



An EU citizen who, after more than one year, has ceased to work in a self-employed capacity in another Member State because of an absence of work owing to reasons beyond his control retains the status of self-employed person and, consequently, a right to reside in that Member State

Mr Florea Gusa, a Romanian national, entered the territory of Ireland in 2007. From 2008 to 2012 he worked as a self-employed plasterer and paid his taxes, pay related social insurance and other levies on his income in Ireland.

In 2012, Mr Gusa stopped working, claiming an absence of work caused by the economic downturn. He had no further income and therefore applied for a jobseeker's allowance. The application was refused on the ground that Mr Gusa had not demonstrated that he still had a right to reside in Ireland. It was considered that, on cessation of his self-employment as a plasterer, Mr Gusa had lost the status of self-employed person and therefore no longer satisfied the conditions for a right of residence laid down by the Free Movement Directive.¹

Article 7 of the directive provides, however, that an EU citizen who is no longer a worker or self-employed person is to retain the status of worker or self-employed person, and thus a right of residence in the host Member State, in four cases. One of those cases is the situation in which a citizen '*is in ... involuntary unemployment after having been employed for more than one year*'. Mr Gusa maintains that he has retained the status of self-employed person and, therefore, a right of residence in Ireland under that provision. The Irish authorities contend that that provision applies only to persons who have worked as employees.

On appeal, the Court of Appeal (Ireland) asked the Court of Justice whether the expression, '*is in ... involuntary unemployment after having been employed for more than one year*', that is used in the directive covers only persons who are involuntarily unemployed after having worked as employees for more than one year, or whether it also applies to persons who are in a comparable situation after having been self-employed for that period.

In today's judgment, the Court finds that **it cannot be inferred from the wording of the provision at issue that that provision covers only the situation of persons who have ceased to work as employed persons and excludes those who have ceased to work as self-employed persons.**

The Court notes that there are variations between the different language versions of the directive. Certain versions refer, in essence, to work as an employee, whereas in others the EU legislature uses the neutral formulation of 'occupational activity' instead.

¹ 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 amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).

The Court recalls that, where there is divergence between the various language versions of an act, the provision in question must be interpreted by reference to the general scheme and the purpose of the act.

The Court notes first of all in that regard that the purpose of the directive is to define the conditions governing the exercise of the right of free movement and residence within the territory of the Member States. To that end, the directive distinguishes, in particular, the situation of economically active citizens from that of inactive citizens and students. However, it does **not make a distinction between citizens working as employed persons and those working as self-employed persons** in the host Member State.

The Court goes on to point out that the directive is intended to **remedy the approach characterising the earlier directives which dealt separately, in particular, with workers and self-employed persons.**

Finally, the Court considers that a **restrictive interpretation of the provision at issue** (that is to say, an interpretation covering only those who have worked as employed persons) **would introduce an unjustified difference in the treatment** of those who have ceased to work as employed persons and those who have ceased to work as self-employed persons, given that, just as an employed worker may involuntarily lose his job, a person who has been self-employed may find himself obliged to stop working. That person might thus be in a vulnerable position comparable to that of an employed worker who has been dismissed.

Such a difference in treatment would be particularly unjustified in so far as it would lead to a person who has been self-employed for more than one year in the host Member State, and who has contributed to that Member State's social security and tax system, being treated in the same way as a person who, being a first-time jobseeker in that Member State, has never carried on an economic activity and has never contributed to the social security and tax system of the State in question.

The Court rules, therefore, that **a national of a Member State retains the status of self-employed person for the purposes of the directive where, after having lawfully resided in and worked as a self-employed person in another Member State for approximately four years, that national has ceased that activity because of an absence of work owing to reasons beyond his control.**

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 Court of Justice about the interpretation of EU law or the validity of a European Union act. The Court of Justice 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.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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