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NEWS REPORT

Country:	Italy
Title:	Collective discrimination and legal standing of associations
Date:	14 July 2017
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<u>Context</u>	
Issue at stake:	Legal standing of associations on ground of nationality
Ground of discrimination:	Race/ethnic origin, other (nationality)
Source:	National court decisions, Supreme Court no. 11165/17 and no. 11166/17
Field:	Social advantages
Applicable law:	Legislative decrees no. 215/2003, 286/1998 and 150/2011

Content

Case: In both the two cases, the Italian National Social Security Institute – INPS – rejected the application by a third-country national for a benefit for households having at least three minor children, called ANF. The third-country nationals claimed that the rejection amounted to discrimination, in breach of Art. 11 of Directive 2003/109/EC on the right of equal treatment of long-term residents. The Tribunal in first instance and the Court of appeal in second instance upheld the complaints but INPS appealed to the Supreme Court. The actions were brought to Court by the individual parties and by two associations, ASGI (Associazione Studi Giuridici per l’Immigrazione) and APN (Avvocati per Niente Onlus). INPS contested their legal standing because while they are allowed to act against discrimination on ground of race and ethnic origin (Legislative decree no. 215/2003), there is no express provision allowing them to act also against discrimination on ground of nationality. Moreover, INPS contested that this was a case of collective discrimination, because the exclusion of third-country nationals was provided for by an administrative act, with only potential discriminatory effects.

Decision of the Court: The Supreme Court found that the two associations had legal standing to act against discrimination on ground of nationality, notwithstanding the lack of express provision in this regard in the laws implementing Directive 2003/109 on long-term residents and on antidiscrimination law provisions. The Supreme Court has interpreted the provisions regarding discrimination on the ground of nationality (Immigration Decree 286/1998) according to discrimination on the ground of racial and ethnic origin, mixing up the different provisions. Regarding the collective discrimination, according to the Supreme Court the collective action against discrimination may be brought also against an administrative act that has a dissuasive effect on municipalities and on physical persons potentially affected by the act, persuaded not to apply for the benefit.

Key points of analysis: according to the Court there is a general approach in favour of the extension of legal standing of associations when there is a case of discrimination.

Nationality is the only ground where legal standing is not expressly mentioned in general terms, but only as far as trade unions in the employment sector are concerned (Art. 44, para. 10, Legislative decree no. 286/1998).

Moreover, Directive 2003/109 provides for the right to equal treatment of long term aliens without providing for remedies. Therefore, national remedies apply according to art. 19 TEU and 47 TEU. National remedies must comply with the principles of equivalence and effectiveness. According to the principle of equivalence, civil action against discrimination provided for by legislative decree no. 215/2003 (implementing Directive 2000/43 on discrimination on ground of race and ethnic origin) and art. 28 of legislative decree no. 150/2011 on civil procedural rules apply, thus allowing the right to legal standing to associations also on ground of nationality.

The Supreme Court mentions also the Recommendation of 11 June 2013 (OJ 26.7.2013) on collective actions and the accompanying Communication of the European Commission of the same day, where the relevance of collective actions also in the field on discrimination is underlined.

Internet link source:

[https://www.asgi.it/wp-content/uploads/2017/05/Corte di Cassazione sez lavoro sentenza n 11165 del 8517 pres D%E2%80%99Antonio est Riverso INPS avv Coretti Stumpo e Triolo c ASGI APN .pdf](https://www.asgi.it/wp-content/uploads/2017/05/Corte_di_Cassazione_sez_lavoro_sentenza_n_11165_del_8517_pres_D%E2%80%99Antonio_est_Riverso_INPS_avv_Coretti_Stumpo_e_Triolo_c_ASGI_APN.pdf).

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