Corte costituzionale

# JUDGMENT NO. 40 OF 2011

*Ugo DE SIERVO, President*

*Maria Rita Saulle, Author of the Judgment*

# JUDGMENT NO. 40 YEAR 2011

**In this case the President of the Council of Ministers challenged legislation enacted by Friuli-Venezia Giulia Region which purported to limit access to social benefits and services to Community nationals who had been resident for at least three years in the region, thereby excluding short-term Community residents and all non-Community residents, whilst guaranteeing only "essential" services to all residents without distinction. The Court struck down the contested legislation as unconstitutional on the grounds that it introduced an arbitrary distinction, there being no reasonable correlation between the residence requirement and situations of need or discomfort which create a need for social provision.**

(omitted)

JUDGMENT

in proceedings concerning the constitutionality of Article 9(51), (52) and (53) of Friuli-Venezia Giulia Regional Law no. 24 of 30 December 2009 (Provisions governing the formation of the annual and long-term budget of the Region - Finance Law 2010), amending Article 4 of Friuli-Venezia Giulia Regional Law no. 6 of 31 March 2006 (Integrated system of initiatives and services to promote and protect social citizenship rights), initiated by the President of the Council of Ministers by the application served on 8-11 March 2010, filed in the Court registry on 16 March 2010 and registered as no. 46 in the register of applications 2010.

Considering the entry of appearance by Friuli-Venezia Giulia Region;

having heard the Judge Rapporteur Maria Rita Saulle in the public hearing of 30 November 2010;

having heard the *Avvocato dello Stato* Paola Palmieri for the President of the Council of Ministers and Counsel Giandomenico Falcon for Friuli-Venezia Giulia Region.

*(omitted)*

*Conclusions on points of law*

1. – By application served and filed according to the applicable procedures, the President of the Council of Ministers challenged – with reference to Articles 2, 3, 38 and 97 of the Constitution – Article 4 of Friuli-Venezia Giulia Regional Law no. 6 of 31 March 2006 (Integrated system of initiatives and services to promote and protect social citizenship rights), as amended by Article 9(51), (52) and (53) of Regional Law no. 24 of 30 December 2009 (Provisions governing the formation of the annual and long-term budget of the Region - Finance Law 2010).

1.1. – According to the applicant, the reformulation of the above regional legislation by Article 9(51), (52) and (53) of Regional Law no. 24 of 2009 such as to render the Region's integrated system of social initiatives and services accessible only to "Community nationals" who have been resident there "for at least thirty six months" – rather than "to all persons resident in the Region" as was by contrast provided for under the provision as originally enacted – violated, in the first place, Article 2 of the Constitution given that, due to its length, such a length of time would "excessively restrict" the enjoyment of benefits and services which, due to the fact that they are strictly related to the satisfaction of fundamental rights, should by contrast be guaranteed on a general and uniform basis throughout the national territory "to all parties who are entitled".

1.2. – Secondly, the regional legislation is also claimed to violate Article 3 of the Constitution "due to the violation of the principle of equality" since the provision cited "discriminates against entire classes of individual – such as non-Community nationals or" European nationals themselves "unless they have been resident for thirty six months – which is not justified by specific requirements or factual circumstances capable of justifying the stipulation under regional legislation of the particular prerequisite of Community citizenship or residence for at least thirty six months".

1.3. – Thirdly, the applicant complains of the violation of Article 38 of the Constitution, given that the regional legislature did not even safeguard "specific situations of particular need, necessity or urgency, as was by contrast specified under Article 4(2) and (3) of Regional Law no. 6 of 2006 as previously in force [...]".

1.4. – Fourthly, the regional provision concerned is claimed to violate Article 97 of the Constitution since that "denial of access" to the region's integrated system of social

initiatives and services "for whole classes of individuals" does not ensure "the proper conduct and impartiality of the Public Administration".

2. – In particular, according to the applicant, it does not appear to be possible to set aside the doubts raised as to the provision's constitutionality in any way through the safeguard clause contained in Article 4(3) of Regional Law no. 6 of 2006 (as replaced by paragraph 53 of Regional Law no. 24 of 2009), according to which "all persons present within the regional territory on any grounds shall be entitled to receive the social assistance provided for under applicable State and Community legislation".

In fact, in the opinion of the President of the Council of Ministers, this provision does not eliminate the denial of access to the social initiatives and services relating to the regional integrated system as a whole for certain classes of person, but is limited to the guarantee for all those present on any grounds within the territory of the Region that only social assistance considered essential on State or Community level will be administered.

3. – As a preliminary matter it is necessary to consider the question relating to the effects on these proceedings of the subsequently enacted legislation relating to the contested provision since, after the application was filed, the contested provision was fully amended by Article 9(5) of Regional Law no. 12 of 16 July 2010 (Settlement of the budget for 2010 and the multi-year budget for 2010-2012 pursuant to Article 34 of Regional Law no. 21 of 2007).

In the version of the contested provision resulting from that amendment, the prerequisite of "residence for at least thirty six months" in the Region has been replaced with that of simple residence for a specific series of classes of individual: Italian nationals, nationals of Member States of the European Union lawfully resident in Italy, foreign nationals identified pursuant to Article 41 of Legislative Decree no. 286 of 25 July 1998 (Consolidated text of the law of immigration and provisions governing the status of foreigners), and "the holders of the status of refugee or the status of subsidiary protection pursuant to Article 27 of Legislative Decree no. 251 of 19 November 2007" (Article 4(1)(a), (b), (c) and (d) of Regional Law no. 6 of 2006, as replaced by Article 9 of Regional Law no. 12 of 2010). Paragraph 3 of that provision now stipulates that, irrespective of the prerequisite of residence, the right to the service concerned shall be assured to certain classes of individual ("underage foreign nationals, foreign nationals

who are pregnant and women during the first six months after childbirth"). Moreover, paragraph 4 also grants access to the regional integrated system of initiatives and services to those who "are otherwise present within the regional territory", provided that their "circumstances are such as to require non-deferrable intervention and it is not possible to refer them to the corresponding services of the region or State of origin".

3.1. – The amendments described above appear to have had a significant impact upon the prerequisites previously stipulated for access to the aforementioned regional integrated system, in a manner which moreover fully satisfies the objections raised in this application.

As was correctly observed by the region's representative, this fact first and foremost prevents the questions raised in relation to the contested provision as previously in force from being transferred to that in force after the application was filed, with the result that the judgment of this Court must relate exclusively to Article 4 of Regional Law no. 6 of 2006, as reformulated by Article 9(51), (52) and (53) of Regional Law no. 24 of 2009 for the duration of its albeit limited applicability.

Moreover, it must be observed in this regard that since the contested provision stipulates an exclusion from entitlement to certain services with immediate effect for entire classes of individuals, it does not require any specific measure of implementation in order to take effect, which means that it cannot be excluded that it may have been applied during the intervening period. Therefore, the prerequisites for a ruling that there is no longer any matter in dispute (see *inter alia*, judgments no. 251 and no. 249 of 2009) cannot be considered to have been met.

3.2. – Again as a preliminary matter, it must be ruled – accepting the express objection formulated to that effect by the Region's representative – that the objection brought with reference to Article 97 of the Constitution is inadmissible since it fails to provide sufficient and self-standing reasons with regard to the alleged violation of the constitutional principle invoked.

4. – On the merits, the question concerning the violation of Article 3 of the Constitution is well-founded.

4.1. – Article 4 of Regional Law no. 6 of 2006, as amended by Article 9(51), (52) and (53) of Regional Law no. 24 of 2009, regulates the eligibility of individuals to assess the integrated system of regional services concerning "the arrangement and

provision of services, whether free of charge or for payment, or financial support intended to remove and alleviate situations of need and difficulty that an individual may encounter over the course of his life, excluding only those assured by the pension and healthcare systems", as such falling within the more general scope of social services under the residual jurisdiction of the Regions (see *inter alia*, judgment no. 50 of 2008).

The fact, pointed to several times by the Region's representative, that in this case the Region established arrangements that went beyond what was essential by no means infers, as already asserted by this Court "that the choices associated with the identification of beneficiaries – which are necessarily to be restricted due to the limited extent of financial resources – need [not] be made always and in any case in accordance with the principle of reasonableness" (judgment no. 432 of 2005).

The provision under discussion unequivocally introduces an exclusion intended to discriminate, out of the users of the integrated system of services relating to social benefits provided by the Region, against non-Community nationals as such, as well as European nationals who have not been resident for at least thirty six months.

That absolute exclusion of entire classes of persons based either on the failure to possess European citizenship, or the fact that the individual has not been resident for at least thirty six months does not respect the principle of equality since it introduces arbitrary grounds for distinction into the legislative framework, since there is no reasonable correlation between these conditions for eligibility to receive the benefit (European citizenship in conjunction with residence for at least thirty six months) and the other particular prerequisites (consisting in situations or need or discomfort directly relating to the person as such) constituting the prerequisite for eligibility to receive the social services which, by their very nature, do not tolerate distinctions based either on citizenship or particular classes of residence aimed at excluding precisely those individuals who, on the facts, are the most exposed to situations of need or discomfort which such a social services system aims to supersede by pursuing an eminently social goal.

Therefore, such discrimination contrasts with the function and legislative rationale of the measures that make up the complex and detailed system of services identified by the regional legislature in the exercise of its jurisdiction over social services, in breach of the limits of reasonableness imposed by the principle of equality (Article 3 Cost.).

5. – All remaining challenges are moot.

ON THOSE GROUNDS

## THE CONSTITUTIONAL COURT

*declares* that Article 4 of Friuli-Venezia Giulia Regional Law no. 6 of 31 March 2006 (Integrated system of initiatives and services to promote and protect social citizenship rights), as amended by Article 9(51), (52) and (53) of Regional Law no. 24 of 30 December 2009 (Provisions governing the formation of the annual and long-term budget of the Region - Finance Law 2010) is unconstitutional;

*rules* that the question concerning the constitutionality of Article 4 of Regional Law no. 6 of 2006, as amended by Article 9(51), (52) and (53) of Regional Law no. 24 of 2009, initiated with reference to Article 97 of the Constitution by the President of the Council of Ministers by the application referred to in the headnote, is inadmissible.

Decided in Rome, at the seat of the Constitutional Court, *Palazzo della Consulta*, on 7 February 2011.

(omitted)