



HIGHLIGHT

GARCÍA NIETO: ANOTHER RESTRICTIVE APPROACH IN THE EUROPEAN CITIZENSHIP CASE LAW

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KEYWORDS: CJEU – EU citizenship – social benefits – short-term residence – economically inactive – family reunification.

On February 2016, the CJEU rendered an important judgment in, *García-Nieto et al.*, on the limits to the right to social assistance granted to European citizens living in another Member State.¹ The case concerns the García-Nieto family, a Spanish couple with two children (all of them Spanish nationals). Ms García-Nieto and her daughter had moved to Germany in April 2012. From June, the mother began to work as a kitchen assistant. In the same month, her partner, Mr Peña Cuevas, and his son joined the other two members of the family in Germany. In July, the family applied for subsistence benefits. Nonetheless, they were denied for Mr Peña Cuevas and his son because at the time of the application the father had lived in Germany for less than three months and did not have the status of worker or self-employed person.

The family challenged the decision and the German Court referred a preliminary question to the CJEU. It basically asked whether it was compatible with EU law the complete exclusion of economically inactive EU citizens from accessing to social assistance benefits in the first three months of residing in another Member State of the Union. The CJEU considered that Germany could rely on the derogation in Art. 24, para. 2, 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 in order to refuse to grant that citizen the social assistance sought, as this provision states “the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of resi-

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¹ Court of Justice, judgment of 25 February 2016, case C-299/14, *Vestische Arbeit Jobcenter Kreis Recklinghausen v. Jovanna García-Nieto, Joel Peña Cuevas, Jovanlis Peña García, Joel Luis Peña Cruz.*

dence [...] 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*".² Thus, the CJEU concluded that the German rule at stake did not breach EU law.

This case cannot be understood without taking into account other recent landmark judgments such as *Dano*³ and *Alimanovic et al.*,⁴ which are frequently cited by the CJEU throughout the judgment. The three decisions share main points: they were all issued in the context of preliminary reference procedures initiated by German Courts, they deal with the limits of social assistance in the framework of EU citizenship and the CJEU adopted a restrictive approach in all of them. Indeed, the CJEU in these decisions gave much weight to the interest of Member State not to be called to bear "unreasonable burden on the social assistance system" *vis-à-vis* the interest of individuals requesting access of that system. This is crystal clear where the CJEU refused, in *García-Nieto, et al.* to assess the personal circumstances of the individual concerned.⁵ Arguably also the current financial crisis in a given Member States may have played a role in the overall balancing of interests which underlies the decision.⁶

Last but not least, it should be noted that there is a substantial difference between *García-Nieto et al.*, on the one hand, and *Dano* and *Alimanovic et al.*, on the other hand. In *García-Nieto et al.*, it is clear that Mr. Peña Cuevas had a right of residence in Germany and was not liable to expulsion. He was only denied a subsistence benefit for two months and shortly after (from October 2012 onwards) he was granted social assistance – once he had been residing for three months in Germany. Zooming out of these three cases and comparing them with old seminal cases of the CJEU dealing with EU citizenship (*Grzelczyk*⁷ or *Baumbast and R.*⁸) we can observe an evident setback in framing a justice-driven Union focused on rights more than on the interests of the Member States.

² Art. 24, para. 2, of Directive 2004/38. Emphasis added.

³ Court of Justice, judgment of 11 November 2014, case C-333/13, *Elisabeta Dano, Florin Dano v. Jobcenter Leipzig* [GC].

⁴ Court of Justice, judgment of 15 September 2015, case C 67/14, *Jobcenter Berlin Neukölln v. Nazifa Alimanovic and Others*.

⁵ *García-Nieto et al.*, cit., para. 46.

⁶ M. HAAG, *Case C-299/14 García-Nieto and Others: No Benefits for Economically Inactive Union Citizens in the First Three Months Abroad*, in *DELI Blog*, 9 March 2016, delilawblog.wordpress.com.

⁷ Court of Justice, judgment of 20 September 2001, case C-184/99, *Rudy Grzelczyk v. Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*.

⁸ Court of Justice, judgment of 17 September 2002, case C-413/99, *Baumbast and R v. Secretary of State for the Home Department*.