Reports of Cases

OPINION OF ADVOCATE GENERAL
RICHARD DE LA TOUR
delivered on 10 July 2025 [1]

Case C-151/24 [Luevi] [i]

Istituto nazionale della previdenza sociale (INPS)
v
V.M.

(Request for a preliminary ruling from the Corte costituzionale (Constitutional Court, Italy))

(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 – Regulation (EC) No 883/2004 – Article 3 – Branches of social security – Article 70 – Special non-contributory cash benefits – Social allowance – National legislation excluding third-country nationals holding single permits from receiving the social allowance)

I. Introduction

1. The request for a preliminary ruling concerns 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. [2]

2. That request has been made in proceedings between V.M., an Albanian national residing in Italy, and the Istituto nazionale della previdenza sociale (National Social Security Institute, Italy) ('the INPS') concerning the latter's refusal to grant her a cash benefit reserved for persons over the age of 67 experiencing economic hardship.

3. It gives the Court the opportunity to clarify the material scope of Article 12(1)(e) of Directive 2011/98, which provides for equal treatment in matters of social security for migrant workers who are third-country nationals holding single permits with nationals of the Member State where they reside. I will set out what, in my view, justifies the exclusion therefrom of the social allowance at issue in the main proceedings.

[1] Original language: French.

[i] The name of the present case is fictitious. It does not correspond to the real name of any of the parties to the proceedings.

[2] OJ 2011 L 343, p. 1.

II. Legal framework

A. European Union law

4. In the present Opinion, I will refer to recitals 19 and 20 of Directive 2011/98 and Article 2(b) and (c), Article 3(1)(b) and (c), and Article 12 of that directive.

5. I will also refer to recital 1 of Regulation (EC) No 883/2004,[3] Articles 3 and 70 thereof and Annex X thereto.

B. Italian law

6. Article 3(6) of legge n. 335 – Riforma del sistema pensionistico obbligatorio e complementare (Law No 335 reforming the compulsory and complementary pension scheme) of 8 August 1995[4] provides that, instead of the social pension and its increases, Italian citizens residing in Italy who have reached 65 years of age (since 1 January 2019, 67 years of age) and who fulfil the income conditions laid down in that paragraph will receive a social allowance. If the person has income from his or her own capital, the allowance is granted, in principle, at a reduced rate up to the net annual amount laid down by law. Subsequent increases in income beyond the maximum limit will result in the social allowance being suspended.[5]

7. Article 80 of legge n. 388 – Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge finanziaria 2001) (Law No 388 laying down provisions for drawing up the annual and multiannual State budget (Law on Finance 2001))[6] of 23 December 2000 provides, in paragraph 19 thereof, that the social allowance and financial benefits which are subjective rights under the legislation in force on social services are to be granted, in accordance with the conditions laid down in that legislation, to foreign nationals holding a residence permit;[7] in the case of the other benefits and social services, equal treatment with Italian citizens is to be provided to foreign nationals holding at the very least a residence permit for a period of one year or more.

8. Article 20(10) of decreto-legge n. 112 – Disposizioni urgenti per lo sviluppo economico, la semplificazione, la competitività, la stabilizzazione della finanza pubblica e la perequazione tributaria (Decree-Law No 112 laying down urgent measures for economic development,

[3] Regulation 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, as amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009 (OJ 2009 L 284, p. 43) ('Regulation No 883/2004').

[4] GURI No 190 of 16 August 1995, p. 3 – ordinary supplement to GURI No 101 ('Law No 335/95').

[5] That allowance is contained, in respect of Italy, in Annex X to Regulation No 883/2004.

[6] GURI No 302 of 29 December 2000, p. 5 – ordinary supplement to GURI No 219 ('Law No 388/2000').

[7] Since 2007, residence permits issued pursuant to Italian law have been replaced by 'long-term resident's EU residence permits', thus designated in the request for a preliminary ruling. In the present Opinion, I will use the term chosen by the EU legislature, namely 'residence permit "long-term resident – EU"'.

simplification, competitiveness, the stabilisation of public finances and fiscal balance)[8] of 25 June 2008, converted into law, with amendments, by legge n. 133 (Law No 133) of 6 August 2008,[9] states:

'From 1 January 2009, the social allowance referred to in Article 3(6) of [Law No 335/95] shall be paid to those entitled provided that they have resided legally for a continuous period of at least 10 years in the national territory.'

III. The facts in the main proceedings and the question referred for a preliminary ruling

9. V.M., an Albanian national, has been legally resident in Italy since 2006 as the holder of a residence permit granted for family reasons[10] and is authorised to work in that Member State, as is apparent from the file submitted to the Court.

10. The INPS refused to pay her the social allowance provided for in Article 3(6) of Law No 335/95, on the ground that she did not have a residence permit 'long-term resident – EU'.

11. After her action against that decision was dismissed at first instance, the Corte d'appello di Firenze (Court of Appeal, Florence, Italy) upheld her request on the ground that the grant of the social allowance at issue is subject only to the requirement of residence in Italy for at least 10 years.

12. Following the appeal brought by the INPS against that decision, the Corte suprema di cassazione (Supreme Court of Cassation, Italy), by order of 8 March 2023, raised before the Corte costituzionale (Constitutional Court, Italy), the referring court, questions based on various provisions of the Costituzione (Italian Constitution), read in conjunction with Article 34 of the Charter of Fundamental Rights of the European Union[11] and Article 12(1)(e) of Directive 2011/98, on the constitutionality of Article 80(9) of Law No 388/2000 in so far as that provision makes the grant of the allowance at issue subject to the additional condition that the foreign nationals be holders of a residence permit 'long-term resident – EU'.

13. While referring to the previous case-law of the Corte costituzionale (Constitutional Court), the Corte suprema di cassazione (Supreme Court of Cassation) raised the possibility of a constitutional obligation to grant the social allowance at issue to a foreign national who does not hold a residence permit 'long-term resident – EU' on account of 'the recognised interpenetration of the values underlying Article 3 of the Constitution and Article 34 of the Charter' and the different interpretation of Article 12 of Directive 2011/98 given by the Court of Justice.[12]

14. Moreover, the Corte suprema di cassazione (Supreme Court of Cassation) held that Article 3(6) of Law No 335/95 was contrary to the first paragraph of Article 38 of the Constitution, 'since there can be no doubt about the close correlation between that article and

8 GURI No 147 of 25 June 2008, p. 5 – ordinary supplement to GURI No 152.

9 GURI No 195 of 21 August 2008, p. 3 – ordinary supplement to GURI No 196.

10 At the hearing, it was confirmed that V.M. obtained a residence permit in the context of family reunification, as the sponsor's mother.

11 'The Charter'.

12 That court refers in particular to the judgment of 2 September 2021, *INPS (Childbirth and maternity allowances for holders of single permits)* (C-350/20, 'the judgment in *INPS C-350/20*', EU:C:2021:659).

Article 34 of the Charter which, establishing the right to social and housing assistance, seeks to "ensure a decent existence for all those who lack sufficient resources" (judgment of 24 April 2012, *Kamberaj*, C-571/10, EU:C:2012:233)'.

15. The Corte costituzionale (Constitutional Court) states that the new questions as to constitutionality before it are based on provisions of the Charter and that it cannot refrain from answering them using the instruments at its disposal. [13] It takes the view that they mainly involve ascertaining whether the social allowance at issue falls within the scope of the social security benefits in relation to which third-country nationals holding a residence permit for work purposes or which, in any event, permits them to work, are entitled to equal treatment under Article 12(1)(e) of Directive 2011/98.

16. For that purpose, the Corte costituzionale (Constitutional Court) states that the social allowance at issue is a cash benefit which the INPS grants, on request, to persons over the age of 65 (since 1 January 2019, over the age of 67) experiencing economic hardship because they have no income or receive an income below the threshold established annually by law determining the maximum amount of that allowance.

17. The Corte costituzionale (Constitutional Court) restates its case-law, according to which, first, the social allowance at issue is granted irrespective of whether the recipient has been a worker and is 'solely within the category of assistance'. [14] That allowance is intended solely to alleviate the risk of poverty faced by persons who do not have sufficient economic resources and who, by reason of old age, have reduced working capacity.

18. Second, in its judgment No 50/2019 of 4 December 2018, the Corte costituzionale (Constitutional Court) held that it is 'at the discretion of the national legislature to grant a cash benefit to an indigent foreign national with no pension only if that person's integration into society has made that person worthy of receiving the same assistance as that granted to an Italian citizen'. It took the view that equality of access to social assistance between Italian or Union citizens and third-country nationals should be limited to services and benefits which, while meeting 'the primary needs of the individual, which permit no distinction relating to territorial origin', give specific expression to individuals' enjoyment of their fundamental rights. In such a case, no restriction relating to the limited nature of available finances can be tolerated. However, the legislature may reserve the granting of other benefits to persons who have demonstrated their stable and active integration into Italian society by obtaining a residence permit 'long-term resident – EU'. That presupposes, unlike mere legal residence in Italy, that those persons possess an income and accommodation and have a knowledge of the Italian language, which constitute 'not unreasonable evidence [of their] participation' in society, which contributes to its progress.

19. With regard to EU law, the referring court states, first, that the social allowance at issue is expressly classified under special non-contributory cash benefits, also known as 'mixed' benefits, defined in Article 70 of Regulation No 883/2004 and listed in Annex X thereto. Next, it analyses the wording of Article 12(1)(e) of Directive 2011/98 and the legal regulation of those 'mixed' benefits. It recalls, in particular, the conditions for granting them as laid down by the Court, both in respect of Union citizens [15] and in respect of third-country nationals legally resident in EU

[13] It refers, inter alia, to the judgment in *INPS C-350/20*. In that regard, see, in particular, paragraph 23 of that judgment.

[14] It refers to judgment No 137/2021 of 25 May 2021.

[15] The Corte costituzionale (Constitutional Court) refers in particular to the judgments of 11 November 2014, *Dano* (C-333/13, 'the judgment in *Dano*', EU:C:2014:2358, paragraph 83); of 15 September 2015, *Alimanovic* (C-67/14, 'the judgment in *Alimanovic*', EU:C:2015:597); and of 25 February 2016, *García-Nieto and Others* (C-299/14, EU:C:2016:114).

territory[16] before being enshrined by the EU legislature. It infers from this that third-country nationals moving within EU territory, like citizens of EU Member States, must have a contribution relationship with the social security system of the State from which the payment of benefits is sought.

20. Lastly, the referring court is of the opinion that the principle of equal treatment enshrined in Article 12(1)(e) of Directive 2011/98 cannot confer on third-country nationals who are holders of the residence permits referred to in Article 3(1)(b) and (c) of that directive more extensive protection than that provided for by the regime for the coordination of social security systems, established in Regulation No 883/2004, to which the former article refers.

21. The referring court therefore takes the view that third-country nationals to which Article 12(1)(e) of Directive 2011/98 applies may receive the same treatment as nationals of the Member State in which they reside only if they are workers and only as regards benefits relating to the branches of social security listed in Article 3(1) of Regulation No 883/2004, whereas, in order to receive the special benefits referred to in Article 70 of that regulation – including the social allowance at issue – they must necessarily be subject to the conditions expressly laid down for that purpose by the coordination regime and by the legislation of the host Member State.

22. Consequently, it doubts whether the mere fact of holding a residence permit allowing the holder to work in a Member State within the meaning of Directive 2011/98 confers on third-country nationals the right to have access to 'mixed' benefits under the same conditions as nationals of the Member State in which they reside.

23. In those circumstances, the Corte costituzionale (Constitutional Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is Article 12(1)(e) of Directive [2011/98], giving specific expression to the protection of the entitlement to social security benefits provided for in Article 34(1) and (2) of the [Charter], to be interpreted as meaning that it covers assistance such as the social allowance under Article 3(6) of [Law No 335/95], and does EU law therefore preclude national legislation which fails to extend to foreign nationals holding a single permit as referred to in that directive the assistance already granted to foreign nationals on condition that they hold a long-term resident's EU residence permit?'

24. V.M., the INPS, the Italian Government and the European Commission submitted written observations and participated in the hearing held on 7 May 2025, during which they responded to questions put to them by the Court for oral answer.

IV. Analysis

25. The question for a preliminary ruling calls, in my view, for two preliminary remarks.

26. First, the referring court states that Article 12(1)(e) of Directive 2011/98 gives specific expression to the entitlement to social security benefits provided for in Article 34(1) and (2) of the Charter.

[16] The Corte costituzionale (Constitutional Court) refers to the judgment of 12 October 1978, *Belbouab* (10/78, EU:C:1978:181).

27. In so doing, it reproduces what the Court held in the judgment in *INPS C-350/20* by relying on the reference to Regulation No 883/2004 made in Article 12(1)(e) of that directive, read in the light of recital 31 thereof, which states inter alia that that directive observes the principles recognised by the Charter. [17]

28. Second, the referring court refers to the situation of 'foreign nationals holding a single permit'. On account of the Court's finding regarding the personal scope of Article 12(1) of Directive 2011/98 in its judgment in *INPS C-350/20*, [18] it should be clarified that the interpretation of that provision requested by the referring court is not limited to situations in which third-country nationals have been admitted to a Member State for the purpose of work in accordance with EU or national law. [19] As it expressly lays down, Article 12(1) of that directive also applies to third-country nationals who have been admitted to a Member State for purposes other than work in accordance with EU or national law, who are allowed to work and who hold a residence permit in accordance with Regulation (EC) No 1030/2002. [20]

29. Accordingly, in view of the decision in the judgment in *INPS C-350/20*, [21] I suggest that the Court should consider, by analogy with the reformulation of the question for a preliminary ruling adopted in that judgment, [22] that, by its sole question, the referring court asks, in essence, whether Article 12(1)(e) of Directive 2011/98 must be interpreted as precluding national legislation which excludes the third-country nationals referred to in Article 3(1)(b) and (c) of that directive from the benefit of an allowance granted, in accordance with that legislation, to persons over the age of 65 (since 1 January 2019, over the age of 67) experiencing economic hardship and who, by reason of old age, have reduced working capacity. [23]

30. Article 12(1) of Directive 2011/98 lays down *the principle of equal treatment of third-country workers*, [24] as referred to in Article 3(1)(b) and (c) of that directive, *with nationals of the Member State where they reside* in various fields, such as working conditions, education and vocational training and tax benefits. In particular, *in matters of social security*, Article 12(1)(e) of that directive refers to 'branches of social security, as defined in Regulation … No 883/2004'. [25]

31. It is clear from recital 19 of Directive 2011/98 that this implies a minimum level of harmonisation, since the aim of that directive is to specify the fields in which equal treatment is provided.

[17] See judgment in *INPS C-350/20* (paragraphs 44 to 46).

[18] See judgment in *INPS C-350/20* (paragraphs 48 and 49).

[19] See definition in Article 3(1)(c) of Directive 2011/98.

[20] Council Regulation of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ 2002 L 157, p. 1). See definition in Article 3(1)(b) of Directive 2011/98 and recital 20 thereof.

[21] See judgment in *INPS C-350/20* (paragraph 47).

[22] See judgment in *INPS C-350/20* (paragraph 50).

[23] The requirement of residence for at least 10 years (see point 11 of the present Opinion) laid down in the Italian legislation was commented on at the hearing. I should make clear that the referring court's question does not concern that requirement. Moreover, as regards a similar requirement imposed on third-country nationals who are long-term residents for access to a social security, social assistance or social protection measure, see judgment of 29 July 2024, *CU and ND (Social assistance – Indirect discrimination)* (C-112/22 and C-223/22, EU:C:2024:636).

[24] See, also, Article 2(b) of Directive 2011/98 for the definition of the expression 'third-country worker'.

[25] That expression appears in the same terms in Article 12(1)(e) of Directive (EU) 2024/1233 of the European Parliament and of the Council of 24 April 2024 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 L 2024/1233). It repeals Directive 2011/98 and will apply from 22 May 2026. See Article 19 and the second paragraph of Article 20 of Directive 2024/1233.

32. An identical reference appears in other directives.[26] This should be extended to Directive 2003/109/EC[27] if the Commission's proposal to insert the reference to Regulation No 883/2004 into the recast of that directive were to be successful.[28]

33. *As regards the personal scope* of Article 12(1) of Directive 2011/98, as stated in point 28 of the present Opinion, I should add, first, that it is not necessary for the third-country nationals to have always been in active employment.[29]

34. Therefore, it cannot be argued, as the INPS does, that, 'in order to be granted the right to equal treatment in social security matters, it is not sufficient for the foreign national to be the holder of a residence permit, the foreign national must also contribute to the economy of the host Member State by carrying out an occupational activity and paying the taxes relating to that activity'.

35. Second, recital 20 of Directive 2011/98, regarding the right to equal treatment under Article 12, also refers to '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 [30]'. As regards the situation in which family members of a third-country worker who is the holder of a single permit benefit directly from the right to equal treatment referred to in that recital, the Court has held that '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]

[26] See Article 16(1)(e) of Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC (OJ 2021 L 382, p. 1), commonly known as 'the Blue Card Directive'; Article 18(2)(c) of Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (OJ 2014 L 157, p. 1), and Article 23(1)(d) of Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers (OJ 2014 L 94, p. 375). Article 22(2)(b) of Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (OJ 2016 L 132, p. 21) refers to Article 12(1)(e) of Directive 2011/98.

[27] Council Directive of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44). See Article 11(1)(d) of that directive.

[28] See Article 12(1)(d) of the proposal for a Directive of the European Parliament and of the Council concerning the status of third-country nationals who are long-term residents (COM(2022) 650 final), presented on 27 April 2022, and the commentary of Melin, P., 'Social security rights of third-country nationals coming from outside the EU: the scope and meaning of equal treatment', *Research Handbook on European Social Security Law*, Edward Elgar Publishing, Northampton, 2023, pp. 353 to 378, in particular p. 363. That proposal is unchanged in the document of 28 November 2023 from the General Secretariat of the Council to the delegations on the proposal for a Directive of the European Parliament and of the Council concerning the status of third-country nationals who are long-term residents – Mandate for negotiations with the European Parliament (document 16000/23). On the scope of the provisions relating to equal treatment of third-country nationals according to various statutory provisions relating to social security and social assistance and access to goods and services and the supply of goods and services offered to the public, see judgment of 28 October 2021, *ASGI and Others* (C-462/20, 'the judgment in *ASGI*', EU:C:2021:894).

[29] See, to that effect, the first subparagraph of Article 12(2)(b) of Directive 2011/98, on the limits to equal treatment, which provides for certain guarantees for third-country workers who have been employed for a minimum period of six months or who have been registered as unemployed. See, in that regard, judgment of 25 November 2020, *Istituto nazionale della previdenza sociale (Family benefits for the holder of a single permit)* (C-302/19, 'the judgment in *INPS C-302/19*', EU:C:2020:957, paragraph 25).

[30] OJ 2003 L 251, p. 12.

[31] See judgment in *INPS C-302/19* (paragraph 30). See, also, judgment of 19 September 2024, *Caisse d'allocations familiales des Hauts-de-Seine* (C-664/23, EU:C:2024:1046, paragraph 38).

36. In the present case, it was stated at the hearing that V.M. has never worked in Italy and that she lives with her son who has the status of 'long-term resident – EU'. Being authorised to work,[32] it therefore appears that she falls within the personal scope of Article 12(1) of Directive 2011/98.

37. *As regards the material scope* of the right to equal treatment laid down in Article 12(1)(e) of Directive 2011/98, that is determined by Regulation No 883/2004 to which it refers.[33] The referring court's question relates to the meaning and scope of the expression 'branches of social security, as defined in Regulation … No 883/2004'.

38. The branches of social security are referred to in Article 3 of that regulation, entitled 'Matters covered'.

39. Article 3(1) of that regulation lays down the principle that that regulation 'shall apply to all legislation concerning the … branches of social security' relating to nine categories of benefits and a grant set out exhaustively therein.

40. Article 3(5) of Regulation No 883/2004 defines the exceptions. According to subparagraph (a) of that provision, that regulation 'shall not apply to social and medical assistance'.[34]

41. Article 3(3) of Regulation No 883/2004 provides that that regulation 'shall also apply to the special non-contributory cash benefits covered by Article 70' of that regulation.

42. Doubt may arise from the wording of that paragraph 3, on the one hand, and the criteria adopted by the EU legislature in that Article 70 for defining special non-contributory cash benefits, on the other hand.

43. In my view, the fact that the adverb 'also' is used in Article 3(3) of Regulation No 883/2004 must be interpreted in the light of the objective pursued by that regulation in so far as it is intended to promote the free movement of workers[35] by laying down rules for the coordination of social security systems between Member States.[36] Therefore, its material scope includes non-contributory benefits in accordance with the limits stated in recital 37 of that regulation.

44. The criteria for determining special non-contributory cash benefits are as follows:

– those benefits are 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) [of Regulation No 883/2004] and of social assistance';[37] and

– they are intended '*to provide* … supplementary, substitute or ancillary *cover against the risks covered by the branches of social security* referred to in Article 3(1) [of that regulation], and …

[32] See point 9 of the present Opinion.

[33] See also point 27 of the present Opinion.

[34] See judgment of 15 July 2021, *A (Public health care)* (C-535/19, EU:C:2021:595, paragraphs 32 and 33). See, also, for a distinction in definition between social security rights, on the one hand, and social and medical assistance, on the other hand, Articles 12 and 13 of the European Social Charter, signed at Turin on 18 October 1961.

[35] See recitals 1 and 3 of Regulation No 883/2004.

[36] See recitals 4 and 45 of Regulation No 883/2004. See also, inter alia, judgment of 2 April 2020, *Caisse pour l'avenir des enfants (Child of the spouse of a non-resident worker)* (C-802/18, EU:C:2020:269, paragraph 68).

[37] See Article 70(1) of Regulation No 883/2004. Emphasis added.

guarantee the persons concerned a minimum subsistence income having regard to the economic and social situation in the Member State concerned'. [38]

45. Moreover, the first subparagraph of Article 1(l) of Regulation No 883/2004 defines the term '*legislation*' as meaning, 'in respect of each Member State, laws, regulations and other statutory provisions and all other implementing measures *relating to the social security branches* covered by Article 3(1) [of that regulation]'. [39]

46. Therefore, in so far as they are intended to cover partially or even completely 'the risks covered by the branches of social security referred to in Article 3(1)' of Regulation No 883/2004, might special non-contributory cash benefits be covered by the equal treatment provided for by Article 12(1)(e) of Directive 2011/98 for third-country nationals authorised to work in a Member State?

47. In the first place, it should be noted that the expressions cited in points 44 and 45 of the present Opinion should not diminish the importance of the other characteristic laid down in Article 70(1) of Regulation No 883/2004, namely that of 'social assistance', as specified in paragraph 2(a)(i) of that article. [40]

48. In that regard, the Court has held that the 'special non-contributory cash benefits' referred to in Article 70(2) of that regulation fall within the concept of 'social assistance' within the meaning of Article 24(2) of Directive 2004/38/EC. [41] It stated that that concept refers to all assistance schemes established by the public authorities, whether at national, regional or local level, to which recourse may be had by an individual who does not have resources sufficient to meet his or her own basic needs and those of his or her family. [42]

49. Moreover, it follows from the judgment in *Alimanovic* that the predominant function of the allowance at issue in the main proceedings must be determined in order for it to be able to be classified as a 'special non-contributory cash benefit'. That is the case if the allowance covers the minimum subsistence costs necessary to lead a life in keeping with human dignity. [43]

50. Lastly, according to settled case-law, a benefit granted, without any individual and discretionary assessment of personal needs, to recipients on the basis of a legally defined position and which relates to one of the risks expressly listed in Article 3(1) of Regulation No 883/2004 may be regarded as a social security benefit. [44]

38 See Article 70(2)(a)(i) of Regulation No 883/2004. Emphasis added. See, for the second case, Article 70(2)(a)(ii) of that regulation.

39 Emphasis added.

40 Comparable to Article 13(1) of the European Social Charter. See commentary of Eleveld, A. and Katrougalos, G., 'The right to social security and social assistance in the "case-law" and conclusions of the Social Rights Committee', *Research Handbook on European Social Security Law*, footnote 28, op. cit., pp. 64 to 83, in particular p. 70.

41 Directive of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p 77, and corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).

42 See judgment in *Dano* (paragraph 63) and reference by analogy to that judgment in the judgment in *ASGI* (paragraph 34).

43 See judgment in *Alimanovic* (paragraphs 43, 45 and 46 and the case-law cited). See, by contrast, regarding benefits of a financial nature which, independently of their status under national law, are intended to facilitate access to the labour market of a Member State, judgment of 4 June 2009, *Vatsouras and Koupatantze* (C-22/08 and C-23/08, EU:C:2009:344, paragraph 45). See, also, on the irrelevance of whether a benefit is classified as a social security benefit by national legislation, judgment in *INPS C-350/20* (paragraph 52 and the case-law cited).

44 See judgment in *ASGI* (paragraph 25 and the case-law cited).

51. In the second place, it should be noted that two additional criteria stated in Regulation No 883/2004 make it possible to distinguish the benefits referred to in Article 70 of that regulation from those falling within the branches of social security, namely:

– their 'financing exclusively derives from compulsory taxation intended to cover general public expenditure and the conditions for providing and for calculating the benefits are not dependent on any contribution in respect of the beneficiary', [45] and

– they are listed in Annex X. [46]

52. In the third place, it must be emphasised that those benefits are subject to a specific legal regime. In particular, under Article 70(4) of Regulation No 883/2004, they are provided exclusively in the Member State in which the persons concerned reside, in accordance with its legislation. They are provided by and at the expense of the institution of the place of residence.

53. In those circumstances, I note, first, that the expression 'branches of social security, *as defined* in Regulation … No 883/2004' [47] used in Article 12(1)(e) of Directive 2011/98 is specific enough to infer that it means the branches of social security listed exhaustively in Article 3(1) of that regulation. [48]

54. However, other considerations must be mentioned in support of that analysis, since it is clear from the settled case-law of the Court that, when interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part. [49]

55. Accordingly, second, in order to provide necessary contextual clarification, I note that the justification for the reference to the branches of social security listed in Article 3(1) of Regulation No 883/2004 can be found in the personal scope of the right to equal treatment laid down in Article 12(1) of Directive 2011/98. [50] That scope is limited to workers who, by virtue of their status, receive payments subject to the obligation to contribute to social security cover for employment-related risks. [51] Under Regulations No 883/2004 and (EC) No 987/2009, [52] workers, self-employed persons and members of their families are, in principle, covered by the social

45 See the first sentence of Article 70(2)(b) of Regulation No 883/2004.

46 See Article 70(2)(c) of Regulation No 883/2004.

47 Emphasis added.

48 The views expressed in the legal literature to which I have had access are agreed on that point. See, inter alia, Thym, D., *European Migration Law*, Oxford University Press, Oxford, 2023, in particular Chapter 15, entitled 'Integration and settlement', pp. 469 to 504, in particular paragraph 15.3.3.1 (p. 482).

49 See judgments of 17 November 1983, *Merck* (292/82, EU:C:1983:335, paragraph 12); of 16 July 2020, *AFMB and Others* (C-610/18, EU:C:2020:565, paragraph 50); and of 8 May 2025, *Pielatak* (C-410/23, EU:C:2025:325, paragraph 54).

50 See point 28 of the present Opinion.

51 See, on the condition for a public contribution for family benefits, judgment in *ASGI* (paragraph 28). See also, on that correlation with the contribution to the funding of social security schemes, Beduschi, A., 'An empty shell? The protection of social rights of third-country workers in the EU after the Single Permit Directive', *European Journal of Migration and Law*, Vol. 17, No 2-3, Wolters Kluwer, The Hague, 2015, pp. 210 to 238, in particular p. 223. See further Article 26 of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).

52 Regulation of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ 2009 L 284, p. 1).

security system of the Member State in which they pursue their employment or self-employed activity, under the same conditions as nationals. Therefore, the criterion based on the link with the host Member State is irrelevant. [53]

56. Thus, the EU legislature expressly chose not to extend the right to equal treatment laid down in Article 12(1) of Directive 2011/98 to benefits which cannot be classified as 'social security benefits' within the meaning of Article 3 of Regulation No 883/2004, including, therefore, those referred to in Article 70 of that regulation, on account of their characteristics, which are essentially related to individual and discretionary assessment of the needs of recipients who are not exclusively workers. [54]

57. However, equality of rights in matters of social assistance was established in the case of third-country nationals who are *long-term residents*, [55] by reason of their 'more privileged status', according to the expression used in recital 8 of Directive 2011/98, granted on account of their degree of integration. [56]

58. That difference in equal rights in relation to social assistance, justified by the duration of residence as the criterion for integration of the persons concerned, without any restriction on the nature of the resources sufficient to meet their own needs and those of their family members other than the lack of recourse to the social assistance system of the Member State concerned, [57] is comparable to that which is provided for 'mobile' Union citizens. [58]

59. That is the case for Union citizens who have acquired the right of permanent residence after residing legally for a continuous period of five years in the host Member State. [59] As regards the preceding period, according to the same integration logic, the EU legislature chose, also in relation to the right to a social assistance benefit, to provide in Article 24(2) of Directive 2004/38, in consideration of the short periods of residence for inactive citizens, a derogation from the principle of non-discrimination established in paragraph 1 of that article in respect of Union citizens whose residence complies with the conditions laid down in that directive. [60] Moreover,

[53] See judgment in *INPS C-302/19* (paragraph 43).

[54] See points 48 to 50 of the present Opinion.

[55] See Article 11(1)(d) of Directive 2003/109 which refers to 'social security, social assistance and social protection as defined by national law'. See, by way of comparison, Article 29 of Directive 2011/95. In that regard, see judgment in *ASGI* (paragraphs 33 and 34).

[56] See judgment of 29 July 2024, *CU and ND (Social assistance – Indirect discrimination)* (C-112/22 and C-223/22, EU:C:2024:636, paragraphs 45 and 46). See, however, on the fact that the rights guaranteed by Directive 2003/109 are not always as favourable as those guaranteed by Directive 2011/98 if the Member State concerned limits equal treatment in social matters in accordance with Article 11(4) of Directive 2003/109, Verschueren, H., 'Employment and social security rights of third-country labour migrants under EU Law – an incomplete patchwork of legal protection', *European Journal of Migration and Law*, footnote 51, op. cit., Vol. 18, No 4, 2016, pp. 373 to 408, in particular pp. 387 and 388. See, also, on the comparison with 'mobile' Union citizens, Weingerl, P. and Tratnik, M., 'Climbing the wall around EU Citizenship – has the time come to align third-country nationals with intra-EU migrants?', *European Journal of International Law*, European University Institute, Florence, Vol. 33, No 1, 2022, pp. 15 to 38.

[57] See Article 5(1)(a) of Directive 2003/109 and Thym, D., 'Article 5 – Conditions for acquiring long-term resident status', in Hailbronner, K. and Thym, D., *EU Immigration and Asylum Law – a commentary*, 2nd ed., Beck, Munich, 2016, pp. 453 to 460, in particular paragraph 7 (p. 456).

[58] According to Article 3(1) of Directive 2004/38, Union citizens who move to or reside in a Member State other than that of which they are a national, and their family members as defined in point 2 of Article 2 of that directive who accompany or join them, fall within the scope of that directive and are beneficiaries of the rights conferred by it.

[59] See Article 16(1) of Directive 2004/38 and judgment in *Dano* (paragraph 72).

[60] The period in question is the first three months of residence (Article 6 of that directive) or a longer period in the case of job-seekers (Article 14(4)(b) of that directive). See judgments in *Dano* (paragraphs 64 and 65) and of 25 February 2016, *García-Nieto and Others* (C-299/14, EU:C:2016:114, paragraph 44). See, also, on the right to equal treatment, judgment of 15 July 2021, *The Department for Communities in Northern Ireland* (C-709/20, 'the judgment in *CG*', EU:C:2021:602, paragraph 75 and the case-law cited).

within a period of three months to five years, Union citizens who meet the conditions for the grant of a residence permit on account of their level of resources are removed from access to social assistance in the host Member State. [61]

60. Nonetheless, an important difference remains. Third-country nationals covered by Directive 2011/98 do not enjoy equal rights in matters of social assistance, whereas Union citizens who are also workers or self-employed persons or who retain that status [62] and their family members are entitled to the same social assistance benefits as nationals from the beginning of their residence. [63]

61. It is therefore appropriate, third, to recall the EU legislature's objective, as expressed in recital 19 of Directive 2011/98, in the light of which Article 12(1)(e) of that directive must be interpreted. [64]

62. I would point out that that recital consistently defines the degree of equal treatment laid down.

63. On the basis of the finding that, in the absence of horizontal Union legislation, the rights granted to third-country nationals varied depending on the Member State, it was decided 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.

64. Specifically, the objective stated in that recital is 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'. [65]

65. It is therefore consistent, given the EU legislature's intention as so expressed, first, to create a strictly circumscribed framework, *in the case of residence for a certain period of time*, for a *minimum* common set of rights within the limits of its power in social security matters, as stated

[61] See, as a reminder of the conditions for that right of residence, judgment in *CG* (paragraph 76 and the case-law cited). See, also, Commission notice entitled 'Guidance on the right of free movement of EU citizens and their families' (OJ C/2023/1392), Sections 11.1.2 and 11.1.3 (p. 50). See further, Martin, D., 'Article 24 – Égalité de traitement', *Directive 2004/38 relative au droit de séjour des citoyens de l'Union européenne et des membres de leur famille*, Bruylant, Bruxelles, 2020, pp. 373 to 396, in particular p. 383, paragraph 24.

[62] See judgment in *Alimanovic* (paragraphs 53 and 54).

[63] See Article 24 of Directive 2004/38 and judgment of 25 February 2016, *García-Nieto and Others* (C-299/14, EU:C:2016:114, paragraph 44). Moreover, it should be noted that, in the case of a possible difference in treatment between nationals of Member States and nationals of non-member countries, Article 18 TFEU is not applicable. See judgment of 4 June 2009, *Vatsouras and Koupatantze* (C-22/08 and C-23/08, EU:C:2009:344, paragraph 52); *Opinion 1/17 (EU-Canada CET Agreement)* of 30 April 2019 (EU:C:2019:341, paragraph 169); and judgment of 2 September 2021, *Belgian State (Right of residence in the case of domestic violence)* (C-930/19, EU:C:2021:657, paragraph 51).

[64] On the background to the drafting of Article 12 of Directive 2011/98, see, in particular, Iglesias Sánchez, S., 'Article 12 – Right to equal treatment', in Hailbronner, K. and Thym, D., *EU Immigration and Asylum Law – a commentary*, footnote 57, op. cit., paragraphs 7 to 9 (p. 919) and paragraphs 29 and 30 (pp. 922 and 923).

[65] Emphasis added. See, in particular, judgment in *INPS C-302/19* (paragraph 34). Regarding the political compromise, see, inter alia, Beduschi, A., footnote 51, op. cit., in particular section 2.2 (pp. 218 and 219). See also, on developments since the Conclusions of the Tampere European Council of 15 and 16 October 1999, Tsourdi, E. and Philippe De Bruycker, P., *Research Handbook on EU Migration and Asylum Law*, Edward Elgar Publishing, Northampton, 2022, particularly Chapter I, entitled 'The evolving EU asylum and migration law', pp. 1 to 55, in particular subsection 2.1.6.1, second paragraph (pp. 20 and 21).

in recital 26 of Directive 2011/98,[66] and, second, to reserve equal rights for benefits governed by the law of the Member State in which the third-country national was authorised to work[67] or is registered as unemployed after a minimum period of employment.[68]

66. It is clear from recital 19 of Directive 2011/98 that the directive is intended to achieve a minimum harmonisation and not a strict balance between the situation of third-country nationals and that of the nationals of the Member State in which they live.

67. That objective is, again, expressed in almost identical terms[69] in Directive 2024/1233.[70]

68. It is therefore confirmed that the consensus of the Member States on the principle of equal rights, in Article 12 of Directive 2011/98 and in Article 11 of Directive 2003/109, is based on the limitation of the areas in which that principle is guaranteed and on the power to derogate from that principle in certain circumstances.[71]

69. All those contextual and teleological clarifications confirm the framework for the Court's interpretation, imposed by the reference to 'branches of social security, as defined in Regulation … No 883/2004' in Article 12(1)(e) of Directive 2011/98.[72] The right to equal treatment of persons covered by that directive therefore does not apply to special non-contributory cash benefits, as defined in Article 70 of that regulation.

70. In the present case, although V.M. does not dispute the fact that the allowance at issue is a 'mixed' benefit[73] contained in Annex X, 'Italy' entry, item (g), of Regulation No 883/2004, she maintains that 'a subsistence provision granted to elderly persons is certainly not unrelated to the "risk of old-age" and therefore surely corresponds to one of the branches referred to in [Article 3(1) of that regulation]'. In her view, the allowance at issue therefore justifiably falls within the scope of Article 12(1)(e) of Directive 2011/98.

71. In my view, such an approach calls into question the distinction between the benefits referred to in Article 3(1) and (3) of Regulation No 883/2004.[74]

72. I note that the Court has held that the grant of old-age benefits referred to in Article 3(1)(d) of Regulation No 883/2004 does not have to depend on an individual assessment of the applicant's personal needs, which is the criterion for eligibility for a social assistance benefit, and that their essential characteristic lies in the fact that they are intended to safeguard the means of

66 See, also, judgment of 19 December 2024, *Caisse d'allocations familiales des Hauts-de-Seine* (C-664/23, EU:C:2024:1046, paragraph 30 and the case-law cited).

67 See, by way of comparison, judgment of 16 June 2022, *Commission* v *Austria (Indexation of family benefits)* (C-328/20, EU:C:2022:468, paragraph 108).

68 On the finding that all other directives relating to legal migration do not cover 'social assistance' in the form of a minimum income allowance intended to cover essential living costs, see Thym, D., *European Migration Law*, footnote 48, op. cit., in particular p. 483.

69 See recital 2 of Directives 2011/98 and 2024/1233. As regards equal rights to be found in new Directive 2024/1233, the terms of recitals 28, 30, 31 and *34* of that directive are almost identical, respectively, to those of recitals 19, 20, 21 and *24* of Directive 2011/98. The recitals relating to social security are indicated in italics.

70 See footnote 25 of the present Opinion.

71 See Article 12(2) of Directive 2011/98 and Article 11(2), (3) and (4) of Directive 2003/109. See also judgment in *INPS C-302/19* (paragraphs 38 and 39). See also, on the power to adopt more favourable provisions, Article 13(2) of Directive 2011/98 and Article 11(5) of Directive 2003/109.

72 See, in particular, regarding the framework in which the Court may exercise its power of judicial review, judgment in *Alimanovic* (paragraphs 60 and 61). See, also, Muir, E., *EU Equality Law – the first fundamental rights policy of the EU*, Oxford University Press, Oxford, 2018, particularly Chapter 3, entitled 'EU equality law at a constitutional crossroads', pp. 58 to 109, in particular p. 103.

73 See point 19 of the present Opinion.

74 See points 46 and 47 of the present Opinion.

subsistence of persons who, when they reach a certain age, leave their employment and are no longer required to hold themselves available for work at the employment office..[75] Therefore, the mere fact that benefits are paid in order to supplement the means of subsistence of persons having reached a certain age is insufficient for them to be classified as old-age benefits.[76]

73. Consequently, in accordance with the case-law of the Court, it is sufficient to note that the special non-contributory character of the allowance at issue included in Annex X to Regulation No 883/2004 is not disputed.[77] Moreover, the referring court states that the allowance at issue is an assistance benefit, since it is intended solely to alleviate the risk of poverty faced by persons who do not have sufficient economic resources and who, by reason of old age, have reduced working capacity.[78]

74. It must therefore be inferred that the social allowance at issue does not fall within the scope of Article 12(1)(e) of Directive 2011/98, even though it would meet basic needs within the meaning of the case-law of the Court interpreting Article 11(4) of Directive 2003/109 relating to the principle of equal treatment applicable to third-country nationals who are long-term residents.

75. Those 'basic needs' were defined by the Court as food, accommodation and health. It held that they fall within the concept of 'core benefits', with the result that the grant thereof cannot be excluded by Member States under Article 11(4) of Directive 2003/109 in matters of social assistance and social protection.[79]

76. Specifically, in the case of third-country nationals holding a single permit, it is reasonable to consider that the conditions for the grant and renewal of that permit relating to employment and to the fulfilment of the requirement of sufficient resources make it unlikely that there should be any need to apply for such core benefits. However, the situation of those persons may change before that permit is renewed, a possibility which was rightly raised by the Commission at the hearing. According to the referring court's analysis, the allowance at issue seeks to ensure a decent existence for all those who lack sufficient resources.

77. In that context, I find it appropriate to point out, first, that the Corte costituzionale (Constitutional Court) stated that benefits are paid in order to meet 'the primary needs of the individual, which permit no distinction relating to territorial origin'.[80] The Italian Government explained at the hearing that those benefits of various kinds are used to support persons whose health or safety are under threat. It reiterated the referring court's explanation that, 'in those … circumstances, the provision of such benefits is not a component of social assistance (which under [the first paragraph of] Article 38 of the Constitution is solely accorded to "citizens"), but a necessary instrument to guarantee [an individual's fundamental right (Article 2 of the Constitution)].'[81]

[75] See, in particular, judgment of 16 September 2015, *Commission* v *Slovakia* (C-361/13, EU:C:2015:601, paragraphs 47, 52 and 55 and the case-law cited).

[76] See judgment of 16 September 2015, *Commission* v *Slovakia* (C-361/13, EU:C:2015:601, paragraph 60).

[77] See, to that effect, judgment of 8 March 2001, *Jauch* (C-215/99, EU:C:2001:139, paragraph 17).

[78] See point 17 of the present Opinion.

[79] See judgment of 24 April 2012, *Kamberaj* (C-571/10, EU:C:2012:233, paragraph 91).

[80] See point 18 of the present Opinion.

[81] I refer to the summary of the request for a preliminary ruling (p. 7).

78. Second, it appears to me that other individual situations of a less serious nature, but which violate the dignity of a third-country national holding a single permit, must be taken into consideration. Since such a national is legally residing in the territory of a Member State, the national authorities empowered to grant social assistance should be required to check that a refusal to grant such assistance based on the residence permit which that national holds does not expose the national concerned who does not have any resources to provide for his or her own needs to an actual and current risk of violation of his or her fundamental rights, in particular the right enshrined in Article 1 of the Charter. [82]

79. Therefore, I share the view expressed by the Commission at the hearing. In my opinion, certain individual situations justify the provision of a 'safety net'. [83]

80. In short, I take the view that the lack of equal treatment, in social security matters, of the third-country workers referred to in Article 3(1)(b) and (c) of Directive 2011/98 with nationals of the Member State in which they reside follows from the interpretation of the concept of 'branches of social security' to which Article 12(1)(e) of that directive refers. However, that interpretation does not preclude the competent authorities of the host Member State, in particularly critical situations with regard to respect for fundamental rights, from making an overall assessment, without waiting to have to provide support against an existential risk.

V. Conclusion

81. In the light of all the foregoing considerations, I propose that the Court answer the question referred for a preliminary ruling by the Corte costituzionale (Constitutional Court, Italy) as follows:

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 not precluding national legislation which excludes the third-country nationals referred to in Article 3(1)(b) and (c) of that directive from the benefit of an allowance granted, in accordance with that legislation, to persons over the age of 65 (since 1 January 2019, over the age of 67) experiencing economic hardship and who, by reason of old age, have reduced working capacity.

[82] Compare with the judgment in *CG* (paragraph 92). That judgment relates to a situation in which a 'mobile' Union citizen cannot rely on the principle of non-discrimination set down in Article 24(1) of Directive 2004/38 (see paragraph 80 of that judgment).

[83] See, regarding that expression, the following commentary on the judgment in *CG*: De Becker, E., 'Social security in the fundamental rights case-law of the Court of Justice', *Research Handbook on European Social Security Law*, footnote 28, op. cit., pp. 2 to 29, in particular p. 7 and p. 16 et seq., in particular p. 17. According to that author, what the Court has done in that judgment is clearly state to Member States the need to provide protection, even when the provisions in the Treaties or secondary EU law do not spell out how such protection should be granted. See, also, observations on the application of certain rights under the Charter in a situation in which the Union citizen has a national right of residence, under more favourable conditions than those laid down in Directive 2004/38, of Lenaerts, K., 'The broadening of EU competences through the case-law of the Court of Justice – myth or reality?', *ERA Forum, Journal of the Academy of European Law*, No 4, ERA, Trier, 2023, pp. 589 to 598, in particular footnote 40 (p. 596).

However, the national authorities empowered to grant social assistance are required to check that a refusal to grant such assistance does not expose those nationals who would not have any resources to provide for their own needs to an actual and current risk of violation of their fundamental rights, in particular the right enshrined in Article 1 of the Charter of Fundamental Rights of the European Union.