Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

15 September 2015*

(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')

In Case C-67/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundessozialgericht (Germany), made by decision of 12 December 2013, received at the Court on 10 February 2014, in the proceedings

Jobcenter Berlin Neukölln

v

Nazifa Alimanovic,

Sonita Alimanovic,

Valentina Alimanovic,

Valentino Alimanovic,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, L. Bay Larsen, T. von Danwitz, A. Ó Caoimh, J.-C. Bonichot and C. Vajda, Presidents of Chambers, E. Levits, A. Arabadjiev, C. Toader, M. Berger (Rapporteur), E. Jarašiūnas, C.G. Fernlund and J.L. da Cruz Vilaça, Judges,

Advocate General: M. Wathelet,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 3 February 2015,

after considering the observations submitted on behalf of:

— Nazifa Alimanovic, Sonita Alimanovic, Valentina Alimanovic and Valentino Alimanovic by D. Mende and E. Steffen, Rechtsanwälte,

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

* Language of the case: German.

— the Danish Government, by M. Wolff, acting as Agent,

— Ireland, by E. Creedon, A. Joyce and E. McPhillips, acting as Agents, and G. Gilmore, Barrister-at-Law,

— the French Government, by G. de Bergues and R. Coesme, acting as Agents,

— the Italian Government, by G. Palmieri, acting as Agent, and F. Varrone, avvocato dello Stato,

— the Swedish Government, by A. Falk, K. Sparrman, C. Meyer-Seitz, U. Persson, N. Otte Widgren, L. Swedenborg, E. Karlsson and F. Sjövall, acting as Agents,

— the United Kingdom Government, by J. Beeko, acting as Agent, and J. Coppel QC,

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

after hearing the Opinion of the Advocate General at the sitting on 26 March 2015,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 18 TFEU and 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(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, 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).

2 The request has been made in proceedings between, on one hand, Jobcenter Berlin Neukölln (the Employment Centre, Berlin Neukölln) ('the Job Centre') and, on the other hand, Nazifa Alimanovic and her three children, Sonita, Valentina and Valentino Alimanovic (together 'the Alimanovic family'), concerning the withdrawal by that agency of benefits by the 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 the Federal Republic of Germany ('the Assistance Convention'), lays down a principle of equal treatment 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 Pursuant to 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 under that provision is worded as follows:

'[t]he 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 its own nationals, the benefits provided for in Book Two of the Social Code [(Sozialgesetzbuch Zweites Buch, "Book II")] — Basic Income Support for Job-seekers — in the latest applicable version.'

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, headed 'Equality of treatment', provides as follows:

'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 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 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, which is 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 (Article [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. Therefore, the right of residence for Union citizens and their family members for periods in excess of three months should be subject to conditions.

...

(16) As long as the beneficiaries of the right of residence do not become an unreasonable burden on the social assistance system 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 job-seekers 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 job-seekers, 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 7(1) and (3) of that directive provides as follows:

‘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; …

…

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:

(a) he/she is temporarily unable to work as the result of an illness or accident;

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

(c) he/she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first 12 months and has registered as a job-seeker with the relevant employment office. In this case, the status of worker shall be retained for no less than 6 months;

(d) he/she embarks on vocational training. Unless he/she is involuntarily unemployed, the retention of the status of worker shall require the training to be related to the previous employment.’

11 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.'

12 Article 24 of that directive, entitled 'Equal treatment', provides as follows:

'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

13 Paragraph 19a(1) of Book I of the Social Code sets out the two types of benefit granted by way of basic provision for job-seekers as follows:

'Under the entitlement to basic provision for job-seekers, the following may be claimed:

1. benefits for integration into the labour market,

2. benefits to cover subsistence costs.'

14 Paragraph 1 of Book II, entitled 'Function and objective of basic provision for job-seekers', provides as follows, in subparagraphs 1 and 3:

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

…

(3) Basic provision for job-seekers encompasses benefits:

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

2. intended to cover subsistence costs.'

15 Paragraph 7 of Book II, entitled ‘Beneficiaries’, provides as follows:

‘(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.

...’

16 Paragraph 8, entitled ‘Fitness for work’, of Book II provides as follows, in subparagraph 1 thereof:

‘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.’

17 Paragraph 9(1) of Book II provides as follows:

‘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.’

18 Paragraph 20 of Book II sets out additional provisions on basic subsistence needs. Paragraph 21 of Book II lays down rules on additional needs and Paragraph 22 of Book II concerns accommodation and heating needs. Finally, Paragraphs 28 to 30 of Book II deal with education and participation benefits.

19 In Book XII of the Social Code (‘Book XII’), Paragraph 1, which relates to social assistance, is worded in the following terms:

‘The function of social assistance is to enable the beneficiaries to lead a life in keeping with human dignity. …’

20 Paragraph 21 of Book XII provides as follows:

‘Subsistence benefits shall not be paid to persons who are in principle entitled to benefits under [Book II] because they are fit for work or because of their family ties. …’

The Law on freedom of movement

21 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.’

22 Paragraph 2 of the Law on freedom of movement provides as follows, 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.

…’

23 Paragraph 3 of the Law on freedom of movement, relating to family members, states:

‘(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.

...’

24 Paragraph 5 of the Law on freedom of movement, on residence permits and the certificate concerning the right of permanent residence, provides as follows:

‘(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

25 Nazifa Alimanovic, born in 1966, and her children, Sonita, Valentina and Valentino, born in 1994, 1998 and 1999 respectively, are all Swedish nationals. Ms Alimanovic was born in Bosnia whereas her children were all born in Germany.

26 The request for a preliminary ruling states that the Alimanovic family left Germany in 1999 for Sweden and returned to Germany in June 2010, although neither their exact departure date nor the reason for that absence are stated.

27 On 1 July 2010, the members of the Alimanovic family were issued with a certificate attesting the right of permanent residence in accordance with Paragraph 5 of the Law on freedom of movement. After her return to Germany, Ms Alimanovic and her daughter Sonita, who were fit for work within the meaning of the German legislation, worked between June 2010 and May 2011 in temporary jobs lasting less than a year.

28 During the period from 1 December 2011 to 31 May 2012, Ms Alimanovic was paid family allowances for her children Valentina and Valentino and, like her daughter Sonita, basic provision under Book II, namely subsistence allowances for the long-term unemployed (known as 'Arbeitslosengeld II'), plus social allowances for beneficiaries unfit to work, those latter beneficiaries being her other two children, Valentina and Valentino (together, 'the benefits at issue').

29 For the purpose of granting the benefits at issue during that period, the Job Centre took the view that the exclusion applying to Union citizens seeking employment, set out in the second sentence of Paragraph 7(1), point 2, of Book II, was not applicable to the Alimanovic family in so far as, since the members of that family were Swedish nationals, that rule had to be disregarded under the principle of non-discrimination provided for in Article 1 of the Assistance Convention. In a judgment of 19 October 2010, the Federal Social Court had held that the obligation imposed on the Federal Republic of Germany under that provision, namely to grant, in the same way as to its own nationals, social assistance to the nationals of the other contracting parties who are lawfully present in any part of its territory and without sufficient resources, also covered the grant of a minimum subsistence income under Paragraph 19 et seq of Book II.

30 However, under the first sentence of Paragraph 48(1) of Book X of the Social Code, an administrative measure must be annulled with prospective effect when a significant change has occurred in the legal and factual circumstances which existed when that measure was adopted. In respect of the grant of benefits on the basis of Article 1 of the Assistance Convention, a change occurred in May 2012, as a result of the reservation issued by the German Government on 19 December 2011 with regard to that convention. The Job Centre withdrew the decision on the grant of all the benefits at issue in respect of May 2012 on that basis.

31 On application by the Alimanovic family, the Social Court, Berlin, (Sozialgericht Berlin) annulled that decision and held, inter alia, that Ms Alimanovic and her daughter Sonita were entitled to the benefits at issue which applied to them, under, inter alia, Article 4 of Regulation No 883/2004, which prohibits any discrimination against Union citizens in relation to the nationals of the Member State concerned, read in conjunction with Article 70 of that regulation, which concerns special non-contributory cash benefits such as those at issue in the case before it.

32 In its appeal brought before the referring court, the Job Centre submits, in particular, that the benefits to cover subsistence costs under Book II constitute 'social assistance' within the meaning of Article 24(2) of Directive 2004/38 and, therefore, job-seekers may be refused the grant of such benefits.

33 The referring court states in particular that, according to the findings of the Social Court, Berlin, by which it is bound, Ms Alimanovic and her daughter Sonita could no longer rely on a right of residence as workers under Paragraph 2 of the Law on freedom of movement. Since June 2010, they had worked only in temporary jobs lasting less than a year and, since May 2011, they had been neither workers nor self-employed.

34 With reference to the judgment in *Vatsouras and Koupatantze* (C-22/08 and C-23/08, EU:C:2009:344), the referring court states that it follows from the second sentence of Paragraph 2(3) of the Law on freedom of movement, read in the light of Article 7(3)(c) of Directive 2004/38, that neither Ms Alimanovic nor her daughter Sonita still have the status of an employee or self-employed worker and that they must therefore be regarded as seeking employment within the meaning of Paragraph 2(2), point 1, of the Law on freedom of movement.

35 Ms Alimanovic and her daughter Sonita, among others, were thus precluded from claiming subsistence allowances for the long-term unemployed on the basis of Paragraph 7(1), second sentence, point 2, of Book II, which excludes both persons whose right of residence arises solely out of the search for employment and their family members from entitlement to the benefits provided for by that legislation.

36 The referring court therefore, first, raises the issue of whether that provision of Book II breaches the principle of equal treatment laid down in Article 4 of Regulation No 883/2004.

37 Secondly, that court raises the issue of whether that provision of Book II may be regarded as a valid transposition of Article 24(2) of Directive 2004/38 into domestic law or, should that latter provision be held inapplicable, whether it infringes Article 45(2) TFEU, read in conjunction with Article 18 TFEU.

38 In those circumstances, the Bundessozialgericht (Federal Social Court) 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 Regulation [No 883/2004]?

(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 in the case in which the right of residence of the citizen of the Union in another Member State arises solely out of the search for employment and, if so, to what extent may that principle be so limited?

(3) Does Article 45(2) TFEU, [read] in conjunction with Article 18 TFEU, preclude a provision of national law that does not in any circumstances allow the grant of a social benefit, intended to ensure subsistence and to facilitate access to the labour market, to citizens of the Union who, as job-seekers, may invoke the exercise of their right of free movement when they enjoy a right of residence arising solely out of the search for employment, irrespective of a link to the host Member State?’

39 By letter of 26 November 2014, the Court Registry sent the referring court the judgment in *Dano* (C-333/13, EU:C:2014:2358), requesting it to inform it whether, in the light of the first point in the operative part of that judgment, it still wished to refer the first question in the order for reference. By order of 11 February 2015, received at the Court Registry on 19 February 2015, the Federal Social Court decided that it would withdraw the first question referred.

Consideration of the questions referred

The classification of the benefits at issue

40 The file submitted to the Court states that the referring court is of the view that the rights of residence held by Ms Alimanovic and her daughter Sonita arise solely out of their status as job-seekers and that it is bound by the findings of fact made by the court of first instance in that regard.

41 By its second and third questions, the referring court asks the Court as to, in essence, the compatibility, first, with Article 24(2) of Directive 2004/38 and, secondly, with Articles 18 TFEU and 45(2) TFEU, of national legislation which excludes from entitlement to certain benefits nationals of other Member States who have the status of job-seekers, whereas those benefits are guaranteed to the nationals of the Member State concerned who are in the same situation.

42 Since the issue of whether the benefits at issue constitute 'social assistance' or measures intended to facilitate access to the labour market is determinative for the purposes of identifying the EU rule under which that compatibility falls to be assessed, it is necessary to classify them.

43 In this connection, it is sufficient to note that the referring court has itself characterised the benefits at issue as 'special non-contributory cash benefits' within the meaning of Article 70(2) of Regulation No 883/2004. It states in that regard that those benefits are intended to cover subsistence costs for persons who cannot cover those costs themselves and that they are not financed through contributions, but through tax revenue. Since those benefits are moreover mentioned in Annex X to Regulation No 883/2004, they meet the conditions in Article 70(2) thereof, even if they form part of a scheme which also provides for benefits to facilitate the search for employment.

44 That said, it should be added that, as is apparent from the Court's case-law, such benefits are also covered by the concept of 'social assistance' within the meaning of Article 24(2) of Directive 2004/38. That concept refers to all assistance schemes established by the public authorities, whether at national, regional or local level, to which recourse may be had by an individual who does not have resources sufficient to meet his own basic needs and those of his family and who by reason of that fact may, during his period of residence, become a burden on the public finances of the host Member State which could have consequences for the overall level of assistance which may be granted by that State (judgment in *Dano*, C-333/13, EU:C:2014:2358, paragraph 63).

45 However, in the present case it must be found that, as the Advocate General observed in point 72 of his Opinion, the predominant function of the benefits at issue in the main proceedings is in fact to cover the minimum subsistence costs necessary to lead a life in keeping with human dignity.

46 It follows from those considerations that those benefits cannot be characterised as benefits of a financial nature which are intended to facilitate access to the labour market of a Member State (see, to that effect, judgment in *Vatsouras and Koupatantze*, C-22/08 and C-23/08, EU:C:2009:344, paragraph 45) but, as the Advocate General observed in points 66 to 71 of his Opinion, must be regarded as 'social assistance' within the meaning of Article 24(2) of Directive 2004/38.

47 Consequently, there is no need to answer the third question referred.

The second question

48 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 job-seekers in the host Member State 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.

49 It must first be recalled in this connection that, so far as concerns access to social assistance, such as that at issue in the main proceedings, 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 (judgment in *Dano*, C-333/13, EU:C:2014:2358, paragraph 69).

50 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 (judgment in *Dano*, C-333/13, EU:C:2014:2358, paragraph 74).

51 In order to determine whether social assistance, such as the benefits at issue in the main proceedings, may be refused on the basis of the derogation laid down in Article 24(2) of Directive 2004/38, it is therefore 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.

52 Only two provisions of Directive 2004/38 may confer on job-seekers in the situation of Ms Alimanovic and her daughter Sonita a right of residence in the host Member State under that directive, namely Article 7(3)(c) and Article 14(4)(b) thereof.

53 In this connection, Article 7(3)(c) of Directive 2004/38 provides that if the worker is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first 12 months and has registered as a jobseeker with the relevant employment office, he retains the status of worker for no less than six months. During that period, the Union citizen concerned retains his right of residence in the host Member State under Article 7 of Directive 2004/38 and may, consequently, rely on the principle of equal treatment, laid down in Article 24(1) of that directive.

54 The Court thus held, in the judgment in *Vatsouras and Koupatantze* (C-22/08 and C-23/08, EU:C:2009:344, paragraph 32), that Union citizens who have retained the status of workers on the basis of Article 7(3)(c) of Directive 2004/38 have the right to social assistance, such as the benefits at issue, during that period of at least six months.

55 However, as the Advocate General observes in point 41 of his Opinion, it is not disputed that Ms Alimanovic and her daughter Sonita, who retained the status of workers for at least six months after their last employment had ended, no longer enjoyed that status when they were refused entitlement to the benefits at issue.

56 As regards the question whether a right of residence under Directive 2004/38 might be established on the basis of Article 14(4)(b) thereof for Union citizens in the situation of Ms Alimanovic and her daughter Sonita, that provision stipulates that Union citizens who have entered the territory of the host Member State in order to seek employment 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.

57 Although, according to the referring court, Ms Alimanovic and her daughter Sonita may rely on that provision to establish a right of residence even after the expiry of the period referred to in Article 7(3)(c) of Directive 2004/38, for a period, covered by Article 14(4)(b) thereof, which entitles them to equal treatment with the nationals of the host Member State so far as access to social

assistance is concerned, it must nevertheless be observed that, in such a case, the host Member State may rely on the derogation in Article 24(2) of that directive in order not to grant that citizen the social assistance sought.

58 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.

59 It must be stated in this connection that, although the Court has held that 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 (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.

60 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.

61 By enabling those concerned to know, without any ambiguity, what their rights and obligations are, the criterion referred to both in Paragraph 7(1) of Book II, read in conjunction with Paragraph 2(3) of the Law on freedom of movement, and in Article 7(3)(c) of Directive 2004/38, namely a period of six months after the cessation of employment during which the right to social assistance is retained, is consequently 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.

62 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 at issue in the main proceedings as a whole, it must be observed 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. 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.

63 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 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.

Costs

64 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 (Grand 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 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.

[Signatures]