



Germany - Social Welfare Court Munich (46th Chamber), judgment S 46 EG 130/17

The plaintiff sought parental allowance for her daughter and the defendant rejected the demand due to insufficient prove of identity. The court determined that the plaintiff is entitled to a parental allowance. The Act on Parental Allowance and Parental Leave (*Bundeselterngeld- und Elternzeitgesetz*) does not provide for the exclusion of benefits in case of general doubts about the identity of the applicant.

Case name (in original language) : SG München (46. Kammer), Urteil vom 04.05.2018 - S 46 EG 130/17

Case status: Decided

Case number: S 46 EG 130/17

Citation: Social Welfare Court Munich, Judgement of 4 May 2018 - S 46 EG 130/17

Date of decision: 04/05/2018

State: Germany

Court / UN Treaty Body: Social Welfare Court Munich

Language(s) the decision is available in: German

Applicant's country of birth: Syria

Applicant's country of residence: Syria

Key aspects: Access to social and economic rights, Birth registration, Standard of proof

Relevant Legislative Provisions:

Social Security Statute Book II (Sozialgesetzbuch II) § 11; Civil Status Regulation (Personenstandsverordnung) § 7 II; Residence Act (Aufenthaltsgesetz) § 25 II; Act on Parental Allowance and Parental Leave (Bundeselterngeld- und Elternzeitgesetz) § 1; Bavarian Integration Act (Bayerisches Integrationsgesetz) Article 12

Facts

The applicant, who is of Syrian origin, was born in 1985 and has been in Germany since October 2015. Since May 2016, she has held a residence permit with right to work pursuant to Section 25 II of the Residence Act. The plaintiff and the working father of the daughter are increasingly receiving unemployment benefit II.

The daughter was born in Germany on 2 June 2017. In August 2017, the plaintiff applied for parental allowance for the first to twelfth month of her daughters' lives and enclosed a certificate from the registry office, which was submitted explicitly for the purpose of parental allowance. In particular, it was a provisional certificate due to the postponement of the notarisation in accordance with § 7 II Civil Status Regulation (*Personenstandsverordnung*). The certificate declared the child's surname as not proven and the identity of the plaintiff as not proven either.

The defendant rejected the application due to insufficient evidence to attest the plaintiff's identity. Furthermore, the defendant referred to Article 12 of the Bavarian Integration Act (*Bayerisches Integrationsgesetz*), pursuant to which state benefits may be made dependent on specific proof of the foreigner's identity.

The applicant appealed, arguing that she was a recognised refugee. Fingerprints were taken upon entry. In addition, a valid Syrian identity card with a photograph was produced. Therefore, her identity was clear.

The defendant rejected the appeal on the ground that the claim for parental benefit required proof of the applicant's identity. A birth certificate was not produced.

The plaintiff thereupon brought an action before the Social Welfare Court of Munich.

Legal arguments by the applicant

The applicant takes the view that proof of identity is not a condition for the granting of parental benefit.

Legal arguments by the opposing party

The defendant stresses that a birth certificate has several functions: proof of birth/existence of the child, proof of parentage and, last but not least, the avoidance of double payments in different federal states.

Decision & Reasoning

The court held that, pursuant to § 1 I No 1-4 Act on Parental Allowance and Parental Leave, the plaintiff meets the eligibility criteria during the entitlement period: her place of residence is in Germany, she lives in a household with her daughter, she raises and cares for her daughter, and she is not fully employed pursuant to § 1 VI Act on Parental Allowance and Parental Leave. The written application was submitted in good time. Pursuant to § 1 VII, the plaintiff also meets the additional requirements for foreigners: she is a Syrian citizen and not entitled to freedom of movement, but has resident status pursuant to § 1 VII No 2, i.e. a residence permit with the right to work.

The Act on Parental Allowance and Parental Leave does not contain any grounds for exclusion from state benefits in case of general doubts regarding the applicant's identity.

The civil registry, its extracts and civil status documents have special evidential value pursuant to §§ 55, 54 Personal State Law (*Personenstandsgesetz*). Following the wording of § 7 II Civil Status Regulation, the provisional certificate does not have such special evidential value. However, because of its obligation pursuant to § 26 Act on Parental Allowance and Parental Leave in conjunction with § 20 Social Security Statute Book X to examine the facts of its own motion, the authority must resort to other means of evidence.

The Court finds that there is no reasonable doubt as to the identity of the applicants. The applicant is the mother and her name and nationality were found to be appropriate. The general risk of abuse of social security benefits is not such as to justify the exclusion of benefits without a legal basis.

Article 12 of the Bavarian Integration Act is not applicable to the parental allowance, since the parental allowance is a social contribution by the Federal Government.

Decision documents

[SG München \(46. Kammer\), Urteil vom 04.05.2018 - S 46 EG 130/17](#)

Outcome

The plaintiff was successful. No appeal was lodged against the decision. The decision is therefore legally binding on all parties.