Causing or Preventing (Reverse) Discrimination When Transposing EU Free-Movement Rules in the European Economic Area: A First Categorization of the Approaches Adopted by National Legislators

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ABSTRACT

Within the European Economic Area (EEA), many rights are granted to EU/EEA nationals in terms of free movement and residency. Most of these rights, enshrined in Directive 2004/38/EC, apply also to their family members, regardless of their nationality. However, in some States national rules continue to apply to the family members of static citizens, even when such rules are less favorable, creating situations of reverse discrimination. Current studies focus mostly on 'if' reverse discrimination occurs and 'why' (systemic causes). There is no comparative study on the approaches adopted by national legislators when implementing EU secondary rules on free movement (i.e., on 'how' discrimination is caused or prevented). This article intends to fill the gap, designing a first categorization of such approaches. We consider how Norway, Italy, and Slovenia have transposed the Directive, studying which provisions apply to third country nationals who are family members of EU/EEA nationals, and which apply to family members of static nationals. These selected countries have adopted different methods when extending or limiting free-movement rights in their national systems, and therefore they provide interesting examples of different approaches, which we categorize as 'separation,' 'accumulation,' and 'assimilation.'

KEYWORDS:

Directive 2004/38/EC; European economic area; Family reunification; Reverse discrimination; Third country nationals

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1 INTRODUCTION

European Union citizens who have exercised free movement rights are quite aware that immigration between EU countries is simple: there are no high fees, no difficult formalities, and no special requirements. Nationals from the three EFTA (European Free Trade Association) countries that participate in the European economic area (EEA)—Norway, Iceland, and Liechtenstein—also experience the same simplification. By means of the EEA agreement (Agreement on the European Economic Area 1994), in fact, the EU rules on free movement apply also to them. On the one hand, the Treaty provisions on free movement have been 'imported' into the EEA Agreement—for example, Art. 45 of the TFEU (Treaty on the function of the European Union 2016) is mirrored by Art. 28 of the EEA Agreement. On the other hand, secondary legislation that is 'EEA relevant,' concerning areas covered by the Agreement, is incorporated into the Annexes of the latter and becomes applicable (subject to transposition) also in these countries.

Free movement rules apply not only to EU/EEA nationals (hereafter EEA nationals), but also to their family members, regardless of their citizenship. This means that third country nationals (TCNs: citizens of countries outside the EEA) accompanying or reuniting with EEA citizens benefit from the same rights, with only some minor differences. In brief, also TCNs may benefit from the simplification created by the EU set of rules on free movement of persons.

Making a practical example, a Norwegian citizen who moves to Italy to work will use free-movement rules for him/herself and for his/her Australian spouse. The same set of rules will apply to an Italian citizen moving to Norway together with his/her Australian spouse. Immigration of the TCNs mentioned in these examples happens (almost) in the same manner as it does for EEA nationals exercising free movement. But what about the immigration of a TCN married to an EEA national that does not cross borders (a static citizen of that country)? Which rules apply in that case? The answer to this question really depends on the country considered.

Interestingly, in Norway, the spouse would be subject to (more restrictive) national rules, whereas in Italy, the spouse would benefit from the more generous EU legislation. This is because EU law is to be applied only to EEA nationals exercising freedom of movement, whereas the relevant rules applicable to family reunification with static citizens are those provided by national legislation (Vitrò 2014a: 149). Even if national rules vary in the different Member States, they have in common a less liberal approach than those deriving from EU law (Oosterom-Staples 2012: 166). The most significant differences concern income and accommodation requirements to be satisfied by the sponsor, costs connected to the application, etc.

Only in Member States that have opted for it will EU law determine the entry and residence rights of the TCN family members of their static citizens. Whereas some States have decided to apply to them the same standards granted to EEA nationals; others have preferred the opposite direction. When their citizens and their family members are subject to less favorable standards set by national immigration law, 'reverse discrimination is their fate' (Oosterom-Staples 2012: 153). Reverse discrimination has been widely debated and studied by scholars (see Balnaves 2021; Staver 2013; Verbist 2014; Walter 2008), but currently there is no comparative study of the specific approaches adopted by national legislators when transposing EU secondary legislation on free movement, which is the factor that causes or prevents this phenomenon and determines its scope. This article intends to fill this gap, offering

a first categorization of such approaches. Therefore, the focus is on 'how' reverse discrimination is caused or prevented, not on 'if' (does it occur?) or 'why' (political reasons behind legislation and systemic causes in the EU context) it is caused or prevented.

The countries included in this research provide interesting and clear examples of three different models, and the case selection was based exactly on this criterion. On the one hand, Norway is a country where reverse discrimination occurs, and being a dualistic country outside the EU (although still a member of the internal market through the EEA Agreement), the intervention of the national legislator is, in that system, particularly relevant. The Norwegian case shows that the issue of reverse discrimination goes beyond the borders of the EU and that the national legislator plays a significant role in determining the scope of the rights of its own citizens and their family members. On the other hand, Italy and Slovenia have both addressed the issue of reverse discrimination, but in different ways. It is interesting to compare these methods, as they lead to different consequences in terms of applicable law.

This research offers an additional insight for understanding reverse discrimination in all EEA States where it occurs (see Guild 2019; Groenendijk et al. 2012). The work is structured as follows. Section 2 discusses the well-known problem of reverse discrimination and the existing literature in this area. Section 3 describes EU secondary legislation on free movement, focusing on the Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (Directive 2004/38/EC) in relation to TCNs. Section 4 analyzes how Norway, Italy, and Slovenia have transposed the main residence rules of the Directive and explores which rules apply to TCN family members of static nationals. Finally, Section 5 compares these legal contexts, delineates a categorization of the different approaches, and provides some conclusive remarks.

2 REVERSE DISCRIMINATION

Reverse discrimination may be defined as the situation in which an unexpected group of people is subject to a treatment that can be considered discriminatory (worse but at the same time not justified) compared to another group that would normally be treated in a less beneficial manner (Davies 2003; Guild 2019; Spitaleri 2010; Tryfonidou 2009). This happens, for example, when an EEA national is treated better in a different State compared to the citizens of that specific State.

What are the reasons and effects of this peculiar type of disparity of treatment? As for the reasons, reverse discrimination could be interpreted as a consequence of the internal market, which has increased the movement of people within the Member States. This phenomenon represents a major success for the European integration process, but at the same time, it also creates problems because it happens in an area where the scope of EU law is limited and there is a high degree of fragmentation at the national level (Montaldo 2018: 1483). Hence, reverse discrimination could also be interpreted as a consequence of how EU law interacts with national legislative competence: although relatively vast, the scope of EU law is still limited. It has been suggested that the 'potential' for reverse discrimination depends on how much the Treaties confer to the EU and how much they leave to the national legislator: the broader the scope of EU law, the fewer the possibilities that reverse discrimination will occur (Cambien 2011: 273; Van Elsuwege 2014: 166; Verbist 2017: 40). Situations

that do not fall under EU law (that is, situations that are merely internal) are left to the competence of the Member States, and this allows national situations to be regulated differently compared to similar cases with EU-law relevance (Walter 2008).

In other words, reverse discrimination can be explained as a 'by-product' of the principle of conferral enshrined in Art. 5 of the TEU (Treaty on the European Union 2016) and of the vertical division of competences between the Member States and the European Union. If the EU can only act within the limits of the competences conferred by the Treaties, whereas any residual competence remains with the Member States, it is extremely difficult to impose upon the latter solutions that bypass national competence (Van Elsuwege 2014: 164).

Practically speaking, the phenomenon of reverse discrimination has had a 'fragmentation' effect with regard to the rights of family reunification with TCNs. In fact, it has been pointed out that four different scenarios are possible within the EU (and partially within the EEA), depending on the situation of the reference person (Staver 2013): family reunification following national rules (which apply to static citizens of the country considered who reunite with TCNs); family reunification following the Directive on the right to family reunification (Directive 2003/86/EC), which applies to TCNs legally residing in an EU country who seek reunification with TCN family members (not applicable in Denmark, Ireland, and in the EFTA countries); family reunification following EU free movement rules, which apply to mobile EEA nationals and their TCN family members; family reunification rights derived from EU citizenship status under TFEU Art. 20, following the development of the jurisprudence of the Court of Justice (Van Elsuwege & Kochenov 2011).

Is it necessary to address reverse discrimination? Different scholars recognize it as problematic in terms of effective implementation of the concept of EU citizenship, equality, rule of law, legal certainty, and human rights protection (Balnaves 2021; Berneri 2014; Cambien 2012; Hanf 2011; Jarak 2021; Staver 2013; Spaventa 2008: 44; Tryfonidou 2011). On the other hand, some wonder whether tackling reverse discrimination would alter the competence balance within the EU and undermine the historical constitutional traditions of the Member States (Wormsbecher 2015).

While some have placed the issue within the scope of Union citizenship (Kochenov & Plender 2012: 395), a fundamental question is whether the problem of reverse discrimination in family reunification rights should be addressed by the EU (Van Der Mei 2009). When exploring potential solutions, in fact, scholars have pointed out two different avenues, one at the EU level, one at the Member States level (Hanf 2011). If the current EU legal framework does not provide direct means for resolving this problem because it lies beyond its competence (Staver 2013: 70), the only options left are amending EU legislation (Berneri 2014; Cambien 2012; Verbist 2017: 43) or judicial intervention (by the Court of Justice), but both are highly debatable in terms of competence balance between the Union and the Member States (Davies 2003; Ritter 2006; Shuibhne 2010: 1615; Verbist 2017: 43–46), general principles of law (Hanf 2011: 38), effectiveness of such an approach (Cambien 2012: 147; Staver 2013: 70), etc. The other avenue, more relevant for the aim of this article, is adopting remedies at the national level.

This second approach is in line with the Court of Justice's position, according to which it is up to the national courts to assess whether discrimination happens, and up to domestic authorities to determine how any ascertained discrimination is to

be eliminated. In a sense, the Court has even exacerbated the possibility of reverse discrimination by clearly stating that purely internal situations fall outside the scope of application of EU law and that reverse discrimination is not prohibited by EU law (Case C-111/12: para. 22; Case C-403/03: para. 20; Case C-148/02: para. 26; Case C-253/01: para. 36; Joined cases C-64/96 and C-65/96: paras. 16–19, 23; see also Lansbergen 2009: 289). This idea was already present in the jurisprudence that precedes the Maastricht reform (Case C-132/93: para. 10; Case 44/84: para. 56; Case 175/78: para. 11; Case 115/78: para. 24). In addition, some have pointed out that it is politically unfeasible to expand the scope of rights stemming from EU law by amending the Treaties (Montaldo 2018: 1485; Shuibhne 2010: 1615; Verbist 2017: 43). Ultimately, it is up to the Member States to resolve the issue of reverse discrimination if they consider it to be a problem (Tryfonidou 2011). The Member States, in brief, have two options: autonomous legislative alignment, or judicial constitutional interpretation (Cambien 2012; Hanf 2011: 49; Verbist 2014).

This article explores the first option at the national level. When none of the family reunification rights provided by EU law apply, Member States are free to adopt different techniques to address reverse discrimination or decide not to address its effects at all. We study some of these different approaches and attempt to categorize them. Although the development of family reunification rights is not the focus of this article, an essential question is how these rights are extended to TCNs who are family members of static citizens. Therefore, before analyzing national legislation, the article describes the EU legal framework on free movement with a focus on TCNs.

3 DIRECTIVE 2004/38/EC AND THE RIGHTS OF TCNS

The right to free movement of workers is one of the four fundamental freedoms in the EU. It was one of the first novelties of the European integration process that began in the aftermath of World War II. It was introduced in 1957 by the Treaty establishing the European Economic Community, now consolidated into the TFEU, in Art. 45. Free-movement rights were originally conceived to facilitate economic integration and were therefore limited to persons engaged in economic activity, such as workers, self-employed persons, and service providers and receivers (Ballesteros et al. 2016: 17). The EU first adopted implementing legislation that set out key principles governing the free movement of workers in 1961, regulating their entry, employment, and residence.

The second stage of the transitional period of free movement of workers followed in 1964 with the adoption of legislation designed to facilitate integration of the EU labor market and deepen the rights of workers. In 1968, further legislation was enacted, consolidating and replacing the previous (procedural) rules and rights of migrant workers (Guild et al. 2019: 1–5). These provisions focused on individuals moving across borders as 'economic agents,' workers under the form of employees or providers of services (Apap 2002: 9). In other words, the right of free movement was limited to citizens of EEC Member States and their family members who were exercising economic activity (Guild et al. 2019: 2).

In parallel with the evolution of supranational competences, free movement rights have been extended through case law and legislation to include other categories of citizens (Ballesteros et al. 2016: 17; Carrera & Atger 2009: 2). In 1990, three separate directives were adopted, specifically on the right of residence of students (Directive

90/366/EEC), pensioners (Directive 90/365/EEC), and economically inactive people (Directive 90/364/EEC).

Finally, the concept of Union citizenship was introduced with the Treaty of Maastricht in 1992, alongside several associated rights, such as the right to move and reside freely within the territory of the Member States, which is central to EU integration. In the current consolidated versions of the Treaties (after the Lisbon reform), these rights are enshrined in TFEU Art. 20 and Art. 21. The Court of Justice has interpreted these two provisions quite broadly, recognizing their direct effect and filling them with substantial content (Kaczorowska-Ireland 2016: 663). It is worth mentioning that TFEU Art. 20 (read in light of the general principle of nondiscrimination on the grounds of nationality provided by TFEU Art. 18) becomes relevant when the cross-border (interstate) element is not present (see Barnard and Peers 2020: 401–409). In the well-known decision *Ruiz Zambrano* (Case C-34/09: para. 42), the Court clarified that TFEU Art. 20 'precludes national measures which have the effect of depriving citizens of the Union of the genuine enjoyment of the substance of the rights conferred by virtue of their status as citizens of the Union.' On the other hand, the Court has accepted that non-economically active citizens may enjoy movement and residence rights conferred directly by TFEU Art. 21. This is particularly relevant when other provisions (such as TFEU Art. 45, Art. 49, etc.) cannot be invoked because the citizens concerned do not fall under any of the categories described (worker, self-employed, etc.). In *Baumbast* (Case C-413/99: para. 83), the Court stated that the Treaty does not require the exercise of an economic activity to enjoy certain citizenship rights. In addition, the right to move and reside across the EU is also guaranteed by the Charter of Fundamental Rights of the European Union (2016) in Art. 45, and the free movement of persons is recognized as one of the objectives of the European Union: see TEU Art. 3(2) (Ballesteros et al. 2016: 17; Guild et al. 2019: 1).

Until 2004, there was no consolidation of the common general legal framework on this topic. This meant that free movement rights were granted based on a sector-specific approach, which resulted in a fragmentation of the status of Union citizenship (Carrera & Atger 2009: 2). This approach changed significantly on the eve of the eastern enlargement, when Directive 2004/38/EC, often referred to the 'Citizenship Directive' or the 'Citizens' rights Directive' (hereafter CRD), came into force (Carlier & Guild 2006; Carrera 2005). This piece of secondary legislation has codified the previous case law and all the 'dispersed' legislation, attempting to conform it and at the same time contain the novelties of the jurisprudence of the Court of Justice (Blauberger et al. 2018: 1423). In brief, the CRD is 'a landmark policy development' that has shaped a unitary legal system in the context of European citizenship by consolidating the free movement rights of Union citizens (European Citizen Action Service 2009: vi).

The CRD strengthens the right to move and reside for citizens of the Union and their family members; establishes a right of permanent residence after five years; limits and defines the grounds on which a receiving Member State can expel a citizen of the Union; and simplifies the administrative formalities applying to procedures concerning the right to move and reside. Significantly for the scope of this article, the CRD also reinforces and extends the definition of family members who have the right to move and reside together with an EU citizen (whether they themselves are citizens of the Union or not) and who are also entitled to independent rights.

As mentioned above, most of the CRD provisions concerning residence rights are meant to be applied to family members of EEA citizens regardless of their nationality. In

other words, TCNs and EEA citizens have similar rights when they are family members accompanying or joining EEA nationals who exercise their freedom of movement. However, when implementing the CRD, there have been issues concerning TCNs, as Member States originally imposed on them extra conditions and procedures that were not specified in the Directive. Problems in this area concerned especially the status of TCNs, visas, rights of retention of residence, and employment (European Citizen Action Service 2009: 195).

The reluctance of Member States in granting rights to TCNs was not new. In fact, the Court of Justice had to intervene several times in this regard, often focusing on the concept of European citizenship to tackle the issues that arose. Well-known decisions are *Chen* (Case C-200/02), *Metock* (Case C-127/08), *Ruiz Zambrano* (Case C-34/09), and *McCarthy* (Case C-434/09). However, the independence of citizenship rights from the mobility requirement has never been full, as it emerges only in special situations in which a national measure prevents the real enjoyment of citizenship rights (Aiello & Lamonaca 2012: 343). In this regard, it has been suggested that the case law of the Court of Justice, by adopting the concept of EU citizenship to address situations where TCNs are involved, has certainly increased the level of protection to family members. However, by doing so, the Court has also heightened the issue of reverse discrimination toward EU nationals who do not exercise their free movement rights (Berneri 2014: 253).

Hereafter, the article will focus on CRD provisions related to the right of residence (Art. 6 and Art. 7) and permanent residence (Art. 16) of TCNs who are family members of EEA citizens exercising free-movement rights. We will analyze how these provisions have been transposed into the national systems of Norway, Italy, and Slovenia, and compare the status of these family immigrants with the status of TCN family members of static citizens.

4 NATIONAL LEGISLATION

This section analyzes how the three countries considered have implemented the CRD and how they regulate family immigration of TCN family members of static EEA nationals. The section starts with Norway, where reverse discrimination occurs, and then moves to Italy and Slovenia, which address the issue adopting different approaches.

4.1 NORWAY

In Norway, the Immigration Act (Utlendingsloven 2008) implements the CRD in Chapter 13, which contains special provisions for foreign nationals who fall under the EEA Agreement and the EFTA Convention. In particular, this chapter governs the right of residence of EU/EEA and EFTA nationals, allowing them to enter and take up residence in Norway on the basis of the three types of right of residence described in the CRD.

In brief, family members of EEA nationals have the right of residence in Norway for up to three months as long as they carry a valid passport (or identity card) and do not become an unreasonable burden for the public welfare system (Section 111). This right applies also to TCN family members. The only conditions are that he or she follows or is reunited with an EEA citizen and carries a valid passport. In the CRD,

the right of residence for more than three months of a family member joining or accompanying an EEA citizen is regulated in Art. 7, the same provision that delineates the right of the person they wish to reunite with (employees, self-employed persons, students, etc.). In the Immigration Act, instead, the right of residence for more than three months of family members is regulated in two specific provisions, Sections 113 and 114, but with the same material result: a TCN family member of an EEA national exercising his or her right of residence has the right to stay in Norway for as long as the right of residence of the EEA national lasts. Whereas the EEA national who is moving to Norway is required to register with the authorities within three months, TCNs must apply for a residence card, within the same period of time. When applying for a residence card as a family member of an EU/EEA citizen, no fee is required. Finally, as long as permanent residence is concerned, a TCN family member of an EEA national who has lived with the latter and has had continuous legal residence in Norway for five years, receives a permanent right of residence. Upon application, the TCN is issued a permanent residence card. No fee is required (see Sections 116 and 119).

A family member of a Norwegian citizen, instead, follows the national rules for family immigration described in the Immigration Act Chapter 6. Taking spouses as an example, the main provision on residence permits is Section 40, which specifies that a spouse of a Norwegian citizen who is resident or is going to settle in Norway (the 'reference person,' or 'sponsor') has the right to a residence permit. The provision sets some general conditions, such as that both spouses must be over 18 years old, that they must live together, that the marriage does not have as main purpose the establishment of a basis for residence, etc. It is also necessary to document their identities.

In addition, both the Immigration Act and the Immigration Regulations (Utlendingsforskriften 2009) set several other requirements. First, with the aim of contrasting forced marriages, in cases of family formation, both spouses must be at least 24 years old. Exemptions are possible in those cases in which it is obvious that the relationship is voluntary, and this rule does not apply in cases of family establishment—i.e., when the marriage precedes the sponsor's arrival in Norway or was entered into when both parties had a valid residence permit or Norwegian citizenship (see Immigration Act, Section 41 a). One of the most relevant requirements in order to be granted a residence permit for spouses is the income requirement. The Immigration Regulations stipulate in Sections 10-8 to 10-10 that the sponsor (i.e., the Norwegian citizen) must have an income of at least NOK 300.988 per year pre-tax (around EUR 30.000 as per October 2022). The sponsor must have this income the first year the spouse is granted a permit in Norway and must also have had it the previous year and during the time the application is processed. In addition, the sponsor cannot have received any financial assistance from the Norwegian Labour and Welfare Administration (NAV) during the previous 12 months. It is worth mentioning also that first-time applications for family immigration for adults have a fee of NOK 10.500 (around EUR 1.050).

As long as permanent residence is concerned, a TCN family member of a Norwegian citizen may be granted a permanent residence permit after three years of continuous stay when the conditions set by the Immigration Act and by the Immigration Regulations are fulfilled (see Immigration Act, Section 62, and Immigration Regulations, Chapter 11). A permanent residence permit for adults has a fee of NOK 3.800 (around EUR 380).

There is one situation in which a family member of a Norwegian citizen may use the EU rules to get residency in Norway. The Immigration Act specifies in Section 110 that the rules in Chapter 13 may apply to family members that follow or join a Norwegian citizen when the latter returns to Norway after exercising his or her rights to free movement under the EEA Agreement in another EEA country. In this case, the applicant (the TCN family member) may choose between applying for a residence card for family members of EU/EEA nationals or for a residence permit for family (e.g., spouses or children).

In conclusion, there are significant differences between the requirements linked to family-immigration residence permits (when the sponsor is a Norwegian citizen) and those linked to the residence card for family members of EEA nationals. In particular, application fees, income requirements, and special rules concerning age apply when the sponsor is a Norwegian citizen, whereas they do not apply when the reference person is an EEA national. Norwegian law defines a clear 'separation' between the applicable rules, limiting the scope of rights granted to family members of static Norwegian citizens.

4.2 ITALY

The CRD was implemented in Italy with a specific legislative decree (Decreto legislativo 30/2007, hereafter d. lgs. 30/2007). Citizens of Norway, Iceland, and Liechtenstein (EEA EFTA States) are treated as equivalent to citizens of the European Union for the purposes of the legislative decree, as well as citizens of Switzerland and the Republic of San Marino.

As regards to the right of entry of a TCN family member of an EEA citizen, in line with CRD Art. 5, the legislative decree specifies that it is sufficient for them to have a valid passport and a visa. As for short-stay rules, the national provision transposes Art. 6 of the CRD without significant variations: there are no formalities for staying in Italian territory for up to three months (only a passport is required). As far as long-term stay is concerned (CRD Art. 7), an EEA citizen can remain in Italy for a period exceeding three months provided that he or she: is an employed or self-employed worker; has sufficient resources for him/herself and for his family members, so as they not become a burden to the state social assistance system during the period of stay, and a health insurance that covers all risks in the national territory; is registered in a public or private education institution recognized or financed by the host Member State. This right also extends to the family members (EEA citizens or TCNs) accompanying an EEA citizen who complies with one of the conditions mentioned above. Registration takes place in the registry of the municipality concerned (see d. lgs. 30/2007 Art. 7 and Art. 9).

The family member who does not have citizenship of an EEA country acquires the right of permanent residence if he or she has legally resided continuously for five years in Italy together with the EEA national. The police authority issues a permanent residence card to TCN family members who have acquired the right of permanent residence. The issue of the certificate is free, except for the reimbursement of the cost of the printed material or the material used (d. lgs. 30/2007 Art. 14 and Art. 17).

A central provision in the Italian system is d. lgs. 30/2007 Art. 23, according to which the rules of the decree, if more favorable, apply to family members of Italian citizens who do not have Italian citizenship. In other words, the decree extends the application of

the above-mentioned rules also to TCN family members of Italian citizens. However, it is interesting to notice that in theory this extension is not automatic, as it is subject to the principle of application of the more favorable rule. It has been noted that even if Art. 23 gives the impression that the regulatory treatment of EU citizens deriving from the CRD is more favorable than that of non-EU citizens; however, in some cases the most favorable legislation seems to be the one concerning the latter (Vitrò 2014b: 5).

The rule of more favorable condition appears also in the legislative decree (Decreto legislativo 286/1998, hereafter d. lgs. 286/1998) that regulates the conditions of foreigners in Italy and applies to TCNs not related to EEA citizens. This decree specifies in Art. 28 that the application of its own provisions, when more favorable, is maintained for foreign family members of both Italian and EU citizens.

In conclusion, the Italian legislators have adopted an approach based on 'accumulation' (Vitrò 2014a: 149), maintaining, at least potentially, the application of both legislative dimensions: EU rules on freedom of movement of persons and national immigration provisions; whichever is more favorable.

Accommodation and income are examples of conditions required in case of family reunification with foreigners who reside in Italy. As for the former, the law specifies that the applicant must have an accommodation that is suitable to accommodate the family members who are to be reunited. As for income, the applicant must have a minimum annual income set by law. In addition to these conditions, the foreigner must send an application for 'no impediment' (*nulla osta*) to the territorial office of the Government competent for the place of residence of the applicant (d. lgs. 286/1998, Art. 29). These are some of the requirements that do not apply to family members of Italian citizens because of the principle of the more favorable rule.

4.3 SLOVENIA

In Slovenia, the CRD was implemented in Chapter 13 of the Foreigners Act (Zakon o tujcih 1991), titled 'Entry and residence of citizens of EU member states, their family members and family members of Slovenian citizens.' The special provisions of this chapter, in particular provisions related to entry and residence, apply therefore not only to EEA citizens who exercise free-movement rights in Slovenia and their family members, but also to family members of Slovenian (static) citizens, as clarified by Art. 117. Apart from minor differences, which will be further explained below, Slovenian legislation does not significantly differentiate the family immigration rules that apply to TCN family members of EEA citizens and those that apply to TCN family members of static citizens.

In line with the CRD, the Foreigners Act distinguishes between 3 different types of right of residence: residence for up to 90 days; residence for more than 3 months based on a temporary residence permit; and permanent residence. Concerning the first category, in the first 90 days after entering Slovenia, requirements for residence are the same for TCN family members of EEA nationals and TCN family members of static citizens. If the TCN wishes to reside in the territory of Slovenia for a period longer than 90 days for the purposes of reunification or maintaining family unity with an EEA citizen or static citizen, he or she must apply, prior to the expiration of his or her authorized stay, for a temporary residence permit (see Foreigners Act Art. 127). Conditions for receiving a temporary residence permit are the same for TCN

family members of EEA nationals and Slovenian static citizens: established family relationship; valid identity card or a valid passport; sufficient means of subsistence; adequate health insurance; legal access to the Slovenian territory; etc. (see Foreigners Act Art. 128). The only difference is the length of validity of the temporary residence permit and the length of stay required for issuance of the permanent residence permit. A temporary residence permit may be issued to the TCN family member of an EEA citizen (sponsor) with the same validity as the residence application certificate issued to the sponsor. Residence application certificates are issued to EEA nationals for a period of up to five years or shorter if intended residency in Slovenia is shorter. If the sponsor has a permanent residence permit in Slovenia or if the sponsor is a Slovenian static citizen, the temporary residence permit is automatically issued with a validity of five years (Art. 128). A permanent residence permit may be issued to TCN family members of EEA nationals and static citizens if they have resided in Slovenia legally and continuously for five years. If the sponsor has a permanent residence permit or is a static citizen, a permanent residence permit to TCN family members may be issued after two years of continuous legal residence in Slovenia (Art. 30).

The Foreigners Act also regulates, in a different chapter, the status of TCN family members of TCNs who are legally residing in Slovenia. This does not fall within the scope of EU law, and it is entirely regulated by national legislation. TCNs residing in Slovenia based on a permanent residence permit, and TCNs residing in Slovenia for the last two years based on a temporary residence permit and who have a valid residence permit issued for at least one year, have under certain legal conditions (e.g., valid travel document, provable purpose of residence, adequate health insurance, sufficient means of subsistence, certified and translated documents, fingerprinting, etc.), the right to reunify, preserve, and regain family integrity with TCN family members. Compared to TCN family members of EEA national and static citizens, their status differs only with regard to the validity of the temporary residence permit issued to a TCN family member of a sponsor holding a temporary residence permit, which could be equal to the validity of the sponsor's permit but shall not exceed one year (Art. 47). A permanent residence permit may be issued to a TCN family member of a sponsor with a permanent residence permit after two years of continuous legal residence in Slovenia, which is the same as in the case of TCN family members of EEA citizens and static citizens (Art. 52). When applying for a temporary or permanent residence permit, applicants are required to pay administrative fees which, in the case of TCN family members of EEA nationals and static citizens, amounts to 9,60 EUR, and a fee for the issuing of a residence permit card, which amounts to 15,47 EUR. TCN family members of TCNs are required to pay higher administrative fees: 54,50 EUR for a temporary residence permit, and 95,10 EUR for a permanent residence permit. In both cases, they are also required to pay a fee for a residence permit card, which amounts to 15,47 EUR.

In conclusion, Slovenia has largely unified family immigration rules (entry and right of residence) for TCN family members of EEA nationals and static citizens. This approach is based on 'assimilation.' In fact, they are regulated in the same chapter of the law. Differences can only be observed in the length of validity of a temporary residence permit and the duration of continuous legal residence, which is a condition for the issuance of a permanent residence permit. In both cases, the difference is not based on the citizenship of the TCN family member or sponsor, but rather on the status of the sponsor regarding his or her residence in Slovenia. If the sponsor is an EEA citizen

with a permanent residence permit, the same family immigration rules apply as in the case in which the sponsor is a Slovenian citizen. On the other hand, if a sponsor is an EEA citizen with a temporary residence permit, slightly different (worse) rules concerning the length of validity of the temporary residence permit and the length of stay required for issuance of the permanent residence permit apply. The status of TCN family members of EEA citizens is completely the same as TCN family members of static citizens if the EEA citizen (sponsor) has a permanent residence permit.

5 DISCUSSION AND CONCLUSIVE REMARKS

The study in Section 4 has shown different ways of implementing the CRD provisions regarding TCNs. Clearly, Italy and Slovenia have addressed the issue of reverse discrimination, whereas Norway currently has a system where the phenomenon occurs. From a comparative perspective, it is interesting to notice that the two approaches adopted by Italy and Slovenia are quite different, although both address the issue.

Slovenia has coordinated the rules applicable to their own citizens with those that derive from the EU context. In particular, it has chosen to differentiate in the law EEA nationals exercising short- and long-term stay from those who already have permanent residence, giving to Slovenian citizens the same benefits given to EEA nationals—although, as shown above, the differences are minor. This approach is based on 'assimilation' of Slovenian citizens to EEA nationals with permanent residence. Italy, instead, has adopted provisions that grant TCN family members of Italian citizens the same rules applicable to EEA nationals who exercise free movement in Italy, when these rules are more favorable. The Italian system today adopts an approach based on 'accumulation' (Vitrò 2014a: 149) of different legislative spheres, clearly inspired by the principle of nondiscrimination of Italian citizens. In that regard, it is worth mentioning a general provision in the law that regulates Italy's participation in the formation and implementation of EU legislation and policies (Legge 234/2012). According to Art. 53, entitled 'parity of treatment,' no provisions of the Italian legal system or internal practices that produce discriminatory effects with respect to the condition and treatment guaranteed in the Italian system for citizens of the European Union can be applied to Italian citizens.

Ultimately, while both Italy and Slovenia have addressed reverse discrimination, it is worth mentioning that the results in terms of applicable law are not the same. Slovenia chooses to apply EU law to its own citizens. In the Italian case, instead, the applicable law might as well be the national one (i.e., the one reserved to TCNs), if more favorable. Therefore: 'assimilation' contra 'accumulation.' Norway, instead, has chosen not to assimilate TCN family members of Norwegian citizens to those of EEA nationals. The approach adopted by the *Stortinget* (the national Norwegian parliament) is 'separation' of the legislative dimensions: for the former, Chapter 6 of the Immigration Act, which regulates immigration for TCNs, applies; for the latter, instead, the applicable provisions are those in Chapter 13 of the Act, which specifically transposes the CRD. This does not necessarily mean that reverse discrimination always occurs. A good example is the time needed to be granted permanent residence: five years for EEA nationals; three for TCNs (although, considering formalities and costs, it is debatable which one is more favorable).

The phenomenon of reverse discrimination assumes a different tone when read through the lens of the categorization offered in this article. When different approaches lead to different solutions in terms of applicable law, the important question is not anymore whether national rules are aligned to EU law; but how the legislator defines the scope of rights granted to their own citizens. In fact, both the Italian and Norwegian examples show that the best solution could potentially be provided by national immigration rules.

This perspective may be useful when studying other systems because it gives insight on how the national legislator exacerbates or attenuates potential discrimination, affecting the scope of rights that static nationals and their family members enjoy. Focusing on the Nordic countries, whereas Denmark has strict national rules that require several conditions so that Danish nationals can exercise family reunification rights with TCNs (Balnaves 2021), Swedish and Finnish legislation does not impose dramatic differences between national and EEA sponsors, but still in Finland, national rules are slightly stricter for static nationals. Considering other EU countries where reverse discrimination occurs, some systems create significant differences between static citizens and EEA nationals (Netherlands, Ireland, etc.), whereas in others (Belgium, France, Germany, etc.), those differences are less dramatic (see Guild 2019: 370–372). Further research may compare these cases, focusing on *how* national legislation exacerbates or attenuates those differences.

The Norwegian case is exemplificative in this regard. Especially in that system, it makes sense that EU free-movement rules apply only for mobile citizens (as a result to Norway's participation in the internal market), whereas other types of migration (included family reunification with static citizens) remain entirely regulated by national law, as Norway is not part of the EU. Transposition of EU secondary legislation (that follows incorporation into the EEA agreement) is in fact subject to the principle of 'EEA relevance,' that is, being useful for establishing and securing the internal market. Certainly, free-movement rules provided by secondary legislation are central in that regard. But what about Treaty provisions, such as the one establishing Union-citizenship rights, and connected principles (such as direct effect)? Especially in the Norwegian system, where the protection deriving from the EU is limited, the intervention of the national legislator acquires significant relevance. Understanding how this intervention occurs was one of the aims of this study.

In conclusion, although the intervention of the Court of Justice and the evolution of the EU legal framework have been extremely beneficial in the protection of rights; the national legislators still play a significant role as they have both the legislative competence and the responsibility to protect the interests of their own citizens (and their family members). By categorizing three different approaches, this article has attempted to highlight that different methods might lead to different outcomes in terms of applicable law.

ETHICS AND CONSENT

This study does not involve the use of elements that may cause harm to the environment, humans, animals, or plants, nor does it have the potential for military application, misuse, or malevolent/criminal/terrorist abuse. No personal or any other sensitive data is collected or analyzed.

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The authors have no competing interests to declare.

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REFERENCES

Agreement on the European Economic Area. 1994. OJ No L 1, 3.1.1994, p. 3.

Aiello, GF and **Lamonaca, S.** 2012. Diritto di soggiorno dei familiari del cittadino europeo: erosione del limite delle situazioni puramente interne e delimitazione del nucleo essenziale del diritto di cittadinanza. *Rivista italiana di diritto pubblico comunitario*, 2: 321–348.

Apap, J. (ed.) 2002. *Freedom of movement of persons: A practitioner's handbook*. The Hague: Kluwer Law International.

Ballesteros, M, Kelly, G, Meurens, N and **Perego, A.** 2016. *Obstacles to the right of free movement and residence for EU citizens and their families: Comparative analysis* (PE 571.375). Brussels: European Parliament.

Balnaves, H. 2021. A bride run: Free movement of people in the EU, the fundamental right to family, family reunification, and the case of Denmark. *Nordic Journal of European Law*, 4(1): 69–83. DOI: https://doi.org/10.36969/njel.v4i1.23173

Barnard, C and **Peers, S.** 2020. *European Union Law*. 3rd ed. Oxford: Oxford University Press. DOI: https://doi.org/10.1093/he/9780198855750.001.0001

Berneri, C. 2014. Protection of families composed by EU citizens and third-country nationals: Some suggestions to tackle reverse discrimination. *European Journal of Migration and Law*, 16(2): 249–275. DOI: https://doi.org/10.1163/15718166-12342055

Blauberger, M, Heindlmaier, A, Kramer, D, Martinsen, DS, Sampson, TJ, Schenk, A and **Werner, B.** 2018. ECJ Judges read the morning papers: Explaining the turnaround of European citizenship jurisprudence. *Journal of European Public Policy*, 25(10): 1422–1441. DOI: https://doi.org/10.1080/13501763.2018.1488880

Cambien, N. 2011. *Citizenship of the union as a cornerstone of European integration*. Dissertation, KU Leuven.

Cambien, N. 2012. The scope of EU Law in recent ECJ case law: Reversing "reverse discrimination" or aggravating inequalities? *Cuadernos Europeos de Deusto*, 47: 127–148. DOI: https://doi.org/10.18543/ced-47-2012pp127-148

Carlier, JY and **Guild, E.** 2006. *The future of free movement of persons in the EU*. Brussels: Bruylant.

Carrera, S. 2005. What does free movement mean in theory and practice in an enlarged EU? *European Law Journal*, 11(6): 699–721. DOI: https://doi.org/10.1111/j.1468-0386.2005.00283.x

Carrera, S and **Atger, AF.** 2009. *Implementation of directive 2004/38 in the context of EU enlargement: A proliferation of different forms of citizenship?* CEPS Special Report.

Case 44/84. Judgment of the Court of 15 January 1986: Derrick Guy Edmund Hurd v Kenneth Jones (Her Majesty's Inspector of Taxes). European Court of Justice. Available at https://curia.europa.eu/juris/liste.jsf?language=en&num=C-44/84.

Case 115/78. Judgment of the Court of 7 February 1979: J. Knoors v Staatssecretaris van Economische Zaken. European Court of Justice. Available at https://curia.europa.eu/juris/liste.jsf?language=en&num=C-115/78.

Case 175/78. Judgment of the Court of 28 March 1979: The Queen v Vera Ann Saunders. European Court of Justice. Available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61978CJ0175.

Case C-34/09. Judgment of the Court (Grand Chamber) of 8 March 2011: Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm). The Court of Justice of the European Union. Available at https://curia.europa.eu/juris/liste.jsf?num=C-34/09.

Case C-111/12. Judgment of the Court (Fifth Chamber) of 21 February 2013: Ministero per i beni e le attività culturali and Others v Ordine degli Ingegneri di Verona e Provincia and Others. The Court of Justice of the European Union. Available at https://curia.europa.eu/juris/liste.jsf?num=C-111/12&language=EN.

Case C-127/08. Judgment of the Court (Grand Chamber) of 25 July 2008: Blaise Baheten Metock and Others v Minister for Justice, Equality and Law Reform. European Court of Justice. Available at https://curia.europa.eu/juris/liste.jsf?language=en&num=C-127/08.

Case C-132/93. Judgment of the Court (Second Chamber) of 16 June 1994: Volker Steen v Deutsche Bundespost. European Court of Justice. Available at https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A61993CJ0132.

Case C-148/02. Judgement of the Court of 2 October 2003: Carlos Garcia Avello v Belgian State. European Court of Justice. Available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62002CJ0148.

Case C-200/02. Judgment of the Court (Full Court) of 19 October 2004: Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department. European Court of Justice. Available at https://curia.europa.eu/juris/liste.jsf?num=C-200/02.

Case C-253/01. Order of the Court (Third Chamber) of 29 January 2004: S.A. Krüger v Directie van de rechtspersoonlijkheid bezittende Dienst Wegverkeer. European Court of Justice. Available at https://curia.europa.eu/juris/liste.jsf?language=en&num=C-253/01.

Case C-403/03. Judgment of the Court (Grand Chamber) of 12 July 2005: Egon Schempp v Finanzamt München V. European Court of Justice. Available at https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:62003CJ0403.

Case C-413/99. Judgement of the Court of Justice of the EU of 17 September 2002: Baumbast and R v Secretary of State for the Home Department.

European Court of Justice. Available at https://curia.europa.eu/juris/liste.jsf?language=en&num=C-413/99%20.

Case C-434/09. Judgment of the Court (Third Chamber) of 5 May 2011: Shirley McCarthy v Secretary of State for the Home Department. The Court of Justice of the European Union. Available at https://curia.europa.eu/juris/liste.jsf?num=C-434/09.

Charter of Fundamental Rights of the European Union. 2016. OJ C 202, 07.06.2016, p. 389.

Davies, G. 2003. *Nationality discrimination in the European internal market*. The Hague: Kluwer Law International.

Decreto legislativo 30/2007. Decreto legislativo 6 febbraio 2007, n. 30. Attuazione della direttiva 2004/38/CE relativa al diritto dei cittadini dell'Unione e dei loro familiari di circolare e di soggiornare liberamente nel territorio degli Stati membri. GU n.72 del 27-03-2007.

Decreto legislativo 286/1998. Decreto legislativo 25 luglio 1998, n. 286. Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero. GU n.191 del 18-08-1998—Suppl. Ordinario n. 139.

Directive 90/364/EEC. Council Directive of 28 June 1990 on the right of residence. OJ L 180/26.

Directive 90/365/EEC. Council Directive of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity. OJ L 180/28.

Directive 90/366/EEC. Council Directive of 28 June 1990 on the right of residence for students. OJ L 180/30.

Directive 2003/86/EC. Council Directive of 22 September 2003 on the right to family reunification. OJ L 251, 03.10.2003, p. 12.

Directive 2004/38/EC. 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. OJ L 158, 30.04.2004, p. 77.

European Citizen Action Service. 2009. *Comparative study on the application of Directive 2004/38/EC 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* (Policy Department for Citizens' Rights and Constitutional Affairs, PE 410.650). Brussels: European Parliament.

Groenendijk, K, Guild, E, Cholewinski, R, Oosterom-Staples, H and **Minderhoud, P.** 2012. *Annual European report on the free movement of workers in Europe in 2010–2011*. Brussels: European Commission.

Guild, E. 2019. EU citizens, foreign family members and European Union law. *European Journal of Migration and Law*, 21(3): 358–373. DOI: https://doi.org/10.1163/15718166-12340055

Guild, E, Peers, S and **Tomkin, J.** 2019. *The EU citizenship directive: A commentary*. 2nd ed. Oxford: Oxford University Press. DOI: https://doi.org/10.1093/oso/9780198849384.001.0001

Hanf, D. 2011. 'Reverse discrimination' in EU law: Constitutional aberration, constitutional necessity, or judicial choice? *Maastricht Journal of European and Comparative Law*, 18(1–2): 29–61. DOI: https://doi.org/10.1177/1023263X1101800103

Jarak, N. 2021. Fundamental rights of EU citizens in purely internal situations: From reverse discrimination to incorporation? *Croatian Yearbook of European Law & Policy*, 17(1): 41–76. DOI: https://doi.org/10.3935/cyelp.17.2021.464

Joined cases C-64/96 and C-65/96. Judgment of the Court (Third Chamber) of 5 June 1997: Land Nordrhein-Westfalen v Kari Uecker and Vera Jacquet v Land Nordrhein-Westfalen. European Court of Justice. Available at https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A61996CJ0064.

Kaczorowska-Ireland, A. 2016. *European Union Law*. 4th ed. London and New York: Routledge. DOI: https://doi.org/10.4324/9781315561035

Kochenov, D and **Plender, R.** 2012. EU citizenship: From an incipient form to an incipient substance? The discovery of the treaty text. *European Law Review*, 37: 369–396.

Lansbergen, A. 2009. Metock, implementation of the citizens' rights directive and lessons for EU citizenship. *Journal of Social Welfare and Family Law*, 31(3): 285–297. DOI: https://doi.org/10.1080/09649060903354605

Legge 234/2012. Legge 24 dicembre 2012, n. 234. Norme generali sulla partecipazione dell'Italia alla formazione e all'attuazione della normativa e delle politiche dell'Unione europea. GU n.3 del 04-01-2013.

Montaldo, S. 2018. Freedom of movement, social integration and naturalization: Testing reverse discrimination in the recent case law of the court of justice. *European Papers*, 3(3): 1481–1492.

Oosterom-Staples, H. 2012. To what extent has reverse discrimination been reversed? *European Journal of Migration and Law*, 14(2): 151–172. DOI: https://doi.org/10.1163/157181612X642358

Ritter, C. 2006. *Purely internal situations, reverse discrimination, Guimont, Dzodzi and article 234*. DOI: https://doi.org/10.2139/ssrn.954242

Shuibhne, NN. 2010. The resilience of EU market citizenship. *Common Market Law Review*, 47(6): 1597–1628. DOI: https://doi.org/10.54648/COLA2010068

Spaventa, E. 2008. Seeing the wood despite the trees? On the scope of union citizenship and its constitutional effects. *Common Market Law Review*, 45: 13–45. DOI: https://doi.org/10.54648/COLA2008002

Spitaleri, F. 2010. *Le discriminazioni alla rovescia nel diritto dell'Unione europea*. Rome: Aracne.

Staver, A. 2013. Free movement and the fragmentation of family reunification rights. *European Journal of Migration and Law*, 15(1): 69–89. DOI: https://doi.org/10.1163/15718166-12342024

Treaty on the European Union. 2016 Consolidated version. OJ C 202, 7.6.2016, p. 13.

Treaty on the function of the European Union. 2016 Consolidated version. OJ C 202, 7.6.2016, p. 47.

Tryfonidou, A. 2009. *Reverse discrimination in EC law*. The Hague: Kluwer Law International.

Tryfonidou, A. 2011. *What can the court's response to reverse discrimination and purely internal situations contribute to our understanding of the relationship between the 'restriction' and 'discrimination' concepts in EU free movement law?* Available at https://www.jus.uio.no/ifp/forskning/prosjekter/markedsstaten/arrangementer/2011/free-movement-oslo/speakers-papers/tryfonidou.pdf [Last accessed 12 December 2022].

Utlendingsforskriften. 2009. Forskrift 15 oktober 2009 nr. 1286 om utlendingers adgang til riket og deres opphold her. FOR-2009-10-15-1286.

Utlendingsloven. 2008. Lov 15. mai 2008 nr. 35 om utlendingers adgang til riket og deres opphold her. LOV-2008-05-15-35.

Van Der Mei, AP. 2009. Combating reverse discrimination: Who should do the job? *Maastricht Journal of European and Comparative Law*, 16(4): 379–382. DOI: https://doi.org/10.1177/1023263X0901600401

Van Elsuwege, P. 2014. The phenomenon of reverse discrimination: An anomaly in the European constitutional order? In: Rossi, LS and Casolari, F (eds.) *The EU after Lisbon: Amending or coping with the existing treaties?* 161–176. Cham: Springer International Publishing. DOI: https://doi.org/10.1007/978-3-319-04591-7_7

Van Elsuwege, P and **Kochenov, D.** 2011. On the limits of judicial intervention: EU citizenship and family reunification rights. *European Journal of Migration and Law*, 13(4): 443–466. DOI: https://doi.org/10.1163/157181611X605891

Verbist, V. 2014. Reverse discrimination—a Belgian perspective. In: Guild, E, Rotaeche, CG and Kostakopoulou, D (eds.), *The Reconceptualization of European Union Citizenship*. 265–284. Leiden and Boston: Brill Nijhoff.

Verbist, V. 2017. The European court of justice's approach to reverse discrimination. In: Verbist, V (ed.). *Reverse Discrimination in the European Union, a Recurring Balancing Act*. 21–46. Cambridge: Intersentia. DOI: https://doi.org/10.1017/9781780685823

Vitrò, S. 2014a. L'art. 23 del d.lg. n. 30/2007. In: Cortese, EG, Ratti, G, Veglio, M and Vitrò, S (eds.) *Lo straniero e il giudice civile. Aspetti sostanziali e processuali di diritto dell'immigrazione*, 149–150. Milano: UTET Giuridica.

Vitrò, S. 2014b. Circolazione, ingresso e soggiorno dei cittadini comunitari e dei loro familiari. In: Cortese, EG, Ratti, G, Veglio, M and Vitrò, S (eds.), *Lo straniero e il giudice civile. Aspetti sostanziali e processuali di diritto dell'immigrazione*, 3–82. Milano: UTET giuridica.

Walter, A. 2008. *Reverse discrimination and family reunification*. Nijmegen: Wolf Legal Publishers.

Wormsbecher, M. 2015. The right to free movement and the dilemma of reverse discrimination in EU law. *Erdelyi Tarsadalom*, 13(3): 107–122.

Zakon o tujcih. 1991. Uradni list RS, št. 91/21—uradno prečiščeno besedilo, 95/21—popr., 105/22—ZZNŠPP in 48/23.

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