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Research Brief No 1

Beneficiaries of international protection and the “place of residence” condition

The Court of Justice ruled on the relationship between the freedom of movement of beneficiaries of international protection and measures intended to facilitate their integration

Can a Member State restrict the freedom of movement within the host country of beneficiaries of subsidiary protection in receipt of social security benefits? This question was addressed by the ECJ in its ruling of 1 March 2015 in the *Alo and Osso* case¹. Under the Qualification Directive² Member States must allow freedom of movement within their territory to persons to

whom they have granted subsidiary protection status, under the same conditions as those provided for other non-EU citizens who are legally resident there.

German law provides that, where beneficiaries of subsidiary protection receive social security benefits, their residence permit is issued subject to a condition requiring residence to be taken up in a particular place (residence condition). The aim of the condition is to ensure a balanced distribution of the costs of those

¹ Joined Cases C-443/14 and C-444/14. *Kreis Warendorf v Ibrahim Alo and Amira Osso v Region Hannover*, 1 March 2016.

² Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 20 December 2011, OJ L. 337/9-337/26.

benefits among the various competent institutions and to facilitate the integration of non-EU citizens in German society³.

The case was brought forward by Ibrahim Alo and Amira Osso, two Syrians who came to Germany before their country's civil war began in 2011. They were granted subsidiary protection and their access to social benefits was made conditional on them taking up residence at assigned addresses. Mr. Alo and Ms. Osso sued against this provision in German courts, which turned to the EU to check whether the German ruling is in line with the laws drafted in Brussels.

The Court found, first, that **the Directive requires the Member States to allow persons to whom they have granted subsidiary protection status not only to move freely within their territory but also to choose their place of residence within that territory.** Accordingly, a residence condition imposed on such persons constitutes a restriction of the freedom of movement guaranteed by the Directive. Where that condition is imposed exclusively on

beneficiaries of subsidiary protection who are in receipt of social assistance, it also constitutes a restriction of their access under EU law to social welfare⁴.

The Court pointed out that beneficiaries of subsidiary protection cannot, in principle, be subject to more restrictive rules, as regards the choice of their place of residence, than those applicable to non-EU citizens legally resident in the Member State concerned and, as regards access to social assistance, than those applicable to nationals of that Member State. However, the Court took the view that a residence condition may be imposed exclusively on beneficiaries of subsidiary protection if they are not in a situation which is objectively comparable with that of non-EU citizens or that of nationals of that State⁵.

The Court concluded that the Directive does not prevent beneficiaries of subsidiary protection status from being subject to a residence condition for the purpose of promoting their integration, even if that condition does

³ L. Halleskov Storgaard, Enhancing and diluting the legal status of subsidiary protection beneficiaries under Union law – the CJEU judgment in Alo and Osso, <http://eulawanalysis.blogspot.gr/2016/03/enhancing-and-diluting-legal-status-of.html>

⁴ <http://curia.europa.eu/jcms/upload/docs/application/pdf/2016-03/cp160022el.pdf>

⁵ <http://curia.europa.eu/jcms/upload/docs/application/pdf/2016-03/cp160022el.pdf>

not apply to other non-EU citizens legally resident in Germany⁶.

What implications for the EU Asylum Policy?

The ruling comes as Germany seeks to tighten access to social benefits after more than one million people having filed for asylum in Germany in the past year. The German government acknowledged late February it can't account for 130,000 asylum seekers who no longer showed up at the residence places they were assigned to⁷.

Advocate General Villalón found that, through comprehensive interpretations, the obligation to take up residence in a specific place is a restriction of freedom of movement. Further, contrary to principle of proportionality requirements, the discrepancy in the treatment of refugees and beneficiaries of subsidiary protection must be addressed. In terms of the reasoning behind residence distribution for the sake of alleviating burden, AG Villalón believes that the current basis is abstract and insufficient,

and that alternative measures to redistribute monetary and social responsibilities are possible. It can only be sufficient if it is linked to serious and concrete risks such as obvious cases of social tension that place public order at risk. Moreover, the national legal order must not limit the scope of that condition exclusively to beneficiaries of international protection⁸.

It should also be highlighted that *“the case cements the Geneva Convention’s function as a cornerstone of the Common European Asylum System (CEAS) measures by enhancing the strong link between that Convention and the QD. In that respect the Court’s extension of the applicability of the Geneva Convention to cases involving subsidiary protection beneficiaries is groundbreaking”*⁹.

It is now up to the German federal administrative court to determine what defines the integration difficulties that underpin the “place-of-residence condition”. Integration rights of people with subsidiary status

⁶ <http://curia.europa.eu/jcms/upload/docs/application/pdf/2016-03/cp160022el.pdf>

⁷ <http://www.wsj.com/articles/asylum-seekers-freedom-of-movement-can-be-suspended-eu-rules-1456829611>

⁸ Joined Cases C-443/14 and C-444/14, OPINION OF ADVOCATE GENERAL CRUZ VILLALÓN delivered on 6 October 2015.

⁹ L. Halleskov Storgaard, Enhancing and diluting the legal status of subsidiary protection beneficiaries under Union law – the CJEU judgment in Alo and Osso, <http://eulawanalysis.blogspot.gr/2016/03/enhancing-and-diluting-legal-status-of.html>

protection is outlined in the EU's Qualification Directive.

The Luxembourg-based court's ruling is also unlikely to have much bearing on the EU's relocation scheme to distribute people arriving in Greece and Italy among other member states¹⁰.

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Funded by the
Erasmus+ Programme
of the European Union

"The European Commission support for the production of this publication does not constitute an endorsement of the contents which reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein."

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¹⁰ <https://euobserver.com/migration/132518>