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**Third-country nationals who hold a single work permit obtained pursuant to the Italian legislation transposing an EU directive are entitled to a childbirth allowance and a maternity allowance as provided for by the Italian legislation**

The Italian authorities refused to grant childbirth and maternity allowances to a number of third-country nationals residing legally in Italy and who hold a single work permit obtained pursuant to the Italian legislation transposing Directive 2011/98.<sup>1</sup> That refusal was based on the fact that, contrary to the requirements laid down by Law No 190/2014 and Legislative Decree No 151/2001, those persons do not have long-term resident status.

Under Law No 190/2014, which introduces a childbirth allowance in respect of each child born or adopted, the allowance is paid monthly to Italian nationals, to nationals of other Member States, and to third-country nationals who hold a long-term residence permit, in order to encourage the birth rate and to contribute to the costs of supporting it. Legislative Decree No 151/2001 grants entitlement to the maternity allowance, in respect of every child born since 1 January 2001 or in respect of any minor in pre-adoption foster care or adopted without foster care to women residing in Italy who are nationals of that Member State or of another EU Member State or who are holders of a long-term residence permit.

The third-country nationals concerned challenged that refusal before the Italian courts. In the context of those proceedings, the Corte suprema di cassazione (Supreme Court of Cassation, Italy), holding that the childbirth allowance regime infringes, *inter alia*, several provisions of the Italian Constitution, referred questions on constitutionality concerning Law No 190/2014 to the Corte costituzionale (Constitutional Court, Italy), in so far as that provision makes the grant of the allowance to third-country nationals subject to the condition that they have long-term resident status. For the same reasons, that court was also called upon to answer a question as to constitutionality concerning Legislative Decree No 151/2001 on the maternity allowance.

Considering that the prohibition of arbitrary discrimination and the protection of motherhood and children, guaranteed by the Italian Constitution, must be interpreted in the light of the binding indications given by EU law, the Corte costituzionale asked the Court of Justice to clarify the scope of the right to social benefits recognised by Article 34 of the Charter of Fundamental Rights of the European Union and of the right to equal treatment in the field of social security granted to third-country workers by Article 12(1)(e) of Directive 2011/98.<sup>2</sup>

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<sup>1</sup> Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (OJ 2011 L 343, p. 1).

<sup>2</sup> Those workers are those referred to in Article 3(1)(b) and (c) of that directive, namely, first, third-country nationals admitted to a Member State for purposes other than work, who are allowed to work and who hold a residence permit in accordance with Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ 2002 L 157, p. 1), and, second, third-country nationals admitted to a Member State for the purpose of work.

In its Grand Chamber judgment, the Court confirms the right of third-country nationals who hold single permits to receive, in accordance with Article 12(1)(e) of Directive 2011/98, a childbirth allowance and a maternity allowance as provided for by the Italian legislation.

## Findings of the Court

First, the Court states that, given that Article 12(1)(e) of Directive 2011/98 gives specific expression to the entitlement to social security benefits provided for in Article 34(1) and (2) of the Charter of Fundamental Rights, it is necessary to examine the question concerning the compatibility of the Italian legislation with EU law in the light of that directive alone.

Second, since the scope of that provision of the directive, which refers to Regulation No 883/2004,<sup>3</sup> is determined by the latter, the Court ascertains whether the childbirth allowance and the maternity allowance at issue constitute benefits falling within the branches of social security listed in Article 3(1) of that regulation.

As regards the childbirth allowance, the Court notes that that allowance is granted automatically to households satisfying certain legally defined, objective criteria, without any individual and discretionary assessment of the applicant's personal needs. It is a cash benefit intended in particular, by means of a public contribution to the family's budget, to alleviate the financial burdens involved in the maintenance of a newly born or adopted child. The Court concludes from this that that allowance is a family benefit within the meaning of Article 3(1)(j) of Regulation No 883/2004.

As to the maternity allowance, the Court observes that it is granted or refused taking into account, in addition to the absence of maternity benefit in connection with employment, self-employment or professional practice, the resources of the household of which the mother is a member on the basis of an objective and legally defined criterion, namely the economic situation indicator, without the competent authority being able to take account of other personal circumstances. Furthermore, that allowance relates to the branch of social security referred to in Article 3(1)(b) of Regulation No 883/2004.

The Court finds that the childbirth allowance and the maternity allowance fall within the branches of social security in respect of which the third-country nationals referred to in Article 3(1)(b) and (c) of Directive 2011/98 enjoy the right to equal treatment provided for by that directive.

In view of the fact that Italy has not availed itself of the option of restricting equal treatment offered by the directive to the Member States,<sup>4</sup> the Court considers that the national legislation which excludes those third-country nationals from entitlement to those allowances does not comply with Article 12(1)(e) of that directive.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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<sup>3</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1, and corrigendum OJ 2004 L 200, p. 1).

<sup>4</sup> That option is provided for by Article 12(2)(b) of Directive 2011/98.