



Judgement of the European Court of Justice (ECJ)

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Equal treatment for cross-border commuters

Cross-border workers (frontier workers) in the EU must receive the same social benefits as resident workers, the European Court of Justice (ECJ) ruled in case C-27/23.

The case

A Belgian employee worked in Luxembourg and lived in Belgium. As a cross-border worker, he was reliant on the Luxembourg system for family allowances, which he had received for several years for a child placed in his household by a court order. In 2017, the Luxembourg Caisse pour l'avenir des enfants (CAE; Children's Future Fund) nevertheless withdrew that family allowance. According to the CAE, family allowances are paid only to children who have a direct relationship with the cross-border worker (legitimate, natural or adopted children). By contrast, children who live in Luxembourg and are placed in care under a court order are entitled to receive a family allowance, which is paid to the natural or legal person that has custody of them.

The Luxembourg Court de Cassation (Cassation Court) sought to determine whether the application of different conditions for the award of the allowance, depending on whether or not the worker is a resident, might be perceived as indirect discrimination in contravention of the Luxembourg Social Security Code.

In its judgement, the Court of Justice noted that cross-border workers contribute to the financing of the social network of the host member state in terms of taxes and social security contributions which they pay in that state by virtue of their employment there. Accordingly, they must be able to enjoy family benefits and social and tax advantages under the same conditions as resident workers.

Violation of EU law

The Court considered that legislation such as that at issue gives rise to a difference in treatment and is contrary to EU law.

Any legislation of a member state under which non-resident workers—unlike resident workers—are not entitled to receive a social benefit in respect of children who are placed in their household, of whom they have custody, who are officially resident with them and who actually live with them on a continuous basis, constitutes indirect discrimination on the ground of nationality.

The fact that the placement was determined by a court of a member state other

than the host member state of the worker concerned has no bearing on that conclusion.

Similarly, the question of whether the cross-border worker provides for the upkeep of the child placed in their household cannot have any relevance if the same requirement is not also applied to a resident worker with whom a child has been placed.

Note

A reference for a preliminary ruling allows the courts and tribunals of the member states, in disputes which have been brought before them, to refer questions to the ECJ about the interpretation of European Union law or the validity of a European Union act. The ECJ does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Source: *Press release of the ECJ in case C-27/23 ECJ of 16 May 2024*

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