

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

29 July 2024 (*)

(Reference for a preliminary ruling – Status of third-country nationals who are long-term residents – Directive 2003/109/EC – Article 11(1)(d) – Equal treatment – Social security, social assistance and social protection measures – Residency condition of 10 years, the final 2 years of which must be consecutive – Indirect discrimination)

In Joined Cases C-112/22 and C-223/22,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Tribunale di Napoli (District Court, Naples, Italy), made by decisions of 16 February 2022 and 22 March 2022, received at the Court on 17 February 2022 and 29 March 2022, respectively, in the criminal proceedings concerning

CU (C-112/22),

ND (C-223/22),

intervening parties:

Procura della Repubblica presso il Tribunale di Napoli (C-112/22 and C-223/22),

Ministero dell'Economia e delle Finanze (C-112/22 and C-223/22),

Istituto nazionale della previdenza sociale (INPS) (C-223/22),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, A. Prechal, K. Jürimäe, F. Biltgen and N. Piçarra, Presidents of Chambers, S. Rodin, P.G. Xuereb, I. Jarukaitis (Rapporteur), N. Wahl, I. Ziemele and J. Passer, Judges,

Advocate General: P. Pikamäe,

Registrar: C. Di Bella, Administrator,

having regard to the written procedure and further to the hearing on 3 October 2023,

after considering the observations submitted on behalf of:

- CU and ND, by M. Costantino, avvocata,
- the Italian Government, by G. Palmieri, acting as Agent, and by S. Fiorentino and P. Gentili, avvocati dello Stato,
- the European Commission, by A. Katsimerou, B.-R. Killmann and P.A. Messina, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 25 January 2024,

gives the following

Judgment

- 1 These requests for a preliminary ruling concern the interpretation of Articles 18 and 45 TFEU, Article 34 of the Charter of Fundamental Rights of the European Union ('the Charter'), Articles 30 and 31 of the European Social Charter signed at Turin on 18 October 1961 at the Council of Europe and revised at Strasbourg on 3 May 1996 ('the European Social Charter'), Article 11(1)(d) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44), Article 7(2) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ 2011 L 141, p. 1) and Article 29 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).
- 2 The requests have been made in criminal proceedings against, in Case C-112/22, CU, and, in Case C-223/22, ND, for false declarations regarding the conditions of access to 'basic income'.

Legal context

European Union law

Directive 2003/109

- 3 Recitals 2 to 4, 6 and 12 of Directive 2003/109 state:
 - '(2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, stated that the legal status of third-country nationals should be approximated to that of Member States' nationals and that a person who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by citizens of the European Union.
 - (3) This Directive respects the fundamental rights and observes the principles recognised in particular by the European Convention for the Protection of Human Rights and Fundamental Freedoms and by the [Charter].
 - (4) The integration of third-country nationals who are long-term residents in the Member States is a key element in promoting economic and social cohesion, a fundamental objective of the Community stated in the Treaty.
 - ...
 - (6) The main criterion for acquiring the status of long-term resident should be the duration of residence in the territory of a Member State. Residence should be both legal and continuous in order to show that the person has put down roots in the country. Provision should be made for a degree of flexibility so that account can be taken of circumstances in which a person might have to leave the territory on a temporary basis.
 - ...
 - (12) In order to constitute a genuine instrument for the integration of long-term residents into society in which they live, long-term residents should enjoy equality of treatment with citizens of the Member State in a wide range of economic and social matters, under the relevant conditions defined by this Directive.'

4 Paragraphs (a) and (b) of Article 2 of that directive, entitled ‘Definitions’, provide:

‘For the purposes of this Directive:

- (a) “third-country national” means any person who is not a citizen of the Union within the meaning of Article 17(1) [EC];
- (b) “long-term resident” means any third-country national who has long-term resident status as provided for under Articles 4 to 7’.

5 Article 4 of that directive, entitled ‘Duration of residence’, provides, in paragraph 1:

‘Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application.’

6 Article 5 of Directive 2003/109 lays down the conditions for acquiring long-term resident status. Pursuant to Article 5(1)(a) and (b), Member States are to require third-country nationals to provide evidence that they have, for themselves and for dependent family members, first, stable and regular resources sufficient to maintain himself or herself and the members of his or her family, without recourse to the social assistance system of the Member State concerned and, second, sickness insurance in respect of all risks normally covered for his or her own nationals in the Member State concerned. Article 5(2) provides that Member States may also require third-country nationals to comply with integration conditions, in accordance with national law.

7 Pursuant to Article 7(1) of the directive, in order to acquire long-term resident status, the third-country national concerned is to lodge an application with the competent authorities of the Member State in which he or she resides, accompanied by documentary evidence to be determined by national law that he or she meets the conditions set out in Articles 4 and 5 of that directive.

8 Article 11 of the directive, entitled ‘Equal treatment’, provides, in paragraphs 1, 2 and 4:

‘1. Long-term residents shall enjoy equal treatment with nationals as regards:

...

(d) social security, social assistance and social protection as defined by national law;

...

2. With respect to the provisions of paragraph 1, points (b), (d), (e), (f) and (g), the Member State concerned may restrict equal treatment to cases where the registered or usual place of residence of the long-term resident, or that of family members for whom he/she claims benefits, lies within the territory of the Member State concerned.

...

4. Member States may limit equal treatment in respect of social assistance and social protection to core benefits.’

Regulation No 492/2011

9 According to Article 7 of Regulation No 492/2011, which forms part of Section 2, entitled ‘Employment and equality of treatment’, of Chapter I, entitled ‘Employment, equal treatment and workers’ families’, of that regulation:

‘1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, should he become unemployed, reinstatement or re-employment.

2. He shall enjoy the same social and tax advantages as national workers.

...’

Directive 2011/95

10 Article 29 of Directive 2011/95, entitled ‘Social welfare’, provides, in paragraph 1:

‘Member States shall ensure that beneficiaries of international protection receive, in the Member State that has granted such protection, the necessary social assistance as provided to nationals of that Member State.’

Italian law

11 Article 1 of decreto-legge n. 4 ‘Disposizioni urgenti in materia di reddito di cittadinanza e di pensioni’ (Decree-Law No 4 containing urgent provisions on basic income and pensions) of 28 January 2019 (GURI No 23 of 28 January 2019), converted into law by legge n. 26 (Law No 26) of 28 March 2019 (GURI No 75 of 29 March 2019) (‘Decree-Law No 4/2019’), provides, in paragraph 1:

‘From April 2019, basic income ... shall be established as a fundamental measure of active employment policy to guarantee the right to work, to combat poverty, inequality and social exclusion, and to promote the right to information, education, training and culture by means of policies for the economic support and social inclusion of persons at risk of exclusion from society and from the world of work. [Basic income] constitutes an essential benefit within the limits of available resources.’

12 Article 2 of that decree-law, entitled ‘Beneficiaries’, defines the conditions for accessing basic income. Those conditions relate, first, to the nationality, permanent residence or residence of the applicant and, second, more specifically, to the income, assets and durable goods of the applicant’s household. Regarding the first set of conditions, Article 2(1) provides:

‘[Basic income] shall be granted to households that, at the time the application is made and throughout the period for which the benefit is paid, satisfy the following cumulative conditions:

(a) with regard to the conditions relating to nationality, permanent residence or residence, the member of the household who is claiming the benefit must cumulatively:

- (1) hold Italian nationality or that of a Member State of the European Union, or [be a] family member thereof ... who has the right of residence or permanent residence, or [be] a third-country national holding an EU long-term residence permit;
- (2) have been resident in Italy for at least 10 years, the final 2 years of which, at the time the application is made and throughout the period for which the benefit is paid, must be consecutive;

...’

13 Article 3 of that decree-law, headed ‘Economic benefit’, stipulates, in paragraph 1:

‘The economic benefit of [basic income], on an annual basis, is comprised of the following two components:

- (a) a component intended to supplement the household income ... up to a threshold of EUR 6 000 per year multiplied by the corresponding parameter of the equivalence scale ...;
- (b) a component intended to supplement the income of households living in rented accommodation, equal to the amount of the annual rent provided for in the tenancy agreement ... capped at EUR 3 360 per year.'

14 Article 7 of that decree-law, headed 'Penalties', provides, in paragraph 1:

'Save where the act constitutes a more serious criminal offence, any person who, for the purpose of obtaining unduly the benefit referred to in Article 3, makes or uses declarations or documents which are false or certify matters which are untrue, or fails to supply the information required, shall be liable to a term of imprisonment of two to six years.'

The disputes in the main proceedings and the questions referred for a preliminary ruling

- 15 CU and ND are third-country nationals who are long-term residents in Italy. CU was registered as a resident in Italy on 29 March 2012, and ND was registered as a resident in Italy on 24 March 2013.
- 16 CU and ND are accused by the Pubblico Ministero della Procura della Repubblica presso il Tribunale di Napoli (Public Prosecutor's Office at the District Court, Naples, Italy) of having committed the offence laid down in Article 7(1) of Decree-Law No 4/2019, in that, on 27 August 2020 and 9 October 2020, respectively, they applied for 'basic income', having falsely declared, in their applications, that they satisfied the eligibility criteria for that benefit, including the condition of residence for a minimum period of 10 years in Italy as provided for by that decree-law. On that basis, CU and ND are alleged to have unduly received total amounts of EUR 3 414.40 and EUR 3 186.66, respectively.
- 17 The Tribunale di Napoli (District Court, Naples, Italy), the referring court, is uncertain as to whether Decree-Law No 4/2019 is consistent with EU law, in so far as that decree-law requires, inter alia, third-country nationals to have resided in Italy for at least 10 years, the final 2 years of which must be consecutive, in order to receive 'basic income', which is characterised as a social assistance benefit intended to ensure a minimum level of subsistence. That court considers that, in this way, the decree-law establishes less favourable treatment of those nationals, including those who hold long-term residence permits, compared to that accorded to nationals.
- 18 According to the referring court, 'basic income' is a social assistance benefit intended to ensure a minimum level of subsistence, which falls within one of the three categories mentioned in Article 11(1)(d) of Directive 2003/109, namely social security, social assistance and social protection, as defined by national law. Further, Article 11(4) of that directive is irrelevant in the present case, as the Italian State did not restrict, when adopting the national legislation at issue in the main proceedings, equal treatment to core benefits. Moreover, even if it were provided for by that legislation, such a restriction would be contrary to Directive 2003/109 in so far as, according to the last sentence of Article 1(1) of Decree-Law No 4/2019, 'basic income' constitutes an essential benefit within the limits of available resources.
- 19 The referring court recalls that, in the judgment of 24 April 2012, *Kamberaj* (C-571/10, EU:C:2012:233), the Court ruled that Article 11(1)(d) of Directive 2003/109 must be interpreted as precluding a national law which provides, with regard to the grant of housing benefit, for different treatment for third-country nationals enjoying the status of long-term resident conferred pursuant to the provisions of that directive compared to that accorded to nationals. It also cites the judgments of 27 March 1985, *Hoeckx* (249/83, EU:C:1985:139), and of 27 March 1985, *Scrivner and Cole* (122/84, EU:C:1985:145), which relate to a social assistance measure comparable to 'basic income'. In those judgments, the Court held that, under Regulation No 492/2011, such a measure must be granted both to national workers and to workers from other Member States.

20 By contrast, the Court has not yet ruled as to whether a national rule providing for ‘basic income’ to be granted only to applicants fulfilling a residency condition such as that in the main proceedings is consistent with EU law. Further, should the condition laid down in Article 2(1)(a)(2) of Decree-Law No 4/2019 be found to be unlawful, the material element of the criminal offence concerned would disappear, such that an answer to that question is necessary in order to rule on the cases in the main proceedings.

21 In those circumstances, the Tribunale di Napoli (District Court, Naples) decided to stay the proceedings and to refer the following questions, worded identically in Joined Cases C-112/22 and C-223/22, to the Court of Justice for a preliminary ruling:

- ‘(1) Does European Union law, and in particular [Articles 18 and 45 TFEU], Article 7(2) of [Regulation No 492/2011], Article 11(1)(d) of [Directive 2003/109], Article 29 of [Directive 2011/95], Article 34 of the [Charter] and Articles 30 and 31 of the [European Social Charter], preclude national legislation such as that contained in Article 7(1), read in conjunction with Article 2(1)(a) [of Decree-Law No 4/2019] in so far as it makes access to “basic income” subject to the condition relating to residence in Italy for at least 10 years (the final [2 years] of which, as at the time the application is made and for the entire duration of the benefit, must be consecutive), thus affording treatment to Italian nationals, EU nationals with a right of residence or permanent residence, or [third-country nationals] who have been long-term residents [in Italy] for less than 10 years or for 10 years, the final [2 years] of which were not consecutive, which is less favourable than that accorded to the same categories who have been resident for 10 years, the final [2 years] of which were consecutive?’

If the answer to the previous question is in the affirmative:

- (2) Does European Union law, and in particular Article 18 [TFEU], Article 45 [TFEU], Article 7(2) of [Regulation No 492/2011], Article 11(1)(d) of [Directive 2003/109], Article 29 of [Directive 2011/95], Article 34 of the [Charter] and Articles 30 and 31 of the [European Social Charter], preclude national legislation such as that contained in Article 7(1) [of Decree-Law No 4/2019], read in conjunction with Article 2(1)(a) [of that same decree-law], in so far as it affords different treatment to long-term residents, who can acquire a permanent right of residence in an EU State after residing for 5 years in the host Member State, and long-term residents who have been resident [in Italy] for 10 years, the final [2 years] of which were consecutive?
- (3) Does European Union law, and in particular [Articles 18 and 45 TFEU], Article 7(2) of [Regulation No 492/2011], Article 11(1)(d) of [Directive 2003/109] and Article 29 of [Directive 2011/95], preclude national legislation such as that contained in Article 7(1) [of Decree-Law No 4/2019], read in conjunction with Article 2(1)(a) [of that same decree-law], which requires Italian nationals, EU nationals and [third-country] nationals to be resident for 10 years (the final [2 years] of which must be consecutive) in order to access ‘basic income’ benefit?
- (4) Does European Union law, and in particular [Articles 18 and 45 TFEU], Article 7(2) of [Regulation No 492/2011], Article 11(1)(d) of [Directive 2003/109], Article 29 of [Directive 2011/95], Article 34 of the [Charter] and Articles 30 and 31 of the [European Social Charter], preclude national legislation such as that contained in Article 7(1) [of Decree-Law No 4/2019], read in conjunction with Article 2(1)(a) [of that same decree-law], in so far as it, for the purposes of obtaining “basic income” benefit, requires Italian nationals, EU nationals and [third-country] nationals to declare that they have resided in Italy for 10 years, the final [2 years] of which must be consecutive, subjecting false declarations to [serious criminal sanctions]?’

Procedure before the Court

22 By decision of the President of the Court of 3 May 2022, Cases C-112/22 and C-223/22 were joined for the purposes of the written and oral parts of the procedure and of the judgment.

- 23 On 8 May 2023, the Court sent the referring court a request for clarification pursuant to Article 101(1) of the Rules of Procedure, inviting it to state the legal status of the persons concerned by the criminal cases in the main proceedings and the specific provisions of EU law, the interpretation of which that court deems necessary in order to rule on the cases before it, applicable to those persons. The referring court replied to that request on 9 June 2023 in C-223/22 and on 13 June 2023 in Case C-112/22, stating that the persons concerned by the main proceedings are third-country nationals who are long-term residents in Italy. In addition, in the reply provided in Case C-112/22, the referring court confirmed that it sought an interpretation of Article 11(1)(d) of Directive 2003/109, which it considered to be useful for the resolution of the case in the main proceedings.
- 24 In accordance with the third paragraph of Article 16 of the Statute of the Court of Justice of the European Union, the Italian Republic requested that the present cases be heard in the Grand Chamber, which was accepted by the Court on 10 July 2023.

The jurisdiction of the Court

- 25 The Italian Government submits, in its written observations, that the Court lacks jurisdiction to answer the questions referred, given that the national provisions applicable in the main proceedings concern a benefit laid down in national legislation stemming from the exercise of exclusive competence of the Member States. The ‘basic income’ in question in the main proceedings is not a social protection or social assistance measure, the aim of which is to provide the persons concerned with a certain level of income, but is rather a complex measure intended above all to support social inclusion and the integration of the persons concerned into the workplace.
- 26 In that connection, the Court observes that the requests for a preliminary ruling concern the interpretation of EU law, Article 11(1)(d) of Directive 2003/109 in particular, which clearly falls within the jurisdiction of the Court (see, to that effect, judgment of 22 March 2022, *Prokurator Generalny (Disciplinary Chamber of the Supreme Court – Appointment)*, C-508/19, EU:C:2022:201, paragraph 57 and the case-law cited).
- 27 In addition, in so far as the Italian Government, by its argument, intends to dispute that the ‘basic income’ in question in the main proceedings comes within the scope of Article 11(1)(d) of Directive 2003/109, the Court observes that, as that government observed at the hearing before the Court, that argument is not liable to call into question the Court’s jurisdiction to answer the questions referred, but must be assessed in the context of the examination of the substance of the cases (see, to that effect, judgment of 24 April 2012, *Kamberaj*, C-571/10, EU:C:2012:233, paragraph 76).
- 28 However, it must be stated that the national court also refers, in its questions, to Articles 30 and 31 of the European Social Charter. Although, according to the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17), Article 34(3) thereof draws on Articles 30 and 31 of the revised European Social Charter, it is settled case-law that the Court does not have jurisdiction to interpret that charter (see, to that effect, judgment of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi*, C-561/19, EU:C:2021:799, paragraph 70 and the case-law cited).
- 29 It follows that the Court has jurisdiction to rule on the requests for a preliminary ruling, except where they relate to the provisions of the European Social Charter.

Consideration of the questions referred

- 30 As a preliminary point, it should be borne in mind that, according to settled case-law, in the context of the procedure laid down in Article 267 TFEU which provides for cooperation between national courts and the Court of Justice, it is for the Court to provide the referring court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court may have to reword the questions referred to it, extracting from all the information provided by the national court, in particular from the grounds of

the order for reference, the points of EU law which require interpretation in view of the subject matter of the dispute (see, to that effect, judgment of 29 February 2024, *Eesti Vabariik (Põllumajanduse Registrite ja Informatsiooni Amet) and Others*, C-437/22, EU:C:2024:176, paragraph 41 and the case-law cited).

- 31 In that connection, the Court notes that the requests for a preliminary ruling refer to several categories of persons who might, according to the referring court, be placed at a disadvantage by the national legislation at issue in the main proceedings, that is, third-country nationals who are long-term residents, certain Italian nationals, EU citizens and third-country nationals who are beneficiaries of international protection. Those requests do not, however, specify to which of those categories the persons concerned in the main proceedings belong.
- 32 Nevertheless, as observed in paragraph 23 of the present judgment, in its replies to the Court's request for clarifications, the referring court stated that the persons in question in the main proceedings are third-country nationals who are long-term residents in Italy. In addition, in Case C-112/22, it confirmed that the provision the interpretation of which is useful for the main proceedings is Article 11(1)(d) of Directive 2003/109. It is that provision, read in the light of Article 34 of the Charter – not Articles 18 and 45 TFEU, Article 7(2) of Regulation No 492/2011 or Article 29 of Directive 2011/95, also mentioned in the questions referred – which is applicable to that category of persons. Those provisions must therefore be disregarded, as they are unconnected to the disputes in the main proceedings.
- 33 In the light of the foregoing, the Court considers that, by its questions, which it is appropriate to consider together, the referring court is asking, in essence, whether Article 11(1)(d) of Directive 2003/109, read in the light of Article 34 of the Charter, must be interpreted as precluding legislation of a Member State which makes 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, and which provides for a criminal penalty for any false declaration regarding that residency condition.
- 34 Under Article 11(1)(d) of Directive 2003/109, long-term residents enjoy equal treatment with nationals as regards social security, social assistance and social protection as defined by national law.
- 35 First, given that the Italian Government disputes that the 'basic income' in question in the main proceedings comes within the scope of that provision, it must be noted that, where a provision of EU law makes an express reference to national law, as does Article 11(1)(d) of Directive 2003/109, it is not for the Court to give the terms concerned an autonomous and uniform definition under EU law. Such a reference expresses the intention of the EU legislature to respect the differences between the Member States concerning the meaning and exact scope of the concepts in question. However, the absence of such autonomous and uniform definitions under EU law of the concepts of 'social security', 'social assistance' and 'social protection' and the reference to national law, in that provision, relating to those concepts do not mean that the Member States may undermine the effectiveness of Directive 2003/109 when applying the principle of equal treatment provided for in that provision (judgments of 24 April 2012, *Kamberaj*, C-571/10, EU:C:2012:233, paragraphs 77 and 78, and of 28 October 2021, *ASGI and Others*, C-462/20, EU:C:2021:894, paragraph 31).
- 36 In addition, Article 51(1) of the Charter provides that the Charter's provisions are addressed to the Member States when they are implementing EU law. Similarly, it is clear from recital 3 of Directive 2003/109 that that directive respects fundamental rights and observes the principles recognised in particular by the Charter.
- 37 Consequently, when determining the social security, social assistance and social protection measures defined by their national law and subject to the principle of equal treatment laid down in Article 11(1)(d) of Directive 2003/109, the Member States must comply with the rights and observe the principles provided for under the Charter, including those laid down in Article 34 thereof. Under Article 34(3) of the Charter, in order to combat social exclusion and poverty, the European Union – and thus the Member States when

they are implementing EU law – ‘recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices’ (judgment of 24 April 2012, *Kamberaj*, C-571/10, EU:C:2012:233, paragraph 80).

- 38 Given that both Article 34 of the Charter and Article 11(1)(d) of Directive 2003/109 refer to national law, it is for the referring court to determine whether the ‘basic income’ in question in the main proceedings constitutes a social benefit covered by the directive (see, to that effect, judgments of 24 April 2012, *Kamberaj*, C-571/10, EU:C:2012:233, paragraph 81, and of 28 October 2021, *ASGI and Others*, C-462/20, EU:C:2021:894, paragraph 32).
- 39 As observed in paragraph 18 of the present judgment, that court states in its requests for a preliminary ruling that ‘basic income’ is a social assistance benefit intended to ensure a minimum level of subsistence, which falls within one of the three categories mentioned in Article 11(1)(d) of Directive 2003/109, namely social security, social assistance and social protection as defined by national law.
- 40 Admittedly, the Italian Government disputes that finding by the referring court. However, it must be borne in mind that, according to settled case-law, the Court must take into account, under the division of jurisdiction between the Courts of the European Union and the national courts, the factual and legal context, as set out in the order for reference, of the questions referred for a preliminary ruling. As a result, whatever criticism the government of a Member State may have made of the interpretation of national law adopted by the referring court, the questions referred for a preliminary ruling must be examined in the light of that court’s interpretation, the accuracy of which is not a matter for the Court to determine (see, to that effect, judgments of 21 June 2016, *New Valmar*, C-15/15, EU:C:2016:464, paragraph 25, and of 21 December 2023, *Cofidis*, C-340/22, EU:C:2023:1019, paragraph 31).
- 41 In the present cases, the Court must therefore base its reasoning on the premiss that the ‘basic income’ in question in the main proceedings is a measure covered by Article 11(1)(d) of Directive 2003/109, read in the light of Article 34 of the Charter.
- 42 In addition, although, in accordance with Article 11(4) of Directive 2003/109, Member States may, with regard to social assistance and social protection, limit equal treatment to core benefits, the referring court states in its requests for a preliminary ruling that that provision, which must be interpreted strictly, does not apply in the present cases. According to that court, the Italian authorities responsible for the implementation of that directive did not state clearly that they intended to rely on the derogation provided for in that provision. Moreover, the ‘basic income’ is, precisely, such a ‘core benefit’ within the meaning of that provision. That concept covers benefits which enable individuals to meet their basic needs such as food, accommodation and health (see, in that regard, judgment of 24 April 2012, *Kamberaj*, C-571/10, EU:C:2012:233, paragraphs 86 to 92).
- 43 Second, it should be noted that the system put in place by Directive 2003/109 states clearly that acquisition of long-term resident status conferred by that directive is to be made subject to a specific procedure and, in addition, to fulfilment of all the conditions set out in Chapter II of that directive.
- 44 Article 4(1) of Directive 2003/109 provides that Member States are to grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application. Article 5 of the directive makes acquisition of long-term resident status conditional upon evidence that the third-country nationals who wish to enjoy that status have sufficient resources and sickness insurance. Lastly, Article 7 of the directive lays down the procedural requirements for acquisition of that status.
- 45 Moreover, it is apparent from recitals 2, 4, 6 and 12 of Directive 2003/109 that its objective is the integration of third-country nationals who are settled lawfully and on a long-term basis in the Member States and, for that purpose, to bring the rights of those nationals closer to those enjoyed by EU citizens, inter alia, by establishing equal treatment with the latter in a wide range of economic and social fields.

Thus, long-term resident status enables the person benefiting from it to enjoy equal treatment in the fields covered by Article 11 of the directive, under the conditions laid down in that article (judgment of 25 November 2020, *Istituto nazionale della previdenza sociale (Family benefits for long-term residents)*, C-303/19, EU:C:2020:958, paragraph 28 and the case-law cited).

- 46 As observed by the Advocate General in point 35 of his Opinion, that status corresponds to the highest level of integration for third-country nationals and justifies them being guaranteed equal treatment with nationals of the host Member State, as regards, in particular, social security, social assistance and social protection.
- 47 Third, as to whether the condition of having resided in Italy for a minimum period of 10 years, the final 2 years of which must be consecutive, required under Article 2(1)(a)(2) of Decree-Law No 4/2019, in order to be able to access ‘basic income’ is compatible with Article 11(1)(d) of Directive 2003/109, read in the light of Article 34 of the Charter, the referring court emphasises that that residency condition applies identically to third-country nationals who are long-term residents and to Italian nationals. However, that court observes, in essence, that that condition places third-country nationals who are long-term residents at a disadvantage as compared with Italian nationals who reside in Italy and have not left the territory of that Member State in order to reside abroad for an extended period of time.
- 48 As observed by the Advocate General, in essence, in point 50 of his Opinion, the principle of equal treatment laid down in Article 11 of Directive 2003/109 prohibits not only overt discrimination based on nationality, but also all covert forms of discrimination which, by applying other distinguishing criteria, ultimately have the same effect.
- 49 The Court must therefore ascertain, in the first place, whether a residency condition of 10 years, the final 2 years of which must be consecutive, results in a difference in treatment constituting indirect discrimination towards third-country nationals who are long-term residents as compared with nationals of the Member State concerned.
- 50 In that connection, the Court observes that such a residency condition of 10 years, the final 2 years of which must be consecutive, affects primarily non-nationals, which includes third-country nationals.
- 51 The referring court states, moreover, that the residency condition of 10 years, the final 2 years of which must be consecutive, also affects the interests of Italian nationals who return to Italy after a period of residence in another Member State. However, it is immaterial whether, in some circumstances, the contested measure affects, as well as third-country nationals who are long-term residents, nationals of the Member State in question who are unable to fulfil such a condition. A measure may be regarded as indirectly discriminatory without there being any need for it to have the effect of placing all nationals at an advantage or placing only third-country nationals who are long-term residents at a disadvantage, but not nationals of the State in question (see, by analogy, judgment of 20 June 2013, *Giersch and Others*, C-20/12, EU:C:2013:411, paragraph 45).
- 52 The difference in treatment between third-country nationals who are long-term residents and nationals which results from national legislation laying down a residency condition of 10 years, the final 2 years of which must be consecutive, constitutes indirect discrimination.
- 53 The Court observes, in the second place, that such discrimination is, in principle, prohibited, unless it is justified objectively. In order to be justified, it must be appropriate for securing the attainment of a legitimate objective and must not go beyond what is necessary to attain that objective.
- 54 In that connection, the Italian Government states, in its written observations, that, given that ‘basic income’ is an economic benefit access to which is made conditional on the participation of the adult members of the household concerned in an individualised support programme for employment and social inclusion on the basis of specific agreements, the grant of that benefit involves a process of social and professional integration, which is highly complex administratively. Therefore, according to that

government, the national legislature duly limited access to that measure to third-country nationals who are residing in Italy permanently and are well integrated.

- 55 However, the Court observes that Article 11(2) of Directive 2003/109 provides an exhaustive list of the situations in which Member States may derogate, as regards residence, from equal treatment between third-country nationals who are long-term residents and nationals. Accordingly, outside those situations, a difference in treatment between those two categories of persons is, in itself, an infringement of Article 11(1)(d) of that directive (see, to that effect, judgment of 25 November 2020, *Istituto nazionale della previdenza sociale (Family benefits for long-term residents)*, C-303/19, EU:C:2020:958, paragraph 23).
- 56 In particular, a difference in treatment between third-country nationals who are long-term residents and nationals of the Member State concerned cannot be justified by the fact that they are in a different situation on account of their respective links with that Member State. Such a justification would be contrary to Article 11(1)(d) of Directive 2003/109 which requires equal treatment between them in the fields of social security, social assistance and social protection (judgment of 25 November 2020, *Istituto nazionale della previdenza sociale (Family benefits for long-term residents)*, C-303/19, EU:C:2020:958, paragraph 34).
- 57 As observed in paragraph 44 of the present judgment, Directive 2003/109 lays down, in Article 4(1), 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 by that Member State. It is apparent from that provision, read in conjunction with recital 6 of the directive, that the EU legislature considered that such a legal and continuous residence period shows that the person has ‘put down roots in the country’ and must therefore be regarded as sufficient for that person to be entitled, after acquiring long-term resident status, to equal treatment compared with the nationals of that Member State, in particular as regards social security, social assistance and social protection under Article 11(1)(d) of that directive.
- 58 As a result, Member States cannot, without disregarding that provision and the objective it pursues – consisting, as is clear from recital 12 of that directive, in ensuring that long-term resident status is ‘a genuine instrument for the integration of long-term residents into [the] society in which they live’ – extend unilaterally the required period of residence for such a long-term resident to enjoy the right guaranteed by Article 11(1)(d) of Directive 2003/109.
- 59 It follows that a residency condition of 10 years, the final 2 years of which must be consecutive, such as that at issue in the main proceedings, runs counter to Article 11(1)(d) of Directive 2003/109.
- 60 Fourth and lastly, regarding the compatibility with EU law, and with Directive 2003/109 in particular, of a national provision which provides for a criminal penalty to be imposed on applicants for a social security, social assistance or social protection measure in the event of their false declaration regarding the conditions for accessing such a measure, the Court recalls that it is apparent from its settled case-law that a national penalty mechanism is not compatible with the provisions of Directive 2003/109 where it is imposed in order to ensure compliance with an obligation which itself does not comply with those provisions (see, to that effect, judgment of 26 April 2022, *Landespolizeidirektion Steiermark (Maximum duration of internal border control)*, C-368/20 and C-369/20, EU:C:2022:298, paragraph 97 and the case-law cited).
- 61 Having regard to all the foregoing considerations, the answer to the questions referred is that Article 11(1)(d) of Directive 2003/109, read in the light of Article 34 of the Charter, must be interpreted as precluding legislation of a Member State which makes 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, and which provides for a criminal penalty for any false declaration regarding that residency condition.

Costs

- 62 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Article 11(1)(d) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, read in the light of Article 34 of the Charter of Fundamental Rights of the European Union,

must be interpreted as precluding legislation of a Member State which makes 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, and which provides for a criminal penalty for any false declaration regarding that residency condition.

[Signatures]

* Language of the case: Italian.