JUDGMENT NO. 186 YEAR 2020

In this case, the Court considered various referral orders concerning the constitutionality of a rule providing that "a residence permit… shall not constitute grounds for registration in the residents' register" of the relevant municipality of residence for lawfully resident asylum applicants, along with various other provisions incidental to this rule. The Court first considered a number of documents and statements relating to the enactment of the legislation, and satisfied itself that the referring courts' interpretation was correct (as opposed to a different interpretation, according to which the desired outcome could be achieved without having to declare the legislation unconstitutional). The Court upheld the challenges to the constitutionality of the legislation with reference to Article 3 of the Constitution, holding that it was inherently irrational. Whilst the legislation had the effect of "limiting the capacity of the public authorities to control and monitor the population that is actually resident within its local territory", this was not offset by any notional benefit associated with the saving of the administrative effort required to register foreign nationals. Indeed, the legislation in actual fact complicated the task of public authorities as it "increases, rather than reduces, the problems associated with the monitoring of foreign nationals who are lawfully resident within the national territory". The Court also ruled that the legislation was discriminatory in that it treated different classes of resident persons (e.g. Italian nationals, foreign national asylum applicants and other foreign nationals) differently without any objective reason. Specifically, if the fact that the period of residence was set to be short were a genuine reason for the refusal of registration, then it would also be necessary to extend the same rule to all foreign nationals residing in Italy under a residence permit of limited duration. "Whilst the legislator is free to stipulate particular consequences for any factual differences existing between Italian nationals and foreign nationals..., it cannot place foreign nationals... in a condition of social 'subordination' without any appropriate justification [since] ...status as a foreign national cannot be considered in itself 'as an admissible reason for different and less favourable treatment'".

[omitted]

THE CONSTITUTIONAL COURT

[omitted]

gives the following

JUDGMENT

in proceedings concerning the constitutionality of Article 4(1-*bis*) of Legislative Decree No. 142 of 18 August 2015 (Implementation of Directive 2013/33/EU laying down standards for the reception of applicants for international protection, and Directive 2013/32/EU on common procedures for granting and withdrawing international protection), as introduced by Article 13(1)(a), number 2 of Decree-Law No. 113 of 4 October 2018 (Urgent provisions on international protection and immigration, public security, and measures concerning the operation of the Ministry of Interior and the organisation and functioning of the National Agency for the Administration and Allocation of Assets Seized from Criminal Organisations), converted, with amendments, into Law No. 132 of 1 December 2018, initiated by the First Civil Division of the Ordinary Court of Milan with the referral order of 1 August 2019, by the First Civil Division of the Ordinary Court of Ancona with the referral order of 29 July 2019 and by the First Civil Division sitting during the court holiday of the Ordinary Court of Salerno

with two referral orders of 9 August 2019, registered respectively as Nos. 145, 153, 158 and 159 in the Register of Referral Orders 2019 and published in the *Official Journal* of the Republic, Nos. 39, 40 and 41, first special series 2019.

Considering the entries of appearance by Mr A. H. and Mr A. S., the associations *ASGI-Associazione per gli studi giuridici sull'immigrazione* [ASGI-Association for Legal Studies on Immigration] and *Avvocati per Niente Onlus* [Pro Bono Lawyers Non-Profit Association], the Municipality of Milan and the interventions by the President of the Council of Ministers;

having heard Judge Rapporteur Daria de Pretis in chambers on 8 July 2020;

having heard Counsel Valerio Onida for A. H., Counsel Alberto Guariso for A. H. and others, Counsel Antonello Mandarano for the Municipality of Milan, Counsel Paolo Cognini for A. S. and State Counsel [*Avvocati dello Stato*] Giuseppe Albenzio and Ilia Massarelli for the President of the Council of Ministers;

having deliberated in chambers on 9 July 2020.

[omitted]

Conclusions on points of law

1.– The First Division of the Ordinary Court of Milan (Register of Referral Orders No. 145 of 2019), the First Division of the Ordinary Court of Ancona (Register of Referral Orders No. 153 of 2019) and the First Civil Division sitting during the court holiday of the Ordinary Court of Salerno (Register of Referral Orders Nos. 158 and 159 of 2019) have raised questions concerning the constitutionality of Article 4(1-*bis*) of Legislative Decree No. 142 of 18 August 2015 (Implementation of Directive 2013/33/EU laying down standards for the reception of applicants for international protection, and Directive 2013/32/EU on common procedures for granting and withdrawing international protection), introduced by Article 13(1)(a), number 2 of Decree-Law No. 113 of 4 October 2018 (Urgent provisions on international protection and immigration, public security, and measures concerning the operation of the Ministry of Interior and the organisation and functioning of the National Agency for the Administration and Allocation of Assets Seized from Criminal Organisations), converted, with amendments, into Law No. 132 of 1 December 2018, due to the violation, overall, of Articles 2, 3, 10, 16, 77(2) and 117(1) of the Constitution, the last-mentioned in relation to Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), signed in Rome on 4 November 1950, ratified and implemented by Law No. 848 of 4 August 1955, Article 2(1) of Protocol No. 4 to the ECHR, adopted in Strasbourg on 16 September 1963 and implemented by Decree of the President of the Republic No. 217 of 14 April 1982, which recognises certain rights and freedoms different from those covered by the Convention and its First Additional Protocol, and with reference to Articles 12 and 26 of the International Covenant on Civil and Political Rights adopted in New York on 16 December 1966, which entered into force on 23 March 1976, ratified and implemented by Law No. 881 of 25 October 1977.

The referring courts have been seized by foreign-national asylum applicants, whose applications for inclusion in the residents' register have been refused. The applications launching the proceedings before the Ordinary Court of Ancona and the Ordinary Court of Salerno were filed pursuant to Article 700 of the Code of Civil Procedure. The application before the Ordinary Court of Milan was launched pursuant to Article 28 of Legislative Decree No. 150 of 1 September 2011 (Provisions supplementing the Code of Civil Procedure on the reduction and simplification of civil merits proceedings at first instance, enacted pursuant to Article 54 of Law No. 69 of 18 June 2009), and pursuant to

Article 44 of Legislative Decree No. 286 of 25 July 1998 (Consolidated text of legislative provisions regulating immigration and rules governing the status of foreign nationals), as well as pursuant to Article 702-*bis* of the Code of Civil Procedure.

The proceedings before the Ordinary Court of Ancona and the Ordinary Court of Salerno are thus interim proceedings launched on the premise that serious and irreparable detriment could be caused to the applicant by the refusal of the application for inclusion in the residents' register (as a result of the application of the contested provision), pending a decision on the merits of the case. Within these proceedings, the referring courts granted interim relief "subject to the confirmation or revocation of the measure, thus ordering the cancellation of registration, following the conclusion of the proceedings before the Constitutional Court" (as ruled by the Ordinary Court of Ancona).

The proceedings before the Ordinary Court of Milan are summary merits proceedings at first instance seeking, "following, as the case may be, a reference to the Constitutional Court, a declaration that the refusal by the Municipality of Milan to register the claimant in the register of the resident population was invalid and discriminatory in nature".

1.1.– It is only in formal terms that the four referral orders appear to challenge different provisions (Article 4(1-*bis*) of Legislative Decree No. 142 of 2015 and Article 13(1)(a), number 2 of Decree-Law No. 113 of 2018). Therefore, since the remedy sought is the same, it is appropriate to consider them jointly (*ex plurimis*, Judgments Nos. 99 and No. 79 of 2020). The relative proceedings must therefore be joined for decision within a single judgment.

1.2.– As a further preliminary issue, the arguments invoked by counsel for the associations *ASGI-Associazione per gli studi giuridici sull'immigrazione* e *Avvocati per Niente Onlus*, which entered appearances within the proceedings initiated pursuant to Referral Order No. 145 of 2019 seeking to extend the *thema decidendum* – as specified in the referral order – to the violation of Article 8 ECHR and of Articles 1, 7, 18, 20 and 29 of the Charter of Fundamental Rights of the European Union (CFREU), proclaimed in Nice on 7 December 2000 and adapted in Strasbourg on 12 December 2007, must be ruled inadmissible. According to the settled case law of this Court, the object of incidental constitutionality proceedings is limited to the provisions stated in the referral order. Therefore, it is not possible to consider "further questions or aspects of constitutionality invoked by the parties, whether these have been averred but not endorsed by the referring court, or whether they seek to subsequently expand or alter the content of those orders (*ex plurimis*, Judgment No. 271 of 2011, No. 236 of 2009, No. 56 of 2009 and No. 86 of 2008)" (Judgment No. 203 of 2016; see also Judgments Nos. 165, 150 and 85 of 2020).

2.– Before examining the challenges raised, it is necessary to set out the legislative framework, *inter alia* for the purpose of clarifying the meaning of the contested provision.

2.1.– Article 13 of Decree-Law No. 113 of 2018 made a series of changes to Articles 4 and 5 of Legislative Decree No. 142 of 2015 and also provided for the repeal of Article 5-*bis* of the Legislative Decree. In particular, Article 13 is comprised of one single paragraph, which is sub-divided internally into three letters (*a*, *b* and *c*).

Letter *a*) amends Article 4 of Legislative Decree No. 142 of 2015 and lays down two provisions (marked as numbers 1 and 2): the first provision contained in paragraph 1 of Article 4 introduces the following sentence (which has not been challenged by the referring courts): "A residence permit shall constitute an identity document for the purposes of Article 1(1)(c) of Decree of the President of the Republic No. 445 of 28 December 2000"; the second provision introduces, after paragraph 1 of Article 4, a

paragraph 1-*bis* (which has been challenged by all referring courts), which provides as follows: "1-*bis*. A residence permit issued pursuant to paragraph 1 shall not constitute grounds for registration in the residents' register pursuant to Decree of the President of the Republic No. 223 of 30 May 1989 and Article 6(7) of Legislative Decree No. 286 of 25 July 1998".

Letter *b*) amends Article 5 of Legislative Decree No. 142 of 2015 and lays down two provisions (marked as numbers 1 and 2), neither of which has been challenged by the referring courts: the first provision replaces Article 5(3) as follows: "3. Access to the services provided for under this Decree and to those otherwise provided within the local territory in accordance with the applicable law shall be guaranteed at the current place of abode identified pursuant to paragraphs 1 and 2"; the second provision amends Article 5(4) as follows: "the phrase 'a place of residence' shall be replaced by 'a place of abode'".

Finally, letter *c*) (which has also not been challenged) provides for the repeal of Article 5-*bis* of Legislative Decree No. 142 of 2015, which governed the procedures applicable to the registration in the residents' register of a person seeking international protection.

2.2.– The contested provision, which stipulates that "[t]he residence permit provided for under paragraph 1 shall not constitute grounds for registration in the residents' register […]", has been interpreted in two different ways.

2.2.1.– In contrast with the interpretation endorsed by the referring courts, which state – at least as their principal argument (as asserted by the Ordinary Court of Milan) – that the effect is to preclude registration in the residents' register, and on this basis argue that the contested provision is unconstitutional, there is a different interpretative option (which was first proposed by: the Fourth Civil Division of the Ordinary Court of Florence in an order of 18 March 2019; the International Protection Division of the Ordinary Court of Bologna in an order of 2 May 2019; the Eleventh Civil Division of the Ordinary Court of Genoa in an order of 20 May 2019; the Specialist Division for Immigration, International Protection and the Free Movement of EU Citizens of the Ordinary Court of Florence in an order of 27 May 2019; the First Civil Division of the Ordinary Court of Lecce in an order of 4 July 2019; the First Civil Division of the Ordinary Court of Parma in an order of 2 August 2019; the Specialist Division for Immigration, International Protection and the Free Movement of EU Citizens of the Ordinary Court of Bologna in an order of 23 September 2019; the Fourth Civil Division of the Ordinary Court of Florence in an order of 22 November 2019; the Individual Rights and Civil Immigration Division of the Ordinary Court of Rome in an order of 25 November 2019). Focusing on the alleged ambiguity within the literal wording (including in particular the phrase "shall not constitute grounds"), it asserts that Article 13 of Decree-Law No. 113 of 2018 does not preclude registration in the civil registry, and on the contrary is limited to clarifying the fact that the possession of an asylum applicant's residence permit alone is not sufficient in order to obtain registration in the residents' register.

In particular, the fundamental stages within this interpretative development are the following: the provision does not contain any express prohibition on registration in the residents' register; the legal system does not identify any documents that "constitute grounds" for registration in the residents' register; such registration is rather the outcome of an administrative procedure that is aimed at identifying a factual situation; there is an individual right to registration in the residents' register (*inter alia*, judgments of the Joint Civil Divisions of the Court of Cassation No. 4674 of 26 May 1997 and No. 449 of 19 June 2000), which is governed by Article 1 of Decree of the President of the Republic

No. 223 of 30 May 1989 (Approval of the new regulations on the register for the resident population); the right to registration in the residents' register is exercised by a declaration by the interested party to the civil registrar by which the individual gives notice concerning the fact that he or she lives at a particular location and intends to reside there stably; the legislative context set out (and interpreted in this manner) constituted the backdrop, in a consistent manner, for Article 6(7) of Legislative Decree No. 286 of 1998, which provides that: "The registration of and any change in the details of a lawfully resident foreign national shall occur under the same conditions as Italian nationals in accordance with the procedures laid down by the implementing regulation […]"; an asylum applicant's residence permit – although the same thing may be said in relation to other residence permits – has never constituted "grounds" for registration in the residents' register; the effect of the repeal of Article 5-*bis* of Legislative Decree No. 142 of 2015 has only been to remove the "simplified" registration procedure provided for thereunder and to re-expand the scope of the ordinary procedures for registration in the residents' register (as provided for under Decree of the President of the Republic No. 223 of 1989); finally, the provision that "[a]ccess to the services provided for under this Decree and to those otherwise provided within the local territory in accordance with applicable law shall be guaranteed at the current place of abode […]" cannot make up for the limitation of individual rights associated with registration in the residents' register.

2.2.2.– The interpretation described above does not appear to be practicable for the reasons set out below. By contrast, as argued by the referring courts, it must be concluded that the contested provision precludes the registration in the residents' register of foreign national asylum applicants.

First and foremost, this conclusion is supported by the contents of the illustrative report concerning the Decree-Law, and also in the same manner, in the illustrative report concerning the conversion bill. Those documents state, *inter alia*, that an "asylum applicant's residence permit does not establish entitlement to registration in the residents' register" and that "[t]he exclusion from registration in the residents' register is justified by the precarious status of the asylum applicant's residence permit and reflects the need to establish the applicant's legal status on an *ex ante* basis". Moreover, the provision was also construed in this way by the various individuals heard during the course of the decree's conversion into law, as is apparent from the relevant reports. In particular, it is important to note the statement made by the director of the National Institute for Statistics [*Istituto nazionale di statistica*, ISTAT] that "[t]he change in the law will in any case result in some discontinuity in the historical records of the resident population, leading in some cases, especially at local level, to not insignificant changes in the total numbers of the resident population". Moreover, when confronted with the "difficulty for municipal administrations in complying with their obligations in relation to the registration, within their residents' registers, of asylum applicants resident within their local territories", the Minister of Interior identified the reason for exclusion from the residents' register as being "the precarious status of their physical presence in the local territory".

This approach is in keeping with several circulars issued by the Ministry of Interior following the entry into force of Decree-Law No. 113 of 2018, including that dated 18 October 2018 concerning "Decree-Law No. 113 of 4 October 2018 (Official Journal No. 231 of 4 October 2018). Article 13 (Provisions on registration in the residents' register)", which states as follows: "[t]herefore, following the entry into force of the new provisions, the residence permit for persons seeking international protection provided for under Article 4(1) of Legislative Decree No. 142/2015 cannot allow the individual to be

registered in the residents' register". Similarly, the circular dated 18 December 2018 (Decree-Law No. 113 of 4 October 2018 laying down "Urgent provisions on international protection and immigration, public security, and measures concerning the operation of the Ministry of Interior and the organisation and functioning of the National Agency for the Administration and Allocation of Assets Seized from Criminal Organisations", converted with amendments into Law No. 132 of 1 December 2018), states as follows: "[c]onsequently, asylum applicants – who moreover will no longer be registered in the residents' register (Article 13) – will be allocated to dedicated reception facilities (assistance centres for asylum applicants [*centri di accoglienza per richiedenti asilo* [CARA]) and reception and service centres [*centro accoglienza e servizi*, [CAS]) within which they shall remain, as in the past, until their status has been resolved".

Moreover the actual wording of the provisions introduced by Article 13 of Decree-Law No. 113 of 2018 is also significant; this provision aims to replace the reference to the place of residence by a reference to the place of abode, and consequently repeals not only the provision governing the special procedure for registration in the residents' register, but also the very provision allowing registration in the residents' register (Article 5-*bis*(1) of Legislative Decree No. 142 of 2015); indeed, this change would be meaningless were the contested provision to be intended only as repealing the simplified procedure for registration in the residents' register, thus "re-engaging" the ordinary procedure.

Also a systematic reading of the provision confirms this interpretation. In particular, the reference contained in it to Article 6(7) of Legislative Decree No. 286 of 1998 (which, as mentioned above, provides that lawfully resident foreign nationals are to be registered "under the same conditions as Italian nationals") must be deemed to serve the purpose of acknowledging that the provision thereby introduced constitutes an exception from the provision referred to. Moreover, the fact of providing that "[t]he residence permit shall constitute an identity document […]" (Article 13(1)(a), number 1) only makes sense if it is considered that asylum applicants cannot obtain an identity card, a prerequisite for which is registration in the residents' register. Similarly, in replacing the phrase "place of residence" with the reference to abode as the location of service provision, Article 13(1)(b), numbers 1 and 2 of Decree-Law No. 113 of 2018 confirms the legislator's intention of precluding legal recognition to asylum applicants of their habitual abode by virtue of registration in the residents' register.

Ultimately, the interpretation adopted by the referring courts appears to be confirmed by the considerations set out above. It is therefore possible to proceed to an examination of the individual challenges raised.

3.– Due to logical considerations, it is first necessary to consider the question raised by the First Civil Division of the Ordinary Court of Milan with reference to Article 77(2) of the Constitution, as it concerns the prerequisites for the proper exercise of the legislative function (Judgments Nos. 288 and 247 of 2019, No. 189 of 2018 and No. 169 of 2017).

In his intervention, the President of the Council of Ministers objected that the question is inadmissible "as the Court has already ruled it unfounded" by Judgment No. 194 of 2019.

That objection is unfounded for two reasons: in the first place, whilst Judgment No. 194 of 2019 did indeed rule on various questions raised by direct applications to the Court against Decree-Law No. 113 of 2018, it did not consider them on the merits, and rather ruled all questions inadmissible; secondly, it is clear that a previous declaration that a

question is unfounded cannot constitute grounds for the inadmissibility of the question raised a second time, although it may potentially result in a declaration that it is manifestly unfounded (*ex multis*, Judgments No. 44 of 2020 and No. 99 of 2017).

3.1.– On the merits, the question is unfounded.

This Court has held that "the constitutional review of the adoption of a decree-law by the government must be limited to situations involving the evident failure to comply with the prerequisites of extraordinary necessity and urgency required under Article 77(2) of the Constitution or in which its assessment is manifestly unreasonable or arbitrary" (Judgment No. 97 of 2019; for a similar view, Judgments No. 288 and No. 33 of 2019 and No. 137, No. 99 and No. 5 of 2018): the purpose of this is to avoid any overlap between the political assessment by the Government and the Houses of Parliament (upon conversion) on the one hand and constitutional review by the Court on the other hand.

In particular, in the cases in which this Court has been called upon to assess the compatibility of one of the provisions of a decree-law (as it has been in this case) with Article 77(2) of the Constitution, it has carried out its assessment with reference to various criteria, such as: a) the consistency of the provision with the title of and preamble to the decree (for example, Judgments No. 288 and No. 33 of 2019 and No. 137 of 2018); b) the homogeneity of the provision in terms of content or function with the rest of the decree-law (*ex plurimis*, Judgments No. 149 of 2020, No. 97 of 2019 and No. 137 of 2018); c) usage of preparatory works (for example, Judgments No. 288 of 2019, No. 99 and No. 5 of 2018); d) the status of the provision as systemic or reforming (for example, Judgments No. 33 of 2019, No. 99 of 2018 and No. 220 of 2013).

Decree-Law No. 113 of 2018, which is entitled "Urgent provisions on international protection and immigration, public security, and measures concerning the operation of the Ministry of Interior and the organisation and functioning of the National Agency for the Administration and Allocation of Assets Seized from Criminal Organisations", is sub-divided into four titles: Title one (within which Article 13 appears) contains "Provisions on the issue of special temporary residence permits on humanitarian grounds and on international protection and immigration" and is sub-divided in turn into four chapters, the second of which includes the "Provisions on international protection", amongst which Article 13 features. That chapter, amongst other things, changes the law on the refusal, withdrawal or termination of international protection, regulates situations in which repeated applications for international protection are made, and amends the provisions governing the reception of asylum applicants.

The illustrative report on the draft conversion bill (Acts of the Senate No. 840, released by the Office of the President of the Senate on 4 October 2018) refers to the urgent need to make provision, "within the context of a complex reorganising initiative, concerning the system for the recognition of international protection and the forms of complementary protection, with the ultimate aim of ensuring the more efficient and effective management of migration and of introducing measures to combat the possible exploitation of applications for international protection". With specific reference to Article 13, the report states that "[t]he preclusion on registration in the residents' register is justified by the precarious status of the asylum applicant's residence permit and reflects the need to establish the applicant's legal status on an *ex ante* basis".

Leaving for the following section any assessment of the content of the contested provision, it must be concluded that it is not affected by any evident failure to comply with the prerequisites of necessity and urgency. Article 13 has been incorporated in a homogeneous manner into the chapter containing provisions on international protection,

and concerns an aspect of the status of asylum applicants: in Judgment No. 194 of 2019, this Court has previously classified the provision laying down the prohibition on the registration of asylum applicants in the residents' register as falling under the area of law concerning the "right to asylum and legal status of nationals of countries that are not Member States of the European Union", as well as the area concerning "residents' registers" (Article 117(1)(a) and (i) of the Constitution). It is no coincidence that, in its opinion dated 14 November 2018, the Legislation Committee did not make any comments in relation to Article 13, whilst expressing doubts concerning the homogeneity of some of the provisions contained in Decree-Law No. 113 of 2018.

Moreover, it cannot be asserted that the Government decided to amend by decree-law the system for the recognition of international protection with the aim of ensuring the more efficient and effective management of migration, notwithstanding the evident lack of any necessity and urgency: against the context of the massive inflow of asylum applicants and the complex problems associated with the management of asylum, the Government's assessment that the prerequisites for the decree-law were met cannot be regarded as manifestly arbitrary. Whilst it may indeed be the case that Article 13 and the related provisions do not address a new emergency, it must also be stated that the persistence of a problem may eventually render it urgent and that, "where the prerequisites are met, the Government's programme may indeed be implemented through the issue of urgent decrees" (Judgment No. 288 of 2019).

Accordingly, for the purposes of the type of review conducted by this Court as regards compliance with Article 77(2) of the Constitution, the contested provision passes constitutional muster in this respect.

4.– Moving to the other provisions of the Constitution that are alleged to have been violated, the referring courts take the view first and foremost that the contested provision violates Article 3 of the Constitution in various respects, essentially by introducing an exception from Article 6(7) of Legislative Decree No. 286 of 1998 for which the "prerequisites of rationality and reasonableness" are not met.

The questions of constitutionality raised by all referring courts in relation to Article 3 of the Constitution are well-founded.

4.1.– First and foremost, the objections arguing that the contested provision is inherently irrational on the grounds that it is inconsistent with the purposes pursued by Decree-Law No. 113 of 2018 must be accepted.

As noted in the discussion of the rationale for the provision under examination, the legislator sought to release the municipal administrations within whose territory reception centres for foreign nationals seeking asylum are situated from the burden of attending to the formalities associated with their registration in the residents' register. From this perspective, the precarious status of their physical presence in the local territory was deemed to be capable of justifying the prohibition on their registration in the residents' register.

However, in proceeding in this manner, the legislator contradicts the overall rationale for the decree-law within which the contested provision appears. In fact, leaving aside the stated objective of the legislation of increasing the level of public security, by preventing the registration in the residents' register of asylum applicants, the provision in question ends up limiting the capacity of the public authorities to control and monitor the population that is actually resident within its local territory, having excluded from that population a category comprised of persons – foreign nationals seeking asylum – who are

lawfully resident in Italy. Moreover, this exclusion cannot be reasonably justified in the light of the obligations to register the resident population.

It cannot be denied that the municipalities in question are subject to a further burden (over and above that incumbent upon other municipalities) associated with attending to the procedures relating to the registration of asylum applicants in the residents' register. However, this consideration cannot justify the "exclusion" of one particular category of individual from the requirement of the formal "acknowledgement" of their physical presence (classified in terms of habitual abode); that "acknowledgement" consists specifically in registration in the residents' register. In this respect, it is important not to overlook the fact that modern residents' register systems are based specifically on the need for the administrative registration of the resident population. That registration of the actual presence of residents within the municipal territory is a prerequisite for the proper exercise of all functions vested in the public administration, from those relating to security and public order to those relating to health, from the regulation and control of housing to the provision of public services, and so on.

In providing that individuals who are in actual fact resident within the municipal territory must not be registered in the residents' register, the contested provision increases, rather than reduces, the problems associated with the monitoring of foreign nationals who are lawfully resident within the national territory, including for extended periods of time, pending a decision on their asylum applications. In this way it ends up complicating, rather than simplifying, their identification for all purposes, including for purposes pertaining to matters related to the asylum procedure. It must also be considered that the refusal of registration in the residents' register prevents municipalities from being made directly aware of the presence of asylum applicants within their territory – which results in consequences that are even more serious as a result of the digitalisation of data and procedures – in view of the obligation incumbent upon such asylum applicants to report their abode only to the competent police station (Article 5(1) of Legislative Decree No. 142 of 2015).

Furthermore, this view cannot be rebutted – as State Counsel and previously the Government upon the conversion into law of the decree sought to do – by the argument that the legal presence of asylum applicants within the local territory is precarious, especially where that status is held for the duration of an extended period of residence, which is the only aspect relevant for the purposes of registration in the residents' register. In fact, it can easily be countered against that argument that the residence permit in question has a validity period of six months and may be renewed "until a decision is taken concerning the application or otherwise for the duration of the period for which the holder is authorised to remain within the country" (Article 4 of Legislative Decree No. 142 of 2015) and that, in the vast majority of cases, the overall duration of the stay in our country by asylum applicants is at least one year and a half (as has been highlighted by all individuals who have intervened or entered appearances in these proceedings), above all due to the time taken in order to decide on applications.

The legal and *de facto* duration described above of the period of residence by a foreign national seeking asylum is, already in itself, indicative of an extended period of stay over a significant period of time; moreover, it appears to be particularly significant in the light of Article 9 of Legislative Decree No. 30 of 6 February 2007 (Implementation of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States), which sets a limit of three months for any stay by a European citizen in a Member State other than that of

which he or she is a national, after which period an obligation for registration in the residents' register arises. Article 9 provides in particular that "[a] citizen of the Union who intends to reside in Italy pursuant to Article 7 for a period in excess of three months shall be subject to Law No. 1228 of 24 December 1954 and the new regulations on the register for the resident population, approved by Decree of the President of the Republic No. 223 of 30 May 1989" (paragraph 1), and that, "[n]otwithstanding the provisions of paragraph 1, registration shall in any case be required upon expiry of a period of three months after entry, and an attestation containing details of the name and abode of the applicant along with the date of the application shall be issued immediately" (paragraph 2).

Moreover, Article 6(7) itself of Legislative Decree No. 286 of 1998, which lays down a general rule in this area, provides that a period of stay lasting for at least three months at a reception centre is necessary in order to establish that place as the foreign national's habitual place of abode for the purposes of obtaining legal recognition for his or her residence.

Finally, it is not superfluous to point out that the need for control and monitoring of the residence within the local territory of foreign national asylum applicants is relevant, and indeed of particular significance, also for healthcare purposes. This is because it is only on the basis of the residents' register that the municipality can establish the actual number of persons present within its local territory and can be in a position to exercise adequately the functions vested in the mayor pursuant to Article 32 of Law No. 833 of 23 December 1978 (Establishment of the national health service), above all in the event of health-related emergencies that are circumscribed to the municipal territory.

Therefore, from all viewpoints considered, the contested provision contradicts the purposes of Decree-Law No. 113 of 2018, and in particular has a negative impact on the functioning of the public administrations charged with attending to the interests to which the legislation relates, as it prevents them from basing their actions on an accurate representation within the residents' registers of the actual size of the population resident within their territory.

4.2.– The objections raised alleging an unreasonable difference in treatment caused by the contested provision between foreign national asylum applicants and other categories of foreign national lawfully resident within the country, as well as with Italian nationals, also deserve to be accepted.

This Court has for some time resolved the apparent obstacle imposed by the literal wording of Article 3 of the Constitution (which refers to "citizens"), stressing that, "whilst it may be the case that Article 3 refers expressly to citizens only, there is also no doubt that the principle of equality also applies for foreign nationals in situations involving compliance with fundamental rights" (Judgment No. 120 of 1967), and has also clarified that the legislator is only permitted to establish different rules governing the treatment of individual members of the public if there is "a legislative 'reason' that is not manifestly irrational or, worse, arbitrary" (Judgment No. 432 of 2005).

In specific individual circumstances, the position of a foreign national may indeed differ from that of an Italian national (see again Judgment No. 120 of 1967) and hence any provisions establishing different treatment cannot be branded as unreasonable on that basis alone. In fact, "even if individual circumstances are recognised as being equivalent with regard to the enjoyment of freedom rights, this by no means excludes the possibility that, under specific circumstances, factual differences may arise between individuals who are equal, which the legislator may take into account and regulate at its discretion, subject

to no limit other than the requirement that its assessment be rational" (Judgment No. 104 of 1969, referred to by subsequent rulings, and Judgments No. 144 of 1970, No. 177 and No. 244 of 1974, No. 62 of 1994 and No. 245 of 2011, and Orders No. 503 of 1987 and No. 490 of 1988).

On the basis of these arguments it may therefore be asserted that the particular features of the "specific circumstances" may justify a difference between the treatment of different categories of lawfully resident foreign national owing to the reason for and duration of their residence. This is for instance the case in relation to legislation limiting the recognition of certain rights to so-called long-term residents, and may as a matter of principle be the case for asylum applicants in view of the fact that their period of stay – which, as noted above, is not short in duration and is not infrequently quite lengthy – is nonetheless destined to continue on a different basis if international protection is granted, or otherwise comes to an end.

However, in refusing registration in the residents' register to persons whose habitual abode is in Italy, the contested provision provides for different and undoubtedly worse treatment for a particular category of foreign national without any reasonable justification: in fact, if registration in the residents' register is simply a consequence of the objective fact of lawful habitual abode in a particular place, the fact that the individual concerned is an Italian national, a foreign national, or a foreign national asylum applicant, who is lawfully resident on whatever grounds, cannot have any relevance for the purposes of registration.

As mentioned above, the general rule governing the registration of lawfully resident foreign nationals in the residents' register is contained in Article 6(7) of Legislative Decree No. 286 of 1998 ("The registration of and any change in the details of a lawfully resident foreign national shall occur under the same conditions as Italian nationals in accordance with the procedures laid down by the implementing regulation"), to which the contested provision establishes an exception without any reasonable basis. This Court has already clarified that any legislative choice that departs from the general rules laid down by Legislative Decree No. 286 of 1998 "must enable a specific, transparent and rational 'justification' that is capable of 'explaining' in constitutional terms the 'reasons' underlying the derogation to be identified within the structure of the legislation" (Judgment No. 432 of 2005): this cannot be said in relation to the contested provision. In fact, the short-term nature of residence by asylum applicants cannot justify the refusal to register them in the residents' register, both for the reasons set out in the previous section and also because, were that short-term status to be incompatible with registration in the residents' register, it would then be necessary to exclude from registration a large number of other lawfully resident foreign nationals holding residence permits of limited duration, which might not be renewed (such as for example those provided for under Article 5(3-*bis*) of Legislative Decree No. 286 of 1998).

Similar considerations may also be made in relation to the exception introduced unreasonably by the contested provision from the general rules laid down by Article 2(2) of Legislative Decree No. 286, according to which a "foreign national lawfully resident within the country shall have the same civil rights as those vested in Italian nationals […]". In fact, it deprives asylum applicants of the right to register in the residents' register without any suitable justification.

Owing to the scope and consequences also in terms of the social stigma of the exclusion established by the provision submitted to this Court for review, of which the inability to obtain an identity card is a not only symbolic expression, within this context

– leaving aside the violation of the principle of equality itself – the alleged violation of Article 3(1) of the Constitution is tantamount specifically to a violation of the related right of "equal social dignity".

Whilst the legislator is free to stipulate particular consequences for any factual differences existing between Italian nationals and foreign nationals (Judgment No. 104 of 1969), it cannot place foreign nationals (or, as in this case, a particular category of foreign national) in a condition of social "subordination" without any appropriate justification. This is due to the decisive consideration that status as a foreign national cannot be considered in itself "as an admissible reason for different and less favourable treatment" (for a similar finding see Judgment No. 249 of 2010; see by analogy, *inter alia*, Judgments Nos. 166 of 2018, 230, 119 and 22 of 2015, 309, 202, 172, 40 and 2 of 2013, 172 of 2012, 245 and 61 of 2011, 187 of 2010, 306 and 148 of 2008, 324 of 2006, 432 of 2005, 252 and 105 of 2001, 203 of 1997, 62 of 1994, 54 of 1979, 244 and 177 of 1974, 144 of 1970, 104 of 1969 and 120 of 1967).

In depriving asylum applicants of legal recognition for their status as residents, the contested provision thus unreasonably impinges upon the "equal social dignity" recognised under Article 3 of the Constitution to the individual as such, irrespective of his or her status and the degree of stability of his or her lawful residence in Italy.

From this point of view, specifically, the refusal to allow registration in the residents' register has adverse effects for asylum applicants in terms of access to services that are also guaranteed to them. Without entering into the merits of the much-debated question as to whether or not it is possible to obtain the provision of each service by the competent administrations without having been registered in the relevant residents' register – a question that does not arise in this case – it cannot be denied that the rule requiring the provision of services at the location of abode rather than the place of residence (Article 13(1)(b), number 1 of Decree-Law No. 113 of 2018) makes it at the very least more difficult, without any justified reason, to access those services, if for no other reason than the practical and bureaucratic obstacles associated with the arrangements for requesting the provision of the service – which almost always refer to residence and the certification thereof with reference to the residents' register – as well as the difficulty in identifying the place of abode, as against the certainty offered by the formal fact of residence documented by registration in the residents' register.

It must therefore be concluded that the question as to constitutionality raised with reference to Article 3 of the Constitution is well-founded also in this respect.

5.– Since Article 4(1-*bis*) of Legislative Decree No. 142 of 2015, as introduced by Article 13(1)(a), number 2 of Decree-Law No. 113 of 2018 is unconstitutional, it follows that Article 13 is unconstitutional in its entirety. As highlighted in section 2.2.2, the overall body of provisions contained in Article 13 is in fact an organic whole, which constitutes an expression of a unitary logic, the fulcrum of which lies with the prohibition on registration in the residents' register.

Considering Article 27 of Law No. 87 of 11 March 1953 (Provisions on the Constitution and the operation of the Constitutional Court), the remaining provisions of Article 13 of Decree-Law No. 113 of 2018 must be declared unconstitutional by way of consequence.

6.– The remaining questions of constitutionality raised by the referring courts are absorbed.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

having joined the cases,

1) *declares* that Article 4(1-*bis*) of Legislative Decree No. 142 of 18 August 2015 (Implementation of Directive 2013/33/EU laying down standards for the reception of applicants for international protection, and Directive 2013/32/EU on common procedures for granting and withdrawing international protection), as introduced by Article 13(1)(a), number 2 of Decree-Law No. 113 of 4 October 2018 (Urgent provisions on international protection and immigration, public security, and measures concerning the operation of the Ministry of Interior and the organisation and functioning of the National Agency for the Administration and Allocation of Assets Seized from Criminal Organisations), converted, with amendments, into Law No. 132 of 1 December 2018, is unconstitutional;

2) declares, by way of consequence, pursuant to Article 27 of Law No. 87 of 11 March 1953 (Provisions on the Constitution and the operation of the Constitutional Court), that the remaining provisions of Article 13 of Decree-Law No. 113 of 2018 are unconstitutional;

3) declares that the question concerning the constitutionality of Article 13(1)(a), number 2 of Decree-Law No. 113 of 2018, raised with reference to Article 77(2) of the Constitution, by the First Civil Division of the Ordinary Court of Milan by the referral order mentioned in the headnote, is unfounded.

Decided in Rome at the seat of the Constitutional Court, *Palazzo della Consulta*, on 9 July 2020.

Signed:

Marta CARTABIA, President

Daria de PRETIS, Author of the Judgment