

Decision on how the European Commission handled a complaint about how Italy transposed EU legislation on appropriate remuneration of doctors (case 1358/2020/LM)

Decision

Case 1358/2020/LM - Opened on 29/10/2020 - Decision on 29/09/2021 - Institution concerned European Commission (No maladministration found) |

The case concerned how the European Commission handled a complaint alleging that Italy has failed to fully transpose Directive 82/76/CCE on the mutual recognition of diplomas in medicine into national law. The complainant contended that the Italian legislation transposing the Directive, as well as related case law, does not guarantee appropriate remuneration for all doctors who attended training for medical specialists from 1982 to 1991.

The Ombudsman opened an inquiry asking the Commission to address in more detail the complainant's arguments. In the course of the inquiry, the Commission set out its position that there was no breach of EU law in a clear and reasonable manner. The Ombudsman finds no manifest error by the Commission and thus closes the case with a finding of no maladministration.

Background to the complaint

1. EU law [1] provide that training for medical specialists shall be remunerated appropriately. The deadline for Member States to transpose the Directive in question was 31 December 1982.
2. The complainant, an Italian doctor, attended training for medical specialists between 1982 and 1985, but he did not receive any remuneration. In 2013 he brought a legal action before an Italian court seeking compensation for the lack of remuneration but the court declared the action time-barred in 2018.
3. In January 2019, the complainant submitted a complaint to the European Commission, asking it to take action against Italy for infringing EU law [2] . He argued that Italy had not transposed the Directive with regard to *all* doctors falling within its scope of application. The complainant put forward that the Italian Legislative decree No 257/1991 [3] transposed the Directive with effect from 1992, but does not apply to doctors who attended a medical training



during the period 1982-1991. In October 1999, Italy adopted Law 370/99 [4] , which apply only to doctors who attended medical training in the period 1982-1991 *and had their right to remuneration established by a court* . Thus, Italy never transposed the Directive to apply for *all* doctors who had attended specialist training in 1982-1991. The complainant also argued that Italian courts did not follow the principles laid down by the Court of Justice of the EU in the *Pantuso* [5] case.

4. In April 2019, the Commission replied to the complainant that it would close his case. The Commission considered that, although Italy had not transposed the Directive on time, it eventually did so. The Commission invited the complainant to submit comments. Having analysed the complainant's comments, the Commission confirmed its initial assessment and closed the case in September 2019. The complainant contacted the Commission again on the matter in October 2020. The Commission replied in January 2020, maintaining its initial assessment.

5. Dissatisfied with the Commission's reply, the complainant turned to the Ombudsman in August 2020.

The inquiry

6. The Ombudsman opened an inquiry into whether the Commission had taken into account all relevant aspects raised in the infringement complaint.

7. In the course of the inquiry, the Ombudsman asked the Commission to address in more detail the complainant's arguments. The Ombudsman also received the comments of the complainant on the Commission's reply.

Arguments presented to the Ombudsman

Arguments by the complainant

8. The complainant considered that the Commission was wrong to conclude that Italy has fully transposed the Directive. The complainant's view was that the Commission did not sufficiently justify its position and it failed to take into consideration all the points he raised. The complainant argued that, according to the *Pantuso* case, the right to remuneration for the period 1982-1990 stems directly from the Directive and is not subject to any limitation period. Yet, several Italian courts (including the one that rejected his action for compensation) have declared actions for compensation time-barred. Moreover, the national case law on the matter is not consistent, as certain Italian courts have recently recognised the right to compensation for loss of income to doctors who attended medical training before 1991 based on *Pantuso* [6] ,



without declaring the action time-barred.

9. The complainant also argued that the starting date of the limitation period, namely the date of entry into force of law 370/99, is arbitrary. This date is based on the wrong assumption that Italy would not adopt any further legislation on the matter, whereas there has been draft legislation proposed after 1999. The starting date of the limitation period also makes it excessively difficult for individuals to exercise their rights [7] .

10. The complainant contended that, in line with the powers conferred to it by the EU Treaties [8] , the Commission must ensure that national courts implement the Directive in a way that is coherent with its wording, rationale and aim. It is in the Commission's power to hold national courts responsible for a Member State's failure to comply with its obligations under the Treaty [9] .

Arguments by the Commission

11. The Commission said that Italy transposed the Directive into national law through legislative decree No 257/1991. Italy adopted Law 370/99 to remedy the situation for those doctors in specialist training who had not received remuneration between 1983 and 1991. Law 370/99 does not discriminate between different categories of doctors as it provides a legal basis for those who have not yet claimed the remuneration to do so within ten years.

12. The Commission considered a ten-year limitation period, starting to run from the entry into force of law 370/99, to be reasonable. Full implementation of a Directive does not depend on whether all damages caused by its late implementation have been settled, as the complainant suggested. It is up to the national courts to determine, based on the national procedural rules, the limitation period for such compensatory schemes [10] .

13. The Commission also said that it is not part of its role to supervise how national authorities and courts deal with individual cases. Issues of inconsistent application of the law, such as conflicting judgements, should be pursued within the national legal order.

The Ombudsman's assessment

14. It is the Commission's role to ensure that EU Member States implement EU law effectively. The Ombudsman has no mandate to examine whether a Member State complies with EU law. If a complainant is dissatisfied with how the Commission has dealt with an infringement complaint against an EU Member State, the Ombudsman's role is thus limited. The Ombudsman can ensure that the Commission, in its reply to the infringement complaint, complies with the principle of good administration by adequately addressing the concerns raised by the complainant and by giving the complainant the opportunity to provide comments on the Commission's position. The Ombudsman's role is also to ensure that the Commission has set out its position on the matter in a clear and reasonable manner. The Ombudsman would



question the Commission's position only in case there is an indication of a manifest error of assessment.

15. In the course of the inquiry, the Commission has provided additional information and explanations that adequately clarify its position on the infringement complaint. The Commission's position is clear and within the margins of reasonable legal interpretation. EU case law provides that it is for the domestic legal system of each Member State to lay down procedural rules such as limitation periods, provided, first, that the rule is not less favourable than those governing similar domestic actions and, second, that it does not render in practice impossible or excessively difficult the exercise of rights conferred by EU law [11] . On this basis, and having carefully considered the complainant's arguments regarding the matter, the Ombudsman finds that the Commission made no manifest error of assessment as regards the limitation period for claiming remuneration for the period 1983-1991.

16. In light of the above, the Ombudsman concludes that there has been no maladministration by the Commission in this case.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion [12] :

There was no maladministration by the European Commission in this case .

The complainant and the Commission will be informed of this decision .

Tina Nilsson Head of the Case-handling Unit

Strasbourg, 29/09/2021

[1] Council Directive 82/76/CEE ('the Directive') of 26 January 1982 amending Directive 75/362/EEC concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in medicine, including measures to facilitate effective exercise of the right of establishment and freedom to provide services and Directive 75/363/EEC concerning the coordination of provisions laid down by law, regulation or administrative action in respect of activities of doctors, available at

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31982L0076&qid=1625736079569>
[Link]



[2] Article 258 of the Treaty on the Functioning of the European Union,
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12016E258> [Link]

[3] Decreto legislativo 8 agosto 1991, n. 257, Attuazione della direttiva n. 82/76/CEE del Consiglio del 26 gennaio 1982, recante modifica di precedenti direttive in tema di formazione dei medici specialisti, a norma dell'art. 6 della legge 29 dicembre 1990, n. 428 (Legge comunitaria 1990).

[4] Legge 19 ottobre 1999, n. 370, disposizioni in materia di università e di ricerca scientifica e tecnologica.

[5] Judgement of the Court of 24 January 2018, *Pantuso* , joined cases C-616/16 and C-616/17, paragraph 51, available at
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=198724&pageIndex=0&doclang=EN&mode=lst&dir>
[Link]

[6] Tribunale civile di Palermo, case 2741/2018. Tribunale di Genova, 11 February 2020, n. 353

[7] Judgement of the Court of 24 March 2009, *Danske Slagterier* , case 445/06, paragraph 32, available at
<https://curia.europa.eu/juris/document/document.jsf?text=&docid=77796&pageIndex=0&doclang=EN&mode=lst&dir>
[Link]

[8] Article 17 TFEU.

[9] Judgement of the Court of 9 December 2003, *Commission v. Italy* , case C-129/00, paragraph 29
<https://curia.europa.eu/juris/document/document.jsf?text=&docid=48783&pageIndex=0&doclang=EN&mode=lst&dir>
[Link]

[10] Case 445/06, *Danske Slagterier* , paragraph 31.

[11] See judgement for the Court of 15 April 2010, *Friedrich G. Barth v. Bundesministerium für Wissenschaft und Forschung* , case C-542/08, paragraphs 16 and 17, available at
<https://curia.europa.eu/juris/document/document.jsf?text=&docid=81361&pageIndex=0&doclang=en&mode=lst&dir>
[Link]

[12] This complaint has been dealt with under delegated case handling, in accordance with Article 11 of [the Decision of the European Ombudsman adopting Implementing Provisions](#) [Link]