ORDER NO 29 YEAR 2024

In this case, the Constitutional Court considered the compatibility of Article 80(19) of Law No 388 of 23 December 2000 with Articles 3, 11, 38(1) and 117(1) of the Constitution, in relation to Article 34 of the Charter of Fundamental Rights of the European Union and Article 12(1)(e) of Directive 2011/98/EU, specifically regarding the rights of third-country nationals residing and working in EU Member States. The questions were raised by the Labour Division of the Court of Cassation after an appeal by the National Institute of Social Security (INPS) against a ruling of the Florence Court of Appeal that entitles V.M., an Albanian citizen with a residence permit for family reasons but lacking a long-term residence permit, to receive social security benefit in Italy.

The referring court considered arguments invoking both constitutional principles and EU law, notably asserting that the provision in question conflicts with the principle of equal treatment in social assistance, as enshrined in Directive 2011/98/EU and emphasising that this principle applies to both third-country nationals admitted to a Member State for work purposes and those holding residence permits for other reasons but allowing them to work. The court also holds that the challenged provision breaches Article 3 of the Constitution, as the principle of equal treatment in social security intersects with the constitutional principle of equality and effectively fosters a wider integration of third-country nationals. Furthermore, it considers the disputed provision to be incompatible with Article 38(1) of the Constitution, which is closely aligned with Article 34 of the EU Charter, both of which seek to ensure a dignified existence through social assistance and housing rights for those lacking sufficient resources.

The benefit in question is cash assistance provided by INPS to individuals over sixty-seven who are financially disadvantaged. This assistance is granted upon request to those with little or no income. The social security benefit provided by INPS is purely welfare-oriented, aimed at addressing the financial needs of individuals in poverty, particularly the elderly who face challenges in working. This benefit is distinct from other welfare schemes, such as attendance allowance for severe disabilities and support measures like basic income and inclusion income, which serve broader purposes like labour market reintegration and social inclusion. According to Article 3(6) of Law No 335/995, only Italian and EU citizens residing in Italy can apply for the benefit in question. However, under the provisions of Article 80(19) of Law No 388/2000, third-country nationals holding a residence permit, now replaced by the EU long-term residence permit, are also eligible. Long-term residence permits are granted based on stable residence and integration. Lastly, in accordance with Article 20(10) of Decree Law No 112/2008, as converted by parliament, for applicants to be entitled to social security benefits they must have been legally and continuously resident in the country for at least ten years.

Among the EU legislation transposed into Italian law, Directive 2011/98/EU aims to ensure fair treatment for legally residing third-country nationals in Member States and promote a stronger integration policy, while also narrowing the rights gap between EU citizens and third-country nationals legally working in a Member State.

The Court notes that third-country nationals covered by Article 12(1)(e) of Directive 2011/98/EU may receive equivalent treatment to the citizens of their host country

but only as workers and specifically in relation to benefits listed in Article 3(1) of Regulation (EC) No 883/2004. However, eligibility for special benefits under Article 70 of the same regulation, including the social security benefit in question, requires compliance with both the coordination framework's conditions and the host State's legislation.

The question concerning constitutionality centres therefore on whether the social security benefit as defined in Article 3(6) of Law No 335/1995 falls within the scope of social security benefits eligible for equal treatment under Article 12(1)(e) of Directive 2011/98/EU. As this matter has not been clarified by the ECJ, the Constitutional Court deems it necessary to refer the question of whether Article 12(1)(e) Directive 2011/98/EU should be considered to encompass provisions such as the social security benefit outlined in Article 3(6) of Law No 335/1995. Additionally, it questions whether EU law precludes national legislation that does not extend such a benefit to foreigners holding the single permit referred to in the same Directive, to which foreigners are already entitled provided that they hold a long-term EU residence permit.

[*omitted*]

THE CONSTITUTIONAL COURT

[*omitted*]

gives the following

ORDER

in proceedings concerning the constitutionality of Article 80(19) of Law No 388 of 23 December 2000, containing "Provisions for the preparation of the annual and multi-annual budget of the State (financial law 2001)", initiated by the Labour Division of the Court of Cassation in the proceedings between the National Institute of Social Security (*Istituto nazionale della previdenza sociale*, INPS) and V.M., by referral order of 8 March 2023, registered as No 82 of the 2023 Register of Referral Orders, published in *Official Journal of the Italian Republic* No 26, first special series of 2023.

Having regard to the entry of appearance filed by INPS and V.M.;

after hearing Judge Rapporteur Maria Rosaria San Giorgio at the public hearing of 10 January 2024;

after hearing Counsel Patrizia Ciacci for INPS and Alberto Guariso for V.M.;

after deliberation in chambers on 24 January 2024.

[*omitted*]

Conclusions on points of law

1.– This Court is called upon to rule on the compatibility of Article 80(19) of Law No 388/2000 with Articles 3, 11, 38(1) and 117(1) of the Constitution, the latter in relation to Article 34 CFREU and Article 12(1)(e) of Directive 2011/98/EU 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.

The questions were raised by the Labour Division of the Court of Cassation, seized with the application for review initiated by the National Social Security Institute (INPS) for the annulment of the judgment of the Florence Court of Appeal, which, overruling the decision at first instance, had granted the request for social security benefit made by V.M., an Albanian citizen holding a residence permit for family reasons but lacking a long-term residence permit.

1.1.– In support of the objections of unconstitutionality, the referring court evoked both constitutional and EU law provisions, claiming, firstly, that the provision under scrutiny conflicts with the principle of equal treatment with regard to social security benefits laid down in Article 12(1)(e), of Directive 2011/98/EU, which "gives specific expression to the entitlement to social security benefits provided for in Article 34(1) and (2) of the Charter" (Court of Justice of the European Union, Case C-350/20, *O.D. and Others*).

Consistently with the pronouncement of the Court of Justice cited above, the referring Division underlines that, pursuant to Article 3 of the aforementioned Directive, this principle applies both to third-country nationals who have been granted entry to a Member State for employment purposes and non-EU citizens who, like the private individual who is the respondent in the main proceedings, hold a residence permit for purposes other than employment but which allows them to work.

In the opinion of the referring court, the challenged provision simultaneously infringes Article 3 of the Constitution, since the principle of equal treatment with regard to social security benefits as outlined by the aforementioned sources of primary and secondary EU law and the case law of the Court of Justice intersects with the constitutional principle of equality and "enhances and illuminates their axiological content, with the aim of promoting the broader and more effective integration of third-country nationals" (Judgment No 54/2022 of this Court).

Lastly, the Court of Cassation considers that the provision under scrutiny conflicts with Article 38(1) of the Constitution, given the "close correlation existing between it and Article 34 CFREU which, as affirmed by the Court of Justice of the European Union (Case C-571/10, *Kamberaj*, judgment of 24 April 2012), in recognising the right to social assistance and housing assistance, aims to ensure a dignified existence for all those who do not have sufficient resources.

2.– This having been said, it must first be reiterated that if an ordinary court raises a question of constitutionality which also involves the provisions of the Charter of Fundamental Rights of the European Union, this Court cannot abstain from providing a response using its own methods, and that the direct effect of the primary and secondary legislative provisions evoked by the referring court (Judgment No 67/2022 and Court of Justice of the European Union, Case C-350/20, *O.D. and Others*) does not render the questions at hand inadmissible, as they indicate the incompatibility between a domestic legislative provision and Charter rights that "to a large extent overlap with the principles and rights protected by the Italian Constitution itself" (Judgment No 149/2022).

3.– The doubts concerning constitutionality primarily involve the question of whether the social security benefits provided for under Article 3(6) of Law No 335/1995 can or cannot be included among the social security benefits regarding which third-country nationals holding a residence permit for employment purposes, or which anyway

allows them to work, are entitled to equal treatment under Article 12(1)(e) of Directive 2011/98/EU.

This question first requires an answer from the perspective of EU law and, since it has not yet been the subject of specific rulings by the Court of Justice, which has the task of interpreting Union law in such a way as to ensure its uniform application in all Member States, this Court considers it necessary to consult the Court of Justice through a request for a preliminary ruling in order to clarify, with respect to domestic law in this instance, the scope and effects of the EU provisions adopted as interposed provisions in the present question regarding constitutionality.

4.– In a framework of constructive and sincere cooperation between the different guarantee systems (Judgment No 269/2017; Order No 216/2021; Order No 217/2021; Order No 182/2020 and Order No 117/2019), this Court considers it necessary to illustrate, first of all, the salient features of the applicable domestic regulations.

5.– The social security benefit in question is a cash benefit that INPS provides on request for individuals over the age of sixty-five (as of 1 January 2019, over the age of sixty-seven) who are in economically disadvantaged circumstances as they either have no income at all or receive an amount below the threshold set annually by law, which serves as the maximum sum for the allowance.

It is provided regardless of whether the recipient has worked and is of a "purely welfare" nature (Judgment No 137/2021).

The social security benefit aims solely to address the state of need arising from the poverty in which individuals lacking adequate financial resources find themselves and who, due to old age, experience greater difficulty in working.

It is therefore different both from welfare benefits which – like the attendance allowance – are designed to meet the need caused by the serious disability or non-self-sufficiency of the entitled person (Judgments Nos 137/2021, 12/2019 and 400/1999), and from support measures, such as the repealed basic income scheme and the inclusion income, which have additional aims such as reintroduction onto the labour market and social inclusion (Judgments Nos 34 and 19 of 2022, 137 and 126 of 2021).

5.1.– Social security benefit, unlike the form of benefit under scrutiny, operates as a substitute for the disability benefits already available. In this scenario, which does not regard the present case, once an invalid or disabled person who is already receiving an invalidity allowance reaches the previously mentioned age, disability and invalidity benefits are automatically replaced by social security benefit as the means of providing disabled persons with social security coverage.

5.2.– According to Article 3(6) of Law No 335/995, those applying for the benefit at issue must hold Italian citizenship and reside in Italy. Citizens of a European Union State are equated with Italian citizens residing in Italy, as are, according to the provisions of challenged Article 80(19) of Law No 388/2000, third-country nationals holding a residence permit, a document replaced by the EU long-term residence permit under Article 9 of Legislative Decree No 286 of 25 July 1998 (Consolidated text of the provisions concerning immigration regulations and the rules on the status of foreigners), as replaced by Article 1(1)(a) of Legislative Decree No 3 of 8 January 2007 (Implementation of Directive 2003/109/EC on the status of third-country nationals who are long-term residents).

5.2.1.– A long-term residence permit is granted if a series of prerequisites attest to the individual's stable presence in Italy, and its regulation "is situated within the logic of a reasonable prospect of integration of the recipient into the host community" (Judgment No 34/2022). More precisely, under Article 9(1) and (2-*bis*) of Legislative Decree No 286/1998, the residence permit is issued if the following requirements are met: a) the "possession, for at least five years, of a valid residence permit"; b) "a disposable income not less than the annual amount of the social security benefit"; c) "suitable accommodation"; d) "the applicant passing an Italian language proficiency test". The permit is of indefinite duration (Article 9(2) of the Consolidated text on immigration), and the loss of the aforementioned requirements (i.e. income and suitable accommodation) are not envisaged among the grounds for its revocation.

5.3.– Lastly, in accordance with Article 20(10) of Decree Law No 112/2008, as converted by parliament, for applicants to be entitled to social security benefits, they must have been legally and continuously resident in Italy for at least ten years.

This requirement applies to all eligible individuals, including non-EU citizens, who must hold a long-term residence permit (among others, Labour Division of the Court of Cassation, Judgment No 7229 of 13 March 2023).

5.4.– This Court has ruled on the conformity of Article 80(19) of Law No 388/2000 on several occasions, in so far as it subjects entitlement to certain benefits to possession of the (former) residence permit, both with respect to Articles 3 and 38 of the Constitution and to Article 14 of the European Convention on Human Rights.

5.4.1. In relation to the aforementioned constitutional provisions, and specifically regarding the social security allowance in question, in its Judgment No 50/2019, this Court considered that holding an EU long-term residence permit as a requirement for entitlement to this benefit was neither discriminatory nor manifestly unreasonable.

The ruling stated that the Constitution establishes the requirement to ensure equal access to social security benefits between Italian and EU citizens on one hand and non-EU citizens on the other, but only with regard to services and allowances that, in meeting "a primary need of the individual that cannot be subject to distinctions of territorial rootedness," reflect the enjoyment of the inviolable rights of the person. In this scenario, the benefit is not so much a component of social assistance (which Article 38(1) of the Constitution reserves to "citizens"), but rather a necessary means of safeguarding an inviolable right of the individual (Article 2 of the Constitution).

In aforementioned Judgment No 50/2019, it was also affirmed that, given the limited availability of resources, beyond the impassable boundary just mentioned, it lies within the discretion of the legislature to regulate entitlement to additional benefits for non-EU citizens with restrictions, and even to rule it out altogether. Regarding these benefits, "if citizenship itself, whether Italian or of the EU, presupposes and justifies making allowances available to members of the community, then conversely, the legislature may indeed subject non-EU citizens to additional requirements to demonstrate their stable and active integration, as long as they are not manifestly unreasonable".

These benefits "become the corollary of the stable integration of foreigners in Italy, in the sense that the Republic recognises and values their contribution to the progress of society through their participation in its life over an appreciable period of time". Indeed, holding an EU long-term residence permit entails, unlike mere legal residency in Italy,

the generation of income, the availability of housing, and knowledge of the Italian language, which are "not unreasonable indicators of such participation".

In Judgment No 50/2019, it was therefore concluded that it is "within the discretion of the legislature to grant financial benefits only to indigent foreigners with no pension, whose stable integration into the community has made them deserving of the same benefit that is granted to Italian citizens".

5.5.– The aforementioned ruling aligns with the broader and consistent constitutional case law, whereby the legislature can lawfully restrict the number of persons on social security benefit due to the limited resources allocated to funding it, on condition that it meets European obligations. These obligations include ensuring equal treatment for Italian and European citizens as well as for third-country nationals who are long-term residents, in addition to upholding the principle of reasonableness. This too on condition that the distinction does not result in "the exclusion of non-nationals from the enjoyment of the fundamental rights concerning the "primary needs" of the person, non-deferrable and non-differentiable, which are granted to citizens" (Judgment No 166/2018; in a similar sense, see, among others, Judgments Nos 54/2022 and 222/2013).

6.– Regarding the provisions of European Union law relevant to the current proceedings, while the European Court of Justice maintains exclusive competence to provide uniform interpretation, in the spirit of collaboration that characterises the relationship between the courts, the following arguments are raised.

6.1.– Directive 2011/98/EU aims to "ensure fair treatment of third-country nationals who are legally residing in the territory of the Member States", with the perspective of "a more vigorous integration policy" (Recital No 2), and to "narrow[ing] the rights gap between citizens of the Union and third-country nationals legally working in a Member State" (Recital No 19).

The Directive in fact intended to grant third-country nationals who already "contribute to the Union economy through their work and tax payments" (Recital No 19) "a common set of rights based on equal treatment with the nationals of their respective host Member State, irrespective of the initial purpose of or basis for admission" (Recital No 20), pointing out that the right to equal treatment in the specified sectors "should be granted not only to those third-country nationals who have been admitted to a Member State to work but also to those who have been admitted for other purposes and have been given access to the labour market of that Member State in accordance with other provisions of Union or national law" (Recital No 20).

6.2.– Consistently with these policy objectives, Article 12(1) of the Directive in question recognises the right to equal treatment in matters of social security benefits for both "third-country nationals who have been admitted to a Member State for the purpose of work in accordance with Union or national law" (Article 3(1)(c)) and "third-country nationals admitted to a Member State for purposes other than work in accordance with Union or national law, who are allowed to work and who hold a residence permit in accordance with Regulation (EC) No 1030/2002" (Article 3(1)(b)).

However, obtaining one of the aforementioned residence permits is not sufficient for a foreigner to obtain the same social security benefits as citizens of the host Member State. The person concerned is also required to engage in or have engaged in employment in that State.

Article 12(1) expressly mentions, in fact, "third-country workers referred to in points (b) and (c) of Article 3(1)" and, precisely by reason of this condition, entitles them to equal treatment in various areas of regulation relating to significant aspects of employment, including social security.

6.3.– Consistently, from the objective standpoint, the protection of equal treatment laid down in Article 12(1)(e) operates with regard to "the branches of social security, as defined in Regulation (EC) No 883/2004", namely those outlined in Article 3(1) of the regulation concerning a series of risks directly or indirectly associated with employment.

6.3.1.– It seems hardly necessary to mention that this provision is situated within a source of secondary law explicitly aimed at achieving the objective, now stated in Article 48 TFEU, of promoting the mobility of the workforce in the common market by improving the standard of living and employment conditions of individuals moving within the territory of the European Union for work purposes.

Regulation (EC) No 883/2004 establishes rules for the coordination rather than the harmonisation (Court of Justice of the European Union, Case C-303/19, *INPS*, judgment of 25 November 2020) of national social security benefit systems. These rules aim to ensure, while respecting the specifics of each national legislation (Recital No 4), that citizens of the Member States, stateless persons, refugees and their families and survivors, as well as third-country nationals to whom, as will be discussed later, the legislation in question has been made applicable, enjoy the same social benefits as those reserved for workers who are citizens of the host Member States when they move within the territory of the Union for work purposes.

6.4.– That being so, the "branches of social security" mentioned in Article 12(1)(e) of Directive 2011/98/EU are listed in Article 3(1) of the aforementioned regulation and define the "matters covered*"* (as stated in the heading of Article 3) of the coordination regulations of national legislations. These are, specifically, legislation concerning the following branches of social security: a) sickness benefits; b) maternity and equivalent paternity benefits; c) invalidity benefits; d) old-age benefits; e) survivors benefits; f) benefits in respect of accidents at work and occupational diseases; g) death grants; h) unemployment benefits; i) pre-retirement benefits; j) family benefits".

6.5.– Paragraph 3 of the same Article 3 specifies that Regulation (EC) No 883/2004 "shall also apply to the special non-contributory cash benefits covered by Article 70", while paragraph 5 excludes social and medical assistance from its scope, among other things.

Article 70(1) mentioned above defines "special non-contributory cash benefits", also known as "mixed" or "hybrid" benefits, as a measure "provided under legislation which, because of its personal scope, objectives and/or conditions for entitlement, has characteristics both of the social security legislation referred to in Article 3(1) and of social assistance".

Article 70(2) also clarifies that the benefits in question are those "a) intended to provide: i) supplementary, substitutive or ancillary coverage against the risks covered by the branches of social security referred to in Article 3(1), and which guarantee the persons concerned a minimum subsistence income having regard to the economic and social situation in the Member State concerned; or ii) solely specific protection for the disabled, closely linked to the said person's social environment in the Member State concerned;

and b) where the financing derives from compulsory taxation intended to cover general public expenditure and the conditions for granting and for calculating the benefits are not dependent on any contribution in respect of the beneficiary. However, benefits provided to supplement a contributory benefit shall not be considered to be contributory benefits for this reason alone; and (c) are listed in Annex X".

7.– This having been said, the Italian social security benefit under discussion here, listed in the aforementioned Annex X, is expressly included among the special non-contributory cash benefits.

The referring court assumes that, since Article 3(3) of Regulation (EC) No 883/2004 provides that these benefits fall within its purview, and Article 12(1)(e) of Directive 2011/98/EU, in establishing the scope of application of the principle of equal treatment, refers to the branches of social security defined by the aforementioned regulation, special non-contributory cash benefits – including social security benefits – should benefit from this coverage.

In this regard, the following is noted.

The reference in Article 12(1)(e) to the branches of social security defined in Regulation (EC) No 883/2004 does not appear to allow the automatic extension of the principle of equal treatment to all the social security benefits that fall within the domain of the regulatory source since both the wording of the referring provision and the systematic interpretation of the regulation referred to oppose it.

7.1.– Firstly, in identifying the benefits subject to the non-discrimination provision, Article 12(1)(e) of the Directive in question does not refer to all benefits falling within the scope of Regulation (EC) No 883/2004, but more precisely to benefits related to the "branches of social security" listed there, to be identified with the specific areas of social security benefits set out in Article 3(1) of the same regulation, as mentioned above.

Furthermore, as previously mentioned, Article 12(1) grants the right to equal treatment to third-country nationals specified in Article (3)(1)(b) and (c), identifying them as "workers," whereas the non-contributory benefits under Article 70 of the aforementioned regulation do not necessarily presuppose a direct or indirect association with employment and consequently to the payment of contributions in respect of the citizens of the Member State where the institution responsible for making the payments is located.

7.2.– It must also be noted that within the coordination framework provided for by Regulation (EC) No 883/2004, "mixed" benefits exhibit autonomous structural and functional characteristics in respect of social security benefits serving to address the circumstances listed in Article 3(1)) of the regulation.

Unlike these, special non-contributory benefits provide coverage against these risks not directly but rather in a "supplementary, substitut[ive], or ancillary" manner in order to "guarantee the persons concerned a minimum subsistence income having regard to the economic and social situation in the Member State concerned".

It must also be taken into account that, among the benefits in question, Article 70(2)(a)(ii) of the regulation notably includes those that offer "solely specific protection for the disabled, closely linked to the said person's social environment in the Member State concerned".

Lastly, the benefits in question are financed solely through general taxation intended to cover general public expenditure, and the conditions for granting and for calculating the amount due are not dependent on any contribution by the beneficiary.

7.2.1.– The Court of Justice of the European Union has, in this regard, stated that special non-contributory cash benefit serves a different purpose from that of social security benefits, as it "must either replace or supplement a social security benefit and be by its nature social assistance justified on economic and social grounds and fixed by legislation setting objective criteria" (Court of Justice, Case C-160/02, *Skalka*, judgment of 29 April 2004, point 25). It constitutes "social assistance, particularly since the grant of the benefit provided for is not dependent on the completion of periods of employment, insurance or contribution, nevertheless in certain circumstances it is more similar to social security" (Court of Justice of the European Communities, Case C-356/89, *Newton*, judgment of 20 June 1991, point 13).

7.3.– Precisely because of the aforementioned characteristics, Regulation (EC) No 883/2004 reserves a partially different treatment for "mixed" benefits (requested by foreigners of the host Member State) compared to that based on equal treatment (Article 4) laid down for social security benefits under the preceding Article 3(1).

Indeed, Article 70(3) stipulates that the principle of exportability, safeguarded by the previous Article 7 for social security benefits, does not apply to them.

As a result of this exception, Article 70(4) clarifies that the "mixed" benefits "shall be provided exclusively in the Member State in which the persons concerned reside, in accordance with its legislation [...] by and at the expense of the institution of the place of residence".

The European legislator aimed to bind access to the benefits in question to the applicant's residency in the territory of the State responsible for the financial burden of provision.

7.4.– The notion of residence presupposed by the non-exportability rule, to be identified in accordance with Article 1(j) of Regulation (EC) No 883/2004 as the "place where a person habitually resides", is grounded in the objective fact of the stable permanence of the person concerned in the place chosen as their habitual residence.

This implies that if such residence is in a Member State other than the one of which the individual is a citizen, the residency in question can only be considered to exist if the requirements for permanent residence in a different EU country are also met.

Regarding EU citizens, relevance is attached to Directive 2004/38/EC, particularly Article 7(1), according to which, in order to stay for a period longer than three months in the territory of another Member State, any citizen of the Union must be a worker or self-employed person in the host Member State or have sufficient resources for themselves and their family members so as not to become a burden on the social assistance system of the host Member State during their stay, and must have health insurance covering all risks in the host Member State.

Finally, under Article 16(1) of Directive 2004/38/EC, EU citizens acquire the right of permanent residence after legally and continuously residing in the territory of the host Member State for five years.

7.5.– In the light of the legal sources referred to, the Court of Justice has observed that special non-contributory cash benefits are provided, in accordance with Article 70(4) of Regulation (EC) No 883/2004, solely in the person concerned's Member State of residence and in accordance with its legislation. Consequently, "there is nothing to prevent the grant of such benefits to Union citizens who are not economically active from being made subject to the requirement that those citizens fulfil the conditions for obtaining a right of residence under Directive 2004/38 in the host Member State" (Court of Justice of the European Union, Grand Chamber, Case C-333/13, *Dano and Others*, judgment of 11 November 2014, point 83).

Similar considerations are found in the judgments of 15 September 2015, Case C-67/14, *Alimanovic and Others*, and 25 February 2016, Case C-299/14, *Vestische Arbeit Jobcenter Kreis Recklinghausen*, in which the Court of Justice, referring to the statements of the judgment of 19 September 2013, Case C-140/12, *Brey*, clarified that, since special non-contributory cash benefits in accordance with Article 70(2) of Regulation (EC) No 883/2004 are provided, pursuant to paragraph 4 of the same article, solely in the Member State of residence of the person concerned and in accordance with its legislation, nothing – not even the principle of equal treatment laid down in Article 4 of the aforementioned regulation – prevents such benefits from being denied to citizens of other Member States who do not have the status of employed or self-employed workers or to persons who maintain this status during the first three months of their stay in the host State.

If, therefore, in the absence of such conditions, EU citizens cannot benefit from "mixed" benefits in a Member State other than the one of which they hold citizenship, all the more so, Member States should not be obligated to grant such benefits to non-EU citizens who do not demonstrate significant ties to their territory, primarily evidenced by engaging in employment.

8.– Moreover, European coordination legislation regarding social security benefits, originally conceived for EU citizens moving within the Union for work purposes, was subsequently extended to third-country nationals legally residing in the EU for work, first in case law (Court of Justice of the European Communities, Case C-10/78, *Belbouab*, judgment of 12 October 1978), and later in legislation, following recommendations arising from the extraordinary European Council meeting in Tampere of 15 and 16 October 1999. The Council urged the adoption of measures to ensure the fair treatment of third-country nationals legally residing in the territory of Member States, to guarantee them rights and obligations similar to those of EU citizens, to reinforce non-discrimination in economic, social, and cultural life, and to bring the legal status of third-country nationals closer to that of citizens of Member States.

With specific regard to Regulation (EC) No 883/2004, the extension to third-country nationals to whom this source of secondary law was not already applicable solely on grounds of nationality was established by Regulation (EU) No 1231/2010 of the European Parliament and of the Council on 24 November 2010, extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality.

The current coordination framework for social security benefits applies both to citizens of Member States who move within the territory of the Union for work purposes and to third-country nationals legally residing in a Member State and who are similarly situated "in a situation which is not confined in all respects within a single Member State"

(Article 1 of Regulation (EU) No 1231/2010). This provision in fact clarifies that even for non-EU citizens, the application of the regulation in question requires the person concerned to move within the territory of the Union (as envisaged by Recital No 13 of Regulation (EC) No 883/2004).

The equivalence established by Regulation No (EU) 1231/2010 means that third-country nationals moving within the territory of the European Union, like those from EU countries, must have paid contributions into the social security system of the State to which they apply for the benefit in order to enjoy non-contributory cash benefits under Article 70 of Regulation (EC) No 883/2004.

8.1.– Thus, the principle of equal treatment enshrined in Article 12(1)(e) of Directive 2011/98/EU cannot afford third-country nationals holding the entitlements specified in Article 3(1)(b) and (c) greater protection than that prescribed by the coordination rules for social security benefits systems, to which the Directive refers.

9.– Therefore, it seems to this Court that third-country nationals to whom Article 12(1)(e) of Directive 2011/98/EU applies may benefit from the same treatment as citizens of the host Member State only if they are workers and solely with regard to benefits relating to the branches of social security listed in Article 3(1) of Regulation (EC) No 883/2004. However, to be eligible for the special benefits under Article 70 of the same regulation – which includes the social security benefit in question – they must comply with the conditions expressly provided for by the coordination framework as well as the legislation of the host State.

9.1.– In conclusion, this Court doubts that merely holding a residence permit allowing work in accordance with the aforementioned Directive provides third-country nationals with the right to access "mixed" benefits on the same terms as citizens of the Member State where they reside.

Hence the need to request the Court of Justice to interpret the provisions of EU law that affect the resolution of the questions of constitutionality that have been raised.

10.– Therefore, this Court deems it appropriate to suspend the current proceedings and, pursuant to Article 267 TFEU, to refer to the Court of Justice the question of whether Article 12(1)(e) of Directive 2011/98/EU, as a concrete expression of the right of access to social security benefits recognised by Articles 34(1) and 34(2) CFRUE, should be interpreted as meaning that a benefit such as the social security benefit envisaged in Article 3(6) of Law No 335/1995 falls within its scope, and whether, therefore, EU law opposes national legislation that does not extend the aforementioned provision to foreigners holding the single permit referred to in the same Directive, to which foreigners are entitled provided they hold a long-term EU residence permit.

ON THESE GROUNDS

THE CONSTITUTIONAL COURT

1) *directs* to submit the following request for a preliminary ruling to the Court of Justice of the European Union, pursuant to and for the purposes of Article 267 of the Treaty on the Functioning of the European Union:

must Article 12(1)(e) of 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, as a concrete expression of the protection of the right of access to social security benefits recognised by Articles 34(1) and 34(2) of the Charter of Fundamental Rights of the European Union, be interpreted to mean that it includes benefits such as the social security benefit pursuant to Article 3(6) of Law No 335 of 8 August 1995 (Reform of the mandatory and complementary pension system), and, therefore, whether EU law precludes national legislation that does not extend the aforementioned benefit to foreigners holding the single permit referred to in the same Directive, to which foreigners are already entitled provided that they hold a long-term EU residence permit;

2) *stays* the present proceedings until the aforementioned preliminary question is resolved;

3) *orders* that a copy of this order be transferred along with the case file to the Registry of the Court of Justice of the European Union.

Decided in Rome, at the seat of the Constitutional Court, Palazzo della Consulta, on 24 January 2024.

Signed:

Augusto Antonio BARBERA, President

Maria Rosaria SAN GIORGIO, Judge Rapporteur