

CHILDBIRTH AND MATERNITY ALLOWANCE TO FOREIGN
NATIONALS TOO: IT IS UNREASONABLE TO DENY ADEQUATE
PROTECTION TO THOSE IN MOST NEED

The provisions excluding eligibility for certain benefits (childbirth and maternity allowance) for non-EU nationals who do not hold an EU long-term residence permit are unconstitutional because “they establish, solely for third country nationals, a system that is irrationally more cumbersome, reaching beyond the albeit legitimate goal of granting welfare benefits only to those with a valid residence permit and who are not ephemerally present within the country”, whilst denying adequate protection precisely to those who are in the greatest need.

This is an extract from Constitutional Court judgment [no. 54](#), filed today (author Vice President Silvana Sciarra), previously announced in the [press release of 12 January 2022](#).

The decision was issued following a ruling by the Court of Justice of the European Union in Case C-350/20 on 2 September 2021 in response to the questions referred by the Constitutional Court on 30 July 2020 by the Order concerning a Reference for a Preliminary Ruling no. 182. The CJEU held that the Italian legislation is not compatible either with Article 34 of the Charter of Fundamental Rights of the European Union, which provides for the right to social security benefits, or with point (e) of Article 12(1) of Directive 2011/98/EU on equal treatment for third country nationals and nationals of the Member States.

The Constitutional Court writes that its task is “to ensure systematic and unfractioned protection for the rights established by the Constitution, in synergy with the EU Charter of Fundamental Rights, and to assess the balance carried out by the legislator, in a perspective of a maximum expansion of guarantees”.

The legislation ruled unconstitutional violates the right to equal treatment in access to social security benefits protected by Article 34 of the Charter in conjunction with Article 12 of Directive 2011/98/EU, which recognises a set of rights for third country nationals who have been allowed into the country in order to work, or for other purposes with permission to work.

According to the judgment, the principle of equal treatment is linked “to the principles enshrined in Articles 3 and 31 of the Constitution and enhances and illuminates their axiological content, with the aim of promoting the broader and more effective integration of third country nationals”.

The protection of maternity and infancy (Article 31 of the Constitution) “does not tolerate arbitrary and unreasonable distinctions”.

The Constitutional Court held that there was no reasonable correlation between the prerequisite of an EU long-term residence permit, which is conditional upon the fulfilment of strict income requirements, and eligibility for benefits that ensure the protection for maternity and infancy enshrined in Article 31 of the Constitution, and address the state of need arising following the birth of a child or a child’s acceptance into an adoptive family.

Rome, 4 March 2022