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Court of Justice of the European Union

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Advocate General's Opinion in Case C-333/13
Elisabeta Dano and Florin Dano v Jobcenter Leipzig

According to Advocate General Wathelet, Germany may refuse, on the basis of a general criterion that demonstrates the absence of a genuine link with the host Member State, nationals of other Member States 'social security benefits for jobseekers who are in need of assistance'

Germany may thus exclude from such benefits persons who come to Germany solely in order to seek employment or obtain social assistance

In Germany, jobseekers who are in need of assistance may apply for 'basic provision' in order, inter alia, to meet their subsistence needs.¹ The benefits granted thereunder are intended to enable recipients to lead a life in keeping with human dignity and are intended to cover basic subsistence needs, additional needs and accommodation and heating needs. However, persons who go to Germany solely in order to obtain those benefits or seek employment are, under German law, excluded from entitlement to those benefits. The objective of that exclusion is to prevent unreasonable recourse to German social security benefits.

The Sozialgericht Leipzig (Social Court, Leipzig) wishes to know whether EU law precludes such an exclusion. That court must resolve a dispute between Ms Dano and her infant son, both Romanian nationals, and Jobcenter Leipzig (a competent local authority). Relying on the exclusion provided for under German law, Jobcenter Leipzig refused to allocate the basic provision benefits to these two people.² For several years, Ms Dano and her son (who was born in Germany) have been living in Leipzig in the apartment of one of Ms Dano's sisters, who provides them with food and lodging. Ms Dano has no professional qualifications and up until now has not pursued, any professional activity, either in Germany or Romania. It appears that she did not enter Germany in order to look for work, nor is actively seeking work in that country.

In today's Opinion, Advocate General Melchior Wathelet takes the view that EU law³ does not preclude nationals of other Member States being refused, on the basis of a general criterion, entitlement to a 'special non-contributory cash benefit' (such as the German basic provision benefits for jobseekers who are in need of assistance⁴), provided that the criterion adopted (for

¹ Book II of the German Social Security Code (Sozialgesetzbuch Zweites Buch, SGB II). The basic provision benefits provided for in the SGB II also include benefits relating to integration into employment, but those benefits are not the subject-matter of the present proceedings. Alongside that scheme for jobseekers, a social assistance scheme in the narrow sense, in SGB XII, provides for an exclusion similar to that at issue in the *Dano* case.

² However, in respect of her son, Ms Dano receives child benefit ('Kindergeld') from the German authorities of €184 per month and an advance on maintenance payments of €133 per month.

³ Specifically, (i) 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), as amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009 (OJ 2009 L 284, p. 43), and (ii) 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, and corrigenda OJ 2004 L 229, p. 35, OJ 2005 L 30, p. 27 and OJ 2005 L 197, p. 34).

⁴ According to the Advocate General, those benefits, which result from the amalgamation of two previous schemes (namely, unemployment assistance and social assistance), constitute special non-contributory cash benefits within the meaning of Regulation No 883/2004 and are, on that basis, subject to observance of the principle of equal treatment. However, they also constitute social assistance benefits within the meaning of Directive 2004/38, so that nationals of the

example, the reason for the applicant's entering the territory of the Member State) is capable of demonstrating the absence of a genuine link with the host Member State and is thereby intended to prevent an unreasonable burden falling on the national social assistance system.

The Advocate General recalls that EU law⁵ authorises EU citizens and their family members to reside in a Member State other than that of which they are nationals for a period of three months, as long as they do not become an unreasonable burden on the social assistance system of the host Member State. Where such persons wish to remain for more than three months, they must have sufficient resources in order not to become a burden on the social assistance system of the host Member State. It necessarily follows that there may be unequal treatment in respect of the granting of social assistance benefits between nationals of the host Member State and other EU citizens. According to Advocate General Wathelet, legislation which excludes from basic provision benefits people who come to Germany solely in order to benefit from the German social assistance scheme, rather than seeking to integrate themselves into the labour market, is consistent with the EU legislature's intention. Such exclusion serves to prevent persons who exercise their freedom of movement with no intention of integration becoming a burden on the social assistance system. It is also consistent with the latitude granted to the Member States in that regard. In other words, it helps to prevent abuse and a certain form of 'benefit tourism'.

The Advocate General observes, in addition, that the criterion adopted by Germany (namely, where the sole reason for entering German territory is to seek employment or obtain social assistance) is capable of demonstrating the absence of a genuine link with the territory of the host Member State and a failure to integrate that State. That criterion helps to ensure the economic viability of the scheme without jeopardising its financial equilibrium. The German legislation therefore pursues a legitimate objective, as the Court of Justice requires. Moreover, the Advocate General takes the view that the criterion chosen appears to be proportionate to the objective pursued. In order to determine whether the applicant falls within the exclusion in question and must accordingly be refused the grant of the basic provision benefits, the German authorities are required to examine the applicant's personal situation.

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 EU law or the validity of a European Union act. The Court of Justice does not decide the 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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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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host Member State and EU citizens who have exercised their freedom of movement and of residence may, in some circumstances, be the subject of unequal treatment.

⁵ Specifically, Directive 2004/38, cited in footnote 3.