Court of Justice of the European Union
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Press and Information

Opinion of the Advocate General in Case C-299/14
Vestische Arbeit Jobcenter Kreis Recklinghausen v Jovanna García-Nieto, Joel Peña Cuevas, Jovanlis Peña García, Joel Luis Peña Cruz

According to Advocate General Wathelet, EU citizens who move to a Member State of which they are not nationals may be excluded from entitlement to certain social benefits during the first three months

However, they may not be excluded during that period from entitlement to benefits intended to facilitate access to the labour market without being given the opportunity to prove the existence of a genuine link with the labour market in the host Member State

This case is one of a series of German cases in which the Court of Justice is asked to rule on the question whether the exclusion of certain EU citizens from entitlement to social benefits provided for by national legislation is compatible with EU law, and in particular with the principle of equality.

These cases concern the basic German provision benefits ('Grundsicherung'), from which are excluded (i) foreign nationals (and the members of their families) whose right of residence arises solely out of the search for employment and (ii) during the first three months of their residence, foreign nationals (and the members of their family) who are not workers or self-employed persons and cannot be regarded as having retained that status.

In Dano,[1] the Court has already held that the Member States may exclude the entitlement to social assistance of EU citizens who arrive in their territory without intending to find a job. The Alimanovic case,[2] currently pending before the Court, concerns EU citizens who seek entitlement to the same benefits after having resided in Germany for more than three months and having worked there for less than a year. In his Opinion in that case, Advocate General Melchior Wathelet recently proposed that, in such a case, social benefits cannot automatically be refused, without there being individual consideration.

The present case concerns the situation of an EU citizen who, during the first three months of his residence in Germany, was not a worker or self-employed person (and who could not be regarded as having retained that status) and who accordingly had no entitlement to the German basic benefits during that period.

Mr Joel Peña Cuevas and his son are Spanish nationals who arrived in Germany at the end of June 2012 to join Ms García-Nieto and her daughter (whose father is Mr Peña Cuevas). The latter, who are also Spanish nationals, had arrived in Germany in April 2012. During the first months of their residence, the family resided with Ms García-Nieto's mother and their living expenses were met from the income of Ms García-Nieto, who had found work in June 2012. The children attended school in Germany from the end of August 2012. Subsequently, Mr Peña Cuevas also took up temporary employment or received unemployment benefit, in part on the basis of periods of insurance which he had completed in Spain. Mr Peña Cuevas and his son were refused the basic German benefits for the months of August and September 2012 on the ground that they had resided for less than three months in Germany. The Landessozialgericht Nordrhein-Westfalen (Higher Social Court of North-Rhine Westphalia, Germany) asks whether this exclusion is compatible with EU law.

[1] C-333/13 Dano, see also Press Release No. 146/14.
[2] Case C-67/14. Alimanovic

In today's Opinion, Advocate General Wathelet takes as his starting-point the premiss that the benefits at issue in this case, just as in Dano and Alimanovic, 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.[3] [4]

According to the Advocate General, the exclusion, during the first three months of residence, of such social assistance is compatible with EU law.

He recalls in particular that, in Dano, the Court has already confirmed that, according to the Citizenship Directive, the host Member State is not obliged to confer entitlement to social benefits on a national of another Member State or his family members for periods of residence of up to three months.

According to Mr Wathelet, that interpretation is consistent with the objective of maintaining the financial equilibrium of the social security system of the Member States pursued by the directive. Since the Member States cannot require EU citizens to have sufficient means of subsistence and personal medical cover for a three-month stay, it is legitimate not to require Member States to be responsible for them during that period. Otherwise, granting entitlement to social assistance to EU citizens who are not required to have sufficient means of subsistence could result in relocation en masse liable to create an unreasonable burden on national social security systems. Moreover, while persons arriving in a host Member State may have personal links with other EU citizens already residing there, the link with the Member State itself is nevertheless in all likelihood limited during that initial period.

However, if the Court were to decide that it is for the Landessozialgericht to classify the basic German provision benefits under EU law and that court were to take the view that those benefits are essentially intended to facilitate access to the labour market; the Advocate General reaches a different result. He takes the view that in such a case EU law and, more specifically, the freedom of movement for workers preclude nationals of other Member States being excluded from such benefits during the first three months of their residence on the territory of the host Member State unless they are given the opportunity to demonstrate the existence of a genuine link with the labour market of the host Member State.

In that regard, matters that can be inferred from family circumstances (such as the children's education or close ties, in particular of a personal nature, created by the claimant with the host Member State) are factors capable of demonstrating the existence of such a link with the host Member State, as is the fact that the person concerned has, for a reasonable period, in fact genuinely sought work. The fact of having worked in the past, or even the fact of having found a new job after applying for the grant of social assistance, ought also to be taken into account in this connection.

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

[3] 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).

[4] Mr Wathelet also takes as his starting point the premiss that the case also involves special non-contributory cash 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, and corrigendum OJ 2004 L 200, p. 1), as amended by Commission Regulation (EU) No 1244/2010 of 9 December 2010 (OJ 2010 L 338, p. 35).

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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