

Joined Cases C-22/08 and C-23/08

Athanasios Vatsouras and Josif Koupatantze

v

Arbeitsgemeinschaft (ARGE) Nürnberg 900

(Reference for a preliminary ruling
from the Sozialgericht Nürnberg)

(European citizenship — Free movement of persons — Articles 12 EC and 39 EC — Directive 2004/38/EC — Article 24(2) — Assessment of validity — Nationals of a Member State — Professional activity in another Member State — Level of remuneration and duration of the activity — Retention of the status of ‘worker’ — Right to receive benefits in favour of job-seekers)

Opinion of Advocate General Ruiz-Jarabo Colomer delivered on 12 March 2009 I - 4588
Judgment of the Court (Third Chamber), 4 June 2009 I - 4609

Summary of the Judgment

1. *Freedom of movement for persons — Workers — Concept — Existence of an employment relationship — Real and genuine activity*
(Art. 39 EC)
2. *Citizens of the European Union — Right of free movement and residence in the territory of the Member States — Directive 2004/38 — Derogation from the principle of equal treatment of Union citizens*
(Art. 39(2) EC; European Parliament and Council Directive 2004/38, Art. 24(2))

3. *Community law — Principles — Equal treatment — Discrimination on grounds of nationality — Prohibition — Scope*
(Art. 12 EC)

1. Notwithstanding the limited amount of the remuneration and the short duration of a professional activity, such as brief minor professional activity which is insufficient to ensure its holder a livelihood and which has lasted barely more than one month, the possibility cannot be ruled out that that professional activity, following an overall assessment of the employment relationship, may be considered by the national authorities as real and genuine, thereby allowing its holder to be granted the status of ‘worker’ within the meaning of Article 39 EC.

tion of another person in return for which he receives remuneration.

(see paras 25, 26, 30)

2. With respect to the rights of nationals of Member States seeking employment in another Member State, the derogation to the principle of equal treatment enjoyed by Union citizens other than workers, self-employed persons, persons who retain such status and members of their families who reside within the territory of the host Member State provided for in Article 24(2) of Directive 2004/38 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 No 1612/68 and repealing Directives 64/221, 68/360, 72/194, 73/148, 75/34, 75/35, 90/364, 90/365 and 93/96, according to which the host Member State is not obliged to confer entitlement to social assistance, in particular on job-seekers during the longest period during which they have the right to reside there must be interpreted in accordance with Article 39(2) EC.

In that regard, the concept of ‘worker’ within the meaning of Article 39 EC has a specific Community meaning and must not be interpreted narrowly. Any person who pursues activities which are real and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, must be regarded as a ‘worker’. The essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direc-

In that regard, nationals of the Member States seeking employment in another Member State who have established real links with the labour market of that State can rely on Article 39(2) EC in order to receive a benefit of a financial nature intended to facilitate access to the labour market. It is for the competent national authorities and, where appropriate, the national courts not only to establish the existence of a real link with the labour market, but also to assess the constituent elements of that benefit, in particular its purposes and the conditions subject to which it is granted. The objective of the benefit must be analysed according to its results and not according to its formal structure. Thus, benefits of a financial nature which, independently of their status under national law, are intended to facilitate access to the labour market cannot be regarded as constituting 'social assistance' within the meaning of Article 24(2) of Directive 2004/38.

(see paras 34, 35, 40-42, 44-46, operative part 1)

3. Article 12 EC does not preclude national rules which exclude nationals of Member States of the European Union from receipt of social assistance benefits which are granted to nationals of non-member countries.

The first paragraph of Article 12 EC prohibits, within the scope of application of the EC Treaty and without prejudice to any provisions contained therein, any discrimination on grounds of nationality. That provision concerns situations coming within the scope of Community law in which a national of one Member State suffers discriminatory treatment in relation to nationals of another Member State solely on the basis of his nationality and is not intended to apply to cases of a possible difference in treatment between nationals of Member States and those of third countries.

(see paras 51-53, operative part 2)