



Reports of Cases

Case C-67/14

Jobcenter Berlin Neukölln
v
Nazifa Alimanovic and Others

(Request for a preliminary ruling from the
Bundessozialgericht)

(Reference for a preliminary ruling — Freedom of movement for persons — Citizenship of the Union — Equal treatment — Directive 2004/38/EC — Article 24(2) — Social assistance — Regulation (EC) No 883/2004 — Articles 4 and 70 — Special non-contributory cash benefits — Member State nationals who are job-seekers and resident in a different Member State — Excluded — Retention of the status of ‘worker’)

Summary — Judgment of the Court (Grand Chamber), 15 September 2015

1. *Social security — Migrant workers — Directive 2004/38 — Social assistance — Concept — Special non-contributory cash benefits covered by Article 70(2) of Regulation No 883/2004 — Included*

(European Parliament and Council Regulation No 883/2004, Art. 70(2); European Parliament and Council Directive 2004/38, Art. 24(2))

2. *Citizenship of the Union — Right to move and reside freely in the territory of the Member States — Directive 2004/38 — Principle of equal treatment — Obligation on the host Member State to grant entitlement to social assistance to nationals of other Member States not exercising an economic activity — Conditions — Residence in the territory of the host Member State complying with the conditions of the Directive*

(European Parliament and Council Directive 2004/38, Recital 10 and Art. 24(1))

3. *Citizenship of the Union — Right to move and reside freely in the territory of the Member States — Directive 2004/38 — Principle of equal treatment — National legislation under which nationals of other Member States seeking employment are excluded from entitlement to certain special non-contributory cash benefits — Benefits granted to nationals of the host Member State who are in the same situation — Lawfulness*

(European Parliament and Council Regulation No 883/2004, Arts 4 and 70(2); European Parliament and Council Directive 2004/38, Arts 14(1) and (4)(b) and 24)

1. See the text of the decision.

(see paras 43, 44)

2. See the text of the decision.

(see paras 49, 50)

3. Article 24 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 and Article 4 of Regulation No 883/2004 on the coordination of social security systems, as amended by Regulation No 1244/2010, must be interpreted as not precluding legislation of a Member State under which nationals of other Member States who are in a situation such as that referred to in Article 14(4)(b) of that directive are excluded from entitlement to certain 'special non-contributory cash benefits' within the meaning of Article 70(2) of Regulation No 883/2004, which also constitute 'social assistance' within the meaning of Article 24(2) of Directive 2004/38, although those benefits are granted to nationals of the Member State concerned who are in the same situation.

It follows from the express reference in Article 24(2) of Directive 2004/38 to Article 14(4)(b) thereof that the host Member State may refuse to grant any social assistance to a Union citizen whose right of residence is based solely on that latter provision.

Although Directive 2004/38 requires a Member State to 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, no such individual assessment is necessary in the case of an EU citizen who has entered the territory of the host Member State in order to seek employment there, given that Directive 2004/38, establishing a gradual system as regards the retention of the status of 'worker' which seeks to safeguard the right of residence and access to social assistance, itself takes into consideration various factors characterising the individual situation of each applicant for social assistance and, in particular, the duration of the exercise of any economic activity.

Moreover, since the individual assessment concerns an overall appraisal of the burden which the grant of a specific benefit would place on the national system of social assistance as a whole, the assistance awarded to a single applicant can scarcely be described as an 'unreasonable burden' for a Member State, within the meaning of Article 14(1) of Directive 2004/38. However, while an individual claim might not place the Member State concerned under an unreasonable burden, the accumulation of all the individual claims which would be submitted to it would be bound to do so.

(see paras 58-60, 62, 63, operative part)