The Court of Cassation reintroduces complementary protection

According to the Court of Cassation, complementary protection should be granted in the presence of real roots in the territory. The condition of vulnerability must be "effective" and there must be "unequivocal, clear, precise and consistent signs" of social integration.

This is the principle established by the First Civil Section of the Court of Cassation, with Order No 29593 filed on 10 November 2025.

The question was raised, as a preliminary matter, by the Court of Venice, which was called upon to decide on the appeal against the decision of the Territorial Commission, which had determined the application for international protection to be manifestly unfounded. The question posed, in particular, concerned the possibility of continuing to grant protection to the private and family life of the foreigner even after the entry into force of Legislative Decree No 20 of 2023 (converted into Law No 50 of 2023) and the consequent repeal of Article 19(1.1), third and fourth sentences, of the Consolidated Law on Immigration (Legislative Decree No 286/1998).

Complementary protection, the Court clarifies, has an independent configuration compared to the two forms of greater protection (refugee status and subsidiary protection), the scope of which is entrusted "to a flexible clause, devoid of specific circumstances." According to the Supreme Court, within the framework of Article 19 of the Consolidated Law, after the 2023 amendments, although the explicit reference to "respect for the private and family life of foreigners" has been removed, the reference to " the State's constitutional and international obligations as a limit to any form of expulsion of foreigners, through the express reference to Article 5, paragraph 6, of the same Consolidated Law" is still present. And among the latter, the protection of private and family life, expressly considered in Article 8 of the ECHR , must certainly be included .

Ultimately, the judges argue, it is up to the interpreter to "retrace the paths traced by case law" and find, in the criteria developed by supranational jurisprudence, the "paths to follow to fill with content the flexible formula he must apply", thus valorizing "family ties, the duration of the person's presence in the national territory, the social relationships established, the degree of occupational integration achieved." Each assessment, the Court specifies, must,

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however, be carried out with "rigour ", because the condition of vulnerability must be "real", although, with regard to social integration , "a fully completed path" is not required, but "unambiguous, clear, precise, and consistent signs of the direction taken." With regard to family life, a "communion" must emerge "strong enough to suggest that a separation would constitute a violation of the right to family life or private life. However, the primary consideration must always be the needs of the State, and in particular the maintenance of public order and security."

Source(s)

- Ministry of Labour and Social Policies | Ministero del Lavoro e delle Politiche Sociali (12 November, 2025), Si alla protezione complementare in presenza di un reale radicamento sul territorio [Yes to complementary protection in the presence of real roots in the territory], https://integrazionemigranti.gov.it/it-it/Ricerca-news/Dettaglio-news/id/4494/Si-alla-protezione-complementare-in-presenza-di-un-reale-radicamento-sul-territorio

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