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Action brought on 10 August 2023 – European Commission v Italian Republic (Case C-519/23)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: B.-R. Killman, D. Recchia, acting as Agents)

Defendant: Italian Republic

Form of order sought

The Commission claims that the Court should:

declare that the Italian Republic has failed to fulfil the obligations imposed by Article 45 TFEU, not having reconstructed the former assistants' careers in order to guarantee the economic treatment due to them and the corresponding payment of arrears

order the Italian Republic to pay the costs.

Pleas in law and main arguments

The Commission maintains that the Italian Republic has not correctly applied Article 45 TFEU relating to the career reconstruction of university staff, hired previously by many Italian State universities with the qualification of 'assistant'.

The Commission recalls that the Court has already had the opportunity to rule on the former assistants' situation, at the time hired by six Italian State universities. In the judgment in case C-212/99, ¹ the Court stated that the principle of equal treatment, of which Article 45 TFEU is an expression, not only prohibits overt discrimination based on nationality, but also any covert form of discrimination that, in fact, leads to the same result, ² and that the legal framework then in force in Italy allowed six Italian universities to put in place discriminatory administrative and contractual practices failing to recognise career reconstruction for former assistants that ensured the same rights as national workers (including increases in salary, seniority and payment of social security contributions from the original recruitment date) . ³

In the judgment in case C-119/04, ¹ the Court examined the evolution of the Italian legal framework leading to decreto-legge 14 gennaio 2004, n. 2 – Disposizioni urgenti relative al trattamento economico dei collaboratori linguistici presso talune università ed in materia di titoli equipollenti ² (Decree-Law of 14 January 2004, No 2 – Urgent provisions relating to the economic treatment of linguistic associates in certain universities and concerning equivalent qualifications). The Court concluded that that legal framework, not incorrect, allowed the universities concerned to reconstruct the career of the former assistants . ³

Despite the abovementioned Decree-Law and notwithstanding the annual appropriations of more than EUR 8 million since 2017 to be allocated to the universities that employ or have employed former assistants (funds that were initially subject to the conclusion of supplementary contracts, but at present, are released from that requirement), many former assistants still have not obtained appropriate career reconstruction. Therefore, according to the Commission, a situation of discrimination prohibited by Article 45 TFEU persists for these former assistants.

¹ Judgment of 26 June 2001, *Commission v Italy*, C-212/99, EU:C:2001:357.

¹ Judgment of 26 June 2001, *Commission v Italy*, C-212/99, EU:C:2001:357, paragraph 24.

¹ Judgment of 26 June 2001, *Commission v Italy*, C-212/99, EU:C:2001:357, paragraph 30 et seq.

¹ Judgment of 18 July 2006, *Commission v Italy*, C-119/04, EU:C:2006:489.

¹ GURI No 11 of 15 January 2004. The Decree-Law 2/2004 was converted with amendments into the Law of 5 March 2004 No 36 (GURI No 60 of 12 March 2004).

¹ Judgment of 18 July 2006, *Commission v Italy*, C-119/04, EU:C:2006:489, paragraphs 38 and 39.