accordance with Article 26§11, the periods when a person was engaged in socially useful work for which the benefit was paid, can be calculated towards the retirement pension.

26. Legislative Decree No. 75/2017 – Provisions for the reorganisation of the public administrations

Article 20§14 provides that "permanent appointments (…) shall be permitted also during the period of 2018-2020. For the purposes of this paragraph, the administrations concerned may also use the resources referred to under paragraphs 3 or 4 or provided for under regional laws, subject to compliance with the arrangements, limits and criteria laid down in the paragraphs quoted. (…) the local Government bodies shall calculate their expenses on staff after accounting for any joint financing provided by the State and the regions. The administrations concerned may extend any fixed-term contracts in accordance with the arrangements laid down in the last sentence of paragraph 4".

27. Regional Laws No. 27/2016, 8/2017 and 9/2021 – Provisions for the stabilisation of persons in precarious situation

Regional Law No. 27/2016, Article 4§1, provided that the continuation of socially useful activities carried out by workers included in the list referred to in Article 30§1 of the Regional Law No. 5/2014 (and subsequent amendments and additions) is authorised until 31 December 2021 <…>.

28. Circular of the National Social Security Institute of 25 January 2019

This circular established that as of 1 January 2019 the benefit paid to socially useful workers will amount to 592.97 euros per month.

29. Legislative Decree No. 178/2020 – Provisions for the formation of the annual budget for 2021 financial year and multiannual budget for 2021-2023

This law introduced simplified methods for recruiting socially useful workers, to be included in the professional profiles of the areas and categories that do not require educational qualifications beyond the successful completion of compulsory schooling. For professional profiles requiring only successful completion of compulsory schooling, workers with priority based on a selective public procedure are recruited directly, regardless of whether the selection is made by the authority employing the worker or a different authority.

30. Decree of the President of the Council of Ministers of 28 December 2020 – Provisions for the allocation of resources to encourage the hiring of socially useful workers on open-ended contracts, including part-time contracts

This Decree provided that an amount of 42,706,834.68 euros would be allocated to four regions (Basilicata, Calabria, Campania and Puglia) in order to allow them to stabilise existing socially useful workers into regular contracts of employment within the public administration.

C – Domestic case-law

31. Court of Cassation, Judgment No. 3/2007 of 3 January 2007

In this judgment, the Court of Cassation stated that the relationship between a socially useful worker and the public body that uses him or her does not constitute an employment relationship but a legal relationship with a nature of welfare support, based on Article 38 of the Constitution.

32. Court of Cassation, Judgment No. 23317/2015

In this judgment, the Court of Cassation stated that *"the concept [of socially useful workers] supplements the existing social shock absorbers (inclusion on mobility lists of dismissed workers; wage guarantee scheme; unemployment benefit) and is an innovative instrument for dealing with unemployment, having been created with a clear social security intention".*

33. Court of Cassation, Judgment No. 6155/2018 of 14 March 2018

In this judgment, the Court of Cassation stated that *"pursuant to Article 8 of Legislative Decree No. 468/1997, later reproduced by Article 4 of Legislative Decree No. 81/2000, the employment of such workers does not lead to the establishment of an employment relationship, but to a special relationship involving several subjects of a welfare matrix and with a training purpose aimed at retraining the personnel for possible redeployment. Therefore, the temporary employment of socially useful workers in the public administrations, for the implementation of a specific project, cannot be qualified as an employment relationship, since in such case a special employment relationship is created which is essentially of a welfare nature, within the framework of a specific programme using public funds".*

34. Court of Cassation, Judgment No. 17101/2017 of 11 July 2017

In this judgment, the Court of Cassation stated that *"with regard to employment to carry out socially useful jobs, the normative qualification of this special relationship, having a care matrix and a training component, does not exclude that in practice the relationship may have the characteristics of an regular employment relationship with consequent application of Article 2126 of the Civil Code and, for the purposes of qualification of such relationship as an employment relationship, it has to be noted that it is important that the worker is actually included in the public administration and used for a service falling within the institutional purposes of that administration".*

35. Court of Cassation, Judgment No. 5896/2020 of 3 March 2020

In this judgment, the Court of Cassation stated that *"only if the service rendered presents a radical divergence from the project, the relationship becomes subordinate and is regulated by Article 2126 of the Civil Code".*

36. Court of Appeal of Palermo, Judgment No. 291/2020 of 4 May 2020

In this judgment, the Court of Appeal of Palermo stated that *"the legal classification of socially useful workers as a special relationship which has a welfare matrix and an educational component does not exclude the possibility that in practice the relationship may have the characteristics of a regular employment relationship with the consequent application of Article 2126 of the Civil Code. For the purposes of classifying the relationship as an employment relationship de facto working for the public administration, it is important that the employee is actually a part of the public administration, and assigned to a service falling within the institutional purposes of the administration, and the absence of a formal act of appointment is not relevant, it is also irrelevant that the relationship is a fixed-term relationship or that it is null and void because of the breach of the mandatory rules on the prohibition of new recruitment."*

RELEVANT INTERNATIONAL MATERIAL

A – International Labour Organisation (ILO)

37. Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation (adopted on 25 June 1958, entry into force on 15 June 1960)

Article 1(3)

"3. For the purpose of this Convention the terms ***employment*** and ***occupation*** include access to vocational training, access to employment and to particular occupation, and terms and conditions of employment."

38. Convention (No. 102) concerning Minimum Standards of Social Security (adopted on 28 June 1952, entry into force on 27 April 1955)

Article 25

"Each Member for which this Part of this Convention is in force shall secure to persons protected the provision of old-age benefit in accordance with the following Articles of this Part."

…

Article 29

"1. The benefit specified in Article 28 shall, in a continency covered, be secured at least —
(a) to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period which may be 30 years of contribution or employment, or 20 years of residence; or
(b) where, in principle, all economically active persons are protected, to a person protected who has completed a prescribed qualifying period of contribution and in respect of whom, while he was of working age, the prescribed yearly average number of contributions has been paid."

39. Convention (No. 158) concerning Termination of Employment (adopted on 22 June 1982, entry into force on 23 November 1985)

Article 2
"1. This Convention applies to all branches of economic activity and to all employed persons.
2. A Member may exclude the following categories of employed persons from all or some of the provisions of this Convention:
(a) workers engaged under a contract of employment for a specified period of time or a specified task;
(b) workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration;
(c) workers engaged on a casual basis for a short period.

Article 4
The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.

Article 11
A worker whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof, unless he is guilty of serious misconduct, that is, misconduct of such a nature that it would be unreasonable to require the employer to continue his employment during the notice period."

40. Recommendation (No. 111) concerning Discrimination in Respect of Employment and Occupation (adopted on 25 June 1958)

Article 2
Each Member should formulate a national policy for the prevention of discrimination in employment and occupation. This policy should be applied by means of legislative measures, collective agreements between representative employers' and workers' organisations or in any other manner consistent with national conditions and practice, and should have regard to the following principles:
a) the promotion of equality of opportunity and treatment in employment and occupation is a matter of public concern;
b) all persons should, without discrimination, enjoy equality of opportunity and treatment in respect of—
i) access to vocational guidance and placement services;
ii) access to training and employment of their own choice on the basis of individual suitability for such training or employment;
iii) advancement in accordance with their individual character, experience, ability and diligence;
iv) security of tenure of employment;
v) remuneration for work of equal value;

vi) conditions of work including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment."

41. Recommendation (No. 122) concerning Employment Policy (adopted on 9 July 1964)

Article 1
(1) With a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment, each Member should declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment;
(2) The said policy should aim at ensuring that—
(a) there is work for all who are available for and seeking work;
(b) such work is as productive as possible;
(c) there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin."

B – The European Union

42. EU Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP

(…)

ANNEX: ETUC-UNICE-CEEP framework agreement on fixed-term work

"(…)

Scope (clause 2)

1. This agreement applies to fixed-term workers who have an employment contract or employment relationship as defined in law, collective agreements or practice in each Member State.

2. Member States after consultation with the social partners and/or the social partners may provide that this agreement does not apply to:

(a) initial vocational training relationships and apprenticeship schemes;
(b) employment contracts and relationships which have been concluded within the framework of a specific public or publicly-supported training, integration and vocational retraining programme.

(…)

Definitions (clause 3)

1. For the purpose of this agreement the term "fixed-term worker" means a person having an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event.

2. For the purpose of this agreement, the term "comparable permanent worker" means a worker with an employment contract or relationship of indefinite duration, in the same establishment, engaged in the same or similar work/occupation, due regard being given to qualifications/skills.

Where there is no comparable permanent worker in the same establishment, the comparison shall be made by reference to the applicable collective agreement, or where there is no applicable collective agreement, in accordance with national law, collective agreements or practice.

Principle of non-discrimination (clause 4)

1. In respect of employment conditions, fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation unless different treatment is justified on objective grounds.

2. Where appropriate, the principle of *pro rata temporis* shall apply.

3. The arrangements for the application of this clause shall be defined by the Member States after consultation with the social partners and/or the social partners, having regard to Community law and national law, collective agreements and practice.

(…)"

43. Court of Justice of the European Union (CJEU)

Case C-316/13, Fenoll, CJEU Judgment of 6 March 2015
The CJEU held that, according to the settled case-law of the Court, the term "worker" within the meaning of Directive 2003/88 must be defined in accordance with objective criteria that distinguish the employment relationship by reference to the rights and duties of the persons concerned. So, any person who pursues real, genuine activities, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, must be regarded as a "worker". The essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration (Case C-316/13, Fenoll, CJEU Judgment of 6 March 2015, §27). The CJEU also held that it is not for the national court to apply that concept of a "worker" in any classification, and the national court must base that classification on objective criteria and make an overall assessment of all the circumstances of the case brought before it, having regard both to the nature of the activities concerned and the relationship of the parties involved (ibid., §29). According to the CJEU's settled case-law, neither the level of productivity of the individual concerned, nor the origin of the funds from which the remuneration is paid, nor even the limited amount of that remuneration can in any way whatsoever affect whether or not the person is a worker for the purposes of EU law (ibid., §34).

Case C-216/15, Betriebsrat der Ruhlandklinik GmbH, CJEU Judgment of 17 November 2016
The CJEU considered that the concept of "worker" covers any person who carries out work and who is protected on that basis in the Member State concerned (Case C-216/15, Betriebsrat der Ruhlandklinik GmbH, CJEU Judgment of 17 November 2016, §26). The essential feature of an employment relationship is that, for a certain period of time, a person performs services for and under the direction of another person, in return for which he receives remuneration, the legal characterisation under national law and the form of that relationship, as well as the nature of the legal relationship between those two persons, not being decisive in that regard (ibid., §27).

Case C-157/11, Sibilio, CJEU Judgment of 15 March 2012
The CJEU already examined the situation of socially useful workers and whether Directive 1999/70 is applicable to socially useful workers or should such workers be considered as persons having an employment relationship concluded directly between the employer and the worker where the end of the employment relationship is determined by objective conditions such as reaching a specific date constituted, in this case, by the end of the project. The CJEU also examined whether clause 4 of the framework agreement prevents a socially useful worker from receiving less remuneration than that of a permanent worker who exercises the same functions

and has the same seniority solely because his employment relationship has started as a socially useful worker's relationship or does this constitute an objective reason justifying less favourable remuneration (Case C-157/11, Sibilio, CJEU Judgment of 15 March 2012, §24). The CJEU stated that the framework agreement starts from the premise that permanent employment contracts constitute the general form of employment relationships, while recognising that fixed-term employment contracts are a characteristic employment in certain sectors or for certain occupations and activities (ibid., §38). The CJEU decided that it was for the Member States and/or the social partners to define what constitutes a contract or an employment relationship falling under the framework agreement in accordance with clause 2 point 1 (ibid., §45). It was apparent to the CJEU that the use of workers for socially useful activities did not lead to the establishment of an employment relationship with the public administrations under the Italian law (ibid., §46). Nevertheless, the CJEU noted that the Italian law did not exclude the possibility of services provided within the framework of a socially useful work project being able, in reality, to present the characteristics of a salaried work service and in such cases the Italian legislature could not refuse the legal qualification of an employment relationship, however, it was for the referring court to decide (ibid., §48). The formal qualification by the national law of the relationship between socially useful worker and the public administration cannot exclude that this person must nevertheless be recognised as a worker if such qualification is purely fictitious and disguises a real employment relationship (ibid., §49). In the case of the applicant the CJEU noted that even the domestic court acknowledged that in reality the applicant's work constituted an employment relationship. Under the framework agreement the Member States and/or social partners have the option of excluding from the scope of the agreement relationships of initial vocational training and apprenticeship, as well as contracts or employment relationships concluded within the framework of a specific public training, integration and retraining programme supported by the public authorities (ibid., §53). Thus, the CJEU concluded that clause 2 of the framework agreement must be interpreted as meaning that it does not preclude national legislation, which provides that socially useful workers do not fall within the scope of the framework agreement (ibid., §58).

THE LAW

PRELIMINARY CONSIDERATIONS

As to the alleged violation of European Union law

44. The Committee notes that the claims submitted by the complainant organisation are mostly based on alleged violations of European Union law and decisions of the Court of Justice of the European Union.

45. In this respect, the Committee points out that the law of the Charter and EU law are two different legal systems, and the principles, rules and obligations constituting EU law do not necessarily coincide with the system of values, principles and rights embodied in the Charter.

46. In particular, the Committee has already considered that it is competent neither to assess the conformity of national situations with a directive of the European Union nor to assess compliance of a directive with the European Social Charter (see *Confédération Générale du Travail* (CGT) v. France, Complaint No. 55/2009, decision on the merits of 23 June 2010, §§32 and 33; LO and TCO v. Sweden, Complaint No. 85/2012, decision on admissibility and the merits of 3 July 2013, §§ 72 to 74; Irish

Congress of Trade Unions v. Ireland, Complaint No. 123/2016, decision on the merits of 12 September 2018, §114). The Committee's mandate is to assess whether national legislation is compatible with the standards of the European Social Charter (see, *mutatis mutandis*, *Unione Generale Lavoratori - Federazione Nazionale Corpo forestale dello Stato* (UGL–CFS) and *Sindacato autonomo polizia ambientale forestale* (SAPAF) v. Italy, Complaint No. 143/2017, decision on the merits of 3 July 2019, §99).

As to the "socially useful work" scheme and its context

47. Starting in autumn 1973, the economic crisis severely affected several countries, including Italy. Many workers were dismissed from their jobs and there was a need to provide them with a solution, especially in certain regions of Italy, such as Sicily and Campania. In Italy, "socially useful work" scheme became widely used in 1990s and after that a number of legislative decrees and laws were passed by the Italian Government to establish a "socially useful work" scheme. The concept of "socially useful work" was implemented through projects of local public administrations and opportunities to work were created for the unemployed. Public employment was the solution preferred by the persons who did not have a job and this kind of employment was also supported by trade unions because it was considered to be the most stable over time. Even though in the beginning the "socially useful work" was supposed to be used by the public administrations to implement a specific project and for simple short-term tasks, over time the situation developed, and "socially useful workers" were formally unemployed but basically did the same work as civil servants working for the public administration for decades in certain cases. After a certain period of time, the so-called "stabilisation", i. e. conversion into regular permanent or fixed-term contracts of the "socially useful work" scheme commenced, budget was allocated to the regions in order to allow them to "stabilise" "socially useful workers" and it was sought to give those workers more stable jobs in the public administrations. As a result of the COVID-19 crisis, the conversion of the contracts of "socially useful workers" to indefinite duration or fixed-term contracts was delayed and the public administrations are still using "socially useful workers" to carry out specific tasks that came with the crisis.

48. According to the Government, between 2001 and 2019 the number of persons receiving benefits for "socially useful work" went down from over 39,000 to 6,781 in total. Moreover, the national legislation allowed to allocate resources to finance the "stabilisation" of "socially useful workers" in certain regions, and the aim was to reduce the number of those workers to zero in 2020. Also, national legislation gave an opportunity to permanently employ this category of workers in the municipalities with less than 5,000 inhabitants and allowed for the "stabilisation" of 410 workers in Campania and 52 in Sicily. Between 2007 and 2010 one million € was allocated each year to "stabilise" "socially useful workers" in the municipalities with less than 50,000 inhabitants and allowed for the "stabilisation" of 13 "socially useful workers" in Campania and 125 in Sicily.

49. The Committee notes that the parties disagree on the status of "socially useful workers". While USB claims that most of such workers have become a part of the public administrations and carry out ordinary tasks similar to those carried out by the

permanent or fixed-term employees of those administrations, the Government states that the concept of “socially useful workers” is related solely to the social security system aimed at reintegrating the unemployed into the labour market and cannot in any case be assimilated to a regular employment relationship.

50. The Committee notes that a distinction has to be made between the “socially useful workers” who carry out certain short-term tasks in the public administrations specified in a project solely for the duration of that project, and the “socially useful workers” who work for long periods of time in the public administrations. These latter workers become a part of those administrations and carry out tasks similar to those carried out by the regular employees of the public administrations under permanent or fixed-term contracts and who carry out tasks exceeding the limits of the projects in question.

51. As to the first category of workers, the Committee considers that their status is closer to that of a person seeking a job and included into jobseekers’ registers and receiving benefits than to a worker in the regular labour market and the aim of such system is to provide such persons with social security in the form of benefits while promoting their reintegration into the labour market. Such workers do not constitute a part of the public administrations concerned and the activities they carry out in favour of the public administrations are limited in time and in substance, usually they carry out certain tasks specified in the project.

52. As to the second category, the Committee notes that the main features of their status are: they are used as “socially useful workers” for long periods of time; they carry out similar or even the same tasks as regular workers of the public administrations; they receive a benefit for 20 hours per week and the hours worked above those 20 hours are paid for by the specific public administrations and thus they are a part of public administrations concerned. The Committee considers that it is the situation of this category of workers which is at stake in the present case, and it will focus its assessment on this point. The Committee will examine whether this category of workers is more vulnerable in comparison to regular workers of the public administrations, who benefit from social labour protection and from all the social guarantees, such as pension insurance.

53. For the purposes of the present case, the Committee takes note of the case law of the Italian courts, according to which the relationship between a “socially useful worker” and a public administration can be qualified as an employment relationship if the worker actually becomes a part of the public administration and is used for a service falling within the institutional purposes of that administration (Court of Cassation, Judgment No. 17101/2017 of 11 July 2017, Court of Appeal of Palermo, Judgment No. 291/2020 of 4 May 2020). The Committee also takes note of an autonomous definition

of “worker” provided by the CJEU, which is based on the criteria of “genuine and effective activity” for and under the direction of employer.

54. Notwithstanding the case law of the Italian courts and the CJEU, the Committee notes that it has recently provided its own definition of “worker”. In this regard, it stated that the concept of “worker” cannot be defined for the purposes of the Charter solely by reference to the legislation of the member States, as otherwise, the implementation of different guarantees provided by “workers” would be within the State discretion and it would be possible for the States to alter the scope of those guarantees which would deprive them of any efficiency (see European Youth Forum (YFJ) v. Belgium, Complaint No. 150/2017, decision on the merits of 8 September 2021, §119).

55. To conclude, the Committee considers that “socially useful workers” who have carried out tasks within public administrations for an extended period, who have become a part of those administrations and who carry out tasks similar to those that are carried out by the regular workers of the public administrations, can be considered “workers” within the meaning of the Charter and the alleged abuse of their contracts can therefore be assessed under the provisions of the Charter.

As to the provisions of the Charter at stake

56. USB alleges that by using “socially useful workers” for long periods of time Italy has violated the following provisions of the Charter:

a. Article 1§1, as “socially useful workers” are not guaranteed a stable employment;
b. Article 1§2, as the situation of “socially useful workers” infringes their right to earn their living in an occupation freely entered upon;
c. Article 4§1, as the remuneration is dependent upon regional contributions and that the minimum contractual amounts are paid to “socially useful workers” without regard to any career progression;
d. Article 4§4, as the situation of “socially useful workers” also infringes their right to a reasonable period of notice for termination of their contract;
e. Article 5, as the “socially useful workers” are prevented from forming national trade union organisations such as USB and to join them;
f. Article 6§4, as the legislation and the judiciary, by depriving of effect the case brought by USB before the CJEU, undermine the right of “socially useful workers” to collective action through USB;
g. Article 24, as the abusive use of “socially useful workers” in the public administrations infringes upon the right of them not to have their employment terminated without a valid reason, as well as their right to get in such cases an adequate compensation or other appropriate relief by appeal to an impartial body;
h. Article E taken together with Article 12§1, as those persons who were hired as “socially useful workers” in the regions of Sicily and Campania do not have any alternative social security protection;

i. Article E taken together with each above mentioned provisions on account of discrimination of “socially useful workers” in Sicily and Campania in terms of their right to be granted tenured status with the public administration which uses them, in comparison to workers from the private sector, whose situation is stable.

57. While USB argues that the use of “socially useful workers” in the public administrations implies the violation of several provisions of the Charter (Articles 1§1, 1§2, 4§1, 4§4, 5, 6§4, 12§1 and 24 read alone and E read in conjunction with each of the provisions concerned of the Charter), the Committee refers to its decision on admissibility in the present complaint (see §3 above) where it declared the USB’s allegations with regard to Articles 5 and 6§4 of the Charter inadmissible and the allegations as far as it concerns Articles 1§1, 1§2, 4§4 and 24 as well as E taken in conjunction with Articles 1§1, 1§2, 4§1, 4§4, 24 and 12§1 of the Charter admissible. The Committee also notes that the grievances expressed by USB in respect of the different provisions of the Charter invoked are not sufficiently substantiated to allow a distinct assessment under each these provisions.

58. The Committee considers that Article 1§1 of the Charter is concerned with the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment. It also notes that it recognises that states enjoy a wide margin of appreciation when it comes to the design and implementation of national employment policies. However, in principle, the Committee does not preclude the possibility of examining a situation such as the one in the present complaint under Article 1§1. In this instance, given the lack of evidence provided by the complainant organisation with regard to Article 1§1, the Committee rejects these allegations as unsubstantiated.

59. The Committee also notes that, as regards Article 4§1, Article 4§4 and Article 24 of the Charter, the USB failed to sufficiently substantiate its claims in the merits stage in respect of those provisions as it did not provide sufficient evidence with regard to the termination of the contracts of “socially useful workers”.

60. The Committee recalls that the existence and maintenance of a social security system both come under Article 12§1 of the Charter. The Committee notes, however, that the complaint does not concern the material scope of the system of social security under Article 12§1 of the Charter. In this regard, whereas Article 12§1 of the Charter does not require that the entire population or active population be covered by the system of social security, it cannot be interpreted so as to exclude certain groups of the population or the active population in a discriminatory manner. The present case is related to the issues such as whether “socially useful workers” who carry out initially the same work as workers of the public administrations on permanent or fixed-term contracts should benefit from social security protection, whether they are workers within the meaning of the Charter. These issues and whether the claims of a category of workers may be examined separately from the population as a whole, in principle relate to the personal scope of Article 12§1 of the Charter.

61. Considering all the information at its disposal and in view of its preliminary considerations, the Committee decides to assess this complaint under Article 1§2 and in respect of Article E in conjunction with Article 12§1 of the Charter.

I. ALLEGED VIOLATION OF ARTICLE 1§2 OF THE CHARTER

62. Article 1§2 of the Charter reads as follows:

> **Article 1 – The right to work**
>
> Part I: "Everyone shall have the opportunity to earn his living in an occupation freely entered upon."
>
> Part II: "With a view to ensuring the effective exercise of the right to work, the Contracting Parties undertake:
>
> (…)
>
> 2. to protect effectively the right of the worker to earn his living in an occupation freely entered upon;
>
> (…)"

A – ARGUMENTS OF THE PARTIES

1. The complainant organisation

63. USB alleges that, by maintaining thousands of "socially useful workers" in the regions of Sicily and Campania, Italy is in breach of Article 1§2 of the Charter, insofar as it does not protect the right of these workers to earn their living in an occupation freely entered upon.

64. USB points out that while this category of workers (as defined by the Legislative Decree No. 299/1994, Law No. 451/1994 and Legislative Decree No. 468/1997) carries out regular work similar to that of the workers having permanent or fixed-term contracts in the public administrations, they are not provided with enough protection and their contracts are abusive. USB claims that the issue in the present case is the improper use of such workers in Sicily and Campania, who are mostly used for regular work tasks and are fully incorporated into the public administrations they work for. Moreover, as claimed by USB, the annual contracts concluded with these workers in Sicily and Campania between 1999 and 2005 have been extended every year until the present day.

65. USB alleges that since the beginning of their work relationship with the public administrations, "socially useful workers" work in stable and permanent positions, for which competitions should have been organised. USB states that the type of work they perform is comparable to that carried out by persons under permanent or fixed-term contracts by the same public administrations. In the view of USB, this amounts to discrimination.

66. USB points out that in Sicily more than 16,000 “socially useful workers” have been given fixed-term contracts, however, as of 14 July 2015, 5,410 people are still considered as “socially useful workers”. USB provides several examples of specific “socially useful workers” in Sicily, who have been working for various public administration bodies between 60 and 228 months.

67. USB further points out that in Campania, according to the agreement concluded between Campania and the Ministry of Labour appended to the resolution of the Campania Regional Executive of 26 September 2017, there are 5,518 “socially useful workers”. USB explains that the conclusion of the said agreement does not guarantee that “socially useful workers” will be given stable jobs. Moreover, according to USB, no action has been taken to “stabilise” such workers who are employed as manual workers, clerks, social workers and other professionals, such as architects. USB provides several examples of specific “socially useful workers” in Campania, who have been working for various public administration bodies between 228 and 267 months.

68. USB notes that workers on mobility lists or the long-term unemployed have been used for more than a decade for publicly useful work and, although these were originally temporary in nature, this nature disappeared over time. Moreover, the activities carried out by “socially useful workers” are normally intended to satisfy the institutional requirements of user bodies and not objectives that are exceptional or limited in time.

69. USB refers to the CJEU judgments where the latter stressed that the definition of the employment contracts and relationships to which that framework agreement applies does not fall to it or to EU law, but to national legislation and/or practice. It also pointed out that the formal classification under national law of the relationship established between a person carrying out “socially useful work” and the public administration for which such work is carried out cannot preclude such a person from nonetheless being granted the status of worker under national law, if such a formal classification is only notional and thereby conceals an actual employment relationship under national law.

70. USB refers to the judgments of the Court of Cassation (Nos. 23316/2015, 23317/2015 and 23318/2015) where the latter excluded the possibility of recognising any employment relationship of “socially useful workers”. USB also refers to the judgment of the Court of Cassation (No. 17101/2017) where it held that the relationship of a “socially useful worker” can have the characteristics of a regular employment relationship and it is a relevant consideration that the worker is actually incorporated into the public organisation and is assigned to a department falling under the institutional goals of the administration.

71. USB also notes that the Civil Code (Article 2126) considers the aspect of remuneration only and excludes any other relief in respect of the abuse. USB also makes a reference to a Legislative Decree No. 75/2017, which allows the regularisation

of the situation of “socially useful workers”, however, USB points out that the choice on whether to regularise the situation falls upon the public bodies, which may decide whether to “stabilise” the situation of “socially useful workers” at all or to “stabilise” only some of them, which may result in discrimination. USB also explains that the “stabilisation” will only have effects on the future and not the past, as it does not entail the payment of compensation for the abuse of fixed-term contracts but only the payment of any salary differences accumulated and the possible regularisation of pension contributions.

72. Furthermore, USB strongly contests the Government’s arguments that the “socially useful workers” work under projects, that their status is clearly regulated in domestic legislation and that the whole purpose of “socially useful workers” is to give persons who are vulnerable in the sense of labour market work and to pay benefits, which, according to the Government, excludes the qualification of contracts of “socially useful workers” as subordinate work.

73. In the light of the abovementioned elements, USB considers that “socially useful workers” working for long periods of time for public administrations in Sicily and Campania are discriminated against in comparison to persons who are employed under permanent or fixed-term contracts, in violation of Article 1§2 of the Charter.

2. The respondent Government

74. The Government maintains that the use of a worker for “socially useful work” does not determine the establishment of an employment relationship.

75. The Government states that permanent employment of “socially useful workers” has been encouraged and that the number of “socially useful workers” dropped from 39,000 in 2001 to the current 6,781.

76. The Government states that under domestic legislation the regions where “socially useful workers” are used, including Sicily and Campania, can allocate the necessary resources to ensure the payment of benefits and allowing the annual extension of the related projects at user agencies. This could be done until 31 December 2017 by concluding agreements with the Ministry of Labour. Moreover, the additional resources enable the financing of the “stabilisation” of “socially used workers” in some regions. Also, permanent employment of “socially useful workers” in the municipalities with less than 5,000 inhabitants allowed for the “stabilisation” of 2,132 “socially useful workers” in total, out of those 410 were in Campania and 52 in Sicily. 10 million € were allocated for the “stabilisation” of “socially useful workers” in Campania. Starting from 2008, 50 million € were allocated for the “stabilisation” of “socially useful workers” in certain regions, including Sicily and Campania, until 31 December 2017. Further, legal acts allowed the “stabilisation” of “socially useful workers” to be financed from the Social Fund of Employment and Training almost exclusively in Sicily and Campania, which meant that in 2009-2010 one million € were allocated for the “stabilisation” of “socially useful workers” in the municipalities with less than 50,000 inhabitants and 125 persons in Sicily and 13 in Campania benefited from this allocation.

77. The Government further notes that domestic legislation provided for a creation of a regional list of workers which the territorial bodies that have vacancies can hire for indefinite time and for whom compulsory education is sufficient.

78. The Government states that “socially useful workers” have an adequate level of protection, since public administrations must cover their insurance against accidents and occupational diseases, as well as civil liability insurance; also, the right to an adequate rest is envisaged, as well as the payment of the allowance in case of documented illness. Absences are provided for personal reasons and for that time the payment of the allowance is suspended. Finally, the periods when “socially useful works” were carried out can be included in the period required to receive old-age pension.

79. The Government also states that the contracts of “socially useful workers” are covered by the social legislation, which has an aim to protect a worker from the risks resulting from the loss of the working capacity or loss of work for reasons related to changes in the labour market. Further, the Government states that the “socially useful workers” do not get removed from the employment or mobility lists, that they get paid a benefit, and that the Employment Fund is the institution that finances the payment of benefits for “socially useful workers”.

80. The Government maintains that the benefits mentioned above that “socially useful workers” receive are paid for an activity that is part of a project, and that they work reduced hours (if they work more, they are paid accordingly). Moreover, the Government states that the concept of “socially useful workers” is aimed at avoiding situations related to an increase of unemployment and at using the work energy towards “socially useful” activities. Therefore, the Government asserts that “socially useful work” is not a fixed-term job but rather a social safety net used to gradually reintegrate a worker into the labour market.

81. In light of these measures, the Government considers that “socially useful workers” have a social safety net and are sufficiently protected against any abuse of their contracts, and, in the absence of a subordinate employment relationship, they are therefore not in a situation comparable to that of workers having permanent or fixed-term contracts in the public administrations. It accordingly considers that there is no violation of Article 1§2 of the Charter.

B – Assessment of the Committee

82. The Committee notes that the complaint relates in substance to the situation of “socially useful workers” in the public sector in the regions of Sicily and Campania in Italy.

83. The Committee recalls that Article 1§2 of the Charter implies that all forms of forced or compulsory labour must be prohibited. The States parties to the Charter who have accepted this Article undertake “to protect effectively the right of the worker to earn his living in an occupation freely entered upon”. According to the Committee’s interpretation of this provision, the right to earn one’s living through an occupation freely entered upon entails the elimination of all forms of discrimination in employment and the prohibition of forced labour (European Organisation of Military Associations and Trade Unions (EUROMIL) v. Ireland, Complaint No. 164/2018, decision on the merits of 21 October 2020, §48).

84. The Committee recalls that discrimination is defined as a difference in treatment between persons in comparable situations, where the treatment does not pursue a legitimate aim, is not based on objective and reasonable grounds or is not proportionate to the aim pursued (*Confederazione Generale Italiana del Lavoro* (CGIL) v. Italy, Complaint No. 91/2013, decision on the merits of 12 October 2015, §236).

85. Discriminatory acts prohibited by Article 1§2 are those that may occur in connection with employment conditions in general (in particular with regard to remuneration, training, promotion, transfer and dismissal or other detrimental action) (ibid., §238).

As to comparability and differential treatment

86. In the instant case, the Committee considers that the only differences between “socially useful workers” and the regular workers of the public administration are the amount of remuneration they receive and that they do not receive certain social benefits, such as having the remuneration taken into account for the calculation of the old-age pension. The similarities are more prominent: they carry out similar tasks and constitute a part of public administrations. Furthermore, it can be seen from the specific examples provided by the USB that “socially useful workers“ in those examples carry out tasks that require a subordinate relationship between the worker and the person giving such worker tasks to be carried out.

87. The Committee notes that the Government relies heavily on the fact that “socially useful workers” do not receive a salary but rather a benefit which is paid from social funds designated towards providing certain social security. However, having regard to what has been stated in the preliminary considerations (see §§48-57 above), the Committee considers that the mere fact that this category of workers is paid benefits from different social funds than those from which the salaries of regular workers are paid cannot be the decisive factor in the definition of their status as “workers”.

88. The Committee thus considers that there is a difference in treatment between “socially useful workers” and regular workers of the public administrations.

As to the existence of a legitimate aim

89. The Committee notes that the fact that Italian law provides that access to indefinite duration employment in the public sector is determined by transparent and objective competitive selection procedures is based on objective and reasonable grounds and corresponds to the legitimate aim of securing the principle of impartiality and the proper conduct of public administration and, on the other hand, the scheme of "socially useful work" corresponds to the legitimate aim of achieving a social safety net for this category of vulnerable workers.

As to the justification and proportionality of the differential treatment

90. The Committee considers that the mere fact that "socially useful workers" exist and carry out work for public administrations for certain periods of time cannot in itself be regarded as contrary to the Charter, provided that effective measures exist to prevent abuses arising from the recourse to indefinite prolongation of "socially useful workers'" contracts and provided that effective remedies are available and accessible in case of such abuse.

91. In this respect, the Committee notes that Italian legislation (Legislative Decree No. 747/1983, Law No. 608/1996, Legislative Decree No. 81/2000, Law No. 388/2000, Legislative Decree No. 150/2015) sets specific conditions for the use of "socially useful workers": they must work no less than 20 hours per week under a specific project and the overall length of the employment under that project is limited in time.

92. The Committee will examine the remedies that are available in cases of the abuse of contracts for "socially useful workers". Firstly, the Committee notes that "socially useful workers" are prioritised for employment in the public administrations if vacant positions become available in those administrations. However, it depends largely on the specific public administration whether there are positions available. Secondly, the Committee notes that there is a possibility to "stabilise" "socially useful workers", and it takes note of the efforts of Italy taken to provide access to stable employment to "socially useful workers" and of progressively reducing the number of "socially useful workers" in the regions, such as Sicily and Campania. However, this measure depends on the resources allocated to the regions for that purpose, as well as on the will of the specific public administration. Following the case law of Italian courts, if a "socially useful worker" carries out tasks that are completely different to what has been described in the project, the relationship has similarities to a regular employment relationship which is governed by Article 2126 of the Civil Code. The Committee notes that in this case the remedy is purely compensatory as the "socially useful workers" can then receive the differences in remuneration and other entitlements related to employment relationship. This does not have any effect on their status as "socially useful workers". Moreover, although "socially useful workers" are not prevented from raising complaints related to their situation before the domestic courts, the Committee notes that there is limited case law in Italy on the situation of "socially useful workers". Even from the existing case law a conclusion can be drawn that the domestic courts usually consider that the relationship between a public administration and a "socially useful worker" cannot be classified as an employment relationship. Only recently there has been a slight shift in Italian case law on "socially useful workers" where the courts held that the relationship between a public administration and a "socially useful worker" may have the characteristics of a regular employment relationship.

93. The Committee notes that the use of “socially useful workers“ may be necessary in ensuring that long-term and other unemployed persons are given opportunities to be reintegrated into the labour market while receiving certain social benefits necessary for their subsistence.

94. The Committee considers however that an adequate balance must be struck between needs for flexibility and the rights of workers to earn their living in an occupation freely entered upon. In particular, “socially useful workers” should not be used to circumvent more stringent rules applicable to permanent or fixed-term employment contracts in the public administrations. The Committee notes that there must be adequate legal safeguards preventing abuse arising from the successive use of “socially useful workers” without providing them with necessary social guarantees. Also, in case such abuse occurs, there should be adequate, proportionate and dissuasive remedies available both in law and in practice.

95. The Committee considers that in cases where “socially useful workers” carried out functions equivalent to those carried out by regular workers of the public administrations, the experience acquired by “socially useful workers” should be taken into account as a relevant criterion for recruitment in public administrations. In this regard, the Committee notes as a positive aspect that “socially useful workers” are prioritised to be recruited in public administrations they work for.

96. Nevertheless, on the basis of the evidence and the examples available to the Committee, it does not consider it demonstrated that an adequate balance has been struck between the need for flexibility and the right of “socially useful workers” to earn their living in an occupation freely entered upon. In particular, the Committee notes that “socially useful workers” who carry out equivalent functions to those carried out by regular workers of public administrations, provide services to public administrations that are not limited to the duration of a given project but that are continuously renewed, sometimes for decades. These “socially useful workers”, even though they have, for extended periods of time, acquired the same experience in the same tasks as regular employees of public administrations, are not a part of these administrations and therefore continue to have limited career development opportunities and receive less remuneration. Thus, the Committee considers that there are insufficient safeguards to prevent the abuse of the “socially useful workers” in question. With regard to remedies available to such “socially useful workers” in case of abuse, the Committee notes that the remedy is limited to a compensatory remedy and that the effects of the “stabilisation” of “socially useful workers” are uncertain and might only be realised in the future.

97. It follows that the Committee does not consider it demonstrated by the Government that “socially useful workers” who carry out equivalent functions to those carried out by regular workers of the public administrations are not exposed to abuse by being engaged successively and for very long periods without the guarantees provided to regular workers of public administrations. The possibility of “stabilisation” of “socially useful workers”, the payment of a benefit and certain coverage by the social legislation does not lead the Committee to take any other view of the situation.

98. Consequently, the Committee considers that there has been a disproportionate interference with the rights of this group of persons to earn their living in an occupation freely entered upon, and it thus holds that there is a violation of Article 1§2 of the Charter.

II. ALLEGED VIOLATION OF ARTICLE E IN CONJUNCTION WITH ARTICLE 12§1 OF THE CHARTER

99. Article E of the Charter reads as follows:

> **Article E –Non-discrimination**
>
> "The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

100. Article 12§1 of the Charter reads as follows:

> **Article 12§1 –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;
>
> […]."

A – ARGUMENTS OF THE PARTIES

1. The complainant organisation

101. USB states that while the temporary nature of the activities of "socially useful workers" disappeared over time and such workers could be placed in a similar position with regular workers of the public administrations where "socially useful workers" are also employed, the latter do not have the same social security arrangements.

102. USB argues in particular that "socially useful workers" do not have any social security protection that would guarantee them a pension similar to that received by regular workers of the public administrations hired under permanent or fixed-term contracts. USB explains that the periods when "socially useful workers" carry out their activities only notional contributions to the old-age pension are recognised and they are valid only to establish an entitlement to the pension and not its amount. It follows, that the periods when "socially useful work" is carried out, do not result in an increase of the pension. USB further notes that in order to receive a higher amount of pension, "socially useful workers" can make voluntary contributions, but they come at a cost too high for "socially useful workers" as they receive reduced remuneration.

2. The respondent Government

103. The Government asserts that as the “socially useful workers” are not “employed” within the regular meaning of that word and that they receive a benefit for their work and not remuneration, the issue raised by the USB is ill-founded.

104. The Government states that for all “socially useful works” carried out before 31 July 1995 a figurative contribution is provided for the purposes of recognising the right to a pension and determining its exact amount, meaning that they are “fictitious” social security sums that coincide with the periods when “socially useful work” was carried out and pension rights are only guaranteed if certain amounts of money are paid by a person. For “socially useful works” carried out after 31 July 1995, the periods worked can be calculated for the purposes of periods necessary to receive entitlement to pension but not for the purposes of the calculation of the pension itself. Thus, it is the Government’s opinion that the alleged violation cannot in any way concern the period before 31 July 1995 and for the subsequent periods the time a person worked as a “socially useful worker” is included in the calculation of pension and, if voluntary contributions are paid, then the amount of pension received is accordingly higher.

105. The Government also notes that a “socially useful worker” can make voluntary contributions towards pension and in that case the amount received as pension would increase.

B – Assessment of the Committee

106. The Committee recalls that the insertion of Article E into a separate provision indicates the heightened importance paid to the principle of non-discrimination with respect to the achievement of the various substantive rights contained in the Charter. Its function is to help secure the equal effective enjoyment of all the rights concerned. The principle of equality that is reflected therein means treating equals equally and unequals unequally. 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 and to all. The grounds of prohibited discrimination listed in Article E of the Charter are not exhaustive (*Associazione Nazionale Giudici di Pace* v. Italy, Complaint No. 102/2013, decision on the merits of 5 July 2016, §70).

107. The Committee also recalls that States Parties enjoy 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 (*Associazione Nazionale Giudici di Pace* v. Italy, Complaint No. 102/2013, op. cit., §71).

108. A distinction is discriminatory with regard to Article E of the Charter where it lacks objective and reasonable justifications, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised (European Roma Rights Centre (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, §40).

109. The Committee recalls that in matters of discrimination, the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment (Mental Disability Advocacy Centre (MDAC) v. Bulgaria, Complaint No. 41/2007, decision on the merits of 3 June 2008, §52).

As to comparability and differential treatment

110. The Committee refers to its considerations under Article 1§2 above and finds that "socially useful workers" carry out equivalent functions to regular workers of the public administrations with regard to Article 12§1 of the Charter, regardless of their classification under domestic law.

111. The Committee refers to the Italian legislation where it is stated that the benefit paid for "socially useful work" is incompatible with direct pension payments that are paid by the compulsory insurance for disability, old-age and survivors' and early retirement pensions (see §25 above). The Committee notes that there are certain means available for "socially useful workers" to receive higher old-age pension for the periods when they did "socially useful work": one way is to pay voluntary contributions. If such contributions are not paid, periods of "socially useful work" are taken into account for the purposes of establishing the contribution period necessary to receive a pension but do not result in any increase in the amount of the pension. In this case, such "socially useful workers" could find themselves to be excluded from the social security protection. The other possible means for "socially useful workers" to earn pension rights is to work for more than 20 hours per week, to get paid by the public administration that uses "socially useful workers" and in this case social security contributions are paid from the remuneration received. Further, "socially useful workers" can be self-employed (income from such employment cannot exceed €3,718.49 gross per year) and receive income from part-time fixed-term contracts (although the income from such employment cannot exceed €309.87 per month), in which case the social security contributions are also paid.

112. However, if a "socially useful worker" works 20 hours per week only, the amount of the future pension does not change, no additional pension rights are earned.

113. The Committee notes that the Government essentially does not comment on the alleged discrimination, merely stating that "socially useful workers" can pay

voluntary contributions towards higher pension.

114. The Committee finds that, where persons perform their duties within the public administrations as “socially useful workers” for 20 hours per week and where they receive benefits for their work, the differential treatment does affect their entitlement to social security, namely the amount of the old-age pension, the right to receive early retirement and other pensions under Article 12§1.

As to the justification and proportionality of the differential treatment

115. The Government did not put forward any specific arguments justifying the differential treatment, it merely stated that “socially useful workers” received benefits as a result of the social security protection provided for unemployed and that in any event they could not be compared to regular workers of the public administrations.

116. Accordingly, the Committee considers that there is no objective and reasonable justification for the differential treatment of “socially useful workers” who work for 20 hours per week and who do not contribute to their pension voluntarily.

117. Consequently, the Committee holds that there is a violation of Article E read in conjunction with Article 12§1 of the Charter in respect of this group of persons.

CONCLUSION

For these reasons, the Committee concludes:

- by 13 votes against 2 that there is a violation of Article 1§2 of the Charter;

- unanimously that there is a violation of Article E read in conjunction with Article 12§1 of the Charter.

Karin LUKAS
President and Rapporteur

Henrik KRISTENSEN
Deputy Executive Secretary