Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

25 February 2016 *

(Reference for a preliminary ruling — Freedom of movement of 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 — Exclusion of nationals of a Member State during the first three months of residence in the host Member State)

In Case C-299/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landessozialgericht Nordrhein-Westfalen (Higher Social Court, North Rhine-Westphalia, Germany), made by decision of 22 May 2014, received at the Court on 17 June 2014, in the proceedings

Vestische Arbeit Jobcenter Kreis Recklinghausen

v

Jovanna García-Nieto,

Joel Peña Cuevas,

Jovanlis Peña García,

Joel Luis Peña Cruz,

THE COURT (First Chamber),

composed of A. Tizzano, Vice-President of the Court, acting as President of the First Chamber, F. Biltgen, E. Levits, M. Berger (Rapporteur) and S. Rodin, Judges,

Advocate General: M. Wathelet,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 22 April 2015,

after considering the observations submitted on behalf of:

— Ms García-Nieto, Mr Peña Cuevas, Jovanlis Peña García and Joel Luis Peña Cruz, by M. Schmitz, Rechtsanwalt,

— the German Government, by T. Henze and J. Möller, acting as Agents,

* Language of the case: German.

— the French Government, by R. Coesme, acting as Agent,

— the Polish Government, by B. Majczyna, acting as Agent,

— the United Kingdom Government, by M. Holt, acting as Agent, and B. Kennelly, Barrister,

— the European Commission, by D. Martin, M. Kellerbauer and C. Tufvesson, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 4 June 2015,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 18 TFEU and Article 45(2) TFEU, of Articles 4 and 70 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 at OJ 2004 L 200, p. 1), as amended by Commission Regulation (EU) No 1244/2010 of 9 December 2010 (OJ 2010 L 338, p. 35) ('Regulation No 883/2004'), and of Article 24 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 at OJ 2004 L 229, p. 35 and OJ 2005 L 197, p. 34).

2 The request has been made in proceedings between the Vestische Arbeit Jobcenter Kreis Recklinghausen (Employment Centre for the district of Recklinghausen, 'the Employment Centre') and Mr Peña Cuevas and Ms García-Nieto and their daughter, Jovanlis Peña García, and Mr Peña Cuevas's son, Joel Luis Peña Cruz (together 'the Peña-García family'), concerning the refusal by that centre to grant benefits by way of basic provision ('Grundsicherung') provided for under German law.

Legal context

International law

3 Article 1 of the European Convention on Social and Medical Assistance, signed in Paris on 11 December 1953 by the members of the Council of Europe and in force since 1956 in Germany ('the Assistance Convention'), lays down a principle of non-discrimination in the following terms:

'Each of the Contracting Parties undertakes to ensure that nationals of the other Contracting Parties who are lawfully present in any part of its territory to which this Convention applies, and who are without sufficient resources, shall be entitled equally with its own nationals and on the same conditions to social and medical assistance … provided by the legislation in force from time to time in that part of its territory.'

4 Under Article 16(b) of the Assistance Convention, '[e]ach Contracting Party shall notify to the Secretary General of the Council of Europe any new law or regulation not already included in Annex I. At the time of making such notification a Contracting Party may make a reservation in

respect of the application of this new law or regulation to the nationals of other Contracting Parties.' The reservation issued by the German Government on 19 December 2011 pursuant to that provision is worded as follows:

'The Government of the Federal Republic of Germany does not undertake to grant to the nationals of the other Contracting Parties, equally and under the same conditions as to its own nationals, the benefits provided for in Book II of the Social Code — Basic Income Support for Jobseekers [(Sozialgesetzbuch Zweites Buch — Grundsicherung für Arbeitsuchende)], in the latest applicable version [("Book II of the Social Code")].'

5 That reservation was notified to the other parties to the Assistance Convention in accordance with Article 16(c) of that convention.

EU law

Regulation No 883/2004

6 Article 4 of Regulation No 883/2004, 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.'

7 Article 70 of that regulation, entitled 'General provision', is included under Title III, Chapter 9 thereof, on '[s]pecial non-contributory cash benefits'. That article provides:

'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 either:

(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; or

(ii) solely specific protection for the disabled, closely linked to the said person's social environment 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. However, benefits provided to supplement a contributory benefit shall not be considered to be contributory benefits for this reason alone,

and

(c) are listed in Annex X.

3. Article 7 and the other chapters of this Title shall not apply to the benefits referred to in paragraph 2 of this Article.

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. Such benefits shall be provided by and at the expense of the institution of the place of residence.'

8 Annex X to Regulation No 883/2004, entitled 'Special non-contributory cash benefits', specifies the following benefits as regards the Federal Republic of Germany:

'…

(b) Benefits to cover subsistence costs under the basic provision for jobseekers unless, with respect to these benefits, the eligibility requirements for a temporary supplement following receipt of unemployment benefit (Paragraph 24(1) of Book II of the Social Code) are fulfilled.'

Directive 2004/38

9 Recitals 10, 16 and 21 in the preamble to Directive 2004/38 state:

'(10) Persons exercising their right of residence should not, however, become an unreasonable burden on the social assistance system of the host Member State during an initial period of residence. …

…

(16) As long as the beneficiaries of the right of residence do not become an unreasonable burden on the social assistance scheme of the host Member State they should not be expelled. Therefore, an expulsion measure should not be the automatic consequence of recourse to the social assistance system. The host Member State should examine whether it is a case of temporary difficulties and take into account the duration of residence, the personal circumstances and the amount of aid granted in order to consider whether the beneficiary has become an unreasonable burden on its social assistance system and to proceed to his expulsion. In no case should an expulsion measure be adopted against workers, self-employed persons or jobseekers as defined by the Court of Justice save on grounds of public policy or public security.

…

(21) However, it should be left to the host Member State to decide whether it will grant social assistance during the first three months of residence, or for a longer period in the case of jobseekers, to Union citizens other than those who are workers or self-employed persons or who retain that status or their family members, or maintenance assistance for studies, including vocational training, prior to acquisition of the right of permanent residence, to these same persons.'

10 Article 6 of that directive, entitled 'Right of residence for up to three months', provides:

'1. Union citizens shall 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 the requirement to hold a valid identity card or passport.

2. The provisions of paragraph 1 shall also apply to family members in possession of a valid passport who are not nationals of a Member State, accompanying or joining the Union citizen.'

11 Under the heading ‘Right of residence for more than three months’, Article 7(1) of that directive provides:

‘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; ...

…’

12 Under Article 14 of that directive, entitled ‘Retention of the right of residence’:

‘1. Union citizens and their family members shall have the right of residence provided for in Article 6, as long as they do not become an unreasonable burden on the social assistance system of the host Member State.

2. Union citizens and their family members shall have the right of residence provided for in Articles 7, 12 and 13 as long as they meet the conditions set out therein.

In specific cases where there is a reasonable doubt as to whether a Union citizen or his/her family members satisfies the conditions set out in Articles 7, 12 and 13, Member States may verify if these conditions are fulfilled. This verification shall not be carried out systematically.

3. An expulsion measure shall not be the automatic consequence of a Union citizen’s or his or her family member’s recourse to the social assistance system of the host Member State.

4. By way of derogation from paragraphs 1 and 2 and without prejudice to the provisions of Chapter VI, an expulsion measure may in no case be adopted against Union citizens or their family members if:

(a) the Union citizens are workers or self-employed persons, or

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

13 Article 24 of Directive 2004/38, entitled ‘Equal treatment’, provides:

‘1. Subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence.

2. By way of derogation from paragraph 1, the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 14(4)(b), nor shall it be obliged, prior to acquisition of the right

of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families.'

German law

The Social Code

14 Paragraph 19a(1) of Book I of the Social Code (Sozialgesetzbuch Erstes Buch) sets out the two main types of benefit granted by way of basic provision for jobseekers as follows:

'Under the entitlement to basic provision for jobseekers, the following may be claimed:

1. benefits for integration into the labour market,

2. benefits to cover subsistence costs.'

15 Paragraph 1 of Book II of the Social Code, entitled 'Function and objective of basic provision for jobseekers', provides as follows, in subparagraphs 1 and 3:

'(1) Basic provision for jobseekers is intended to enable its beneficiaries to lead a life in keeping with human dignity.

…

(3) Basic provision for jobseekers encompasses benefits:

1. intended to bring to an end to or reduce the need for assistance, in particular by integration into the labour market, and

2. intended to cover subsistence costs.'

16 Paragraph 7 of Book II of the Social Code, entitled 'Beneficiaries', provides as follows in subparagraph 1:

'Benefits under this Book shall be received by persons:

1. who have attained the age of 15 years and have not yet reached the age limit referred to in Paragraph 7a,

2. who are fit for work,

3. who are in need of assistance, and

4. whose ordinary place of residence is in the Federal Republic of Germany (beneficiaries fit for work).

The following are excluded:

1. foreign nationals who are not workers or self-employed persons in the Federal Republic of Germany and do not enjoy the right of freedom of movement under Paragraph 2(3) of the Law on freedom of movement of Union citizens [(Freizügigkeitsgesetz/EU, "the Law on freedom of movement")], and their family members, for the first three months of their residence,

2. foreign nationals whose right of residence arises solely out of the search for employment, and their family members,

…

Point 1 of the second sentence shall not apply to foreign nationals residing in the Federal Republic of Germany who have been granted a residence permit under Chapter 2, Section 5, of the Law on residence [(Aufenthaltgesetz)]. Provisions of the law governing residence shall be unaffected.'

17 It follows from subparagraphs 2 and 3 of Paragraph 7 that minors unfit for work, living with beneficiaries fit for work and thus forming a 'community of need' with the latter, have a derivative right to the benefits provided for by Book II of the Social Code.

18 Paragraph 8(1) of Book II of the Social Code, entitled 'Fitness for work', is worded as follows:

'All persons who are not incapable for the foreseeable future, because of an illness or disability, of working for at least three hours per day under normal labour market conditions are fit for work.'

19 Paragraph 9(1) of Book II of the Social Code provides:

'All persons who cannot, or cannot sufficiently, cover their subsistence costs on the basis of the income or assets to be taken into consideration and who do not receive the necessary assistance from other persons, in particular from family members or providers of other social security benefits, are in need of assistance.'

20 Paragraph 20 of Book II of the Social Code contains additional provisions relating to basic subsistence needs. Paragraph 21 of Book II of the Social Code lays down rules on additional needs and Paragraph 22 of that code concerns accommodation and heating needs. Lastly, Paragraphs 28 to 30 of Book II of the Social Code deal with education and participation benefits.

21 Paragraph 1 of Book XII of the Social Code, which relates to social assistance, is worded as follows:

'The function of social assistance is to enable its beneficiaries to lead a life in keeping with human dignity. …'

22 Paragraph 21 of Book XII of the Social Code provides:

'Subsistence benefits shall not be paid to persons who are in principle entitled to benefits under Book II of the Social Code because they are fit for work or because of their family ties. …'

The Law on freedom of movement

23 The scope of the Law on freedom of movement, as applicable to the facts of the main proceedings, is laid down in Paragraph 1 of that law:

'This Law shall govern the entry and residence of nationals of other Member States of the European Union (Union citizens) and their family members.'

24 Paragraph 2 of that law provides, on the right of entry and residence:

'(1) Union citizens who are entitled to freedom of movement and their family members shall have the right to enter and reside in federal territory, subject to the provisions of this Law.

(2) The following are entitled to freedom of movement under EU law:

1. Union citizens who wish to reside in federal territory as workers or for the purpose of seeking employment or pursuing vocational training,

…

5. Union citizens who are not working, subject to the conditions laid down in Paragraph 4,

6. family members, subject to the conditions laid down in Paragraphs 3 and 4,

…

(3) For workers and self-employed persons, the right provided for in subparagraph 1 is without prejudice:

1. to temporary incapacity for work as the result of an illness or accident,

2. to involuntary unemployment confirmed by the relevant employment office or termination of self-employment owing to circumstances beyond the control of the self-employed person, after more than one year of work,

3. to vocational training where that training is linked to the previous employment; the two need not be linked where the Union citizen is involuntarily unemployed.

The right derived from subparagraph 1 shall be retained for a period of six months in the event of involuntary unemployment confirmed by the relevant employment office after a period of employment of less than one year.

…'

25 Paragraph 3 of the Law on freedom of movement, relating to family members, provides:

'(1) Family members of the Union citizens specified in Paragraph 2(2), points 1 to 5, shall enjoy the right under Paragraph 2(1) if they are accompanying or joining the Union citizen. For family members of the Union citizens specified in Paragraph 2(2), point 5, this shall apply subject to Paragraph 4.

(2) The following are family members:

1. the spouse and the descendants of the persons specified in Paragraph 2(2), points 1 to 5 and 7, or of their spouses, who are not yet 21 years old,

2. the relatives in the ascending line and descendants of the persons specified in Paragraph 2(2), points 1 to 5 and 7, or of their spouses, whom those persons or their spouses maintain.

…'

26 Paragraph 5 of the Law on freedom of movement, entitled 'Residence permits and certificate concerning the right of permanent residence', provides:

'(1) A certificate attesting the right of residence shall be issued automatically and immediately to Union citizens and to their family members holding the nationality of a Member State of the European Union and authorised to move freely within the territory of the Member States.

…

(3) The competent aliens office may require that the conditions for the right under Paragraph 2(1) be substantiated within three months following entry into federal territory. Information and evidence necessary for substantiation may be received by the competent registration authority at the time of registration with it. That authority shall forward the information and evidence to the competent aliens office. …

…'

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

27 All of the members of the Peña-García family are Spanish nationals. Ms García-Nieto and Mr Peña Cuevas lived together for a number of years as a couple in the same household in Spain and formed an economic unit, without being married and without having entered into a civil partnership, with their daughter, Jovanlis Peña García, and Mr Peña Cuevas's son, Joel Luis Peña Cruz, who is still a minor.

28 In April 2012, Ms García-Nieto entered Germany with her daughter Jovanlis and registered as a jobseeker on 1 June 2012. From 12 June 2012, she worked as a kitchen assistant, for which — from 1 July 2012 — she was compulsorily affiliated to German social security, and received a monthly net salary of EUR 600.

29 On 23 June 2012, Mr Peña Cuevas and his son joined Ms García-Nieto and Jovanlis. Until 1 November 2012, the Peña-García family resided with Ms García-Nieto's mother and the family's living expenses were met from Ms García-Nieto's income. In addition, from July 2012, Mr Peña Cuevas and Ms García-Nieto received child benefits for their children, Jovanlis and Joel Luis, who began attending school on 22 August 2012.

30 On 30 July 2012, the Peña-García family applied to the Employment Centre for subsistence benefits under Book II of the Social Code ('the benefits at issue'). The Employment Centre however refused to grant those benefits to Mr Peña Cuevas and his son for August and September 2012, although those benefits were granted with effect from October 2012.

31 The decision refusing the benefits given by the Employment Centre was based on point 1 of the second sentence of Paragraph 7(1) of Book II of the Social Code, on account of the fact that, at the time of the application, Mr Peña Cuevas and his son had resided in Germany for less than three months and that, moreover, Mr Peña Cuevas did not have the status of a worker or self-employed person. According to the Employment Centre, the exclusion from entitlement to the benefits at issue applied equally to Mr Peña Cuevas's son. Following the reservation issued by the German Government on 19 December 2011 with regard to the Assistance Convention, no rights could arise under the Assistance Convention.

32 The action brought by the Peña-García family against the Employment Centre's decision was upheld by the Sozialgericht Gelsenkirchen (Social Court, Gelsenkirchen), which rejected the grounds for exclusion relating to point 1 of the second sentence of Paragraph 7(1) of Book II of the Social Code for reasons relating to the scheme of the national legislation. The Employment Centre brought an appeal against that judgment before the Landessozialgericht Nordrhein-Westfalen (Higher Social Court, North Rhine-Westphalia).

33 The referring court expresses doubts as to the compatibility with EU law of the complete exclusion from entitlement to the benefits at issue in the situations referred to in point 1 of the second sentence of Paragraph 7(1) of Book II of the Social Code.

34 In those circumstances, the Landessozialgericht Nordrhein-Westfalen (Higher Social Court, North Rhine-Westphalia) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does the principle of equal treatment under Article 4 of Regulation No 883/2004 — with the exception of the clause in Article 70(4) thereof excluding the provision of benefits outside the Member State of residence — apply also to the special non-contributory cash benefits referred to in Article 70(1) and (2) of that regulation?

(2) If the first question is answered in the affirmative: may the principle of equal treatment laid down in Article 4 of Regulation No 883/2004 be limited by provisions of national legislation implementing Article 24(2) of Directive 2004/38 that do not in any circumstances allow access to those benefits for the first three months of their residence to Union citizens who are neither workers or self-employed persons in the Federal Republic of Germany nor entitled to exercise freedom of movement under Paragraph 2(3) of the Law on Freedom of Movement and, if so, to what extent may that principle be so limited?

(3) If the first question is answered in the negative: do the principles of non-discrimination enshrined in primary law — in particular by the combined provisions of Article 45(2) TFEU and Article 18 TFEU — preclude a provision of national legislation that does not in any circumstances allow the grant of a social benefit, intended to provide means of subsistence and to facilitate access to the labour market, in their first three months of residence to Union citizens who are neither workers or self-employed persons in the Federal Republic of Germany nor entitled to exercise freedom of movement under Paragraph 2(3) of the Law on Freedom of Movement, but who can demonstrate a genuine link to the host Member State and, in particular, to the labour market of that host Member State?'

35 By decision of 19 March 2015, the referring court decided that there was no need for the first question to be answered, since a substantially similar question had been referred in the case that gave rise to the judgment in *Dano* (C-333/13, EU:C:2014:2358) and the Court had answered in the affirmative, holding that 'Regulation No 883/2004 [had to] be interpreted as meaning that "special non-contributory cash benefits" as referred to in Articles 3(3) and 70 of the regulation fall within the scope of Article 4 of the regulation'.

Consideration of the questions referred

The second question

36 By its second question, the referring court asks, in essence, whether Article 24 of Directive 2004/38 and Article 4 of Regulation No 883/2004 must be interpreted as 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 6(1) 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.

37 As a preliminary point, it should be recalled that, in the judgment in *Alimanovic* (C-67/14, EU:C:2015:597, paragraphs 44 to 46), the Court held that benefits such as the benefits at issue cannot be considered to be benefits of a financial nature which are intended to facilitate access to the labour market of a Member State, but must be regarded as 'social assistance' within the meaning of Article 24(2) of Directive 2004/38.

38 As regards access to such benefits, a Union citizen can claim equal treatment with nationals of the host Member State under Article 24(1) of Directive 2004/38 only if his residence in the territory of the host Member State complies with the conditions of Directive 2004/38 (judgments in *Dano*, C-333/13, EU:C:2014:2358, paragraph 69, and *Alimanovic*, C-67/14, EU:C:2015:597, paragraph 49).

39 To accept that persons who do not have a right of residence under Directive 2004/38 may claim entitlement to social assistance under the same conditions as those applicable to nationals of the host Member State would run counter to an objective of the directive, set out in recital 10 in its preamble, namely preventing Union citizens who are nationals of other Member States from becoming an unreasonable burden on the social assistance system of the host Member State (judgments in *Dano*, C-333/13, EU:C:2014:2358, paragraph 74, and *Alimanovic*, C-67/14, EU:C:2015:597, paragraph 50).

40 Consequently, in order to determine whether social assistance, such as the benefits at issue, may be refused on the basis of the derogation in Article 24(2) of Directive 2004/38, it is necessary to determine beforehand whether the principle of equal treatment referred to in Article 24(1) of that directive is applicable and, accordingly, whether the Union citizen concerned is lawfully resident on the territory of the host Member State (judgment in *Alimanovic*, C-67/14, EU:C:2015:597, paragraph 51).

41 It should be noted that, as the file submitted to the Court shows, Mr Peña Cuevas may base a right of residence on Article 6(1) of Directive 2004/38.

42 Article 6(1) of Directive 2004/38 provides 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 the requirement to hold a valid identity card or passport and, under Article 14(1) of that directive, that right is retained as long as the Union citizen and his family members do not become an unreasonable burden on the social assistance system of the host Member State (judgments in *Ziolkowski and Szeja*, C-424/10 and C-425/10, EU:C:2011:866, paragraph 39, and *Dano*, C-333/13, EU:C:2014:2358, paragraph 70).

43 That said, it must nevertheless be observed that, in such a case, the host Member State may rely on the derogation in Article 24(2) of Directive 2004/38 in order to refuse to grant that citizen the social assistance sought (judgment in *Dano*, C-333/13, EU:C:2014:2358, paragraph 70).

44 Indeed, it follows from the express wording of that provision that the host Member State may refuse to grant persons other than workers, self-employed persons or those who retain that status any social assistance during the first three months of residence.

45 As the Advocate General observed in point 70 of his Opinion, that provision is consistent with the objective of maintaining the financial equilibrium of the social assistance system of the Member States pursued by Directive 2004/38, as is apparent, in particular, from recital 10 in the preamble to that directive. Since the Member States cannot require Union citizens to have sufficient means of subsistence and personal medical cover for a period of residence of a maximum of three months in their respective territories, it is legitimate not to require those Member States to be responsible for those citizens during that period.

46 In that context, it must also be stated that, although Directive 2004/38 requires the host 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 (judgment in *Brey*, C-140/12, EU:C:2013:565, paragraphs 64, 69 and 78), no such individual assessment is necessary in circumstances such as those at issue in the main proceedings.

47 In the judgment in *Alimanovic* (C-67/14, EU:C:2015:597, paragraph 60), the Court stated 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.

48 Therefore, if such an assessment is not necessary in the case of a citizen seeking employment who no longer has the status of 'worker', the same applies *a fortiori* to persons who are in a situation such as that of Mr Peña Cuevas in the main proceedings.

49 By enabling those concerned to know, without any ambiguity, what their rights and obligations are, the exception set out in point 1 of the second sentence of Paragraph 7(1) of Book II of the Social Code, read in conjunction with Article 24(2) of Directive 2004/38, according to which the Federal Republic of Germany is not required to confer entitlement to social assistance during the first three months of a Union citizen's residence in its territory, is such as to guarantee a significant level of legal certainty and transparency in the context of the award of social assistance by way of basic provision, while complying with the principle of proportionality (see, by analogy, judgment in *Alimanovic*, C-67/14, EU:C:2015:597, paragraph 61).

50 Moreover, as regards the individual assessment for the purposes of making an overall appraisal of the burden which the grant of a specific benefit would place on the national system of social assistance in question in the main proceedings as a whole, it must be recalled that 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, for an individual claim is not liable to place the Member State concerned under an unreasonable burden, but the accumulation of all the individual claims which might be submitted to it would be bound to do so (see judgment in *Alimanovic*, C-67/14, EU:C:2015:597, paragraph 62).

51 In those circumstances, Article 24(2) of Directive 2004/38 does not preclude national legislation, such as that at issue in the main proceedings, in so far as it excludes nationals of other Member States who are in a situation such as that referred to in Article 6(1) of that directive from entitlement to certain 'special non-contributory cash benefits' within the meaning of Article 70(2) of Regulation No 883/2004.

52 The same conclusion must be reached as regards the interpretation of Article 4 of Regulation No 883/2004. The benefits at issue, which constitute 'special non-contributory cash benefits' within the meaning of Article 70(2) of that regulation, are, under Article 70(4), to be provided exclusively in the Member State in which the persons concerned reside, in accordance with the legislation of that Member State. It follows that there is nothing to prevent such benefits being refused to nationals of other Member States who do not have the status of workers or self-employed persons or persons who retain such status during the first three months of residence in the host Member State (see, to that effect, judgments in *Brey*, C-140/12, EU:C:2013:965, paragraph 44, and *Dano*, C-333/13, EU:C:2014:2358, paragraph 83).

53 Having regard to all the foregoing considerations, the answer to the second question is that Article 24 of Directive 2004/38 and Article 4 of Regulation No 883/2004 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 6(1) 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.

The third question

54 Since the third question was asked in the event the first question was answered in the negative, and since the Court provided an affirmative reply to a substantially similar question referred in the cases that gave rise to the judgments in *Dano* (C-333/13, EU:C:2014:2358) and *Alimanovic* (C-67/14, EU:C:2015:597), there is no need to reply to the third question referred.

Costs

55 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 (First Chamber) hereby rules:

Article 24 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, and 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, as amended by Commission Regulation (EU) No 1244/2010 of 9 December 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 6(1) 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.

[Signatures]