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Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 12 June 2025 – CA v Ministero della Difesa

(Case C-386/25, Ministero della Difesa II)

(C/2025/4740)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: CA

Defendant: Ministero della Difesa

Questions referred

1. 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 submit to such medical treatment, still in the trial phase, at his own risk, as an additional, necessary prerequisite for being able to work in the same working environment as civilian workers, for whom the law does not introduce the compulsory nature of the vaccination, despite the fact that they perform the same duties as the military?

2. 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 a worker – without any other income – who has been suspended for failing to comply with the vaccination requirement, unable, in any lawful manner, to meet his own needs and fulfil the financial obligations entered into by him at an earlier point in time, which are of a continuous and lasting nature, infringe Articles 1, 2, 3, 7, 15, 21, 33 and 34 of the [Charter of Fundamental Rights of the European Union]?

4. Is Article 4b of Decree-Law No 44/2021, inserted by Decree-Law No 172/2021, contrary to Articles 1, 8, 9, 14, 17 and 18 [of the European Convention for the Protection of Human Rights and Fundamental Freedoms] and Directive 2000/78/EC[,] [g]iven that Article 4b of Decree-Law No 44/2021 provides that 'the act of establishing non-compliance shall result in the immediate suspension of the right to work, with no disciplinary consequences and with the right to the preservation of the employment relationship. For the period of suspension, no remuneration or other emoluments of any kind shall be payable', and the administrations interpret that as meaning that '[d]ays of suspension shall be regarded as service not taken into account for the purposes of accruing seniority and pay increases, as well as ordinary leave, which shall be reduced proportionately. Moreover, days of suspension shall not be taken into account for pension purposes', thereby obliging the workers concerned to apply to the judicial authority, for recognition of the length of service accrued during the suspension, the deducted days of leave and pension.

[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).

5. Are the means used by the Italian legislature in providing for the vaccination requirement for certain categories of persons, which are formally subject to consent to inoculation, but, in essence, uninformed because of the lack of indications or information necessary to ensure awareness of the citizen, contrary to Articles 1, 2, 3, 7, 15, 21 and 34 of the Charter of Fundamental Rights of the European Union, Resolution 2361 (2021) of the Council of Europe, Regulation (EU) 2021/953, ([2]) and Regulation (EU) No 2014/536? ([3]) Also in the light of recital 36 of Regulation (EU) 2021/953 (as rectified, in the Official Journal of the European Union L 211 of 15 June 2021), which has interpretative scope, and Article 2 of the Charter of Nice, which recognises the right to life – closely linked to the critical issues arising from the administration of the AstraZeneca vaccine and the physiological dysfunctions suffered by those who have been inoculated with the vaccine of the Anglo-Swedish biopharmaceutical multinational, including permanent brain damage caused by blood clots and vascular thrombosis – is informed consent of the patient (which is lacking) also a prerequisite for health treatment required by law, since the obligation to obtain consent aims to provide information on the foreseeable consequences of the treatment and the possibility that a deterioration in the patient's state of health may occur?

([2]) Regulation (EU) 2021/953 of the European Parliament and of the Council of 14 June 2021 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic (OJ 2021 L 211, p. 1).

([3]) Regulation (EU) No 536/2014 of the European Parliament and of the Council of 16 April 2014 on clinical trials on medicinal products for human use, and repealing Directive 2001/20/EC (OJ 2014 L 158, p. 1).