

DOES CITIZENSHIP MATTER? THE TREATMENT OF EU WORKERS IN ITALY

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The aim of the seminar was to assess whether EU workers in Italy are treated in accordance to EU law. The limited number of preliminary references to the Court of Justice coming from Italian judges on the matter and the few infringement procedures against Italy (all about access to public employment) should be considered as evidence of a satisfactory implementation of EU legislation. The seminar wanted to go further and to identify possible problems.

The first session described the presence of foreign workers on the Italian labour market. As Professor Ambrosini said, Italy is a reluctant importer of migrants. On the one hand, enterprises and families need foreign workers, because they offer unskilled jobs that, for many reasons, Italians refuse. On the other hand, politics wants to limit access of foreigners to the Italian labour market by establishing annual entry quota falling short of the demands. Limitations on entry are ineffective, because they can not prevent foreign workers from coming. Periodical amnesties are adopted to find a balance between the demands of the economy and the refusal of politics. As a consequence, many of the 5-million regular foreigners today in Italy have spent a shorter or longer time as irregular immigrants. The same fate has been shared by many of the EU nationals from Eastern Europe who came to Italy before the accession of their countries to the EU, and who had spent some time as illegal migrants till an amnesty, or the accession to the Union, changed their status.

The second session discussed the treatment of foreigners in general.

Prof. Nascimbene explained that two sets of rules on foreigners are in force, one transposing Directive 2004/38/EC, the other on immigration in general, dating back to 1998. The 1998 law has been amended many times, not to address the new needs of foreigners, such as integration measures or the treatment of second and third generations, but rather to meet security concerns of Italians, mainly caused by politics itself. The same security concerns led to the restrictive amendments to the law on EU nationals. It is a source of concern, as the seminar will show, that the general legislation on foreigners, which has a wider material scope, is not applicable to EU nationals. Nonetheless, a common thread runs through both sets of rules: fundamental rights, access to social assistance included, can not be undermined.

Prof. Queirolo discussed the issue of family reunification. The reunification of Italian nationals is regulated by EU rules. The main problems are: the difficult implementation of the *Metock* case, first addressed by a circular letter and later by an amendment to the law transposing Directive 2004/38/EC; the tendency for the public administration to investigate more often than reasonable whether the marriage of Italian nationals to foreigners are real; the unclear position of public administration and courts toward entry and residence rights of same sex spouses; the tendency for public administration not to duly take account of family links when deciding for an expulsion.

Prof. Condinanzi discussed the issue of expulsion of EU nationals. The rules on expulsions have been amended three times in four years. Looking at practice, the main problems are: concerning expulsion for not satisfying the conditions for residence, public authorities seem to pay little attention to the overall situation of the person concerned, but often judges redress the case; concerning expulsion on grounds of public security or public order, public authorities tend to consider almost whichever crime committed by the person concerned as evidence of a threat to society; sometimes, expulsion is even grounded on considerations of general prevention. The concept of public security embraced by Italian law seems wider than the traditional definition given by the Court of Justice, even though the Court itself, in the *Tsakouridis* and *P.I.* cases, seems to have changed its mind and tends to mix public order and public security, as Italian law does.

The third session discussed questions that can be relevant for EU nationals, which are regulated by the general legislation on immigration but not by the law on EU nationals.

Dr. Guariso discussed the issue of judicial protection against discrimination on the ground of nationality. Articles 43 and 44 of the general legislation on immigration lay down that everybody, foreigners and nationals alike, have a right not to be discriminated on the ground of nationality and can go to court to have their right protected. On the contrary, they do not regulate the details of the

action (definitions, burden of proof, proceedings). In day-to-day practice, Articles 43 and 44 are coupled with Legislative Decree 2003 n. 215, transposing Directive 2000/43, which regulates in details the procedural aspects of the action. Even though discriminations on grounds of nationality are outside the scope of application of Legislative Decree 2003 n. 215, courts said that a discrimination on ground of nationality always amounts to a discrimination on grounds of race or ethnic origin.

Dr. Di Pascale discussed the case of unaccompanied minors. Before the accession of Romania, public authorities took care of 2-3 EU minors per year, and of about 7000 non-EU unaccompanied minors, one third of Romanian origin. When Romania became a member of the Union, the public body in charge of non-EU unaccompanied minors ceased to deal with Romanian minors and no other competent body has been established. In 2008, Italy and Romania entered into an agreement in order to promote the return of minors to Romania, no relevance being given to the superior interest of the minor. The entire procedure is managed by administrative authorities without court's supervision.

Dr. Olivani discussed the issue of medical care. The general legislation on immigration grants access to medical care to every foreigners, free of charge for those who have no means of subsistence. Since Directive 2004/38 does not regulate the issue of medical care, no specific rules were in force for EU nationals. When Bulgaria and Romania joined the Union, a problem emerged. The health care systems of both States do not benefit all nationals and refuse to repay the expenses Italy bore to treat their citizens not covered by their health care system. The case of Bulgarian and Romanian having no means of subsistence has been uncertain for a while. In 2008, the Ministry of Health established by circular letter that they should receive access to free medical care under the same conditions as non-EU foreigners. Nevertheless, five Italian Regions refuse to implement the circular letter and as a consequence, the treatment of EU nationals is worse than that granted to foreigners.

The fourth session singled out some issues in order to compare the treatment of EU and non-EU workers.

Prof. Pallini discussed the issue of access to employment in the public sector. Italian law is clear in granting access to EU nationals, even though practice still reveals problems, mainly regarding recognition of professional qualifications and titles. Less clear is whether Italian law grants access to foreigners too. The positive answer rests on the argument that since access is granted to EU nationals, it can not be reserved to Italian.

Prof. Di Filippo discussed the effects of the loss of employment and of job insecurity on the workers' right of residence. EU law itself grants a much more favourable regime to EU workers than to non-EU workers. This difference of treatment seems contrary to some EU principles, as the principle according to which workers are the weaker parties deserving special protection and the principle of unity of the internal market.

Dr. Scuto discussed access to social benefits provided for by Regional laws. The competence of the Regions to pass legislation addressed to foreigners was not granted, since under Italian Constitution immigration is a matter for national law. But since immigration only comprises entry, residence and expulsion of foreigners, access to social benefits falls within politics for migrants and can be regulated at regional level. In shaping their policies, Regions shall respect fundamental rights and the principle of non discrimination on ground of nationality. Regional laws can be divided into two groups: those aiming to improve the level of protection established by the general legislation on immigration, and those directed at restricting access to social benefits for foreigners (EU nationals included). The Constitutional Court considered the former to be in line with the Constitution, and the latter to be in breach of the principle of equality, unless they reserve access to people having resided for a certain length of time, provided that it is reasonable and applied in a non-discriminatory way. As to EU nationals, some Regional laws even grant them a more favourable access to social benefit than that required by Directive 2004/38/EC.