ECLI:EU:C:2020:957

Provisional text

JUDGMENT OF THE COURT (Fifth Chamber)

25 November 2020 (1)

(Reference for a preliminary ruling – Directive 2011/98/EU – Rights for third country workers who hold single permits – Article 12 – Right to equal treatment – Social security – Legislation of a Member State excluding, for the purposes of determining entitlement to a family benefit, the family members of the holder of a single permit who do not reside in the territory of that Member State)

In Case C-302/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte suprema di cassazione (Supreme Court of Cassation, Italy), made by decision of 5 February 2019, received at the Court on 11 April 2019, in the proceedings

Istituto nazionale della previdenza sociale (INPS),

v

WS,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, M. Ilešič, E. Juhász, C. Lycourgos and I. Jarukaitis (Rapporteur), Judges,

Advocate General: E. Tanchev,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 27 February 2020,

after considering the observations submitted on behalf of:

– the Istituto Nazionale della Previdenza Sociale (INPS), by A. Coretti, V. Stumpo and M. Sferrazza, avvocati,

– WS, by A. Guariso and L. Neri, avvocati,

– the Italian Government, by G. Palmieri, acting as Agent, and by D. Del Gaizo, P. Gentili and A. Giordano, avvocati dello Stato,

– the European Commission, by C. Cattabriga and A. Azéma and by B.-R. Killmann, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 June 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of 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 (OJ 2011 L 343, p. 1).

2 The request has been made in proceedings between the Istituto Nazionale della Previdenza Sociale (Italian National Social Security Institute) (INPS) and WS concerning the refusal of an application for a family benefit for the periods in which the spouse and children of the person concerned resided in their third country of origin.

Legal context

European Union law

3 Recitals 2, 19, 20, 24 and 26 of Directive 2011/98 state:

‘(2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, acknowledged the need for harmonisation of national law governing the conditions for admission and residence of third-country nationals. In this context, it stated in particular that the European Union should ensure fair treatment of third-country nationals who are legally residing in the territory of the Member States and that a more vigorous integration policy should aim to grant them rights and obligations comparable to those of citizens of the Union. The European Council accordingly asked the Council to adopt the legal instruments on the basis of Commission proposals. The need for achieving the objectives defined at Tampere was reaffirmed by the Stockholm Programme, which was adopted by the European Council at its meeting of 10 and 11 December 2009.

…

(19) In the absence of horizontal Union legislation, the rights of third-country nationals vary, depending on the Member State in which they work and on their nationality. With a view to developing further a coherent immigration policy and narrowing the rights gap between citizens of the Union and third-country nationals legally working in a Member State and complementing the existing immigration acquis, a set of rights should be laid down in order, in particular, to specify the fields in which equal treatment between a Member State’s own nationals and such third-country nationals who are not yet long-term residents is provided. Such provisions are intended to establish

a minimum level playing field within the Union, to recognise that such third-country nationals contribute to the Union economy through their work and tax payments and to serve as a safeguard to reduce unfair competition between a Member State's own nationals and third-country nationals resulting from the possible exploitation of the latter. A third-country worker in this Directive should be defined, without prejudice to the interpretation of the concept of employment relationship in other provisions of Union law, as a third-country national who has been admitted to the territory of a Member State, who is legally residing and who is allowed, in the context of a paid relationship, to work there in accordance with national law or practice.

(20) All third-country nationals who are legally residing and working in Member States should enjoy at least 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. The right to equal treatment in the fields specified by this Directive 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, including family members of a third-country worker who are admitted to the Member State in accordance with Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification [OJ 2003 L 251, p. 12] …

…

(24) Third-country workers should enjoy equal treatment as regards social security. Branches of social security are defined in 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]. The provisions on equal treatment concerning social security in this Directive should also apply to workers admitted to a Member State directly from a third country. Nevertheless, this Directive should not confer on third-country workers more rights than those already provided in existing Union law in the field of social security for third-country nationals who are in cross-border situations. This Directive, furthermore, should not grant rights in relation to situations which lie outside the scope of Union law, such as in relation to family members residing in a third country. This Directive should grant rights only in relation to family members who join third-country workers to reside in a Member State on the basis of family reunification or family members who already reside legally in that Member State.

…

(26) Union law does not limit the power of the Member States to organise their social security schemes. In the absence of harmonisation at Union level, it is for each Member State to lay down the conditions under which social security benefits are granted, as well as the amount of such benefits and the period for which they are granted. However, when exercising that power, Member States must comply with EU law.'

4 Article 1 of Directive 2011/98, headed 'Subject matter', provides as follows:

'1. This directive lays down:

…

(b) a common set of rights to third-country workers legally residing in a Member State, irrespective of the purposes for which they were initially admitted to the territory of that Member State, based on equal treatment with nationals of that Member State.

…’

5 Article 2 of that directive, under the heading ‘Definitions’, states:

‘For the purposes of this Directive:

(a) “third-country national” means any person who is not a citizen of the Union within the meaning of Article 20(1) of the Treaty;

(b) “third-country worker” means a third-country national who has been admitted to the territory of a Member State and who is legally residing and is allowed to work in the context of a paid relationship in that Member State in accordance with national law or practice;

(c) “single permit” means a residence permit issued by the authorities of a Member State allowing a third-country national to reside legally in its territory for the purpose of work;

…’

6 Article 3 of that directive, entitled ‘Scope’, provides, in paragraph 1 thereof:

‘This Directive shall apply to:

…

(c) third-country nationals who have been admitted to a Member State for the purpose of work in accordance with Union or national law.’

7 Article 12 of the directive, headed ‘Right to equal treatment’, states:

‘1. Third-country workers as referred to in points (b) and (c) of Article 3(1) shall enjoy equal treatment with nationals of the Member State where they reside with regard to:

…

(e) branches of social security, as defined in Regulation [No 883/2004];

…

2. Member States may restrict equal treatment:

…

(b) by limiting the rights conferred on third-country workers under point (e) of paragraph 1, but shall not restrict such rights for third-country workers who are in employment or who have been employed for a minimum period of six months and who are registered as unemployed.

In addition, Member States may decide that point (e) of paragraph 1 with regard to family benefits shall not apply to third-country nationals who have been authorised to work in the territory of a Member State for a period not exceeding six months, to third-country nationals who have been admitted for the purpose of study, or to third-country nationals who are allowed to work on the basis of a visa.

(c) under point (f) of paragraph 1 with respect to tax benefits by limiting its application to cases where the registered or usual place of residence of the family members of the third-country worker for whom he/she claims benefits, lies in the territory of the Member State concerned.

…'

8 Article 3(1)(j) of Regulation No 883/2004, as amended by Regulation (EC) No 988/2009 of the European Parliament of the Council of 16 September 2009 (OJ 2009 L 284, p. 43) ('Regulation No 883/2004'), provides that the latter applies to all legislation concerning family benefits. In accordance with Article 3(5)(a), it does not apply to social and medical assistance.

Italian law

9 It is clear from the order for reference that decreto legge n. 69 – Norme in materia previdenziale, per il miglioramento delle gestioni degli enti portuali ed altre disposizioni urgenti (Decree Law No 69 – Provisions governing social security, for improvement of the management of port bodies and other urgent provisions), of 13 March 1988 (GURI No 61, of 14 March 1988), converted into Law No 153 of 13 May 1988) (GURI No 112 of 14 May 1988) ('Law No 153/1988'), introduced a benefit for families, the amount of which depended on the number of children under 18 years old in the family unit and its income ('the family unit allowance'.

10 Article 2(6) of Law No 153/1988 provides:

'The family unit shall be made up of the spouses, excluding those legally and effectively separated, and children and equivalents aged less than 18 years or, regardless of age where, because of disability or mental or physical impairment, they are completely and permanently unable to perform paid work. Brothers, sisters, nieces and nephews and grandchildren under the age of 18, or regardless of age, where they are present and, because of disabilities or physical or mental impairments, are completely and permanently unable to perform paid work, may also be part of the household, under the same conditions as children and equivalents if they are orphans of father and mother and are not entitled to a survivor's pension.

11 According to Article 2(6-bis), a family unit does not include spouses, children and equivalents of foreign nationals who are not resident in the territory of the Italian Republic, except where the State of which that foreign national is a citizen is subject to reciprocity with Italian citizens or where an international convention on family allowances has been concluded.

12 Directive 2011/98 was transposed into national law by decreto legislativo n. 40 – Attuazione della direttiva 2011/98/UE relativa a una procedura unica di domanda per il rilascio di un permesso unico che consente ai cittadini di Paesi terzi di soggiornare e lavorare nel territorio di uno Stato membro e a un insieme comune di diritti per i lavoratori di Paesi terzi che soggiornano regolarmente in uno Stato membro (Legislative Decree No 40 on the transposition of Directive 2011/98) of 4 March 2014 (GURI No 68, 22 March 2014), which introduced a 'single work permit'.

The dispute in the main proceedings and the question referred for a preliminary ruling

13 According to the order for reference, WS is a third-country national who has held a permit to carry out paid employment in Italy since 9 December 2011, and a single work permit since 28 December 2015, pursuant to Legislative Decree No 40/2014. During the periods from January to June 2014 and July 2014 to June 2016, his wife and two children resided in Sri Lanka, their country of origin.

14 The INPS having refused to pay him the family unit allowance during those periods on the basis of Article 2(6-bis) of Law No 153/1988, WS brought an action before the Tribunale del lavoro di Alessandria (Labour Court, Alessandria, Italy), before which he relied on an infringement of Article 12 of Directive 2011/98 and the discriminatory nature of that refusal. That court dismissed his action.

15 WS brought an appeal against the decision of that court before the Corte d'appello di Torino (Court of Appeal, Turin, Italy), which allowed that appeal, holding that Article 12 of Directive 2011/98 had not been transposed into national law and that Article 2(6bis) of Law No 153/1988 was incompatible with that directive.

16 The INPS brought an appeal in cassation seeking to have the appeal judgment set aside, relying on a single ground of appeal based on the incorrect application of Article 12 of Directive 2011/98 and Legislative Decree No 40/2014.

17 The referring court states that the resolution of the dispute in the main proceedings depends on the interpretation of Article 12(1)(e) of Directive 2011/98 and whether that provision requires the family members of a third-country national, who is the holder of a single permit and entitled to the family unit allowance laid down in Article 2 of Law No 153/1988, to be included as family members eligible for that allowance, even though they do not reside on Italian territory.

18 The referring court states, in that regard, that the family unit referred to in Article 2 of Law No 153/1988 serves not only as the basis for calculating the family unit allowance, but is also the beneficiary of that allowance, through the intermediary of the person receiving the remuneration or pension to which the allowance is tied. That allowance is a financial supplement to which, in particular, all employees who work on Italian territory are eligible, provided they are members of a family unit whose annual income does not exceed a certain threshold. For the period from 1 July 2018 to 30 June 2019, its amount, at the full rate, was EUR 137.50 per month for annual income not exceeding EUR 14 541.59. It is paid by the employer at the same time as the salary.

19 The referring court also notes that, in its case-law, the Corte suprema di cassazione (Supreme Court of Cassation) has already had occasion to highlight the dual nature of the family unit allowance. On one hand, the allowance, which is linked to all types of household income, and intended to guarantee a sufficient income for low-income families, is a social security benefit. In accordance with the general rules of the social security scheme of which the allowance is part, the protection of the families of workers is implemented by means of a supplement to the remuneration for work performed. Financed by contributions paid by all employers, plus a supplement paid by the State, the family unit allowance is paid by the employer as an advance, which is authorised to offset that amount against the social security contributions due. On the other hand, that allowance is a social assistance measure, the income taken into account being increased, where necessary, to protect persons suffering from physical or mental infirmity or disability or minors with persistent difficulties in performing their duties and functions appropriate to their age. In any event, according to the national court, this is a measure which falls within the scope of Article 12(1)(e) of Directive 2011/98.

20 The national court points out that the members of the family unit are of essential importance for the family allowance scheme who are regarded as the beneficiaries of that allowance. However, in the light of the fact that the law designates the family members making up the family unit as the beneficiaries of a financial benefit to which the person receiving the remuneration is entitled and to which that benefit is linked, it asks whether Article 12(1)(e) of Directive 2011/98 precludes a

provision such as Article 2(6-bis) of Law No 153/1988. In particular, it has doubts as to the interpretation of the directive in the light of the objectives set out in recitals 20 and 24 thereof.

21 In those circumstances, the Corte suprema di cassazione (Supreme Court of Cassation) decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 12(1)(e) of [Directive 2011/98] and the principle of equal treatment for holders of single permits to reside and work and nationals of the host Member State be interpreted as precluding national legislation under which, unlike the provisions laid down for nationals of that Member State, the family members of a worker holding a single permit from a third country, if they live in their third country of origin, are not taken into account when determining the members of the family unit for the purpose of calculating the family unit allowance?'

Consideration of the question referred

22 By its question the referring court asks, essentially, whether Article 12(1)(e) of Directive 2011/98 must be interpreted as precluding the legislation of a Member State pursuant to which, for the purpose of determining entitlement to a social security benefit, the family members of the holder of a single permit, within the meaning of Article 2(c) of that Directive, who do not reside in the territory of that Member State but in a third country, are not to be taken into account, whereas family members of a national of that Member State who reside in a third country are taken into account.

23 As recital 26 of Directive 2011/98 states, that European Union law does not detract from the power of the Member States to organise their social security systems. In the absence of harmonisation at European Union level, it is for the legislation of each Member State to determine the conditions for the grant of social security benefits. The fact nevertheless remains that, when exercising that power, Member States must comply with European Union law (see, to that effect, judgment 5 October 2010, *Elchinov*, C-173/09, EU:C:2010:581, paragraph 40).

24 Article 12(1)(e) of that directive, in conjunction with Article 3(1)(c) of Directive thereof, requires Member States to ensure equal treatment with regard to the branches of social security set out in Regulation No 883/2004 to third-country nationals who have been admitted to a Member State for the purpose of work in accordance with EU or national law. That is the case of a third-country national holding a single permit within the meaning of Article 2(c) of Directive 2011/98, since under that provision that permit allows such a national to reside lawfully in the territory of the Member State which has issued it, in order to work there (see, to that effect, judgment of 21 June 2017, *Martinez Silva*, C-449/16, EU:C:2017:485, paragraph 27).

25 However, by virtue of the first subparagraph of Article 12(2)(b) of Directive 2011/98, Member States may limit the rights conferred on third-country workers by Article 12(1)(e) of that directive, except for those who are in employment or who have been employed for a minimum period of six months and are registered as unemployed. In addition, under the second subparagraph of Article 12(2)(b) thereof, Member States may decide that Article 12(1)(e) of the directive relating to family benefits is not to apply to third-country nationals who have been authorised to work in the territory of a Member State for a period not exceeding six months, to third-country nationals who have been admitted to that territory for the purpose of study, or to third-country nationals who are allowed to work there on the basis of a visa (judgment of 21 June 2017, *Martinez Silva*, C-449/16, EU:C:2017:485, paragraph 28).

26 Thus, like Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44), Directive 2011/98 provides, for certain third-country nationals, a right to equal treatment, which is the general rule, and lists the derogations from that right which the Member States have the option of establishing. Those derogations can therefore be relied on only if the authorities in the Member State concerned responsible for the implementation of that directive have stated clearly that they intended to rely on them (judgment of 21 June 2017, *Martinez Silva*, C-449/16, EU:C:2017:485, paragraph 29).

27 In that regard, it must be held that none of the derogations from the rights conferred by Article 12(1)(e) of Directive 2011/98, laid down in Article 12(2) thereof, allow Member States to exclude from the right to equal treatment a worker holding a single permit whose family members reside not in the territory of the Member State concerned but in a third country. To the contrary, it follows from the clear wording of Article 12(1)(e), set out in paragraph 24 of the present judgment, that such a worker must enjoy the right to equal treatment.

28 Furthermore, while Article 12(2)(c) of that Directive provides that Member States may provide for limits to equal treatment as regards tax advantages, limiting its application to cases where the registered or usual place of residence of the family members of the third-country worker for whom he/she claims benefits, lies in the territory of the Member State concerned, no such derogation is provided for in respect of social security benefits. It thus appears that the Union legislature did not intend to exclude the holder of a single permit whose family members do not reside in the territory of the Member State concerned from the right to equal treatment provided for in Directive 2011/98 and that it specified the cases in which this right may be limited on this ground by the Member States.

29 Since the national court has doubts about the interpretation of Article 12(1)(e) of Directive 2011/98 in the light of recitals 20 and 24 thereof, it should be observed that recital 20 of Directive 2011/98 states that the right to equal treatment 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, including family members, in accordance with Directive 2003/86, and who have been given access to the labour market of that Member State in accordance with other provisions of Union or national law.

30 However, it must be observed, first, that it is apparent from the wording of recital 20 to Directive 2011/98 that, by referring to a list of third-country nationals who have been admitted for purposes other than employment, who have subsequently been authorised to work in a Member State under other provisions of Union or national law that that recital refers, inter alia, as the Advocate General observed essentially in point 53 of his Opinion, to the situation in which the family members of a worker from a third-country who is the holder of a single permit benefit directly from the right to equal treatment provided for in Article 12 thereof. That right is conferred on those individuals in their own capacity as workers, although their arrival in the host Member State was due to the fact that they were family members of a worker who was a third-country national.

31 Second, with regard to recital 24 of Directive 2011/98, it should be observed that that recital seeks, in particular, to clarify that that directive does not itself grant social security rights to third-country nationals holding a single permit, over and above equal treatment with nationals of the host Member State. Therefore, as the Advocate General noted in point 55 of his Opinion, it does not in itself require Member States to pay social security benefits to family members who do not reside in the host Member State. In any event, it must be observed that the content of that recital, and in particular the last sentence thereof, has not been repeated in any of the provisions of the directive.

32 The preamble to an EU act has no binding legal force and cannot be relied on as a ground either for derogating from the actual provisions of the act in question or for interpreting those provisions in a manner that is clearly contrary to their wording (see, to that effect, judgments of 19 November 1998, *Nilsson and Others*, C-162/97, EU:C:1998:554, paragraph 54, and of 19 December 2019, *Puppinck and Others* v *Commission*, C-418/18 P, EU:C:2019:1113, paragraph 76).

33 Therefore, it cannot be inferred from those recitals that Directive 2011/98 must be interpreted as meaning that the holder of a single permit whose family members reside, not in the territory of the Member State concerned, but in a third country is excluded from the right to equal treatment provided for by that directive.

34 Furthermore, since the INPS and the Italian government argue that the exclusion of the holder of a single permit whose family members do not reside in the territory of the Member State concerned is consistent with the objective of integration pursued by Directive 2011/98, as integration presupposes a presence in that territory, it must be stated, as the Advocate General observed in points 62 and 63 of his Opinion, that it follows, in particular, from recitals 2, 19 and 20 and Article 1(1)(b) of the directive, that the latter intends to promote the integration of third-country nationals by establishing a common set of rights, based on equal treatment with the nationals of the host Member State. The objective pursued by the directive is also to establish a minimum level playing field within the Union, to recognise that third-country nationals contribute to the EU economy through their work and tax payments, and to serve as a safeguard to reduce unfair competition between a Member State's own nationals and third-country nationals resulting from the possible exploitation of the latter.

35 Contrary to the submissions relied on by the INPS and the Italian Government, it follows that, the exclusion of the holder of a single permit from the right to equal treatment, where his/her family members do not reside, for a period which may be temporary in the territory of the Member State concerned, as the facts of the main proceedings show, cannot be regarded as consistent with those objectives.

36 The INPS and the Italian Government also argue that the exclusion of the holder of a single permit whose family members do not reside in the territory of the Member State concerned from the right to equal treatment under Directive 2011/98 is supported by Article 1 of Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 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 those regulations solely on the ground of their nationality (OJ 2010 L 344, p. 1), which provides that Regulation No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (OJ 2009 L 284, p. 1) apply to third-country nationals who are not already covered by those Regulations solely on the basis of their nationality, as well as to members of their family and their survivors, provided that they are legally resident in the territory of a Member State and are in a situation which is not confined in all respects to a single Member State.

37 However, although, as the Advocate General stated in substance, in points 58 and 59 of his Opinion, Article 1 of Regulation No 1231/2010 is intended to create a right to equal treatment expressly in favour of family members of third-country nationals who reside in the territory of a Member State and who are in a situation covered by the Regulation, it cannot be inferred from that that the Union legislature intended to exclude from the right to equal treatment provided for by

Directive 2011/98 the holder of a single permit whose family members do not reside in the territory of the Member State concerned.

38 Contrary to the submissions of the INPS and the Italian Government, such an exclusion cannot be based solely on the fact that, in the case of third-country nationals who are long-term residents and enjoy a privileged status, Article 11(2) of Directive 2003/109 provides for the possibility for Member States to limit equal treatment as regards social security to cases where the registered or habitual place of residence of family members is on their territory. As follows from paragraph 26 of the present judgment, the derogations to the right to equal treatment provided for in Directive 2011/98 must be interpreted strictly. However, the derogation contained in Article 11(2) of Directive 2003/109 does not appear in Directive 2011/98. It follows that it cannot be accepted that the derogations contained in Directive 2011/98 should be interpreted in such a way as to include an additional derogation solely because it is contained in another act of secondary legislation.

39 It follows that, subject to the derogations permitted by Article 12(2)(b) of Directive 2011/98, a Member State may not refuse or reduce the social security benefit to the holder of a single permit on the grounds that some or all of his family members reside not in its territory, but in a third country, if it grants that benefit to its own nationals irrespective of the place of residence of their family members.

40 As regards the case in the main proceedings, it should be noted, first of all, that the national court itself states that the family unit allowance is specifically a type of social security benefit which falls within the scope of Article 12(1)(e) of Directive 2011/98. According to the information provided by that court, it is a cash benefit granted without any individual and discretionary assessment of the applicant's personal needs, on the basis of a legally defined situation, which is intended to meet family expenses. Such a benefit constitutes a social security benefit, falling within the scope of the family benefits referred to in Article 3(1)(j) of Regulation No 883/2004 (see, to that effect, judgment of 21 June 2017, *Martinez Silva*, C-449/16, EU:C:2017:485, paragraphs 20 to 25).

41 Secondly, the referring court states that the family unit is the basis for calculating the amount of that allowance. The INPS and the Italian Government argue, in that respect, that the non-inclusion of family members not residing on the territory of the Italian Republic only affects the amount, which, as the INPS stated at the hearing, is zero if all family members reside outside the national territory.

42 However, it must be observed that both the non-payment of the family unit allowance and the reduction of its amount, depending on whether all or some family members do not reside in the territory of the Italian Republic, are contrary to the right to equal treatment laid down in Article 12(1)(e) of Directive 2011/98, since it constitutes a difference in treatment between holders of a single permit and Italian nationals.

43 Contrary to the submissions of the INPS, such a difference in treatment cannot be justified by the fact that holders of a single permit and nationals of the host Member State are in different situations because of their respective links with that State, such a justification being contrary to Article 12(1)(e) of Directive 2011/98 which, in accordance with its objectives, set out in paragraph 34 of the present judgment, requires equal treatment between those two groups in the field of social security.

44 Similarly, it follows from settled case-law that any difficulties in checking the situation of beneficiaries with regard to the conditions for granting the family unit allowance when the members

of the family do not reside in the territory of the Member State concerned, relied on by the INPS and the Italian Government, cannot justify a difference in treatment (see, by analogy, judgment 26 May 2016, *Kohll and Kohll-Schlesser*, C-300/15, EU:C:2016:361, paragraph 59 and the case-law cited).

45 Thirdly, the referring court points out that, under national law, the members of the family unit are considered to be the recipients of the family unit allowance. However, the entitlement to that allowance cannot be refused on that ground with respect to the holder of a single permit whose family members do not reside in the territory of the Italian Republic. Although the members of the family unit are the beneficiaries of the allowance, which is the very purpose of a family benefit, it is clear from the information provided by that court, set out in paragraphs 18 and 19 of the present judgment, that the allowance is paid to the worker or pensioner, who is also a member of the family unit.

46 It follows that Article 12(1)(e) of Directive 2011/98 precludes a provision, such as Article 2(6-bis) of Law No. 153/1988, according to which the spouse and the children and equivalent persons of a third-country national who do not reside on the territory of the Italian Republic do not form part of the family unit, for the purposes of that law, unless the State from which the third-country national originates reserves reciprocal treatment for Italian citizens or has concluded an international convention on family benefits.

47 In the light of all the foregoing, the answer to the question referred is that Article 12(1)(e) of Directive 2011/98 must be interpreted as precluding the legislation of a Member State under which, for the purpose of determining entitlement to a social security benefit, family members of the holders of a single permit, within the meaning of Article 2(c) thereof, who do not reside in the territory of that Member State but in a third country are not to be taken into account, whereas account is taken of family members of nationals of that Member State residing in a third country.

Costs

48 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

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 must be interpreted as precluding the legislation of a Member State under which, for the purpose of determining entitlement to a social security benefit, the family members of the holder of a single permit, within the meaning of Article 2(c) thereof, who do not reside in the territory of that Member State but in a third country are not be taken into account, whereas account is taken of family members of nationals of that Member State residing in a third country.

[Signatures]

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1 Language of the case: Italian.