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EUROPEAN PARLIAMENT

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2009 - 2014

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*Committee on Petitions*

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24.6.2010

## NOTICE TO MEMBERS

**Subject: Petition 1688/2009 by Luigi Caligiuri (Italian), on behalf of 'Coordinamento Sindacale Autonomo Regioni e Autonomie Locali (CSA/RAL), bearing 5 signatures, on leave arrangements in the Po River Interregional Agency**

### **1. Summary of petition**

The petitioner maintains that the new leave arrangements introduced by the Po river interregional agency infringe EU provision regarding working conditions and are particularly disadvantageous for disabled workers and workers action as carers for disabled persons. He also argues that the arrangements make life difficult for families and undermine social policy, social solidarity, the protection of minorities and the elderly and guarantees regarding equal opportunities for men and women. He is accordingly seeking a European Parliament investigation.

### **2. Admissibility**

Declared admissible on 25 February 2010. Information requested from Commission under Rule 202(6).

### **3. Commission reply, received on 24 June 2010.**

#### *The petition*

The petitioner complains that an Italian public body (the Po River Interregional Agency) has imposed new conditions on its employees for using special paid leave entitlements provided under a 1995 national collective agreement.

The petition concerns in particular the authorisation criteria for the use of three days of paid leave per year granted for particular personal and family reasons (Article 19.2 of the EE.LL. national collective agreement of 06.07.1995). The petitioner maintains that the new

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arrangements are particularly disadvantageous for people with disabilities and raise questions of compatibility notably with human/fundamental rights.

### *The Commission's observations*

At the European level, Directive 2003/88/EC provides for minimum safety and health requirements for the organisation of working time. The Directive regulates, among others, certain aspects concerning annual leave. In accordance with Article 7 of the Directive Member States shall take the measures necessary to ensure that every worker is entitled to paid annual leave of at least four weeks in accordance with the conditions for entitlement to, and granting of, such leave laid down by national legislation and/or practice. The Directive further states that the minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated.

The important judgment of the Court of Justice in *BECTU*, in 2001, clarified the significance and objectives of the right to paid annual leave. The Court held that "the entitlement of every worker to paid annual leave must be regarded as a particularly important principle of Community social law from which there can be no derogations and whose implementation by the competent national authorities must be confined within the limits expressly laid down by Directive 93/104".<sup>1</sup>

The Employment Equality Directive (Directive 2000/78/EC<sup>2</sup>) establishes a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation. It prohibits discrimination, inter alia, on grounds of disability. The European Court of Justice, in the *Coleman* case<sup>3</sup>, stated that the protection from direct discrimination and harassment found in the Directive 2000/78/EC is not limited to people who are themselves disabled, but also applies when an employer directly discriminates against or harasses an employee, where that discrimination or harassment is based on the disability of the employee's child, whose care is provided primarily by the employee.

Italy transposed this Directive with the adoption of "Decreto Legislativo 9 luglio 2003, n.216 - Attuazione della direttiva 2000/78/CE per la parità di trattamento in materia di occupazione e di condizioni di lavoro", amended later by "Legge 6 giugno 2008, n. 101 - Conversione in legge, con modificazioni, del decreto-legge 8 aprile 2008, n. 59, recante disposizioni urgenti per l'attuazione di obblighi comunitari e l'esecuzione di sentenze della Corte di giustizia delle Comunità europee".

Italy has transposed the right to paid annual leave under the Working Time Directive by Legislative Decree 66/2003, which provides at Article 10 that every worker has a right to annual paid leave of not less than four weeks. The changes to which the petition relates do not affect this provision.

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<sup>1</sup> *BECTU* (Case C-173/99), para 43.

<sup>2</sup> OJ L 303, 2.12.2000, p. 16–22.

<sup>3</sup> [http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:223:0006:0007:EN:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:223:0006:0007:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:223:0006:0007:EN:PDF)

Special types of leave, such as those provided for in Article 19.2 of the national collective agreement of 06.07.1995 granted for particular personal and family reasons, are therefore additional to the rights required by Article 10, and cannot be regarded as falling within the scope of the Directive 2003/88/EC. Therefore, as long as the Member States provide for a right to at least four weeks' annual paid leave (as required by the Directive) they are free to set criteria for use of additional types of paid leave, especially taking into account that the purpose of those special types of leave differs from the purpose of the annual paid leave, as provided for in the Directive.

Furthermore, the petitioner maintains that the contested regulations do not comply with other national Italian measures, including Civil Service Circular No 8/2008. This does not appear to raise any issue of EU law.

Regarding the application of the Employment Equality Directive (Directive 2000/78/EC), it should be noted that, as the petitioner points out, the new rules set up by the Po River Interregional Agency make a somehow restrictive interpretation of the applicable Italian rules. Under the new conditions, special paid leave for reasons of serious disease of a family relative can only be granted to cases of admission to a hospital, or to a public emergency service.

In the Commission's view, it seems that these rules do not discriminate against workers with disabilities, nor against workers who have children with disabilities. In the latter case, in fact, they affect both workers who have children with disabilities and workers whose children are not disabled. Eventually, in some situations, the former type of workers may be less disadvantaged by the new rules – since their children, depending on the concrete cases, may even need to go more often to hospital.

Therefore, in conclusion, on basis of the available information, the Commission believes the contested national measure is not contrary to the requirements of the Employment Equality Directive.

In any event, since the principle of prohibition of discrimination based on disability inscribed in Directive 2000/78/EC has been transposed in Italy, if a citizen believes he or she has been discriminated against, he or she can bring a case before the national court on the basis of the relevant national and European legislation. The control of the application of the directives to the individual case is in principle the task of the national jurisdictions.

Finally, regarding the reference of the petitioner to the Charter of Fundamental Rights of the European Union, it must be pointed out that, according to Article 6 of the Treaty on European Union, the provisions of the Charter [do] "not extend in any way the competences of the Union as defined in the Treaties". In addition, according to Art. 51 of the Charter, its provisions are addressed to the Member States authorities only when they implement the European Union law. Therefore, the above mentioned conclusion still holds.

### *Conclusions*

It does not appear from the available information that the contested national measure is contrary to the requirements of the Working Time Directive or of the Employment Equality Directive. In the Commission's view, this petition relates to matters which are outside the

scope of EU law and/or fall within the competence of the national authorities.