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Press and Information

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Advocate General's Opinion in Case C-119/04

Commission of the European Communities v Italy

**ADVOCATE GENERAL POIARES MADURO PROPOSES FINING ITALY
EUR 265 500 PER DAY FOR FAILING TO COMPLY WITH A 2001 JUDGMENT**

In his opinion, Italy has failed to adequately explain the discrepancies in treatment in terms of salary arrears and accrued pension rights between foreign-language assistants and tenured researchers in Italian Universities.

The employment conditions of foreign language assistants has been the subject of many cases before the Court of Justice. In 1989 and 1993 the Court ruled that an Italian law limiting the duration of employment contracts of foreign language assistants was contrary to Community law¹. In 1995 Italy adopted a law to reform foreign language teaching. The post of “foreign-language assistant” was abolished and replaced by that of “linguistic associate”. Following this law’s entry into force, the Commission received several complaints from former foreign-language assistants that, in the conversion to linguistic associate, their length of service as assistants had not been taken into account for purposes of pay and social security. The Commission therefore instigated legal proceedings against Italy.

On 26 June 2001, in Case C-212/99 *Commission v Italy*, the Court found Italy to have failed to fulfil its obligations under the provisions of the EC Treaty guaranteeing free movement of workers, by not guaranteeing recognition of the acquired rights of former foreign language assistants in six Italian universities (La Basilicata, Milan, Palermo, Pisa, La Sapienza in Rome and the Eastern University Institute in Naples), even though such recognition was guaranteed to Italian nationals.

Believing that Italy had still not complied with this judgment, on 4 March 2004, the Commission commenced the present case against Italy requesting that the Court find Italy in breach of the judgment of June 2001 and impose a penalty payment of EUR 309 750 per day from the date of judgment in the present case until compliance by Italy.

¹ Case 33/88 *Alloué and Coonan* [1989] ECR 1591 and *Joined Cases C-259/91, C-3311/91 and C-332/91 Alloué and Others* [1993] ECR I-4309

In his Opinion issued today, Advocate General Miguel Poiares Maduro suggests that the Court should find that Italy has failed to fully comply with the ruling of June 2001 and that the Court impose a daily penalty payment of EUR 265 500 from the date of judgment in the present case until compliance.

In the opinion of the Advocate General, whilst Italy has a margin of discretion as to the value to be placed on various academic and teaching activities, any disadvantageous treatment must be objectively justified and proportionate. Italy submitted evidence to the Court that the universities concerned currently recognise acquired rights of full-time former foreign-language assistants on an equal footing with part-time tenured researchers. The Advocate General, however, considers that Italy has failed to explain sufficiently why the differences between foreign-language assistants and tenured researchers should give rise to the large discrepancy in terms of the amount of arrears of salary and accrued pension rights which results from this equation of full-time work of foreign-language assistants with part-time work of researchers. The Advocate General therefore concludes that Italy has so far failed to comply with the Court's previous judgment.

As regards the calculation of the fine to be paid by Italy, Advocate General Poiares Maduro recalls that the suggestion made by the Commission has no binding effect upon the Court but serves as a useful point of reference. In this respect the Advocate General concurs with the reasoning of the Commission as regards the coefficients to be applied to take account of the length of the infringement and the ability of Italy to pay . However, given the margin of appreciation that must be accorded to Member States, mentioned above, the Advocate General suggests that the coefficient to take account of the seriousness of the offence be reduced from 14 to 12. This would result in a daily fine of EUR 265 500 being imposed on Italy from the day of judgment in the present case until Italy complied with the Court's 2001 judgment.

IMPORTANT: The Advocate General's Opinion is not binding on the Court. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court of Justice are now beginning their deliberations in this case. Judgment will be given at a later date.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: FR, DE, EN, IT, PL

The full text of the Opinion may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-119/04>

It can usually be consulted after midday (CET) on the day of delivery.

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