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The Impact of Recent EU Rulings on the Rights of Homeless  
Mobile EU Citizens

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The first half of November 2014 witnessed three important rulings that are significant for EU mobile citizens who become homeless whilst exercising their right to free movement.

In the ruling *Elisabeta Dano and Florin Dano v Jobcenter Leipzig*, the European Court of Justice addressed the highly sensitive issue of access to social benefits for economically inactive EU mobile citizens. Specifically, the case concerns two non-economically active Romanian nationals - Ms. Dano and her son, who both live in the home of Ms Dano's sister, who provides for them. For her son Ms Dano receives child benefits amounting to €184 per month and an advance on maintenance payments of €133 per month. She is very lowly skilled and her knowledge of German is limited to oral understanding, and very basic speaking and reading skills. Ms Dano did not enter Germany in order to seek work there and is indeed not seeking any employment. She has not been trained in a profession and has not worked in Germany nor in Romania. They applied for a basic provision benefit for jobseekers, including a subsistence benefit, social allowance and a contribution to accommodation and heating costs, that were not granted by the German authorities. The Court ruled that when it is apparent that the applicant does not have sufficient resources to meet his/her basic needs and is neither working, nor seeking employment and did not move to the host Member State in order to find work, she or he does not fall within the scope of the *ratione personae* in Article 24(1) and (2) of the Directive 2004/38 (equal treatment). Therefore, as far as social benefits are concerned, a Union citizen is not entitled to claim equal treatment with nationals of the host Member State once it is established that his/her right of residence on the territory of that State does not comply with the conditions of Directive 2004/38 (being a worker or involuntarily unemployed and actively seeking work, or - if economically inactive - having sufficient resources for him/herself and his/her family members). Moreover, Member States can decide to exclude economically inactive European Union citizens from accessing non-contributory benefits when they do not have an official right to reside. The condition of having sufficient resources not to become an "unreasonable" burden on the social assistance system is to be considered taking individual circumstances but not necessarily the social benefits actually claimed into account.

Notwithstanding the fact that most mobile EU citizens who become homeless in a host Member State have worked for a certain period of time or at least moved with the aim of finding a job and not for the sole purpose of claiming social benefits, this ruling suggests that the Court is moving away from a position taken in previous rulings whereby the right to equal treatment derives from the status of being a European Union citizen of , and is progressively allowing more flexibility for Member States to establish conditions for economically inactive EU migrants' access to social benefits. This may greatly affect those who are at risk of or are experiencing homelessness, since they often recurrently lose their living quarters due to seasonal unemployment, illness or other incidents. They thus face specific difficulties in proving that they have been actively looking for a job or even that

they have worked. This is may because they have been hired without a formal contract or have experienced intermittent employment. In any case, if they do odd jobs for short periods of time, their access to the social assistance system is limited.

Besides the change of approach taken by the ECJ, the political context - which might have influenced the judgement - is likely to push some Member States to adopt a broad interpretation of the ruling which would allow for stricter rules on the access to social benefits for economically inactive EU mobile citizens.

In order to achieve common and sufficiently clear rules that would cover all EU mobile citizens, two significant concepts need to be clarified at EU level. The first is 'genuine chance of being engaged'. Indeed, those who are seeking employment and are deemed to have a chance of finding it are entitled to equal treatment with nationals of the host Member State. Both the requirement to prove that one is looking for a job and the conditions determining what a 'genuine chance of finding one' may differ widely, not only between but also within Member States. Therefore, that leads to uncertainty about what is needed, not only for the individuals concerned but also for those who have to determine who has the right to reside and to which services and social benefits EU mobile citizens are entitled.

The second concept that needs to be better agreed upon at EU level is the definition of 'unreasonable burden on the social assistance system'. The European Commission has listed a few criteria, i.e. whether it is a matter of temporary difficulties, the duration of residence, the personal circumstances and the amount of aid granted, but they might easily be interpreted in inappropriate ways in order to justify the non provision of services - including emergency services, such as night shelters and other low threshold services - to destitute EU mobile citizens.

The issue of access to emergency shelter has been addressed directly by the European Committee for Social Rights and indirectly by the European Court of Human Rights respectively in their decisions on the cases *FEANTSA v. The Netherlands* (Collective Complaint 86/2013) and *Tarakhel v. Switzerland*. In *FEANTSA v. The Netherlands* - as well as in *CEC v. The Netherlands* (Collective Complaint 90/2013) - the European Committee for Social Rights held that access to emergency accommodation must be provided to all, regardless of residence status. Moreover, shelters must meet health, safety and hygiene standards and, in particular, be equipped with basic amenities such as access to water and heating and sufficient lighting. The Committee states that, while regularly residing migrants must be offered either long-term accommodation suited to their circumstances or housing of an adequate standard, irregularly residing migrants must nonetheless have access to shelter and eviction from shelters should accordingly be forbidden as it would place the persons concerned in a situation of extreme vulnerability that is contrary to the notion of respect for their human dignity. It is important to note that both the legal framework and the practical implementation of access to shelter are addressed by the judgement.

The decision of the Committee mentions among its references to international law Article 3 of the European Convention on Human Rights (ECHR), which prohibits torture, inhuman or degrading treatment. The same article was used by the European Court on Human Rights to prohibit the return of an Afghani family to Italy in the *Tarakhel v. Switzerland* case because, if they had been returned to Italy, they would have faced inadequate accommodation in reception centres for asylum seekers. Since Article 3 ECHR does not allow any exceptions or limitations, not providing emergency accommodation to any individual, regardless of residence status, would be a breach of the ECHR.

Therefore, FEANTSA urges the EU to set clearer rules in order to better define the conditions determining a genuine chance of finding employment and the sets of criteria to be considered by Member States to ascertain whether an EU citizen is an unreasonable burden to the social assistance system or not. Moreover, the EU should guarantee that Member States do not improperly use the recent case law on access to benefits for economically inactive EU mobile citizens and that all individuals have at least access to emergency accommodation and support as standard. In a context of highly politicized debates about mobility and access to welfare, the EU has a duty to ensure that Member States do not compromise people's fundamental rights and human dignity by exposing them to homelessness or destitution and/or denying them support when this situation arises.



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