Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

20 December 2017*

(Reference for a preliminary ruling — Directive 2004/38/EC — Person no longer working in a self-employed capacity — Retention of the status of self-employed person — Right of residence — Legislation of a Member State restricting eligibility for a jobseeker's allowance to persons who have a right of residence on the territory of that Member State)

In Case C-442/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Court of Appeal (Ireland), made by decision of 29 July 2016, received at the Court on 8 August 2016, in the proceedings

Florea Gusa

v

Minister for Social Protection,

Ireland,

Attorney General,

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça, President of the Chamber, A. Tizzano (Rapporteur), Vice-President of the Court, E. Levits, A. Borg Barthet and M. Berger, Judges,

Advocate General: M. Wathelet,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 14 June 2017,

after considering the observations submitted on behalf of:

– Mr Gusa, by V. Nahoi, advocate, M. Flanagan BL and D. Shortall BL,

– the Minister for Social Protection, Ireland and the Attorney General, by A. Morrissey, E. Creedon and E. McKenna, acting as Agents, and by D. Dodd BL and S. Woulfe SC,

– the Czech Government, by M. Smolek, J. Pavliš and J. Vláčil, acting as Agents,

– the Danish Government, by J. Nymann-Lindegren, M.N. Lyshøj and C. Thorning, acting as Agents,

* Language of the case: English.

– the German Government, by J. Möller, acting as Agent,

– the French Government, by D. Colas and R. Coesme, acting as Agents,

– the Hungarian Government, by M.Z. Fehér and E.E. Sebestyén, acting as Agents,

– the United Kingdom Government, by S. Brandon, T. Buley and C. Crane, acting as Agents, and by D. Blundell, Barrister,

– the European Commission, by E. Montaguti and J. Tomkin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 July 2017,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 7 and 14 of 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 corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34), and of 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, 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) ('Regulation No 883/2004').

2 The request has been made in proceedings between (1) Mr Florea Gusa and (2) the Minister for Social Protection (Ireland), Ireland and the Attorney General concerning the refusal to provide Mr Gusa with a jobseeker's allowance.

Legal context

EU law

Directive 2004/38

3 Recitals 3 and 4 of Directive 2004/38 state:

'(3) ... It is ... necessary to codify and review the existing Community instruments dealing separately with workers, self-employed persons, as well as students and other inactive persons in order to simplify and strengthen the right of free movement and residence of all Union citizens.

(4) With a view to remedying this sector-by-sector, piecemeal approach to the right of free movement and residence and facilitating the exercise of this right, there needs to be a single legislative act to amend Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community [(OJ, English Special Edition 1968 (II), p. 475), as amended by Council Regulation (EEC) No 2434/92 of 27 July 1992 (OJ 1992 L 245, p. 1)] and to repeal the following acts: Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their

families [(OJ, English Special Edition 1968 (II), p. 485)], Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services [(OJ 1973 L 172, p. 14)], Council Directive 90/364/EEC of 28 June 1990 on the right of residence [(OJ 1990 L 180, p. 26)], Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity [(OJ 1990 L 180, p. 28)] and Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students [(OJ 1993 L 317, p. 59)].'

4 Article 1 of that directive provides:

'This Directive lays down:

(a) the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members;

...'

5 Article 7 of that directive, entitled 'Right of residence for more than three months', provides in paragraphs 1 and 3:

'1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:

(a) are workers or self-employed persons in the host Member State; or

(b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State; or

(c) - are enrolled at a private or public establishment ... for the principal purpose of following a course of study, including vocational training; and
- have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority ... that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence;...

3. For the purposes of paragraph 1(a), a Union citizen who is no longer a worker or self-employed person shall retain the status of worker or self-employed person in the following circumstances:

...

(b) he/she is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a jobseeker with the relevant employment office;

...'

6 Article 14 of the directive, entitled 'Retention of the right of residence', provides in paragraph 4:

'... without prejudice to the provisions of Chapter VI, an expulsion measure may in no case be adopted against Union citizens ... if:

...

(b) the Union citizens entered the territory of the host Member State in order to seek employment. In this case, the Union citizens ... may not be expelled for as long as [they] can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged.'

Regulation No 883/2004

7 Article 3(1) and (3) of Regulation No 883/2004 provides:

'1. This Regulation shall apply to all legislation concerning the following branches of social security:

...

(h) unemployment benefits;

...

3. This Regulation shall also apply to the special non-contributory cash benefits covered by Article 70.'

8 Article 4 of this regulation, entitled 'Equality of treatment', provides:

'Unless otherwise provided for by this Regulation, persons to whom this Regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals thereof.'

9 Article 70 of Regulation No 883/2004, in Chapter 9, entitled 'Special non-contributory cash benefits', of Title III of that regulation, is worded as follows:

'1. This Article shall apply to special non-contributory cash benefits which are provided under legislation which, because of its personal scope, objectives and/or conditions for entitlement, has characteristics both of the social security legislation referred to in Article 3(1) and of social assistance.

2. For the purposes of this Chapter, "special non-contributory cash benefits" means those which:

(a) are intended to provide ...:
   (i) supplementary, substitute or ancillary cover against the risks covered by the branches of social security referred to in Article 3(1), and which guarantee the persons concerned a minimum subsistence income having regard to the economic and social situation in the Member State concerned;

   ...

   and

(b) where the financing exclusively derives from compulsory taxation intended to cover general public expenditure and the conditions for providing and for calculating the benefits are not dependent on any contribution in respect of the beneficiary. ...

   and

(c) are listed in Annex X.

...

4. The benefits referred to in paragraph 2 shall be provided exclusively in the Member State in which the persons concerned reside, in accordance with its legislation. ...'

10 Annex X to that regulation, which lists the special non-contributory cash benefits referred to in Article 70(2) thereof, includes, in respect of Ireland, 'jobseekers' allowance (Social Welfare Consolidation Act 2005, Part 3, Chapter 2)'.

Irish law

11 Section 139 of the Social Welfare Consolidation Act 2005 (as amended) ('the 2005 Act') provides, amongst a list of social assistance payments, for a jobseeker's allowance.

12 In accordance with section 141(1) and (9) of the 2005 Act, the grant of that allowance is subject to a means test and is conditional upon the person concerned being habitually resident in Ireland at the date of the making of the application for the allowance.

13 Section 246(5) of the 2005 Act provides that:

'... a person who does not have a right to reside in the State shall not, for the purposes of this Act, be regarded as being habitually resident in the State.'

14 Section 246(6) of the 2005 Act lists the persons who are, for the purpose of subsection (5), to be taken to have a right to reside in Ireland. These include Irish citizens and persons who have a right to enter and reside in Ireland under the European Communities (Free Movement of Persons) (No. 2) Regulations 2006 ('the 2006 Regulations'), which transpose Directive 2004/38 into Irish law.

15 Regulation 6(2) of the 2006 Regulations provides:

'(a) Subject to Regulation 20, a Union citizen may reside in the State for a period longer than 3 months if he or she –
(i) is in employment or is self-employed in the State,

...

(c) Subject to Regulation 20, a person to whom subparagraph (a)(i) applies may remain in the State on cessation of the activity referred to in that subparagraph if –

...
(ii) he or she is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a jobseeker with a relevant office of the Department of Social and Family Affairs and FÁS [(Training and Employment Authority, Ireland)],

...'

The dispute in the main proceedings and the questions referred for a preliminary ruling

16 Mr Gusa, a Romanian national, entered the territory of Ireland in October 2007. During the first year of his residence in that Member State, he was supported by his adult children who also resided there. From October 2008 until October 2012, he worked as a self-employed plasterer and, on that basis, paid his taxes in Ireland, as well as pay related social insurance and other levies on his income.

17 He ceased working in October 2012, claiming an absence of work caused by the economic downturn, and registered as a jobseeker with the relevant Irish authorities. He then had no more income, as his children had left Ireland and were no longer supporting him financially.

18 In November 2012, he applied for a jobseeker's allowance on the basis of the 2005 Act.

19 The application was, however, refused by a decision of 22 November 2012 on the ground that Mr Gusa had not demonstrated that he still had a right to reside in Ireland at that date. According to the decision, on cessation of his self-employment as a plasterer, Mr Gusa no longer satisfied the conditions for such entitlement laid down in Regulation 6(2) of the 2006 Regulations, which transposes Article 7 of Directive 2004/38 into Irish law.

20 Following an unsuccessful internal administrative appeal against that decision, Mr Gusa challenged it before the High Court (Ireland), claiming in particular that, although he had ceased to work in a self-employed capacity, he had retained the status of self-employed person and a right to reside in Ireland pursuant to Article 7 of Directive 2004/38. By a judgment of 17 October 2013, the High Court dismissed the action brought before it. Mr Gusa appealed against that judgment to the Supreme Court (Ireland), which transferred the appeal to the referring court.

21 As a preliminary point, the referring court notes that Mr Gusa does not contend that he has sufficient resources to support himself or that he has comprehensive sickness insurance cover and, therefore, does not claim to have a right to reside in Ireland pursuant to Article 7(1)(b) of Directive 2004/38. Nor does he claim to have acquired a right of permanent residence in Ireland in November 2012.

22 However, the referring court queries, first of all, whether, despite having ceased to work as a self-employed plasterer, Mr Gusa must be considered to have retained the status of self-employed person on the basis of Article 7(3)(b) of that directive or of another provision of EU law, so that he would continue to have a right of residence in Ireland under Article 7(1)(a) of that directive. In particular, the referring court asks, in essence, whether Article 7(3)(b) covers only persons who are involuntarily unemployed after having worked as an employee for more than one year, or whether that provision applies also to persons who are in a comparable situation after having been self-employed for that period.

23 Next, if Mr Gusa must be considered to have lost the status of self-employed person, the referring court asks, in essence, whether he must nevertheless be acknowledged as having a right of residence in Ireland under another provision of EU law, notwithstanding the fact that he has neither sufficient resources nor comprehensive sickness insurance cover.

24 Last, in the event of a negative answer, the referring court queries whether the refusal to grant Mr Gusa a jobseeker's allowance under the 2005 Act on the ground of his failure to establish such a right to reside is contrary to EU law, in particular Article 4 of Regulation No 883/2004, given that that allowance is a 'special non-contributory cash benefit' within the meaning of Article 70 of that regulation.

25 In those circumstances, the Court of Appeal (Ireland) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Does an EU citizen who (i) is a national of another Member State; (ii) has lawfully resided in and worked as a self-employed person in a host Member State for approximately four years; (iii) has ceased his work or economic activity by reason of absence of work and (iv) has registered as a jobseeker with the relevant employment office retain the status of self-employed person pursuant to Article 7(1)(a) whether pursuant to Article 7(3)(b) of Directive 2004/38 or otherwise?

2. If not, does he retain the right to reside in the host Member State not having satisfied the criteria in Article 7(1)(b) or (c) of Directive 2004/38 or is he only protected from expulsion pursuant to Article 14(4)(b) of Directive 2004/38?

3. If not, in relation to such a person is a refusal of a jobseeker's allowance (which is a non-contributory special benefit within the meaning of Article 70 of Regulation No 883/2004) by reason of a failure to establish a right to reside in the host Member State compatible with EU law, and in particular Article 4 of Regulation No 883/2004?'

Consideration of the questions referred

The first question

26 By its first question, the referring court asks, in essence, whether Article 7(3)(b) of Directive 2004/38 must be interpreted as meaning that a national of a Member State retains the status of self-employed person for the purposes of Article 7(1)(a) of that directive where, after having lawfully resided in and worked as a self-employed person in another Member State for approximately four years, that national has ceased that activity, because of an absence of work owing to reasons beyond his control, and has registered as a jobseeker with the relevant employment office of the latter Member State.

27 Under Article 7(1)(a) of Directive 2004/38, all Union citizens who are workers or self-employed persons in the host Member State have a right of residence for a period of longer than three months on the territory of that Member State. Article 7(3) of the directive provides that, for the purposes of Article 7(1)(a), a Union citizen who is no longer a worker or self-employed person is nevertheless to retain the status of worker or self-employed person in four cases.

28 Those cases include that referred to in Article 7(3)(b) of Directive 2004/38, in which the EU citizen concerned 'is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a jobseeker with the relevant employment office'.

29 The referring court states in that regard that, in the present case, it is not in dispute that Mr Gusa registered as a jobseeker with the relevant employment office for the purposes of Article 7(3)(b) of Directive 2004/38. However, the referring court notes, in essence, that it could be inferred from the wording of point (b) that that provision applies only to persons who are in duly recorded involuntary unemployment after having worked as employed persons for more than one year, and excludes those who, like Mr Gusa, are in an equivalent position after having worked as self-employed persons for that period.

30 However, that interpretation cannot be inferred unequivocally from the wording of that provision.

31 In particular, contrary to the submissions of the respondents in the main proceedings and the United Kingdom Government, the expression 'involuntary unemployment' may, depending on the context in which it is used, refer to a situation of inactivity due to the involuntary loss of employment following, for example, a dismissal, as well as, more broadly, to a situation in which the occupational activity, whether on an employed or self-employed basis, has ceased due to an absence of work for reasons beyond the control of the person concerned, such as an economic recession.

32 Furthermore, as regards the words 'after having been employed', used notably in the English-language version and in the French-language version ('*après avoir été employé*') of Article 7(3)(b) of Directive 2004/38 and which, as the respondents in the main proceedings in particular have pointed out, did not appear in the initial or amended proposals for a directive submitted by the European Commission (Proposal for a European Parliament and Council Directive on the right of citizens of the Union and

their family members to move and reside freely within the territory of the Member States (OJ 2001 C 270 E, p. 150), and Amended proposal for a Directive of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2003) 199 final), it is true that those words could be read as referring to previous work as an employee.

33 However, as the Advocate General noted, in essence, in points 48 and 49 of his Opinion, other language versions of that provision, which are formulated in more neutral terms, do not support that interpretation. In particular, the Greek-language version uses the expression '*επαγγελματική δραστηριότητα*', thus referring to the pursuit of an 'occupational activity', the Italian-language version uses the words '*aver esercitato un'attività*', referring to the pursuit of an activity, and the Latvian-language version contains the words '*ir bijis(-usi) nodarbināts(-a)*', referring in general terms to persons who have 'worked'.

34 According to the settled case-law of the Court, the wording used in one language version of a provision of EU law cannot serve as the sole basis for the interpretation of that provision or be made to override the other language versions. Provisions of EU law must be interpreted and applied uniformly in the light of the versions established in all the languages of the European Union. Where there is divergence between the various versions, the provision in question must be interpreted by reference to the general scheme and the purpose of the rules of which it forms part (judgment of 1 March 2016, *Alo and Osso*, C-443/14 and C-444/14, EU:C:2016:127, paragraph 27 and the case-law cited).

35 As regards the general scheme of Directive 2004/38, it should be noted that, as Article 1(a) thereof provides, the purpose of the directive is to define, inter alia, the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens.

36 To that end, Article 7(1) of the directive distinguishes, in particular, the situation of economically active citizens from that of inactive citizens and students. That provision does not, however, draw a distinction, within the first category, between citizens working as employed persons and those working as self-employed persons in the host Member State.

37 Thus, as set out in paragraph 27 of the present judgment, Article 7(1)(a) of Directive 2004/38 confers a right of residence on all Union citizens who have the status of 'workers or self-employed persons'. Similarly, Article 7(3) of that directive refers, in its introductory sentence, to Union citizens who, although no longer 'worker[s] or self-employed person[s]', are to retain the status of 'worker or self-employed person' for the purposes of Article 7(1)(a).

38 Since, as is apparent from paragraphs 30 to 34 of the present judgment, it cannot be inferred from the wording of Article 7(3)(b) that point (b) covers only the situation of persons who have ceased to work as employed persons and excludes those who have ceased to work as self-employed persons, point (b) must be read, in the light of the general scheme of Directive 2004/38 and, in particular, the introductory sentence of that provision and Article 7(1)(a) of that directive, as applying to both categories of persons.

39 That interpretation is supported by analysis of the objectives of that directive and, specifically, Article 7(3)(b) thereof.

40 First, it is apparent from recitals 3 and 4 of Directive 2004/38 that, with a view to strengthening the fundamental and individual right of all Union citizens to move and reside freely within the territory of the Member States and to facilitating the exercise of that right, the aim of the directive is to remedy the sector-by-sector, piecemeal approach which characterised the instruments of EU law which

preceded that directive and which dealt separately, in particular, with workers and self-employed persons, by providing a single legislative act codifying and revising those instruments (see, to that effect, judgment of 19 June 2014, *Saint Prix*, C-507/12, EU:C:2014:2007, paragraph 25).

41 To interpret Article 7(3)(b) of that directive as covering only persons who have worked as employed persons for more than one year and excluding those who have worked as self-employed persons for that period would run counter to that purpose.

42 Second, such an interpretation would introduce an unjustified difference in the treatment of those two categories of persons given the objective of that provision, which is to safeguard, by the retention of the status of worker, the right of residence of persons who have ceased their occupational activity because of an absence of work due to circumstances beyond their control.

43 Just as an employed worker may involuntarily lose his job following, for example, his dismissal, a person who has been self-employed may find himself obliged to stop working. That person might thus be in a vulnerable position comparable to that of an employed worker who has been dismissed. In those circumstances, there would be no justification for that person being ineligible for the same protection, as regards retention of his right of residence, as that afforded to a person who has ceased to be employed.

44 Such a difference in treatment would be particularly unjustified in so far as it would lead to a person who has been self-employed for more than one year in the host Member State, and who has contributed to that Member State's social security and tax system by paying taxes, rates and other charges on his income, being treated in the same way as a first-time jobseeker in that Member State who has never carried on an economic activity in that State and has never contributed to that system.

45 It follows from all of the foregoing that a person who has ceased to work in a self-employed capacity, because of an absence of work owing to reasons beyond his control, after having carried on that activity for more than one year, is, like a person who has involuntarily lost his job after being employed for that period, eligible for the protection afforded by Article 7(3)(b) of Directive 2004/38. As set out in that provision, that cessation of activity must be duly recorded.

46 Accordingly, the answer to the first question is that Article 7(3)(b) of Directive 2004/38 must be interpreted as meaning that a national of a Member State retains the status of self-employed person for the purposes of Article 7(1)(a) of that directive where, after having lawfully resided in and worked as a self-employed person in another Member State for approximately four years, that national has ceased that activity, because of a duly recorded absence of work owing to reasons beyond his control, and has registered as a jobseeker with the relevant employment office of the latter Member State.

The second and third questions

47 In view of the answer given to the first question, there is no need to answer the second and third questions.

Costs

48 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

Article 7(3)(b) of 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 must be interpreted as meaning that a national of a Member State retains the status of self-employed person for the purposes of Article 7(1)(a) of that directive where, after having lawfully resided in and worked as a self-employed person in another Member State for approximately four years, that national has ceased that activity, because of a duly recorded absence of work owing to reasons beyond his

control, and has registered as a jobseeker with the relevant employment office of the latter Member State.

Da Cruz Vilaça Tizzano Levits

Borg Barthet Berger

Delivered in open court in Luxembourg on 20 December 2017.

A. Calot Escobar
Registrar

J.L. da Cruz Vilaça
President of the Fifth Chamber