

Italy, Tribunal of Pavia, Manara v. INPS, Order of 9 September 2009

Deciding bodies and decisions

Tribunal of Pavia (first instance court)

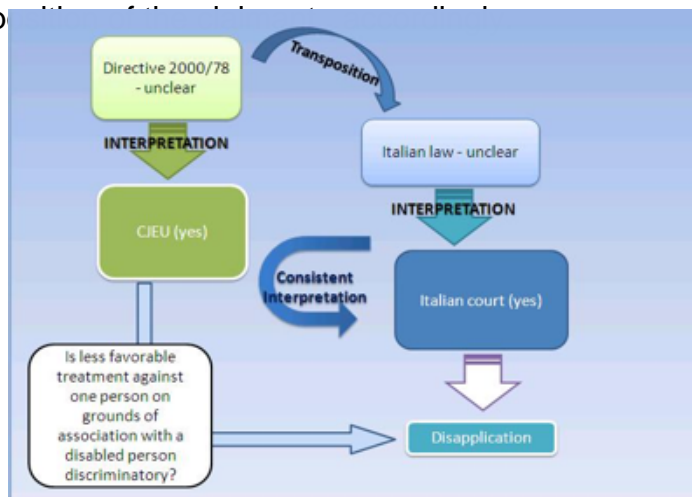
Subject matter

Discrimination (on grounds of disability) by association - primary carer - social rights

Summary Facts Of The Case

Disapplication was granted for a breach of the domestic statute transposing Directive 2000/78 (ie, the Employment Equality Directive). The employee challenged the decision of the National Institute of Social Security (INPS) which determined his ranking for the purpose of an internal promotion. The complaint focused on the fact that INPS had not taken into account for the purposes of determining his length of service, a period of unpaid leave of six months. The leave was necessary for him to take care of the mother who suffered from severe disability as defined in domestic law (Article 3 of Law 104/1992). The failure to take into account this period resulted in a lower score than what would have been given in calculating the leave towards his seniority. With its order, the Tribunal of Pavia upheld the applicant's request for provisional measures. It observed that the domestic provision (Art. 4 paragraph 2 of Law 53/2000) which expressly excluded the computability towards seniority of the period of unpaid leave taken by the employee to look after a disabled relative amounted to direct discrimination, and that it was not supported by any legitimate objective. Therefore, the provision had to be disapplied, and INPS was ordered to upgrade the

Diagram



In 2008, the CJEU interpreted Directive 2000/78 as also encompassing discrimination by association. In 2009, an Italian court of first instance (the Tribunal of Pavia) interpreted the national legislation implementing the Directive (which did not contain any explicit reference to discrimination by association) in conformity with the judgment of the CJEU of 2008. Accordingly, the Tribunal of Pavia did not apply to the specific case pending before it another national legislation, whose application had resulted into

discrimination by association.

Sources - ECHR

none

Sources - CJEU Case Law

- Case C-303/05 *Coleman v. Attridge Law & Steve Law* [2008] ECR I-560303;
 - Case C-180/95 *Nils Draehmpaehl v Urania Immobilienservice OHG* [1997]
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Sources - ECtHR Case Law

none

Sources - Internal or external national courts case law

none

Comments

The Tribunal of Pavia drew inspiration from the reasoning of the CJEU to extend the application of the rules on direct discrimination to treatment of persons associated with a disabled person. It must be noted that neither Directive 2000/78 nor the national legislation implementing it (D.lgs. 216/03) contain indications in that sense. Therefore, the interpretation adopted by the Tribunal was picked pursuant to an exercise of **consistent interpretation** that did not limit itself to conform domestic law to EU provisions, but took into account the case-law of the CJEU, and in particular a decision that displays a sound degree of purposive interpretation. Through the setting aside (**disapplication**) of the domestic provision excluding the relevance of unpaid leave the Tribunal adjusted the domestic regime without having to resort to the Constitutional Court. Incidentally, it must be recalled that the Constitutional Court had already pronounced on the right of sons to make use of extraordinary paid leaves for the care of the disabled person, along with parents and brother (judgment no. 19/2009 of 30 January 2009: <http://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2009&numero=19>). The Constitutional Court had deemed it unfair to exclude sons from this right. However, whereas this decision is based on the equality between the close relatives of the disabled, there is no discrimination entailed. In the Pavia proceedings, instead, the issue of equality arose between workers and workers who had to take care of a disabled person: in this sense discrimination was ruled by association with a member of the protected group, but it was still considered direct.
