



C/2024/6080

21.10.2024

**Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 29 July 2024 – BG v
Ministero della difesa**

(Case C-522/24, Ministero della difesa)

(C/2024/6080)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: BG

Defendant: Ministero della difesa

Questions referred

1. Given that the administration has not deemed it necessary to introduce a specific vaccination requirement for the military pursuant to Article 206a of decreto legislativo n. 66/10 (Legislative Decree No 66/10), assuming responsibility for the effects of the vaccine, does Directive 2000/78/EC ⁽¹⁾ preclude the transposition of decreto-legge n. 172/21 (Decree-Law No 172/21), in so far as it amends decreto-legge n. 44/21 (Decree-Law No 44/21) by adding [Article] 4b(2)(b), which introduces compulsory vaccination for a member of the military contrary to his personal views, since it requires him to voluntarily submit to such medical treatment, still in the trial phase, at his own risk, as an additional prerequisite for being able to work in the same working environment as civilian workers who are not required to undergo vaccination, despite the fact that they perform duties that, from the point of view of contagiousness and the potential for person-to-person transmission, are similar to those performed by the military?
2. Given that, according to Italian legislation on access to the workplace, even in crowded settings such as public transport, stadiums and restaurants, for workers not referred to in Decree-Law No 172/21, a vaccination certificate or negative COVID test carried out within the previous 48 hours are considered equivalent, does Article 2(2)(b) of Directive 2000/78/EC preclude a measure such as Decree-Law No 172/21 in so far as it amends Decree-Law No 44/21 by adding [Article] 4b(1)(b), which introduces compulsory vaccination for a member of the military contrary to his personal views, as a prerequisite for working in the same working environment as military personnel who, in line with their personal views, have chosen to be vaccinated even in the absence of a requirement to do so, despite the fact that the member of military staff who is not vaccinated is willing, and in any event is already required, to produce proof of a negative COVID test at intervals of less than 48 hours?
3. Does the measure referred to in Decree-Law No 172/21, supplementing Decree-Law No 44/21, in which Article 4b(3) renders employees who have been suspended for failing to comply with the vaccination requirement unable to provide for their family and offer the protection and care necessary for the well-being of minor daughters, infringe Articles 1 and 24 of the Charter of Fundamental Rights of the European Union pursuant to Article 24 of the Charter?

⁽¹⁾ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).