

WRITTEN QUESTION E-3927/05

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to the Commission

Subject: Checking the legitimacy of the appointment and remuneration of the Administrative Director of the 'Umberto I' university polyclinic in the light of the relevant Community legislation and case-law

By decision No 37 of 1 September 2005 the General Director of the 'Umberto I' university polyclinic appointed Luciano Barnaba Administrative Director of the hospital. Article 7 of Legislative Decree No 505 of 30 December 1998 stipulates that the Administrative Director should be a graduate in law or economics who has worked in technical or administrative management in local authorities or public health services. Mr Barnaba's curriculum vitae, which is attached to the decision, shows no evidence of experience in the health sector and indicates that he has a degree in physics, rather than a legal or economic discipline, as specified in the legislative decree. In his statement accepting the appointment Mr Barnaba does not state that there is any incompatibility.

In view of the fact that the appointment clearly lacks legitimacy because it contravenes the relevant legislation (Legislative Decree No 502, amended by Legislative Decree No 229 of 19 June 1999), does not the Commission consider that this official appointment contravenes Community principles and legislation governing the free movement of workers (Articles 38 et seq.) and right of establishment (Articles 43 et seq.), as sanctioned by the EC Treaty and the case-law of the European Court of Justice regarding access to public service appointments?

Furthermore, does not the Commission consider that the illegitimate nature of the appointment of a person to a public office in contravention of the national legislation of a Member State may undermine the Community interest as regards fair and correct recognition of the professional qualifications for such a post (the Administrative Director of a university hospital) sanctioned by general and sectoral EC directives regarding the recognition of professional qualifications (when, for example, Mr Barnaba took part in selection procedures together with other Community candidates or if he takes part in European-level symposia, meetings and employment or negotiation panels, to which he is invited and hence recognised as the Administrative Director of a university hospital)?

Mr Barnaba's annual salary is EUR 165 600, plus a 30% bonus. The rules governing the pay of general directors of health centres and hospitals provide for an annual salary of no more than EUR 150 000 and a maximum additional amount equivalent to 20%. Since the legislation in question, by virtue of Prime Ministerial Decree No 502 of 19 July 1995, amended by Prime Ministerial Decree No 319 of 31 May 2001, puts polyclinics and institutions established pursuant to Legislative Decree No 517/99 on the same footing, which means that the 'Umberto I' university hospital is subject to all these regulations, does not the Commission consider that this infringement of national legislation contravenes the principle of 'fair and appropriate pay' established in Community case-law?

Does not the Commission consider that the illegitimate nature of the appointment and the relevant salary also constitutes a contravention of the 'European Charter of Fundamental Rights' referred to by the Court of Justice itself on a number of occasions?