

Rome, March 22, 2024
Prot. n. 88/2024 JG/GF-stm

To the attention of Commissioner Nicolas Schmit,
Commissioner for Jobs and Social Rights
CAB-SCHMIT-ARCHIVES@ec.europa.eu
Directorate-General for Employment,
Social Affairs and Inclusion
Labour Mobility: Free Movement of Workers, EURES

and c.c.
President Ursula Von Der Leyen

European Commission
Rue de la Loi / Wetstraat 200 - 1049 Brussels
Belgium

Subject: Infringement procedure No. 2021.4055 against Italy opened by the European Commission for non-implementation of the ruling in CJEU Case C-119/04, registered under No. Ares (2023)4469000

Dear Commissioner Nicolas Schmit,

First of all, I would like to thank you for your letter of 25/07/23 in response to my letter of 27/06/23 and for your decision of 14 July to refer Italy to the CJEU, in your words *"for failing to end discrimination of foreign lecturers. The Commission considers that Italy does not adequately enforce national law implementing EU rules on the free movement of workers, in particular Article 45 of the Treaty on the functioning of the European Union and Regulation (EU) No 492/2011."*

We are writing to you with an update on the situation of the *Lettori* in Italy regarding the lack of effective implementation of the Interministerial Decree No. 688/2023 for the reconstruction of their careers, hoping to provide you with useful information for the European Commission in the presentation of the question before the CJEU.

Indeed, we are already in the spring of 2024 and now a few months after the closing of the timeframe for the career reconstruction of the former *Lettori* according to the terms set forth in Ministerial Decree 688/2023, it is possible to verify, contrary to the claims of the Italian government, the substantial and almost total lack of that reconstruction pursuant to the CJEU ruling in Case C-119/04.

On 12 February, we wrote a letter to the Minister of University and Research Anna Maria Bernini, with copies sent to you and to President von der Leyen, to express our concern about the substantial lack of career reconstruction of the *Lettori* through Interministerial Decree No. 688/2023 and to ask for an update on the situation (<https://www.flcgil.it/universita/lettori-ecel/vertenza-europea-lettori-madrelingua-lettera-flc-cgil-al-mur-e-commissione-europea.flc>). More than two months have passed, and we are still waiting for some response from the Minister.

In early February, the CGIL - along with the Asso.CEL.L association - launched a third national census to gather data on the situation in Italian universities. The picture that emerges shows a quite varied situation, not only among the different Universities but also within the same University with groups of *Lettori* who have not had any career reconstruction, other groups who have obtained partial reconstruction, and others who have obtained full reconstruction.

The results show, however, that only a small minority of *Lettori* have had full career recognition with the arrears to date or to the date of their termination of service (ca. 50 overall, in the Universities of Milan, Rome 2, Sannio-Benvenuto, Teramo, Tuscia-Viterbo). Hundreds of *Lettori* have never had any career reconstruction (e.g., at Bari, Bologna, Brescia, Cagliari, Modena-Reggio Emilia, Naples l'Orientale, Perugia, Piemonte Orientale, Rome 3), while hundreds of other *Lettori* have received only partial reconstruction (e.g. in Ancona-Marche Polytechnic, Bari, Basilicata, Cosenza-Calabria, Cassino, Catania, Chieti-Pescara, Florence, Genoa, L'Aquila, Lecce-Salento, Milan, Molise, Naples Federico II, Parma, Pisa, Rome La Sapienza, Salerno, Siena, Trieste, Turin, Tuscia-Viterbo, Udine, Urbino, Venice). Moreover, according to our census, only twelve universities have reportedly requested the co-funding under Article 11 of Law 167 of 2017 from the ministerial fund to close past and ongoing *Lettori* disputes, while a representative of the Ministry has told the press that 17 universities requested co-funding.

As the census data shows, the reasons for the failure to reconstruct *Lettori* careers are multiple.

The main reason concerns the application of paragraph 3 of Art. 26 of Law 240/2010 which, more than 6 years later, gave a supposed "authentic interpretation" to the previous Law 63 of 2004 (converting Decree Law No. 2 of Jan. 14, 2004), which was adopted by Italy in order not to incur the sanctions of the CJEU. That law at Art. 1 paragraph 1 recognized the attribution of "a salary corresponding to that of the part-time tenured researcher, with effect from the date of first employment, save where more advantageous treatment may be afforded" without imposing any time limit on the career reconstruction of the *Lettori*.

Law 240/2010, on the other hand, distorted the meaning of Law 63/2004 by retroactively specifying that the economic treatment of the part-time tenured researcher was to "be attributed with effect from the date of first employment as mother-tongue foreign language lecturers" only "until the date of establishment of the new employment status as *collaboratori ed esperti linguistici*" pursuant to Art. 4 of Law 236 of 1995. Therefore, with this unfavourable implementation of Law 240/2010, the Italian authorities have recognized the career reconstruction of the vast majority of *Lettori* in almost all Italian universities only until 1995, even though for all *Lettori*, after that date, nothing changed, and they have continued to perform the same work in the same manner as before.

However, when the CJEU issued its ruling in Case C-119/2004 on 18/07/2006 with the conclusion "that this legal framework, which was not incorrect, allowed the universities concerned to proceed with the career reconstruction of the former *Lettori*" (Ruling of 18 July 2006, Commission v. Italy, C-119/04, EU:C:2006: 489, points 38 and 39), Law 63/2004 provided for no time limit restrictions to the acquired rights and career reconstructions of the *Lettori*, who, as aforementioned, have always continued to perform the same work with the continuity of their employment relationship since the creation of the figure of the *CEL* in 1995. In fact, the numerous rulings of the Italian Courts even after the year 1995 continued to recognize the application of Law 63/2004 to the *Lettori* well beyond that date and even after the year 2010 itself.

It is worth remembering, among others, Sentence No. 44/2012 of the Court of Appeals of Florence, Employment Section, which affirms that the legislator (Art. 26 para. 3, L. 240/2010) had intervened with "a provision of retroactive scope, which was intended to prevent what had seemed to be the most logical and reasonable normative intent of Decree-Law 14.01.2004 (...)

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in such a way as to negate one of the few points in which some interpretative certainty had seemed to be acquired..."

Therefore, Art. 26, paragraph 3, of Law 240/2010 appears to be a norm which, while qualifying itself as interpretative, actually introduced a new meaning that could in no way be inferred from the text of Art. 1 of Decree Law No. 2/2004 (converted into law by Law No. 63/2004), distorting its content.

Therefore, Art. 26, paragraph 3 of Law 240/2010 was formulated as an innovative norm with retroactive effect, contrary to the provisions of the CJEU rulings on the matter.

The attempt on the part of Law 240/2010 to deny full recognition of the acquired rights of the *Lettori*, by retroactively applying a time limit until only 1995, seems to be in blatant contradiction with the CJEU's own Judgment in Case C-119/04, which specified, "*As a preliminary point, it is to be noted that a Member State cannot plead provisions, practices or situations prevailing in its domestic legal order to justify failure to observe obligations arising under Community law (see, inter alia, Case C-212/99 Commission v Italy, paragraph 34, and Case C-195/02 Commission v Spain (2004) ECR I-7857, paragraph 82).*"

On the other hand, however, as reported above, a very small minority of the *Lettori* have had full recognition of career reconstruction up to the current date or the date of termination of service without the 1995 time limit as provided for by Law 240/2010. It is not clear why Law 63/2004 was applied to these *Lettori* without any time limitation, as opposed to how it was applied to the vast majority of their colleagues.

However, it also turns out that some of the *Lettori* in the aforementioned universities did not get full reconstruction because their universities applied the 5-year statute of limitations provided for by Italian legislation and therefore they obtained the economic recognition of their career reconstruction only for the last 5 years and not *ab origine* as requested by the European Commission itself (e.g. Milan, Molise, Salerno, Tuscia-Viterbo). Moreover, in order to receive this very partial career reconstruction, the *Lettori* in question also had to sign a formal waiver of any legal action to claim unpaid arrears. Limiting the full career reconstruction due to these *Lettori* to 5 years is yet another example of how Italy is clearly using a provision of its legal system to escape its full responsibility under EU law.

There are even cases in which Universities (e.g. Chieti-Pescara, Genoa) have rejected the request for career reconstruction for the years of service in the University as a *Lettoressa* on the fanciful grounds that the worker had left the University while still a *Lettoressa* without ever having had "the transition to *Collaboratore ed Esperto Linguistico*" in that same University!

Art. 11 of Law 167 of 2017 had raised the hope of the possibility of overcoming this situation of ongoing discrimination in the Universities, also including the provisions of funds to overcome the current litigation of the *Lettori* and to prevent future legal disputes, calculated on the basis of a precise technical report in 8,705,000 euros starting from the year 2017. Almost 7 years after the law was passed, unfortunately, the situation has been far from resolved and most of the allocated money has still not been utilized for the career reconstructions of the *Lettori*.

On 10 August 2023, the European Commission referred Italy to the CJEU because - despite the approval of Ministerial Decree 688 of 24 May 2023 - Italy had not yet "proceeded to the reconstruction of the careers of the former *Lettori* in order to guarantee the economic treatment due to them and the payment of the corresponding arrears (...) (including salary increases, seniority and payment of social security contributions from the date of their first employment)" (*Official Journal of the European Union*). Now, seven months after that referral, based on the census conducted, it is possible to conclude and demonstrate beyond any doubt that the situation

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regarding the *Lettori* is far from having been positively resolved, and the Ministry's failure to provide any answers to our questions appears as eloquent proof.

Now the hope of finally receiving justice lies in the hands of the judges of the CJEU. In our opinion, yet another CJEU ruling in favor of the *Lettori* would represent the affirmation of an essential principle - that of equal treatment (Art. 45 TFEU) - of the EU Treaty and one of the foundations of the EU: discrimination against workers on the basis of nationality must never be tolerated.

We hope that this updated information on the continuing discrimination against the *Lettori* in Italian universities, as well as those who have now retired, will be useful in contributing to the legal case against Italy initiated by the European Commission with the CJEU. We would kindly request to be updated on the timeline for the CJEU's judicial procedure in this case.

We remain available as always for any eventuality or clarification.

Yours faithfully,

Secretary General FLC CGIL
Gianna Fracassi

