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SOCIAL SECURITY IN ITALY-TUNINSIA AGREEMENTS

LOS ACUERDOS DE SEGURIDAD SOCIAL ENTRE ITALIA-TÚNEZ

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ABSTRACT

Social Security fulfils the general principles of protection of the needy through social assistance and social security, specific for the safeguard of workers.

In Italy, according to the principle of territoriality of the insurance obligation, the non community worker is subject to the country's social security and welfare legislation.

On 7 December 1984 an administrative agreement is signed in Tunis for the application of the convention on social security, between the Italian Republic and the Tunisian Republic, with the possibility for the Tunisian citizen to work in Italy, while remaining under the responsibility of the legislation on social security in your country of origin.

Because of the political alternation of the Italian Governments, more restrictive guidelines have been reached, with the introduction of the limitation to equating to Italians only non-EU immigrants holding EC residence permits as long-staying guests, exceeding even the provisions of bilateral agreements including the Italy - Tunisian one. This has subordinated the provision of certain social security benefits, discriminating against Tunisian citizens and limiting the enjoyment of the fundamental rights recognized to Italian citizens.

KEYWORDS: Social Security. Retire. Tunisians immigrates. Critical issues.

RESUMEN

La Seguridad Social cumple con los principios generales de protección de las personas desfavorecidas a través de la asistencia y los subsidios sociales, específicos para velar por los trabajadores.

En Italia, de acuerdo con el principio de la territorialidad del seguro obligatorio, el trabajador no perteneciente a la EE.UU. está sujeto a la legislación de prestaciones sociales italianas.

El 7 de diciembre de 1984 se firmó un acuerdo administrativo en Túnez para la aplicación del convenio sobre seguridad social entre la República Italiana y la República de Túnez, el cual brinda al ciudadano tunecino la oportunidad de trabajar en Italia, aunque seguirá bajo la competencia de la normativa de su país de origen.

Debido a la alternancia política de los gobiernos italianos, se han llegado a crear unas directrices más restrictivas. Se ha introducido la limitación de equiparar con los italianos solo a los inmigrantes no comunitarios que tengan permiso de residencia de la EE.UU. como residentes de larga duración, obviando las disposiciones de los acuerdos bilaterales, incluido el italo-tunecino.

Esto ha subordinado la concesión de ciertos beneficios de prestación y asistencia, discriminando a los ciudadanos tunecinos y limitando el disfrute de los derechos fundamentales reconocidos, en cambio, a los ciudadanos italianos.

PALABRAS CLAVE: Seguridad social. Seguridad. Inmigrantes tunecinos. Aspectos críticos.

SUMMARY

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I. INTRODUCTION

Social Security refers to all the services that the State makes available to citizens in need, lacking resources for their maintenance or incapacitated for work.

Appropriate benefits are provided for cases of accident, illness, disability, old age and involuntary unemployment.

Social Security fulfils these general principles of protection of the needy through social assistance and social security, specific for the protection of workers.

In Italy, according to the principle of territoriality of the insurance obligation, the non-EU worker is subject to national social security and welfare legislation.

The social security system is a significant means of inclusion because it recognizes genuine protection against the risk of unemployment, accidents at work, illness and disability. Each Member State, according to its own history and the singularity of the national context, has developed its own social security system.

Tunisian immigrants in Italy, compared to other no-E.U. communities, are guaranteed, as well as by national legislation, also by a bilateral agreement called "The Social Security Convention between Italy and Tunisia" stipulated in Tunis on 07 December 1984.

The institutions involved were I.N.P.S.² for Italy and C.N.S.S.³ for Tunisia, which established the criteria for the recognition of social security payments.

The Convention has been modified according to the variations introduced by the Italian legislation, with the increase of the years of contribution and consequently of the retirement age.

This agreement provides for equal treatment of workers, as provided for by the O.I.L.⁴ ratified in Italy by Legislative Decree No. 285/1998, which enshrines in Article 2, paragraph 3, of Legislative Decree No. 286 of 25 July 1998 Consolidated Text on Immigration⁵, which «the Italian Republic, implementing the I.L.O. No. 143 of June 24, 1975, guarantees all foreign workers legally residing in its territory and their families equal treatment and full equality of rights compared to Italian workers ».

But with the rigidity of the rules that regulate immigration in Italy, this protection has often not been applied, generating cases of discrimination, only sometimes remedied by appeal to the Court.

² I.N.P.S.: Istituto Nazionale di Previdenza Sociale

³ C.N.S.S.: Caisse Nationale de Sécurité Sociale.

⁴ O.I.L.: International Labor Organization is a specialized Agency of the United Nations that promotes social justice and internationally recognized human rights, with particular reference to those concerning work in all its aspects.

⁵ Governo Italiano, 2000. Legge n° 388/2000, art. 80 c. 19. Disposizioni in materia di politiche sociali.

Legislative text retrieved in August 2018 on the institutional website of Italian Government: <http://www.gov.it/leggi/archivio/388-2000>.

With the introduction of Law No. 388 of 23 December 2000⁶, in Italy begins a path of tightening immigration rules, which enshrines with the art. 80 that “the social allowance and the economic provisions that constitute subjective rights according to the current legislation on social services are granted, under the conditions established by the law itself, to foreigners who hold a residence permit; for other social services and services, the equivalence with Italian citizens is allowed in favour of foreigners who are at least holders of a residence permit of not less than one year”.

An important limitation is introduced on the basis of the residence permit, with the "economic services" provided on the basis of pre-established requirements, such as the long-term residence permit.

The rigidity of the norm is accompanied in Italy by the practice of work in black, which also involves holders of a regular residence permit, with resulting penalisation of pension rights to be accrued, making the pension benefits disregarded on the application plan, due to the lack of requirements⁷.

But the turnaround of the pension system that has affected all without distinction, has occurred with the introduction of Law No. 214 of 22 December 2011⁸, known as Fornero Law, which has set a series of parameters always stricter to meet retirement requirements.

It immediately became clear that it would affect the socially weaker citizens, including non-EU citizens, since it provides for the calculation of the allowance based on the contributions paid during the working life, and no longer considering only the last five years of social security payments they determined the check, determining with this system, which provides for a minimum of twenty years of contributions, the amount of pensions has undergone a drastic reduction. The purpose of this law was to reduce public spending linked to pension benefits at a time of financial crisis because, in the public pension system, also called first-pillar pensions, these are paid with taxes. It is therefore a social security reform of the public pension system and compulsory social insurance.

This epochal change has seen in many cases the lack of application at administrative level of the principle of equal treatment, between Italian and no-EU citizens, for which it has become essential to have recourse, in Italy, to judges of merit, the Court of Cassation and the Constitutional Court, and in Europe at the Court of Justice.

⁶ Giuliani M. , Pittau F. e Ricci A., 2012. Canali migratori. Visti e flussi irregolari. Roma, Italia. Edizioni IDOS.

⁷ Giuliani M. , Pittau F. e Ricci A. (2012). Canali migratori. Visti e flussi irregolari. Roma, Italia. Edizioni IDOS.

⁸ Governo Italiano, 2011. Legge n° 214 del 22 dicembre 2011. Disposizioni urgenti per la crescita, l'equità e il consolidamento dei conti pubblici.

Legislative text retrieved in August 2018 on the institutional website of Italian Government: <http://www.gov.it/leggi/archivio/214-2011>.

The interventions of the jurisprudence have made possible the extension to no-EU immigrants of all pension and social security benefits. But in reality what decreases the consistency, remains the greater flexibility of employment, which reduces the maturity of the minimum contributory requirement and the level of pay, in fact lower than that of Italians with the same qualifications and tasks performed⁹.

To make the pension system in Italy more equitable, it is necessary to overcome the current rigidities and encourage generational change, in order to identify a new criterion that respects the diversity and peculiarities of all workers.

To increase pensions economically, it would be desirable to use an instrument which, by valuing the contributory history of workers, supports their future pension income and, at the same time, overcomes the current criteria set by the contributory system, penalizing workers with lower incomes.

For the latter, which have the greatest difficulty in joining, given the cost to be incurred, it would be essential to re-launch supplementary pension with the increase in incentive taxation,

Finally, in order to safeguard public spending, an accounting separation of social security and welfare expenditure must be carried out, in order to demonstrate that pension expenditure in Italy is below the European average and therefore could be increased without incurring infringement provided for by the E.U.

At the moment there are numerous legislative proposals filed in Parliament for the reform of the pension system in Italy, but none of these has been the object of political attention, since the governments have always placed their attention on the safeguarding of public debt according to the fiscal pact of the EU.

The current Government, installed on 1st June 2018, declared its intention to modify the pension system by repealing the Law No. 214 of 22 December 2011, known as the Fornero Law and estimated that for exceeding the parameters set by the Law No. 214/2011 it would take about 20 billion Euros for the next ten years, presumably not feasible given the country's public accounts situation.

In fact in the D.E.F. (Economic and Financial Document) presented on 1st October 2018 by the Minister of Economy and Finance to the Commission E.U. there is no comparison with the reform of the pension system.

II. THE RULES OF SOCIAL SECURITY

The general principles on Social Security have been inspired by different legislative levels.

⁹ Pittau, F. 2009. Immigrazione, mercato occupazionale e lavoro nero. Quaderni di ricerca dell'artigianato, n° 51/2009.

The International Convention of the O.N.U. of 1990, on the protection of the rights of migrant workers and members of their families, enshrines in article 27 equal treatment in access to the social security system, but to date, in Italy has not yet been ratified¹⁰ Article 10 of the I.L.O. No. 143 on migrations in abusive conditions and on the promotion of equal opportunities and treatment of migrant workers establishes equal treatment and has been ratified in Italy under Law No. 158 of 10 April 1981¹¹.

Also the EU has issued provisions concerning the application of Social Security which is implemented through the application of the European Regulations. These Regulations are No. 1408/71¹² and No. 574/72¹³ which dictate the general rules on insurance, disability, pensions, insurance against accidents at work and occupational diseases, against involuntary unemployment, for assistance during illness and in maternity and for family benefits.

Other Regulations specifically concerned the coordination of social security and its application by paying attention to non-discrimination.

With the EU Regulation No. 987/2009¹⁴ the procedures for the application of Regulation No. 883/2004¹⁵ concerning the coordination of social security systems have been established, while with the E.U. Regulation No° 859/2003¹⁶ the discipline has also

¹⁰ U.N., 1990. Convenzione internazionale sulla protezione dei diritti dei lavoratori migranti e dei membri delle loro famiglie.

Legislative text retrieved in September 2018 on the institutional website of Centro Regionale di Informazione delle Nazioni Unite (UNRIC):

<https://www.unric.org/html/italian/treaties/InternationalConventionont.html>

¹¹ I.L.O., 1975. Convenzione sulle migrazioni in condizioni abusive e sulla promozione della parità di opportunità e di trattamento dei lavoratori migranti.

Legislative text retrieved in September 2018 on the institutional website of I.L.O.:

https://www.ilo.org/rome/norme-del-lavoro-e-documenti/WCMS_153191/lang--it/index.htm

¹² Consiglio Europeo, 1971. Regolamento n° 1408/1971. Applicazione dei regimi di sicurezza sociale ai lavoratori subordinati, ai lavoratori autonomi e ai loro familiari che si spostano all'interno della Comunità.

Legislative text retrieved in September 2018 on the institutional website of Italian Government:

http://www.salute.gov.it/imgs/C_17_normativa_244_allegato.pdf

¹³ Consiglio Europeo, 1972. Regolamento n° 574/1972. Modalità di applicazione del regolamento CEE n° 1408/71 relativo all'applicazione dei regimi di sicurezza sociale ai lavoratori subordinati, ai lavoratori autonomi e ai loro familiari che si spostano all'interno della Comunità. Legislative text retrieved in September 2018 on the institutional website of Italian Government:

http://www.salute.gov.it/imgs/C_18_normativa_245_allegato.pdf

¹⁴ Consiglio Europeo, 2009. Regolamento n° 987/2009. Modalità di applicazione del Regolamento CE n. 883/2004 relativo al coordinamento dei sistemi di sicurezza sociale. Legislative text retrieved in September 2018 on the institutional website of E.U.:

<https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=celex%3A32009R0987>

¹⁵ Consiglio Europeo, 2004. Regolamento CE n° 883/2004. Coordinamento dei sistemi di sicurezza sociale. Legislative text retrieved in September 2018 on the institutional website of E.U.:

<https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=CELEX%3A02004R0883-20140101>

¹⁶ Consiglio Europeo, 2003. Regolamento n° 859/2003. Estensione delle disposizioni del Regolamento CEE n° 1408/71 e del Regolamento CEE n° 574/72 ai cittadini di paesi terzi cui tali disposizioni non siano già applicabili unicamente a causa della nazionalità. Legislative text retrieved in September 2018 on the institutional website of E.U.:

https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=uriserv:OJ.L_.2003.124.01.0001.01.ITA&toc=J:L:2003:124:TOC

been extended to no-E.U. citizens, as the essential requirement has become the insurance under the Social Security schemes of one of the member states.

The Community Regulations do not replace the law of the Member State but regulate its application among the E.U. countries avoiding cases of discrimination between workers who work abroad and those who remain in their homeland.

In Italy Social Security protects the fundamental rights to health and safety at work, enshrined in articles 4, 32, 35 and 41 of the Republican Constitution¹⁷ and her history of Social Security began in 1870 after the unity of the Kingdom of Italy and through the legislative history of the country with a series of measures up to the Delegated Law No. 243 of 2004¹⁸ with which they are reorganized the Social Security Entities for the provision of benefits and the Law No. 214 of 2011 with which the pension requirements are reorganized.

The Social Security System is divided into three sectors managed by as many public institutions, which the S.S.N. (National Health Service)¹⁹ deals with the provision of medical care services and is structured at the provincial level and the cost of the services is borne by the individual Regions.

The I.N.A.I.L. (National Institute for Accidents at Work)²⁰ is a public institution body managed by the Ministry of Labour and Social Policies. In addition to playing a role in the field of Occupational Safety, it plans to provide benefits to workers in the event of an accident, occupational disease or death, while the I.N.P.S. (National Institute of Social Security)²¹ is the public institution body that provides the social security and welfare benefits. Social security benefits are matched by contributory payments and are finalized with the provision of pensions, also in addition, welfare benefits are determined through maternity allowances and family units.

The I.N.P.S. pays pensions and other social security benefits with taxes that derive, for approximately 70% from contributions for compulsory insurance through the application of rates of purpose called pension contribution rate and, for the remaining

¹⁷ Costituzione della Repubblica Italiana (1948). G.U. n° 298 del 27/12/1948. Roma, Italia.

¹⁸ Governo Italiano, 2004. Legge n° 243 del 23/08/2004. Norme in materia pensionistica e deleghe al Governo nel settore della previdenza pubblica, per il sostegno alla previdenza complementare e all'occupazione stabile e per il riordino degli enti di previdenza ed assistenza obbligatori. Legislative text retrieved in September 2018 on the institutional website of Italian Government: <http://www.camera.it/parlam/leggi/042431.htm>

¹⁹ S.S.N.(Servizio Sanitario Nazionale - National Health Service): Introduced with the Law n. 833 of 23 December 1978, it identifies the complex of functions, activities and welfare services managed and provided by the Italian State.

²⁰ I.N.A.I.L. (Istituto Nazionale Assicurazione Infortuni sul Lavoro - National Institute for Accidents at Work): Established with the Royal Decree No. 264 of 23, March 1933, is a public institution supervised by the Italian Ministry of Labor and Social Policy, whose purpose is to protect, from the insurance point of view, those who remain involved in an accident at work.

²¹ I.N.P.S. (Istituto Nazionale Previdenza Sociale - National Institute of Social Security): Established with the Royal Decree No. 371 of 27 March 1933, is the main social security institution of the Italian public pension system, in which all public or private employees, self-employed workers must be registered. The INPS is subject to supervision by the Ministry of Labor and Social Policies.

30%, through transfers from part of the State directly from general taxation, which finances social assistance activities²².

III. THE ITALY-TUNISIA BILATERAL AGREEMENTS OF 7 DECEMBER 1984

Italy, since the beginning of the seventies, has entered into a series of bilateral agreements with the countries of emigration to protect the circulation of workers. They are based on respect for non-discrimination and on ensuring equal treatment of workers and pensioners, with a view to harmonizing the laws of the Contracting States so that migration does not lead to the loss of social security rights.

These agreements regulate social security by offering the possibility for the foreign citizen to work in Italy, while remaining under the regulatory competence in the field of social security of their country of origin, notwithstanding the principle of territoriality of the contributory obligation.

They also allow the guarantee of fair treatment within the system of the host State in reference to particular services, or the equality of treatment is valid for pension contributions covered by the agreement, while the restrictions on the benefits of assistance, the exportability of social security benefits, so as to avoid double taxation, providing for the taxability of the pension in the country of residence only.

In the eighties, following the transformation of Italy from a country of emigration to an immigration country, new agreements were concluded, including that with the Republic of Tunisia.

The Social Security Convention between Italy and Tunisia, stipulated in Tunis on 7 December 1984, was ratified by Law No. 735 of 7 October 1986²³ by Italian Government, confirmed by the Administrative Agreement of 23 March 1987 and it entered into force on 1st June 1987.

The bilateral act has identified the benefits that can be provided in old-age, invalidity and survivors' pensions; sickness and maternity benefits for workers and their families; sickness benefits in kind to pensioners and their family members; benefits in the event of tuberculosis, in kind or in cash; benefits for family members dependent on the worker; benefits for family members of a pension recipient or pension and benefits for accidents at work and occupational diseases.

²² I.D.O.S., 2013. *Rivista Affari Sociali Internazionali*. Quaderno n°1/ 2013 “I diritti degli Immigrati in un contesto interculturale”, p. 161. Quadro Giuridico Nazionale: Sicurezza Sociale. Edizioni IDOS.

Legislative text retrieved in September 2018 on the institutional website of Italian Government: <http://www.integrazionemigranti.gov.it/normativa/procedureitalia/Pagine/Sicurezza-Sociale.aspx#4>

²³ Governo Italiano, 1986. Legge n° 735 del 07/10/1986. Ratifica ed esecuzione della Convenzione tra la Repubblica Italiana e la Repubblica Tunisina in materia di sicurezza sociale, firmata a Tunisi il 7 dicembre 1984.

Legislative text retrieved in September 2018 on the institutional website of Italian Government: http://www.salute.gov.it/imgs/C_17_pagineAree_594_listaFile_itemName_33_file.pdf

The Institutions that finalized the Convention and determined the conditions were I.N.P.S. for Italy and C.N.S.S.²⁴ for Tunisia, which established the criteria for the recognition of social security payments.

For the purposes of both Tunisian and Italian services, at least 52 weeks of contributions are required for international totalization.

For admission to voluntary insurance provided by Italian legislation, the periods of contribution accredited in Italy can be totalized with insurance periods in Tunisia and at least 52 weeks of effective work contributions are required in Italy.

Insurance periods lower than that period accrued in one State, which do not give rise, therefore, to international totalization, are nevertheless taken into consideration by the other State both for the assessment of the right and for the determination of the amount. This only if the worker has accrued in the other State the minimum period provided for by the Agreement and does not accrue the right to a benefit without resorting to international totalization.

If the requirements for the right to a pension are not improved with the international totalization of insurance periods in Italy and Tunisia, under the Italian-Tunisian Convention the periods completed in "third-party" States linked to both the Italy that to Tunisia from distinct bilateral social security Conventions, implementing multiple totalization²⁵.

It must be borne in mind that since the 1990s, when mass immigration began in Italy, the alarming negative trend of social security accounts has led to the restrictive approach of various bilateral agreements, interrupting the signing of further bilateral agreements that, if defined with the same general principles as those signed in the past, would have made their financial coverage problematic.

IV. CRITICALITY IN THE ACCESS OF IMMIGRANTS TO WELFARE

The role of the no-E.U. citizen in society is relevant, as he actively participates in the life of the country both as a beneficiary and a contributor to the social protection system²⁶.

Over the years there has been the formation of measures aimed at supporting the full integration of foreign citizens into society, and others aimed at protecting access to the welfare system, for example by choosing the recipients of benefits on the basis of the

²⁴ C.N.S.S.: Caisse Nationale de Sécurité Sociale is the Tunisian social security institute established by Law No. 60-30 of 14 December 1960.

²⁵ Ministero del Lavoro e delle Politiche Sociali, 2015. Circolare esplicativa per attuazione Convenzione Italia Tunisia.

Legislative text retrieved in September 2018 on the institutional website of I.N.P.S.: <https://www.inps.it/nuovoportaleinps/default.aspx?itemdir=49823>

²⁶ IDOS, 2014. Rapporto lavoratori immigrati negli archivi previdenziali. IDOS per I.N.P.S. Roma, Italia. IDOS Edizioni.

condition of citizenship or residence prolonged in the territory, determining inequality factors.

Among the identified causes is the position of the extra worker E.U. in the Italian context, which has difficulty access to work, often linked to the request of Italian citizenship both in relation to public employment and private work, a requirement assessed as a discriminating element.

Furthermore, following the increase in the number of years required to accrue the right to a retirement pension, and the blocking of the signing of new bilateral agreements with third countries, persistent negative results will be determined given the impossibility of accumulating the insurance periods accrued in Italy with those of the countries of origin, it will hinder many to accrue the minimum contribution requirement for the right to benefit.

The Italian legislator over the years has adopted for no-E.U. citizens various systems related to the guarantee of social security rights.

At the beginning the immigrant had the opportunity to transfer the contributions in his country in the case of a repatriation completed before the right of retirement²⁷.

Subsequently, as a result of Law 189/2002²⁸, again in the event of repatriation provision pension entitlement, the assignment of contributions was cancelled and the of a benefits at 65 was arranged, both for men and women, even in the presence without contribution lower than the minimum for the right to a pension, measured by the amount of the contributions.

With the entry into force of Law No. 214/2011, called the Fornero social security reform, the retirement age has been increased to 66 years and the minimum contribution to 20 years. However, the possibility remains, however, for no-E.U. workers insured after 1996 and repatriated before having matured the new minimum, to be able to obtain a pension at the age of 66, in the manner described above.

Therefore, the immigrant worker, in the hypothesis of a return to his country before having matured the right to retirement according to Italian law, can obtain the totalization of social security contributions accrued in Italy with those paid in his own country, only on condition that in force a convention that allows it²⁹.

²⁷ Governo italiano, 1995. Legge n° 335/1995. Riforma del sistema pensionistico obbligatorio e complementare.

Legislative text retrieved in September 2018 on the institutional website of I.N.P.S.:
<https://www.inps.it/nuovoportaleinps/default.aspx?itemdir=50735>

²⁸ Governo italiano, 2002. Legge n° 189 del 30/07/2002, art. 18 comma 13. Modifica alla normativa in materia di immigrazione e di asilo.

Legislative text retrieved in September 2018 on the institutional website of the Chamber of Deputies of Italian Parliament: <http://www.camera.it/parlam/leggi/021891.htm>

²⁹ Signorini, M. e Bonifazi, P., 2012. Liquidazione dei contributi INPS ai cittadini non comunitari rimpatriati. Pag. 160. Roma, Italia. IDOS Edizioni.

In the absence of a convention, the worker who decides to repatriate retains the accrued social security and security rights, but can only benefit from the retirement age and upon completion of the minimum contribution requirement based on the legislation in force in Italy. When these requirements are not met, the foreign citizen, man or woman, at the age of 66 can ask for the portion of the pension relative to his reduced seniority in contributions.

It is not possible, after the entry into force of Law No. 189/2002, that foreign workers returning to their countries of origin, suspending their work activity in Italy, obtain reimbursement of contributions paid in Italy³⁰.

Often no-E.U. citizens, in order to see their rights recognized, are forced to turn to the courts, which resume the path outlined by the jurisprudence contained in article 3 of the Italian Constitution³¹ and article 2 of the Law on Immigration³² which establish the universality of fundamental rights and equality in the exercise of civil and social rights. Relevant was the intervention of the Italian Constitutional Court that declared the acts of the Public Administration unconstitutional, where it limits the access of foreigners to social benefits linked to the requirement of residence on the national territory for at least five years.

The Constitutional judge declared the unequal treatment introduced in the regulations of some Regions where for third-country nationals who are not long-term residents, refugees or holders of subsidiary protection, an additional requirement for seniority of residence of five years in the territory was unconstitutional national for the purpose of obtaining welfare benefits related to the fight against poverty, the support of family income and the social right to housing, while for Italian citizens and other E.U. member

³⁰ Aronica, G., Candida, F. e Fucilitti, A., 2012. I diritti previdenziali dei lavoratori non comunitari in caso di rimpatrio. Dossier Statistico Immigrazione 2012. Roma, Italia. Edizioni IDOS.

³¹ Article 3 of the Italian Constitution:

All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinions, personal and social conditions. It is the task of the Republic to remove the economic and social obstacles which, by limiting the freedom and equality of citizens, prevent the full development of the human person and the effective participation of all workers in political, economic organization. and social life of the country.

³² Art. 2 of the Law n. 943 of 30/12/1986: Rights and duties of the foreigner:

1. Any foreign person present at the border or in the territory of the State shall recognize the fundamental rights of the human person provided for by the rules of domestic law, international conventions in force and generally recognized principles of international law.

2. A foreigner legally residing in the territory of the State enjoys the rights in civil matters attributed to the Italian citizen, unless the international conventions in force for Italy and the present consolidated text provide otherwise. In cases where the present single text or the international conventions provide for the condition of reciprocity, it is ascertained according to the criteria and methods provided for in the implementing regulation.

3. The Italian Republic, implementing the ILO Convention n. 143 of 24 June 1975, ratified by law 10 April 1981, n. 158, guarantees all foreign workers legally residing in its territory and their families equal treatment and full equality of rights compared to Italian workers.

4. The regularly residing foreigner participates in local public life.

5. The foreigner is recognized equal treatment with the citizen in relation to the judicial protection of legitimate rights and interests, in relations with the public administration and in access to public services, within the limits and ways provided by law.

countries and their family members, as well as for long residents and refugees, only a retirement age requirement was provided.

According to the constitutional judge it is discriminating to assume that immigrant foreigners have been less in need of less time than those who live or stay for several years in the host country.

In this sense, the Court has recognized the illegality of the unequal treatment because the distinction based on citizenship and seniority of residence in the national territory does not have a logical connection with the aims of social protection institutions, aimed at remedying conditions of necessity and discomfort, indicating them as arbitrary and intrinsically discriminatory criteria³³.

The necessary link between the foreign citizen is not E.U. and the community where he/she is staying is already insured by the residence permit for at least one year, provided for by article 41 of the Law on Immigration³⁴, a sufficient requirement for exercising the right to equal treatment with regard to the use of social assistance benefits. This directive, in fact, also extends the principle of equal treatment in the social security sectors defined by the Community Regulation No. 883/2004 to include workers from third countries residing in a Member State for work purposes. Also family benefits intended as support for family expenses, as well as mixed social assistance services, that is to say assistance as not financed by individual social security contributions, but which represent subjective rights in accordance with current legislation.

The limitation of the access of immigrants to welfare benefits hinder the integration of the foreigner on the national territory.

There is no single multicultural model, which can be used in all the E.U. countries, each country should create its own model with characteristics of dynamism and flexibility. Italy needs to grow socially by keeping under control the forms of discrimination that accompany migratory processes, the aspects of alarmism, closure and/or foreclosure in some contexts. The migration phenomenon is reflected in a national regulatory framework that poses concrete obstacles to the full enjoyment of social rights. The logic of existing national legislation, based on the employment contract as the sole principle of regulating migration flows and the temporary nature of the phenomenon, makes the living conditions of immigrants precarious.

Foreigners holding a residence permit or residence permit of not less than one year, as well as minors enrolled in their residence card or in their residence permit, are treated as Italian citizens for the purpose of using the provisions and services, also economic, social assistance, including those provided for those suffering from Hansen's disease or tuberculosis, for the deaf-mutes, for the blind civilians, for the civil disabled and for the indigent.

³³ Corte Costituzionale, 2013. Judgment n° 222/2018.

Legislative text retrieved in August 2018 on the institutional website of Constitutional Court: <https://www.cortecostituzionale.it/actionSchedaPronuncia.do?anno=2013&numero=222>

³⁴ Article 41 of Law No. 943 of 30 December 1986: *Social Assistance*.

We need to increase the opportunities for comparison based on the assumptions of co-responsibility that is finalized in a "pact of cohabitation" between foreigners, Italians and institutions, at the basis of which is the exercise of rights and respect for the duties provided for by the law and the Italian Constitution. The rapidity of the process of growth of the migratory phenomenon, and the consequent abrupt socio-demographic changes impose the development of actions aimed at preventing and resolving situations of possible social conflict in the territorial contexts.

V. CONCLUSIONS

Social security is a considerable support for sustainable economic growth and an instrument for reducing poverty and inequality, protecting individuals with specific actions aimed at health, unemployment, sickness, disability and retirement. Although all the states of the E.U. have in common the approach of ensuring the well-being of their citizens through efficient social security systems, each state has its own rules to identify who is entitled to receive social security benefits and under what conditions.

In Italy, all workers who perform a remunerated activity are compulsorily insured by the social security system, financed by the contributions paid by the worker and by the employer and, in addition, by the public resources.

In the last decade, more restrictive guidelines have been introduced in Italian legislation in the immigration rules³⁵.

Although the existence of the agreement between Italy and Tunisia for the application of the convention on social security, it still represents the operational criticalities that have been indicated in the provision of family benefits and were addressed in March 2016 and 2018 in the a specific technical meeting between the representatives of I.N.P.S., the Ministry of Labour and Social Policies and the Tunisian National Social Security Bureau³⁶, with the need to review the legislation, in order to achieve the necessary legislative harmonization for a more tangible protection policy and, therefore, better usable by the person, without however having reached a resolution.

This result is determined by the choice of Italian Governments not to want to renegotiate any of the bilateral agreements stipulated³⁷.

³⁵ Article 18 paragraph 13 of Law No. 189/2002. *Subordinate and permanent employment and self-employment*:

Except for seasonal workers under Article 25, paragraph 5, in case of repatriation the non-E.U. worker retains the social security and social security rights accrued and can enjoy them regardless of the validity of a reciprocity agreement when the requisites established by current legislation have matured, at the age of 65, also by way of derogation from the minimum contribution requirement provided for by article 1, paragraph 20, of the law of 8 August 1995, No. 335

³⁶ Operational note of I.N.P.S. No. 1027 of 07 March 2018.

Legislative text retrieved in October 2018 from the INPS institutional website:

<https://www.inps.it/convenzione-bilaterale-italo-tunisina-di-sicurezza-sociale-chiarimenti-sullo-scambio-di-informazioni-in-matter-of-performance-familiari.html>

³⁷ International Policy Observatory of the Italian Parliament. *Enlarged Mediterranean Focus*, No. 6 of January 2018. ISPI Publisher.

Legislative text retrieved in October 2018 from the Italian Parliament institutional website :

Some Italian Regions, including Sicily, had proposed to Governments that have succeeded between 2012 and 2014 to independently enter into bilateral agreements with Tunisia, for a certain number of workers, even for a fixed term taking charge of half of the social spending, starting with the 1984 Agreement.

Since the bilateral agreements are legally equivalent to international conventions and are therefore legal transactions under international law by virtue of which the contracting States undertake the obligation to establish and coordinate a social insurance scheme having the character of reciprocity and guaranteeing the free movement of citizens, are framed within the exclusive sphere of competence of the central State, and therefore the Regions have no juridical possibility of being able to exercise any contract law independently.

Another sign of the poor consideration of the social security needs of no-E.U. immigrants was implemented by bringing the contribution requirement for reaching the 20 year old age pension for all taxpayers.

It has not been taken into consideration that many countries of origin of immigrants are not linked to Italy by any convention that allows the totalization of insurance periods. Apparently the 20 year contributory requirement is not discriminatory towards immigrants, but in fact it is burdensome for those coming from abroad, working with fixed-term contracts, therefore in a fragmented way and often it is induced to return home rather time due to loss of job and non-renewal of residence permit. If one considers that Italy is not proceeding with the stipulation of new bilateral social security agreements, it comes to the definition that the concern to defend the social security rights of immigrants still has insufficient weight in the political migratory decisions³⁸. This aspect, although recognized as discriminating, has been remedied through the intervention of judges of merit. In fact, the legislation can intervene only on the case treated and can not impose on the social security body to issue provisions in other similar cases.

The Italian legislator cannot condition the provision of certain social security and welfare benefits, discriminating against foreigners, limiting the enjoyment of fundamental rights allowed instead to citizens.

To rectify this balance, the Constitutional Judge has repeatedly intervened, legitimacy and merit, which on several occasions has taken the principle of equality as the right of the individual, modifying the situations of exclusion at national, regional and local level of foreign citizens from life daily.

<https://www.parlamento.it/application/xmanager/projects/parlamento/file/repository/affariinternazionali/osservatorio/focus/PI0006ISPIMed.pdf>

³⁸ Biondi Dal Monte, F. 2011. Welfare, immigrazione e non discriminazione: Quando i diritti costruiscono l'integrazione. Paper for the Espanet Conference. Innovare il welfare. Percorsi di trasformazione in Italia e in Europa.

Article retrieved in September 2018 from the website:

espanet-italia.net/conferenza2011/edocs2/sess.16/16-biondi%20dal%20monte.pdf.

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Even the European Court of Justice has condemned Italy for violation of Article 14 of the C.E.D.U. (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life), for not having granted on equal terms with citizens the provision of social benefits to a Tunisian citizen, father of 4 children, residing regularly in Italy with a residence permit for work.

The denial of the concession by the I.N.P.S. the allowance for a large family, provided for by article 54 of Law No. 448 of 1998, was justified by the provision of provision for families composed of Italians residing in Italy.

Not even by virtue of the Italy – Tunisian Agreement was it possible to grant this provision, since the latter concerned exclusively social security benefits and not welfare benefits.

The Court confirmed the claim of the claimant claiming the benefit in question due to the fact that large families are exposed to substantial expenses, mainly related to the maintenance and education of their children. The State therefore has a positive obligation to protect the family, as required by article 8 of the C.E.D.U.³⁹.

Only through the recovery of the principle of non-discrimination of the foreigner can therefore be ensured its concrete integration into civil society.

To encourage the path of inclusion, it would suffice to refer to our Constitution, European and international legislation and the Convention on the Fundamental Rights of Man, which provide effective principles, devices, objectives which, in order to materialize, require effective participation above all by those who have political and institutional responsibilities, in order to create a more just and intercultural civil society. Integration policies stand as a support for sustainable economic growth and an instrument for reducing poverty and inequality, protecting individuals with specific actions aimed at health, unemployment, sickness, disability and retirement.

Supporting access to welfare represents the opportunity to allocate existing services, able to support the problems shown by foreign citizens or who are in a situation of difficulty, even temporary or linked to prejudices and forms of discrimination. Within the integration policies, the themes of socialization and opposition to prejudices are centralized, the realization of projects to widen the knowledge of rights and duties and to foster a sense of responsibility in the new and old citizens, a theme for which Tunisian citizens, who have been resident in Italy for some decades, could represent a capable model to which other foreign citizens could aspire.

But the rigidity of the rules on immigration and integration, introduced gradually by the Italian State, risks fading the path so far made by the Tunisian community, and the failure to negotiate the Bilateral Agreement of 1984 represents a disregard for inclusion in the social life, for personal and social sensibilities, for the social equilibrium that moves, but which in any case remain decisive objectives for the growth of a supportive and protective State that every Government should pursue.

³⁹ Judgment No. 17120 of 8 April 2009 of European Court of Justice: Dhahbi vs. Italy.