JUDGMENT NO. 166 YEAR 2018

In this case the Court considered a referral order challenging a provision of a Lombardy regional law regulating access to the State-instituted National Assistance Fund for Access to Rental Housing. In addition to State-instituted requirements relating to income bracket and the percentage of income needed to pay rental fees under a lease agreement, the Lombardy Region added requirements that applied only to "immigrants," that is, nationals of countries outside the European Union and stateless persons. The provision required such persons to provide proof of either ten years of residency in the national territory of Italy, or else five years in the territory of Lombardy. The Court struck down the provision, holding that the form of social assistance at issue was, indeed, a social welfare measure chiefly intended to provide assistance to indigents, and that the Lombardy provision unreasonably and disproportionately discriminated against third-country nationals. It found the ten- and five-year residency requirements to be arbitrary, patently unreasonable, and disproportionate, given that ten-year legal residents may request Italian citizenship and that the purpose of the National Fund (to provide temporary assistance in periods of acute financial distress) would be frustrated by a five-year residency threshold. It also held that the provision violated EU obligations by distinguishing between Italian nationals and long-term residents, since EU law both dictates that long-term resident status be granted after five years residence in any EU Member State, and that long-term residents be treated equally to citizens for purposes of social assistance.

[omitted]

THE COSTITUZIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 11(13) of Decree-Law (DL) no. 112 of 25 June 2008 (Urgent provisions on economic growth, simplification, competitiveness, the stabilization of public finances, and tax adjustments), converted, with modifications, into Law no. 133 of 6 August 2008, initiated by the Labour Division of the Milan Court of Appeals during ongoing proceedings between V.C. L. *et al* and the Lombardy Region and another, with a referral order of 7 November 2016, registered as no. 41 of the 2017 Register of Referral Orders and published in the Official Journal of the Republic no. 13, first special series of 2017.

Considering the appearances of ASGI - *Associazione per gli studi giuridici sull'immigrazione* [the Association for legal research on immigration] and another, and of the Lombardy Region, as well as the intervention of the President of the Council of Ministers;

Having heard from Judge Rapporteur Marta Cartabia;

Having heard from Counsel Alberto Guarisco on behalf of ASGI and another, Maria Lucia Tamborino on behalf of the Lombardy Region, and State Counsel Giuseppe Albenzio on behalf of the President of the Council of Ministers.

[omitted]

Conclusions on points of law

1.– With its referral order of 7 November 2016 (R.O. no. 41 of 2017), the Labour Division of the Appeals Court of Milan raises questions concerning the constitutionality of Article 11(13) of Decree-Law no. 112 of 25 June 2008 (Urgent provisions on

economic growth, simplification, competitiveness, the stabilization of public finances, and tax adjustments), converted, with modifications, into Law no. 133 of 6 August 2008, in reference to Article 3 of the Constitution.
The challenged provision provides that, "[F]or purposes of distributing the National Assistance Fund for Access to Rental Housing established in Article 11 of Law no. 431 of 9 December 1998, the minimum requirements necessary in order to benefit from the financial assistance as defined under paragraph 4 of the same article shall include, in the case of immigrants, possession of a certification of residency history dating back at least ten years in the national territory, or at least five years in the region."
The referring Court alleges that this provision, when applied to persons in identical conditions of need, discriminates against nationals of countries outside the European Union by requiring a certain period of residency within the national or regional territory only for them, with no reasonable correlation between the length of residency and access to the measures offering support to pay rent for housing.
2.– As a preliminary matter, it bears noting that V.C. L., ASGI – *Associazione per gli studi giuridici sull'immigrazione*, *Avvocati Per Niente* Onlus, and the Lombardy Region have appeared in these constitutional proceedings. Given that these are the parties to the underlying proceedings, it clear from this Court's case law that their appearances in the proceedings on incidental review are admissible.
3.– The Lombardy Region has objected that the question is inadmissible on the grounds that the referral order fails to provide reasons for its legal classification of the assistance under the challenged provision. According to the Region's interpretation, this form of financial assistance is not, by nature, social welfare and does not amount to an essential service essential for ensuring the fundamental right to housing, as the court in the pending proceedings assumes.
The objection is unfounded.
Here it bears noting that the referring Court, which lays out and refers to multiple decisions of this Court in support of its theory, assumes a precise and well-supported position as to the social welfare nature of the "rent assistance for citizens in serious financial difficulty." The referral order points out that, in laying down the requirements for access to this service, and regardless of the fact that it must be recognized as one that is "essential" in character, the legislator must respect the principles of reasonableness. It deems that these principles have been violated in the present case, alleging that there is no reasonable correlation between the residency time requirement, which the challenged provision provides only for immigrants, and the circumstances of economic difficulty that the assistance in question is intended to alleviate. In addition, the referring Court clearly specifies that this requirement relating to the duration of residency, the constitutionality of which is in question, is legally grounded in the challenged provision. Thus, only pursuant to the provision being (potentially) declared unconstitutional could a court proceed with the non-application of the administrative acts that reproduce said requirements.
The referral order, therefore, is not lacking in arguments supporting its relevance and the not manifest unfoundedness, as the objection alleges, so that the Lombardy Region's objections go not to the question's admissibility, but rather to whether it is well-founded on the merits.
4.– Again with regard to admissibility, the President of the Council of Ministers has, in turn, objected that there are flaws in the request. The objection alleges that the referral order asks this Court for neither an additive nor a clearly ablative judgment, but instead

merely points to the need for a regulatory scheme that, "does not presume in absolute terms that foreign immigrants who have been in Italy for less than ten years, and in the Region for less than five […] persist in a state of need and difficulty, for purposes of qualifying for assistance, that is any less than those who have lived there longer." Thus, the referral order allegedly leaves the kind of intervention requested of the Constitutional Court open-ended, and, at the same time, the Court cannot introduce a substitute regulatory scheme in the absence of constitutionally mandated contents, given that an intervention of this kind would fall within an area reserved for the discretion and political responsibility of the legislator.

This objection is, likewise, unfounded.

Indeed, the referring court does not ask this Court to intervene by substituting a new regulatory scheme concerning the requirements for access to the aforementioned rent assistance fund. On the contrary, the order alleges that Article 3 of the Constitution has been violated, in that the challenged provision draws an unreasonable distinction between persons seeking support, to the sole detriment of nationals of countries outside the European Union, who alone are required to have qualified residency. The issue put before this Court is clear, and it outlines a request intended to eliminate this discriminatory distinction by means of a simple ablation striking it down.

5.– On the merits, the question is well-founded, for the reasons laid out below.

5.1.– Rental housing support was established by Article 11 of Law no. 431 of 9 December 1998 (Regulation of rentals and designation of real estate for residential use). It consists of the provision of financial assistance toward residential rent payments, to be provided to subjects living in situations of qualifying indigence.

More precisely, Article 11 of Law no. 431 of 1998 provides that, "[u]nder the auspices of the Ministry of Public Works, a National Assistance Fund for Access to Rental Housing is hereby established, the annual endowment of which shall be fixed by Finance Law […]" (paragraph 1), and that, "[t]he sums ascribed to the Fund described in paragraph 1 shall be used for granting, to lessees who meet the minimum requirements specified in paragraph 4, financial assistance for the payment of rental fees owed to the owners of the real property, be it publicly or privately owned, and, inasmuch as the available resources of the Fund allow, to support municipality-level initiatives, including those that involve the establishment of rental agencies or institutions and those that involve promotional activities in collaboration with real estate rental cooperatives, the purpose of which is to foster mobility in the leasing sector by finding rental housing available for fixed-term lease" (paragraph 3).

The paragraph referred to, Article 11(4) of Law no. 431 of 1998, specifies that, "[t]he Ministry of Public Works, within ninety days of this law's entry into force, and after reaching an agreement within the Permanent Conference for the Relationship between the State, the Regions, and the Autonomous Provinces of Trent and Bolzano (*Conferenza permanente per i rapporti fra lo Stato, le regioni e le province autonome di Trento e di Bolzano*), shall define, by decree, the necessary minimum conditions required to benefit from the financial assistance described in paragraph 3 and the criteria for determining the amount of the aid in relation to household income and the impact of rental fees on that income."

The Ministry of Public Works and Infrastructure, in its 7 June 1999 decree executing this provision and containing the "[m]inimum requirements for lessees to accede to financial assistance drawn from the resources ascribed to the National Assistance Fund for Access to Rental Housing described in Article 11 of Law no. 431 of 9 December

1998, and the criteria for determining the same," provides, in Article 1, for the compilation of a municipal ranking list according to pre-established income requirements, made up, for each requesting family unit, of: "a) overall annual taxable income not greater than two minimum INPS pensions, with respect to which the impact of rental payments is no less than fourteen percent; b) overall annual taxable income not greater than the amount established by the regions, and by the autonomous provinces of Trent and Bolzano, for the assignment of government-provided public housing, with respect to which the impact of rental payments is no less than twenty-four percent." The income amount to refer to shall be taken from reported incomes as they appear on the last tax return, and the value of the rental payments shall be taken from the legally registered lease agreements, after ancillary costs. Article 2 then provides that, if the Regions and the Autonomous Provinces of Trent and Bolzano, and the municipalities (*Comuni*) contribute their own funds to increase the resources provided by the national fund, they may establish further categories within the income brackets or more favorable thresholds for rent impact (paragraph 1); that, "the municipalities shall set the amount of the contributions according to a progressive principle that favors family units with low incomes and high thresholds of rent impact" (paragraph 3); and that the presence "of persons over sixty-five years of age, having disabilities, or having […] other, analogous situations of particular social disadvantage" within the family units must be taken into consideration" (paragraph 4).

5.2.– Thus, at the outset, the recipients of support were all "tenants" party to a registered housing agreement, who, due to low income and the high threshold of impact of rental fees, could be considered indigent to the extent that they lacked sufficient resources to meet the burden of paying the total amount of rent due for housing. Neither the law nor the ministerial decree provides for any sort of distinction between nationals and foreigners, nor do they mention requirements relating to the length of residency within the national or regional territory. Rather, they list criteria of an exclusively economic nature, intended to limit the disbursement of the funds to subjects in serious need.

Therefore, it was the legislator's intention to address situations of need so severe as to compromise the enjoyment of a good of primary importance, as is housing.

It is, indeed, true that the form of assistance in question differs from other, similar measures, such as those which furnish accommodations in public housing and directly and exclusively meet the residential needs of indigents. Financial assistance for paying rental fees for housing, whether publicly or privately owned, which is at issue here, meets a variety of needs and benefits a variety of subjects. Certainly, these benefits flow to the indigent renters and meet their housing needs, contributing to the cost of housing in situations of temporary financial duress, and to the lessors, who are thus insulated from the risk of delinquency on the part of their lessees, and also to the public administration, since they compensate for potential insufficiencies in the availability of public housing. Therefore, it amounts to a multifunctional service (Judgment no. 329 of 2011), susceptible to variable or intermittent financing, on the basis of political evaluations concerning the need for its distribution, which may impact both its existence and its total balance.

The fact that this form of assistance serves many purposes does not rule out the prospect that some of these purposes may be crucial for persons in dire need, such that they have serious difficulty making rent payments for housing.

The fact that this form of social assistance is directed toward subjects who have already entered into residential lease agreements does not obscure the fact that such rent support

is intended to assist indigents (Article 11(2) of Law no. 431 of 1998). Financial difficulties may very well come about after one has entered into a lease agreement, and, in any case, support is distributed only after a documented case of poverty has been verified.
Thus, this case involves a multifunctional measure, the underlying reason for which is to support indigents for purposes of allowing them to meet their housing needs through the market and to prevent the risk of eviction for delinquency.
5.3.– Ten years after the fund was established, D.L. no. 112 of 2008, converted, with modifications, into Law no. 133 of 2008, created a distinction among the lessee beneficiaries, setting additional requirements for accessing assistance that applied only to nationals of States outside the European Union and stateless persons. In particular, challenged Article 11(13) of the aforementioned decree-law sets forth that, "[f]or purposes of apportioning of the National Assistance Fund for Access to Rental Housing, established by Article 11 of Law no. 431 of 1998, the necessary minimum conditions required to benefit from the financial assistance as defined under section 4 of the same article must, in the case of immigrants, include that they have a certification of residency history in the national territory dating back at least ten years or residency in the same region for at least five years."
The added requirement of qualifying residency is mandated, therefore, as one may deduce from a clear and literal reading of the text of the provision, only for "immigrants," that is to say, for nationals of countries that do not belong to the European Union and for stateless persons. The definition of immigrant and of immigration is taken from the applicable unified text, Legislative Decree no. 286 of 25 July 1998 (Unified text of provisions concerning the regulation of immigration and rules on the condition of foreigners), which predated the law instituting the National Fund under consideration, particularly from Title I, which contains "General Principles" and from Article 1, which defines the scope of application of immigration regulations as concerns "nationals of States not belonging to the European Union and stateless persons, hereinafter referred to as foreigners."
Indeed, as far as nationals of the Member States of the European Union are concerned, following the Schengen Agreement and the Maastricht Treaty, the institution of "European citizenship" applies, and not the unified text on immigration. This institution includes the rights of residence and movement throughout the territory of the European Union, in accordance with the conditions established by Directive 2004/38/CE of the European Parliament and of the Council of 29 April 2004, concerning the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.
Challenged Article 11(13) therefore, calls for a certain duration of residency, at both the national and regional territorial levels, only for "immigrants." There is no such requirement for Italian and European nationals, although the financial requirements and those concerning being party to a registered residential lease agreement remain in place, as Article 2 of Law no. 431 of 1998 makes apparent.
6.– In light of the above considerations, the challenged provision presents an unreasonable distinction to the detriment of nationals of countries that do not belong to the European Union, since they alone are required to possess past certification of

residency showing at least ten years in the national territory or at least five years in the region.

Indeed, according to well established case law of this Court, starting with Judgment no. 432 of 2005, the legislator may lawfully circumscribe the group of social assistance recipients due to the limited nature of the resources set aside to fund it (Judgment no. 133 of 2013). Nevertheless, such legislative choices are not exempt from constitutional obligations.

First of all, the law must comply with European obligations, which demand equal treatment of Italian or European citizens and long-term residents, including when it comes to social assistance. Specifically, Council Directive 2003/109/EC of 25 November 2003, which concerns the status of third-country nationals who are long-term residents, grants long-term resident status to third-country nationals who legally reside in one Member State for at least five years (Article 4). It goes on to provide that long-term residents shall be equal to nationals of the Member State in which they live as regards (among other things) social security and social assistance (Article 11). Article 1 of Legislative Decree no. 3 of 8 January 2007 (Implementation of Directive 2003/109/EC on the status of third-country nationals who are long-term residents) then modified Article 9 of Decree-Law no. 286 of 1998, which now grants third-country nationals the possibility to obtain long-term residency status, in compliance with legal requirements (a status recognized by the granting of a specific residency permit by the Police Commissioner). They thereby acquire the right to receive social services on equal footing with citizens.

Moreover, every regulation that draws distinctions between different categories of persons, on the basis of citizenship and residency, to regulate access to social services must always comply with the principle of reasonableness under Article 3 of the Constitution. As this Court has recently reiterated, only where there is a "law-based reason" for the differentiation will it comply with the principle, and this must be "justified by a reasonable correlation between the condition placed on access to the social benefit and the other specific requirements that are conditions for granting it and which define its rationale" (Judgment no. 107 of 2018). One such reasonable, law-based reason could be, in the abstract, requiring a document which proves that residency in the national territory has been continuous or for a set period. Even in such cases, however, a reasonable correlation must always exist between the requirement and the situation of difficulty or need for which the individual services were designed (Judgment no. 133 of 2013).

Finally (although this is not the case), the distinction must never translate into the exclusion of non-nationals from the enjoyment of the fundamental rights concerning the "primary needs" of the person, non-deferrable and non-differentiable, which are granted to citizens (as this Court has laid out over time in, for example, Judgments no. 306 of 2008, 187 of 2010, 2, 40, and 172 of 2013, 22 and 230 of 2015, and 107 of 2018).

More precisely, as regards the requirement of qualified residency, this Court held in Judgment no. 222 of 2013 that social policies intended to meet housing needs may take into consideration a further element of territorial connection in addition to mere residency, as long as it is contained within limits that are not patently arbitrary or unreasonable.

7.– In light of these principles, it is clear that ten years of residency in the national territory or five in the regional territory (the requirements of challenged Article 11(13) of D.L. no. 112 of 2008, converted, with modifications, into Law no. 133 of 2008)

amount to a patently unreasonable and arbitrary length of time and fail to comply with European obligations, for purposes of access to financial assistance for residential rent payments by foreign nationals of third countries not belonging to the European Union, thus violating Article 3 of the Constitution.

In the first place, the provision meets the definition of intrinsic irrationality in the part in which it requires an extended residency period of ten years in the national territory, given that that time period is the same as the necessary and sufficient time period required in order to request Italian citizenship under Article 9(1)(f) of Law no. 91 of 5 February 1992 (New rules on citizenship). In any case, this provision contradicts Directive 2003/109/EC, mentioned above, which lays down the rule that citizens and long-term residents must be treated equally, given that long-term resident status is obtainable after five years of residency in the territory of a Member State.

Second, the required five-year residency in the regional territory is patently unreasonable and disproportionate, considering that the funds were established by the legislator as part of a regulatory scheme intended to "foster mobility in the housing sector through the identification of housing to grant by lease agreements for set periods" (Article 11(3) of Law no 431 of 1998). Therefore, it is intended for temporary situations of need, associated with limited time periods, a purpose that would be frustrated by a five-year residency requirement.

Moreover, since the form of assistance in question, in light of the current limitedness of resources available for social welfare policies, is reserved for cases of true indigence, there is no reasonable correlation between meeting the primary housing needs of someone living in poverty and residing in the regional territory and the extended duration of this residency over time (Judgments no. 222 of 2013, 40 of 2011, and 187 of 2010). Indeed, this Court recently struck down a regional law that required an extended residency period (of ten years) in order to access public housing (Judgment no. 106 of 2018).

All these regulatory and judicial indicators, which relate to or implement specific obligations binding the State in the European Union context, confirm that a provision requiring a decade of residency in the State territory and five years in the regional territory is disproportionate and, therefore, unreasonable, as well as non-compliant with those European obligations.

8.– Therefore, in light of the above observations, challenged Article 11(13) must be declared unconstitutional for violating Article 3 of the Constitution.

Obviously, this leaves open the possibility that the legislator may specify further elements of connection with the Italian territory and Italian society as preconditions for receiving residential rent assistance and other housing assistance, within the limits imposed by the principles of non-discrimination and reasonableness, as described above.

ON THESE GROUNDS

THE CONSTIUTIONAL COURT

declares that Article 11(13) of Decree-Law no. 112 of 25 June 2008 (Urgent provisions for economic development, simplification, competition, the stabilization of public finances, and tax adjustments), converted, with modifications, into Law no. 133 of 6 August 2008.

Decided in Rome, at the seat of the Constitutional Court, Palazzo della Consulta, on 20 June 2018.