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Press and Information

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Judgment of the Court of Justice in Joined Cases C-22/08 and C-23/08

*Vatsouras and Koupatantze v. ARGE Nürnberg 900*

**A JOB-SEEKER WHO HAS ESTABLISHED GENUINE LINKS WITH THE LABOUR MARKET OF A MEMBER STATE CAN RECEIVE A BENEFIT OF A FINANCIAL NATURE INTENDED TO FACILITATE ACCESS TO EMPLOYMENT**

*Independently of its status under national law, such a benefit is not ‘social assistance’ which Member States may refuse to job-seekers*

The Sozialgericht Nürnberg has asked the Court of Justice whether it is possible to exclude job-seekers from other Member States from certain financial benefits. That question has arisen in the course of proceedings between two Greek nationals, on the one hand, and the Arbeitsgemeinschaft (ARGE) Nürnberg 900 (Job Centre, Nuremberg 900), on the other, concerning the withdrawal of basic job-seekers benefits which those Greek nationals had been receiving.

The Sozialgericht takes the view that the two applicants did not, at the material time, benefit from the specific guarantees in favour of ‘workers’ since the ‘brief minor’ professional activity of the first applicant, Mr Vatsouras, ‘did not ensure him a livelihood’ and the activity pursued by Mr Koupatantze ‘lasted barely more than one month’. According to the Community directive on the free movement of citizens of the Union<sup>1</sup>, a Member State is not obliged to confer entitlement to a social assistance benefit on citizens who are not economically active. However, the Sozialgericht expresses doubts as to whether that exception is compatible with the principle of equal treatment guaranteed by Community law.

In its judgment delivered today, the Court first of all invites the Sozialgericht to analyse the applicants’ situation in the light of its case-law concerning the status of workers. Independently of the limited amount of the remuneration and the short duration of the professional activity, it cannot be ruled out that that activity, following an overall assessment of the employment relationship at issue, may be regarded by the national authorities as real and genuine, thereby allowing the person engaged in that activity to be granted the status of ‘worker’.

<sup>1</sup> Article 24(2) of 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 (OJ 2004 L 229, p. 35; OJ 2005 L 197, p. 34; and OJ 2007 L 204, p. 28).

Were the Sozialgericht to conclude that Mr Vatsouras and Mr Koupatantze had the status of workers, they would have been entitled, in accordance with the directive at issue<sup>2</sup>, to receive the requested benefits for at least six months after losing their jobs.

The Court then goes on to examine the possibility of refusing a social assistance benefit to job-seekers who do not have the status of workers. In that regard, it notes that, in view of the establishment of citizenship of the Union, job-seekers enjoy the right to equal treatment for the purpose of claiming a benefit of a financial nature intended to facilitate access to the labour market.

A Member State may, however, legitimately grant such an allowance only to job-seekers who have a real link with the labour market of that State. The existence of such a link can be determined, in particular, by establishing that the person concerned has, for a reasonable period, in fact genuinely sought work in the Member State in question.

It follows that citizens of the Union who have established real links with the labour market of another Member State can enjoy a benefit of a financial nature which is, independently of its status under national law, intended to facilitate access to the labour market.

It is for the competent national authorities and, where appropriate, the national courts not only to establish the existence of a real link with the labour market, but also to assess the constituent elements of the benefit in question. The objective of that benefit must be analysed according to its results and not according to its formal structure.

The Court points out that a condition such as that provided for in Germany for basic benefits in favour of job-seekers, under which the person concerned must be capable of earning a living, could constitute an indication that the benefit is intended to facilitate access to employment.

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

*Languages available: ES CS DA DE EL EN FR IT HU NL PL PT SK SV*

*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-22/08>*

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

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<sup>2</sup> Article 7(3)(c) of Directive 2004/38/EC.