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Press and Information

Advocate General's Opinion in Case C-67/14
Jobcenter Berlin Neukölln v Nazifa, Sonita, Valentina and Valentino Alimanovic

According to Advocate General Wathelet, EU citizens who travel to a Member State of which they are not nationals in order to seek employment may be excluded from entitlement to certain social benefits

However, if the person in question has already been employed in that Member State, he may not automatically be refused such benefits

In its recent judgment in *Dano*,[1] the Court of Justice held that Member States may exclude from entitlement to social assistance EU citizens who arrive in their territory without intending to find a job. That case involved German basic provision ('Grundsicherung') benefits, which are intended in particular to cover the beneficiaries' subsistence costs.

In the present case, the Court has been called upon to decide whether an EU citizen who is seeking employment after having already worked for a certain period of time in the host Member State may also be refused such benefits.

Ms Nazifa Alimanovic and her three children, Sonita, Valentina and Valentino, are all Swedish nationals. The three children were born in Germany in 1994, 1998 and 1999, respectively. After living abroad, the family re-entered Germany in June 2010. Between then and May 2011, that is to say, for less than a year, Ms Alimanovic and her elder daughter, Sonita, worked in short-term jobs or under employment-promotion measures in Germany. The two women have not worked since. From 1 December 2011 to 31 May 2012, they received subsistence allowances for beneficiaries fit for work ('Arbeitslosengeld II'), while Valentina and Valentino received social allowances for beneficiaries unfit for work. Subsequently, the competent German authority, the Jobcenter Berlin Neukölln, stopped paying those allowances, taking the view that Ms Alimanovic and her elder daughter, Sonita, as foreign jobseekers, and in consequence, Valentina and Valentino as well, were excluded from entitlement to the allowances in question. According to the German legislation, non-nationals (and members of their family), whose right of residence arises solely out of the search for employment, may not claim such benefits. The Bundessozialgericht (Federal Social Court, Germany), before which the case has been brought, asks the Court whether that exclusion is compatible with EU law.

In his Opinion given today, Advocate General Melchior Wathelet takes as his starting-point the premise that the benefits at issue in this case, just as in *Dano*, are intended (at least predominantly) to guarantee the means necessary to lead a life in keeping with human dignity, and not (or only secondarily) to facilitate access to the labour market. It follows that those benefits must be regarded as social assistance benefits within the meaning of the EU Citizenship Directive.[2] [3] [4]

[1] Case C-333/13 *Dano*, see also Press release No 146/14.
[2] Directive 2004/38/EC 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 amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).
[3] Mr Wathelet starts, in addition, from the premise that these too are special non-contributory benefits within the meaning of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1, corrigendum OJ 2004 L 200, p. 1), as amended by Commission Regulation (EU) No 1244/2010 of 9 December 2010 (OJ 2004 L 338, p. 35).

While recalling that discrimination against an EU citizen on grounds of nationality is prohibited, the directive allows derogation from that principle in respect of social assistance benefits. According to the directive, a Member State is not obliged to confer entitlement to social assistance during the first three months of residence or, as the case may be, the longer period of job seeking for EU citizens who entered the host Member State for that purpose.

According to the Advocate General, that exception must be interpreted restrictively and any limitations that arise must be legitimate. Mr Wathelet therefore proposes that **three situations should be distinguished**.

Firstly, a national of one Member State who enters the territory of another Member State and stays there (for less than three months or for more than three months) ***without*** **the aim of seeking employment there may**, as the Court held in the judgment in *Dano*, **legitimately be excluded from social assistance benefits, in order to maintain the financial equilibrium of the national social security system**.

Secondly, such exclusion is also legitimate, for the same reasons, **in respect of a national of one Member State who moves to the territory of another Member State in order to seek employment there**.

On the other hand, as regards, thirdly, a national of one Member State who stays for more than three months in the territory of another Member State and has worked there, the Advocate General considers that such a person may not automatically be refused the benefits in question.

It is true that an EU citizen having worked in national territory for less than one year may, in accordance with EU law, lose the status of worker after six months of unemployment (in the case of Ms Alimanovic and her daughter Sonita, that happened in December 2011).

Nevertheless, **it runs counter to the principle of equal treatment[5] to exclude automatically an EU citizen from entitlement to social assistance benefits such as those at issue beyond a period of involuntary unemployment of six months after working for less than one year without allowing that citizen to demonstrate the existence of a genuine link with the host Member State.**

In that regard, in addition to matters evident from the family circumstances (such as the children's education), the fact that the person concerned has, for a reasonable period, in fact genuinely sought work is a factor capable of demonstrating the existence of such a link with the host Member State. Having worked in the past, or even the fact of having found a new job after applying for the grant of social benefits, should also be taken into account to that end.

Beyond the questions of the Bundessozialgericht, Mr Wathelet emphasises that, **if it is demonstrated that the children Valentina and Valentino Alimanovic are duly continuing their education within an establishment in Germany** (which it is for the Bundessozialgericht to ascertain), **they – like their mother, Ms Alimanovic – enjoy a right of residence in German territory under EU law.** The children of a national of one Member State who works or has worked in the host Member State and the parent who is their primary carer can claim a right of residence in the latter State **owing to the sole fact that EU law[6] confers on those children a right of access to education**. That right of residence is not dependent on the conditions laid down in the EU Citizenship Directive (including the requirements of having sufficient resources and comprehensive sickness insurance). **In those circumstances, exclusion from social assistance benefits, provided for by the German legislation, is not applicable to the situation of Ms Alimanovic**

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[4] If this should not be the case, he takes the view that the compatibility of exclusion from the benefits in question would have to be analysed in the light of the provisions on the free movement of workers in the EU Treaties. In such an analysis, the same reasoning should apply.

[5] As laid down by the EU Treaties and clarified by Regulation No 883/2004 and Directive 2004/38.

[6] Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ 2011 L 141, p. 1).

or to that of her two younger children, since it applies only to persons 'whose right of residence arises solely out of the search for employment and their family members'.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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