



According to Advocate General Cruz Villalón, a condition requiring beneficiaries of subsidiary protection to reside in a particular place constitutes a restriction of freedom of movement within a Member State

Such a restriction is permissible only in specific situations in which serious considerations of immigration and integration policy apply, and cannot be justified on the basis that the burden of social assistance should be distributed across national territory

An EU Directive¹ provides that Member States must allow freedom of movement within their territory to beneficiaries of international protection – persons who have been granted refugee status or subsidiary protection status² – under the same conditions and restrictions as those provided for other third-country nationals legally resident in their territories.

Under the German rules concerned, if beneficiaries of international protection are in receipt of social security benefits, a permit granted under international law or on humanitarian or political grounds is issued subject to a condition requiring residence to be taken up in a particular place. The rules state that the condition concerned is an appropriate means of ensuring that social assistance granted to foreign recipients does not place a disproportionate budgetary burden on individual *Länder* and municipalities. The rules also seek, with the aim of facilitating integration, to prevent the concentration of welfare-dependent foreign nationals in specific areas, which could create problems of social segregation with negative effects for integration.

Mr Alo and Ms Osso are Syrian nationals who travelled to Germany where they applied for asylum. Although their applications were unsuccessful, they were awarded social security benefits at the time the applications were made. They were subsequently granted the status of beneficiaries of subsidiary protection and were thus issued with residence permits which contained conditions about the place in which they had to reside. They both challenged those restrictions. The case has come before the Bundesverwaltungsgericht (German Federal Administrative Court), which has some doubts about whether the residence condition in question is compatible with the Directive.

The German rules under consideration impose the restriction on third country nationals who have been granted residence under international law or on humanitarian or political grounds and who are in receipt of social security benefits. Thus, both beneficiaries of subsidiary protection and refugees are concerned. However, the Bundesverwaltungsgericht held in 2008 that a place of residence condition such as that at issue cannot be applied to persons whose status as refugees has been recognised if the condition is justified solely by the need to ensure an appropriate territorial distribution of public spending costs on social assistance. The Bundesverwaltungsgericht has doubts about whether the same reasoning may be applied in the case of beneficiaries of

¹ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011 L 337, p. 9).

² The expression 'person eligible for subsidiary protection' refers to a third-country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm, and who is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.

subsidiary protection. It adds that a place of residence condition of this kind might be justified on grounds of migration and integration policy – even where refugees are concerned – but that, in its view, the competent authorities must state specifically why they are imposing that restriction and that it is thus not sufficient merely to allude to those grounds in the abstract.

In his Opinion delivered today, Advocate General Pedro Cruz Villalón takes the view that the concept of ‘freedom of movement’ in the Directive includes both freedom to travel and freedom to choose the place of residence. He reaches that conclusion on the basis of a literal, schematic, purposive and historical interpretation of that concept. Since the key element of freedom of residence is the right to be at liberty to choose the place in which to live, it is clear that the obligation to take up residence in a specific place constitutes a restriction of freedom of movement, regardless of whether the beneficiary of international protection can move freely throughout the Member State concerned and remain there.

As regards the two aims expressly stated in the German rules as justification for the place of residence condition – avoiding a disproportionate budgetary burden for certain *Länder* and municipalities and preventing social segregation and its negative consequences for integration – the Advocate General states that they are in themselves legitimate objectives. However, it must be determined whether the difference in treatment, on the one hand, between refugees and beneficiaries of subsidiary protection and, on the other, between beneficiaries of international protection and other third country nationals is proportionate in relation to those objectives.

In the first case, the Advocate General considers that **it is contrary to the requirements of the principle of proportionality for refugees and beneficiaries of subsidiary protection – who are both in receipt of social benefits – to be treated differently by imposing on the latter a place of residence condition which is justified by the objective of distributing the burden of social assistance across national territory.** The Advocate General observes that, since it is possible to envisage the creation of mechanisms for redistribution and the offsetting of budgetary imbalances across national territory, it is not unreasonable to assume that measures exist which are less restrictive of the right to freedom of movement. Nor has it been shown to what extent a correct balance in distributing the burden of social assistance may be achieved if the place of residence condition is imposed, on this ground, on beneficiaries of subsidiary protection but not on refugees. The Advocate General also points out that it was the express intention of the EU legislature to establish a uniform status for both categories of person. **The place of residence condition based on the justification described is therefore contrary to the Directive.**

As regards the justification based on immigration or integration policy considerations, Advocate General Cruz Villalón takes the view that a place of residence condition is compatible with the Directive only if those considerations are sufficiently serious and are linked to concrete situations. Although the condition in question may be appropriate for achieving immigration or integration policy objectives, given the likely difficulty of preventing the concentration of beneficiaries of international protection by means of less restrictive measures, the German court will have to examine the viability of other measures, such as dispersal policies in relation to access to accommodation. In any event, **abstract grounds connected with immigration and integration considerations are not sufficient**; rather the restriction must be based on solid grounds linked to specific immigration and integration considerations (for example, cases of obvious social tension entailing possible disruptions of public order as a result of the concentration of large numbers of beneficiaries of international protection in receipt of social assistance). It is also necessary to take account of the duration and territorial scope of the place of residence condition. In addition, **the national legal order, considered as a whole, must not limit the scope of that condition exclusively to beneficiaries of international protection.**

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 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 Opinion is published on the CURIA website on the day of delivery.

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