



Press and Information

Court of Justice of the European Union  
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Judgment in Case C-333/13  
Elisabeta Dano, Florin Dano v Jobcenter Leipzig

## **Economically inactive EU citizens who go to another Member State solely in order to obtain social assistance may be excluded from certain social benefits**

In Germany, foreign nationals who enter national territory in order to obtain social assistance or whose right of residence arises solely out of the search for employment are excluded from benefits by way of basic provision ('Grundsicherung'), which are intended in particular to cover the recipients' subsistence costs.

Two Romanian nationals, Ms Dano and her son Florin, have brought proceedings before the Social Court, Leipzig (Germany), against Jobcenter Leipzig, which refused to grant them benefits by way of basic provision.<sup>1</sup> Ms Dano did not enter Germany in order to seek work there and, although she is requesting benefits by way of basic provision which are only for jobseekers, it is apparent from the case-file that she is not seeking employment. She has not been trained in a profession and, to date, has not worked in Germany or Romania. She and her son have been residing since at least November 2010 in Germany, where they live in the home of Ms Dano's sister, who provides for them. Ms Dano receives, for her son, child benefit amounting to €184 per month and an advance on maintenance payments of €133 per month. Those benefits are not at issue in the present case.

In response to the questions asked by the Social Court, Leipzig, the Court of Justice has held in today's judgment that, for the purpose of having access to certain social benefits (such as German benefits by way of basic provision), nationals of other Member States can claim equal treatment with nationals of the host Member State only if their residence complies with the conditions of the Directive on free movement of EU citizens.<sup>2</sup>

The Court of Justice points out that, under the directive, the host Member State is not obliged to grant social assistance during **the first three months of residence**.

Where the period of **residence is longer than three months but less than five years** (the period which is at issue in the present case), one of the conditions which the directive lays down for a right of residence is that economically inactive persons **must have sufficient resources of their own**. The directive thus seeks to prevent economically inactive Union citizens from using the host Member State's welfare system to fund their means of subsistence. A Member State must therefore have the possibility of refusing to grant social benefits to economically inactive Union citizens who exercise their right to freedom of movement solely in order to obtain another Member State's social assistance although they do not have sufficient resources to claim a right of residence; in this connection, each individual case must be examined without taking account of the social benefits claimed. Accordingly, the Court decides that the Directive on free movement of EU

<sup>1</sup> They are, for Ms Dano, subsistence benefit ('existenzsichernde Regelleistung') and, for her son, social allowance ('Sozialgeld'), as well as a contribution to accommodation and heating costs.

<sup>2</sup> 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).

citizens and the regulation on the coordination of social security systems<sup>3</sup> do not preclude domestic legislation which excludes nationals of other Member States from entitlement to certain 'special non-contributory cash benefits',<sup>4</sup> although they are granted to nationals of the host Member State who are in the same situation, in so far as those nationals of other Member States do not have a right of residence under the directive in the host Member State.

Finally, the Court points out that the regulation on the coordination of social security systems does not govern the conditions for the grant of special non-contributory cash benefits. As that competence lies with national legislatures, they also have competence to define the extent of the social cover provided by that type of benefit. Consequently, when the Member States lay down the conditions for the grant of special non-contributory cash benefits and the extent of such benefits, they are not implementing EU law, and the Charter of Fundamental Rights of the EU is therefore not applicable.

So far as concerns Ms Dano and her son, the Court observes that they do not have sufficient resources and thus cannot claim a right of residence in Germany under the Directive on free movement of EU citizens. Therefore, they cannot invoke the principle of non-discrimination laid down by the directive and by the regulation on the coordination of social security systems.

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**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 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 judgment is published on the CURIA website on the day of delivery.

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<sup>3</sup> 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 at 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). This regulation does not apply to social assistance (it is to be noted that this concept is narrower than the concept in the 'Union citizens' directive). However, the regulation applies partially to 'special non-contributory cash benefits', which have characteristics of both social security and social assistance and are financed exclusively by general taxation. In the present judgment, the Court explains that the principle of equal treatment laid down by the regulation applies to those benefits.

<sup>4</sup> For Germany, the regulation specifies in particular benefits to cover subsistence costs under the basic provision for jobseekers. The Social Court, Leipzig, classified the benefits at issue as 'special non-contributory cash benefits'.