



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 101/15

Luxembourg, 15 September 2015

Judgment in Case C-67/14

Jobcenter Berlin Neukölln v Nazifa, Sonita, Valentina and Valentino Alimanovic

A Member State may exclude Union citizens who go to that State to find work from certain non-contributory social security benefits

Foreigners who go to Germany to obtain social assistance or whose right of residence arises solely out of a search for employment are excluded from entitlement to German benefits by way of basic provision ('Grundsicherung').¹ In the judgment in *Dano*,² the Court of Justice recently held that such exclusion is lawful in the case of Member State nationals who go to another Member State with no intention of finding employment there.

In the present case, the Federal Social Court (Bundessozialgericht, Germany) seeks to ascertain whether such an exclusion is also lawful concerning Union citizens who have gone to a host Member State to search for employment and have already worked for a period in that State, where those benefits are granted to nationals of the host Member State who are in the same situation.

This question has arisen in proceedings between the Jobcenter Berlin Neukölln and four Swedish nationals: Ms Alimanovic, born in Bosnia, and her three children Sonita, Valentina and Valentino, born in Germany in 1994, 1998 and 1999 respectively. The Alimanovic family left Germany in 1999 for Sweden and returned to Germany in June 2010. Following their return, Nazifa Alimanovic and her eldest daughter Sonita worked in several temporary jobs lasting less than a year. Since then they have not been engaged in any occupational activity. The Alimanovic family was subsequently, during the period from 1 December 2011 to 31 May 2012, paid benefits by way of basic provision, namely subsistence allowances for the long-term unemployed ('Arbeitslosengeld II') payable to Nazifa Alimanovic and her daughter Sonita and social allowances for beneficiaries unfit to work for the children Valentina and Valentino. In 2012, the competent authority (Jobcenter Berlin Neukölln) finally ceased payment of the benefits; taking the view that Ms Alimanovic and her eldest daughter were excluded from entitlement to the allowances concerned as foreign jobseekers whose right of residence arose solely out of the search for employment. Consequently, that authority also excluded the other children from entitlement to the allowances pertaining to them.

In response to the questions referred by the German court, the Court has held, in its judgment delivered today, that denying Union citizens whose right of residence in the territory of a host Member State arises solely out of the search for employment entitlement to certain 'special non-contributory cash benefits',³ which also constitute 'social assistance',⁴ **does not contravene the principle of equal treatment.**⁵

¹ Those benefits are intended in particular to cover the subsistence costs of the recipients.

² Case [C-333/13](#) *Dano*, see also Press Release No [146/14](#).

³ Those benefits are defined in 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). In respect of Germany, the Regulation refers inter alia to benefits to cover subsistence costs under the basic provision for jobseekers. The Federal Social Court has classified the benefits at issue as 'special non-contributory cash benefits'.

⁴ Within the meaning of the 'Free Movement of Citizens' Directive (Directive 2004/38/EC).

⁵ That principle is laid down in the EU Treaties and specified in Article 4 of Regulation No 883/2004 and Article 24 of Directive 2004/38.

The Court notes that the benefits at issue, even if they form part of a scheme which also provides for benefits to facilitate the search for employment, are intended to cover subsistence costs for persons who cannot cover those costs themselves and are not financed through contributions, but through tax revenue. It points out that, as in *Dano*, those benefits are to be regarded as 'social assistance'.

In this connection, the Court recalls that in order to obtain social assistance such as that at issue in the main proceedings, an EU citizen can claim equal treatment with nationals of the host Member State only if his residence in the territory of the host Member State complies with the conditions of the 'Free Movement of Citizens' Directive.⁶

The Court notes that there are two possibilities for the purposes of granting a right of residence to job-seekers such as those in the present case:

Where an EU citizen who has enjoyed a right of residence as a worker is in **involuntary unemployment after having worked for less than a year** and has registered as a **job-seeker** with the relevant employment office, he **retains the status of worker and the right of residence for no less than six months**. During that period, he can rely on the principle of equal treatment and is entitled to social assistance.

Where an EU citizen **has not yet worked** in the host Member State or where **the period of six months has elapsed**, a job-seeker cannot be expelled from that Member State for as long as he can provide evidence that he is continuing to seek employment and that he has a genuine chance of being engaged. **However**, in this case the **host Member State may refuse to grant any social assistance**.

Lastly, the Court points out that a Member State must take account of the individual situation of the person concerned before it adopts an expulsion measure or finds that the residence of that person is placing an unreasonable burden on its social assistance system.⁷ Nevertheless, it observes that **no such individual assessment is necessary** in circumstances such as those at issue in the main proceedings, since **the gradual system as regards the retention of the status of 'worker'** provided for in the 'Free Movement of Citizens' Directive (a system which seeks to safeguard the right of residence and access to social assistance) **itself takes into consideration** various factors characterising **the individual situation** of the applicant for social assistance. Furthermore it states that the issue of whether payment of social security benefits constitutes an 'unreasonable burden' for a Member State is to be assessed after accumulating all the individual claims submitted.

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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⁶ 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) .

⁷ Case [C-140/12](#) Brey.