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Judgment of the Court in Case C-747/22 | INPS (Social assistance and access to employment – Indirect discrimination)

Access to social assistance and employment: a condition of 10 years' residence constitutes indirect discrimination against beneficiaries of international protection

A foreign national who is a beneficiary of subsidiary protection in Italy saw his 'citizens' income' (social benefits coupled with an obligation to participate in an occupational integration scheme) withdrawn after an administrative check revealed that he did not satisfy the condition under Italian national law requiring him to have resided in Italy for a minimum of 10 years. He challenged that decision before an Italian court, which made a reference to the Court of Justice in order to determine whether that condition constituted indirect discrimination against foreign nationals.

The Court of Justice finds that a grant of 'citizens' income' must observe the principle of equality between beneficiaries of international protection and Italian nationals, both in the field of access to employment and the right to minimum income. Even though that condition is applied in the same way to both foreign nationals and Italians, it primarily affects those who are not Italian nationals. That difference in treatment is not justified by the fact that the granting of the 'citizens' income' entails, according to the Italian government, significant administrative and financial costs. It therefore constitutes indirect discrimination prohibited by EU law.

A beneficiary of subsidiary protection, who had been lawfully resident in Italy since 2011, was receiving 'citizens' income', a social benefit coupled with measures for occupational and social integration. The grant of that assistance was subject to a condition that the beneficiary have resided in Italy for a minimum of 10 years, the last 2 years of which had to have been continuous.

Following an administrative check, the Istituto nazionale della previdenza sociale (Italian National Social Security Institute; INPS) found that that condition had not been satisfied. On that basis, it stopped paying the benefit to that beneficiary and demanded repayment of the sums unduly received.

The individual challenged that decision before an Italian court, arguing that the condition that he had to have resided in Italy for 10 years constituted indirect discrimination, as it was more easily satisfied by Italian nationals. For its part, the INPS argued that that income was not intended to cover a primary need, but came within the scope of employment policy and integration policy, which justified the requirement of a genuine link with Italy.

The national court took the view that that condition could potentially be discriminatory and disproportionate and made a reference to the Court of Justice to verify whether it was in line with EU law.

The Court finds, first, that **'citizens' income' is both an access to employment measure, which is subject to the principle of equality between beneficiaries of international protection and nationals,**¹ and a core social benefit, in the form of a minimum income, which is also covered by that principle.²

Second, **the condition of 10 years' residence**, even if applied in the same way to nationals of the Member State and beneficiaries of international protection, **primarily affects non-nationals and constitutes indirect discrimination** against them, which is, in principle, prohibited.

Third, the Court considers that **that condition is not objectively justified** by the fact that the grant of 'citizens' income' entails, according to the Italian Government, a significant administrative and financial cost, which justifies limiting a grant of that benefit solely to persons who are well integrated into the national community.

The Court notes in that regard that the granting of social benefits to a person entails the same costs for the institution concerned regardless of whether that person is a beneficiary of international protection or a national of the Member State concerned.

Moreover, as regards access to employment measures and core social benefits, such as 'citizens' income', EU law confers on beneficiaries of international protection a right to equal treatment and does not allow Member States to lay down conditions or limitations additional to those laid down by the EU legislature. It is noteworthy that the length of stay in the territory of a Member State is not provided for by EU law as a criterion for granting the benefits in question to those beneficiaries.

Furthermore, making the grant of those benefits subject to a condition of 10 years' residence in the Member State concerned runs counter to the EU law objective of ensuring a minimum level of benefits for beneficiaries of international protection, whose status is, by its nature, not permanent and may be revoked, which can in some cases entail the person concerned being returned to his or her country of origin.

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 EU law or the validity of an EU 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 and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ This follows from Article 26 of [Directive 2011/95/EU](#) of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

² As set out in Article 29 of Directive 2011/95.