

Press and Information Division

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Opinion of Advocate General Ruiz-Jarabo in Case C-138/02

*Collins and Secretary of State for Work and Pensions*

**THE ADVOCATE GENERAL CONCLUDES THAT COMMUNITY LAW AS IT STANDS DOES NOT REQUIRE PAYMENT OF A SOCIAL SECURITY BENEFIT TO A UNION CITIZEN WHO SEEKS WORK IN A MEMBER STATE IN WHICH HE HAS NO ROOTS AND WITH WHOSE EMPLOYMENT MARKET HE HAS NO CONNECTION**

*Advocate General Ruiz-Jarabo is of the view that the condition as to residence for the granting of the income-based jobseekers' allowance may be justified in order to prevent "benefit tourism" and other abuses*

Mr Collins was born in 1957 in the United States and holds dual Irish and American nationality. As part of his studies, he spent one semester in the United Kingdom, where he returned in 1980 and in which he spent approximately 10 months doing casual and part-time work in pubs, bars and shops. He then returned to the United States.

On 31 May 1998 he returned to the United Kingdom with the intention of seeking work. Eight days later he claimed income-based jobseekers' allowance, which was refused because he was not habitually resident in the United Kingdom.

Mr Collins appealed to the United Kingdom courts which now refer a number of questions to the Court of Justice on the freedom of movement for workers and the principles of Community law applicable in the circumstances of the claimant, in particular, rights of European citizenship.

**Advocate General Ruiz-Jarabo is delivering his Opinion in this case today.**

**Opinions of the Advocates General are not binding on the Court. It is the function of the Advocates General, acting in complete independence, to propose a legal solution in cases before the Court.**

Advocate General Ruiz-Jarabo begins by recalling that Community law confers on the citizens of the Union the right to take up any employment offered in any Member State under the same conditions as its own nationals. On the other hand, it requires that a citizen have the status of "worker" before he can be entitled in another Member State to the same social and tax advantages as its nationals. According to the Court of Justice, any person who pursues activities which are not marginal but are effective and genuine must be regarded as a worker.

When Mr Collins claimed the jobseekers' allowance, he was not pursuing any activity which allowed him to be classified as a worker in order to enjoy the same social and tax advantages as United Kingdom nationals.

None the less, the Advocate General points out that the provisions of the EC Treaty relating to freedom of movement for workers have been given a broad interpretation by the Court of Justice. Mr Collins had the right to reside in the United Kingdom for at least 6 months as a national of one Member State (Ireland) actively seeking employment in another (United Kingdom).

Mr Ruiz-Jarabo turns, next, to the question of **citizenship of the Union**, in particular, the **right to move and reside freely in the territory of the Member States** as it has been interpreted by the Court to date. He examines whether under the EC Treaty unemployed persons seeking work in a Member State with whose employment market they have no connection are entitled to an income-based benefit. In his view, the United Kingdom legislation setting a condition as to habitual residence for the payment of the benefit constitutes, in principle, indirect discrimination on grounds of nationality, since it is easier for United Kingdom citizens to fulfil that requirement.

However, in the present case, Mr Ruiz-Jarabo takes the view that **a condition as to residence** which makes it possible to **ascertain the degree of connection with the State and the links** which the claimant has **with the domestic employment market**, may be justified in order to avoid "**benefit tourism**" (movement of persons with the purpose of taking advantage of non-contributory benefits) and prevent **abuses**.

Consequently, **Community law as it now stands does not require that an income-based social security benefit be provided to a citizen of the Union who seeks work in a Member State with whose employment market he lacks any connection or link.**

*NB: The judges of the Court of Justice of the European Communities will now begin their deliberations in this case. Judgment will be given at a later date*

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*Languages available: English, French and Spanish*

*For the full text of the Opinion please see our website*

*[www.curia.eu.int](http://www.curia.eu.int)*

*at approximately 3 o'clock today.*

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