

Italy - Constitutional Court, 26 September 2007, No 335

Country of Decision:

Italy

Country of Applicant:

Ukraine

Date of Decision:

26-09-2007

Citation:

Constitutional Court, 26 September 2007, No 335

Court Name:

Constitutional Court of Italy

Keywords:

Family reunification

Family unity (right to)

Relevant Legislative Provisions:European Union Law

Headnote:

The provisions of Article 29(1)(b) of the Legislative Decree of 25 July 1998, No 286, which allow reunification with adult children to take place under stricter conditions than those relating to underage children or dependent parents, are consistent with the Constitution.

Facts:

The Prefecture had rejected a request for family reunification with a daughter that was submitted by the applicant, a Ukrainian citizen, because the daughter was of adult age. The applicant had appealed this refusal.

The competent Court had raised the issue of unlawfulness citing the contradiction between Article 29(1) of the Legislative Decree of 25 July 1998, No 286, which allows reunification with ?adult dependent children where they are objectively unable to provide for their own needs on account of their state of health, which involves total disability? with Articles 3, 29 and 30 of the Italian Constitution regarding equality before the law, protection of family unity and the equal status of children born both in and out of wedlock.

The Court argued that the inconsistency between the conditions required for reunification with adult dependent children and with underage children and dependent parents was unlawful.

Decision & Reasoning:

The Constitutional Court, while recognising the inviolability of the right to family unity in relation to the reunification of a foreign citizen with his spouse and with underage children, said that, in reunification cases involving adult children, legislators could balance issues of affection against other important issues. In particular, the Court stated that it is reasonable only to allow reunification with adult children where there is a situation of need resulting from a permanent inability to provide for their own needs on account of their state of health.

According to the Court one cannot equate the situation of an adult child to that of dependent parents since, in the case of the former, it can be assumed that any situation of economic dependence is related to outside circumstances and hence can be resolved except in cases where there is an illness that permanently affects the ability to work.

Outcome:

Declaration that the claim that Article 29(1) is inconsistent with the Constitution is clearly unfounded.

Attachment(s):



[Original Judgement - Constitutional Court, 2007 - No 335.pdf](#)[1]

National / Other Legislative Provisions:

[Italy - Legislative Decree No. 286/1998 - Art 29.1\(b\)](#) [2]

[Italy - Constitution - Art 3](#) [3]

[Italy - Constitution - Art 29](#) [4]

[Italy - Constitution - Art 30](#) [5]

Links:

[1] <https://www.asylumlawdatabase.eu/sites/default/files/alddfiles/Original%20Judgement%20-%20Constitutional%20Court%2C%202007%20-%20No%20335.pdf>

[2] <https://www.asylumlawdatabase.eu/en/taxonomy/term/4380>

[3] <https://www.asylumlawdatabase.eu/en/taxonomy/term/7380>

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