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EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

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Judgment of the Court of Justice in Case C-499/06

*Halina Nerkowska v Zakład Ubezpieczeń Społecznych Oddział w Koszalinie*

**PAYMENT OF A DISABILITY PENSION GRANTED BY A MEMBER STATE TO  
CIVILIAN VICTIMS OF WAR AND REPRESSION MUST NOT BE REFUSED  
SOLELY BECAUSE THE PERSON SO ENTITLED IS RESIDENT IN ANOTHER  
MEMBER STATE**

*The requirement of residence on national territory, as laid down by Polish legislation, is  
disproportionate*

Ms Nerkowska, a Polish national, was born in 1946 in the territory of present-day Belarus. After losing her parents who were deported to Siberia pursuant to a court order, she herself was deported in 1951 to the former USSR, where she lived under difficult conditions. She returned to Poland in 1957. In 1985 she left Poland and settled permanently in Germany.

The Zakład Ubezpieczeń Społecznych Oddział w Koszalinie (Social Security Institution, Koszalin Branch) refused to pay Ms Nerkowska a pension – her basic entitlement to which had previously been established – in respect of the damage her health had suffered while she was a deportee, on the ground that she was not resident in Poland.

Ms Nerkowska challenged that decision before the Polish courts, submitting that, following Poland's accession to the European Union, her present place of residence could not constitute an obstacle to the payment of that benefit.

The Sąd Okręgowy w Koszalinie (Regional Court, Koszalin), before which the case was brought, asked the Court of Justice of the European Communities whether the right to move and reside freely within the territory of the Member States, which the EC Treaty guarantees citizens of the European Union, precludes national legislation, such as the Polish legislation at issue<sup>1</sup>, under which payment of a benefit granted to civilian victims of war or repression is subject to the requirement that the person entitled to the benefit be resident in the national territory.

In its judgment the Court of Justice notes, first of all, that as Community law now stands, a benefit which is intended to compensate civilian victims of war or repression for physical or mental harm which they have suffered falls within the competence of the Member States.

<sup>1</sup> Law of 29 May 1974 on provision for war and military invalids and their families, as amended (Dz. U. (Journal of Laws), 2002, No 9, heading 87), and Law of 24 January 1991 on combatants and certain persons who are the victims of wartime and post-war repression (Dz. U. No 17, heading 75).

However, the Member States must exercise that competence in accordance with Community law, in particular with the Treaty provisions concerning the freedom accorded to every citizen of the Union to move and reside freely within the territory of the Member States.

The Court then points out that the opportunities offered by the Treaty in relation to freedom of movement cannot be fully effective if a national of a Member State can be deterred from availing himself of them by obstacles raised by legislation of his State of origin penalising the fact that he has used them. Consequently, **the Polish legislation** which places certain Polish nationals at a disadvantage simply because they have exercised their freedom to move and to reside in another Member State **is a restriction on the freedoms conferred by the EC Treaty** on every citizen of the Union.

**Such a restriction on the exercise of freedoms by a Member State's own nationals can be justified only if it is based on objective considerations of public interest** independent of the nationality of the persons concerned **and if it is proportionate** to the legitimate objective of the national provisions.

The Court thus holds that both the wish to ensure that there is a **connection** between the society of the Member State concerned and the recipient of a benefit and the necessity to verify that the recipient continues to **satisfy the conditions for grant** of that benefit **constitute objective considerations of public interest** which are capable of justifying the restriction in question.

However, the fact that a person is a national of the Member State granting the benefit in question and lived in that State for more than 20 years may be sufficient to establish a connection between that State and the recipient of the benefit. In those circumstances, **the requirement of residence throughout the period of payment of the benefit must be held to be disproportionate**, since it goes beyond what is necessary to ensure that that connection exists.

Furthermore, the objective of verifying that the recipient of a disability pension continues to satisfy the conditions for its grant may be achieved by other means which, although less restrictive, are just as effective.

The Court thus concludes that **Community law precludes legislation such as the Polish legislation in this case.**

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: CS, DE, EN, ES, EL, FR, HU, IT, PL, SK, SL*

*The full text of the judgment may be found on the Court's internet site*

*<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-499/06>*

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

*For further information, please contact Christopher Fretwell*

*Tel: (00352) 4303 3355 Fax: (00352) 4303 2731*