

| | |
|--|--|
| Subject-matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to the article 6 paragraph 1 of the Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 22.11.2016. |
| Deciding body (in original language) | Administratīvā apgabaltiesa |
| Deciding body (in English) | Administrative Regional Court |
| Case number (also European Case Law Identifier (ECLI) where applicable) | Case No A420321213 (archive No AA43-2327-16/5) |
| Parties | Applicant: a natural person (name of person is anonymised) Defendant: The State Social Insurance Agency (hereafter - SSIA)/ Valsts sociālās apdrošināšanas aģentūra |
| Web link to the decision (if available) | https://manas.tiesas.lv/eTiesas/ |
| Legal basis in national law of the rights under dispute | Law on State Social Allowances, entered into force on 01.01.2003. / Valsts sociālo pabalstu likums, stājies spēkā 01.01.2003. |
| Key facts of the case (max. 500 chars) | From 13 July 2009 till 30 December 2010 the applicant was on parental leave and received parental benefit and child care allowance. During this period and later during the period of dispute the applicant was not employed. Since 19 April 2010 the applicant (a citizen of Republic of Latvia), her child (also a citizen of Republic of Latvia) and husband (no information about citizenship) live in Sweden. On this date she and her husband were given Swedish personal identification numbers. From 14 July till 16 July 2010, on 31 December 2010, on 6 January 2011 and on 1 June 2011 the applicant with her daughter came to Latvia with a purpose to visit a doctor. |

| | |
|---|---|
| | <p>In a submission dated 22 September 2011, the applicant indicated to the SSIA that she wished to give up the family allowance because she has lived in Sweden for more than a year.</p> <p>SSIA identified the overpayment of childcare benefit for the period from 1 January 2011 till 25 May 2011 and State family allowance for the period from 1 January 2011 till 30 September 2011 and decided to demand the repayment of overpaid benefits from the applicant. With first instance judgement, the decision of SSIA was cancelled. The court agreed with the applicant that the receipt of benefits depends on whether the applicant and her child permanently reside in the territory of Latvia. The applicant did not get benefits from Sweden while she stayed there and she was just visiting her husband. The court concluded that according to the Directive 2004/38/EC to consider that the applicant and her daughter are residing in Sweden permanently, she and her daughter should be the resident in Sweden for at least five years, but they were there only nine months, and they should receive a document proving the person's right to permanent residence.</p> <p>SSIA submitted an appeal stating that the court wrongly interpreted the concept of permanent residence, and there is no reason to apply the regulation of Directive 2004/38/EC but Regulation No 987/2009 should be applied.</p> <p>The court of second instance agreed with the court of first instance.</p> <p>After reviewing the cassation complaint, the Supreme Court revoked the judgment of the Regional Administrative Court and sent the case for retrial to the Administrative Regional Court.</p> |
| Main reasoning / argumentation (max. 500 chars) | <p>Article 11, paragraph 1 of Regulation 987/2009 provides for elements for determining residence. According to paragraph 2 Article 11, where the consideration of the various criteria based on relevant facts as set out in paragraph 1 does not lead to agreement between the institutions concerned, the person's intention, as it appears from such facts and circumstances, especially the reasons that led the person to move, shall be considered to be decisive for establishing that person's actual place of residence. The Administrative Regional court concluded that the husband of the applicant had informed the Swedish institutions that his wife and daughter live together with him in Sweden, and that the applicant and her husband were given Swedish personal identification numbers.</p> <p>The Administrative Regional court pointed that the actions of the applicant – the registration with the Swedish authority – confirms the intention of the applicant to stay in Sweden not only temporarily with her husband, but to stay for a long time in Sweden.</p> |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | <p>There is a dispute about the facts and their legal assessment, namely, whether the place of residence of the applicant during the period of dispute was the Republic of Latvia (or Sweden) within the meaning of Regulation No. 883/2004 Article 11, paragraph 3, clause 'e'.</p> |

| | |
|--|---|
| Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars) | <p>The Administrative Regional Court recognized that the application of the applicant is not justified and, therefore, is to be rejected.</p> <p>The final court (Administrative Regional Court) recognized that the living conditions of family members of the applicant (employment, residence registration in Sweden) is indicative of the fact that families' economic interests are set in Sweden. Thus, it is irrelevant that the applicant's registered domicile is in the Republic of Latvia, because the Regional Court found that the applicant and her family during the period of dispute did not work and did not live permanently in the Republic of Latvia.</p> |
| Key quotations in original language and translated into English with reference details (max. 500 chars) | <p>“[13] [..]</p> <p><i>Atbilstoši direktīvas Nr.2004/38/EK 6.panta pirmajai daļai Eiropas Savienības pilsoņiem ir tiesības uzturēties citas dalībvalsts teritorijā uz laiku līdz trim mēnešiem, neizvirzot viņiem nosacījumus vai formalitāšu ievērošanu. Tādējādi secināms, ka pieteicējas darbības, reģistrējoties Zviedrijas iestādē, apliecina pieteicējas nodomu ne tikai īslaicīgi uzturēties pie sava vīra Zviedrijā, bet uzturēties Zviedrijā ilgstoši. Apgabaltiesas vērtējumā pieteicēja apzinājās, ka gadījumā, ja viņa ierodas vienīgi īslaicīgā vizītē Zviedrijā, viņai nav nepieciešams reģistrēties valstī kā personai, kas pastāvīgi uzturas šajā valstī.”</i></p> <p>“[13] [..]</p> <p>According to the Directive 2004/38/EC Article 6, paragraph 1 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. Thus, it can be concluded that the actions of the applicant – registration with the Swedish authority – confirms the intention of the applicant to stay in Sweden not only temporarily with her husband, but to stay for a long time in Sweden. In the assessment of the Regional Court the applicant was aware that if she arrives only for a short-term visit to Sweden, she does not need to register in the country as a person residing in the country.”</p> |
| Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article. | <p>No.</p> |