# A genuine chance of free movement? Clarifying the ‘reasonable period of time’ and residence conditions for jobseekers in *G. M. A.*

Case C‑710/19, *G. M. A. v. État belge*, Judgment of the Court (First Chamber) of 17 December 2020, EU:C:2020:1037

## **1. Introduction**

Jobseekers are best thought of as having a hybrid status in EU free movement law. They are not afforded the full privileges associated with worker status,[[1]](#footnote-1) but their intention to find work is rewarded by granting them more protection than those deemed to be economically inactive. AG Colomer described them, in his opinion in *Vatsouras and Koupatantze*, as being ‘midway between being engaged in economic activity and not being so engaged’. [[2]](#footnote-2) After all, the free movement of workers is unlikely to be effective if those workers are forced to conduct their search for suitable employment from a different country. The right to move and stay in a host Member State for this purpose has therefore been protected under the umbrella of the free movement of workers in Article 45 TFEU.[[3]](#footnote-3) The right of residence for jobseekers has since been codified in Article 14(4)(b) Directive 2004/38 and exists independently from more standard residence rights in Articles 6, 7 and 16 of the same Directive.[[4]](#footnote-4) It is not bound by the more standard time framework of rights under the Directive: Article 6 (right of residence for up to three months), Article 7 (right of residence for more than three months) and Article 16 (permanent residence). Nevertheless, residence as a jobseeker is not indefinite and instead relies on host Member States to provide jobseekers a ‘reasonable period of time’ to acquaint themselves with suitable employment opportunities or longer if they can demonstrate a ‘genuine chance of being engaged’.[[5]](#footnote-5) The precise limits of this right of residence and what a ‘reasonable period of time’ or a ‘genuine chance of being engaged’ means have always been, perhaps deliberately, a bit murky.

The treatment of jobseekers’ residence rights differs greatly between Member States.[[6]](#footnote-6) There are variations in both temporal limitations and in the conditions set to acquire status as a jobseeker. It is important to note first that, while jobseekers are entitled to equal treatment[[7]](#footnote-7) and benefits intended to facilitate access to the labour market,[[8]](#footnote-8) this entitlement under EU law does not extend to entitlement to social assistance, or benefits intended to ensure a minimum subsistence,[[9]](#footnote-9) which Member States can withhold under Article 24(2) Directive 2004/38.[[10]](#footnote-10) While the judgment in *G. M. A.* concerns jobseekers’ rights to continue to reside in a host State, not to the more controversial topic of access to a host Member States’ social assistance system, the restrictions to financial support can play an important role in the experience of mobile EU jobseekers.

In *G. M. A.*, the Court found that six months, from the point of registration as a jobseeker, would not appear to be insufficient for newly arrived jobseekers to have a ‘reasonable period of time’ to acquaint themselves with suitable employment. The judgment also established that Member States could only impose the ‘genuine chance of being engaged’ condition on jobseekers after this reasonable period of time and provided some guidance of what should be considered as part of this test. This case note will consider these key findings and the potential for this judgment to harmonize Member State approaches to jobseekers residence rights. It will also consider what the judgment contributes to the effectiveness of free movement rights for jobseekers. Regardless of the protections established in *G. M. A.*, barriers still remain for migrant jobseekers who experience structural discrimination in the labour market or who are unable to afford an extended period of job seeking without access to social assistance.

## **2.** **The facts of the case**

The case concerned a Greek national (G. M. A.) who had moved to Belgium to seek employment and who had made an application for a certificate of residence as a jobseeker from the Office des étrangers in October 2015. This certificate was required to confer a right of residence for more than three months. The Office des étrangers rejected the application in March 2016 on the basis that G. M. A. had not met the requirements for a right of residence beyond three months as a jobseeker as he had failed to demonstrate a ‘genuine chance of being engaged’. This rejection also triggered the Office des étrangers to instruct that G. M. A. leave Belgium within 30 days. G. M. A. appealed the refusal to issue and residence certificate and, in June 2018, the Conseil du contentieux des étrangers (The CCE), the first instance court for challenging these decisions, dismissed the appeal.

An appeal was then lodged on a point of law before Conseil d’État (Council of State, Belgium), the referring court. G. M. A. argued that Article 45 TFEU, when read in light of the judgment in C-292/89 *Antonissen,*[[11]](#footnote-11) meant that Member States are obliged to grant jobseekers a ‘reasonable period of time’ to acquaint themselves with potentially suitable employment opportunities and take the measures necessary to be engaged. Secondly, he argued that this period of time cannot in any circumstance be less than six months and that there must be no requirement to prove a ‘genuine chance of being engaged’ during this six months.

He also argued that, since he had been recruited by the European parliament as a probationer in April 2016, the facts show that he could demonstrate that he had a genuine chance of being engaged for the period of time he was jobseeking. While these facts occurred after the initial decision of the Office des étrangers to refuse the certificate of residence, G. M. A. argued that the CCE had a duty to carry out an exhaustive examination of all the relevant circumstances and to consider all factual matters, even when those matters occur after the decision at issue.[[12]](#footnote-12) He argued that the CCE should have therefore taken his engagement, just one month after he was found to not have a genuine chance of being engaged, into account during the first instance appeal. This argument relied on Articles 15 and 31 of Directive 2004/38, which concern procedural safeguards and access to appropriate redress, and Article 41 and 47 of the Charter of Fundamental Rights of the European Union (The Charter), on the right to good administration, fair trials and effective remedies. Since G. M. A. was engaged in work in April 2016, he made a fresh application and was provided with a certificate of residence on 6 May 2017 confirming his right to stay in Belgium as a worker. Nevertheless, the decision that he did not have a right of residence as a jobseeker for the time before this would effectively restart the clock for a future claim of establishing a right to permanent residence.[[13]](#footnote-13) It was therefore in G. M. A.’s interest that the decision to not award him status as a jobseeker was properly scrutinized.

The Council of State decided to stay the proceedings and to refer two questions to the ECJ. The first question asked whether Article 45 TFEU requires Member States to allow jobseekers a reasonable period of time to find suitable work and whether this period of time should be no less than six months and cannot be conditional on proving a real chance of finding employment. The second question, which was unfortunately not considered by the ECJ, asked whether a joint reading of Articles 15 and 31 of Directive 2004/38 and Articles 41 and 47 of the Charter, alongside the general principles of EU law and effectiveness of directives, meant that national courts must have regard to new facts arising after a decision refusing to recognize a right of residence where such facts could alter the permissibility of the restriction of their right of residence.

## **3. The opinion of Advocate General Szpunar**

The AG opinion begins by analysing the rights of jobseekers under Article 45 TFEU and how this has been interpreted by the ECJ in previous judgments.[[14]](#footnote-14) The opinion recites how a right of residence for jobseekers was identified, by the Court in *Royer,* as being conferred directly by Article 45 TFEU (then Article 48 EEC).[[15]](#footnote-15) The right to free movement for workers was found to entail the right to move freely within the territory of the Member States and to stay there for the purposes of seeking employment. The free movement of workers in Article 45 TFEU therefore requires a broad interpretation to avoid the right from becoming ineffective, for example if jobseekers were only permitted such a short a period of residence that would make finding work unlikely.[[16]](#footnote-16) The AG then turned to the key judgment in *Antonissen*, where it was confirmed that the amount of time in a host Member State for those seeking employment could be limited but that a strict period of three months, without the possibility of extension is not appropriate.[[17]](#footnote-17) It was recognised that a reasonable period of time should be given to jobseekers ‘in which to apprise themselves, in the territory of the Member State concerned, of offers of employment corresponding to their occupational qualifications and to take, where appropriate, the necessary steps in order to be engaged.’[[18]](#footnote-18) The AG notes that the ECJ, in *Antonissen*, did not go so far as a to fix a period of time that would be sufficient. Instead, opting to suggest that, in the absence of a prescribed time, six months would not appear to be insufficient and should not jeopardize the effectiveness of free movement rights.[[19]](#footnote-19) Paragraph 21 of this judgment also clarified that after a sufficient period of time, should the jobseeker show evidence that they are continuing to seek employment and that they have a genuine chance of being engaged, they should not be required to leave the Member State.

This judgment has been partly codified in Article 14(4)(b) Directive 2004/38, protecting residence rights for jobseekers by precluding their expulsion from a host Member State for as long as they can provide evidence that they are continuing to seek employment and have a genuine chance of being engaged. AG Szpunar notes that this provision omits some key factors of the *Antonissen* judgment as it does not mention a ‘reasonable period of time’ or the suggested ‘reasonable’ period of six months for jobseekers to acquaint themselves with suitable employment opportunities.[[20]](#footnote-20) The AG concluded from these summaries that it remains the case that Member States must provide jobseekers with a ‘reasonable period of time’ to acquaint themselves with suitable employment otherwise the effectiveness of Art 45 TFEU would be jeopardized.

*Conditions for a right of residence as a jobseeker*

Turning to the next issue, the AG considered whether Article 14(4)(b) Directive 2004/38, read in light of Article 45 TFEU and the judgments of the ECJ, requires Member States to give a jobseeker a ‘reasonable period of time’, during which they are not obliged to provide evidence that they are seeking work and have a genuine chance of being engaged.[[21]](#footnote-21) While G. M. A. and the Commission argued this to be the case, it was the view of the Belgian, Danish and United Kingdom Governments that jobseekers must prove a genuine chance of being engaged throughout the ‘reasonable period of time’. AG Szpunar sets out that he does not completely agree with either interpretation. Instead, he argued that the requirement for a jobseeker to prove that they are seeking work applies during the reasonable period, but the right of residence only becomes conditional on proving a ‘genuine chance of being engaged’ after the reasonable period of time has expired.[[22]](#footnote-22) The logic behind this finding comes from an examination of the purpose and origin of Article 14(4)(b) Directive 2004/38 and the wording of the *Antonissen* judgment. When examining the former,[[23]](#footnote-23) AG Szpunar found that both recital 9 of the Directive and Council of the European Union amendments to previous iterations of the initial right to reside of three months (Art 6 Directive 2004/38)[[24]](#footnote-24) refer to the intention to give jobseekers more favourable treatment and recognize the ECJ case law which confirms this. For AG Szpunar, this shows an intention to strengthen the status of jobseeker andmeans that any of the conditions in Article 14(4)(b) cannot be imposed during the first 3 months of residence. However, the AG believes that the reference to the judgment in *Antonissen* does not suggest an intent to codify a six-month minimum right of residence for jobseekers.

The key paragraph in the *Antonissen* judgment states that ‘…if after the expiry of that period the person concerned provides evidence that he is continuing to seek employment and that he has genuine chances of being engaged, he cannot be required to leave the territory of the host Member State’.[[25]](#footnote-25) The confusion here lies with the word ‘continuing’. It is not entirely clear whether it requires jobseekers to be continuing to seek employment *and* continuing to have a genuine chance of being engaged. The implication of which would allow Member States to impose the ‘genuine chance of being engaged’ condition on jobseekers during the ‘reasonable period’. When looking to the wording of paragraph 21 of the *Antonissen* judgment, the AG relies on the separation of the two conditions and the distinction of the Court’s wording for each. The AG highlighted the Court’s choice to state that ‘*if after the expiry of that period*’ the jobseeker can demonstrate that they have a genuine chance of being engaged then they cannot be required to leave the host Member State. Following this wording, AG Szpunar argued that it can only follow that *before* the expiry of that reasonable period, it is not necessary to demonstrate a genuine chance of being engaged. In contrast, the *Antonissen* judgment and language in Directive 2004/38 requires that ‘after the expiry of that period’ a jobseeker must provide evidence that they are *continuing* to seek employment to retain their right of residence. For AG Szpunar, this implies that jobseekers must initially demonstrate that they had been seeking employment during the reasonable period of time.

*A fixed minimum period of six months?*

Turning to whether the ‘reasonable period of time’ given to jobseekers must be for a minimum period of six months, the AG first reaffirmed the ruling in *Antonissen* that six months would not appear to be insufficient. Recognising that jobseekers should be given more favourable treatment and should therefore not lose the benefits of unconditional residence for the first three months, the AG argued that ‘a period of three months from the end of the initial three-month period of legal residence’ does not seem to be unreasonable.[[26]](#footnote-26) For the AG, where a jobseekers’ reasonable period of time overlaps with their Article 6 right of residence, their initial three months of residence in a host Member State should remain unconditional, it should also not trigger the countdown for a ‘reasonable period’ of residence.[[27]](#footnote-27) Instead, it is only after the end of the initial three months that the clock should start for the ‘reasonable period’ of a jobseekers residence. Following this suggestion, should registration as a jobseeker occur after the initial three months residence, the AG finds that a period of just three months could still be sufficient as the entire ‘reasonable period of time’ to seek employment for a first-time jobseeker.

In final remarks on this issue, AG Szpunar expressed his desire for a fixed period of time to be established for jobseekers to provide more legal certainty and transparency for EU citizens.[[28]](#footnote-28) However, he also recognizes that it would not be appropriate for the Court to set this and that it should be left to the EU legislature.[[29]](#footnote-29)

Additionally, the AG considers the substance of the condition for jobseekers to demonstrate a genuine chance of being engaged to continue to reside in a host Member State after the reasonable period for seeking employment is up. Here, the AG offers guidance on potentially relevant factors for national authorities to consider when making an assessment of a genuine chance of being engaged including whether the citizen is registered as a jobseeker, has been periodically sending applications or attending interviews and the average time taken to find employment in their national labour market corresponding to the occupational qualifications of the jobseeker.[[30]](#footnote-30) The AG also identifies that factors such as a jobseeker never having worked in that national labour market before or refusing an offer of employment that does not correspond to their level of occupational qualifications should not be used as a basis for finding that they do not have a genuine chance of being engaged.[[31]](#footnote-31) This guidance offers quite a broad interpretation of what could fall into the ‘genuine chance of being engaged’ condition and could help more jobseekers make use of Article 14(4)(b) to extend their right of residence beyond the reasonable period.

Overall, the AG concludes that: (i) Member States must not impose any conditions on jobseekers during their initial three months of residence, (ii) jobseekers must be allowed a reasonable period to seek employment, during which they can only be required to demonstrate that they are seeking employment, (iii) The condition to have a ‘genuine chance of being engaged’ must only apply upon expiry of that reasonable period, and (iv) a period of three months from the end of the initial three-month period of legal residence does not appear to be unreasonable for jobseekers.

## **4. The judgment of the Court**

The Court’s judgment in *G. M. A.* broadly follows the line of argument as the AG’s opinion, beginning with a consideration of whether Member States must provide jobseekers with a ‘reasonable period of time’. The Court, like the AG, notes that the free movement of workers under Article 45 TFEU and the provisions that establish this freedom must not be interpreted narrowly and must include jobseekers.[[32]](#footnote-32) Relying on the judgment in *Antonissen*, it is reiterated that providing EU citizens with a right to enter a Member State to seek employment and to stay there for a ‘reasonable time’ is necessary to ensure the effectiveness of Article 45 TFEU is not jeopardized.[[33]](#footnote-33)

Next the Court considered the length of the ‘reasonable period’ provided to jobseekers to acquaint themselves with suitable employment. First, however, the Court tackled the question of when the ‘reasonable period’ should begin. It is noted that if an EU citizen begins jobseeking during the first three months in a host Member State, their right of residence will be covered by both the initial right of residence in Article 6 Directive 2004/38 and as a jobseeker under Article 45 TFEU as it has been interpreted by the ECJ in *Antonissen* (and then codified into Article 14(4)(b) of the Directive).[[34]](#footnote-34) As such, it is found that the ‘reasonable period’ starts to run at the point when a Union citizen decides to register as a jobseeker, rather than on arrival or, as the AG suggested after the initial three months of residence.[[35]](#footnote-35) This is the main point at which the Court judgment diverges from the AG opinion and changes how the duration of the ‘reasonable period’ should be calculated. The Court does not agree with the AG that ‘a period of three months from the end of the initial three-month period of legal residence’ would suffice for the ‘reasonable period of time’ available to jobseekers. Instead, as the reasonable period starts to run from the point of registration and can therefore overlap with the initial three months, the judgment considers what duration could be reasonable whether it falls within Article 6 residence or not. The Court highlighted that Article 14(4)(b) of Directive 2004/38 does not contain any indication of a minimum duration but that the duration must ensure that the effectiveness of Article 45 TFEU.[[36]](#footnote-36) Despite referring to the purpose of Directive 2004/38 to be the facilitation of free movement rights, the Court refers back to the judgment in *Antonissen* to determine again that ‘a period of six months does not appear, in principle, to be insufficient and does not call into question the effectiveness of Article 45 TFEU’.[[37]](#footnote-37) This finding goes no further than *Antonissen* to setting the duration of the reasonable period, only adding that it should begin at the point of registration as a jobseeker. For now, at least, we are still left with what the Court suggests *could* be sufficient, rather than a clear view of what actually would be insufficient. This may require further clarity from the legislature in the future.

The third focus of the Court in *G. M. A.* concerns the relevant conditions Member States can impose on jobseekers during the difference periods of their residence and subsequently how paragraph 21 of *Antonissen* and Article 14(4)(b) Directive 2004/38 should be interpreted. Here, the Court sets a timeline for when certain conditions should be applied at three different points of residence for first-time jobseekers: (i) the initial three months residence under Article 6 Directive 2004/38, (ii) the reasonable period of time spent jobseeking separate to or after residence under Article 6; and (iii) after that reasonable period. During the initial three months of residence, should an EU citizen register as a jobseeker, they will fall within both Article 6 and Article 14(4)(b) of the Directive. As jobseekers should have a more favourable treatment, the Court found that the unconditional right of residence in Article 6 should not be undermined by conditions for jobseekers. As such, during the first three months of residence, a jobseeker cannot be required to prove either that they are seeking employment or have a genuine chance of being engaged.[[38]](#footnote-38) Turning next to the conditions that can be imposed on jobseekers during the ‘reasonable period of time’, where it does not overlap with the Article 6 initial right of residence, the Court also relies on the wording of Article 14(4)(b) and the judgment in *Antonissen*. Inferring from the statement that a jobseeker must ‘continue’ to seek employment to extend their right of residence beyond the ‘reasonable period’ under Article 14(4)(b) Directive 2004/38, the Court finds that host Member State can require a jobseeker to seek employment during the ‘reasonable period of time’ but cannot require that they have a ‘genuine chance of being engaged’.[[39]](#footnote-39) The Court also finds that this interpretation is supported by the purpose of the ‘reasonable period’ to allow jobseekers to apprise themselves with the national labour market and take the necessary steps in order to be engaged. Therefore, during the reasonable period it would be, in the Court’s view, too early for national authorities to be capable of assessing whether a jobseeker has a ‘genuine chance of being engaged’.[[40]](#footnote-40) The Court therefore found that ‘it is only after the reasonable period of time has elapsed that the jobseeker is required to provide evidence not only that he or she is continuing to seek employment but also that he or she has a genuine chance of being engaged’.[[41]](#footnote-41)

The Court also provided a little more detail on the substance of the test to determine whether a jobseeker has a ‘genuine chance of being engaged’. It is first recognised that national authorities must carry out an overall assessment of all relevant factors to decide if a jobseeker meets these conditions.[[42]](#footnote-42) After this the Court refers to AG Szpunar’s suggestions as examples of the relevant factors national institutions will need to consider and where factors are irrelevant. The Court repeated all but one of the factors identified by the Advocate General, which suggests that the Court agrees with their incorporation in the “overall assessment” taken by Member States. The judgment does not say that a jobseeker having never worked in that Member State before is irrelevant to this assessment, as the Advocate General suggested.

Finally, based on this analysis the Court decided that G. M. A. had not been given a reasonable period of time to acquaint himself with suitable employment opportunities, as such he should not yet have been exposed to the requirement to demonstrate that he has a ‘genuine chance of being engaged’.[[43]](#footnote-43)

The second question referred was, unfortunately, not dealt with by the Court as the matter was resolved through the first question alone. Although G. M. A. received a residence card due to their employment and could therefore stay in Belgium, a decision refusing jobseeker status could break continuity of lawful residence and restart the clock on acquiring the right of permanent residence. This was noted by AG Szpunar.[[44]](#footnote-44) It is foreseeable that a jobseeker who fails to retain their right of residence as a jobseeker may need this decision to be overturned for the purpose of a permanent residence application. Whether national courts have a duty to consider facts occurring after the decision that clearly demonstrate that the jobseeker *should* have been found to have a genuine chance of being engaged, for example being engaged in employment shortly after, remains to be seen.

## **5. Comment**

The judgment in *G. M. A.* offers some welcome clarity to the residence rights of jobseekers, a group which sits at an interesting crossroads in EU citizenship and a free movement law, where those who can prove their economic credentials have a much stronger claim to equal treatment than those who are deemed economically inactive.[[45]](#footnote-45) Jobseekers are, for the most part, not economically active *yet*. They may not ever be economically active. Instead, they occupy a space where their aspiration to join the internal labour market and to become a ‘good’ market citizen is recognised and rewarded with strengthened residence rights, if not necessarily with equal treatment to social assistance.[[46]](#footnote-46) This case did not concern access to welfare benefits in Belgium, only the ability for a jobseeker to continue residing lawfully in a host Member State and not face expulsion. The judgment in *G. M. A.* demonstrates a recognition of this midway status and a willingness of the ECJ to strengthen and reinforce the residence rights of jobseekers, provided they do not need to draw upon a host Member State’s social assistance system.

Nevertheless, the judgment establishes some important protections for jobseekers, it reinforces their residence rights, provides greater clarity and legal certainty and raises three key issues which are worth exploring further. First, the potential impact of a more precise timetable of residence rights and conditions on Member State practices, and which aspects of these rules remain uncertain. Second, did the Court miss an opportunity to improve the effectiveness of free movement rights for jobseekers by neglecting to include a recognition of the structural barriers which inhibit access to the labour market for groups already experiencing discrimination. Finally, whether the issue of access to social assistance makes the protection of jobseekers residence rights, reinforced in *G. M. A.*,unaffordable for many EU citizens.

*Clarifications and harmonising the approach to jobseekers*

The judgment in *G. M. A.* has clearly established that a Member State can only require jobseekers to evidence their chances of finding work after they have had a reasonable period of acquaint themselves with the national labour market and employment opportunities. This reasonable period should only begin at the point of registration as a jobseeker, not on arrival to a host Member State. The judgment also provides guidance on what factors may be relevant for assessing a ‘genuine chance of being engaged’. These findings provide greater legal certainty and transparency for EU citizens who choose to move to another Member State to seek employment. This section explores how this judgment has tightened up some of the edges of residence for jobseekers and whether it will encourage harmonisation among Member State practices which currently diverge considerably.[[47]](#footnote-47) It will then look briefly at a remaining issue left open: what counts as a ‘reasonable period of time’ for jobseeking?

The Court’s first key finding relates to when a reasonable period of residence for jobseekers should begin and confirms this should be at the at the point of registration as a jobseeker regardless of whether this coincides with residence under Article 6 Directive 2004/38. The Court also found that the length of the reasonable period of time available to jobseekers should be the same irrespective of whether an EU citizen registers as a jobseeker on arrival in a host Member State or at a later point of their residence. Previously, some Member States would treat a right to reside under Article 6 and a jobseeker-specific reasonable period of residence as entirely separate stages that would not overlap. New arrivals in these Member States could rely on their initial three months of residence provided in Article 6 to begin job hunting before running down the clock on the ‘reasonable period of time’, extending the overall period of lawful residence to spend jobseeking. This application of the rules would, as O’Brien recognizes as the case in the UK, ‘counterintuitively treat people who have worked and then become jobseekers (without retaining worker status) less favourably than newly arrived jobseekers.’[[48]](#footnote-48) The judgment in *G. M. A.* ends this privileged treatment, as the reasonable period of time should now begin at the point of registration as a jobseeker regardless of whether this registration occurs in the first three months of residence in the host Member State.

The Court’s second key finding focuses on the conditions of residence and sets when, in the jobseeking timeline, Member States can impose these specific conditions. First that jobseekers must prove that they are, in fact, looking for employment. Member States can impose this requirement on jobseekers during the ‘reasonable period’. This will be at the beginning of an EU citizens’ residence as a jobseeker, with an exception for when this period coincides with the initial 3 months of residence under Article 6 Directive 2004/38 as this right of unconditional residence should not be undermined. The second condition, only triggered after the reasonable period of time is over, is that a jobseeker must prove that they have a ‘genuine chance of being engaged’. No judgment can be made on an EU citizens’ chances of being engaged until they have had their reasonable period of residence. This is an important step and could contradict the approach of ‘quite a number of Member States’ who Wollenschläger and Rickets found to be checking whether there are ‘reasonable chances of employment’ for periods of residence between three and six months.[[49]](#footnote-49) It also bolsters the argument that Member States should be prevented from introducing, or at the very least delay the application of, new national tests which increase the conditions imposed upon jobseekers, for example the UK’s requirement for ‘compelling evidence’ of prospects of work after just 91 days[[50]](#footnote-50) or the practice in Member States, such as Belgium, Luxembourg and the UK, of treating periods of residence beyond three months as ‘an indication that the person has no chance of being employed’.[[51]](#footnote-51) It is illogical for Member States to apply harder tests at this point, as it is only the at the end of the ‘reasonable period of time’ that any assessment of a genuine chance of being engaged can even *begin* to be undertaken.

Thirdly, the AG and the Court offered further guidance on the substance of the ‘genuine chances of being engaged’ condition attached to the ability of jobseekers to extend their lawful residence in a host Member State and be protected from expulsion under Article 14(4)(b) Directive 2004/38. Member States have previously been left to unravel how a genuine chance of being engaged could be measured, a concept which is, in Thym’s words, rarely crystal clear.[[52]](#footnote-52) The ECJ, in the context of worker status, has warned against permitting Member States to unilaterally fix or modify EU concepts to ‘eliminate at will the protection afforded by the Treaty to certain categories of person’.[[53]](#footnote-53) Arguably, the same logic should apply to jobseekers and the concept of a ‘genuine chance of being engaged’. Without some uniform interpretation or limitations set, Member States could wilfully set a restrictive test curbing the rights of jobseekers. Analysis of Member State practice has shown that this can result in a significant narrowing of EU free movement rights.[[54]](#footnote-54) For jobseekers, a narrow interpretation of what is considered a ‘genuine chance of being engaged’ may result in the ‘reasonable period of time’ being treated as, essentially, a hard limit. This has been the case in the UK, where the requirement for ‘compelling evidence’ of a genuine prospect of work is exacerbated by the interpretation in the decision maker guidance that this can only be evidenced with either an offer of work due to start within the next three months, or a change of circumstances such that a jobseekers prospects of employment have increased and are awaiting the outcome of job offers.[[55]](#footnote-55) O’Brien argues this test appears to be in direct conflict with the judgment in *Antonissen* as, in the UK’s guidance, continuing to seek work can be seen as evidence that a jobseeker does not have a genuine chance of being engaged after 91 days.[[56]](#footnote-56) Additionally, poor application of the ‘genuine chances of being engaged’ condition could have lasting relevance many years later for an individual looking to secure their residence rights in a Member State. A failure to extend a right of residence as a jobseeker through Article 14(4)(b) of the Directive would likely result in a gap in lawful residence, triggering the clock to be re-set on the five years continuous lawful residence required for a permanent right to reside.[[57]](#footnote-57) As such, the suggestion from the Court that national authorities ‘carry out an overall assessment of all relevant factors’ including the suggestions from the AG,[[58]](#footnote-58) could help prevent the ‘genuine chance of being engaged’ condition being applied so restrictively that very few EU jobseekers can rely on Article 14(4)(b) Directive 2004/38 to protect them from expulsion. Practically, such guidance could protect EU citizens from having their work seeking unfairly curtailed or previous lawful residence discounted when looking to establish permanent residence.

The Court’s inclusion of relevant factors to determine a genuine chance of being engaged provide some, quite expansive, indications of what could be appropriate considerations, covering a simple check on whether periodic applications are being made *or* interviews attended and contextual comparisons with national labour markets. Importantly, the Court also includes two inappropriate factors; that a jobseeker has never worked in that Member State before and if a job offer has been refused that does not correspond to their level of occupational qualifications. These are helpful indicators which may encourage Member States to address and reconfigure current overly restrictive approaches. It is important that the list of relevant criteria is not treated as exhaustive. The AG noted, in his opinion, that the considerations listed should be ‘among others’,[[59]](#footnote-59) and there are some notable omissions. For example, the AG and Court did not address whether longer periods of jobseeking, even if applications are sent periodically, should be treated as an indication of not having a genuine chance of being engaged, as is the practice in Belgium, Luxembourg and the UK. Nor does the Court give any detail on whether Member States should consider the varying average time required to find work for different demographics, to take account of the structural barriers facing some EU citizens from accessing the labour market.

*A fixed period for jobseekers?*

One issue that remains unclear is what length of time is appropriate for the ‘reasonable period’ available to jobseekers to acquaint themselves with the local labour market and suitable employment. The Court was asked whether jobseekers should be given a fixed minimum period of six months to look for employment in a host Member State. Given that residence under Article 14(4)(b) is considered to exist independently of Articles 6, 7 and 16 of the Directive,[[60]](#footnote-60) it could have been useful for the Court to introduce a precise duration that would be suitable for that residence, or alternatively a minimum period, before it is conditional on demonstrating a ‘genuine chance of being engaged’. Rather than setting a final duration, the judgment simply confirmed the finding in *Antonissen,* that six months would not appear to be insufficient. The Court’s choice to not clearly set out what would be ‘insufficient’ as a reasonable period of time could provide Member States the opportunity to limit the rights of jobseekers should they wish to. It was under this same wording of the *Antonissen* judgment that the UK introduced a 91 day limit of residence rights as a jobseeker, which could only be extended where there was ‘compelling evidence’ of a genuine chance of being engaged,.[[61]](#footnote-61) However, given the tightening of residence rights beyond Directive 2004/38 seen in some more recent case law,[[62]](#footnote-62) and in light of some Member States imposing the criteria of Article 14(4)(b) after just 3 months,[[63]](#footnote-63) a position which was not explicitly rejected in *Commission v Belgium,*[[64]](#footnote-64)the Court’s affirmation that a ‘reasonable period of time’ for a jobseeker might be six months, could be interpreted as something of a push-back against restrictive trends. It may also have felt improper for the Court to go any further. The task for setting a fixed minimum period of residence for jobseekers may fall, as AG Szpunar indicates, most suitably to the EU legislature.[[65]](#footnote-65). A previous call for a hard three-month limit to the residence of jobseekers, recorded in the Council minutes regarding the adoption of Regulation No 1612/68 and of Council Directive 68/360/EEC, was dismissed by the ECJ in *Antonissen* as irrelevant to the interpretation of secondary legislation where ‘no reference is made to the content of the declaration in the wording of the provision in question’.[[66]](#footnote-66) It may therefore be necessary for the EU Legislature to return to this issue and address it in the future. Should it be addressed, the Courts acceptance that a jobseeker should have more favourable treatment in *G. M. A.* suggests that it may no longer be justifiable to limit the ‘reasonable period’ of residence to the same three months granted to all EU citizens under Article 6 Directive 2004/38. Additionally, should a fixed period for jobseekers’ residence be introduced, it is vital that the mechanism to extend this period in Article 14(4)(b) remains available and is effective in recognising the lawful residence of those with a genuine chance of being engaged and in recognition of personal circumstances which may justify a longer period of time for seeking employment.

*A missed opportunity for more equal access to the labour market?*

The judgment in *G. M. A.* contributes a number of clarifications to the outer edges of jobseeker residence rights, repeating the sentiment in *Antonissen* that a failure to provide a reasonable amount of time to jobseekers would jeopardise the effectiveness of Article 45 TFEU.[[67]](#footnote-67) However, this discussion is limited to the idea of a ‘standard’ jobseeker and fails to engage with how some EU citizens, particularly those from groups already experiencing discrimination, may face significant barriers when trying to exercise their right to move to a host Member State and seek employment. The effectiveness of Article 45 for some of these citizens may be jeopardized if the analysis of residence rights for those seeking employment, particularly the ability to extend a period of residence, does not include a recognition of these personal circumstances and barriers to finding work.

While it is true that the length of time required to find employment will usually involve some amount of fortuity for everyone, there are some groups who will face systemic barriers that can make the process of seeking employment more complex and time consuming. Work arrangements must sometimes fit around or be balanced with childcare[[68]](#footnote-68) and other informal care responsibilities,[[69]](#footnote-69) both of which are roles most commonly held by women.[[70]](#footnote-70) Suitable employment may also be harder to come by for disabled workers.[[71]](#footnote-71) The availability of suitable employment opportunities and the time to spend on job searching activities may be significantly reduced for these groups. Moreover, these experiences can also be compounded by further structural discrimination in the workplace or bias from recruiters, unconscious or otherwise, on the basis of gender, disability, age or nationality. A reasonable period of time for one jobseeker to find suitable employment could be entirely unreasonable for another. The AG and Court did not mention any need to consider the personal circumstances of jobseekers, possibly because it was not directly relevant to the specific facts of the case. However, a recognition of structural barriers could have been included in the list of relevant factors when determining a jobseekers’ “genuine chance of being engaged” to ensure that Member States do not further restrict opportunities to accessing the labour market. While the AG suggested that a contextual analysis of average times for finding work in a national labour market could be relevant corresponding to the occupational qualifications of the jobseeker, there was no mention of adapting these averages to correspond to the personal circumstances of the work seeker. This was a missed opportunity, especially when the European Pillar of Social Rights commits to equal opportunities to employment and aims to promote ‘inclusion and participation of under-represented groups in the labour market and society’.[[72]](#footnote-72) Moving forward, it would be useful for the Court to embrace this commitment when facing free movement rules. For the residence rights of jobseekers, any ‘reasonable period of time’ or test to see if the period can be extended, should include a full examination of the structural barriers facing jobseekers and the personal circumstances of the jobseeker to avoid further entrenching this discrimination and jeopardizing the effectiveness of Article 45 TFEU for these EU citizens.

*Affordability of jobseekers’ free movement privilege*

While the judgment did not address a jobseekers’ access to welfare benefits in a host Member State, the effectiveness of jobseekers’ residence rights cannot be analyzed in isolation of this. As Wollenschläger puts it, jobseekers have a price to pay for their ‘privileged’ residence status.[[73]](#footnote-73) A jobseeker’s free movement rights are protected in Article 45 TFEU which also entitles them to equal treatment rights. However, the judgment in *Collins* permitted Member States to require that a jobseeker has a ‘real link’ with the national labour market before granting them equal access to their social assistance system.[[74]](#footnote-74) After the exclusion from social assistance in Article 24(2) Directive 2004/38, the Court in *Vatsouras*, distinguished between benefits which facilitate access to the labour market, which jobseekers are entitled to, and social assistance, which they are not.[[75]](#footnote-75) In *Alimanovic*, however, the ECJ determined that if the predominant feature of a benefit is to ensure minimum subsistence, then this must be considered social assistance.[[76]](#footnote-76) This significantly curtails the financial support available to jobseekers as effectively any benefit which ensures a minimum subsistence, even when that subsistence is provided to support the activity of seeking employment, can be considered to be social assistance and withheld from migrant jobseekers. For example, the main job seeking benefit in the UK – Universal Credit – is categorized as social assistance and excludes claims from EU jobseekers.[[77]](#footnote-77) In lieu of access to this benefit, the only remaining options for financial support is to be eligible for contributory based job seeking benefits or exporting an unemployment benefit from another Member State,[[78]](#footnote-78) the latter of which is fraught with low awareness, time limitations and its own administrative obstacles.[[79]](#footnote-79) It is, therefore, only those jobseekers who can afford the extension of residence without the financial support of a host Member State who are likely to truly benefit from the judgment in *G. M. A.*. While the ECJ in this case and *Antonissen* relied on ensuring the effectiveness of the free movement of workers and jobseekers,[[80]](#footnote-80) it begs the question, for whom are the rules effective? For many, it is likely that a lack of unemployment benefits will be a barrier that is just as prohibitive to free movement than an early exposure to the ‘genuine chances of being engaged’ condition. A limited access to financial support will also likely have a disproportionate impact on disabled jobseekers, carers and lone-parents as minimum living costs for these groups can be higher. It therefore risks exacerbating the structural obstacles faced by these groups. When the ability to look for employment in another Member State may rely on having enough financial security to live without income from employment for potentially six months, it starts to look like quite an exclusive ‘right’.

## **6.** **Final Remarks**

The judgment in *G. M. A.* established a clear timeline for the rights of jobseekers and when certain conditions can be required for their lawful residence in a host Member State. It smooths out where rights overlap with Article 6 Directive 2004/38, establishes when a reasonable period of time for jobseeking should be deemed to have begun, and indicates what conditions of lawful residence Member States can impose upon jobseekers. Perhaps most importantly, the judgment reinforced a jobseekers’ ability to stay in a Member State for a reasonable period of time without being exposed to the extra precarity of subjective conditions designed and delivered at a national level. This should ensure that, at least for the ‘reasonable period of time’, jobseekers will be free to seek suitable employment without the burden of proving that they have a ‘genuine chance of being engaged’ or the threat of losing status as a lawful resident. Beyond this reasonable period, the Court’s guidance given here on what could be relevant, or irrelevant, factors for an assessment of whether someone has a genuine chance of being engaged are a helpful reminder to Member States that such a test should not be overly restrictive.

Collectively, these findings will help ensure that the free movement rights of jobseekers are more effective, at least in theory. Nevertheless, there are still aspects of the rules for jobseekers which remain either unclear, such as what the duration of the ‘reasonable period of time’ should be, or risk entrenching discrimination. The Court’s failure to consider the structural barriers to the labour market and, more broadly, the impact of excluding jobseekers from social assistance limits the effectiveness of these free movement rules significantly for EU citizens who already experience discrimination or simply cannot afford the ‘price’ of moving as a jobseeker. The judgment in *G. M. A.* appears to only add weight to the argument that the entitlements of jobseekers, or lack of, reflect the duplicitous or misleading nature of the status. It bolsters the theoretical reward for ambitious would-be market citizens but does nothing about the price affixed to these rights. Jobseekers’ free movement remains a tolerated privilege, rather than a welcomed right.

Alice Welsh[[81]](#footnote-81)\*

1. Verschueren, ‘Being Economically Active: How it Still Matters’ in Verschueren (Ed.) *Residence, Employment and Social Rights of Mobile Persons: On how EU Law defines where they belong* (Intersentia, 2016) p. 187. [↑](#footnote-ref-1)
2. Opinion of AG Colomer, Case C-22/08 and C-23/08, *Vatsouras and Koupatantze*, EU:C:2009:150, para 55. [↑](#footnote-ref-2)
3. Case C-292/89, *Antonissen*, EU:C:1991:80. [↑](#footnote-ref-3)
4. Case C-67/14, *Jobcenter Berlin Neukölln v Alimanovic,* EU:C:2015:597, para 52. [↑](#footnote-ref-4)
5. Case C-292/89, *Antonissen*. [↑](#footnote-ref-5)
6. O’Brien, Spaventa, and De Coninck, ‘Comparative Report 2015: The concept of worker under Article 45 TFEU and certain non-standard forms of employment’ (FreSsco, European Commission, 2016) pp. 31-33. [↑](#footnote-ref-6)
7. Case C-138/02, *Collins*, EU:C:2004:172. [↑](#footnote-ref-7)
8. Case C-22/08 and C-23/08, *Vatsouras and Koupatantze,* EU:C:2009:344, para. 37. [↑](#footnote-ref-8)
9. Case C-67/14, *Alimanovic*. [↑](#footnote-ref-9)
10. 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, O.J. 2004, L 158/77–123, (Directive 2004/38), Art 24(2). [↑](#footnote-ref-10)
11. Case C-292/89, *Antonissen*. [↑](#footnote-ref-11)
12. This issue has been put to the UK Upper Tribunal in *OS v Secretary of State for Work and Pensions* (JSA) [2017] UKUT 107 (AAC), para. 7. The Upper Tribunal found that ‘a genuine chance of being engaged can be evidenced from the furtherance of the claimant’s qualifications and by the job offer which she received just 6 weeks after the date of the DWP’s decision.’. However, this decision was based on UK law and made no reference to any relevant EU provisions on the matter. [↑](#footnote-ref-12)
13. Directive 2004/38, Art. 16. [↑](#footnote-ref-13)
14. Case C-48/75, *Royer*, EU:C:1976:57, Case C-292/89, *Antonissen*. Case C-344/95, *Commission v Belgium*, EU:C:1997:81. [↑](#footnote-ref-14)
15. Case C-48/75, *Royer*, para 31. [↑](#footnote-ref-15)
16. Case C-292/89, *Antonissen*, paras. 11-12. [↑](#footnote-ref-16)
17. ibid., para. 20, affirmed after the introduction of EU Citizenship in Case C-344/95, *Commission v Belgium*. [↑](#footnote-ref-17)
18. Case C-292/89, *Antonissen*, para. 16. [↑](#footnote-ref-18)
19. ibid., para. 21. [↑](#footnote-ref-19)
20. Opinion of AG Szpunar, Case C‑710/19, *G. M. A. v. État belge*, EU:C:2020:739, paras. 42. [↑](#footnote-ref-20)
21. ibid., para. 47. [↑](#footnote-ref-21)
22. ibid., paras. 53-57. [↑](#footnote-ref-22)
23. ibid., paras. 63-67. [↑](#footnote-ref-23)
24. Common Position (EC) No 6/2004 of 5 December 2003 adopted by the Council acting in accordance with the procedure referred to in Article 251 of the Treaty establishing the European Community, with a view to adopting a directive of the European Parliament and of the Council 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, O.J. 2004, C 54/E-12. [↑](#footnote-ref-24)
25. Case C-292/89, *Antonissen*, para 21. [↑](#footnote-ref-25)
26. Opinion, para. 72. [↑](#footnote-ref-26)
27. ibid., para. 69. [↑](#footnote-ref-27)
28. ibid., para. 73. [↑](#footnote-ref-28)
29. ibid., para. 74. [↑](#footnote-ref-29)
30. ibid., paras. 75-76. [↑](#footnote-ref-30)
31. ibid., paras. 76-77. [↑](#footnote-ref-31)
32. Case C‑710/19, *G. M. A.,* para. 24-27. [↑](#footnote-ref-32)
33. ibid., para. 26. [↑](#footnote-ref-33)
34. ibid., paras. 28-35. [↑](#footnote-ref-34)
35. ibid., para. 37. [↑](#footnote-ref-35)
36. ibid., paras. 38-39. [↑](#footnote-ref-36)
37. ibid., paras. 40-42. [↑](#footnote-ref-37)
38. ibid., paras. 35-36. [↑](#footnote-ref-38)
39. ibid., para. 44. [↑](#footnote-ref-39)
40. ibid., para. 46. [↑](#footnote-ref-40)
41. ibid. [↑](#footnote-ref-41)
42. ibid., para. 47. [↑](#footnote-ref-42)
43. ibid., paras. 50. [↑](#footnote-ref-43)
44. Opinion, paras. 23–26. [↑](#footnote-ref-44)
45. O’Brien, ‘Civis Capitalist Sum: Class as the new guiding principle of EU Free Movement Rights’, 53 CML Rev. (2016), 937-977, Spaventa, ‘Earned Citizenship – understanding Union Citizenship through its scope’ in Kochenov (Ed.), *EU Citizenship and Federalism: the Role of Rights* (Cambridge University Press, 2017) p. 207, Nic Shuibhne, ‘Limits Rising, Duties Ascending: The Changing Legal Shape of Union Citizenship’, 52 CML Rev. (2015) 889-937. [↑](#footnote-ref-45)
46. Verschueren, op. cit. supra note 1, at 206, Wollenschläger and Ricketts, ‘Jobseekers’ Residence Rights and Access to Social Benefits: EU law and its Implementation in the Member States’, 7 Online Journal on Free Movement of Workers, (2014), at 8. [↑](#footnote-ref-46)
47. Wollenschläger and Ricketts, op. cit. supra note 46, at 11. [↑](#footnote-ref-47)
48. O’Brien, “The pillory, the precipice and the slippery slope: The profound effects of the UK’s legal reform programme targeting EU migrants”, 37 Journal of Social Welfare and Family Law (2015), 111, at 115. The Upper Tribunal in the UK has since found the UK’s genuine prospect of work test should be applied to jobseekers who have retained their worker status after becoming involuntarily unemployed *KH v Bury MBC and SSWP* [2020] UKUT 50 (AAC). It is still possible that someone who has worked, does not retain their workers status but then begins job seeking could be treated less favourably than new arrivals under the UK’s rules, despite their previous economic contribution. [↑](#footnote-ref-48)
49. Wollenschläger and Ricketts, op. cit. supra note 46, at 11. [↑](#footnote-ref-49)
50. Williams, ‘Kapow to the GPOW: the “Genuine Prospect of Work Test”’ (Child Poverty Action Group, April 2015) < <https://cpag.org.uk/sites/default/files/CPAG-Kapow-GPOW-APR2015_0.pdf>> (last visited 30 Apr. 2021), O'Brien op. cit. supra note 48, at 115. [↑](#footnote-ref-50)
51. Wollenschläger and Ricketts, op. cit. supra note 46, at 11. [↑](#footnote-ref-51)
52. Thym, ‘The elusive limits of solidarity: residence rights of and social benefits for economically inactive Union citizens’, 52 CML Rev. (2015) 17-50, at 42-43. [↑](#footnote-ref-52)
53. Case C-75/63, *Hoekstra*,EU:C:1964:19, Case C-53/81, *Levin v Staatssecretaris van Justitie*, EU:C:1982:105, para 11. [↑](#footnote-ref-53)
54. See, for example, examples of narrow interpretations of ‘genuine and effective’ work and the use of income and hour thresholds in O’Brien, Spaventa, and De Coninck, op. cit. supra note 6. [↑](#footnote-ref-54)
55. DWP, ‘ADM Chapter C1: Universal Credit - International Issues’ (last updated 1st March 2021) [C1415], <<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/965499/adm-chapter-c1-universal_credit-international-issues.pdf>> (last visited 30 Apr. 2021), Williams, op. cit. supra note 50. [↑](#footnote-ref-55)
56. O'Brien, op. cit. supra note 48, at 117. [↑](#footnote-ref-56)
57. Directive 2004/38, Art. 16. This won’t just impact newly arrived jobseekers; an EU citizen may have built up many years of lawful residence before having a right of residence solely as a jobseeker. For example, if a student has completed a 3 or 4 year course in a Member State and then start seeking employment, a gap in lawful residence should it be deemed they do not have a genuine chance of being engaged after a reasonable period of job seeking will result in the loss of those previous years of lawful residence. Workers too, may not always retain their worker status, or have a period of time with another status and then decide to become a jobseeker. [↑](#footnote-ref-57)
58. Opinion, paras. 75-77. [↑](#footnote-ref-58)
59. ibid. [↑](#footnote-ref-59)
60. Case C-67/14, *Alimanovic,* para. 52. [↑](#footnote-ref-60)
61. O'Brien op. cit. supra note 48, p. 115. [↑](#footnote-ref-61)
62. Case C-333/13, *Dano v Jobcenter Leipzig,* EU:C:2014:2358; Case C-67/14, *Alimanovic*; Case C-299/14, *Vestische Arbeit Jobcenter Kreis Recklinghausen v García-Nieto,* EU:C:2016:114; Case C-308/14, *Commission v. United Kingdom,* EU:C:2016:436. For analysis see Spaventa, op. cit. supra note 45, at 207, Nic Shuibhne, op. cit. supra note 45, at 895. [↑](#footnote-ref-62)
63. See Wollenschläger and Ricketts, op. cit. supra note 46, at 11. [↑](#footnote-ref-63)
64. Here, the Court only reiterated the requirement for Member States to allow jobseekers to extend a period of residence after they have had a reasonable period and did not comment on whether the 3 months ‘reasonable period’ applied was appropriate. C-344/95, *Commission v Belgium,* paras 12-19. [↑](#footnote-ref-64)
65. Opinion, paras. 74. [↑](#footnote-ref-65)
66. Case C-292/89, *Antonissen*, para. 18. [↑](#footnote-ref-66)
67. Case C‑710/19, *G. M. A.,* para. 25. [↑](#footnote-ref-67)
68. ‘Reconciliation of work and family life – statistics’ (Eurostat, September 2019) <<https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Reconciliation_of_work_and_family_life_-_statistics#Childcare_responsibilities_effect_work_arrangements>> (last visited 30 Apr. 2021), ‘Enabling working parents? The experiences of parents in the childcare market’ (Citizens Advice, 2015) <<https://www.citizensadvice.org.uk/Global/CitizensAdvice/Families%20Publications/EnablingWorkingParents.pdf>> (last visited 30 Apr. 2021). [↑](#footnote-ref-68)
69. Carers UK found that 24% of the UK employees examined offered none of the ‘carer friendly’ policies identified including flexible working, long term unpaid leave, clear policies to support those who are caring and peer network support in Carers UK, ‘Juggling work and unpaid care A growing issue’ (February 2019) 12. [↑](#footnote-ref-69)
70. ‘…over 20 million Europeans (two-thirds of whom are women) care for adult dependent persons, which prevents them from having a full-time job…’ and ‘austerity measures… [have] forced many people, mainly women, to cut their working hours or return to the home to take care of dependants, elderly people, ill people or children’ European Parliament, ‘Motion for a Parliament Resolution on Women Domestic Workers and Carers in the EU’ (2015/2094(INI)) O.J. 2015, C-66/30. [↑](#footnote-ref-70)
71. van der Zwan and de Beer, ‘The disability employment gap in European countries: What is the role of labour market policy?’ 31 Journal of European Social Policy (2021), Geiger, Van Der Wel and Tøge, ‘Success and Failure in Narrowing the Disability Employment Gap: Comparing Levels and Trends Across Europe 2002–2014’, 17 BMC Public Health (2017) 928, Jones, ‘Disability and the Labour Market: A Review of the Empirical Evidence’, 35 Journal of Economic Studies (2008), 405, Eurostat statistics record that the rate of unemployment for disabled people is between 2.5% and 8& higher than those who are not disabled in ‘Disability Statistics – labour market access’ (Eurostat, 3 April 2019) <<https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Archive:Disability_statistics_-_labour_market_access&direction=next&oldid=428449>> (last visited 30 Apr. 2021), Bulman, ‘Disabled people have to apply for 60% more jobs than non-disabled people before finding one’ (The Independent, 28 September 2017) <<https://www.independent.co.uk/news/uk/home-news/disabled-people-jobs-applications-more-able-bodied-stats-employment-a7970701.html>> (last visited 30 Apr. 2021). [↑](#footnote-ref-71)
72. European Pillar of Social Rights’ (2017) <<https://ec.europa.eu/commission/publications/european-pillar-social-rights-booklet_en>> (last visited 30 Apr. 2021). [↑](#footnote-ref-72)
73. Wollenschläger, ‘The judiciary, the legislature and the evolution of Union citizenship’ in Philip Syrpis (ed), *The Judiciary, the Legislature and the EU Internal Market* (CUP, 2012) 302, at 321. [↑](#footnote-ref-73)
74. Case C-138/02, *Collins*. [↑](#footnote-ref-74)
75. Case C-22/08 and C-23/08, *Vatsouras and Koupatantze*. [↑](#footnote-ref-75)
76. Case C-67/14, *Alimanovic.* [↑](#footnote-ref-76)
77. Department for Work and Pensions, ‘EU jobseekers barred from claiming Universal Credit’ (March 2015) <<https://www.gov.uk/government/news/eu-jobseekers-barred-from-claiming-universal-credit>> (last visited 6 May. 2021). [↑](#footnote-ref-77)
78. Under Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, O.J. 2004, L 166/1-123, Article 64. [↑](#footnote-ref-78)
79. De Wispelaere, De Smedt and Pacolet, ‘Export of unemployment benefits: Report on U2 Portable Documents Reference Year 2019’ (Publications Office of the European Union, 2021), for administrative obstacles see O’Brien, *Unity and Adversity: EU Citizenship, Social Justice and the Cautionary Tale of the UK* (Bloomsbury, 2017) pp. 183-186. [↑](#footnote-ref-79)
80. Case C‑710/19, *G. M. A.* para. 25. [↑](#footnote-ref-80)
81. \* Research fellow; this research has been funded by the ESRC as part of the work of the EU Rights and Brexit Hub, (<https://www.eurightshub.york.ac.uk>),York Law School, University of York. [↑](#footnote-ref-81)