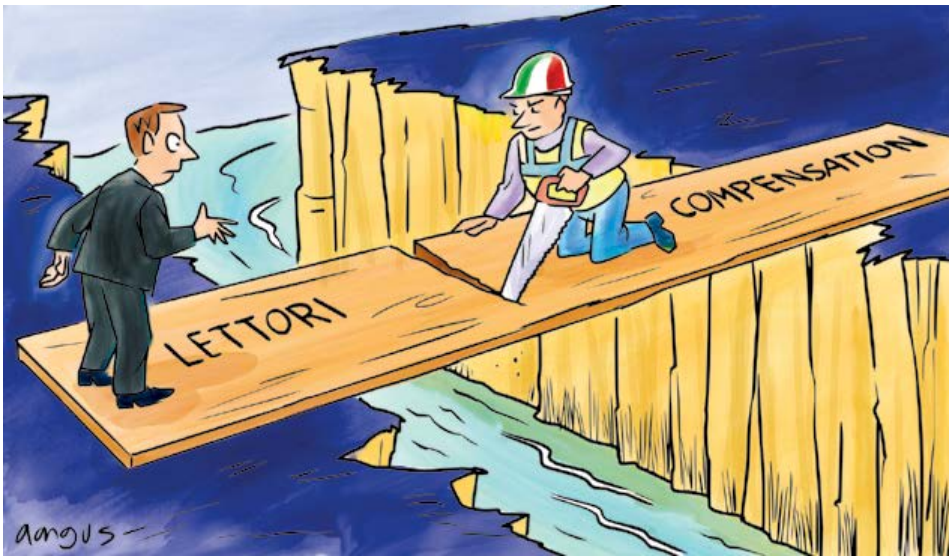
Will Italian universities compensate *lettori*?

From: David Petrie (chair, Associazione Lettori di Lingua Straniera in Italia/Association of Foreign Lecturers in Italy), Via Cavone 8, Procida 80079, Italy



Kurt Rollin ('Ignorance of case law almost cost us dearly', March *Gazette*, p19) chastises his fellow non-native teaching assistants in Italian universities for having signed a petition asking for a stay on proceedings and an investigation into the European Commission's handling of our complaint into discrimination based on nationality during the Santer Commission's tenure, stretching from January 1995 until 15 March 1999, when it resigned *en masse* following an independent report on allegations of fraud, corruption and mismanagement.

First, a small correction – the petition in question, dated 6 July 2000, was addressed to Commission President Romano Prodi, not Commissioner Kinnock, as can be readily ascertained from public records.

Similarly verifiable is that there were 466 signatories to the petition (including myself) from 28 Italian universities; considerably more than a handful that your readers may infer from Mr Rollin's use of the term 'some colleagues'.

Mr Rollin is silent on our questioning the wisdom of the infringement case proceeding, as it stood, leaving your readers to wonder why we should appear to be acting against our own interests.

Commissioner Padraig Flynn had responsibility for Social Affairs and Employment in the Santer Commission. We had very serious misgivings about how our complaint was being dealt with – and in particular on how, without notifying us, the commission, following information received from the Italian authorities, altered its pleadings in law in ongoing infringement proceedings. The petition contained evidence presented by our lawyer, Prof Avv Lorenzo Picotti, stating that "the commission accepted the deliberately instrumental, unfounded and unproved justifications which have been presented as facts in the defence arguments by the Italian government on the basis of partial information, obvious omissions and, at times, complete and utter falsehoods [and] has taken a position which is, from a legal perspective, incomplete, imprecise, unclear and contradictory".

We were further alarmed by the fact that Commissioner Flynn had appointed a legal expert, Bruno Nascembene (professor of labour law at the University of Milan) to advise him on our complaint. Without wishing to cast any aspersions on Prof Nascembene's integrity (he very gracefully received me in his office in Milan), it seemed that anything he might say would be indelibly tainted with apparent bias, especially since Milan University was one of the universities cited by the commission in its pleadings in law.

I complained to the European Ombudsman and gave him a copy of our petition to President Prodi. The ombudsman reported on 13 September 2000 (Case 161/99/IJH).

The ombudsman put the following on record: that I had become concerned that the Italian authorities were supplying false information to the commission and that the commission, in negotiations with the Italian authorities, was weakening its position as stated in its reasoned opinion of 16 May 1997; that I met with Commissioner Flynn on 1 February 1999 and provided him with a copy of a criminal complaint concerning the false information supplied to the commission by the Italian authorities, as well as an analysis of the legal situation written by Prof Picotti; that assistants at Naples University had called on the Italian public prosecutor to bring criminal proceedings against the public officials who had prepared the Italian reply to the commission's supplementary letter of formal notice of July 1998; that, at the same meeting, I learnt that the commission had already, on 29 January 1999 (two days earlier and without informing us), sent another reasoned opinion, and that subsequently I discovered that the commission had modified the first ground of infringement and dropped the second ground entirely.

I quote from the ombudsman's conclusion, substantially upholding our complaint: "The commission's undertaking that it will ensure that a complainant is informed of its intention to close a case, and its reasons, accords with one of the basic requirements of fair administrative procedure, namely that a person should have the right to submit comments before a decision affecting his or her interests is taken. In the present case, before concluding the administrative stage of the article 226 procedure, the commission fundamentally altered the basis on which it was dealing with the complainant's

case, in a way which the complainant considered highly damaging to his interests. The commission should, therefore, have applied the same procedure as when it decides to close a case, thereby giving the complainant the possibility to put forward views and criticisms concerning the commission's point of view."

Mr Rollin applauds Mr Rodgers (author of '*Lettori* of the law', Jan/Feb *Gazette*, p52) and himself for having had to "acquire an understanding of EU law" and become "students of EU law thereafter".

Yet this vainglorious assertion is undermined by his failure to show even a rudimentary understanding of the relationship that the Court of Justice of the European Union (CJEU) has to domestic tribunals. He asserts that the Grand Chamber of the Court in Case C-119/04 "awards us the settlements for reconstruction of career we now welcome".

It does nothing of the kind. Nor does that assertion remotely paraphrase anything the court said. The CJEU does not award settlements – that falls within the jurisdiction of the national authorities.

What the court did, was to express a view on Italian Decree Law 2 of 15 January 2004 and its compatibility with EU law. The court stated, at paragraphs 39 and 40: "Decree Law No 2/2004 cannot therefore be regarded as having provided an incorrect legal framework for the purposes of enabling each of the universities in question to reconstruct precisely the career of former assistants. It remains to be ascertained whether the measures taken by the universities in question after the adoption of Decree Law No 2/2004 achieved the declared objectives."

The commission now acknowledges that those declared objectives have not been achieved – hence its recent letter of formal notice to Italy (23 September 2021).

Almost six months have passed, and there is nothing to suggest that the Italian universities are about to compensate hundreds of us for arrears in wages, seniority, and pensions.

Colleagues with up to 35 years' experience received a net salary last month of €1,078 – half of what Italian colleagues on the same salary scale received.

Far from being ignorant of our plight, we are acutely aware of it, as our monthly payslips or reduced pensions arrive each month.

We are unrepentant in pursuing our attempts to hold the disgraced Santer Commission to account, and we hold no grudge against the von der Leyen Commission for what happened over 22 years ago.

We hope and trust that the current commissioner, Nicolas Schmit, will prove successful in persuading the villain in this case – the recalcitrant Italian state – to change its ways or, failing that, finally bring Italy to book in what would be the seventh case before the CJEU.

Go ahead... make my day

From: Liam Hipwell, Liam Hipwell & Co, Solicitors, 18 Monck Street, Wexford

I read the article in the Jan/Feb 2022 issue of the *Gazette*, titled 'Law of the land'. The photograph of Clint Eastwood both frightened and inspired me. I include, below, an imagined discussion between myself ('LH' – a solicitor in trepidation) and a 'fretting client' (FC) on the intricacies of the doctrine of lost modern grant.

FC – "I was reading in the *Farmer's Journal* that the registration of my right of way for my coastal property is gone."
LH – "Well, early days, but we have been granted some respite."
FC – "What was it all about?"
LH – "Partially an update of the 'doctrine of lost modern grant'."
FC – "I did not lose any documentation."
LH – "No, no, nothing to do with you – but a benign judicial construction."
FC – "'Judicial' – you mean *they* lost the grant?"
LH – "No, no – not lost, but deemed lost. But there's no grant, that is, document as such."
FC – "*I'm* lost."
LH – "Well, it goes back to 1189."
FC – "1189?"
LH – "Sort of. In simple terms, a claim (in your case, a right of way) cannot be set aside simply by proof that the enjoyment did not go back to 1189."
FC – "Can I summarise this – 'lost' means 'nothing lost', and 'modern' means '1189 grant is not a legal document'?"
LH – [Changing subject] "Well, at any rate, the Government has solved the problem."
FC – "You mean, they have found the grant?"
LH – "Well, not quite, but they have restored it."
FC – "You mean 'deemed found'?"
LH – "Well, yes, something like that."
FC – "Am I safe?"
LH – "Well, can you establish user of the right of way, as of right, from 1189?" [I *knew* that was the wrong question!]
FC – "Is this fiction?"
LH – "Well, actually, you are not far wrong – it is a legal fiction."
FC – "I don't understand this law at all."
LH – "I am having difficulties myself. [Thinks: "I dare not mention foreshore or State property, as I am in enough trouble."] Helpfully there is a very good book on rights of way/easements called *Bland on Easements*."
FC – "Bland? There's nothing remotely bland about this complex issue! I have known you for many years as a solicitor but, in this case, do you mind if I get a second opinion?"
LH – [Thinks: Relief!]