

CIVIS Program ‘Governing in times of crisis’

National and Kapodistrian University of Athens – Université libre de Bruxelles - Université d'Aix-Marseille

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Case Study:

Access to social benefits by economically inactive EU citizens: Sovereignty conflicts in the context of the coordination (or convergence) of the national social protection systems

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I. Introduction

The subject matter of this Case Study concerns access to social assistance benefits by economically inactive European Union (‘EU’) citizens. The topic is at the heart of the EU integration process: on the one hand, by virtue of the fundamental freedom of movement, EU citizens have the right to enter any EU member state without any conditions, or formalities; on the other hand, the entitlement of mobile EU citizens to social benefits, in the host state, is a totally different issue - partially unregulated, and consisting of multiple factors (legal, as well as political), but still directly concerning the lives of millions of EU citizens.

Read the statistics cited respectively by the European Commission, at <https://ec.europa.eu/social/BlobServlet?docId=16771&langId=en>

The right of EU mobile citizens to access social advantages in the host member state is a key component of free movement law. On the other hand, the set-up and financing of social protection systems is primarily a competence of member states; on the other, the EU supports national actions to ensure social protection and upward social convergence. In this context, each EU member state has its own regulatory framework, which determines: **(a)** what are the benefits that a citizen of another member state is entitled to, **(b)** how much will he/she receive, and for how long, as well as how long he/she must work there before qualifying for unemployment benefits, **(c)** the rules for calculating benefits, and **(d)** the duration of the benefits. In this regard, European integration coexists with national sovereignty, in a relationship that is both complex, and dynamic.

On the main aspects of this relationship, **see the relevant Report of the High-Level Group on the Future of Social Protection and of the Welfare State (Jan 2023)**, at <https://op.europa.eu/en/publication-detail/-/publication/842d8006-c3b3-11ed-a05c-01aa75ed71a1>

Considering the above, all participants in the Social Protection Case Study of this year’s CIVIS Program will explore the limits of social solidarity, as well as national sovereignty, within the context of the EU integration process.

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II. The relevant case law of the Court of Justice of the European Union, and its impact in the member states' legal orders

The right of social security, when the right of freedom of movement is exercised, has been one of the major concerns for the EU member states. In this regard, national courts have been called upon to address related issues several times. The issue became more complex after the Lisbon Treaty's provisions for the Union citizenship, which has henceforth been conceived far beyond its financial component. In this context, access to social benefits by economically inactive EU citizens gave rise to disputes, which were brought before the Court of Justice of the European Union ('CJEU'), the case law of which gradually shaped the relevant status quo.

Study the relevant case law of the CJEU - in particular, but not exclusively, the famous 'Dano' judgement (Case C-333/13, EU:C:2014:2358), as well as the 'Alimanovic' (Case C-67/14, EU:C:2015:597), 'García-Nieto' (Case C-299/14, EU:C:2016:114), and 'Commission v UK' (Case C-308/14, EU:C:2016:436) judgments.

The aforementioned case law indicates that European integration could act as an incentive to revisit traditional legal structures, even on areas of non-exclusive Union competence; in this regard, the national character of social rights seems to be challenged, while the latter have become increasingly transnational. The role of the CJEU case law towards European integration, is more than obvious through time. However, given the lack of a single EU social protection policy, the actual impact of the Court's case law in the national legal orders can be proven even more crucial. By saying 'impact', we mean legislative, and/or administrative changes, operated in the light of the Court's case law. However, there can also be national legal orders, which have not been affected by the Court's case law. The reason for this can vary a lot; for instance, a member state can just not provide the social benefit requested in the relevant case law of the CJEU; or, such a benefit has never been claimed before by a mobile, and economically inactive EU citizen, in that particular member state.

III. The Case study:

**The member states' response to the new social rights framework;
just convergence, or a new transnational social status in the making?**

The participants in the Social Protection Case Study must familiarize with the general context of the subject under consideration, read the relevant regulatory framework (mainly, the Regulation 883/2004 of the European Parliament and of the Council, and the Directive 2004/38/EC of the European Parliament and of the Council), and study the relevant CJEU case law (including the judgments proposed below), as well as the secondary sources suggested below (however, not exclusively).

Thereafter, the participants will have to conduct research on the following:

(a) What is the evolution, over the last two decades, of the regulatory framework in the member state you come from (or, if you do not come from an EU member state, or if your

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home country is listed among member states which lack specific relevant legislation), concerning access to social benefits by economically inactive citizens of other EU member states? What are the conditions which must be met for awarding welfare allowances? Do these conditions vary, according to the specific type of the requested allowance?

(b) Has there been any relevant national case law, and if so, with what content?

(c) How do you assess the relevant national legislation, and/ or case law, in the light of the effective protection of the rights of mobile EU citizens, but also considering the need to safeguard the sustainability of the host welfare system?

(d) Could the of national legislation's, and/ or case law's evolution, be attributed to the relative case law of the CJEU? If so, to what extent?

The findings of the research will be presented by each participant in a 15-minute oral presentation (PowerPoint presentation: optional), during the afternoon session of the CIVIS program, on Wednesday, July 3rd 2024.

IV. Challenges, and Lessons Learned

This Case Study's practical research will hopefully help us examine whether, as far as the granting of welfare allowances to moving economically inactive EU citizens is concerned, the EU structure is closer to the integration target, or the national sovereignty. The research conclusions would be of particular interest, given that all fiscal crises faced by various Member States over the past few years have highlighted the importance of both an effective social safety net, and a sustainable welfare system.

V. List of Suggested Sources

(a) Main Primary Sources

i. Legislation

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 L 166, 30.4.2004, pp. 1–123)

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 [...] (OJ L 158, 30.4.2004, pp. 77–123)

ii. Case law

Judgment of the CJEU (Grand Chamber) of 11 November 2014, Elisabeta Dano and Florin Dano v Jobcenter Leipzig (Case C-333/13) (EU:C:2014:2358)

Judgment of the CJEU (Grand Chamber) of 15 September 2015, Jobcenter Berlin Neukölln v Nazifa Alimanovic and Others (Case C-67/14) (EU:C:2015:597)

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Judgment of the CJEU (First Chamber) of 25 February 2016, Vestische Arbeit Jobcenter Kreis Recklinghausen v Jovanna García-Nieto and Others (Case C-299/14) (EU:C:2016:114)

Judgment of the CJEU (First Chamber) of 14 June 2016, European Commission v United Kingdom of Great Britain and Northern Ireland (Case C-308/14) (EU:C:2016:436)

(b) Suggested Secondary Sources

Costamagna, F., Montaldo, S., & Romanelli, F., Access to Social Advantages for EU Citizens and Third Country Nationals Under the Law of the European Union - Essential text, cases and materials, Università degli Studi di Torino, 2022
(at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.aisdue.eu/wp-content/uploads/2022/09/2022-Book-Essentials-Access-to-social-benefits.pdf>)

Gavilán, E.-U., 'García Nieto: Another Restrictive Approach in the European Citizenship Case Law', 1 European Papers 2 (2016), pp. 763-764
(at <https://www.europeanpapers.eu/en/europeanforum/garcia-nieto-another-restrictive-approach-european-citizenship-case-law>)

Goedemé, T. & Collado, D., 'The EU Convergence Machine at Work. To the Benefit of the EU's Poorest Citizens?', 54 Journal of Common Market Studies 5 (September 2016), pp. 1142-1158
(at <https://onlinelibrary.wiley.com/doi/abs/10.1111/jcms.12382>)

Hancke, B. & Axisa, A., 'Measuring Social Convergence across the EU', European Union - Directorate-General for Employment, Social Affairs, and Inclusion, 2019
(at <https://ec.europa.eu/social/BlobServlet?docId=22179&langId=en>)

Heindlmaier, A., "'Social Citizenship' at the Street Level? EU Member State Administrations Setting a Firewall", 58 Journal of Common Market Studies 5 (2020), pp. 1252–1269
(at <https://onlinelibrary.wiley.com/doi/full/10.1111/jcms.13028>)

Mantu, S. & Minderhoud, P., 'Struggles over social rights: Restricting access to social assistance for EU citizens', 25 European Journal of Social Security 1 (2023)
(at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://journals.sagepub.com/doi/pdf/10.1177/13882627231167653>)

Shuibhne, N. N., 'What I tell you three times is true: lawful residence and equal treatment after Dano', 23 Maastricht Journal of European and Comparative Law 6 (2016), pp. 908-936
(at <https://www.research.ed.ac.uk/en/publications/what-i-tell-you-three-times-is-true-lawful-residence-and-equal-tr>)

Xylaki, P., 'Free movement and special non-contributory benefits - Comments on the Dano judgement', To Syntagma (2014), pp. 884-899 (in Greek)