



Press and Information

Court of Justice of the European Union

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Judgment in Case C-449/16

Kerly Del Rosario Martinez Silva v Istituto nazionale della previdenza sociale (INPS) and Comune di Genova

A national of a non-EU country holding a single work permit in a Member State enjoys, as a general rule, the social security benefits provided for nationals of that State

Mrs Kerly Del Rosario Martinez Silva, a national of a non-EU country, lives in Italy with her three minor children. She holds a single work permit valid for longer than six months. In 2014 she applied to INPS (National Social Security Institution, Italy) for a benefit provided for by Italian law for households with at least three minor children and with income below a certain limit (€25 384.91 in 2014). Her claim was refused on the grounds that, in the case of nationals of non-EU countries, Italian law does not allow that benefit to be granted to holders of a single work permit, but only to political refugees, persons with subsidiary protection status, and holders of a long-term residence permit. Mrs Martinez Silva does not satisfy those conditions.

The Tribunale di Genova (District Court, Genoa, Italy), before which Mrs Martinez Silva brought proceedings at first instance, dismissed her action. Since it doubted the compatibility of the Italian rules with EU law, the Corte d'appello di Genova (Court of Appeal, Genoa, Italy), hearing her appeal, asked the Court of Justice to interpret the directive on the single residence and work permit for non-EU workers.¹

By today's judgment the Court finds, first, that the benefit claimed by Mrs Martinez Silva is a social security benefit which is among the family benefits referred to by the EU regulation on the coordination of social security systems.²

The Court therefore examines, next, whether a Member State such as Italy can exclude nationals of a non-EU country holding a single work permit from such a benefit. The Court observes that it follows from the directive that nationals of non-EU countries who have been admitted to a Member State for the purpose of work in accordance with EU or national law must in particular enjoy equal treatment with nationals of that State. That is the case of a national of a non-EU country holding a single work permit, since that permit allows that person to reside lawfully in the territory of the Member State which has issued it, in order to work there.

The Court points out that **the right to equal treatment is the general rule** and that the directive lists the derogations³ from that right which the Member States have the option of establishing. However, the provisions of the Italian legislation cannot be regarded as establishing those derogations.

¹ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (OJ 2011 L 343, p. 1).

² 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 OJ 2004 L 200, 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).

³ These are derogations from the principle of equal treatment which the Member States may decide to introduce on the basis of Article 12(2)(b) of Directive 2011/98, relating inter alia to family benefits, with respect to (1) nationals of non-EU countries who have been authorised to work in the territory of a Member State for a period not exceeding six months, (2) nationals of non-EU countries who have been admitted for the purpose of study, and (3) nationals of non-EU countries who are allowed to work on the basis of a visa.

It follows that the directive precludes national legislation under which a national of a non-EU country holding a single work permit cannot receive a social security benefit such as the family benefit claimed by Mrs Martinez Silva.

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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