

SUMMARY

ECJ 15 September 2015, case C-67/14 (Jobcenter Berlin Neukölln –v- Nazifa Alimanovic and her children), Free movement

Facts

Regulation 883/2004 covers social security, not social assistance. However, there is a hybrid category of benefits that have characteristics both of the social security legislation covered by the Regulation and of social assistance. Article 70 deals with these “special non-contributory cash benefits”, to which residents are entitled in accordance with the legislation of the country of residence. The German “benefits to cover subsistence costs under the basic provision for jobseekers” are such benefits.

Directive 2004/38 enshrines the right of EU citizens and their family members to move and reside freely within the EU. Article 7(1) provides, inter alia, that workers have the right to reside in any EU country for longer than three months. Article 7(3) provides that a citizen who is no longer employed shall retain the status of worker for at least six months if, inter alia, he is involuntarily unemployed after having been employed for over one year or after having completed a fixed-term contract of less than one year. Article 24 (1) provides that all EU citizens residing in a Member State on the basis of the directive, as well as their family members, shall enjoy equal treatment with the nationals of that Member State. However, Article 24(2) allows the Member States to deny social assistance during the first three months of residence.

Ms Alimanovic and her four children are Swedish nationals. They moved to Germany in June 2010. They were given the right of permanent residence. After working in temporary jobs for

about six months, Ms Alimanovic and her eldest daughter became unemployed. They received subsistence allowance within the meaning of Article 70 of Regulation 883/2004 until 1 June 2012, when the authority responsible for awarding that allowance, the Jobcenter, stopped paying the allowance.

National proceedings

Ms Alimanovic challenged the Jobcenter's decision, at first with success, but the Jobcenter appealed to Bundessozialgericht. It initially referred three questions to the ECJ, but later withdrew the first question.

ECJ's findings

The ECJ sees no need to answer the third question because, although the benefits at issue qualify as "special non-contributory cash benefits" within the meaning of Article 70 of Regulation 2004/883, they also qualify as "social assistance" within the meaning of Directive 2004/38, as construed by the ECJ in its judgment in Dano (case C-333/13), and the predominant function of the benefits is to cover the minimum subsistence costs necessary to lead a life in keeping with human dignity. Therefore, the benefits cannot be characterised as benefits of a financial nature which are intended to facilitate access to the labour market, but must be characterised as 'social assistance' (§43-47).

The question remaining is whether the provisions in Regulation 883/2004 and Directive 2004/38 on equal treatment preclude national legislation under which nationals of other Member States who are job-seekers in the host Member State are excluded from entitlement to certain "special non-contributory cash benefits" which also constitute "social assistance", although those benefits are granted to nationals of the Member State concerned who are in the same situation (§48).

To accept that persons who do not have a right of residence under Directive 2004/38 may claim entitlement to social assistance under the same conditions as those applicable to nationals of the host Member State would run counter to an objective of the directive, set out in recital 10 in its preamble, namely preventing Union citizens who are nationals of other Member States from becoming an unreasonable burden on the social assistance system of the host Member State (§50).

It is not disputed that Ms Alimanovic and her daughter, who retained the status of workers for at least six months after their last employment had ended, no longer enjoyed that status when they were refused entitlement to the benefits at issue (§55).

Article 14(4)(b) of Directive 2004/38 stipulates that Union citizens who have entered the territory of the host Member State in order to seek employment may not be expelled for as

long as they can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged. Although, according to the referring court, Ms Alimanovic and her daughter may rely on that provision to establish a right of residence even after the expiry of the period referred to in Article 7(3)(c) of Directive 2004/38, for a period, covered by Article 14(4)(b) thereof, which entitles them to equal treatment with the nationals of the host Member State so far as access to social assistance is concerned, it must nevertheless be observed that, in such a case, the host Member State may rely on the derogation in Article 24(2) of that directive in order not to grant that citizen the social assistance sought. It follows from the express reference in Article 24(2) of Directive 2004/38 to Article 14(4)(b) that the host Member State may refuse to grant social assistance to an EU citizen whose right of residence is based solely on that latter provision. (§56-57).

Ruling

Article 24 of Directive 2004/38 [...] and Article 4 of Regulation (EC) No 883/2004 [...] must be interpreted as not precluding legislation of a Member State under which nationals of other Member States who are in a situation such as that referred to in Article 14(4)(b) of that directive are excluded from entitlement to certain ‘special non-contributory cash benefits’ within the meaning of Article 70(2) of Regulation No 883/2004, which also constitute ‘social assistance’ within the meaning of Article 24(2) of Directive 2004/38, although those benefits are granted to nationals of the Member State concerned who are in the same situation.

Creator: European Court of Justice (ECJ)

Verdict at: 2015-09-15

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