



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 114/15**

Luxembourg, 6 October 2015

Advocate General's Opinion in Case C-308/14  
Commission v United Kingdom

## **Advocate General Cruz Villalón proposes that the Court should dismiss the Commission's action against the United Kingdom concerning allowances for children**

*Checking whether claimants are lawfully resident in the host Member State in accordance with EU law when claims for certain social benefits are dealt with is justified by the necessity of protecting that State's public finances*

Regulation No 883/2004 on the coordination of social security systems<sup>1</sup> lays down a series of common principles to be observed by the legislation of the Member States in this sphere. Those principles guarantee that persons exercising their freedom of movement and of residence within the EU will not be adversely treated by the various national systems because they have exercised that right. One of those common principles is the principle of equality. In the particular ambit of social security, it takes the form of prohibiting discrimination on grounds of nationality.

The Commission received many complaints from nationals of other Member States resident in the United Kingdom, stating that the competent UK authorities had refused their claims for certain social benefits because they had no right of residence in that State. The Commission has brought an action against the UK for failure to fulfil obligations on the grounds that the legislation of that Member State was incompatible with the provisions of Regulation No 883/2004, inasmuch as it required checking whether applicants for certain social benefits, including child benefit and child tax credit,<sup>2</sup> which are the subject-matter of this case, are lawfully resident in its territory. The Commission takes the view that that condition is discriminatory and contrary to the spirit of that regulation, which takes into consideration only the claimant's habitual residence.

In response to those arguments, the United Kingdom, relying on the judgment in *Brey*,<sup>3</sup> maintains that the host State may lawfully make the grant of social security benefits to EU citizens conditional upon them meeting the requirements for obtaining a right of residence in its territory, which are laid down in Directive 2004/38.<sup>4</sup> On the other hand, the UK, although acknowledging that it is easier for UK nationals, who as a matter of principle enjoy the right to reside in that Member State, to fulfil the conditions giving entitlement to the social benefits in question in this case, claims that its national system is not discriminatory and that the condition of a right of residence is, at all events, a proportionate measure for ensuring that the benefits are paid to persons sufficiently integrated in the United Kingdom.

In his Opinion today, **Advocate General Pedro Cruz Villalón proposes that the Court of Justice should dismiss the Commission's action.**

<sup>1</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 (OJ 2004 L 166, p.1).

<sup>2</sup> Child benefit and child tax credit are cash benefits funded from general taxation and not from the beneficiaries' contributions, their purpose being to assist with covering family expenses. For the grant of those two benefits, the UK legislation requires the claimant 'to be in the United Kingdom'. That requirement is fulfilled only if the claimant (a) is physically in the United Kingdom, (b) has his habitual residence in the United Kingdom and (c) has a right of residence in the United Kingdom.

<sup>3</sup> Case: [C-140/12](#).

<sup>4</sup> Directive of the European Parliament 2004/38/CE 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).

In his view, the benefits concerned are undoubtedly social security benefits for the purposes of Regulation No 883/2004. Specifically, they are family benefits automatically granted to persons fulfilling certain objective conditions, without any individual or discretionary assessment of personal needs, and are intended to meet family expenses.

It is his opinion that **the UK legislation does not impose any condition additional to that of habitual residence, but rather examines the lawfulness of that residence under EU law** (specifically, Directive 2004/38) **in connection with the grant of specific social benefits**, and does so independently of Regulation 883/2004.

The Commission insists that, even if it were accepted that the test of lawful residence could be independent of the habitual residence test, the UK has at all events infringed that regulation, for it believes that that test, carried out when claims for social security benefits are dealt with, is discriminatory because it imposes a requirement applicable to non-nationals only.

Advocate General Cruz Villalón observes that **the right of EU citizens to move and reside freely within the territory of the Member States is subject to the limitations and conditions laid down in EU law**. Some of those conditions and limitations are laid down in Directive 2004/38. So, contrary to the Commission's assertion that residence for the purposes of Regulation No 883/2004 is subject to no legal conditions, **the provisions of Directive 2004/38 governing freedom of movement and residence are fully effective within the framework of the regulation**. That approach is borne out by the Court's case-law, which has traditionally associated entitlement to social benefits on an equal basis with nationals of the host Member State with the requirement that the claimant must be 'legally' resident in the territory of that State.<sup>5</sup> Advocate General Cruz Villalón consequently considers that **Regulation No 883/2004 requires a Member State to grant social benefits such as those at issue only to an EU citizen who is exercising his right to free movement and residence in its territory lawfully, that is to say, in compliance with the requirements of Directive 2004/38**.

The Advocate General acknowledges that there is a difference in the treatment of UK nationals and non-UK citizens of the EU, for it is the latter who will to a greater degree suffer the inconvenience of undergoing the process of having the lawfulness of their residence checked by the UK authorities. In Advocate General Cruz Villalón's view, although this unequal treatment may be considered to be **indirect discrimination, it is justified by the necessity of protecting the host Member State's public finances**, as argued by the UK. He adds that **that process is the means whereby the host Member State is able to satisfy itself that it is not granting those social benefits to persons to whom it is not obliged to grant them because they do not meet the conditions laid down in Directive 2004/38**.

Although the Commission's action has not challenged the way in which the process of checking in the UK is carried out, **Advocate General Cruz Villalón states that in any case it has not demonstrated that the UK is failing to comply with the conditions as to substance and form that must be satisfied by that process of checking**, noting in particular on this head that such checks are made only in doubtful cases and not on the basis of a presumption that claimants are unlawfully present in the territory of that Member State.

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**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.

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<sup>5</sup> Cases: [C-85/96](#) Martínez Sala; see Press Release No. [32/98](#), [C-184/99](#) Grzelczyk; see Press Release No. [41/01](#), [C-209/03](#) Bidar see Press Release No. [25/05](#), [C-456/02](#) Trojani, [C-140/12](#) Brey and [C-333/13](#) Dano; see Press Release No. [146/14](#).

**NOTE:** An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice may, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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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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