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Judgment of the Court of Justice in Joined Cases C-112/22 CU and C-223/22 ND | (Social assistance – Indirect discrimination)

Social assistance: access for third-country nationals who are long-term residents to a social security, social assistance or social protection measure cannot be made conditional on the requirement of having resided in a Member State for at least 10 years

A Member State cannot make access for third-country nationals who are long-term residents to a social security, social assistance or social protection measure conditional on the requirement, which also applies to nationals of that Member State, of having resided in that Member State for at least 10 years, the final 2 years of which must be consecutive. It is also prohibited from providing for a criminal penalty for a false declaration regarding that unlawful residency condition.

Two third-country nationals who are long-term residents in Italy are accused of having committed a criminal offence. They are claimed to have applied for 'basic income', a social benefit intended to ensure a minimum level of subsistence. It is alleged that they have falsely declared that they satisfied the eligibility criteria for that benefit, including the condition of residence for a minimum period of 10 years in Italy, the final 2 years of which must be consecutive. On that basis, they are alleged to have unduly received total amounts of €3 414.40 and €3 186.66, respectively. The District Court, Naples (Italy) asks the Court of Justice whether that residency condition complies with the directive on third-country nationals who are long-term residents ¹.

The Court considers, first of all, that the residency condition at issue **constitutes indirect discrimination towards third-country nationals who are long-term residents**. Even though that condition also applies to nationals of the Member State, it affects primarily non-nationals, which includes, inter alia, those third-country nationals.

Next, the Court examines whether that difference in treatment can be justified by the respective links of nationals of a Member State and of third-country nationals who are long-term residents with the Member State concerned. The Court states that **the directive lays down a condition of legal and continuous residence of five years in a Member State** for a third-country national to be granted long-term resident status. The EU legislature considered that **period to be sufficient for entitlement to equal treatment** with the nationals of that Member State, in particular as regards social security, social assistance and social protection. As a result, **a Member State cannot extend unilaterally the period of residence required by the directive** for a third-country national who is a long-term resident to enjoy equal treatment with the nationals of that Member State regarding access to such a measure.

Lastly, the Court notes that **it is also prohibited for the Member State concerned to provide for a criminal penalty** for a false declaration regarding a residency condition that infringes EU law.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ [Council Directive 2003/109/EC](#) of 25 November 2003 concerning the status of third-country nationals who are long-term residents.