



12.3.2024

NOTICE TO MEMBERS

Subject: Petition No 0805/2023 by Cosimo Caroli (Italian) on discrimination between people with physical and mental disabilities in Italy

1. Summary of petition

The petitioner alleges that people with mental disabilities face discrimination when seeking employment, particularly in the public sector. He contends that the only way for them to get hired is by means of the conventional procedure under Article 11 of Law 68/99, via direct recruitment ('assunzione nominativa'). However, this procedure does not apply in the public sector, with it being banned for high-skilled jobs and only permitted on an exceptional basis for low-skilled jobs (pursuant to Article 9(4) of Law No 68/99, it is only applicable if the procedure for the recruitment of physically disabled persons is unsuccessful). The petitioner also notes that pursuant to Article 35(1) of Legislative Decree 165/2001, recruitment to public administrations may only take place through public competitions and/or the ordinary selective procedure. The latter, however, only applies for physically disabled persons and is not an option for mentally disabled persons. This thus impedes access to employment for the mentally disabled in breach of the principle of non-discrimination laid down in Article 14 of the European Convention on Human Rights and Article 21 of the Charter of Fundamental Rights, and also runs contrary to the UN Convention on the Rights of Persons with Disabilities and European Directive 2000/78/EC. The petitioner points out that the violation of the right to employment, with regard to both low-skilled and high-skilled jobs, is in itself a serious violation of Articles 1, 15, 21 and 26 of the Charter of Fundamental Rights. Finally, he also stresses that there is a lack of reasonable accommodation for the mentally disabled people, in breach of the requirements of Article 5 of Directive 2000/78/EC. The petitioner therefore calls on the EU institutions to take action to prevent discrimination on the grounds of disability and ensure equal treatment in access to employment for the mentally disabled.

2. Admissibility

Declared admissible on 24 November 2023. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 29 January 2024

The petitioner alleges that people with mental disabilities face discrimination when seeking employment, particularly in the public sector. He contends that the only way for them to get hired is by means of the conventional procedure under Article 11 of Law 68/99, via direct recruitment (*‘assunzione nominativa’*). However, this procedure does not apply in the public sector, with it being banned for high-skilled jobs and only permitted on an exceptional basis for low-skilled jobs (pursuant to Article 9(4) of Law No 68/99, it is only applicable if the procedure for the recruitment of physically disabled persons is unsuccessful). The petitioner also notes that pursuant to Article 35(1) of Legislative Decree 165/2001, recruitment to public administrations may only take place through public competitions and/or the ordinary selective procedure. The latter, however, only applies for physically disabled persons and is not an option for mentally disabled persons. This thus impedes access to employment for the mentally disabled in breach of the principle of non-discrimination laid down in Article 14 of the European Convention on Human Rights and Article 21 of the Charter of Fundamental Rights, and also runs contrary to the UN Convention on the Rights of Persons with Disabilities and European Directive 2000/78/EC. The petitioner points out that the violation of the right to employment, with regard to both low-skilled and high-skilled jobs, is in itself a serious violation of Articles 1, 15, 21 and 26 of the Charter of Fundamental Rights. Finally, he also stresses that there is a lack of reasonable accommodation for the mentally disabled people, in breach of the requirements of Article 5 of Directive 2000/78/EC. The petitioner therefore calls on the EU institutions to take action to prevent discrimination on the grounds of disability and ensure equal treatment in access to employment for the mentally disabled.

The European Commission strongly condemns any form of discrimination. Article 2 of the Treaty on European Union (TEU) enshrines the values of respect for human dignity, freedom, equality, and respect for human rights, including the rights of persons belonging to minorities, among the EU founding values. Article 10 of the Treaty on the Functioning of the European Union (TFEU) declares the EU determination to combat discrimination based on disability. Article 21(1) of the Charter of Fundamental Rights of the European Union prohibits, among others, disability-based discrimination. In order to put into effect in the Member States the principle of equal treatment, the Employment Equality Directive laid down a general framework for combating discrimination, including on grounds of disability, in the area of employment and occupation.¹

Under the Treaties,² the Commission has the responsibility to ensure respect for EU laws, verifying that Member States abide by Treaty rules and EU legislation.

Implementing this power, the Commission conducted infringement proceedings against Italy which ultimately resulted in proceedings in front of the CJEU. The Court found Italy to have breached the Employment Equality Directive. In particular, the CJEU concluded that Italy, by failing to oblige all employers to provide reasonable solutions applicable to all persons with disabilities according to the needs of specific situations, breached its obligation to correctly and

¹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, p. 16–22.

² The Treaty on the European Union and the Treaty on the Functioning of the European Union.

completely transpose Article 5 of the Employment Equality Directive.³

Following this judgement, the Commission welcomed that the Italian National Recovery and Resilience Plan (NRRP) provided for the adoption of a new framework law for persons with disabilities. Two deadlines have been set: the first has been already reached with the approval of Law No. 227/2021,⁴ the second (regarding the adoption of legislative decrees implementing Law No. 227/2021) is set for the first half of 2024. Law No. 227/2021 delegates the Government to adopt legislative decrees for the review of existing legislation on persons with disabilities in accordance with the principles set by the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), its Optional Protocol, the EU Strategy for the Rights of Persons with Disabilities 2021-2030, and the resolution of European Parliament of 7 October 2021 on the protection of persons with disabilities.

In this context, the Commission closely monitors these substantial legislative developments at the Italian national level. The Commission awaits further developments in the near future, consisting of the adoption by the Italian Government of legislative decrees implementing Law No. 227/2021.

I would also like to recall that, in the EU Strategy for the Rights of Persons with Disabilities 2021-2030, the Commission called on Member States to establish, by 2024, targets for increasing the employment rate of persons with disabilities and reducing their employment rate gaps to help achieve the 2030 headline employment target proposed in the Action Plan to implement the European Pillar of Social Rights. The Commission also called on Member States to strengthen the capacities of employment services for persons with disabilities and to enhance work with social partners and organisations of persons with disabilities to that end.

In conclusion, I would like to confirm the full commitment of the Commission in ensuring that Italy, as well all other Member States, fulfil the obligations existing under EU law as regards the rights of persons with disabilities.

Conclusion

The Commission had opened in 2006 an infringement procedure against Italy due to shortcomings in the transposition of Article 5 of the Employment Equality Directive, which resulted in Court proceedings against Italy. The CJEU concluded that Italy, by failing to oblige all employers to provide reasonable solutions applicable to all persons with disabilities according to the needs of specific situations, breached its obligation to correctly and completely transpose such provisions. Following this judgement, the Commission welcomed that the Italian National Recovery and Resilience Plan (NRRP) provided for the adoption of a new framework law for persons with disabilities. The Commission closely monitors the ongoing legislative developments at the Italian national level, as described. The Commission awaits further developments, consisting in particular of the adoption by the Italian Government of legislative decrees implementing Law No. 227/2021. The Commission remains fully committed that Italy, as well all other Member States, fulfil the obligations existing under EU law as regards the rights of persons with disabilities.

4. REV Commission reply, received on 12 March 2024

³ Judgment of 4 July 2013, *Commission v Italy*, case C-312/11, ECLI:EU:C:2013:446.

⁴ Legge 22 Dicembre 2021 No. 227, *Delega al Governo in materia di disabilità*, 21G00254, retrievable at: <https://www.normattiva.it/eli/id/2021/12/30/21G00254/ORIGINAL>

Beyond the subject matter itself, on which the Commission will intervene just below, there are important contestable elements in the further message sent by this citizen to the European Parliament. The Commission deem important to clarify the situation to the European Parliament in detail.

Just as a preliminary information, it should be recalled that this citizen already brought the European Commission in front of the European Ombudsman with similar allegations in October 2023. The European Commission already had the opportunity to clear its position. The European Commission is not aware of any further action from the Ombudsman since our reply in October 2023.

As regards the contestable new elements from the citizen, it is not correct (as it could be easily assumed from his new message) that the European Commission immediately closed correspondence with this citizen after our first reply.

- His first complaint, dated 12 January 2023, was registered as CHAP(2023)00167 and the European Commission replied on 23 January 2023. Our first reply to Mr. Caroli has been registered as Ares(2023)493992.
- He has then sent to the European Commission a second complaint, dated 31 January 2023, to which the European Commission replied on 10 February 2023. Our second reply to Mr. Caroli has been registered as Ares(2023)987541.
- He has subsequently sent to the European Commission a third complaint, dated 10 February 2023, to which the European Commission replied on 21 February 2023. Our third reply to Mr. Caroli has been registered as Ares(2023)1251725.
- In adherence to the Code of Good Administrative Behaviour for the Staff of the European Commission in their Relations with the Public (J.O. L 308, 8.12.2000), the European Commission discontinued exchanges of correspondence on the subject in question with its third reply as all the relevant elements have been examined.
- Mr. Caroli has been duly informed of this (and any other) passage in our written replies.

Mr. Caroli also affirms that the European Commission has allegedly declared his situation as “particular for the only fact of being a person with mental disabilities”. This is also not correct; this is not at all our policy and in no passage of our replies to him (or anyone else) this has been explicitly or implicitly affirmed. Very differently, in all replies to Mr. Caroli, the Commission has been transparent on its lack of power to intervene in (any) individual situation. The examination of individual complaints of discrimination requires an analysis of facts and an evaluation of the possible justification and proportionality of the measures that the national courts are more apt to make. On that occasion, the Commission also acknowledged that Mr. Caroli took action to proceed in front of the tribunal of Bari.

On the substance of the matter (i.e. reasonable accommodation for persons with disabilities, Article 5 of the Employment Equality Directive), the Commission has duly informed Mr. Caroli on the fact that the European Commission opened an infringement procedure against Italy and referred Italy to the Court of Justice. This led to the important judgement on case C-312/11 (Commission v Italy) fully confirming the position of the Commission. In particular, the CJEU concluded that the Italian Republic, by failing to oblige all employers to provide reasonable solutions applicable to all persons with disabilities according to the needs of specific situations, breached its obligation to correctly and completely transpose Article 5 of the Employment Equality Directive.

The Commission has duly informed Mr. Caroli to have welcomed the Italian National Recovery and Resilience Plan (PNRR), which provided for the adoption of a new framework law for persons with disability. Two deadlines had been set: the first has been already reached with the approval of Law No. 227/2021, the second (regarding the adoption of legislative decrees implementing Law No. 227/2021) is set for the first half of 2024. Law No. 227/2021 delegates the Government to adopt legislative decrees for the review of existing legislation on persons with disabilities in accordance with the principles set by the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), its Optional Protocol, the EU Strategy for the Rights of Persons with Disabilities 2021-2030, and the resolution of European Parliament of 7 October 2021 on the protection of persons with disabilities.

The Commission also informed Mr. Caroli of its close monitoring of these substantial legislative developments at the Italian national level. The Commission awaits further developments in the near future, consisting of the adoption by the Italian Government of legislative decrees implementing Law No. 227/2021.

With his new message, Mr. Caroli affirms that the legislative decree implementing Law No. 227/2021 as regards reasonable accommodation for persons with disabilities has been written. It should be noted that Mr. Caroli also directly contacted the European Commission a new message on this matter, and a further reply has been now sent back to him (as this constitutes a new element raised by the complaint, differently from previously received correspondence).

However, the Commission would like to raise the attention of the European Parliament on the fact that the document mentioned by Mr. Caroli is not a finalised version of legislative decree implementing Law No. 227/2021 as regards reasonable accommodation for persons with disabilities.

On 3 November 2023, the Italian government presented indeed a draft version of such legislative decree. However, as of today, the adoption process is still ongoing. For examples, a further step was reached on 11 January 2024, when regional and local authorities agreed a series of textual changes with the Italian government. A public declaration of the competent minister foresees the final adoption of this legislative decree in June 2024. Accordingly, the European Commission reiterates its position that it is awaiting developments in the near future.

The Commission is hopeful that the above clarifies its full commitment on this matter. This information may be helpful to the European Parliament to complement the information provided by the citizen, also as regards the alleged conduct of the Commission.

The Commission remains of course available if any further clarification is needed.

Conclusions

The document mentioned by Mr. Caroli is not a finalised version of legislative decree implementing Law No. 227/2021 as regards reasonable accommodation for persons with disabilities. On 3 November 2023, the Italian government presented indeed a draft version of such legislative decree. However, as of today, the adoption process is still ongoing. For examples, a further step was reached on 11 January 2024, when regional and local authorities agreed a series of textual changes with the Italian government. A public declaration of the competent minister foresees the final adoption of this legislative decree in June 2024. Accordingly, the European Commission reiterates its position that it is awaiting developments in the near future.