

Living in another Member State: barriers to EU citizens' full enjoyment of their rights Slovakia 2017

Contractor: Center for the Research of Ethnicity and
Culture

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1. Table 1 – Case law

<p>1. Subject matter concerned</p>	<p><input type="checkbox"/> 1) non-discrimination on grounds of nationality x 2) freedom of movement and residence - linked to which article 25 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</p>
<p>Decision date</p>	<p>10 May 2013</p>
<p>Deciding body (in original language)</p>	<p>Krajský súd Banská Bystrica</p>
<p>Deciding body (in English)</p>	<p>Regional court Banská Bystrica</p>
<p>Case number (also European Case Law Identifier (ECLI) where applicable)</p>	<p>24S/8/2013 ECLI: SK: KSBB: 2013: 6013200078.1</p>
<p>Parties</p>	<p>Mr XX as “the claimant” c/a Social Insurance Agency as “the Defendant”</p>

Web link to the decision (if available)	https://obcan.justice.sk/content/public/item/f915db7a-8810-4906-ab4e-0fa0a4f4cd52
Legal basis in national law of the rights under dispute	<p>Regulation (EC) No. 883/2004. Regulation (EC) No. 987/2009.</p> <p>The Social Insurance Act, Act No. 461/2003 Coll. on Social Insurance, as amended (<i>Zákon č. 461/2003 Z.z. o sociálnom poistení v znení neskorších predpisov</i>, adopted in 2003, hereinafter only as "Act No. 461/2003 Coll.").</p>
Key facts of the case (max. 500 chars)	<p>The claimant, as a Slovak citizen, exercised his right to free movement in the EU. From 2007 to 2012, he lived and worked in the territory of the Italian Republic where he was also insured against unemployment. He worked there from 18 July 2009 to 17 June 2012.</p> <p>After his return to Slovakia, he filed an application for an unemployment benefit in his original place of permanent stay. He stated in his application that he was insured against unemployment in Italy (from 11 October 2007 to 18 June 2012). The defendant (Slovak Social Insurance Agency) decided that the claimant was not entitled to unemployment benefits (pursuant to Article 104 paragraph 1) of Act No. 461/2003 Coll. and Article 61 EC Regulation 883/2004 of the European Parliament and of the Council stating that the claimant did not have his residence in Slovakia during his employment in Italy and did not have a "centre of interests" preserved there, and issued Decision No. 12534-2/2013-BA dated 9 January 2013 (hereinafter only as "the decision").</p> <p>By exercising his fundamental right to free movement within the EU and by the decision the claimant lost his right to adequate material security due to the loss of employment. In his opinion, there was no doubt that the defendant must take into account the periods of unemployment insurance which he had obtained in the Italy.</p>

<p>Main reasoning / argumentation (max. 500 chars)</p>	<p>The claimant claimed that he only had a stay in Italy for the purpose of work and that he could come to the Slovak Republic at monthly intervals. The claimant did not change his original residence in Slovakia by registering in Italy.</p> <p>The defendant claimed that the claimant interrupted his ties in Slovakia (he returned to the Slovakia at monthly intervals) and thus did not have his residence and "centre of interest" in Slovakia during his five years in Italy. By this action, the claimant did not fulfil conditions for claiming an unemployment benefit. According to the defendant, the claimant also did not own any property in Slovakia, therefore any exemption would not apply and the insurance period in another Member State would not be taken into account if he kept the "centre of interests" in his country of origin, Slovakia.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>Has the claimant maintained his residence in the Slovak Republic during his employment relationship in Italy? By exercising the right to free movement in the EU guaranteed by Directive 2004/38, did he lose the right to adequate material security in his country of origin due to the loss of employment in another Member State?</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The court annulled the contested decision of the defendant and the case returned to the defendant for further proceedings. The defendant has not sufficiently found the facts and the court has not identified with the defendant's opinion that there is no objective doubt that the claimant was resident in Italy at the relevant time (five years of residence).</p>

Key quotations in original language and translated into English with reference details (max. 500 chars)	<p><i>"Bydlisko je potrebné určiť výlučne podľa kritérií podľa nariadenia ES 987/2009. Dĺžka pobytu v štáte zamestnania nie je jediným výhradným a určujúcim kritériom. (Inak by vykonávacie nariadenie mohlo obsahovať číselný údaj o dĺžke a trvalosti pobytu, za ktorý už je potrebné ho považovať za bydlisko, teda centrum záujmov dotknutej osoby)."</i></p> <p>Translation:</p> <p>"The residence is to be determined solely according to the criteria of Regulation EC 987/2009. The length of stay in the state of employment is not the only sole and determining criterion. (Otherwise, the implementing regulation could include a figure on the length and permanence of a residence for which it is already to be considered as the place of residence, i.e. the "centre of interest" of the person concerned)."</p>
Has the deciding body referred to the Charter of Fundamental Rights? If yes, to which specific article.	<p>No.</p>

2. Table 2 – Overview

	non-discrimination on grounds of nationality	the right to move and reside freely in another Member State	the right to vote and to stand as candidates	the right to enjoy diplomatic protection of any Member State	the right to petition
Please provide the total number of national cases decided and relevant for the objective of the research if this data is available (covering the reference period)	n.a.	1	n.a.	n.a.	n.a.