

GREEN LIGHT FOR THE APPOINTMENT  
OF EU CITIZENS AS DIRECTORS  
OF ITALIAN STATE-OWNED MUSEUMS.  
AN IMPORTANT RULING OF  
THE ITALIAN COUNCIL OF STATE

**ABSTRACT:** *Decision n. 9/2018 permits EU citizens to apply for the position of director in state-owned museums. This judgment terminates a very long legal saga and opens to a new contemporary concept of cultural diversity.*

With decision n. 9/2018, the Italian Council of State confirms the lawfulness of the governmental appointment of EU citizens as directors of Italian state-owned museums and declares Italian regulations DPCM n. 174 of 1994 Art. 1, 1° letter a), and the first sentence of DPR 487/1994 Art. 2, inapplicable, due the contrast with Article 45 of TFEU.

This Italian regulation prevents foreign citizens from applying for public administration managerial positions, pursuant to Article 45 TFEU which, declaring the freedom of movement for workers within the Union, makes an exception for public service employment.

The case started in 2016 and 2017 when two different actions challenging of the unlawful application procedure open to non-Italian museum managers were brought before the first instance administrative judge. In 2016, the first action contested the 2015 nomination by Ministry of Cultural Heritage of European workers as state museum directors, done as a part of an innovative cultural heritage reform. In 2017, the second action challenged the decision by the Ministry to open an international selection procedure also for the Colosseum.

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\* Trainee, Council of State, Italy. I am thankful to Prof. Giulio Napolitano who have provided precious comments to previous draft of this paper. I bear sole responsibility for the views expressed in this article.

The first instance judge decided in both cases to uphold both actions, and the Ministry of Cultural Heritage and Activities appealed to the Council of State. In the action presented in July 2017, the 6th section of the Council decided to endorse the Ministry's view and to declare the international call for the director for the Colosseum open to a non-Italian museum manager lawful. However, in February 2018, the same 6th section – with different judges – of the Council was not so sure to declare the legitimacy of the 2015 appointment of European citizens as museum directors. Therefore, it decided to defer to the Plenary Section the decision under discussion.

The Supreme Administrative Court had to decide whether the director of Italian state museums - Palazzo Ducale in that specific case - can be a European citizen in application of the freedom of movement principle or, rather, whether such a position had to be filled by an Italian citizen, in application of the Italian legislation.

The issue is based on the fact that article 45 TFUE, as interpreted by the European Court of Justice, allows an exception to the freedom of movement principle for the public positions that are related to the public authority and to the public policy of the State: this exception is called “Nationality reserve”. The Council of State had to decide whether the state museum's directors exercise such a public authority or not.

The Council decided that the director of an Italian state-museum is not a Public Authority in this sense. Therefore, the Italian regulation, which reserves all positions for general directors to Italian citizens, is not applicable to this kind of case.

The Council of State grounds its decision on the jurisprudence of the European Court of Justice: in particular, the Italian Court makes reference, *inter alia*, to the following judgments: *Commission of the European Communities v. Italian Republic Case C-283/99*; *Commission of the European Communities v. Spanish Republic Case C-114/97*; *Commission of the European Communities v. Kingdom of Belgium Case C-355/98*.

In all these cases, the European Court decided that the exception taken in consideration is restricted to the public positions that are strictly and directly related to public policy and does not consider all the other positions in which the use of public power is occasional.

In the decision-making process the Council of State refers also to the decisions of the French Council of State, Conseil d'Etat, and to the principles identified by the Commission in the interpretative communication COM /2002/0694, intitled “free movement of workers: achieving the full benefits and potential”.

It is worth noting how different European courts achieve the same decisions for the same reasons. The French Council was ordered to decide if the nationality reservation can be applied also to the President of the National Research Agency, and

it established that to apply the exception the work must be connected to a direct or indirect authority (Conseil d'Etat, *avis du 11 septembre 2014*).

This position is also taken also by the European Commission. In Communication COM2002 694 “free movement of workers- achieving the full benefits and potential” published in December 2002, the European Commission confirms the European Court of Justice’s position by stressing the point that the “Nationality reserve” is an exception to the principal of free movement and so it can be accepted only if the work is strictly related to the use of public authority.

Finally, the Italian Council of State compares the regulation with the Italian Constitution, in order to analyse the Italian regulation legal bases. In particular, Article 51 states that access to public employment needs to take place under equal conditions, and it adds that the Italian regulation can admit the application to public employment made by non-Italian citizen.

Therefore, after a clear analysis of the Italian and European law, the Council of State decided to allow European citizens to work as state museums directors.

With the judgment the Plenary had the occasion to confirm that every judge, specially administrative ones, can disapply *ex officio* the internal regulation in contrast with the European law.

It’s useful to emphasize that the Council of State decided to take this decision in plenary section; this is because the plenary decision must be followed by all the sections of the Council of State and by the first instance administrative judge.

With this decision a very controversial case that was under the media attention comes to an end. The choice to allow an European citizen to be general manager for Italy’s most important museums was strongly wanted by the Italian Government as a whole and by the Minister of Cultural Heritage in particular also to improve state-owned museums’ performances.

Opening applications to European managers can be a valuable contribution to increase efficiency and competitiveness in the Italian cultural heritage system, with a new approach emphasizing internationalization in accordance with the International Council of Museums (ICOM) standards.

In fact, official data of the Ministry (MIBACT statistic office 2018) confirm that between 2016 and 2017 the number of visitors in all seven museums managed

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by European general managers was increasing; for instance, in the Uffizi Museum the influx of visitors increased by 10%, while the influx of Museo di Capodimonte increased by 21%. To be clear, it's important to say that 2017 was an important year for the entire cultural heritage system that achieved the record number of 50,103,996 visitors, with an increase between 2013 and 2017 of 31% (MIBACT statistic office 2018). In any case, we cannot ignore the positive contribution of European museums directors and the importance to respect the principle of free movement within the Union in a substantive way.