



## An immigrant worker of Tunisian origin should not have been deprived of a household allowance on the sole ground of nationality

In today's Chamber judgment in the case of [Dhahbi v. Italy](#) (application no. 17120/09), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights, and**

**a violation of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life) of the European Convention.**

The case concerned the inability of an immigrant worker of Tunisian origin to obtain payment from the Italian public authorities of a family allowance under the association agreement between the European Union (EU) and Tunisia (Euro-Mediterranean Agreement).

The Court noted that the Italian courts had failed to comply with their obligation to give reasons for refusing to submit a preliminary question to the Court of Justice of the European Union (CJEU) in order to determine whether the Euro-Mediterranean Agreement allowed the authorities to refuse to pay the allowance in question to a Tunisian worker. It also noted that Mr Dhahbi's nationality had been the only criterion used to exclude him from entitlement to this allowance. Therefore, given that only very weighty considerations can justify a difference in treatment based exclusively on nationality and despite the budgetary reasons advanced by the Government, the restrictions placed on Mr Dhahbi had been disproportionate.

### Principal facts

The applicant, Bouraoui Dhahbi, is an Italian national who was born in 1960 and lives in Marsala (Italy).

Mr Dhahbi, a Tunisian national at the relevant time, went to Italy on a lawful residence and work permit. He was hired by a company, A., and insured with the National Social Security Agency (INPS). His family was made up of his wife and four under-age children. On 24 May 2001 he applied for the family allowance payable under a Law of 1998. He submitted that even if he did not have Italian nationality, as required under that Law, the allowance was due to him under the Euro-Mediterranean Agreement ratified by Italy in 1997.

Following the rejection of his application in 2002, Mr Dhahbi lodged an appeal. He sought to have a preliminary question referred to the Court of Justice of the European Union (CJEU) (a procedure under which a domestic court can ask the CJEU about the interpretation or validity of EU law) on whether, under the Euro-Mediterranean Agreement, a Tunisian worker could lawfully be refused the family allowance payable under the 1998 Law. His appeal was dismissed in 2004, whereupon he appealed on points of law and repeated his request to have a preliminary question referred to the CJEU. The Court of Cassation dismissed his appeal in 2008.

<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

## Complaints, procedure and composition of the Court

Relying on Article 6 (right to a fair trial), Mr Dhabhi alleged that the Court of Cassation ignored his request to have a preliminary question referred to the CJEU. Relying also on Article 14 (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for private and family life), he submitted that he had been discriminated against on grounds of his nationality regarding an award of the allowance payable under the 1998 Law.

The application was lodged with the European Court of Human Rights on 28 March 2009.

Judgment was given by a Chamber of seven judges, composed as follows:

İşıl **Karakaş** (Turkey), *President*,  
Guido **Raimondi** (Italy),  
Peer **Lorenzen** (Denmark),  
Nebojša **Vučinić** (Montenegro),  
Helen **Keller** (Switzerland),  
Paul **Lemmens** (Belgium),  
Egidijus **Kūris** (Lithuania),

and also Stanley **Naismith**, *Section Registrar*.

## Decision of the Court

### Article 6 § 1 (right to a fair trial)

The Court reiterated that from the angle of Article 6, national courts whose decisions were not open to appeal under domestic law were required to give reasons, based on the applicable law and the exceptions laid down in ECJ case-law, for their refusal to refer a preliminary question on the interpretation of EU law. They should set out their reasons for considering that the question was not relevant, that the provision had already been interpreted by the CJEU, or that the correct application of EU law was so obvious as to leave no scope for reasonable doubt.

Therefore, when the Court considered complaints of violation of Article 6 in this context, it had to ensure that the domestic courts had duly provided the reasons for their decisions. In Mr Dhahbi's case, since no appeal lay against its decisions under domestic law, the Court of Cassation had been required to give reasons for its refusal to refer the question whether, in the light of the exceptions provided for in CJEU case-law, it was possible under the Euro-Mediterranean Agreement for a Tunisian worker to be deprived of the family allowance provided under the 1998 Law. However, the judgment of 15 April 2008 had included a reference neither to the request for a preliminary ruling submitted by Mr Dhahbi nor to the reasons why the Court of Cassation had deemed that the question raised should not be referred to the CJEU.

This finding was sufficient for the Court to conclude that there had been a violation of Article 6 § 1.

### Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life)

The Court noted that Mr Dhahbi had been treated differently from EU workers who, like him, had large families. Unlike such workers, he had not been entitled to the family allowance provided for in the 1998 Law for the simple reason that he had not been a national of an EU Member State. Therefore, owing to a personal characteristic, namely his nationality, he had received worse treatment than other individuals in a similar situation.

As to whether there had been an objective and reasonable justification for the aforementioned difference in treatment, the Court noted that Mr Dhahbi had held a lawful residence and work

permit in Italy. His residence in Italian territory had not therefore been only for a short-term stay or in breach of immigration legislation. Furthermore, he had also been insured with the INPS, an insurance body to which he had been paying contributions in the same way and on the same basis as EU workers. He consequently had not belonged to the category of individuals who failed to contribute to the funding of public services and about whom a State could have legitimate reasons for restricting recourse to expensive public services.

The Court noted the Government's argument that Mr Dhahbi had been refused the extension of entitlement to the family allowance for "budgetary reasons" and acknowledged that protecting the State's budgetary interests was a legitimate aim. However, this aim could not in itself justify the difference in treatment noted and had to strike a reasonable balance of proportionality with the means employed.

The Court observed that the national authorities' refusal to grant Mr Dhahbi entitlement to the family allowance had been based exclusively on the fact that he had not held the nationality of an EU Member State. Since the fact that a citizen of such a State who found himself in the same situation would have been granted the allowance had not been contested, nationality had been the only distinguishing criterion used. The Court reiterated that only very weighty considerations could induce it to regard a difference in treatment exclusively based on nationality as compatible with the Convention. Under these circumstances, notwithstanding the national authorities' wide room for manoeuvre ("margin of appreciation") in the social security field, the budgetary reasons mentioned by the Government were insufficient to persuade it that the difference in treatment complained of was proportionate.

The Court therefore concluded that there had been a violation of Article 14 in conjunction with Article 8.

#### **Just satisfaction (Article 41)**

The Court held that Italy was to pay Mr Dhahbi 9,416.05 euros (EUR) in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.