



Court of Justice of the European Union

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Luxembourg, 24 April 2012

Judgment in Case C-571/10

Servet Kamberaj v Istituto per l'Edilizia sociale della Provincia autonoma di Bolzano, Giunta della Provincia autonoma di Bolzano, Provincia autonoma di Bolzano

Press and Information

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**EU law precludes national or regional legislation which treats third-country nationals who are long-term residents differently from EU citizens with regard to the allocation of funds for housing benefit**

*The EU acknowledges a right to equal treatment for persons entitled to housing benefit intended to ensure a decent existence for all those who lack sufficient resources*

Mr Kamberaj, an Albanian national, has resided in Italy in the Autonomous Province of Bolzano since 1994. Holder of a residence permit for an indefinite period, he received 'housing benefit' – a contribution by the province to the payment of the rent for low income tenants – from 1998 to 2008. That benefit is allocated to, first, EU citizens (whether Italian or not) and, second, third-country nationals and stateless persons, provided that those third-country nationals and stateless persons have resided permanently and lawfully in the provincial territory for at least five years and have worked there for at least three years. From 2009, different methods have been used to allocate those funds to those two categories, depending on whether the persons concerned were citizens of the Union or third-country nationals.

The Social Housing Institute ('IPES') of the Province of Bolzano thus rejected Mr Kamberaj's application for benefit in respect of 2009, on the ground that the budget intended for third-country nationals was exhausted.

Mr Kamberaj asks the Tribunale di Bolzano to find that that rejection decision amounts to discrimination contrary to the Directive concerning third-country nationals who are long-term residents.<sup>1</sup>

The Tribunale di Bolzano asks the Court of Justice whether that mechanism for allocation of the funds for housing benefit – which treats third-country nationals who are long-term residents less favourably than EU citizens – is compatible with EU law.

The Court states, first, that the effect of applying different multipliers to the allocation of funds is to disadvantage the category of third-country nationals, since the budget available to satisfy their demands for housing benefit is smaller than that for EU citizens (whether Italian or not) and thus likely to be used up more quickly than theirs.

According to the Court, a third-country national who has acquired the status of a long-term resident in a Member State<sup>2</sup> is in a comparable situation, with regard to housing benefit, to that of an EU citizen (whether Italian or not), with the same economic need.

The Court then assesses the scope of the directive, with regard to the **equal treatment of third-country nationals who are long-term residents and nationals of the Member State of residence in the fields of social security, social assistance and social protection**. Since the EU legislature wished to respect the differences between the Member States, those concepts are

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<sup>1</sup> Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44).

<sup>2</sup> The essential conditions are legal and continuous residence for five years, availability of sufficient resources and sickness insurance.

defined by national law, subject however to compliance with EU law. It follows that **it is for the national court to assess whether housing benefit falls within the fields covered by the directive, taking into account both the integration objective pursued by the directive and the provisions of the Charter of Fundamental Rights.**

Under that directive,<sup>3</sup> Member States may **limit the application of equal treatment in respect of social assistance and social protection to core benefits.** Those benefits – which include minimum income support, assistance in case of illness, pregnancy, parental assistance and long-term care – must be granted equally to nationals of the Member State concerned and to third-country nationals who are long-term residents in accordance with the modalities of allocation determined by the legislation of that Member State.

In so far as the directive does not contain an exhaustive list of core benefits, it cannot be excluded that housing benefit falls within that concept, to which the principle of equal treatment must be applied. In any case, the benefits at issue are those which enable individuals to meet their basic needs such as food, accommodation and health.

In addition, since the right of third-country nationals to equal treatment in the fields listed in the directive is the general rule, any derogation in that regard must be interpreted strictly and can be relied upon only if the bodies in the Member State concerned that are responsible for the implementation of the directive have stated clearly that they intended to rely on that derogation.

The **meaning and scope of the concept of core benefits** must therefore be sought taking into account of the objective pursued by the directive, namely the **integration of third-country nationals** who have resided legally and continuously in the Member States.

The concept of core benefits must also be interpreted in conformity with the principles of the Charter of Fundamental Rights<sup>4</sup>, which recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources. Thus, **the national court must establish whether the housing benefit in question is a core benefit**, taking into consideration its objective, its amount, the conditions subject to which it is granted and the place of that benefit in the Italian system of social assistance.

In the light of those considerations, the Court replies that **EU law precludes a national or regional law which – when the funds for the housing benefit are allocated – provides for different treatment for third-country nationals and nationals of the Member State in which they reside, in so far as the housing benefit falls within one of the three fields covered by the principle of equal treatment provided for under the Directive concerning third-country nationals who are long-term residents and constitutes a core benefit within the meaning of that directive, which are matters for the national court to determine.**

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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<sup>3</sup> See Art. 11(4).

<sup>4</sup> Article 34 of the Charter of Fundamental Rights.