Ministry of Labour, Health and Social Policy
Directorate General for Immigration

Italian comments to

the ***Report on the Free Movement of Workers in Italy in 2007***

prepared by the network of experts in the field of free movement of workers established by the European Commission

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Residence for more than three months

Report

(…)
It is not clear whether a job-seeker would be treated as a worker or as a non-worker, and therefore required to have sufficient economic resources.

Comment:

Actually, the situation of a job–seeker is pretty clear. According to the amended article 7 of the Legislative Decree 2008 no. 30, only workers, students as well as those who have sufficient economic resources for not to become a burden on the social assistance system have the right of residence for more than 3 months in Italy.

Article 13 provides however guarantees against expulsion towards job-seeker. It is impossible to be expelled (except for public policy or public security grounds) if the person is registered as a job-seeker with the employment office (*Centro per l'impiego*) for no longer than six months.

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Residence for more than three months

Report

(…)
If the Union citizen already holds a residence card issued in accordance with the previous regulations, s/he is exempted from proving the fulfilment of the substantial requirements (see circular 18-7-2007 no. 200704165/15100/14865(39)). As far as the "sufficient economic resources" are concerned, a reference is made to Article 29 (3) b of the Legislative Decree 1998 no. 286 (consolidated law on immigration). This provision regulates the family reunification of the non-EU foreigner. It requires the foreigner to have a minimum income per year no less than the annual amount of the social allowance (that

is euro 5.061,68 for the year 2007), in case of reunification with one family member or when no reunification occurs; no less than twice the annual amount of the social allowance, in case of reunification with two or three family members; and no less than three times the annual amount of the social allowance, in case of reunification with four or more family members.

Comment:

It is worth to mention that the requirement that refers to the amount of sufficient economic resources has been changed due to the entry into law the Legislative Decree 2008 no. 160 which has amended the provisions of the Testo Unico for immigration as regards sufficient economic resources required from third country nationals that enter Italy for family reunification reasons. The new rules require a minimum annual income not lower than annual social allowance incremented of an half of this amount for each relative to re-unificate. To obtain the reunification of two or more sons below 14 years old or of two or more relatives of the titulars of subsidiary protection status it is asked anyway an income double of the annual amount of social allowance. To determine the income it has been considered the annual total amount of his/her relatives cohabitants

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1. WORKING CONDITIONS, SOCIAL AND TAX ADVANTAGES (DIRECT/ INDIRECT DISCRIMINATION)

Report

(…)
While the Directive allows the Member States to deny both entitlement to social assistance during the first three months or during the longer period of stay for Union citizens in search of a job, and maintenance aid for students, the implementing provision restricts the application of this derogation. The derogation is limited to the granting of social security benefits. In any case rights to social benefits associated with the activity pursued or otherwise granted by the law shall not be affected by the derogation (see Article 19 (3) of the Legislative Decree 2007 no. 30). Therefore, Union citizens who entered Italy in search for a job are not entitled to social assistance for the first six months of stay, unless these allowances are granted by the law.

Comment:

The above wording suggests that a job-seeker after six months of residence becomes eligible for social assistance if he or she is continuing to seek employment. That is not a correct understanding. As it was already explained above, that during this period of six months a person who seeks employment cannot be expelled only on the base of lack of sufficient economic resources.

According to the article 19 par. 3 of the Legislative Decree in cases provided in article 13 par . 3b, (concerning job-seekers), there is no right to social assistance unless the right is provided on the ground of previous exercised activity or other provisions of the law.

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Report

(…)
Article 38 (1) and (2) of the Constitution read as follows: “Every citizen unable to work and without the resources necessary to live has a right to social maintenance and assistance. Workers have the right to be provided with and assured adequate means for their needs and necessities in cases of accidents, illness, disability and old age, and involuntary unemployment”. While the first paragraph only deals with Italian nationals, the second addresses all workers, irrespective of their nationality.
The circular 3-8-2007 no. DG RUERI/II/12712/I.3.b issued by the Ministry for Health clarifies the effects of the implementation of Directive 2004/38/EC on registration with the national health care institutions. The Ministry says that its previous decree 18-3-1999 is no more applicable.
This decree stated that an Union citizen when been entered into the population registry could ask to be registered with the health care system. From now on, the health care local offices shall register only Union citizens and their family already entered into the population registry and provided that they belong to the following groups: workers and self-employers and their family members; family members of Italian nationals; Union citizens entitle with the right of permanent residence; Union citizens unemployed or attending a vocational training course; Union citizens holding forms E106, E109, E120, E121. Union citizens not belonging to the abovementioned groups are not entitled to free health care.
Therefore, the rapporteur recalls that Article 35 of the Legislative Decree 1998 no. 286 lays down a more favourable health treatment for non-EU foreigners – even irregularly in Italy – and should also be extended to Union citizens.

Comment:

The circular of 19 February, 2008 issued by the Ministry for Health has stated, as it was previously clarified in the circular of 3 August 2007, that EU nationals have the right the urgent benefits, including medical benefits regarding health care for children and for maternity reasons, the vaccinations as well as other intervention of international prevention. Besides, also the vulnerable groups, like the victims of trafficking or enslavement, have right to register in National Health Service.

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Chapter V

Members of the family

1. RESIDENCE RIGHTS

Report:

The Legislative Decree 2007 no. 30 follows the same pattern of the Directive 2004/38/EC in order to define family members. Article 2 gives the same definitions as the Directive, Article 3 lists the beneficiaries. Both Article 2 and Article 3 reproduce Articles 2 and 3 of the Directive literally. This means that in Article 2 of the Legislative Decree we read "the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the condition laid down in the relevant legislation of the host State". Since Italy neither regulates registered partnerships nor equates them to marriage, the scope of the provision is not clear. The Government said that the act of transposition was going to entitle the unmarried partner with the right to enter and reside. Nevertheless, the provision is far from clear, and, given its literal meaning, interpretation in accordance to the meaning envisaged by the Government is not ensured.
When it comes to Article 3, the only difference from the directive relates to the sentence "the partner with whom the Union citizen has a durable relationship duly attested", to which the Government added "by the Union citizen's State". This amendment had been suggested during the legislative procedure by both Parliamentary Committees. It is not clear however if only the State of origin is competent (as the literal interpretation would suggest) or also the State from which the Union citizen comes. Moreover, the Union citizen seems denied of the possibility to prove his/her partnership by other means but a document issued by his/her State. As in the following provisions of the Legislative Decree partners are never contemplated as people entitled to enter and stay, it is not clear which scope the provision could have.

Comment:

The provision indicate to take into account the personal situation of the person concerned. The persons that could be considerate as "partner" and therefore whose entry could be facilitated, for example, they are given a visa priority, with simplified procedures and the possible refusal have to be well –founded after the examination their individual situation.

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Report

(…)
The non-EU family's member acquires the right of permanent residence if s/he has lawfully remained for five years in Italy (Circular 10-4-2007 no. 400/C/2007/1409/P/10.4.39/II DIV) As far as expulsion is concerned, family members (irrespective of nationality) are submitted to the same rules as Union citizens. The consolidated law on immigration adds

some cases of protection against expulsion of the non-EU foreigner. Since this law may be applied to Union citizens where it is more favourable to them, they are worth of mention

Comment:

It is worth to mention that article 1 par. 2 of the Testo Unico for immigration have been recently amended by the Law 2008 no 133. The article is modified in this way: “the Testo Unico is not applicable to the nationals of the European Union Member States, except as provided by the rules of implementation of Community law.”

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Chapter VII
Policies, Texts and/or Practices of a General Nature with Repercussions on Free Movement of Workers

Report

The treatment of third-country nationals in Italy is regulated by the consolidated law on immigration (Legislative Decree no. 286 of 25-7-1998). The consolidated law on immigration was the first comprehensive legal text introduced in Italy to regulate the position of third-country national and was subsequently partially amended in 2002 by the Law no. 189 of 2002, also known as Bossi-Fini law (GURI no. 199 of 26-8-2002, OS). Pursuant to Italian law, third-country nationals who intend to enter the Italian territory must hold an entry visa (some States are exempted from this requirement). The visa is issued by the Italian diplomatic and consular representations of the country where the concerned person has his/her stable residence. Within a deadline of 8 days from the entry, a residence permit on the same grounds as the visa must be requested (except if the stay has a duration shorter than 3 months and is grounded on tourism, business or study reasons). The Italian immigration legislation is based upon a system of quotas: a decree is published every year and states the number of persons that can be admitted legally as employed and self-employed workers.

Comment:

It is worth to precise that the system of quotas is general dedicated only to the entry for work reasons; it does not refer to any other reasons of entry.

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Report

(….)
As a general matter, the consolidated law on immigration does not apply to EU citizens, unless the provisions contained therein are more favourable in comparison with those that

are provided for in the general set of rules normally applied to them (i.e. Legislative Decree 2007 no. 30, see above Chapter I). This principle is clearly affirmed under Article 1, para. 2, of the consolidated law on immigration, and was upheld by the Supreme Court (see judgment 27-1-2000 no. 439).

Comment:
See the above comment that refers to page 45.

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ENTRY

Report

(…)
Finland, the May 2007 legislation transposing the Directive lays down the requirement that third-country national family members must previously have been lawfully resident with their EU citizen family member in another Member State as a condition for enjoying free movement rights in *Finland*. The position in *Ireland* and *Italy* was similar.

Comment:

In Italy the right to entry and residence for family members as defined in article 2 of the Legislative Decree is recognize regardless their previous cohabitation with the EU national.

The requirement of the previous cohabitation with the EU national in the country of origin could be applied, however, to the persons not included in the definition of "family members" under the Legislation Decree, who are indicated in article 3 par. 2 of the Legislation Decree. As regards to those other members of family the Directive 2004/38/EC does not provide an automatic right of entry and residence in the host Member State, but encourage the Member States to examine that possibility. Italy, on the basis of its national legislation, provides that possibility for serious reasons.

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TREATMENT OF JOB-SEEKERS

Report

There are explicit national rules in a number of Member States (*Denmark*, *Finland*, *France*, *Hungary*, *Malta*, *Netherlands*, *Sweden*) on the right of job-seekers from other Member States to enter and reside in their territory for more than three months.

(...)
In *Italy*, the lack of explicit provisions means that it is unclear whether a job-seeker would be treated as a worker or non-worker and therefore required to have sufficient economic resources.

Comment:

Actually, the situation of a job–seeker is pretty clear. According to the amended article 7 of the Legislative Decree 2008 no. 30, only workers, students as well as those who have sufficient economic resources for not to become a burden on the social assistance system have the right of residence for more than 3 months in Italy.

Article 13 provides however guarantees against expulsion towards job-seeker. It is impossible to be expelled (except for public policy or public security grounds) if the person is registered as a job-seeker with the employment office (*Centro per l'impiego*) for no longer than six months.

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Social advantages

Report

Access to job-seekers' allowances for Union citizens have frequently been the subject of court decisions in *Germany* in 2007. Taking into account Directive 2004/38 and the case law of the ECJ in cases as *Grzelczyk* and *Collins*, a Union citizen cannot be excluded from access to job-seekers' allowances when he qualifies under the general provisions for entitlement.
The *French* report describes extensively the new 2007 legislation which limits the access of job-seekers from other EU Member States to single parent benefit, income support and universal health coverage. In *Ireland* the application of the 'habitual residence' test, introduced in 2004 for access to social welfare payments has raised questions in relation to the equality principle. A published guideline on the Habitual Residence Condition11 makes it clear that persons entitled to payments under EU law do not have to satisfy the habitual residence condition where this would conflict with EU rules. This guideline states that people who move in search of employment, only benefit from equal treatment under Regulation 1612/68 as regards access to employment. First-time job seekers do not qualify for equal treatment with regard to social and tax advantages within the meaning of Article 7(2) of that Regulation. In *Italy*, Union citizens who enter Italy in search for a job are not entitled to social assistance for the first six months of their stay, unless these allowances are granted explicitly by the law.

Comment:

The above wording suggests that a job-seeker after six months of residence becomes eligible for social assistance if he or she is continuing to seek employment. That is not a

correct understanding. It was already explained above that during this period of six months a person who seeks employment cannot be expelled only on the base of lack of sufficient economic resources.

According to the article 19 par. 3 of the Legislative Decree in cases provided in article 13 par . 3b, (concerning job-seekers), there is no right to social assistance unless the right is provided on the ground of previous exercised activity or other provisions of the law.

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Report

(…)
Inactive EU citizens are apparently denied free health care, because it is not clear whether they have the right to register with the health care system.

Comment:

The circulars of 3 August 2007 and of 19 February 2008, issued by the Ministry for Health have stated, that the EU nationals who are not workers are obliged to have a suitable health insurance which covers all types of risk on the national territory (this does not replace the European Health Insurance Card). However, in every case also the EU national without health coverage has the right to the urgent benefits, including medical benefits regarding health care for children and for maternity reasons, the vaccinations as well as other intervention of international prevention.
Besides, also the vulnerable groups, like the victims of trafficking or enslavement, have right to register in National Health Service.

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Chapter IV
Employment in the Public Sector

1. ACCESS TO PUBLIC SECTOR
1.1. Nationality conditions for access to positions in the public sector

Report

Member States are only allowed to restrict public sector posts to their nationals if they involve the exercise of public authority and the responsibility for safeguarding the general interest of the State. According to some rapporteurs, it is almost impossible to give a good picture of the employment situation for EU citizens in the public sector. There are no figures available. In most Member States there exist specific rules (Constitution, laws, royal or presidential decrees) regarding the public sector posts which are reserved for nationals. Several national reports list posts reserved for their nationals (*Bulgaria, Cyprus,*

Czech Republic, Estonia,Finland, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, the Netherlands, Romania,Slovakia, Slovenia, Sweden). (…)
The national legislation of some other Member States provide a general clause that access to public service can be made dependent upon nationality if the tasks so require, working this out in criteria or guidelines for the posts or sectors concerned. (…)
In the *Italian* legal system it is impossible to distinguish posts implying concretely the exercise of public authority and responsibility of safeguarding the general interests of the State from those posts involving administrative tasks, technical consultation or maintenance, which have to be opened to EU citizens. The Italian public administrations' practice does not appear always in line with Community law.

Comment

This statement cannot be shared, even if have to be recognised that at present a discussion is still open as regards to the criteria for access for non-Italians to certain public position.