

## HUMAN RIGHTS COMMITTEE

### Disabled and handicapped persons in Italy v. Italy

Communication No. 163/1984

10 April 1984

#### ADMISSIBILITY

*Submitted by:* A group of associations for the defence of the rights of disabled and handicapped persons in Italy, and persons signing the communication, on 9 January 1984

*Alleged victims:* Disabled and handicapped persons in Italy

*State party:* Italy

*Declared inadmissible:* 10 April 1984 (twenty-first session)

#### Decision on Admissibility

1. The authors of the communication, dated 9 January 1984, are a group of associations for the defence of the rights of disabled and handicapped persons in Italy (a non-governmental organization hereinafter referred to as the "Coordinamento") and the representatives of those associations, who claim that they are themselves disabled or handicapped or that they are parents of such persons. Although the representatives are primarily acting for the Coordinamento, they also claim to act on their own behalf.

2. The authors challenge article 9 of the Italian law decree of 12 September 1983, No. 463, which was later confirmed by Parliament and enacted as article 9 of law No. 638 of 11 November 1983.\* They contend that this provision infringes article 26 of the International Covenant on Civil and Political Rights in that it violates the right to work of disabled and handicapped persons. No submissions have been made regarding individual cases. The authors apparently seek a pronouncement of the Human Rights Committee that article 9 of law No. 638 was enacted in violation of Italy's commitments under the Covenant.

3. Article 9 contains a modification of the legal regime providing for the compulsory employment of disabled and handicapped persons laid down in law No. 482 of 2 April 1968. According to articles 11 and 12 of that law, private as well as public undertakings whose force exceeds 35 persons are obliged, in principle, to employ 15 per cent disabled or handicapped persons, a percentage which may rise to 40 per cent for "auxiliary personnel"

in the case of public undertakings. At the same time, article 9 of the 1968 law divided the total number of disabled and handicapped persons to be employed compulsorily into different categories, reserving, in particular, 25 per cent for military war Victims and 10 per cent for civilian war victims, while 15 per cent were allotted for victims of labour accidents and 15 per cent for ordinary disabled or handicapped persons ("invalidi civili"). To the extent that any particular category could not be filled by persons within that category, the entitlement was transferred to persons in the other categories. Considering that few war victims remain, the redistribution scheme significantly benefitted disabled and handicapped persons in other categories. By virtue of paragraph 4 of the impugned article 9, this redistribution scheme was abolished. As a consequence, the authors allege that the amendment has considerably reduced the number of work posts available to ordinary disabled or handicapped persons ("invalidi civili"). Furthermore, they criticize paragraph 3 of the same article which permits employers to take into account, for the purpose of demonstrating their compliance with the compulsory element of 15 per cent of the work force, also those workers whom they have hired outside the special procedure for the employment of disabled and handicapped persons, provided that their disability or handicap exceeds 60 percent.

4. Before proceeding to the merits of a case, the Human Rights Committee must ascertain whether the conditions of admissibility as laid down in the Optional Protocol to the International Covenant on Civil and Political Rights are met.

5. According to article I of the Optional Protocol, only individuals have the right to submit a communication. To the extent, therefore, that the communication originates from the Coordinamento, it has to be declared inadmissible because of lack of personal standing.

6.1. As far as the communication had been submitted on their own behalf by the representatives of the different associations forming the Coordinamento it fails to satisfy other requirements laid down in articles I and 2 of the Optional Protocol.

6.2. The author of a communication must himself claim, in a substantiated manner, to be the victim of a violation by the State party concerned. It is not the task of the Human Rights Committee, acting under the Optional Protocol, to review *in abstracts* national legislation as to its compliance with obligations imposed by the Covenant. It is true that, in some circumstances, a domestic law may by its mere existence directly violate the rights of individuals under the Covenant. In the present case, however, the authors of the communication have not demonstrated that they are themselves actually and personally affected by article 9 of law No. 638 of 11 November 1983. Consequently, the Committee is unable, in accordance with the terms of the Optional Protocol, to consider their complaints.

7. The Human Rights Committee therefore decides:

The communication is inadmissible.

Footnotes:

\*/ Article 9 of law No. 638 of II November 1983 reads as follows:

"Article 9

" 1. Pending amendment of the compulsory employment regime, the provincial offices concerned with labour and promoting full employment shall, prior to the assignment to work of persons entitled to the benefits provided under Act No. 482 of 2 April 1968 and subsequent amendments thereto, ensure that such persons *whose degree of disability is less than 50 percent* undergo a medical examination to be conducted by the competent health authority in order to verify whether their state of disability is unchanged. *Arrangements shall be made for the examination to be given within fifteen days from the date of the decision to assign them to work. Otherwise, in every case they shall be assigned, subject to later confirmation.*

"2. The names of persons failing to present themselves for the examination referred to in the foregoing paragraph shall be deleted from the relevant lists in article 19 of Act No. 482 of 2 April 1968.

"3. Persons employed under the regular placement procedure *and subsequently found to be suffering from disabilities not incurred in their work or service and having a degree of disability of less than 60 per cent shall be considered for the purposes of the aggregate compulsory work percentage referred to in article 11, 9 paragraph 1. of Act No. 482 of 2 April 1968.*

"4. The provisions concerning them in article 9, last paragraph, of Act No. 482 of 2 April 1968 shall not apply."