



Press Office of the Constitutional Court

Press release of 30 July 2020

CHILDBIRTH AND MATERNITY ALLOWANCES FOR NON-EU FOREIGNERS: A NEW DIALOGUE IS OPENED BETWEEN THE CONSTITUTIONAL COURT AND THE CJEU

The ban on arbitrary discrimination and the protection of maternity and childhood, safeguarded by the Italian Constitution (Articles 3(1) and 31 of the Constitution), must also be interpreted in light of the binding indications established by European Union (EU) law. Indeed, the protection recognised by the Constitution and that afforded by EU law are complementary with one another, precisely by virtue of the link of mutual involvement and fertile integration between them.

This was established in Order No. 182, filed today (Judge Rapporteur: Silvana Sciarra), in which the Constitutional Court, in line with the preliminary references procedure, referred a question to the Court of Justice of the European Union (CJEU) concerning the granting of childbirth and maternity allowances to non-EU foreigners (see the [press release of 8 July 2020](#)).

The order falls under what is, by now, a tried-and-tested tradition of loyal collaboration between courts.

The questions of constitutionality giving rise to the present proceedings had been raised by the Supreme Court of Cassation. In particular, those questions required ascertaining whether the prerequisites of 5 years' residence in Italian territory and possessing an adequate income and housing, envisaged for gaining the right to receive the benefits, gave rise to unjustified discrimination against foreigners who legally reside in Italy and live in indigent conditions. According to the Court of Cassation, the relevant provisions breached Articles 3 and 31 of the Constitution, as well as the principle of equal treatment of EU citizens and third-country nationals in the context of family and maternity benefits, a principle established by Directive No. 2011/98/EU in line with the right to receive social security benefits enshrined in Article 34 of the Charter of Fundamental Rights of the European Union (CFREU).

The Constitutional Court asked the CJEU to clarify whether Italian law – according to which possession of a long-term EU residence permit is a prerequisite for receiving childbirth and maternity benefits – is compatible with Article 34 CFREU, which establishes the right to receive social security benefits, and with Article 12(2)(e) of Directive No. 2011/98/EU, on the equal treatment of third-country nationals and nationals of EU member states.

As for childbirth allowances, the Constitutional Court stated that in addition to providing funds, they also serve the purpose of supporting families in precarious economic conditions. Therefore, they can qualify as “family benefits” under EU law (Articles 1(z) and 3(1)(j) of Regulation No. 883/2004/EC), such that the principle of equal treatment applies.

The reference for a preliminary ruling also concerns maternity allowances and whether these can be considered to fall under Article 34 CFREU as interpreted in light of the related secondary legislation; the provision seeks to ensure, for all third-country nationals who legally reside and work in the EU member states, “the same set of rights, on the basis of equal treatment”, and requires host states to observe this obligation.

Pending the CJEU’s judgment, all relevant proceedings are suspended.

Rome, 30 July 2020