JUDGMENT NO 15 YEAR 2024

In this case the Court heard a direct application by Friuli-Venezia Giulia Region against the central State seeking an order that the State in general, and specifically a regional court acting on its behalf, had no power to direct the Region to amend a regional regulation that had resulted in discrimination against non-EU citizens in relation to housing support, and also to impose sanctions on the Region in the event that this direction was not complied with. It argued specifically that a direction of this nature could only be issued following a ruling by the Constitutional Court that the regulation was unconstitutional.

The Court held that a regional court does indeed have the power to direct a regional government to amend discriminatory regional regulations, as otherwise those regulations would continue to apply, and victims of discrimination would have to seek relief through judicial action each time the regulations were applied. However, the Court accepted the Region's argument that this power should fall into abeyance where the regional regulations concerned essentially restated regional legislation. Otherwise, the Region would be obliged to adopt regulatory provisions that were expressly at odds with regional legislation, which remained in force.

In parallel, a regional court made a referral order to the Constitutional Court questioning the constitutionality of overarching regional legislation that was essentially restated within the regional regulation objected to by the Region. The referring court held that it was unable to direct the Region to amend the regional regulation as the regional regulation reflected the provisions of a regional law, which the regional court had no power to amend.

The Court noted that the fact that the legislation could be disapplied insofar as inconsistent with EU law did not constitute a full remedy as it would not remove the discrimination from the legal order, and there was hence a risk of discrimination recurring in the event that a future court did not consider any EU law to have been violated. Moreover, disapplication would not enable the courts to adopt a plan for ending the discrimination. Constitutional review was necessary in order to achieve the removal of the incompatible legislation from the legal order, with effects erga omnes. As such, the examination of compatibility with EU law and constitutional review are not juxtaposed, mutually exclusive remedies, but rather complementary to each other.

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

[omitted]

Conclusions on points of law

1.− By an application registered as No 2 in the 2023 Register of Disputes concerning the allocation of powers between the State and Regions, the Autonomous Region of Friuli-Venezia Giulia initiated proceedings seeking a ruling that it does not fall to the State, and acting on its behalf the Ordinary Court of Udine, sitting as an employment court, to adopt an order by which, within civil proceedings concerning discrimination on the grounds of nationality pursuant to Article 28 of Legislative Decree No 150/2011, ordered the Autonomous Region (point 2 of the operative part) to amend Regional Regulation No 0144/2016 "'to the extent that it imposes different prerequisites

or procedures for long-term residents who are not EU citizens which differ from those applicable to EU citizens for establishing that they do not own any residential property in Italy or abroad, whilst by contrast providing that EU citizens or non-EU citizens who are long-term residents may document in the same manner that they do not own any property falling under Article 9(2)(c)' of the Regulation". As a basis for its objections, the applicant region asserts that Articles 4, 5 and 6 of the Special Statute, Articles 97, 101, 113, 117(3), (4), (5) and (6), 120(2), 134 and 136 of the Constitution, as well as Article 10 of Constitutional Law No 3/2001 have been violated.

The order at issue in the dispute was issued after finding that the Autonomous Region had committed discrimination, which led an Italian citizen and his Albanian wife, who was the holder of a long-term residence permit, to initiate the court action in which the *Associazione per gli studi giuridici sull'immigrazione* (Association for legal studies in immigration, ASGI) intervened independently, and that it had failed to apply Article 29(1-*bis*) of Friuli-Venezia Giulia Regional Law No 1/2016 and Article 12(3-*bis*) of Regional Regulation No 0144/2016, thus violating Article 11 of Directive 2003/109/EC.

The order is also challenged with regard to those parts (points 3, 7 and 8 of the operative part) in which it imposes a framework of coercive sanctions in relation to the above-mentioned order directing the amendment of the Regional Regulation.

In the alternative, the applicant requests an order that it did not fall to the Udine Ordinary Court to adopt the contested order, of which it seeks the annulment, "without having previously requested and obtained a declaration from the Constitutional Court that Article 29(1-*bis*) of Regional Law No 1/2016 is unconstitutional".

2.− Within similar proceedings objecting to discrimination under Article 28 of Legislative Decree No 150/2011, by referral order registered as No 97 in the 2023 Register of Referral Orders, another judge from the Udine Ordinary Court raised questions as to the constitutionality of Article 29(1-*bis*) of Friuli-Venezia Giulia Regional Law No 1/2016, with reference to Articles 3 and 117(1) of the Constitution, the latter in relation to Article 11 of Directive 2003/109/EC. The referring court objects that the provision in question requires that, for the purposes of demonstrating compliance with the prerequisite of non-ownership of other residential property laid down by Article 29(1)(d) of the Regional Law, non-EU citizens must submit documentation establishing that no member of the family unit owns any residential housing in their country of origin or in the country of previous residence following procedures that differ from those applicable to Italian and EU citizens.

In the event that these questions are considered to be unfounded, by the same referral order the referring court has also raised questions as to the constitutionality of Article 29(1)(d) of the Regional Law, again with reference to Articles 3 and 117(1) of the Constitution, "to the extent that it includes amongst the minimum prerequisites for eligibility for the rental support contribution provided for under Article 19 of the Law, 'non-ownership, including in the form of bare ownership, of other residential property within the national territory or abroad, unless the respective property has been declared unfit for occupancy, excluding non-unitary ownership shares received by inheritance of the bare ownership of residential property, the usufruct over which is held by relatives of the second degree or closer, or shares therein that have been allocated to a spouse or cohabiting partner within the ambit of personal separation or divorce'".

Those proceedings were launched by an application filed by thirty-nine non-EU citizens who were holders of long-term residence permits, with interventions being made by another citizen in a similar position and by ASGI, which had standing pursuant to

Article 5 of Legislative Decree No 215/2003. Here too, before issuing the referral order and accepting in part the claims made by the claimants, the Udine Ordinary Court first and foremost established that the actions of the Autonomous Region of Friuli-Venezia Giulia (and of the Municipality of Udine, which was also a defendant) amounted to discrimination. It then went on to hold that it was unable to apply Article 29(1-*bis*) of Friuli-Venezia Giulia Regional Law No 1/2016, and the related regulatory provisions (Article 9(3) and (3-*bis*) of Regional Regulation No 066/2020), on the grounds that they violated Article 11 of Directive 2003/109/EC. However, the referring court held that it was unable to order the Autonomous Region to amend the regulatory provisions that were at the root of the discriminatory conduct, as they essentially restated the legislation. It thus decided to refer the current questions of constitutionality in relation to the statutory provision.

3.− As a preliminary matter, it is necessary to order that the proceedings be joined.

Indeed, the core issue within both proceedings is the ability of the ordinary courts, within the ambit of anti-discrimination proceedings provided for under Article 28 of Legislative Decree No 150/2011, to order the amendment of regulations that have been found to be discriminatory.

Within the proceedings concerning the allocation of powers between the State and Regions, the Autonomous Region of Friuli-Venezia Giulia objects that this is fundamentally impossible and only accepts − albeit in the alternative − that an order of this type may be adopted, as the case may be, only after a question concerning the constitutionality of the legislative provision that is substantially restated by the regulatory provision has been raised and accepted. Within the proceedings initiated by referral order, the Udine Ordinary Court adopted precisely this latter approach, raising a question concerning the constitutionality of the underlying legislative provision, which is essentially restated by the regulatory provision, an order concerning the amendment of which was sought by the parties within the proceedings before the referring court.

In view of the connection that has thereby been established between the two proceedings under examination, they must be treated jointly and decided on within one single ruling.

[omitted]

6.− Turning to the merits, it must be pointed out that the issue at the heart of both proceedings is the power of the ordinary courts under Article 28 of Legislative Decree No 150/2011. It is therefore necessary to set out, first and foremost, the essential characteristics of anti-discrimination proceedings provided for thereunder.

6.1.− The possibility of launching a civil action objecting to discrimination has been available since Legislative Decree No 286/1998, Article 44(1) of which provides that, "Where the actions of a private person or the public authority cause discrimination on the grounds or race, ethnicity, nationality or religious belief, the courts may, upon application by a party, order the cessation of the detrimental conduct and adopt any other measure that, under the specific circumstances, is capable of removing the effects of the discrimination". The currently applicable paragraph 2, as replaced by Article 34(32)(b) of Legislative Decree No 150/2011, provides that Article 28 of the Decree applies to the respective disputes. Insofar as is of relevance here, Article 28(5) provides that, "Within the judgment resolving the proceedings the court may order the defendant to compensate losses, including non-pecuniary losses, and order the cessation of the detrimental, discriminatory behaviour, conduct or act, and may issue any other measure that is capable of cancelling its effects, including in respect of the public authority. In order to prevent

any repetition of the discrimination, the court may order the adoption of a plan for the removal of any discrimination identified, within the time limit set in the ruling. In situations involving collective discrimination, the plan shall be adopted following consultation with the claimant collective body".

In this way, lawmakers have drawn up legislation that, in order to provide an effective guarantee of equal treatment and to sanction any unjustified and intolerable discrimination in the light of the principle of equality enshrined in Article 3 of the Constitution, vests the ordinary courts with "special procedural instruments for combatting instances of discrimination" (Court of Cassation, Joint Civil Divisions, Order No 7186 of 30 March 2011). A civil action may be launched with a view to obtaining a court order directing the cessation not only of behaviour or conduct but also (the cancellation) of any detrimental discriminatory acts. This order may be accompanied by any other ruling that the court, at its discretion, considers appropriate to remove the effects of the discrimination, including in respect of the public authority. In order to prevent the discrimination being repeated, lawmakers have finally vested the courts with a further power to order the adoption of a plan designed to remove it.

6.2.− It is clear that the entire purpose of these proceedings is to remove any discrimination. This ends up establishing "a specific individual right, and specifically a right that can be classified as an 'absolute right', having been established in order to safeguard an area of freedom and potential of the individual vis-a-vis any type of violation thereof, in order to protect any potential victim of discrimination" (again, Court of Cassation, Joint Civil Divisions, Order No 7186/2011). It is precisely in view of the fundamental right to be protected that the "content and extent of the protections available within the proceedings feature atypical aspects and vary depending upon the type of harmful conduct that has been engaged in" (again, Court of Cassation, Joint Civil Divisions, Order No 7186/2011).

The comprehensive nature of the special legislative protection thereby established reaches so far as to enable the ordinary courts to issue rulings against the public authorities due to the adoption of discriminatory acts, the cancellation of which they may order. However, there is no grant of any exceptional power to cancel administrative acts, in accordance with Article 113(3) of the Constitution. A choice was therefore made within the legislation to grant particularly far-reaching protection that enables effective and immediate control over the exercise of power also by the ordinary courts. Nonetheless, this does not preclude the power of the administrative courts to order the cancellation of such decisions, should they come to the attention of those courts, with effect erga omnes as is typical for administrative rulings (see, for example, Council of State, Fifth Division, Judgment No 2290 of 6 March 2023).

It must be stressed in particular – as it is an aspect of particular relevance within these proceedings – that the proceedings provided for under Article 28 of Legislative Decree No 150/2011 are special proceedings, involving a range of remedies, which may be adopted also at different points in time.

The ordinary courts are initially called upon to establish whether or not the behaviour, conduct or act that gave rise to the discrimination is in fact discriminatory, which may result in the issue of an order to pay compensation for non-pecuniary losses, in addition to an order to desist from the discrimination and to take action in order to remove its effects.

In addition to these remedies, which concern specifically the current and immediate harm caused by the discriminatory conduct, the court may order the adoption of a plan

for the removal of any discrimination identified in order to prevent its repetition and the recurrence of identical discrimination in future, not only against the persons who launched court action but also against any other person who could potentially fall victim to it. It is no coincidence that − as is moreover demonstrated by the circumstances that gave rise to these constitutional proceedings − the legislation provides that standing to act in order to obtain a ruling finding that discrimination has occurred is vested also in "associations and bodies included in a dedicated list approved by decree of the Minister for Employment and Social Policy and the Minister for Equal Opportunities that have been identified on the basis of their policy goals and continuity of action" (Article 5(1) of Legislative Decree No 215/2003).

The ordinary courts are thus called upon to act also on a preventive basis by taking action in relation to the factor – whether consisting in conduct or an act – that resulted in discrimination which, if it is not removed, could give rise to other identical and equally unjustified discrimination.

7.− In view of and considering the above, it is appropriate first of all to examine the merits of the dispute concerning the allocation of powers raised by the Autonomous Region of Friuli-Venezia Giulia.

7.1.− Within the proceedings that resulted in the dispute, the Udine Ordinary Court accepted in part the civil action alleging discrimination on the grounds of nationality brought by an Italian citizen and his Albanian wife, the holder of a long-term residence permit, whose application for the grant of the contribution for the purchase of a first home provided for under regional legislation was refused due to the failure to submit documentation attesting that no member of the family unit owned any residential housing in their country of origin or in the country of previous residence.

The civil court seized held that the legislative and regulatory provisions on the basis of which the contribution was refused were discriminatory as they did not allow non-EU citizens to certify non-ownership by way of a declaration in lieu of an official certification under Presidential Decree No 445/2000, as by contrast Italian and EU citizens are able to do.

Finding that the said provisions violated Article 11 of Directive 2003/109/EC, the Udine Ordinary Court held that it should disapply them and consequently ordered that the claimants' application be assessed "as if the documentation come attesting the non-ownership of other property had been duly submitted in accordance with the same criteria as are valid for EU citizens". It also ordered the Autonomous Region to amend the regional regulation in order to avoid any recurrence of the discrimination, and provided for the imposition of a framework of sanctions in support of that order to amend the regulation.

7.2.− This dispute concerns specifically this second head of the contested order. Indeed, the Autonomous Region does not dispute the decision insofar as it does not apply the regional legislation that was found to violate EU law, but rather the assertion by the Udine Ordinary Court that it can direct the Region to amend Article 12(3-*bis*) of Regional Regulation No 0144/2016. It asserts that there is no legal basis for this claim, which reaches beyond the scope of the court's judicial powers and interferes with a number of regional powers.

7.2.1.− The dispute, in the terms set out above, is unfounded.

7.2.2.− It has been mentioned above that, within the ambit of proceedings falling under Article 28 of Legislative Decree No 150/2011, the ordinary courts may order "the cessation of the detrimental, discriminatory behaviour, conduct or act, and may issue any

other measure that is capable of cancelling its effects, including in respect of public authorities" (paragraph 5). As is apparent also from the case law of courts ruling at first and second instance, such broad wording, the aim of which is to effectively prevent discrimination in breach of the principle of equality laid down by Article 3 of the Constitution, also encompasses the power to direct the cancellation of regulatory provisions where they are discriminatory, and all the more so where they may give rise to future discriminatory acts or conduct.

It is no coincidence, as noted above, that the legislative provision states that the courts may order not only the cessation of the discrimination and adopt any measure appropriate to remove its effects but also the adoption of a plan to prevent the discrimination from recurring. Where the discriminatory conduct engaged in by the public authority was based not on a specific administrative measure but rather a regulatory instrument intended for application on an undefined number of occasions, the only way in which any repetition of the discrimination can be effectively prevented must be to order the cancellation of the regulatory provision. If this were not the case, the ordinary courts could have to order the public administration, from time to time, to cease any individual instances of discriminatory conduct, without however being able to make any ruling concerning the regulatory provision that caused the discrimination identified and that resulted in the dispute. The logic underpinning the choice made by lawmakers in adopting Article 28(5) of Legislative Decree No 150/2011 was by contrast entirely the opposite: to enable the ordinary courts to direct the cancellation of any regulatory provision that was found to be discriminatory. Otherwise, owing to its natural capacity to condition the conduct of administrative activity, it could result in the occurrence on an open-ended basis of further discrimination identical or similar to that sanctioned within the proceedings.

The argument made by the applicant region that the ordinary courts are unable to direct the cancellation of discriminatory regulatory provisions within anti-discrimination proceedings pursuant to Article 28 of Legislative Decree No 150/2011 is therefore incorrect: as such, the application is unfounded in terms of its principal claim.

7.3.− The Autonomous Region of Friuli-Venezia Giulia observes that, even if it is accepted that the ordinary courts are able to direct the cancellation of a regulatory provision, that power should fall into abeyance where, as in this case, the regulatory provision in question essentially reiterates a legislative provision. According to this partially different argument, the Udine Ordinary Court thus acted beyond the scope of its judicial powers in directing the Autonomous Region to exercise its own regulatory powers in breach of the law. The Region asserts that this violates in particular the principle of legality laid down by Article 97 of the Constitution and the principle of the supremacy of regional laws over regional regulations (Article 117(6) of the Constitution).

The applicant therefore requests, in the alternative, that the Court declare that it did not fall to the Udine Ordinary Court to adopt the contested order "without having previously requested and obtained a declaration from the Constitutional Court that Article 29(1-*bis*) of Regional Law No 1/2016 is unconstitutional".

7.3.1.− In these different terms, the jurisdictional dispute is well-founded.

7.3.2.− As noted above, in providing for anti-discrimination proceedings pursuant to Article 28 of Legislative Decree No 150/2011, lawmakers sought to provide protection for the fundamental right not to suffer discrimination in all instances in which that right is violated through conduct, behaviour or acts of private persons or public authorities. The prerequisite on which anti-discrimination proceedings are based – and the related power of the ordinary courts to direct the cessation of that discrimination in whatever

manner may be possible – is therefore that the discriminatory conduct must be directly attributable to the private person or – and this is the aspect of significance here – to the public authority.

On the other hand, in the event that the discrimination committed by the public authority occurred as a result of a legal provision that mandated the conduct in question, without any alternative, then the discrimination can only be imputed indirectly to the public authority as it was the law that gave rise to the administrative choices found to be discriminatory: this is what has happened in this case where Article 12(3-*bis*) of Regional Regulation No 0144/2016 substantially restates Article 29(1-*bis*) of Friuli-Venezia Giulia Regional Law No 1/2016.

In cases such as this, the ordinary courts cannot direct that regulatory provisions that restate legislative provisions be amended, as in doing so this would require the public authority to adopt regulatory provisions that conflicted with the unrepealed law. The exercise of that power is therefore conditional upon the acceptance by this Court of the question concerning the constitutionality of the legislative provision that the court considers to be the root cause of the discriminatory regulatory provision.

7.3.3.− Due to the special nature of anti-discrimination proceedings, the issue is not significantly different where, as occurred in this case, the ordinary courts find that the legislative and regulatory provisions violate (also) provisions of EU law with direct effect, which must be applied immediately.

The primacy of EU law – which has been consistently recognised by this Court as the "cornerstone on which the community of national courts rests" (Judgment No 67/2022) – requires the national courts to immediately disapply any national legislation that the court has held to be incompatible with EU law with direct effect, in which case the effect of the EU law cannot be affected by the national law (Judgment No 170/1984). This obviously does not apply if a court considers it necessary to refer a question of constitutionality to the Constitutional Court in the event that the prerequisites set out by this Court since Judgment No 269/2017 are met (see also, inter alia, Judgments Nos 149, 67 and 54 of 2022, 182 and 49 of 2021, 63 and 20 of 2019; Order No 182/2020).

In particular, within proceedings under Article 28 of Legislative Decree No 150/2011, the primacy of EU law is guaranteed by the ordinary courts first and foremost when called upon to make a finding that discrimination has occurred. It is at this stage of the proceedings that, if it is found that the conduct at issue in the proceedings arose as a result of legislation that is incompatible with EU law with direct effect, that EU law must be immediately applied and an order must be issued directing the cessation of the discrimination.

Within the proceedings before the Udine Ordinary Court, the court held specifically that the fact that the claimants were unable to certify non-ownership of property by way of a declaration in lieu of an official certification under Presidential Decree No 445/2000 was discriminatory and violated Article 11 of Directive 2003/109/EC. Consequently, it correctly decided not to apply the legislative and regulatory provisions that prevented them from doing so and, directly applying the EU law, ordered that the claimants' application – seeking the contribution for the purchase of a first home – be considered "as if the documentation attesting the non-ownership of other property had been duly submitted in accordance with the same criteria as are valid for EU citizens". It was at this stage of the proceedings that, in adopting that order, the Udine Ordinary Court fully guaranteed the principles of the primacy and direct effect of EU law.

On the other hand, the order directing the cancellation of Article 12(3-*bis*) from Regional Regulation No 0144/2016, which substantially restates Article 29(1-*bis*) of Friuli-Venezia Giulia Regional Law No 1/2016, forms part of the plan for the removal of the discrimination identified that the Udine Ordinary Court considered it necessary to adopt. Having recognised the vital interest of the claimants, ensuring the full and immediate implementation of EU law, the court then sought to prevent any recurrence of identical or similar discrimination that might involve not so much the claimants, but rather any other person with identical circumstances.

At this stage of the proceedings the requirement for EU law with direct effect to be immediately applied is no longer relevant (Court of Justice of the EU, judgment of 22 June 2010 in Cases C-188/10, *Melki* and C-189/10, *Abdeli*), as that requirement has already been fully satisfied. The relevant issue here is, by contrast, a logic internal to the national legal system that seeks to guarantee effective removal of discrimination, also with future effect, according to a special additional remedial procedure. Moreover, where legislation has been found to be incompatible with EU law, the effect is for Article 28 of Legislative Decree No 150/2011 to operate as an instrument for guaranteeing also the uniform application of that law, thereby contributing to the building of an "an increasingly well integrated system of protections" (Judgment No 67/2022).

Within this perspective, where the regulatory provision substantially restates a legislative provision, it can only be cancelled by referring a question concerning the constitutionality of the latter. Indeed, the disapplication of legislation on the grounds that it does not comply with EU law with direct effect – which is a necessary prerequisite for the immediate recognition of the vital interest that was denied on account of the discrimination identified – does not remove the legislation from the legal system with immediate effect erga omnes, but rather only prevents "the provision being taken into account in order to resolve the dispute before the national courts" (Judgment No 170/1984). Thus, an order concerning the cancellation of the regulatory provision – which, according to the express choice made by lawmakers in adopting Article 28 of Legislative Decree No 150/2011, applies beyond the case that resulted in the anti-discrimination proceedings – is conditional upon a declaration concerning the unconstitutionality of the law which, even if it is not applied within the specific case, will continue to be applicable and in force. As such, it may be applied – albeit mistakenly for the sake of argument – by the public authority or by other courts that consider it to be compatible with EU law.

If the aim is, correctly, to order the cancellation of a regulatory provision with the aim of avoiding any recurrence of discrimination in future, it must therefore fall to the ordinary courts to refer a question concerning the constitutionality of the legislative provision that is substantially restated by the regulatory provision, even if it established that those internal rules are incompatible with EU law with direct effect. This is necessary both in order to ensure the orderly operation of the system of national sources of law – and, in this specific case, relations between regional laws and regulations, including in relation to EU law – and also to fulfil the requirement that the plans for ending the discrimination must be effective.

It must therefore be concluded with regard to the jurisdictional dispute between branches of State that the Udine Ordinary Court had no power to order the cancellation of Article 12(3-*bis*) from Regional Regulation No 0144/2016 (point 2 of the operative part of the contested order), without having previously raised a question concerning the constitutionality of Article 29(1-*bis*) of Friuli-Venezia Giulia Regional Law No 1/2016.

Consequently, that court also had no power to impose the framework of sanctions associated with that removal order (points 3, 7 and 8 of the order). The ruling issued by the Udine Ordinary Court must therefore be annulled, insofar as it has been challenged.

7.4.− As the application has been accepted with reference to the principle of legality (Article 97 of the Constitution) and the hierarchical criterion governing relations between regional legislation and regulations (Article 117(6) of the Constitution), the grounds proffered with reference to Articles 4, 5 and 6 of the Special Statute, Articles 101, 113, 117(3), (4) and (5), 120(2), 134 and 136 of the Constitution, and Article 10 of Constitutional Law No 3/2001 are moot.

8.− The incidental constitutionality proceedings initiated by the referral order of the Udine Ordinary Court referred to in the caption follow exactly the approach set out above in relation to the jurisdictional dispute.

However, it is necessary to illustrate the reasons why there cannot be any doubt regarding the admissibility of the questions of constitutionality raised, despite the referring court's express finding that Directive 2003/109/EC "fulfils all of the prerequisites that the case law of the Court of Justice of the EU considers necessary in order for that source of EU law to have direct effect, namely the prerequisites of being sufficiently precise and unconditional".

8.1.− Indeed, the referring court has already ensured compliance with that Directive – specifically Article 11 – in recognising the claimants' vital interest, and to that effect disapplying the contested Article 29(1-*bis*) of Friuli-Venezia Giulia Regional Law No 1/2016, as well as Article 9(3) and (3-*bis*) of Regional Regulation No 066/2020 on the grounds that they were incompatible with the Directive. This was done with the aim of ordering the respondent public authority to cease the discriminatory conduct alleged within the proceedings and to issue the related ruling stating that the applicants, as non-EU citizens with long-term residence, could submit the same documentation as Italian and EU citizens are allowed to submit for the purpose of inclusion within the ranking lists for the grant of the rental support contribution paid in 2021.

The Udine Ordinary Court therefore gave full and immediate effect to the EU law, granting immediate protection to the rights of the claimants in terms of the recognition of the vital interest.

8.2.− The question of constitutionality arises in relation to the claim by which the parties sought an order against the Autonomous Region of Friuli-Venezia Giulia concerning the cancellation of Article 9(3) and (3-*bis*) from Regional Regulation No 066/2020 in order to prevent any repetition in future of the discrimination identified. It is in relation to that question, upon which it has not yet ruled, that the Udine Ordinary Court has raised the current questions of constitutionality: in seeking to exercise its power to remove the root cause of the discrimination, in this case identified as being not only the regulatory provisions referred to but also – a fortiori – the legislation, the referring court has correctly challenged Article 29(1-*bis*) of Friuli-Venezia Giulia Regional Law No 1/2016, which Article 9(3) and (3-*bis*) of Regional Regulation No 066/2020 substantially restates, as the declaration of unconstitutionality will make it possible to issue "an order to amend the Regulation that avoids any future recurrence of disputes, which are now numerous in number" within the judicial district.

Thus, as noted above, the primacy of EU law, which was invoked as soon as the discrimination had been established, is now supplemented by an internal remedy that seeks to prevent any recurrence of that discrimination. Accordingly, the special characteristics of the proceedings provided for under Article 28 of Legislative Decree No

150/2011 enable the parallel operation of the mechanism of disapplying any internal law that is incompatible with EU law alongside the instrument of centralised constitutional review − with reference to internal or supranational principles − of the same national legislation. That review results in the removal of the incompatible legislation from the legal order, with effects erga omnes (Judgment No 63/2019), in accordance with "the principle that places a centralised system of constitutional review of laws at the foundation of the constitutional structure (Article 134 of the Constitution)" (Judgment No 269/2017). This demonstrates, once again, how the examination of compatibility with EU law and constitutional review are not juxtaposed to each other, but give rise to a confluence of legal remedies, which "enriches the tools for protecting fundamental rights, and, by definition, denies any restriction" (Judgment No 20/2019). This occurs within a context which "sees the ordinary courts and this Court committed to implementing European Union law in the Italian legal system, each using their own instruments and each within the scope of their respective competences" (Judgment No 149/2022).

Besides, a declaration that internal legislation is unconstitutional offers a further guarantee of the primacy of EU law in terms of its certainty and uniform application. Indeed, even though the obligation to apply provisions with direct effect applies not only to all courts but also to public authorities – with the result that, where any internal legislation is incompatible with those provisions, it must not be applied – it is also possible that internal provisions may continue to be used and applied as a result of any failure to appreciate that incompatibility or in the event that an interpretative approach considers there to be no such incompatibility. Precisely with the aim of avoiding such an outcome, and without prejudice obviously to any other remedies that the legal system adopts in order to ensure the uniform application of the law whenever this occurs, the referral of a question of constitutionality offers the opportunity, where the prerequisites are met, to achieve the removal from the legal order, with the binding effect inherent to a judgment accepting a question of constitutionality, of any provisions that are considered to violate EU law.

8.3.− It goes without saying that, before implementing EU law, the ordinary courts must give appropriate consideration to the normative content of the EU law and whether it is compatible with internal law.

The principle of the primacy of EU law results from the principle of equality of the Member States before the treaties (Article 4 of the Treaty on the Functioning of the European Union), which prevents any unilateral measure being accorded precedence by a Member State against the legal order of the Union (Court of Justice, judgment of 22 February 2022 in Case C-430/21, *RS*). Where the prerequisites are met, the obligation to apply EU law implies that it must be interpreted in a uniform manner throughout all Member States.

The correct application and the uniform interpretation of EU law are guaranteed by the Court of Justice of the EU, to which national courts may refer matters by sending references for preliminary rulings according to Article 267 TFEU, thereby cooperating directly in the exercise of the function vested in the Court of Justice under the treaties (Court of Justice of the EU, opinion 1/09 of 8 March 2011, concerning the "Agreement creating a Unified Patent Litigation System"). It is within the context of this engagement between the Court of Justice and the national courts, as the bodies charged with the application of EU law, that it provides interpretations of that law wherever it needs to be applied in order to resolve a dispute referred to it for examination (Court of Justice of the

EU, judgment of 9 September 2015 in Case C-160/14, *Ferreira da Silva and Brito and* others; judgment of 5 December 2017 in Case C-42/17, *M.A.S. and M. B.*).

However, according to the case law of the Court of Justice, the obligation to refer issues to that Court according to Article 267 TFEU, which is an obligation for national courts of last resort, does not apply not only where the question is not relevant or when the provision of EU law concerned has already been interpreted by the Court of Justice, but also in all cases in which the correct interpretation of EU law is so clearly obvious as not to leave scope for any reasonable doubts (Court of Justice, judgments of 6 October 2021 in Case C-561/19, *Consorzio Italian Management and others* and of 6 October 1982 in Case C-283/81, *Cilfit and others*).

9.− In view of the above, the question as to the constitutionality of Article 29(1-*bis*) of Friuli-Venezia Giulia Regional Law No 1/2016, with reference to Articles 3 and 117(1) of the Constitution, the latter in relation to Article 11(2)(d) of Directive 2003/109/EC, is well-founded.

As noted above (point 5.8.1.), the Udine Ordinary Court takes the view that the contested provision is unconstitutional to the extent that it provides that the documentation provided for thereunder establishing that no member of the family unit owns any residential housing in their country of origin or in the country of previous residence – which documentation is required in order to demonstrate non-ownership of other residential property for the purposes of Article 29(1)(d) of the Regional Law – must be submitted by non-EU citizens with long-term residence according to procedures that differ from those applicable to Italian and EU citizens.

9.1.− This Court has already had the opportunity to note in relation to a provision similar to that to which this question of constitutionality relates that a documentary burden of this type "is fundamentally unreasonable primarily on account of the blatant irrelevance and the pretextuous nature of the prerequisite that it seeks to establish" (Judgment No 9/2021).

In situations, as in the present case, in which the objective of the regional legislation is to recognise "the primary value of the right to housing as a fundamental factor for inclusion, social cohesion and quality of life" (Article 1(1) of Friuli-Venezia Giulia Regional Law No 1/2016) and to that effect promotes "access to adequate housing, whether rented or owned as a first home, for all citizens of the Region, in particular from the weaker sections of the population" (Article 1(2) of the Regional Law), "the ownership by any member of the applicant's family unit of adequate housing within the country of origin or of previous residence does not appear to be relevant in any respect. It is not relevant as an indication of need since, where the expression 'adequate housing' is taken to refer to housing that is capable of accommodating the applicant and their family unit, it is clear that the fact that any person from that family unit owns such residential property in the country of origin does not demonstrate anything in terms of their effective need for housing in Italy" (Judgment No 9/2021). Moreover, it does not even provide any indication of the applicant's financial circumstances, which are moreover already taken into account, under the terms of Article 29(1)(b) of Regional Law No 1/2016, by the requirement of "fulfilment of certain indicators of financial circumstances" laid down by Decree of the President of the Council of Ministers No 159/2013.

It was also held in that case that a provision of this type is also discriminatory "even if one only considers the fact that the alleged difficulties in verifying ownership of housing in non-European countries can also affect Italian and EU citizens" (Judgment No 9/2021). It therefore establishes "a procedural encumbrance that gives rise to one of those

‘practical and bureaucratic obstacles’ that this Court has repeatedly objected to, finding that in this way (State or regional) lawmakers have discriminated against certain categories of individuals (Judgments Nos 186/2020 and 254/2019)” (again, Judgment No 9/2021; for a similar ruling, concerning a different documentary requirement, Judgment No 157/2021).

9.2.− Besides, the documentary requirement provided for under the contested provision is manifestly at odds also with Article 11(1)(d) of Directive 2003/109/EC, in the implementation of which “the Member States must comply with the rights and observe the principles provided for under the Charter, including those laid down in Article 34 thereof. According to Article 34 of the Charter, the European Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources” (Court of Justice of the EU, judgment of 10 June 2021 in Case C-94/20, *Land Oberösterreich*).

Italy transposed that Directive by Legislative Decree No 3/2007, without availing itself of the possibility provided for under Article 11(4) of the Directive to limit equal treatment to core benefits: according to the Court of Justice of the EU, this derogation may only be invoked where the Member State has clearly expressed an intention to that effect (Court of Justice of the EU, judgment of 24 April 2012 in Case C-571/10, *Kamberaj*). Article 1(1)(a) of that Decree replaced Article 9 of Legislative Decree No 286/1998, which lays down provisions concerning the “EC residence permit for long-term residents”. Article 9(12) provides in particular that the holder of an EC residence permit for long-term residents may “*c*) receive social assistance benefits, social welfare benefits, benefits relating to health, schooling and social services, and benefits relating to access to goods and services available to the general public, including access to the procedures for obtaining public housing, unless specified otherwise and in all instances provided that the actual residence of the foreign national within the national territory is demonstrated”.

In making provision, amongst the other action taken to implement the housing policy programme, for rental support (Article 19), Friuli-Venezia Giulia Regional Law No 1/2016 is offering a core benefit within the meaning of Article 11(4) of Directive 2003/109/EC in that it is “intended to enable persons who lack sufficient resources to meet their housing needs so as to ensure that they lead a decent existence” (Court of Justice of the EU, Case C-94/20). There is therefore no doubt that it is a benefit that must be granted to long-term residents from third countries “by enabling them to find adequate housing without spending too large a proportion of their income on housing to the detriment, possibly, of the satisfaction of other basic needs” (again, Court of Justice of the EU, Case C-94/20). In subjecting third country citizens with a long-term residence permit to different documentary requirements from those applicable to Italian and EU citizens, the contested provision thus prevents those persons from receiving “social security benefits on the same terms under which they are provided for citizens of the Member State” (Judgment No 67/2022), as is by contrast required under Article 11 of Directive 2003/109/EC.

9.3.− In view of the above, Article 29(1-*bis*) of Friuli-Venezia Giulia Regional Law No 1/2016 must be declared unconstitutional to the extent that it provides that the documentation provided for thereunder establishing that no member of the family unit owns any residential housing in their country of origin or in the country of previous residence – which documentation is required in order to demonstrate non-ownership of other residential property for the purposes of Article 29(1)(d) of the Regional Law – must

be submitted by non-EU citizens with long-term residence according to procedures that differ from those applicable to Italian and EU citizens.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

After joining the proceedings,

1) *declares* that Article 29(1-*bis*) of Friuli-Venezia Giulia Regional Law No 1 of 19 February 2016 (Organic reform of housing policy and reorganisation of the territorial housing agencies) is unconstitutional to the extent that it provides that the documentation provided for thereunder establishing that no member of the family unit owns any residential housing in their country of origin or in the country of previous residence – which documentation is required in order to demonstrate non-ownership of other residential property for the purposes of Article 29(1)(d) of the Regional Law – must be submitted by non-EU citizens with long-term residence according to procedures that differ from those applicable to Italian and EU citizens;

2) *declares* that it did not fall to the Udine Ordinary Court, sitting as an employment court, to order the cancellation of Article 12(3-*bis*) from Decree of the President of Friuli-Venezia Giulia Region No 0144 of 13 July 2016 laying down the "Implementing regulation for the provisions on subsidised housing incentives for private citizens, to support the purchase or renovation of residential property intended for usage as a first home, pursuant to Article 18 of Regional Law No 1 of 19 February 2016 (Organic reform of housing policy and reorganisation of the territorial housing agencies)" (point 2 of the operative part to the order of 31 January-1 February 2023, given within case R.G. 358/2022), without having previously raised a question concerning the constitutionality of Article 29(1-*bis*) of Friuli-Venezia Giulia Regional Law No 1/2016; and, consequently, that it did not fall to that court to adopt the framework of sanctions associated with that removal order (points 3, 7 and 8 of the operative part to the same order);

3) *annuls* accordingly the order of 31 January-1 February 2023 of the Udine Ordinary Court, sitting as an employment court, given within case R.G. 358/2022, solely with regard to points 2, 3, 7 and 8 of the operative part.

Decided in Rome at the seat of the Constitutional Court, Palazzo della Consulta, on 23 November 2023.

Signed:

Augusto Antonio BARBERA, President

Filippo PATRONI GRIFFI, Judge Rapporteur