

Court of Appeal  
(Inferior Jurisdiction)  
Justice Anthony Ellul  
Appeal no: 42/2015

**Petya Angelova (Respondent)**

**Vs**

**Director General Social Security (Appellant)**

Friday, 24<sup>th</sup> June, 2016.

Petya Angelova, a Bulgarian citizen, filed an application for social benefits. The appellant refused her request as notified by letter dated 18<sup>th</sup> December 2014 wherein it was stated: *"A citizen of the European Union may reside in Malta if he has sufficient resources for himself and his family members, ensuring that they do not become a burden on the Social Assistance System in Malta (L.N. 191 of 2007)."*

In a decision delivered on the 18<sup>th</sup> September 2014, the Umpire upheld respondent's appeal after stating that:

*"In the current case, Appellant's right of residence, which in terms of Legal Notice 191/2007 also depends on absence of creating a burden on society, has been retained and has not yet been withdrawn by the competent authority – that is the Director of Citizenship and Expatriate Affairs. This notwithstanding Appellant's evident intention of benefit tourism. Hence Appellant benefits from the provisions of EC Directive 2004/38, subject however to further decisions by the Director of Citizenship and Expatriate Affairs."*

In her appeal filed in January 2015 to the Umpire, respondent claimed that:

- i. She moved to Malta eight months before;
- ii. She has a residence permit;
- iii. As a citizen of the European Union and Single Mother, she had a right for protection.

The appellant replied that respondent's request for social assistance was refused since she was not a Maltese citizen and the regulations of the European Union on Social Security do not apply with regards to social assistance (Legal Notice 191 of 2007).

In his appeal, the appellant contends that:

- i. The Umpire wrongly applied the law. Directive 2004/38 as transposed in Subsidiary Legislation 460.17, permits Member States to refuse a request for social benefits in the case of an economically inactive EU citizen who does not have sufficient resources to claim a residence certificate.
- ii. The Umpire based her decision on the alleged fact that respondent is in possession of a Certificate of Residence. However, no such certificate was shown during the appeal.

- iii. Respondent is a Benefit Tourist as confirmed by the Umpire. Therefore, she is not entitled to request payment of social benefits (vide **Elisabeta Dano, Florin Dano v Jobcenter Leipzig**, Case C-333/13)

Respondent did not file a reply to the appeal.

Having seen the relevant documentation, the court concludes:

1. In her appeal application, respondent claimed that she has a residence permit. However, this is not enough. In the court's opinion she was obliged to present a legal copy of the permit as proof that she has a residence certificate issued in terms of Subsidiary Legislation 460.17. There is no concrete evidence that the respondent has a residence certificate.
2. The Umpire accepted that the respondent is a benefit tourist. The judgement delivered by the European Court of Justice (Grand Chamber) in the case **Elisabeta Dano, Florin Dano v Jobcenter Leipzig**, Case C-333/13 is relevant to this case. The court confirmed that:

*"A Member State must therefore have the possibility, pursuant to Article 7 of Directive 2004/38, of refusing to grant social benefits to economically inactive Union citizens who exercise their right to freedom of movement solely to obtain another Member State's social assistance although they do not have sufficient resources to claim a right of residence."*

The respondent declared on oath that: "... she has been living in Malta for a year and a half; that her child is sick and she came to Malta since medical services are better than those in Bulgaria..." Once the Umpire concluded that respondent's evident intention in moving to Malta was that of '**benefit tourism**', then she has no right to claim social benefits in Malta.

3. The respondent is not economically active and has not produced any evidence that she has tried to seek employment or that she has sufficient resources. Furthermore, she has not proved that she has a right of residence in Malta in terms of the Subsidiary Legislation 460.17. In the circumstances the appellant was legally correct in refusing respondent's application for social benefits.

**In the circumstances the Court upholds the appeal filed by the appellant and revokes the Umpire's decision delivered on the 18<sup>th</sup> September 2015 and confirms the Director General's decision dated 18<sup>th</sup> December 2014. All costs are at the sole charge of the respondent.**

Anthony Ellul.