**JUDGMENT NO. 44 YEAR 2020**

**In this case, the Court considered a referral order concerning regional legislation purporting to impose a requirement of five years' prior residence or gainful activity in the Region as a mandatory prerequisite for establishing eligibility for residential housing. The Court held that this prerequisite was unreasonable, having regard to the rationale for providing social housing, and in fact that its consequences were at odds with the function of public housing, i.e. providing a home to people who do not have one. The Court therefore ruled the legislation unconstitutional insofar as it imposed this requirement.**

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 22(1)(c) of Lombardy Regional Law No. 16 of 8 July 2016 (Regional provisions on housing services), initiated by the Ordinary Court of Milan within the proceedings pending between M. K. and others and Lombardy Region, with the referral order of 22 January 2019, registered as No. 71 in the Register of Referral Orders 2019 and published in the *Official Journal* of the Republic No. 20, first special series 2019.

Considering the entries of appearance by *ASGI-Associazione studi giuridici sull'immigrazione* [Association for Legal Studies on Immigration] and *NAGA-Associazione volontaria di assistenza socio-sanitaria e per i diritti di cittadini stranieri, rom e sinti* [Association for Voluntary Socio-Sanitary Assistance and the Rights of Foreign Nationals, Rom and Sinti] and Lombardy Region;

*having heard* Judge Rapporteur Daria de Pretis at the public hearing of 28 January 2020;

*having heard* Counsel Alberto Guariso for *ASGI-Associazione studi giuridici sull'immigrazione* and for *NAGA-Associazione volontaria di assistenza socio-sanitaria e per i diritti di cittadini stranieri, rom e sinti* and Counsel Carlo Malinconico for Lombardy Region;

*having deliberated* in chambers on 28 January 2020.

[omitted]

*Conclusions on points of law*

1.– The Ordinary Court of Milan questions the constitutionality of Article 22(1)(b) of Lombardy Regional Law No. 16 of 8 July 2016 (Regional provisions on housing services). That provision stipulates that "[t]he recipients of public housing services must fulfil the following prerequisites: […] b) official residence or the performance of gainful activity in Lombardy Region for at least five years immediately prior to the date on which the application is submitted".

According to the referring court, that provision violates: a) Article 3(1) and (2) of the Constitution on the grounds that "[t]he stipulation of residence (or gainful activity) over an extended period as an essential prerequisite for access to public housing services" does not have "any reasonable connection with the social function of public housing services"; b) Article 10(3) of the Constitution on the grounds that the contested provision also applies to persons who have been granted international and humanitarian protection, which status presupposes "the inability to return to the country of origin", and hence "[t]he ability of such persons to access the residential housing service cannot […] be reasonably linked to establishment within the local territory (nor can such establishment be deemed to comply with the proportionality principle)"; c) Article 117(1) of the Constitution, with reference to Article 11(1) of Council Directive

2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, which provides that "[l]ong-term residents shall enjoy equal treatment with nationals as regards: […] f) access […] to procedures for obtaining housing".

[omitted]

3.– On the merits, the first question – raised with reference to Article 3(1) and (2) of the Constitution – is well-founded.

According to the long-established and settled case law of this Court, the right to housing "is one of the essential prerequisites that characterises the social standards embraced by the democratic State envisaged under the Constitution" and it is the task of the State to guarantee it, thus contributing to ensure "that the life of each individual reflects every day and in all respects the universal image of human dignity" (Judgment No. 217 of 1988; see also Judgments Nos. 106 of 2018, 168 of 2014, 209 of 2009 and 404 of 1988). Whilst it is not expressly provided for under the Constitution, that right must nonetheless be deemed to be an inviolable right (see *inter alia* Judgments Nos. 161 of 2013, 61 of 2011 and 404 of 1988 and Order No. 76 of 2010) and its object, i.e. housing, must be regarded as an "interest of primary importance" (Judgment No. 166 of 2018; see also Judgments Nos. 38 of 2016, 168 of 2014 and 209 of 2009).

The purpose of public housing is to ensure specifically that this primary need is satisfied, as it is necessary in order to "'guarantee a home to economically disadvantaged persons at the location of the centre of their interests' (Judgment No. 176 of 2000) with the aim of ensuring a dignified existence to all persons who do not have sufficient resources (Article 34 of the Charter of Fundamental Rights of the European Union) through a public service charged with 'providing housing to workers and less wealthy families'" (Judgment No. 168 of 2014). Public residential housing is thus one of the "social services" provided for under Article 1(2) of Law No. 328 of 8 November 2000 (Framework Law on the implementation of the integrated system of social initiatives and services), and Article 128(2) of Legislative Decree No. 112 of 31 March 1998 (Apportionment of administrative functions of the State to the regions and the local authorities, implementing Part I of Law No. 59 of 15 March 1997).

Moreover, the contested Lombardy Regional Law itself provides that the regional system of housing services has the "purpose of satisfying primary housing needs and reducing housing deprivation for families and specific social categories of disadvantaged persons" (Article 1(1) of Lombardy Regional Law No. 16 of 2016) and refers (in Article 1(3)) to the "social housing" provided for under the Decree of the Minister for Infrastructure of 22 April 2008 (Definition of social housing for the purposes of exemption from the obligation to notify state aid pursuant to Articles 87 and 88 of the Treaty Establishing the European Community).

3.1.– In view of the above, it is now possible to examine Article 22(1)(b) of Lombardy Regional Law No. 16 of 2016, which provides that all potential recipients of public housing (hereafter, PH) mentioned in letter a) (Italian nationals or nationals of a European Union Member State, foreign nationals holding a long-term resident's EC residence permit, or lawfully resident foreign nationals holding a residence permit valid for at least two years who are in regular employment or carry out regular self-employed activity pursuant to Article 40(6) of the Consolidated Text on Immigration) must fulfil the following prerequisite: "official residence or the performance of gainful activity in Lombardy Region for at least five years immediately prior to the date on which the application is submitted".

This Court has asserted on various occasions that the criteria adopted by the legislator for identifying the recipients of social services must have some link with the function of the service (*inter alia*, Judgments Nos. 166 and 107 of 2018, 168 of 2014,

172 and 133 of 2013 and 40 of 2011). The assessment as to whether the link – between the purposes of the service that is to be provided and the individual characteristics stipulated for its potential beneficiaries – exists and is adequate is made by this Court in accordance with the typical structure of review pursuant to Article 3(1) of the Constitution, which starts by identifying the rationale of the reference provision and then considers whether that rationale is consistent with the selective criterion stipulated.

In the case under examination, on the basis of that verification, it is concluded that the prerequisite of residence for more than five years laid down in the contested provision as a prerequisite for eligibility for PH is unreasonable. In fact, while there is no doubt that the rationale for the service is to fulfil the need for housing, it may be readily noted that the prerequisite of prior residence for an extended period by recipients does not have any reasonable connection with it (Judgments Nos. 166 of 2018 and 168 of 2014). In parallel, the exclusion of those who do not fulfil the prerequisite of residence within the region for the previous five years has consequences that are at odds with that very function.

Whilst it is by all means possible to conceive of prerequisites for eligibility that are certainly consistent with that function – for example, the denial of the service to individuals who already have a suitable home of their own is consistent with its rationale, i.e. of providing a home to people who do not have one – it is not compatible to exclude those who have not resided in the region for a period of five years prior to applying for housing, as that prerequisite does not reveal any condition that is relevant for the needs that the service is intended to satisfy. The prerequisite itself thus establishes simply a rigid threshold that results in a denial of access to PH, irrespective of any assessment of the applicant's needs or circumstances of deprivation (such as for example financial circumstances, the presence of disabled or elderly persons within the immediate family, number of children). This is incompatible with the very concept of social service, as a service intended primarily for financially disadvantaged individuals (Judgment No. 107 of 2018, which cites Article 2(3) of Law No. 328 of 2000).

The argument proffered by the Region in defence of the provision that the prerequisite of extended residence over a period of more than five years is necessary "in order to guarantee sufficient stability within the region before providing housing" in publicly owned accommodation, i.e. a "benefit provided on an ongoing basis", is not capable of resolving the inconsistency described. Prior residence over a period of five years is not in itself an indication of an increased likelihood of ongoing residence within a particular area, whereas other factors on which a prognosis of settled status can reasonably be based are much more significant for these purposes. In other words, the significance placed in a condition pertaining to past events, namely residence over the previous five years, is not in any case objectively capable of avoiding the "risk of instability" on the part of a recipient of public housing, and this objective must by contrast be pursued having regard to indications as to the likelihood of staying within the area in future.

In any case, it must be noted that, even if such "rooting" in the local area were to be properly assessed (i.e. not with reference to a previous extended period of residence), it could not in any case be so significant as to preclude any finding of need. Considering the social function of public housing, it is unreasonable to exclude even the neediest persons *ex ante* from the allocation of housing solely on the grounds that they cannot provide sufficient guarantees of stability. The aspect of stability may be one of the aspects to be assessed when drawing up the ranking list: moreover, the contested Regional Law itself gives significance, for the purposes of drawing up the ranking list, to the "period of residence in the municipality in which the housing unit to be allocated is situated" and the "duration of the period of residence in the Region" (Article

23(10)(d)). However, it cannot constitute a general *sine qua non* for eligibility for the service, as this would entail a fundamental negation of the social function of public housing. This Court has already observed that, "in contrast with the prerequisite of residence *tout court* (which is necessary in order to identify the public body that is competent to provide a certain benefit, and is a prerequisite that each individual may fulfil at any time), the requirement of residence for an extended period is a criterion that can specifically preclude a particular individual from establishing eligibility for public benefits, both within the current region of residence as well as within the region of origin (in which the person is no longer resident)". This means that any provisions that introduce such a prerequisite must be "scrutinised with particular attention as they imply a risk of depriving certain persons of eligibility for public benefits due to the sole fact of having exercised their right of free movement or of having had to change the region in which they are resident" (Judgment No. 107 of 2018).

3.2.– The considerations set out above with reference to the prerequisite of residence for an extended period of time apply broadly also in relation to the other prerequisite laid down by the contested provision ("performance of gainful activity in Lombardy Region for at least five years immediately prior to the date on which the application is submitted") as an alternative to residence for more than five years. The requirement of prior gainful activity over an extended period also does not have any reasonable relationship with the rationale of PH. In addition, whilst it may be the case that current involvement in gainful activity within the region may be considered as a reasonable indication of a connection with the local territory, it cannot be denied that to stipulate gainful activity for more than five years as a rigid threshold for eligibility is to refuse to give any significance to need when granting the benefit, and indeed results in its denial precisely to those persons who are financially weakest, which is at odds with the social function of the service.

3.3.– In conclusion, insofar as it stipulates a requirement of residence (or gainful activity) in the region for more than five years as a prerequisite for eligibility to benefit from public housing, Article 22(1)(b) of Lombardy Regional Law No. 16 of 2016 violates both the principles of equality and reasonableness laid down in Article 3(1) of the Constitution, as it establishes an unreasonable difference in treatment to the detriment of those Italian or foreign nationals who do not fulfil that prerequisite, as well as the principle of substantive equality laid down by Article 3(2) of the Constitution, as that requirement is at odds with the social function of public housing.

4.– Since the first objection has been accepted, the questions raised with reference to Article 10(3) and Article 117(1) of the Constitution are absorbed, as are also the related objections that those questions are inadmissible.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

*declares* that Article 22(1)(b) of Lombardy Regional Law No. 16 of 8 July 2016 (Regional provisions on housing services) is unconstitutional exclusively with regard to the phrase "for at least five years immediately prior to the date on which the application is submitted".

Decided in Rome at the seat of the Constitutional Court, *Palazzo della Consulta*, on 28 January 2020.

Signed: Marta Cartabia, President

Daria de Pretis, Author of the Judgment