



Press Release of 11 March 2022

PRIMACY OF EU LAW: THE FAMILY UNIT ALLOWANCE MUST BE AWARDED ALSO TO NON-EU CITIZENS

Non-EU citizens holding a long-term residence permit who are permitted to work may not be treated any differently from Italian citizens in terms of their eligibility for the family unit allowance, even if some members of the family are residing temporarily in the country of origin. Equal treatment for the various recipients of this benefit – which constitutes both a form of social security as well as income support – is guaranteed by the courts, which are obliged to apply EU law.

This is the ruling in [judgment no. 67](#) filed today (author Vice President Silvana Sciarra) in which the Constitutional Court declared inadmissible certain questions referred by the Court of Cassation. In doing so it asserted that the principle of the primacy of EU law is “the keystone on which the community of national courts is based, which are bound together by uniform rights and obligations”.

According to the judgment, when assessed in terms of its “propulsive effects throughout the entire legal system”, this principle is not an alternative to centralised constitutional review as provided for under Article 134 of the Constitution, “but complements it in establishing increasingly more integrated protections”.

In response to two references for preliminary rulings sent by the Court of Cassation, the Court of Justice of the European Union had held that Italian legislation on the family unit allowance was incompatible with two European Directives (2003/109 on long-term residents and 2011/98 on the issue of single work permits).

According to the Court of Justice, although the members of the family unit are the beneficiaries of the allowance, it is clear that the

allowance is paid to the worker or pensioner, who is also a member of the family unit.

The obligation under the Directives not to treat differently lawfully resident third country citizens is imposed in a clear, precise and unequivocal manner, and as such has direct effect.

In the judgment filed today, the Constitutional Court observed that the preliminary reference procedure not only establishes a channel for communication between national courts and the ECJ for the purpose of resolving any interpretative doubts, but also helps to ensure and reinforce the primacy of EU law. Ordinary courts are involved in ensuring such primacy according to the mechanism of diffuse review, “where necessary disapplying” any provision of national law that contrasts with EU law. This is the *effet utile* of Article 267 TFEU.

The Court of Justice’s exclusive competence over the interpretation and application of the Treaties – which the Constitutional Court also recently recognised, when making the reference for a preliminary ruling – “entails, by virtue of the principle of effectiveness of protection, that the decisions taken must be binding, first and foremost on the court that made the reference for a preliminary ruling”.

Rome, 11 March 2022