

FROM LEGAL STATUS TO SOCIAL INCLUSION: THIRD-COUNTRY NATIONALS AND THE RIGHT TO WELFARE IN EUROPE

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Abstract: *This paper examines the evolving relationship between legal status and social inclusion within the European Union, focusing on the judicial dialogue between the CJEU and the Italian Constitutional Court. By analysing the recent case law on Italy's *reddito di cittadinanza*, it explores how national and supranational courts have redefined TCN's access to welfare through the principle of human dignity. The analysis reveals a gradual shift from a status-based to a rights-based conception of inclusion, where lawful residence and participation in the community replace nationality as the key criterion for social citizenship. The paper concludes that welfare access, grounded in dignity, is emerging as a constitutional entitlement underpinning the rule of law and democratic legitimacy in Europe.*

Key words: EU law, social inclusion, human dignity, welfare rights, multilevel judicial dialogue

1. Introduction

The protection of human dignity stands as a cornerstone of both European Union law (Art. 1 CFREU) and the constitutional traditions of its Member States. It represents not only a moral and philosophical value but also a legally binding principle that informs the interpretation and application of fundamental rights within the European legal order. Yet, for third-country nationals (TCNs) legally residing within the EU, access to social welfare benefits remains highly contested. This tension arises from the intersection of national welfare autonomy, supranational guarantees of equality and non-discrimination, and the gradual construction of a common European approach to social inclusion. In the contemporary European context, migration and social policy have become deeply interlinked. The legal status of migrants often determines their degree of access to rights, participation, and inclusion. However, legal status alone does not necessarily translate into social inclusion. The material dimension of human dignity—adequate living conditions, access to basic welfare, and the capacity for social

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participation—depends on the concrete enjoyment of social rights. This paper aims to explore how judicial dialogue contributes to strengthening this material dimension of dignity, focusing on the interaction between the Italian Constitutional Court and the Court of Justice of the European Union (CJEU). The central research question concerns how judicial dialogue between national and European courts shapes the inclusion of third-country nationals in welfare systems. It examines whether recent jurisprudence signals the emergence of a dignity-based approach that transcends formal status distinctions and reaffirms the universality of fundamental rights. Adopting a legal-institutional and interdisciplinary perspective, the paper situates the judicial developments within broader debates on European welfare governance and integration policy. The argument proceeds in six sections. Following this introduction, Section 2 outlines the EU legal framework on welfare and inclusion, highlighting the principles of non-discrimination and equal treatment. Section 3 analyses the concept of human dignity and the role of judicial dialogue in shaping access to welfare. Section 4 focuses on the Italian case of the “reddito di cittadinanza” (citizenship income) and the Constitutional Court’s judgment no. 31/2025. Section 5 discusses the broader implications of these rulings for integration policies and welfare governance in Europe. Section 6 concludes with reflections on the potential of a dignity-based model of European social citizenship.

2. The Legal Framework on Welfare and Inclusion in the European Union

2.1. Non-discrimination and equal treatment

EU law has progressively constructed a complex framework of rights for third-country nationals (TCNs), seeking to reconcile the Union’s objectives of economic integration with the imperatives of social inclusion. At the constitutional level, the Treaty on the Functioning of the European Union (TFEU) prohibits discrimination on grounds of nationality (Article 18 TFEU) and enshrines equality as a general principle of EU law. Yet, as clarified by both doctrine and jurisprudence, this clause applies only within the context of Union citizenship. It protects EU citizens of one Member State from discriminatory treatment in another Member State, but does not extend to TCNs residing legally within the Union (Manfredi, 2025). The Court of Justice has consistently upheld this restrictive interpretation. In *Hadj Hamed* (C-45/12, EU:C:2011:217, §41), the Court explicitly stated that Article 18 TFEU “as it stands” cannot be applied to a situation concerning a third-country national legally resident in a Member State, since such a person does not enjoy the rights of free movement guaranteed to EU citizens. A similar reasoning has been adopted with respect to Article 21(2) CFREU, which prohibits discrimination on grounds of nationality. In *Andrei Petrov* (T-452/15, EU:T:2017:822, §§38–39), the General Court affirmed that this protection is confined to EU citizens, thereby confirming the dualistic structure of Union citizenship and the exclusion of TCNs from its personal scope. This narrow construction reflects the Union’s cautious—if not restrictive—approach to the governance of migration and asylum. It reveals a structural tension within EU constitutionalism: while the EU promotes fundamental rights and social inclusion, the reach of those guarantees remains mediated by nationality and legal

status. As Guild (2020) and Peers (2021) observe, this limitation underscores the incomplete constitutionalisation of migration within EU law, in which TCNs continue to occupy a peripheral position compared to Union citizens. Nonetheless, secondary legislation has progressively tried to fill this normative gap, laying down a sectoral and fragmented set of rights for legally resident TCNs. Directive 2003/109/EC concerning the status of long-term residents remains the cornerstone of this framework. It grants TCNs who have resided legally and continuously within a Member State for at least five years the right to equal treatment with nationals in crucial areas, including access to social security, social assistance, and social protection (Article 11). The Directive reflects an effort to approximate the legal position of long-term residents to that of EU citizens, embedding the principle of non-discrimination into the material sphere of welfare rights.

Directive 2011/98/EU further strengthens this protection by introducing a single application procedure for third-country workers and by ensuring equal treatment with nationals concerning working conditions, pay, and access to social security benefits. The Court of Justice has interpreted these provisions broadly to safeguard the effectiveness of the equal treatment principle. In *INPS v. VR and Others* (C-302/19, EU:C:2020:492), it confirmed that third-country nationals holding single permits must receive the same family allowances as nationals, and that administrative or residence-based obstacles that disproportionately affect them are incompatible with EU law.

However, the implementation of these directives remains fragmented across Member States. The rights granted to TCNs are not absolute: national authorities often impose additional conditions or exclusions that curtail access to welfare schemes. These may take the form of extended residence requirements, integration or language tests, or procedural barriers, which operate as gatekeeping mechanisms limiting the enjoyment of social rights. Such practices reveal a persistent ambivalence in the EU's governance of migration—oscillating between inclusion through law and exclusion through administrative discretion.

The result is a paradox: while EU law formally recognises the equal treatment of TCNs, the exercise of these rights continues to depend heavily on national implementation and judicial enforcement. The combination of restrictive national measures and uneven transposition of EU directives produces a fragmented landscape in which access to welfare varies widely across Member States. This tension between the supranational principle of equality and the sovereignty of national welfare systems remains one of the defining features of the EU's approach to social inclusion.

In this evolving legal architecture, the Court of Justice plays a pivotal role in defining the substantive scope of equality and ensuring its practical effectiveness. Through its case law, the Court has progressively elevated equal treatment from a formal legal guarantee to a substantive standard anchored in human dignity—a development that finds its constitutional complement in the jurisprudence of national constitutional courts, as the following sections will explore.

2.2. National welfare autonomy and the limits of EU competence

Social policy remains primarily a national competence under Article 153 TFEU, and the

organisation of welfare systems is largely determined by each Member State's constitutional traditions and fiscal capacity. The EU's role is complementary, confined to coordinating policies and supporting social cohesion under the European Pillar of Social Rights (EPSR). This institutional division creates an inherent tension: while EU law guarantees equal treatment for certain categories of TCNs, Member States retain discretion over eligibility and conditions for access to benefits (Ferrera, 2005).

This tension is particularly evident in times of economic crisis or rising populist sentiment, when governments tend to restrict welfare access for non-nationals to protect domestic solidarity. As O'Brien (2019) notes, welfare chauvinism has become a recurring theme in several Member States, leading to policies that differentiate between "deserving" and "undeserving" migrants. However, the CJEU has consistently held that such restrictions must comply with the principles of proportionality and non-discrimination. In *Collins v. Secretary of State for Work and Pensions* (C-138/02, EU:C:2004:172), the Court affirmed that Member States may require a "genuine link" between the applicant and the host society when granting jobseekers' benefits, but such requirements must be proportionate and non-arbitrary. In *Vatsouras and Koupatantze* (Joined Cases C-22/08 and C-23/08, EU:C:2009:344), it reiterated that economic benefits aimed at facilitating access to the labour market cannot be denied to lawfully resident persons solely on the basis of nationality.

The same reasoning extends to third-country nationals under Directive 2003/109/EC. In *Kamberaj* (C-571/10, EU:C:2012:233), the Court found that the differential treatment of long-term residents in access to social housing funds breached the principle of equal treatment. More recently, in *INPS v. VR and Others* (C-302/19, EU:C:2020:492), the CJEU clarified that national administrative or residence-based conditions that disproportionately restrict access to family allowances for TCNs violate both Directive 2011/98/EU and Article 34 of the Charter of Fundamental Rights. Taken together, these rulings delineate the boundaries of Member States' discretion, confirming that welfare restrictions must pursue legitimate objectives through proportionate and non-discriminatory means.

2.3. The EU Charter of Fundamental Rights and the principle of human dignity

The EU Charter of Fundamental Rights (CFREU) places human dignity at the apex of the Union's constitutional values (Article 1), framing it as both a stand-alone right and the foundation of all other fundamental rights. As noted by Peers et al. (2021), the Charter's architecture reveals an intrinsic link between dignity and social justice: the former cannot be realised without a minimum level of material well-being guaranteed by the latter. The Charter also codifies a set of social rights that are directly relevant to welfare inclusion—such as the right to social and housing assistance (Article 34), the right to health care (Article 35), and the protection of family and children (Articles 7 and 24). Although these rights require national implementation, they serve as interpretative benchmarks guiding both national judges and the Court of Justice of the European Union in assessing the compatibility of national welfare restrictions with EU law.

The combined reading of Articles 1 and 34 CFREU has been central to the Court's reasoning in several landmark cases. In *Kamberaj* (C-571/10, EU:C:2012:233), concerning differential access to housing funds for third-country nationals in Italy, the CJEU explicitly linked the right to equal treatment under Directive 2003/109/EC with the protection of human dignity under the Charter. The Court observed that social assistance schemes designed to guarantee minimum living conditions fall within the scope of EU law and must therefore comply with the Charter. This line of reasoning was later consolidated in *INPS v. VR and Others* (C-302/19, EU:C:2020:492), where the Court held that family allowances cannot be denied to lawfully resident third-country nationals on grounds that would disproportionately undermine their right to social protection.

Other rulings have extended this approach by integrating dignity into the proportionality analysis of welfare restrictions. In *Dano* (C-333/13, EU:C:2014:2358) and *Alimanovic* (C-67/14, EU:C:2015:597), while the Court upheld certain limitations on social assistance for economically inactive EU citizens, it nonetheless acknowledged that exclusionary measures must respect the essence of fundamental rights, particularly human dignity. As Advocate General Wathelet observed in his Opinion in *Alimanovic*, dignity functions as a "safeguard clause" ensuring that the exercise of national discretion does not lead to destitution incompatible with the values of the Union.

From a doctrinal standpoint, this jurisprudence demonstrates the Court's gradual recognition of a material dimension of human dignity (Barak, 2015). Scholars (O'Brien, 2019) have underlined that the Charter provides a normative bridge between social inclusion and equality, transforming the traditional economic logic of free movement into a rights-based approach to welfare. The result is a developing body of case law in which dignity serves not merely as an abstract principle but as a concrete standard for reviewing the proportionality of welfare restrictions.

Ultimately, the Charter's integration into national adjudication has deepened the dialogue between the CJEU and domestic constitutional courts. By invoking human dignity as a shared value, both levels of adjudication contribute to shaping a common European understanding of social justice. This evolution suggests that welfare access, when viewed through the lens of dignity, transcends the dichotomy between national solidarity and EU competence—offering instead a unified, rights-oriented framework for inclusion.

3. Judicial Dialogue and the Protection of Human Dignity

Human dignity is a multifaceted concept that bridges constitutional, moral, and social dimensions. In EU law, it serves as a normative foundation that informs the interpretation of all rights and freedoms. According to the doctrine, dignity in the European context embodies both the intrinsic worth of the individual and the social conditions necessary for self-realisation. This dual dimension—formal and material—makes dignity particularly relevant to welfare inclusion.

The European Court of Justice has invoked dignity in diverse contexts, from data protection (*Digital Rights Ireland*, C-293/12) to social exclusion (*Kamberaj*, C-571/10). The CJEU's reasoning demonstrates that dignity is not a rhetorical ideal but a concrete legal standard guiding proportionality and equality assessments. National constitutional

courts, particularly in Germany, Italy, and Spain, have similarly elevated dignity to the rank of a constitutional principle with direct effect on social policies (Barak, 2015).

In Italy, Article 3(2) of the Constitution links equality with the removal of social and economic barriers that impede the full development of the human person. The Constitutional Court has repeatedly affirmed that human dignity requires the State to ensure the material conditions for a dignified existence (Corte cost., no. 187/2010). This jurisprudence aligns with the CJEU's approach, showing a convergence between national constitutional identity and EU fundamental rights.

Judicial dialogue is the mechanism through which national courts and the CJEU communicate, interpret, and mutually influence the development of law. It operates through preliminary references under Article 267 TFEU, indirect citations, and cross-constitutional reasoning. As Walker (2016) observes, judicial dialogue fosters a form of constitutional pluralism where national and supranational courts engage in an iterative process of mutual accommodation.

In the field of social rights, this dialogue has been instrumental in delineating the boundaries of national discretion. The *Kamberaj* case is emblematic: the CJEU held that national legislation granting preferential access to social benefits to EU citizens over long-term TCNs violated Directive 2003/109/EC and the principle of equal treatment. The Court emphasised that long-term residents enjoy rights derived directly from EU law and that Member States cannot undermine them through discriminatory measures. This judgment not only expanded the legal protection of TCNs but also influenced national courts in interpreting welfare legislation in light of EU principles.

Similarly, in *INPS* (C-302/19, EU:C:2020:492), the CJEU reaffirmed that TCNs holding single permits are entitled to the same family allowances as nationals. The Court clarified that administrative formalities or residence conditions that disproportionately affect TCNs contravene the equal treatment principle. Such jurisprudence reflects a growing judicial consensus that access to welfare is not merely a policy choice but a matter of fundamental rights.

The interplay between the CJEU and national constitutional courts reveals a gradual convergence towards recognising the material dimension of dignity. This evolution is evident in both EU and national contexts. The Italian Constitutional Court's decision no. 194/2019, concerning access to social housing for non-EU residents, drew explicitly on *Kamberaj* to affirm that residence-based exclusions must comply with proportionality and the principle of equality. The Court argued that social assistance schemes aimed at guaranteeing essential living conditions are inherently linked to the protection of dignity.

The same reasoning can be observed in decisions from other Member States. The Spanish Constitutional Court, in judgment STC 17/2013, acknowledged that denying basic welfare to legally resident migrants could undermine the constitutional guarantee of dignity. These developments suggest that judicial dialogue contributes to a transnational understanding of dignity as encompassing both freedom from degradation and entitlement to minimum social support.

4. The Italian Case: The Italian Case: The Citizenship Income, the Ten-Year Residence Requirement and the “Adversarial Dialogue” Between Courts

The Italian “reddito di cittadinanza” (citizenship income) has become a central testing ground for the relationship between national welfare autonomy and supranational guarantees of equality and dignity. Two almost contemporaneous decisions—the CJEU judgment of 29 July 2024 in C.U. and N.D. (Joined Cases C-112/22 and C-223/22, EU:C:2024:674) and the Italian Constitutional Court’s judgment no. 31/2025—reflect a complex and at times contentious judicial dialogue over the compatibility of Italy’s ten-year residence requirement with EU law and constitutional principles.

The CJEU’s 2024 ruling addressed the situation of third-country nationals holding long-term resident status under Directive 2003/109/EC. The Court held that Article 11(1)(d) of the Directive precludes a Member State from conditioning access to a social-assistance benefit such as the “reddito di cittadinanza” on ten years of residence, of which the last two must be continuous. Such a requirement, it reasoned, constitutes indirect discrimination against long-term residents and violates the principle of equal treatment guaranteed by the Directive and Article 34 of the Charter of Fundamental Rights. Echoing its earlier reasoning in *Kamberaj* (C-571/10) and *INPS* (C-302/19), the Court reaffirmed that long-term residence confers a stable legal status entailing access to social benefits under the same conditions as nationals, save for proportionate limitations justified by legitimate objectives.

While the CJEU’s judgment appeared categorical, the Italian Constitutional Court soon after addressed a parallel challenge concerning EU citizens’ access to the same benefit. In judgment no. 31/2025, it declared the ten-year residence requirement unconstitutional, holding that it violated Articles 3, 38 and 2 of the Constitution and Articles 1 and 34 of the Charter. Yet, in its reasoning, the Constitutional Court did not expressly acknowledge the binding nature of the CJEU’s earlier ruling. Instead, it reconstructed the proportionality test autonomously, relying primarily on domestic constitutional principles of equality and solidarity.

This sequence of decisions has been described by commentators (Amalfitano, 2025) as an adversarial judicial dialogue—a moment of tension in the otherwise cooperative constitutional relationship between the two courts. The CJEU’s decision was perceived in Rome as a direct intrusion into the core of national welfare discretion, whereas the Constitutional Court’s ruling sought to reassert constitutional identity by framing dignity as an internal principle rather than one derived externally from EU law.

However, beneath this apparent conflict lies a deeper normative convergence. Both courts, albeit through distinct methodologies, placed human dignity at the centre of their reasoning. The CJEU derived the right to minimum subsistence from the Charter and from the equal-treatment clause of Directive 2003/109/EC; the Constitutional Court grounded it in the social-state clauses of the Italian Constitution. The resulting dialogue is thus stormy not because the two courts contradict each other, but because they articulate the same constitutional value from different legal vantage points—one supranational and one domestic.

By engaging in a tense exchange rather than a deferential one, the two courts collectively refine the limits of welfare sovereignty and the scope of social rights under EU law. The CJEU's 2024 judgment extends dignity's material dimension to third-country nationals, while the Constitutional Court's 2025 decision affirms its universality within the Italian social model.

Together, these rulings illuminate the evolving nature of multilevel protection of fundamental rights in Europe. The "reddito di cittadinanza" litigation thus stands as a microcosm of the European constitutional landscape: one in which conflict between courts is not a pathology but a mechanism through which shared principles—equality, solidarity, and dignity—are gradually clarified and entrenched.

The judicial dialogue on Italy's citizenship income, however, is far from concluded. At the time of writing, a third preliminary reference is pending before the CJEU, concerning the exclusion of beneficiaries of international protection from access to the same welfare scheme. This new case raises again the question of whether the differential treatment of refugees and subsidiary protection holders is compatible with Article 29 of the Qualification Directive (2011/95/EU), Article 34 of the Charter, and the principle of human dignity. Its outcome will likely complete the triad of *C.U. and N.D.* (TCNs), judgment 31/2025 (EU citizens), and the forthcoming decision on protection holders, thereby providing a comprehensive framework for assessing welfare inclusion across all major categories of legally resident non-nationals in the European Union.

5. From Legal Status to Social Inclusion

Legal status remains a crucial determinant of access to welfare and, consequently, of social inclusion. Yet, as Bosniak (2006) observed, citizenship and rights do not always coincide. In contemporary welfare regimes, legal status alone increasingly fails to guarantee access to social protection, as Member States have introduced additional conditionalities—such as extended residence requirements, integration tests, and proof of economic activity—that disproportionately affect migrants. These measures, though often justified in terms of budgetary sustainability or the need to ensure a "genuine link" with the host society, risk transforming welfare access from a right into a privilege contingent upon performance and duration of stay.

The recent case law on Italy's "reddito di cittadinanza" exemplifies this evolution. Both the CJEU in *C.U. and N.D.* (Joined Cases C-112/22 and C-223/22, 29 July 2024) and the Italian Constitutional Court in judgment no. 31/2025 rejected the ten-year residence requirement as incompatible with the principles of proportionality, equality, and human dignity. Taken together, these decisions signal a gradual shift from a status-based to a rights-based conception of inclusion, whereby the enjoyment of social rights derives from lawful residence and participation in the community rather than from nationality or lengthy residence.

This jurisprudential trend aligns with the broader objectives of the EU's social policy framework, which emphasises equality of opportunities, non-discrimination, and social cohesion (European Commission, 2017). Yet it also exposes a structural tension: even when the law affirms equal treatment, the proliferation of additional conditions—

ranging from administrative compliance to integration indicators—creates new forms of exclusion. This “conditional welfare citizenship” risks eroding the universalist ethos of the European social model.

Judicial developments, therefore, underscore the necessity of integrating legal guarantees with effective policy measures. Welfare inclusion requires not only the removal of discriminatory legal barriers but also the establishment of institutional pathways enabling migrants to access services, employment, and education. The material realisation of dignity depends on this interplay between law and policy. Linguistic, cultural, and socio-economic barriers compound these challenges, limiting migrants’ effective enjoyment of social rights. Courts alone cannot dismantle these structures of exclusion, but their decisions set normative benchmarks compelling governments to design more inclusive welfare systems.

The “reddito di cittadinanza” litigation—culminating in *C.U. and N.D.* and judgment 31/2025—illustrates how dignity operates as a bridging principle between EU law and national constitutions, mediating between supranational equality guarantees and domestic solidarity traditions.

This transnational jurisprudence challenges the traditional dichotomy between national welfare sovereignty and EU-level rights protection. It demonstrates that safeguarding human dignity requires cooperation across levels of governance to ensure the material conditions of equality. In doing so, it contributes to the gradual emergence of a European social citizenship grounded not in formal nationality, but in lawful residence, participation, and the shared recognition of human dignity as the cornerstone of social inclusion.

6. Concluding Remarks: Towards a Dignity-Based European Social Citizenship

The protection of human dignity constitutes the normative and constitutional foundation of European integration. In the domain of welfare, dignity bridges the gap between legal status and social inclusion by ensuring that every individual—regardless of nationality—can access the essential conditions for a dignified existence. The judicial dialogue between national constitutional courts and the Court of Justice of the European Union has been instrumental in bringing this principle to life, gradually transforming the boundaries of welfare inclusion in Europe.

The “reddito di cittadinanza” case shows that the protection of human dignity cannot be confined within the borders of nationality, nor subordinated to rigid conditions of residence or integration.

From a broader theoretical standpoint, these developments suggest that the European legal order is moving towards an integrated concept of social citizenship. Such citizenship is defined not by formal membership but by lawful residence, social participation, and mutual recognition across legal orders. It builds on the idea of a shared constitutional space in which dignity, equality, and solidarity operate as common denominators. The challenge for the European social model lies in reconciling the diversity of national welfare regimes with the universality of fundamental rights. The current jurisprudential trajectory points precisely in this direction, towards a post-national conception of welfare inclusion rooted in human dignity.

The challenge now lies in translating this judicial momentum into tangible policy outcomes. Courts can set normative standards and invalidate discriminatory laws, but it is up to political institutions—both at the EU and national levels—to ensure effective implementation. This requires not only legal compliance but also administrative and linguistic accessibility, targeted outreach, and adequate funding mechanisms. Social inclusion, in this sense, is not solely a matter of law but also of governance.

Ultimately, the evolving jurisprudence on welfare access for non-nationals offers a paradigmatic example of how the rule of law, human dignity, and social inclusion are interdependent within the European project. Through their sometimes contentious but mutually reinforcing dialogue, the CJEU and the Constitutional Court of Italy have demonstrated that dignity is not a rhetorical aspiration but a substantive constitutional guarantee.

By grounding welfare access in the principle of dignity, European jurisprudence provides not only a legal framework but also a normative compass for navigating the complex intersection of migration, welfare, and constitutionalism in the twenty-first century. Whether through cooperation or contestation, the courts of Europe are progressively shaping a social constitution of the Union—one that views inclusion not as a concession but as a constitutional duty flowing from the very idea of human dignity.

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