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## **THE POSITION OF JOBSEEKERS**

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## Rights of Jobseekers

- \* Right of Residence
  - First-time Jobseekers
  - Jobseekers who retain the status of worker
  
- \* Access to Employment Services
  
- \* Access to Social Benefits (not being social security benefits under Regulation 883/2004)
  - First-time Jobseekers
  - Jobseekers who retain the status of worker



## Residence Rights of First-time Jobseekers 1

- \* **Case C-292/89 Antonissen of 26 February 1991:**

Right of nationals of Member States to move freely within the territory of the other Member States and to stay there for the purposes of seeking employment.

- \* **Recital 9 Directive 2004/38:**

“Union citizens should have the right of residence in the host Member State for a period not exceeding three months without being subject to any conditions or any formalities other than the requirement to hold a valid identity card or passport, without prejudice to a more favourable treatment applicable to job-seekers as recognised by the case-law of the Court of Justice.”



## Residence Rights of First-time Jobseekers 2

- But **Recital 12 Directive 2004/38** opens possibility of registration of all Union citizens:  
“For periods of residence of longer than three months, Member States should have the possibility to require Union citizens to register with the competent authorities in the place of residence, attested by a registration certificate issued to that effect.”
- **Article 14(4) Directive 2004/38:**  
Jobseekers and their family members retain their right of residence and cannot be expelled if they are continuing to seek employment and have a genuine chance of being engaged



## Residence Rights of Jobseekers who retain the status of Worker

\* According to **Article 7(3)(b) and (c) Directive 2004/38**:

Union citizen who is no longer a worker retain the status of worker if:

b) He/she is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a job-seeker with the relevant employment office

c) He/she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first twelve months and has registered as a jobseeker with the relevant employment office. In this case, the status of worker shall be retained for no less than six months

\* According to **Article 7(1)(a) Directive 2004/38** they have the right to reside because they have the status of workers



## Residence registration requirements

- Residence registration requirements for job-seekers differ.
- In some Member States (***Estonia**, France, Greece, Hungary, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Spain*), the general rules on residence apply to job-seekers, either expressly or implicitly, and they need to register their residence if they are going to stay longer than three months in the territory,
- While in other Member States (*Austria, Belgium, Czech Republic, **Finland**, Malta, Slovakia, Sweden, United Kingdom*) there is no such requirement.



## Access to employment services

- On the basis of **Article 5 Regulation 1612/68** now **Regulation 492/ 2011** all job seekers have the right to receive the same assistance by the employment offices as national of the host Member State.
- Our European report shows that in a number of Member States it is necessary for job-seekers to register with the national employment agencies so that they can access their services (*Austria, Bulgaria, Czech Republic, Cyprus, **Estonia**, **Finland**, Germany, Hungary, Latvia, Malta, Poland, Sweden*).
- Such registration may also be important when assessing the qualifying period for permanent residence, which, according to **Article 16(1) of Directive 2004/38**, EU citizens have a right to after five years of continuous stay on the territory



## Social Benefits for First-time Jobseekers

- **Article 24(2) Directive 2004/38:**

“The host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 14(4)(b)” (this is the period as long as the Union citizens can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged).

- **But Case C-22/08 Vatsouras of 4 June 2009:**

“Benefits of a financial nature which, independently of their status under national law, are intended to facilitate access to the labour market cannot be regarded as constituting “social assistance” if a real link between the jobseeker and the labour market of that Member State exists”





## Two Questions

*When is a social benefit intended to facilitate access and when is it only social assistance?*

In order to determine whether a particular benefit under national law aims to facilitate access to the labour market, its objective must be analysed according to its results and not according to its formal structure.

*When does a real link between a first time job seeker and the labour market of that Member State exist?*

National legislators remain competent but they should respect the principle of proportionality. Criteria should not go beyond what is necessary to conclude that the person concerned is genuinely seeking work on the employment market of the host MS. The protection of the rights of EU citizens also means that such criteria are known to them in advance and that they can seek redress of a judicial nature.



## Jobseekers who retain the status of worker

- They have a right to equal treatment within the scope of the EU Treaty, based on **Article 24(1) Directive 2004/38**



## Challenges

- Clarification of the length and conditions for residence for more than three months for first-time jobseekers and their family members
- Identification of the social benefits which fall under the definition of the Vatsouras case-law