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Prot. 54/2023 FS/GD-stm

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SUBJECT: FOREIGN LANGUAGE LECTURERS IN ITALIAN UNIVERSITIES - OPEN LETTER TO MINISTER ANNA MARIA BERNINI

Dear Minister,

We have already written to you on several occasions about the persistent discrimination against foreign language lecturers (*Lettori*) in Italian universities, an issue that falls within your competence as Minister for University and Research. Once again we wish to remind you that the European Commission, to which our union has made numerous representations on the Lettori case, has recently advanced infringement proceedings N.2021/4055 to the reasoned opinion stage.

Infringement proceedings N.202/4055 were opened for the non-implementation of the 2006 Court of Justice of the EU (CJEU) enforcement ruling in Case C-119/04, a case which awarded the Lettori an uninterrupted reconstruction of career from the date of first employment with reference to the minimum parameter of part-time researcher or more favourable parameters. Case C-119/04 was taken by the European Commission for non-implementation of the earlier infringement ruling in Case C-212/99.

In their turn those infringement proceedings were opened for non-implementation of the Allué case law of the CJEU. The CJEU first found for Allué in 1989 and again as a consequence to her challenge to Italy's misreading of the 1989 ruling in 1993.

The time span encompassed within this brief legal history equates to 34 years. Over this time period Lettori working in the Italian universities have been denied their right to parity of treatment, a right which should be automatic under the Treaty of Rome.

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It has just been brought to the attention of this union that in the context of infringement proceedings N.2021/4055, your Ministry intends to limit the reconstruction of career due to the Lettori under Case C-119/04 to the years prior to 1995, in application of Art. 26 of Law 240 of 2010 (the "Gelmini Law"), which retrospectively interprets Law n. 63 of March 2004 - a law, the terms of which the Court of Justice of the European Union (CJEU) judged adequate to end the discrimination against Lettori.

Scrutiny of Law n. 63 of March 2004 shows that it contains no provision to limit the reconstruction of career due to the Lettori under Case C-212/99 to the years prior to 1995. It follows therefore that the Court of Justice ruling in the follow-on Case C-119/04 does not read to condone such a limit. More seriously, it follows that the retrospective interpretation of Law n. 63 of March 2004 by Art. 26 of Law 240 of 2010 seeks to undo the case law of the Court of Justice of the EU, the pinnacle institution of the European Union, and if applied, instead of resolving the Lettori question, would certainly lead to the opening up of new litigation, also with regard to the differing treatments that would be applied with respect to the current situation. As you will be aware, in the interval between the handing down of the ruling in Case C-119/04 and the entry into force of the Gelmini Law, local Italian courts routinely awarded Lettori plaintiffs uninterrupted reconstructions of career in accordance with the principles of the CJEU ruling in Case C-119/04, and still today receive the consequent correct remuneration, also because, as is quite evident, the activities carried out by the Lettori have always remained the same, before and after 1995!

It must also be noted that the presumed "authentic interpretation" of Law 63 of 2004 by Law 240/2010 is in clear contrast with the spirit and the letter of Art. 11 of Law 167/2017, which indeed in paragraph 1 explicitly refers to Law 63/2004 and does not mention in any way Law 240/2010. To date, the annual allocation of 8.7 million euros since 2017, provided for by the aforementioned Law 167/2017, has not yet been used, and in the coffers of the Ministry over which you preside there now lie unspent approximately 60 million euros, which should have long since been paid to the Lettori!

To resolve the ongoing legal disputes, prevent future ones and attain the closure of the infringement procedure initiated against Italy by the European Commission with letter prot. C(2021)6354 of 23.09.21, the rulings of the CJEU should finally be applied with the reconstruction of the careers of the Lettori from the date of first employment to the present, according to the economic parameter of the *ricercatore confermato a tempo definito* (part-time researcher), or more favourable treatment currently recognized, with all the attendant seniority payments and corresponding adjustments for pension contributions, with full recognition of the right to payment of arrears starting from date of first employment to date for those still in service or until the date of termination of work. The simplicity of the solution to the Lettori question renders the duration of the breach of the Treaty of Rome all the more remarkable!

On December 13, Lettori from universities all over Italy held a demonstration on Viale Trastevere in the vicinity of your offices to protest against the fact that Italy continues to deny Lettori their right to parity of treatment. Viale Trastevere is just a short walking distance from the Campidoglio, where in the Sala dei Conservatori the right to parity of treatment was signed into law as a provision of the historic Treaty of Rome on 25 March 1957.

The denial of the right to parity of treatment in defiance of 4 clear-cut rulings of the CJEU in the line of litigation that runs from the seminal Allué ruling of 1989 to the present has caused great hardship to the Lettori. Citizens of virtually all the member states of the EU, they came to Italy to teach the language and culture of their countries. That the provenance of the discrimination against them should be universities, all with Faculties of Jurisprudence which teach EU law, and therefore ought to be able to comprehend the rulings of the CJEU condemning discrimination against Lettori in the Italian universities, is most regrettable.

This persistent discrimination against non-nationals does damage to the image of Italy within the EU. It has been the subject of numerous articles in the European media, including *Parliament*

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Magazine, The European Times and most recently *Europe Today*. These articles are available on the web sites of the respective titles.

The FLC CGIL, part of Italy's largest trade union, has made several representations to Commissioner for Jobs and Social Rights, Nicolas Schmit, on the discrimination against Lettori. It has also lobbied all of Italy's MEPs to raise their awareness and secure their support to end the discrimination against Lettori.

In the European Parliament the discrimination against Lettori has been the subject of numerous parliamentary questions to the European Commission. Perhaps the question that best places the injustice to the Lettori before the conscience of the EU is question n. E-002928/2021 placed by Clare Daly MEP and co-signed by 7 other Irish MEPs. The pertinent part of parliamentary question n. E-002928/2021 is worth repeating verbatim:

"Italian universities receive generous funding from the EU. Italy has received the biggest share of the Recovery Fund. Surely, the ethic of reciprocation demands that Italy obey the rule of law and implement the most recent CJEU ruling in favour of the Lettori: case C-119/04."

The Commission has now given Italy 60 days to resolve the Lettori question: that is, to award the Lettori the settlements due under the ruling in Case C119/04. Should Italy refuse to comply, then the Commission can refer the case to the CJEU. In such a scenario lawyers for the Permanent Representation would have to explain to the CJEU, why the Law n. 63 of March 2004, which spared Italy the daily fines of EUR 309,750 recommended by the European Commission, was never subsequently implemented as interpreted by the CJEU.

In conclusion we would respectfully urge you to ensure that Italy complies with the CJEU ruling in Case C-119/04 by paying the settlements due to the Lettori for the uninterrupted reconstruction of career from the date of first employment to the present within the deadline given by the European Commission in its reasoned opinion.

The time has come to put an end to the discrimination which has been going on now for 34 years against the foreign language lecturers (*Lettori*) in Italian universities.

Yours faithfully,

FLC CGIL Secretary General
Francesco Sinopoli

