

SUMMARY

## **ECJ 20 December 2017, case C-442/16 (Gusa), Free movement, Social insurance**

***&lt;p&gt;Self-employed workers who have ceased their activity for reasons beyond their control and who are registered as jobseekers, retain their status as self-employed persons for the purposes of Article 7(1)(a) of Directive 2004/38.&lt;/p&gt;***

### **Summary**

Self-employed workers who have ceased their activity for reasons beyond their control and who are registered as jobseekers, retain their status as self-employed persons for the purposes of Article 7(1)(a) of Directive 2004/38.

### **Legal context**

Article 7 of Directive 2004/38 (Citizen's Directive) grants EU citizens a right of residence in another Member State for more than three months if they meet certain criteria. This can be the case if they are workers or self-employed persons in the host Member State (paragraph 1). The third paragraph (para b) stipulates that EU citizens retain this inter alia if "he/she is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a jobseeker with the relevant employment office". This could make such person entitled to social benefits (e.g. under Regulation No 883/2004).

### **Facts**

Mr Gusa was a Romanian citizen who entered Ireland in October 2007. During his first year, his (adult) children who also lived in Ireland supported him. From October 2008 until October 2012, Mr Gusa worked as a self-employed plasterer and paid taxes, social insurance and other duties on his income in Ireland. He ceased working in October 2012, as he claimed that the

economic downturn resulted in an absence of work. He registered as a jobseeker with the Irish authorities. He had no more income as his children had left Ireland and did no longer support him financially. In November 2012, Mr Gusa applied for a jobseeker's allowance on the basis of the relevant Irish Act.

The Irish authorities refused Mr Gusa's application as he had not demonstrated a right to reside based on the Irish implementation legislation of Article 7 of Directive 2004/38. It argued that Article 7(3), based on which a worker retains the right of residence, only applied to employees but not to self-employed workers. Mr Gusa's claim with the High Court was rejected. The Irish Court of Appeal (to which the Irish Supreme Court had referred the case upon Mr Gusa's appeal) decided to stay proceedings and ask preliminary questions to the ECJ.

### **Questions put to the ECJ**

Must Article 7(3)(b) of Directive 2004/38 be interpreted as meaning that a national of a Member State retains the status of self-employed person for the purposes of Article 7(1)(a) of that directive where, after having lawfully resided in and worked as a self-employed person in another Member State for approximately four years, that national has ceased that activity, because of an absence of work owing to reasons beyond his control, and has registered as a jobseeker with the relevant employment office of the latter Member State?

### **ECJ's findings**

First, the ECJ notes that different language versions of Directive 2004/38/EC would lead to different answers. Whereas the English and French translation suggest that the scope of Article 7(3)(b) refer to previous work as an employee, in particular the Greek, Italian and Latvian translations suggest that its scope includes persons who have 'worked'. Therefore, the provision must be interpreted by reference to the general scheme and the purpose of the rules of which it forms part (ECJ Alo and Osso, C-443/14 and C-444/14).

As regards its general scheme, Directive 2004/38 provides that its purpose is to define, inter alia, the conditions governing the exercise of the right of free movement and residence. To that end, Article 7(1) distinguishes in particular between economically active and inactive citizens (and students), but not between employed and self-employed persons. Thus, it provides a right of residence to all EU citizens who are workers or self-employed persons. Also, Article 7(3) refers to citizens who are no longer 'worker(s) or self-employed person(s)' but are to retain their initial status. Since the translations of Article 7(3)(b) do not conclusively exclude self-employed workers from its scope, in the light of the general scheme it must be interpreted as applying to both employed and self-employed persons.

This interpretation is supported in several ways. First, interpreting Article 7(3)(b) as covering only (ex-) employees would run counter to the purpose of Directive 2004/38 to remedy the sector-by-sector, piecemeal approach which characterised the many instruments that Directive 2004/38 had replaced as a (more or less universal) solution. Second, such an interpretation would introduce an unjustified difference in the treatment of the two categories of persons. Formerly self-employed persons might be in the same vulnerable position as employed workers who has been dismissed. There would be no justification for any differences in their protection as regards retention of his right of residence, in particular when such self-employed person also has contributed to the host Member State's social security and tax system.

### **Ruling**

Article 7(3)(b) of Directive 2004/38/EC must be interpreted as meaning that a national of a Member State retains the status of self-employed person for the purposes of Article 7(1)(a) of that directive where, after having lawfully resided in and worked as a self-employed person in another Member State for approximately four years, that national has ceased that activity, because of a duly recorded absence of work owing to reasons beyond his control, and has registered as a jobseeker with the relevant employment office of the latter Member State.

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**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2017-12-20

**Case number:** C-442/16 (Gusa)