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PROHIBITION OF DISCRIMINATION IN INTERNATIONAL AND EU LAW, WITH A FOCUS ON HOUSING DISCRIMINATION IN ITALY

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SUMMARY: 1. – Introduction – 2. The concept of discrimination and the supranational sources – 3. The prohibition of discrimination in the field of housing – 4. Italian cases – 5. Conclusions.

1. – People who are forced to leave their country of origin to find refuge or a better life in another country can face the problem of not being treated equally by the host authorities. What makes the granting of foreigners' rights effective is a system that ensures equality between citizens and foreigners and that protects the latter from possible discrimination.

In particular, a form of discrimination has been implemented in Italy in recent years. This discrimination concerns the field of housing: some Italian regions or local authorities have imposed greater burdens on citizens of foreign states, legally residing in Italy, who had requested access to social security. These higher burdens have clearly made it difficult, if not impossible, for foreign citizens to access these benefits. This type of provision was condemned by several Italian judges, not only for the unreasonable imposition, but also for the discriminatory intent that characterized it. Further, the imposition of additional burdens exclusively on third country nationals (TCNs) was considered to be in contrast with the international and european legislation that Italy, as a Member State of the European Union and under the Italian Constitution, is obliged to respect.

This paper aims to provide a general overview of the issue and to investigate the legal supremacy of international and European law on local provisions. First of all, the concept of "discrimination" will be exposed, analyzing a number of international and European sources that protect foreigners

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against discrimination (paragraph 1). Subsequently, this work will deal more specifically with the prohibition of discrimination in the field of housing (paragraph 2). Finally, some illustrative cases of the subject will be exposed, in particular that of the Friuli Venezia Giulia region, condemned as regards specifically the case of the municipality of Udine and of Monfalcone (paragraph 3).

2. – "Discrimination" means treating a person or particular group of people differently from the way other people are treated, because of their characteristics [1].

The American-Canadian scholar James Hathaway argues that, if allocations are based on personal characteristics which are immutable or fundamental to the person's idenity, and irrelevant to the substance of the allocation itself, decisions predicated on such criteria are arbitrary assumptions and they undermine the duty to consider individuals on their own merits. Thus, the core understanding of non-discrimination is essentially a prohibition of arbitrariness, which requires that any unequal treatment is properly justified, in order to draw a line between discriminatory and non discriminatory distinctions [2].

However, even though formally a treatment can seem equal (the so-called "*formal equality*"), it can still result in discrimination: "*treating people in the same way regardless of their differing backgrounds frequently entrenched difference*" [3]. This difference turns out to be an *indirect discrimination*, because it does not show the difference in treatment from its surface (like the *direct discrimination*), but from the effects of its application. More vulnerable subjects cannot be considered at the same "starting point" of others', otherwise, with the same incentives, the "point of arrival" would still see them disadvantaged.

For this reason, it is important that non-discrimination is understood to be not only a prohibition of arbitrary allocations (which guarantees the so-called *formal equality*), but also an affirmative guarantee of equal opportunity (sub-

[1] Word "discrimination" in the Cambridge dictionary <http://dictionary.cambridge.org/dictionary/english/discrimination> ; website consulted on 30.11.2020.

[2] J. C. Hathaway, *The rights of Refugees under international law*, Cambridge, 2005, 123 s..

[3] S. Fredman, *Discrimination law*, Oxford, 2011, 106.

stantial equality); thus, public authorities have not only to ensure the absence of direct discrimination, *"but also to act positively to promote equality of opportunity between different groups"* by eliminating indirect discrimination [4].

Fundamental for this issue is the international legal recognition for all human beings of the enjoyment of rights on the basis of equality and the prohibition of discrimination on the grounds of race, colour, sex, sexual orientation, language, religion, political or other opinions, social or national origin, property, birth or other conditions [5]. This principle is embodied in many international and European legal sources, but also in a number of instruments which concern specific forms of discrimination and which apply this principle to particular groups [6]. International organizations have defined, through all these instruments, what constitutes a prohibited reason for discrimination, specifying that, in addition to the reasons expressly listed, there are other statuses that can be considered implicit grounds of discrimination. This is evident in an Article that will soon be analyzed: Art. 26 of the International Covenant on Civil and Political Rights (ICCPR) [7]. Here, the term "or other status" clearly indicate that there is an open-ended formulation. The same reasoning can apply to Art. 2 of both Human Rights Covenants – the above mentioned ICCPR [8] and the International Covenant on

[4]C. McCrudden, *Equality and Non-Discrimination* in *English Public Law*, XI, Oxford, 2004, passim.

[5] The prohibition of discrimination is provided for by a number of regulatory sources. Some of them will be analyzed in this paper, but it is interesting to mention already some of them right now: Artt. 2, 3 and 26, International Covenant on Civil and Political Rights (ICCPR); Art. 14 European Convention on Human Rights (ECHR); Art. 1 of Protocol 12 on the ECHR; Artt. 1 and 24 American Convention on Human Rights; Artt. 2 and 3 African Charter on Human and Peoples Rights; Artt. 3 and 11 Arab Charter on Human Rights; Art. 21 Charter of Fundamental Rights of the European Union; CCPR General Comment n°15 on The position of Aliens Under the Covenant; CCPR General Comment n°18 on Non-discrimination, etc.

[6]Such as, for example, the International Convention for the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of Persons with Disabilities.

[7]UN International Covenant on Civil an Political Rights (ICCPR), 16 December 1966, entry in force 23 March 1976.

[8]ICCPR cit., Art. 2(1): "*Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*".

Economic, Social and Cultural Rights (ICESCR) [9] –, which prohibits discrimination on the basis of a list of grounds, including "other status".

> ICESCR, art. 2(2): "*The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.".*

States must refrain from carrying out discriminatory actions that compromise the enjoyment of rights (*negative obligation*), must adopt tools to prevent and protect against certain forms of discrimination from third parties and provide for measures to ensure equal enjoyment of human rights (*positive obligation*) [10]. They must ensure equality *de jure* and *de facto*, by eliminating both direct and indirect discrimination, thus, not only clearly discriminatory laws, policies and practices, but also apparently neutral measures which have a discriminatory effect in practice [11].

According to Hathaway, the core guarantee of non-discrimination in International human rights law is that found in Art. 26 of the Civil and Political Covenant, which provides that:

> Article 26: "*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."*

Of all the international provisions, Hathaway thinks that Art. 26 is unique as its ambit is not limited to the rights stipulated by the Covenant it-

[9] UN International Covenant on Economic, Social and Cultural Rights (ICESCR), 16 December 1966, entry in force 3 January 1976.

[10] CCPR General comment n°32 on The meaning and scope of special measures in the International Convention on the Elimination of All Forms (of) Racial Discrimination.

[11] M. Frigo, *L'Immigrazione e la normativa internazionale dei diritti umani. Guida per operatori del diritto n°6*, International Commission of Jurists, Ginevra, 2012, trad. F. Vella.

self: it prohibits discrimination in law or in fact in any field regulated and protected by public authorities [12]. Moreover, in addition to *equality before the law*, it also provides an "*equal protection of the law*", which is required to be *effective*. This means that the duty of non-discrimination applies not only to the process of law enforcement, but also to the substance of laws themselves [13]. For this reason, Art. 26 could be a great base for TCNs to demand an end to any law or practice that set them apart from the rest of the community in a host state.

Talking about "European non-discrimination law" [14], it is necessary to say that, according to the IOM Handbook on discrimination [15], a single Europe-wide system of rules relating to non-discrimination does not properly exist. There is, in fact, a system built on multiple contexts of separate origins: mainly from the ECHR [16] and EU law.

The European Convention on Human Rights (ECHR) – which can be considered more a transnational rather than an European source – also provides for a prohibition of discrimination in Article 14:

> ECHR, Art. 14 (Prohibition of discrimination): "*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion political or other opinion, national or social origin, association with a national minority, property, birth or other status.*".

Article 14 of the ECHR guarantees equal treatment in the enjoyment of the other rights set down in the Convention. The scope of Article 14 is expanded by Protocol 12 to the ECHR [17] (which was not yet ratified by all EU Member States) by guaranteeing equal treatment in the enjoyment of any

[12] UN Human Rights Committee, General Comment n° 18 on Non-discrimination, 1989.

[13] J.C. Hathaway, op. cit. on Nowak ICCPR Commentary.

[14] For a further reading see E. Ellis, "*EU Anti-Discrimination Law*", Oxford, 2005.

[15] International Organization for Migration (IOM), "*Handbook on European Non-discrimination Law and its Update including the Manual on the Anti-discrimination Legal Framework and Referral Mechanism in Azerbaijan*", Baku, 2013.

[16] European Convention on Human Rights, Rome, 4 November 1950, entry in force 3 September 1953.

[17] Protocol 12 to the European Convention on Human Rights (ETS No. 177), Rome, 4 November 2000, entry in force 1 April 2005.

right (including rights under national law) [18]. The protection granted by the ECHR applies to everyone within the jurisdiction of a Member State, (whether they are citizens or not) and even beyond the national territory when there is an effective control of the State [19].

The prohibition of discrimination is also foreseen by a number of EU sources. Within the scope of application of the Treaty establishing the European Community and of the Treaty on the European Union, any discrimination on grounds of nationality shall be prohibited. This is provided in Art. 21 of the Charter of Fundamental Rights [20].

> Charter, art. 21 (Non-discrimination): "*(1) Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited. (2) Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, an without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.*".

Any discrimination based on any of these grounds shall be prohibited.

Further, the European Union provided for several Directives against different types of discrimination. Although EU law evolved considerably (starting to include areas such as pensions, pregnancy and statutory social security regimes), until 2000 non-discrimination law in the EU applied only to the context of employment and social security, and only covered the ground of sex [21]. From 2000, a number of Directives were adopted, such as Directive

[18] IOM, "*Handbook on European Non-discrimination"* cit., p. 11.

[19] Op. cit., p. 45.

[20] Charter of Fundamental Rights of the European Union, Strasbourg, 12 December 2007, art. 21 (Non-discrimination): (1) "*Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.*" (2) "*Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, an without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.*".

[21] IOM, *Handbook on European Non-discrimination* cit., 12.

2000/43/EC (against discrimination on grounds of race and ethnic origin), Diretive 2000/78/EC (against discrimination at work on grounds of religion or belief, disability, age or sexual orientation), Directive 2006/54/EC (providing for equal treatment for men and women in matters of employment and occupation), Directive 2004/113/EC (about the equal treatment for men and women in the access to and supply of goods and services) or also the Directive Proposal COM(2008)462 (against discrimination based on age, disability, sexual orientation and religion or belief beyond the workplace) [22].

However, while the ECHR provides for a broad protection, the protection of EU law is more limited in scope. According to IOM, "the prohibition on nationality discrimination in EU law applies in the context of free movement of persons and is only accorded to citizens of EU Member States. In addition, the non-discrimination directives contain various exclusions of application for third-country nationals (TCNs)". Nevertheless (and this is precisely what interests us the most for the purposes of this paper), TCNs enjoy the right to equal treatment in broadly the same areas covered by the non-discrimination directives when they become "long-term residents", thus, after a period of five years' lawful residence. Moreover, Member States can always establish more favourable conditions under their national law [23].

3. – As explained above, Art. 2 of the ICESCR protects against discrimination on rights provided for in the Covenant [24]: one of these is the right to social security. Moreover, Art. 11 provides for the right to adequate housing.

> Article 11: "*1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous*

[22] For more information see https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/know-your-rights/equality/non-discrimination_en, accessed 22 July 2021.

[23] IOM, *Handbook* cit., 45 s..

[24] The ICESCR provides for an exception: Art. 2(3): "*Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.*". Restrictions on the enjoyment of these rights are allowed only to developing countries pursuant to art. 2(3). The explicit reference to developing countries implies that no other country can use art. 2(3) to apply restrictions to the prohibition of discrimination.

improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.".

The Committee on Economic, Social and Cultural Rights (CESCR), between others [25], identified the content of the right to social security, also including the guarantee of housing and reaffirming the ban on discrimination based on nationality, in particular towards disadvantaged and marginalized groups or individuals [26]. The Committee recommended that states pay particular attention to the needs of refugees, asylum seekers and foreigners and established that the right to housing must not suffer any form of discrimination through the actions of the State or third parties [27].

Protection from discrimination on the ground of race is provided by the beforementioned Racial Equality Directive [28] in the field of access to the supply of goods and services, including housing. The Directive does not define housing, however, the text of the law should be interpreted in the light of international human rights law (IHRL): the right to respect for a person's home is derived from Article 7 of the EU Charter of Fundamental Rights and Article 8 of the ECHR.

Charter, Article 7 (Respect for private and family life): "*Everyone has the right to respect for his or her private and family life, home and com-*

[25] A prohibition of discrimination in the field of social security can be found also in the ILO Conventions n°97 and n°118:

C097 – Migration for Employment Convention (Revised), 1949: it provides the host state's duty in the field of social security to apply to refugees, asylum seekers and working migrants a treatment which must not be less favourable than the one applied to their citizens, without any discrimination based on nationality, race, religion or sex;

C118 – Equality of Treatment (Social Security) Convention, 1962.

During the Expert Group Meeting on "Affordable housing and social protection systems for all to address homelessness" which took place at the United Nations Office at Nairobi on 22-24 May 2019, the ILO position was expressed in the terms of considering right to housing as an important part of social protection system.

[26] CESCR, General Comment n°19, note n. 872.

[27] CESCR, General Comment n°4, note n. 892.

[28] Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, 29 June 2000.

munications.".

ECHR, Article 8 (Right to respect for private and family life): "*1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*".

Art. 8 ECHR does not provide a right to housing and, even though the ECHR Protocol 1 art. 1 [29] offers a protection to housing through the right to property, it only protects those who, in fact, have the house's property (as established by the ECtHR in the case *Dogan and others v Turkey* [30]). However, the European Court of Human Rights (ECtHR) has interpreted Article 8 in a way that includes activities capable of having consequences for private and family life. According to the Court, Article 14 ECHR applies if the facts at issue fall within 'the ambit' of one of the Convention's rights, thus, for instance, social security benefits that promote family life can fall within the ambit of Art. 8 ECHR [31]. This means extending the protection also to cases in which these activities are of an economic and social character. Following this approach, the protected right concerns two aspects of the access to housing: one is "equality of treatment on the part of public or private landlords and estate agents in deciding whether to let or sell properties to particular individuals"; the other one is "the right to equal treatment in the way that housing is allocated (such as allocation of low-quality or remote housing to particular ethnic groups), maintained (such as failing to upkeep properties inhabited by particular groups) and rented (such as a lack of se-

[29] See European Court of Human Rights, "*Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights. Protection of property*", Article 1 of Protocol No. 1 (Right to property): "*1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*", 30 Aril 2021, 6.

[30] ECtHR, *Dogan and others v Turkey*, 29 June 2004, parr. 138-139.

[31] L. Slingenberg, *No. 58: Ponomaryovi* in Jurisprudentie Rechtspraak vreemdelingen-recht: Landmark Cases on Asylum and Immigration Law 1950-2019, Nijmegen, 2019, 625 s..

curity of tenure, or higher rental prices or deposits for those belonging to particular groups)" [32].

However, the protection against discrimination in the field of housing is not only addressed in the Racial Equality Directive, but also in the Directive 2003/109/EC [33], concerning the status of TCNs who are long-term residents. Article 11(1)(d) provides that long-term residents are to enjoy equal treatment with nationals as regard to social security, social assistance and social protection. Further, letter (f) of the Article also establishes equality between long-term residents and nationals for what concerns procedures for obtaining housing:

> Article 11 (Equal treatment): "*1. Long-term residents shall enjoy equal treatment with nationals as regards: (…)*
> *(d) social security, social assistance and social protection as defined by national law; (…)*
> *(f) access to goods and services and the supply of goods and services made available to the public and to procedures for obtaining housing;*".

Article 11(4) establishes an exception according to which Member States can restrict this right:

> Article 11(4): "*Member States may limit equal treatment in respect of social assistance and social protection to core benefits.*".

In this regard, the Autonomous Province of Bolzano referred to the Court of Justice (CJEU) for a preliminary ruling in the case *Servet Kamberaj* [34]. With regard to Article 11(1)(d) of the Directive 2003/109, the Court held that, since there is no uniform and autonomous definition under the community

[32] IOM, *Handbook* cit., 57 s..

[33] Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, art. 11 (Equal treatment): "*Long-term residents shall enjoy equal treatment with nationals as regards: (…) (d) social security, social assistance and social protection as defined by national law; (…) (f) access to goods and services and the supply for goods and services made available to the public and to procedures for obtaining housing;".*

[34] *Servet Kamberaj v Istituto per l'Edilizia sociale della Provincia autonoma di Bolzano (IPES) and Others* (case no. C-571/10), 24 April 2012.

law, the concepts of social security, social assistance and social protection are defined by national law. Nevertheless, this does not mean that MSs can undermine the effectiveness of the Directive and of the principle of equal treatment. Further, for what concerns Article 11(4), the Court said that the Article "must be understood as allowing Member States to limit the equal treatment enjoyed by holders of the status of long-term resident with the exception of the core benefits such as food, accommodation and health" [35]. This means that the field of housing cannot be considered an exception pursuant to Article 11(4). This is provided according to Article 34 of the Charter [36], to implement the purpose of ensuring a decent existence for all those who lack sufficient resources.

In the Italian cases that will be analyzed in the following paragraph, international and European law have been the reference point of the Italian judges. In particular, a decisive role has been assumed by the Directive 2003/109.

4. – In Friuli Venezia Giulia, a region in the north-east of Italy, discriminatory measures have been adopted against long-term residents. These measures are in contrast with the supranational rules discussed so far. The region has already been sentenced in March 2021 by the Udine labor judge for a measure adopted precisely in the municipality of Udine [37]. Again, the region has been sentenced in June 2021 for what concerns the case of Monfalcone [38]. Similar cases, as will be seen, have also occurred in other Italian regions (in this paper the case of the Lombardy region will be mentioned, for example). The reasoning applied by the judges is mainly based on the needs for national (and regional) law to comply with international and European law. The aim of this paper is to demonstrate the supremacy of the international and European law

[35] IOM, *Handbook* cit., 59.

[36] Charter cit., Article 34 (Social security and social assistance): "*Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices. 3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.*".

[37] Tribunale di Udine, R.L. 674/2020, 2 March 2021.

[38] Tribunale di Gorizia, Sezione Civile, n. 1006/2020 and 1031/2020, 8 June 2021.

prohibiting discrimination on the discriminatory conduct held by regional or local authorities.

First of all, before dealing with concrete cases, it is necessary to premise that the Italian Constitution expressly recognizes the international and European Union legal systems and affirms the duty of the italian legal order to conform to them. This is expressed in Artt. 10, 11 and 117 of the Constitution [39]:

> Italian Constitution, Art. 10: "*The Italian legal system conforms to the generally recognized rules of international law. The legal status of foreigners is regulated by law in conformity with international provisions and treaties. (…)*";
>
> Art. 11: "(…) *Italy agrees, on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order ensuring peace and justice among the Nations. (…)*";
>
> Art. 117: *"Legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU legislation and international obligations. (…)"* [40].

The relationship between supranational law and Italian law can be semplified by saying that supranational law occupy an intermediate position between the Italian Constitution's provisions and ordinary law in the hierarchy of legal surces [41]. Consequently, even though the Constitutional principles must always be respected, supranational sources prevail over conflicting domestic ordinary law. Art. 117 provides the constitutional principle of observance of EU and international law [42]: thus, it creates a link between

[39] Costituzione della Repubblica Italiana, 27 December 1947, entry in force 1 January 1948.

[40] The translation of the Italian Constitution was found in the "Attachments" section of the Prefecture's website: <www.prefettura.it> consulted on 30 November 2020.

[41] See also Corte Costituzionale, 24 October 2007, Nos. 348 (*R.A. v Comune di Torre Annunziata; Comune di Montello v A.C.; M.T.G. v Comune di Ceprano*).

[42] G. Cataldi-M. Iovane, *The relationship between national and international law* in *International law in Italian courts 1999-2009: an overview of major methodological and substantive issues*, 16 s., available on <www.sidi-isil.org>, consulted on 30 November 2020.

the Italian legal system and all the aforesaid sources adhered to by Italy. In the light of this and talking about discrimination, it can be affirmed that italian authorities must repudiate discrimination, not only on the basis of the national law, but also following European and international obligations.

Now, aware of the relationship between national and supranational law, we will see the cases of concrete application. Between spring and summer of 2020, in the town of Monfalcone (Friuli Venezia Giulia, Italy) some long-term residents' requests for contributions for the reduction of rents were refused. Access to the aforementioned contributions was subject to certain requirements [43], among which, one was provided only for TCNs: the need to prove they had no real estate abroad in order to be eligible for the subsidy. In this particular case, refugees and holders of subsidiary protection were excluded from the list, in compliance with national and European legislation [44], but foreigners who did not fall in these categories (like labour migrants and long-term residents) were strongly disadvantaged. For the purpose of verifying the ownership requirement, they were asked to provide not only a certification or attestation of their possessions of real estate in the country of origin, but also one for every member of their core family's [45].

Next to this case, the same Friuli Venezia Giulia region was condemned for the same regional law few months ago. The case concerned two non-EU citizens holding long-term residence permits and residing in Udine, in Friuli Venezia Giulia, who had submitted an application for the granting of the contribution for the reduction of the rent. The application was rejected by the Municipality of Udine as the documentation required by the regional law no. 1/2016 and by the Regulation no. 66/2020 implementing the said

[43] L.R. Friuli Venezia Giulia 19 February 2016, n. 1 and D.P. Reg. n. 0208/Pres. Of the 26 October 2016, transposed by the announcement 2/2019 (Article 3).

[44] Refugees and holders of subsidiary protection are qualified pursuant to art. 2(1)(a-bis) of the D.L. 251/2007, in implementation of the Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (ex Qualification Directive).

[45] The document should be issued by the competent authority of the foreign state, legalized by the Italian diplomatic or consular representation abroad and accompanied by a translation, of which the same consular or diplomatic representation certifies the conformity to the original. In the event that it was impossible to obtain the aforementioned certification from the competent foreign authority, this should have been issued by the Italian representation abroad.

law was missing. These sources provided that, in order to access the contribution in question, citizens of a non-EU state had to prove that they do not own property abroad, not through a self-declaration (as was instead provided for Italian or EU citizens), but through a certification issued by the authorities of the country of origin or previous residence (or by an Italian diplomatic or consular representation abroad).

> Article 29 (Minimum requirements of the final beneficiaries): "*(1-bis) For the purposes of verifying the requirement referred to in paragraph 1, letter d), citizens of countries not belonging to the European Union, with the exclusion of refugees and holders of subsidiary protection (…), they must present (…) the documentation certifying that all the members of the family unit do not own other property in the country of origin and in the country of previous residence*" [46].

The applicants affirmed the constitutional illegitimacy of regional law no. 1/2016 in Article 29, co. 1-bis, because this requirement is considered discriminatory and, therefore, in contrast with the Italian Constitution and with supranational sources.

A similar situation to the one of Monfalcone and Udine occurred in other Italian regions, among which Lombardy, a few years earlier. The Ordinary Court of Milan [47] established that a provision [48] placed an unreasonable and discriminatory documentary burden on foreigners, not only making access to the social benefit more difficult, but even making it impossible for some foreigners. In fact, the Court affirmed that there are states not belonging to the European Union in which it is not possible to acquire documentation relating to real estate assets. This is confirmed by the Italian decree 21.10.2019 of the Ministry of Labor and Social Policies[49], which lists a

[46] Trad. of the original text: "*(1-bis) Ai fini della verifica del requisito d cui al comma 1, lettera d), i cittadini di Stati non appartenenti all'Unione europea, con esclusione dei rifugiati e dei titolari della protezione sussidiaria (…), devono presentare (…) la documentazione attestante che tutti i componenti del nucleo familiare non sono proprietari di altri alloggi nel paese di origine e nel paese di provenienza.*".

[47] Tribunale ordinario di Milano, RG n. 23608/2018, 27 July 2020.

[48] Regolamento Regionale (Lombardia) 4 August 2017 n°4; art. 7(1)(d).

[49] D. 21 October 2019, Official Journal (GU) n°285, 5 December 2019: "Individuazione

limited number of states or territories in which it is possible to acquire this type of documentation (thus, establishing a consequent situation of impossibility for all countries not included in the list). The Court, moreover, ascertained the discriminatory nature of the request also in the parts in which it provides for the exclusion of the foreigner in the event of his/her ownership of real estate abroad, since this requirement was not applied in the same way to Italian or European citizens. In fact, core family members of the latters were not required to certify the ownership of foreign assets, thus, despite their property abroad, the Italian or european applicant would not be excluded.

The judge of the court of Udine (and the judge of Gorizia which dealt with the case of Monfalcone and who applied almost the same reasoning) first of all considered that Article 29, co. 1-bis of the aforementioned law must necessarily be interpreted in accordance with constitutional and EU principles on equality, non-discrimination and the right to social assistance [50]. The judge observed that the conduct of the Friuli Venezia Giulia region and the municipalities that applied the regulation placed the foreign citizen, purely by reason of being such, in a significantly more disadvantageous situation than that of the Italian citizen and, therefore, it constitutes direct discrimination on grounds of nationality.

The judge referred, as regards the principle of non-discrimination, to supranational sources already cited such as Article 14 of the ECHR or Article 21 of the Charter of Fundamental Rights of the European Union, but also to Article 11 of Directive 2003/109 / EC; in addition, with regard to national sources, she referred to Article 3 of the Constitution and Article 43 of Legislative Decree 286/1998 [51].

In the judge's reasoning, Article 11 of the directive is particularly important. The judge recalled that the Article establishes the principle of equal treatment of long-term residents with respect to Italian citizens for, among other things, "d) social benefits, social assistance and social protection under

dei Paesi nei quali non è possibile acquisire la certificazione sulle dichiarazioni ISEE a fini de Reddito di cittadinanza"- trad. "Identification of countries in which it is not possible to acquire certification on ISEE declarations for the purposes of Citizenship Income". The decree was published on the Official Journal (GU) n°285 on 5 December 2019.

[50] Ordinanza cit., 21.

[51] *Ibidem*, 27.

national law" [52]. The Friuli Venezia Giulia Region stated that the words of the Article "under national legislation" meant that equal treatment in access to social benefits is not unconditional, but that it can be referred to the national legislation. The judge clarified, in accordance with what established the CJEU, that in reality the meaning that the European legislator wanted to attribute to these words was to protect the differences existing between MSs regarding the definition and scope of services. Nor can it be considered that it is possible to limit equal treatment in the case of the so-called essential services, or services that meet basic needs, such as food, accommodation and health. The housing subsidy in this case cannot fail to be considered as an essential service, as it is aimed at guaranteeing a dignified existence to those who do not have sufficient resources and as it responds to the purpose of guaranteeing a dignified existence [53].

In conclusion, the differentiation introduced by regional legislation constitutes direct discrimination based on nationality. The Italian judge, in fact, considered that the regional law resulted in unfavourable treatment of non-EU citizens due to their nationality, since through the additional documentation burden, it made it difficult, if not impossible, to compete for access to the contribution for the payment of the rent, precluding them from the full development of their person and integration into the host community, in violation of the principle of equal treatment of long-term residents enshrined in Directive 2003/109/EC. The judge of Udine, therefore, declared the discriminatory nature of the conduct held, not only by the Friuli Venezia Giulia region, but also from the municipality of Udine which implemented the regional law and ordered the amendment of the regulation.

As was said at the beginning of this paragraph, the case of Monfalcone starts from the same regional law as the case of Udine and, thus, the same reasoning was be applied to the regulation of the municipality of Monfalcone which implemented the regional rule. In fact, also in this case, the requirement was considered discriminatory for two reasons. First of all, it is not in accordance with the Ministerial Decree, because the requirement to prove non-ownership abroad was not provided only for those coming from the states on the list, thus, it created a substantial inequality between TCNs of different ori-

[52] *Ibidem*, 28.
[53] Op cit., 31.

gin and an indirect discrimination based on nationality. Moreover, the difference in treatment expressly provided between foreign citizens and italian or EU citizens results in direct discrimination, thus, according to the just examined cases, it is in contrast with (at least) the above-mentioned Directive 2003/109/EC, art. 11(1)(d) and (f), with Article 14 ECHR, with Article 21 of the Charter, mentioned by the Italian judge of Udine.

5. – Starting from the analysis of the concept of discrimination in its nuances, the supranational sources that provide for the prohibition of discrimination (paragraph 1), in particular the prohibition of discrimination in the field of housing (paragraph 2), have been analyzed. Finally, some concrete cases of discrimination in Italy were analyzed, reaching the conclusion that the Italian judges have assessed the discriminatory nature of a number of italian regional laws on the basis of their compatibility with supranational sources. Analyzing the legal reasoning carried out by the judges in the case of Lombardy and Friuli Venezia Giulia, the supremacy of prohibition of discrimination in the field of housing provided for by supranational legal sources was demonstrated (paragraph 3).

Abstract

Negli ultimi anni, alcune regioni italiane hanno messo in atto una particolare forma di discriminazione nei confronti degli stranieri legalmente residenti in Italia. Per accedere al sostegno economico per il pagamento dell'affitto, infatti, è stato imposto loro di produrre la documentazione necessaria a provare che questi non possedessero proprietà all'estero. Lo stesso non era richiesto per i cittadini italiani. Questo articolo vuole trattare nello specifico della condotta discriminatoria messa in pratica dalla regione Friuli Venezia Giulia, con accenni ad un caso lombardo, con il fine di dimostrare la supremazia delle norme internazionali e comunitarie sulle disposizioni discriminatorie regionali italiane.
Innanzitutto, è stato introdotto il concetto di "discriminazione" nelle sue varie accezioni, citando alcune delle fonti internazionali ed europee che tutelano le persone straniere contro la discriminazione. Successivamente questo lavoro si concentra proprio sulle norme che proibiscono forme di discriminazione nell'ambito dell'assistenza sociale e dell'alloggio. Infine, si passa ad analizzare proprio i casi che coinvolgono la regione Friuli Venezia Giulia. La regione è stata condannata sia dal Tribunale di Udine sia da quello di Gorizia relativamente al contenuto discriminatorio della Legge Regionale 1/2016 e del regolamento regionale 66/2020. I magistrati hanno sottolineato la necessità che dette disposizioni vengano interpretate in conformità ai principi costituzionali ed europei in tema di uguaglianza, di non discriminazione e di diritto all'assistenza sociale. È stato stabilito, inoltre, che le disposizioni regionali in questione abbiano posto i cittadini stranieri in una situazione significativamente svantaggiosa rispetto a quella in cui si erano trovati i cittadini italiani, dando vita ad una discriminazione basata sulla nazionalità.

In recent years, some Italian regions have implemented a particular form of discrimination against foreigners legally residing in Italy. To be able to obtain a financial support for the rent's payment, in fact, third country nationals were required to produce the necessary documentation to prove they had no real estate abroad. The same evidence was not a requirement for Italian citizens. This article aims to deal specifically with the discriminatory conduct held by the Friuli Venezia Giulia region, with the aim of demonstrating the supremacy of international and EU law on Italian regional discriminatory provisions.

First of all, the concept of "discrimination", in its various meanings, has been introduced, citing some of the international and European sources that protect foreign people against discrimination. Subsequently, this work focuses precisely on the rules that prohibit discrimination in the field of social assistance and housing. Finally, the cases involving the Friuli Venezia Giulia region are analyzed. The region was condemned by both the Udine and Gorizia Courts in relation to the discriminatory content of Regional Law 1/2016 and Regional Regulation 66/2020. In the cases, judges stressed the need for these provisions to be interpreted in accordance with constitutional and European principles on the subject of equality, non-discrimination and the right to social assistance. It was also established that the regional provisions in question placed foreign citizens in a significantly disadvantageous situation compared to that in which Italian citizens found themselves, giving rise to discrimination based on nationality.