



4.6.2024

NOTICE TO MEMBERS

Subject: Petition No 1193/2017 by A.M.S. (Italian) concerning freedom of religion for members of the armed forces in Italy

1. Summary of petition

The petitioner complains about Italian law, which does not allow freedom of religion for armed forces personnel. The petitioner refers to the concordat between the Holy See and Italy, whereby Italian armed forces can receive spiritual assistance, but only if they are members of the Catholic faith. In the petitioner's view, this leads to discrimination on grounds of religion for non-Catholics, which is in breach of EU legislation. The petitioner calls for EU intervention in order to secure protection for all military personnel who are not of the Catholic faith.

2. Admissibility

Declared admissible on 23 April 2018. Information requested from Commission under Rule 227(6) (former Rule 216(6)).

3. Commission reply, received on 3 January 2024

The petitioner complains about Italian law, alleging that it does not allow freedom of religion for armed forces personnel. The petitioner refers to the concordat between the Holy See and Italy, whereby Italian armed forces can receive spiritual assistance, but only if they are members of the Catholic faith. In the petitioner's view, this leads to discrimination on grounds of religion or belief for non-Catholic Italian armed forces, in breach of EU legislation. The petitioner calls for EU intervention in order to secure protection for all military personnel who are not of the Catholic faith.

Article 11 of the 1984 *Agreement on the revision of the Concordat* stipulates that spiritual assistance 'to the armed forces, police or other assimilated services' must be provided

according to ‘*the legal status, staffing and modalities established by agreement*’ between the competent Italian authorities and the ecclesiastical authority.¹ An agreement was concluded between the Italian Republic and the Holy See on *Spiritual Assistance to the Armed Forces*, on February 13, 2018. This agreement has been ratified and implemented in Italy by Law 22 April 2021, no. 70.² Chapter I of this law makes an amendment to Legislative Decree No. 66 of March 25, 2010 (i.e. *Code of Military Order*), modifying some of its articles.³ As part of these arrangements, military chaplains are embedded in the armed forces, they are assimilated to the ‘ordinary’ military as to their ranks and salary, they have a stable space, a church, in the barracks and they are paid by the Italian Government. As regards the provision of religious services within the armed forces other than Catholic in Italy, the rules are different, to different degrees. A number of other religious communities also have an agreement with the Italian State and are thereby allowed to provide religious services inside the barracks. Other religions must follow authorisation procedures before their representatives can access the military premises.

Council Directive 2000/78/EC (the ‘Employment Equality Directive’) lays down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.⁴ The Employment Equality Directive prohibits direct and indirect discrimination, also including harassment and instruction to discriminate, on the ground of, among others, religion or belief in the area of employment and occupation. Within the limits of the areas of competence conferred on the EU, the Employment Equality Directive applies to all persons, as regards both the public and private sectors, including public bodies, in the field of employment and occupation.

The scope of the Employment Equality Directive is therefore limited to discrimination of workers in the context of their employment relationship, as further detailed in its Art. 3: access to employment, training, employment and working conditions, involvement in workers or employers organisations. Read in its systematic context, it is clear from this provision that the Employment Equality Directive only applies where a worker is (1) itself discriminated (2) in relation to something that is part of his/her employment relationship with his/her employer.

It follows first of all that the differential treatment of different churches / their representatives is not covered by the scope *ratione personae* of the Employment Equality Directive. On the contrary, according to Art. 17(1) of the Treaty on the Functioning of the European Union, the Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States⁵.

Secondly, it also follows from Article 3 of the Employment Equality Directive that the different factual situation in which soldiers may find themselves as regards the ease of access

1 Agreement between the Holy See and the Italian Republic making amendments to the Concordat Lateranense, available at: https://www.vatican.va/roman_curia/secretariat_state/archivio/documents/rc_seg-st_19850603_santa-sede-italia_it.html

2 Law 22 April 2021 no. 70, Ratification and execution of the Exchange of Letters between the Italian Republic and the Holy See on Spiritual Assistance to the Armed Forces, done at Rome and Vatican City on February 13, 2018, and norms for the adaptation of the internal order to international obligations contracted with the Holy See, available at: <https://www.normattiva.it/eli/id/2021/05/22/21G00079/ORIGINAL>

3 Legislative decree 15 March 2010 no. 66, available at: <https://www.normattiva.it/eli/id/2010/05/08/010G0089/CONSOLIDATED/20230918>

4 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.

5 See also recital (24) of the Employment Equality Directive.

to religious services, as a result of the differential treatment of their respective churches/communities, would only be relevant under the Directive *ratione materiae*, if the services in question were part of the employment relationship, for instance where they would relate to working conditions. Contrary to other situations such as the one at hand in case C-193/17⁶, the facilitation of access to certain religious services as described in the petition seems rather of the resort of private life than related to the employment conditions of the soldiers.

Accordingly, on the basis of the facts available, the situation described by the petitioner appears to fall beyond the material scope of the Employment Equality Directive. It should be noted, as the Employment Equality Directive explains in recital (15), that the full appreciation of facts in alleged discrimination cases can ultimately be dealt with more effectively by national competent bodies.

Conclusion

On the basis of the facts described in the petition, the Commission considers that the situation of the petitioner does not seem to come within the scope of the Employment Equality Directive.

4. Further reply from the Commission, received on 4 June 2024

In his new letter (annex 1), the petitioner requests to hear the opinion of the Intergroup of the European Parliament on freedom of religion or belief and religious tolerance, as well as the final opinion of the European Parliament. There is no request for further details from the Commission. The Commission confirms the position that on the basis of the facts available, it seems that the situation of the petitioner would not come within the scope of Council Directive 2000/78/EC (the ‘Employment Equality Directive’).

Firstly, the differential treatment of different churches and their representatives is not covered by the scope *ratione personae* of the Employment Equality Directive. On the contrary, Art 17(1) TFEU sets that the Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.

Secondly, it follows from Article 3 of the Employment Equality Directive that the different factual situation in which soldiers may find themselves as regards the ease of access to religious services, as a result of the differential treatment of their respective churches/communities, would only be relevant under the Directive *ratione materiae*, if the services in question were part of the employment relationship, for instance where they would relate to working conditions. Contrary to other situations such as the one at hand in case C-193/17, the facilitation of access to certain religious services as described in the petition seems rather of the resort of private life than related to the employment conditions of the soldiers.

Accordingly, on the basis of the facts available, the situation described by the petitioner appears to fall beyond the material scope of the Employment Equality Directive. It should be noted, as the Employment Equality Directive explains in recital 15, that the full appreciation of facts in alleged discrimination cases can ultimately be dealt with more effectively by national competent bodies.

⁶ Judgment of the Court of 22 January 2019, *Cresco Investigation GmbH v Markus Achatzi*, C-193/17, EU:C:2019:43;

Conclusion

The Commission confirms the position that on the basis of the facts available, it seems that the situation of the petitioner does not come within the scope of Council Directive 2000/78/EC (the 'Employment Equality Directive').