

SUMMARY

ECJ 25 February 2016, case C-299/14 (Garcia-Nieto), free movement – social security

<p>An unemployed EU citizen moving to another Member State is not entitled to social assistance in that State for the first three months.</p>

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Facts

Regulation 883/2004 on the coordination of social security systems covers social security, not social assistance ('welfare'). However, there is a hybrid category of benefits that have characteristics both of social security and of social assistance. An example is the German 'basic provision for jobseekers'. It consists of two elements: (i) benefits for integration into the labour market and (ii) benefits to cover "subsistence costs". Such hybrid benefits are dealt with in Article 70 of Regulation 883/2004.

Directive 2004/38 enshrines the right of EU citizens and their family members to move and reside freely within the EU. 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 State. However, Article 24(2) allows Member States to deny social assistance during the first three months of residence.

In 2014, in the Dano case (C-333/13), the ECJ held that, although benefits of the "basic provision for jobseekers" type are hybrid benefits as provided in Article 70 of Regulation 883/2004, the predominant function of the benefits is to cover the minimum subsistence costs

necessary to lead a life in keeping with human dignity, and that they therefore qualify as social assistance and not as social security.

All of the members of the Peña-García family are Spanish nationals. Ms García-Nieto and Mr Peña Cuevas lived together for a number of years as a couple in the same household in Spain and formed an economic unit (without being married) with their daughter Jovanlis and Mr Peña Cuevas's son Joel, who is still a minor. In April 2012, Ms García-Nieto entered Germany with her daughter Jovanlis and registered as a jobseeker. On 23 June 2012 they were joined by Mr Peña Cuevas and his son. On 30 July 2012, the Peña-García family applied to the Employment Centre for subsistence benefits. The Employment Centre refused to grant those benefits to Mr Peña Cuevas and his son for August and September 2012, although those benefits were granted with effect from October 2012.

National proceedings

The decision refusing the benefits was based on a provision in the German Social Code (the 'contested provision') that excludes foreign nationals, who are not workers or self-employed persons in Germany, from "basic provision for jobseekers" benefits for the first three months of their residence. At the time of the application, Mr Peña Cuevas and his son had resided in Germany for less than three months. Moreover, Mr Peña Cuevas did not have the status of a worker or self-employed person. According to the Employment Centre, the exclusion from entitlement to the benefits at issue applied equally to Mr Peña Cuevas's son. The action brought by the Peña-García family against the Employment Centre's decision was upheld by the court of first instance. The Employment Centre brought an appeal against that judgment before the Landessozialgericht Nordrhein-Westfalen. It expressed doubts as to the compatibility with EU law of the complete exclusion from entitlement to the benefits at issue. It stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'(1) Does the principle of equal treatment under Article 4 of Regulation No 883/2004 [...] apply also to the special non-contributory cash benefits referred to in Article 70(1) and (2) of that regulation?(2) If the first question is answered in the affirmative: may the principle of equal treatment laid down in Article 4 of Regulation No 883/2004 be limited by provisions of national legislation implementing Article 24(2) of Directive 2004/38 that do not in any circumstances allow access to those benefits for the first three months of their residence to Union citizens who are neither workers or self-employed persons in the Federal Republic of Germany nor entitled to exercise freedom of movement [...] and, if so, to what extent may that principle be so limited?(3) If the first question is answered in the negative: do the principles of non-discrimination enshrined in primary law — in particular by the combined provisions of

Article 45(2) TFEU and Article 18 TFEU — preclude a provision of national legislation that does not in any circumstances allow the grant of a social benefit, intended to provide means of subsistence and to facilitate access to the labour market, in their first three months of residence to Union citizens who are neither workers or self-employed persons in the Federal Republic of Germany nor entitled to exercise freedom of movement [...], but who can demonstrate a genuine link to the host Member State and, in particular, to the labour market of that host Member State?’

By a decision of 19 March 2015, the referring court decided that there was no need for the first question to be answered, since a substantially similar question had been referred in *Dano*.

ECJ’s findings

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In *Alimanovic* (C-67/14), the Court held that benefits such as those at issue cannot be considered to be benefits of a financial nature which are intended to facilitate access to the labour market of a Member State, but must be regarded as ‘social assistance’ within the meaning of Article 24(2) of Directive 2004/38. As regards access to such benefits, a Union citizen can claim equal treatment with nationals of the host Member State under Article 24(1) of Directive 2004/38 only if his residence in the territory of the host Member State complies with the conditions of Directive 2004/38 (§37-38).

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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, 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. Consequently, in order to determine whether social assistance, such as the benefits at issue, may be refused on the basis of the derogation in Article 24(2) of Directive 2004/38, it is necessary to determine whether the principle of equal treatment referred to in Article 24(1) of that directive applies and, accordingly, whether the Union citizen concerned is lawfully resident in the territory of the host Member State (§39-40).

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Article 6(1) of Directive 2004/38 provides that Union citizens have the right of residence in the territory of another Member State for a period of up to three months without any conditions or formalities other than the requirement to hold a valid identity card or passport and, under Article 14(1) of that directive, that right is retained as long as the Union citizen and his family members do not become an unreasonable burden on the social assistance system of the host Member State. That said, it must nevertheless be observed that, in such a case, the host Member State may rely on the derogation in Article 24(2) of Directive 2004/38 in order to refuse to grant that citizen the social assistance sought (§41-44).

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The assistance awarded to a single applicant can scarcely be described as an ‘unreasonable burden’ for a Member State, within the meaning of Article 14(1) of Directive 2004, but the accumulation of all the individual claims which might be submitted to it would be bound to do so. The same conclusion must be reached as regards the interpretation of Article 4 of Regulation No 883/2004. The benefits at issue, which constitute ‘special non-contributory cash benefits’ within the meaning of Article 70(2) of that regulation, are, under Article 70(4), to be provided exclusively in the Member State in which the persons concerned reside, in accordance with the legislation of that Member State. It follows that there is nothing to prevent such benefits being refused to nationals of other Member States who do not have the status of workers or self-employed persons or persons who retain such status during the first three months of residence in the host Member State (§45-52).

Judgment

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 6(1) 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.

Creator: European Court of Justice (ECJ)

Verdict at: 2016-02-25

Case number: C-299/14 (Garcia-Nieto)