

Press Release of 12 January 2022

CHILDBIRTH AND MATERNITY ALLOWANCE: THE PREREQUISITE THAT FOREIGN NATIONALS MUST HOLD A LONG-TERM RESIDENCE PERMIT IS UNCONSTITUTIONAL

Sitting in chambers on 11 January 2022, the Constitutional Court examined questions raised by the Court of Cassation concerning the rules applicable to the childbirth (Article 1(125) of Law no. 190/2014, as subsequently extended) and the maternity allowance (Article 74 of Legislative Decree no. 151/2001). It was argued that these provisions violated the principle of equality and protection for maternity on the grounds that they rendered the grant of the two allowances to non-EU foreign nationals conditional upon the prerequisite of holding an EU long-term residence permit.

The questions returned before the Constitutional Court, following the judgment issued 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 (Order concerning a Reference for a Preliminary Ruling no. 182 - author Silvana Sciarra). The CJEU held that Italian legislation is not compatible with Article 34 of the Charter of Fundamental Rights of the European Union, which provides for the right to social security benefits, nor 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.

Pending the filing of the judgment, the Press Office announces that the Court has ruled unconstitutional the provisions that prevent the two allowances from being granted to third country nationals who are allowed to reside in the country as workers, as well as to persons who are allowed to reside in the country for non-work purposes but who are permitted to work, provided that they hold a residence permit with a validity period longer than six months. It also ruled unconstitutional the same exclusion contained in the legislation extending the childbirth allowance.

The Constitutional Court held that the contested provisions violate Articles 3 and 31 of the Constitution as well as Article 34 of the Charter of Fundamental Rights of the European Union.

The judgment will be filed over the next few weeks.

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