



## Reports of Cases

Case C-411/20

S  
v

**Familienkasse Niedersachsen-Bremen der Bundesagentur für Arbeit**

(Request for a preliminary ruling from the Finanzgericht Bremen)

**Judgment of the Court (Grand Chamber), 1 August 2022**

(Reference for a preliminary ruling – Citizenship of the Union – Freedom of movement of persons – Equal treatment – Directive 2004/38/EC – Article 24(1) and (2) – Social security benefits – Regulation (EC) No 883/2004 – Article 4 – Family benefits – Exclusion of nationals of other Member States who are economically inactive during the first three months of residence in the host Member State)

- 1. Social security – Family benefits – Concept – Family benefits granted automatically following objective criteria regardless of any individual assessment of the beneficiaries' personal needs and are intended to meet family expenses – Included (European Parliament and Council Regulation No 883/2004, Arts 1(z) and 3(1)(j))*  
(see paragraph 34)
- 2. Social security – Migrant workers – Legislation applicable – Economically inactive national of a Member State residing legally in the territory of another Member State – Application of the legislation of the Member State of residence – Concept of residence (European Parliament and Council Regulation No 883/2004, Arts 1(j) and 11(3)(e))*  
(see paragraphs 36, 37)
- 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 – 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 Regulation 2004/38, Art. 24(1))*  
(see paragraphs 41, 42)

4. *Social security – Migrant workers – Directive 2004/38 – Social assistance – Concept – Family benefits granted independent of the individual needs of the beneficiary and are not intended to cover his or her means of subsistence – Precluded (European Parliament and Council Regulation No 883/2004, Arts 1(z), 3(1)(j); European Parliament and Council Directive 2004/38, Art. 24(2))*

(see paragraphs 45-48)

5. *Social security – Migrant workers – Equal treatment – National legislation excluding entitlement to family benefits of nationals from other Member States who are economically inactive during the first three months of residence in the host Member State – Not permissible – Direct discrimination – Justification – Derogation from the principle of equal treatment of Union citizens in relation to social assistance – Irrelevant (European Parliament and Council Regulation No 883/2004, Arts 4 and 11(3)(e); European Parliament and Council Directive 2004/38, Arts 6(1), 14(1) and 24(2))*

(see paragraphs 49-55, 58-61, 65, 67-69, operative part)

6. *Social security – Migrant workers – Equal treatment – Possibility for a Union citizen who is economically inactive to claim in the host Member State the application of the principle of equal treatment – Condition – Establishment of his or her habitual residence during the period concerned and receipt of a residence permit in that Member State – Concept of habitual residence (European Parliament and Council Regulations No 883/2004, Art. 4, and No 987/2009 Art. 11(1) and (2); European Parliament and Council Directive 2004/38, Arts 6(1) and 14(1))*

(see paragraphs 70-72)

## **Résumé**

S and members of her family are Union citizens originating in a Member State other than the Federal Republic of Germany. In October 2019, S applied for family benefits for her children in Germany for the period from August to October 2019. The Family Allowances Fund to which the case was referred<sup>1</sup> found that, on 19 August 2019, S and her family had entered Germany from their Member State of origin and had taken up their residence there. However, since S had not received national income during the three months after taking up residence in Germany, she did not meet the conditions laid down by national law<sup>2</sup> for entitlement to the benefit claimed. The Family Allowances Fund therefore refused S's application.

S brought an action before the referring court<sup>3</sup> requesting that that refusal be annulled.

<sup>1</sup> Familienkasse Niedersachsen-Bremen der Bundesagentur für Arbeit (Lower Saxony and Bremen Family Allowances Fund of the Federal Employment Agency, Germany).

<sup>2</sup> Paragraph 62(1a) of the Einkommensteuergesetz (Law on Income Tax), as amended by the Gesetz gegen illegale Beschäftigung und Sozialleistungsmissbrauch (Law against illegal work and abuse of social benefits, BGBl. 2019 I, p. 1066).

<sup>3</sup> In the present case, the Finanzgericht Bremen (Finance Court, Bremen, Germany).

The referring court observes that the provision of German law on which that refusal is based treats a national of another Member State who establishes his or her habitual residence in Germany differently from a German national who establishes his or her habitual residence in Germany following a period of residence in another Member State. Pursuant to that provision, nationals of another Member State, such as S, are refused entitlement to family benefits during the first three months of their residence where they do not provide proof that they were in gainful employment in Germany. In contrast, German nationals are entitled to such benefits as from those first three months even where they are not in gainful employment.

The referring court has referred a question to the Court of Justice for a preliminary ruling as to whether that difference in treatment is compatible with EU law.

In its judgment, the Court, sitting as the Grand Chamber, held that national legislation such as that at issue in the main proceedings is contrary to the principle of equal treatment laid down by Regulation No 883/2004.<sup>4</sup> It adds that the possibility of derogating from the principle, on the basis of Article 24(2) of Directive 2004/38,<sup>5</sup> concerns only social assistance and is not applicable to such legislation.

### *Findings of the Court*

As a preliminary point, the Court notes that Union citizens have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than to hold a valid identity card or passport,<sup>6</sup> that right being maintained as long as Union citizens and their family members do not become an unreasonable burden on the social assistance system of the host Member State.<sup>7</sup> Therefore, a Union citizen, even economically inactive, has, if he or she complies with those two conditions, a right of residence of three months in a Member State of which he or she is not a national.

That said, the Court examines whether, where he or she is lawfully resident in the territory of the host Member State,<sup>8</sup> an economically inactive Union citizen may rely, for the purposes of the grant of family benefits, on the principle of equal treatment with nationals of the host Member State who are economically inactive, who return to that Member State after having made use of their right to move and reside in another Member State.

To that end, it determines, in the first place, the scope of Article 24(2) of Directive 2004/38, which allows derogation from the principle of equal treatment and the refusal to grant social assistance to nationals of other Member States who are economically inactive during the first three months of their residence in the host Member State.

<sup>4</sup> Article 4 of 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, corrigendum OJ 2004 L 200, p. 1).

<sup>5</sup> Directive 2004/38/EC of the European Parliament 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, and corrigendum OJ 2005 L 197, p. 34).

<sup>6</sup> Article 6(1) of Directive 2004/38.

<sup>7</sup> Article 14(1) of Directive 2004/38.

<sup>8</sup> Under Article 6(1) of Directive 2004/38, read in conjunction with Article 14(1) thereof.

As the family benefits at issue are granted independently of the individual needs of the beneficiary and are not intended to cover his or her means of subsistence, they do not fall within the scope of 'social assistance' within the meaning of that provision.

The Court adds that that provision cannot be interpreted, as regards the grant of benefits other than 'social assistance', as allowing the host Member State to derogate from the equality of treatment which must in principle be enjoyed by Union citizens lawfully residing on its territory.

As a derogation from the principle of equal treatment laid down in Article 18 TFEU, of which Article 24(1) of Directive 2004/38 is a specific expression, Article 24(2) must be interpreted strictly and in accordance with the provisions of the Treaty. There is nothing in the wording or regulatory context of the latter provision to suggest that, by that provision, the EU legislature intended to allow the host Member State to derogate from the principle of equal treatment in respect of benefits other than social assistance.

In the second place, the Court determines the scope of Article 4 of Regulation No 883/2004.

According to that regulation,<sup>9</sup> a Union citizen who is economically inactive and has transferred his or her habitual residence to the host Member State is subject to the legislation of that Member State, namely, in the present case, Germany, as regards the grant of family benefits. The competence of Germany to determine, in its legislation, the conditions for the grant of those benefits, must however be exercised in compliance with EU law.

In that regard, in accordance with Article 4 of Regulation No 883/2004, persons to whom that regulation applies are to enjoy the same social security benefits and are subject to the same obligations under the legislation of the host Member State as the nationals thereof. No provision of that regulation allows the host Member State of a national of another Member State lawfully residing in its territory to apply, on the ground that that citizen is economically inactive, a difference in treatment between that citizen and its own nationals as regards the conditions for the grant of family benefits. A Union citizen lawfully residing in the territory of a Member State other than that of which he or she is a national and having established his or her habitual residence there may therefore rely, in the host Member State, on the principle of equal treatment, laid down in Article 4 of Regulation No 883/2004, for the purpose of obtaining family benefits under the same conditions as those laid down for nationals of that Member State.

In the present case, the Court finds that national legislation such as that at issue constitutes direct discrimination of such a Union citizen. In the absence of any derogation expressly provided for in Regulation No 883/2004, such discrimination cannot be justified.

It must, however, be stated that a Union citizen, who is economically inactive and who claims, in the host Member State, the application of the principle of equal treatment as regards the conditions for the grant of family benefits, must have, during the first three months during which he or she receives, in that Member State, a residence permit in accordance with Directive 2004/38,<sup>10</sup> established his or her habitual residence in that Member State and does not reside there temporarily. The concept of 'residence', within the meaning of Regulation No 883/2004, means the 'actual' residence.<sup>11</sup> As for the concept of 'habitual residence', it reflects a question of fact

<sup>9</sup> Article 11(3)(e) of Regulation No 883/2004.

<sup>10</sup> Under Article 6(1) of Directive 2004/38, read in conjunction with Article 14(1) thereof.

<sup>11</sup> Article 11(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (OJ 2009 L 284, p. 1).

submitted for assessment by the national court in the light of all the particular circumstances of the case. In that regard, the condition that an economically inactive Union citizen must have transferred his or her habitual residence to the host Member State implies that he or she has shown that his or her presence demonstrates a sufficient degree of stability, which distinguishes it from temporary residence.