

Convention No. 118: Equality of Treatment (Social Security), 1962
Observation 2002/73

Italy (ratification: 1967)

The Committee notes the detailed information provided by the Government and the observations made by the Italian General Confederation of Labour (CGIL) and the Italian General Confederation of Commerce, Tourism and Services (Confcomercio). It would like to draw the Government's attention to the following points.

1. Articles 3, 4 and 10, paragraph 1, of the Convention.

(a) The Committee notes from the information provided by the Government and the CGIL that seasonal workers, who – by virtue of section 5, paragraph 3(b), of Legislative Decree No. 286 of 25 July 1998 (*Testo unico*) – are entitled to a temporary work permit for not more than six or, in special cases, nine months, are no longer covered by the unemployment insurance and family benefit schemes. However, their employer is obliged to pay his share of the corresponding contributions to the National Fund for Migration Policies which provides welfare services to non-Community workers (sections 25 and 45 of Legislative Decree No. 286).

In this respect, the Committee is bound to refer to *Articles 3 and 4, paragraph 1*, of the Convention under which nationals of a member State which has also ratified the Convention shall be granted equality of treatment with Italian nationals as regards both coverage and the right to benefits in respect of every branch of social security for which Italy has accepted the obligations of the Convention, without any condition of residence. As Italy has accepted the obligations of the Convention for branches (h) – unemployment benefit and (i) – family benefit, the Committee hopes that the Government will indicate in its next report the measures taken or envisaged to ensure that seasonal workers who are not nationals of a member State of the European Union or the European Economic Area, but are nationals of a State which has ratified the Convention (Bangladesh, Barbados, Bolivia, Brazil, Cape Verde, Central African Republic, Democratic Republic of the Congo, Ecuador, Egypt, Guinea, Guatemala, Iraq, India, Israel, Jordan, Kenya, Libyan Arab Jamahiriya, Madagascar, Mauritania, Mexico, Pakistan, Philippines, Rwanda, Suriname, Syrian Arab Republic, Tunisia, Turkey, Uruguay, Venezuela), as well as refugees and stateless persons, are also granted access to unemployment and family benefits under the same conditions which apply to Italian nationals.

(b) The Committee also notes from the above information that non-Community women workers, in the case of births occurring after 1 July 2000, are entitled to maternity benefit provided by the INPS only if they hold a residence card. The Committee understands from section 9 of Legislative Decree No. 286 of 25 July 1988, that a residence card can only be obtained after at least five years of legal residence in Italy. Such a condition is contrary to *Articles 3 and 4, paragraph 1*, of the Convention. The Committee would like the Government to indicate in its next report the measures taken or contemplated to ensure that the maternity benefits provided by the INPS are granted to non-nationals

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covered by *Article 3, paragraph 1*, of the Convention, as well as to refugees and stateless persons, under the same conditions as for nationals.

- (c) The Committee notes from the information provided by the Government and the CGIL that foreigners residing in Italy who are not nationals of one of the member States of the European Union or the European Economic Area are, by virtue of section 80(19) of the 2001 Finance Act, No. 388 of 2000, no longer entitled to certain benefits such as the benefits for civilian invalids, the blind and deaf mutes, the social allowance (*l'assegno sociale*), the maternity benefit provided by the communes and the benefit for households with at least three children unless they are holders of a residence card.

The Committee observes that all the abovementioned benefits, although means-tested, are nevertheless social security benefits within the meaning of the Convention. It recalls that under *Article 1(b)* of the Convention, the term “benefits” refers to all benefits, grants and pensions, including any supplements or increments and that, in accordance with *Article 2*, the Convention covers all branches of social security. The Convention therefore applies to all social security benefits whether they are financed by contributions or by the general tax system. Only public assistance is excluded from the scope of the Convention under *Article 10, paragraph 2*.

- (d) *Paragraph 2(a) to (c) of Article 4* of the Convention, however, provides some flexibility with regard to the principle of equality of treatment, by allowing the national legislation to submit *non-contributory benefits* within the meaning of *Article 2, paragraph 6(a)*, of the Convention, i.e. “benefits other than those the granting of which depends either on direct financial participation by the persons protected or the employer, or on a qualifying period of occupational activity”, to a condition of length of residence, which shall not exceed a period of six months for maternity benefit and unemployment benefit; five consecutive years for invalidity or survivors’ benefit; and ten years, including five consecutive years, for old-age benefit. It therefore appears that the requirement imposed upon non-Community foreign nationals to hold a residence card for certain non-contributory benefits can be considered as acceptable under *Article 4, paragraph 2(b) and (c)*, in the case of the benefit for civilian invalids, the blind and deaf mutes, as well as the social allowance (*assegno sociale*). On the other hand, such a requirement may not be acceptable under the Convention for maternity benefit provided by the communes and benefit for households with at least three children since, under *Article 4, paragraph 2*, no condition of residence specific to foreign nationals can be imposed for family benefits, and the residence requirements admissible for maternity benefit is only six months. The Committee therefore requests the Government to indicate in its next report the measures it has taken or envisaged to ensure full application of the Convention on this point.
- (e) The Committee notes that the supplementary contribution of 0.5 per cent payable by non-Community migrant workers to a special fund in the INPS was abolished with effect from January 2000.

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2. As regards the provision of social security benefits in case of residence abroad (*Articles 5 to 8* of the Convention), the Committee refers to the request it is addressing directly to the Government.