

Press and Information Division

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Judgment of the Court of Justice in Case C-138/02

Brian Francis Collins v Secretary of State for Work and Pensions

**THE COURT EXAMINES THE EXTENT TO WHICH NATIONAL LEGISLATION
MAY MAKE ENTITLEMENT TO A JOBSSEEKER'S ALLOWANCE
CONDITIONAL ON A RESIDENCE REQUIREMENT**

If such a requirement is to be proportionate, the requisite period of residence must not exceed what is necessary in order to be satisfied that the person concerned is in fact genuinely seeking employment in the Member State in question.

Under United Kingdom law, in order to qualify for jobseeker's allowance a claimant without family to support must be habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland, or otherwise must be a worker for the purposes of a Community regulation adopted in 1968¹ or a person with a right to reside in the United Kingdom pursuant to a directive of that year.²

Brian Francis Collins, who was born in the United States, possesses dual American and Irish nationality. In 1980 and 1981 he resided in the United Kingdom for approximately 10 months, during which time he did part-time and casual work in pubs and bars and in sales. He returned to the United Kingdom on 31 May 1998 in order to find work there in the social services sector. On 8 June 1998 he claimed jobseeker's allowance, which was refused on the ground that he was not habitually resident in the United Kingdom.

Mr Collins appealed to the Social Security Commissioner who asked the Court of Justice whether Mr Collins could be considered to be a worker for the purposes of the 1968 regulation, whether he had a right to reside in the United Kingdom pursuant to the 1968

¹ Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community.

² Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families.

directive, and whether the residence requirement for jobseeker's allowance was consistent with Community law.

The Court finds first of all that Mr Collins' position in 1998 must be compared with that of any national of a Member State looking for his first job in another Member State.

Next, there is a distinction to be drawn between Member State nationals who are looking for their first job in the host Member State and those who are working, or have worked, there. People who are looking for their first job benefit from the principle of equal treatment only as regards access to employment, while those who have already entered the employment market may, on the basis of the 1968 regulation, claim the same social and tax advantages as national workers. Accordingly, a person in the circumstances of Mr Collins is **not a worker entitled to the same social and tax advantages as national workers**. The Court nevertheless observed that in certain provisions of the 1968 regulation the term 'worker' has a broader meaning. It therefore gave the Social Security Commissioner the task of determining in which sense the term 'worker' as referred to by the national legislation at issue is to be understood.

The Court then recalls that the EC Treaty grants nationals of a Member State seeking employment in another Member State a right of residence which may be limited in time. However, in accordance with the terms of the 1968 directive, the right of residence referred to in that directive is accorded only to nationals of a Member State who are already in employment in another Member State. Therefore, **Mr Collins does not have a right to reside in the United Kingdom solely on the basis of that directive**.

Finally, the Court states that nationals of a Member State seeking employment in another Member State fall within the scope of the Treaty provisions concerning freedom of movement for workers and enjoy the right laid down by those provisions to equal treatment. Given the introduction of citizenship of the Union, the right to equal treatment enjoyed by such Member State nationals also encompasses benefits of a financial nature such as jobseeker's allowance. Accordingly, a **citizen** who is seeking employment in another Member State **cannot be discriminated against** on grounds of nationality when he **claims such an allowance**.

The Court observes that the national legislation concerning jobseeker's allowance introduces a difference in treatment according to whether the person involved is habitually resident in the United Kingdom. Since that requirement is capable of being met more easily by United Kingdom nationals, the legislation places at a disadvantage nationals of other Member States who have exercised their right of movement. A residence requirement **can be justified** only if it is based on **objective considerations that are independent of the nationality** of the persons concerned and **proportionate to the legitimate aim** of the national provisions. Jobseeker's allowance is a social security benefit which requires in particular the claimant to be available for and actively seeking employment and not to have income exceeding the applicable amount or capital exceeding a specified amount. It may be regarded as legitimate for a Member State to grant such an allowance only after it has been possible to establish that a genuine link exists between the person seeking work and the employment market of that State. The existence of such a link may be determined by establishing that the person concerned has, for a reasonable period, in fact genuinely sought employment in the Member State in question. However, if the period of residence required is to be proportionate, it must not exceed what is necessary in order for the national authorities to be able to satisfy

themselves that the person concerned is genuinely seeking employment in the Member State in question.

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Available languages: English, French, German.

The full text of the judgment can be found on the internet (www.curia.eu.int).

In principle it will be available from midday CET on the day of delivery.

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