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Advocate General's Opinion in Case C-488/21 | Chief Appeals Officer and Others

### Advocate General Ćapeta: an EU mobile worker's mother can claim a social benefit without this calling into question her right of residence

*The principle of equal treatment does not allow such a relative to be considered an unreasonable burden on the social assistance system of the State of residence*

GV is a national of Romania and the mother of AC, a Romanian citizen residing and working in Ireland. AC is also a naturalised Irish citizen. GV joined her daughter in Ireland in 2017 and has legally resided there ever since. During the past 15 years, she has been financially dependent on AC. In 2017, GV suffered degenerative changes in her arthritis, after which she made an application for Disability Allowance under the Irish Social Welfare Consolidation Act 2005.

That request was refused on the ground that under the relevant Irish law GV must not become an unreasonable burden on the national social assistance system.

The Court of Appeal (Ireland) has, in essence, asked the Court of Justice whether the Citizenship Directive<sup>1</sup> precludes Irish legislation that allows such refusal.

In today's Opinion, Advocate General Tamara Ćapeta considers that the condition of dependency of the direct ascendant on a mobile EU worker is required **for as long as** that right of residence is derived from the right of free movement exercised by that worker. At the same time, AG Ćapeta takes the view that the Court should embrace a **broad concept of dependency**, which should be deemed to exist whenever a person is in need of the material, financial, physical or emotional support of a family member. **Therefore, even if GV would no longer need the financial support of her daughter, she might still fulfil the requirement of dependency on which the derived right of residence is based.** For that reason, **the Member State award of financial support does not terminate the dependency of the supported person.**

Further, the Citizenship Directive is the result of a **legislative consensus** at the EU level about the acceptable balance between the interests of free movement and the concerns for the welfare systems of the Member States. **The outcome of that consensus is that neither mobile EU workers nor their dependent direct ascendants residing legally in a Member State can be regarded as an unreasonable burden by that State.** In accordance with the **principle of equal treatment**, such family members are an (un)reasonable burden in the same way as nationals of that State are an (un)reasonable burden.

Consequently, **a Member State cannot refuse access to special non-contributory cash benefits to dependent direct ascendants of mobile EU workers on the ground that they represent an unreasonable burden on the**

<sup>1</sup> 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).

**social assistance system of that State.**

**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**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 European Union 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 Opinion is published on the CURIA website on the day of delivery.

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