

SUMMARY

ECJ 14 June 2016, case C-308/14 (Commission – v – UK), Free movement, tax

***<p>UK child benefits may be refused to unlawfully resident
Member State nationals.</p>***

Summary

UK child benefits may be refused to unlawfully resident Member State nationals.

Background

In 2008, after receiving numerous complaints from nationals of other Member States resident in the United Kingdom that the competent UK authorities had refused to grant them certain social benefits on the grounds that they did not have a right to reside in the UK, the Commission sent the UK a request for clarification. Following an exchange of notices, the issue narrowed down to whether unlawfully residing nationals of other Member States are entitled to UK child benefits and child tax credit (together: ‘family benefits’).

The issue relates mainly to Regulation 883/2004. It applies, inter alia, to ‘family benefits’, which are defined as “all benefits in kind or in cash intended to meet family expenses [...]”. Article 4 provides that Member State nationals shall be treated equally, regardless of nationality. Article 1(j) defines “residence” as ‘the place where a person habitually resides’. Article 11(3)(e) provides that, as a rule, persons shall be subject to the legislation of the Member State of residence. Article 67 entitles residents of a Member State to family benefits in accordance with the legislation of that state.

The right of EU citizens to reside in other Member States is regulated in Directive 2004/38. It bestows a right of residence, mainly, on (a) workers and self-employed persons and (b) others with sufficient resources not to become a burden on the social assistance scheme of the host

Member State.

Pre-litigation procedure and action

The Commission's main complaint was that, by requiring a person claiming the social benefits at issue to satisfy the right to reside test in order to be treated as habitually resident in that Member State, the United Kingdom has added a condition that does not appear in Regulation No 883/2004. That condition deprives persons who do not meet it of cover under the social security legislation of one of the Member States, cover which that regulation is intended to ensure. In the alternative, the Commission submitted that, by imposing a condition for entitlement to certain social security benefits which its own nationals automatically meet, such as the right to reside test, the United Kingdom has created a situation involving direct discrimination against nationals of other Member States and has therefore infringed Article 4 of Regulation 883/2004, or, if the discrimination should be considered indirect, it is not justified.

In its defence, the UK argued that in its judgment in *Brey* (C-140/12), the ECJ held that "there is nothing to prevent, in principle, the granting of social security benefits to Union citizens who are not economically active being made conditional upon those citizens meeting the necessary requirements for obtaining a legal right of residence in the host Member State". One of the UK's other defences was that the ECJ has already held on numerous occasions that it is lawful to require economically inactive EU nationals to demonstrate that they have a right of residence as a condition for qualifying for social security benefits and that in Directive 2004/38 the EU legislature expressly authorises host Member States to make their intervention subject to such a condition, in order that those nationals do not become an unreasonable burden on the social assistance system of those States. The principle of equal treatment referred to in Article 4 of Regulation No 883/2004 must be read in the light of that requirement.

ECJ's findings

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The first question to be addressed is whether UK family benefits are to be classified as 'social assistance' (in which case Regulation 883/2004 does not apply) or as 'social security benefits'. The answer is that they are social security benefits, because, according to the Court's case-law, benefits which are granted automatically to families that meet certain objective criteria

relating in particular to their size, income and capital resources, without any individual and discretionary assessment of personal needs, and which are intended to meet family expenses, must be regarded as social security benefits. The fact that the family benefits are funded from compulsory taxation, not from recipients' contributions, is not relevant (§ 54-61).

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Article 11(3)(e) of Regulation No 883/2004, upon which the Commission relies, sets out a 'conflict rule' for determining the national legislation applicable to payment of social security. It is intended not only to prevent the concurrent application of a number of national legislative systems to a given situation and the complications which may ensue, but also to ensure that persons covered by the regulation are not left without social security cover because there is no legislation applicable to them. On the other hand, that provision as such is not intended to lay down the conditions creating the right to social security benefits. It is in principle for the legislation of each Member State to lay down those conditions. It cannot therefore be inferred from Article 11(3)(e) of Regulation No 883/2004, read in conjunction with Article 1(j) thereof, that EU law precludes a national provision under which entitlement to social benefits, such as the social benefits at issue, is conditional upon the claimant having a right to reside lawfully in the Member State concerned (§ 62-73).

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A host Member State which, for the purpose of granting social benefits, requires a national of another Member State to be residing in its territory lawfully, commits indirect discrimination, given that such a residence condition is more easily satisfied by UK nationals, who more often than not are habitually resident in the UK, than by nationals of other Member States, whose residence, by contrast, is generally in a Member State other than the UK (§ 76-78).

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The need to protect the finances of the host Member State justifies in principle the possibility of checking whether residence is lawful when a social benefit is granted, in particular, to persons from other Member States who are not economically active, as such a grant could have consequences for the overall level of assistance that may be accorded by that State (§ 79-80).

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So far as concerns the proportionality of the right to reside test, verification by the national

authorities, in connection with the grant of family benefits, that the claimant is not unlawfully present in their territory must be regarded as a situation involving checks on the lawfulness of the residence of Union citizens under Article 14(2) of Directive 2004/38, and must therefore comply with the requirements set out in that directive. Article 14(2) provides that Union citizens and their family members shall enjoy the right of residence as long as they meet the relevant conditions. In specific cases, where there is a reasonable doubt as to whether a Union citizen or his family members satisfy the conditions set out in those articles, Member States may verify if those conditions are fulfilled. Article 14(2) provides that this verification is not to be carried out systematically (§ 81-82).

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It is apparent from the observations made by the UK at the hearing before the Court that, for each of the social benefits at issue, the claimant must provide, on the claim form, a set of data which reveal whether or not there is a right to reside in the UK, those data being checked subsequently by the authorities responsible for granting the benefit concerned. It is only in specific cases that claimants are required to prove that they in fact enjoy a right to reside lawfully in UK territory, as declared by them in the claim form. It is thus evident that, contrary to the Commission's submissions, the checking of compliance with the conditions laid down by Directive 2004/38 for existence of a right of residence is not carried out systematically and consequently is not contrary to the requirements of Article 14(2) of the directive. It is only in the event of doubt that the UK authorities effect the verification necessary to determine whether the claimant satisfies the conditions laid down by Directive 2004/38 (§ 83-84).

Judgment

The Court dismisses the action.

Creator: European Court of Justice (ECJ)

Verdict at: 2016-06-14

Case number: C-308/14 (Commission – v – UK)