



24.6.2010

## NOTICE TO MEMBERS

Subject: Petition 1689/2009 by Angelo Garofalo (Italian), on behalf of 200 public employees in the province of Umbria, on equal treatment of workers

### 1. Summary of petition

The petitioner, regional secretary of the federation of local authorities, relates pay discrimination between workers with identical job descriptions and functions. In the one case, they were public servants of the province of Umbria, in the other they were staffers of the public agency Ansa, which has been integrated into the general regional civil service of Umbria. Those transferred from Ansa receive pay of up to 300-400€/month more than staff who have always worked for the regional administration. The petitioner claims that the two categories are subject to the same qualification requirements, perform the same duties and have the same seniority.

### 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 petitioner alleges discrimination on the grounds that workers formerly employed by ANSA who have been integrated into the general civil service of Umbria are paid more favourably for similar work than other general civil servants who were not formerly employed by ANSA.

Community law specifically outlaws unjustified discrimination on the grounds of gender<sup>1</sup> and

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<sup>1</sup> Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council

race or ethnic origin<sup>1</sup>. In addition, Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation<sup>2</sup> establishes a general framework for equal treatment in the employment field. However, it does not prohibit discrimination *per se*. This Directive prohibits discrimination on the grounds specified in Article 1 of the Directive as follows:

*Article 1 Purpose*

*The purpose of this Directive is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.*

*Article 2 Concept of discrimination*

*1. For the purposes of this Directive, the ‘principle of equal treatment’ shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.*

The situation the petitioner describes is not discrimination in the sense that is expressly prohibited by EU law, described above. However, it is true that fundamental rights which form an integral part of the general principles of Community law include the general principle of equality and non-discrimination. It is settled case-law<sup>3</sup> that the principle of equal treatment or non-discrimination requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified.

The petitioner has not given many details, but the question of whether different treatment is objectively justified is a question that must be considered by the national competent authorities, who would be expected to look at the integration of a new group of workers, and at their different pay scales and conditions of employment, and other evidence and arguments, duly considering local circumstances. It is not a question that can be considered at Community level.

The apparent contradictions in the positions taken by different courts, reported by the petitioner, is not a matter of EU law but must be resolved in accordance with national law.

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Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions – Official Journal L 269/15 5.1.02

<sup>1</sup> Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin - Official Journal L 180 , 19/07/2000 P. 0022 - 0026

<sup>2</sup> Official Journal L 303 , 02/12/2000 P. 0016 – 0022

<sup>3</sup> See C-344/04 *International Air Transport Association and Others* (paragraph 95), C-13/05 *Chacón Navas* (paragraph 56), Case C-81/05 *Cordero Alonso* (paragraph 37), C-300/04 *Eman and Sevinger* (paragraph 57), C-227/04 *Lindorfer v Council*

The resolution of the Petitioner's problem must be sought at national level.