Setting out the boundaries of jobseekers’ residence status and beyond: Case C-710/19 G.M.A. v État belge

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Abstract
This contribution examines the judgment of the Court of Justice of the European Union delivered in Case C-710/19 G.M.A. v État belge. It is argued that this ruling brings some degree of certainty and transparency to the nature and extent of residence rights guaranteed to jobseekers, considering the fragmented and dispersed outline of their status within the framework of Directive 2004/38. G.M.A. v État belge can also be viewed as a possible catalyst for recasting Directive 2004/38 to provide a clear and systematic layout of jobseekers’ residence status in host Member States. However, it is questionable whether this would, in fact, provide an enhanced protection of jobseekers, since this ruling suggests that the Court’s methodology to ascertain the residence rights of Union citizens varies based on the explicit wording of Union secondary law.

Keywords
Article 45 TFEU, Directive 2004/38, jobseeker, residence status, genuine chance of being engaged

1. Introduction
In December 2020, the First Chamber of the Court of Justice of the European Union issued a judgment in Case C-710/19 G.M.A. v État belge concerning the residence status of Union citizens moving to other Member States in the capacity of a jobseeker. As is well known, Union citizens enjoy, on the basis of Article 45 TFEU, the right to seek employment throughout the Union.1

1. Case 48-75 Royer, EU:C:1976:57, para. 31.

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However, the actual extent of the right of residence bestowed on jobseekers has until recently remained gnomic. This is mainly due to the lack of a clear outline of their status in Directive 2004/38, which only enshrines a safeguard clause against their expulsion based on the evidence of ‘continuing to seek employment and having a genuine chance of being engaged’. Against this, the Belgian Council of State (Conseil d’État) made a request for a preliminary ruling in the proceedings in which the applicant, a Greek national, was denied the right to reside for more than three months as a jobseeker and ordered to leave Belgium. In its response, the Court focused on three elements related to the status of jobseeker. It addressed, first, the origin of the right to seek employment derived from Article 45 TFEU; second, the length of time that would be reasonable to provide Union citizens to apprise themselves of offers of employment and take the necessary steps to be engaged; and more importantly, the requirements that can be imposed on them during and at the expiry of that period of time. These findings are argued to provide some degree of certainty and transparency in relation to the right of residence of jobseekers guaranteed by Article 45 TFEU. At the same time, this ruling is also shown to accentuate the need for a more systematic outline of their status within the framework of Directive 2004/38. However, it is not entirely clear whether this would enhance the protection of jobseekers, since this ruling suggests that the Court’s methodology to establish the residence rights of Union citizens varies depending on the explicit wording of Union secondary law. This contribution begins by stating the relevant facts of the case and the questions raised by the referring court, then briefly outlines the residence status of jobseekers pursuant to Article 45 TFEU and Directive 2004/38 before discussing the Court’s judgment.

2. The relevant facts and preliminary questions

The judgment originated from the request for a preliminary ruling made by the Belgian Council of State in relation to the appeal proceedings brought by G.M.A., a Greek national, against the decision of the Belgian Council for asylum and immigration proceedings (Conseil du contentieux des étrangers). On 25 October 2015, G.M.A. applied to the Belgian Immigration Office (the Office des étrangers) for a certificate of registration as a jobseeker in order to obtain the right to reside for more than three months in Belgium. On 18 March 2016, less than five months later, the Belgian Immigration Office rejected his application. To this effect, it relied on Belgian law, according to which the right to reside in Belgium for more than three months by Union citizens seeking employment was subject to the proof that they continued to seek employment and had genuine chances of being engaged. According to the Belgian Immigration Office, the documents produced by the applicant did not demonstrate that he fulfilled the latter condition. G.M.A. first challenged the legality of this decision before the Belgian Council for asylum and immigration proceedings, which dismissed his action. He then lodged an appeal before the referring court by making two interrelated claims.

The applicant, on the one hand, contended that pursuant to Article 45 TFEU and Directive 2004/38 Member States were obliged to grant a reasonable period of time to jobseekers from other

2. 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, [2004] OJ L 158/77.
3. Ibid., Article 14(4)(b).
4. Case C-710/19 G.M.A. v État belge, EU:C:2020:1037, para. 12.
Member States to enable them to acquaint themselves with offers of employment; secondly, that period of time was required to last no less than six months; and thirdly, during that period jobseekers could not be required to prove a genuine chance of obtaining employment. On the other hand, G.M.A. also argued that the Belgian Council for asylum and immigration proceedings infringed Articles 15 and 31 of Directive 2004/38 and Articles 41 and 47 of the Charter of Fundamental Rights by failing to carry out an exhaustive examination of all relevant individual circumstances, including his employment as a probationer at the European Parliament even if it post-dated the decision taken by the Belgian Immigration Office.

The referring court, having acknowledged that the interpretation of the above-mentioned provisions in the manner suggested by G.M.A. would entitle him the right to reside in Belgium for more than three months, decided to stay the proceedings and referred two set of questions for preliminary ruling. It enquired specifically whether Article 45 TFEU was to be interpreted as obliging Member States, first, to allow jobseekers a reasonable period of time to acquaint themselves with potentially suitable employment opportunities and take the necessary steps to obtain employment; second, to accept that the reasonable period could not be less than six months; and third, to permit a jobseeker to stay within its territory for the duration of that period without a proof of a real chance of obtaining employment. The referring court also asked whether Articles 15 and 31 of Directive 2004/38 together with Articles 41 and 47 of the Charter and the general principles of primacy of Union law and effectiveness of Directives were to be interpreted as requiring national courts of the host Member State to have regard to new facts and matters arising after the decision of national authorities, where those facts and matters were capable of altering the situation of the person concerned.

3. The residence status of jobseekers

Article 45 TFEU explicitly bestows on Union citizens the right to move freely to a Member State for the purpose of accepting offers of employment, the right to stay there for the purpose of employment and the right to remain there after having been employed. As interpreted by the Court, however, this provision also includes the right to seek employment in other Member States. The earliest reference to this right was made in Royer, where the Court held that the right ‘to look for or pursue an occupation’ was directly conferred by Article 45 TFEU. The right of residence as a jobseeker was subsequently elaborated in Antonissen, both in terms of its extent and the rationale for recognizing it. Appealing to the effectiveness of Article 45 TFEU, the Court found that this provision enumerated rights of Union citizens in a non-exhaustive manner and hence included the right to move and stay in other Member States ‘for the purposes of seeking employment’. According to the Court, the effectiveness of this provision was secured if Member States provided Union citizens ‘a reasonable time in which to apprise themselves (...) of offers of employment (...) and to take, where appropriate, the necessary steps in order to be engaged’. As for the duration of the

5. Ibid., para. 14–16.
6. Ibid., para. 20.
7. Ibid.
8. Case 48-75 Royer, para. 31 (emphasis added).
9. Case C-292/89 Antonissen, EU:C:1991:80.
10. Ibid., para. 13.
11. Ibid., para. 16. See also Case C-344/95 Commission v Belgium, EU:C:1997:81, para. 16.
‘reasonable time’, the Court, first, found that a period of six months did not appear in principle to be insufficient and did not jeopardize the effectiveness of Article 45 TFEU. However, it also added that the person concerned could not be expelled from the territory of the host Member State, if he/she ‘[was] continuing to seek employment and (…) [had] genuine chances of being engaged’. For a while, Antonissen remained the only judicial authority specifically applicable to the extent of residence rights of jobseekers.\(^{14}\)

The right of residence as a jobseeker is also enshrined in Directive 2004/38, though its extent is not clearly delineated therein, which was the primary reason for the referring court to seek a preliminary ruling in the present case. Unlike other categories of Union citizens, the outline of residence rights granted to jobseekers is rather fragmented and somewhat dispersed. Apart from Article 6 of Directive 2004/38 that grants all Union citizens a condition-free right to reside for the initial period of three months, only two provisions in the Directive specifically refer to the category of jobseekers. Recital 9 of the Preamble to Directive 2004/38 (hereafter ‘Recital 9’) states that ‘Union citizens should have the right of residence in the host Member State for a period not exceeding three months without being subject to any conditions or any formalities other than the requirement to hold a valid identity card or passport, without prejudice to a more favourable treatment applicable to job-seekers as recognised by the case-law of the Court of Justice’.\(^{15}\) The nature of the favourable treatment is then expressed in Article 14(4)(b) of Directive 2004/38 (hereafter ‘Article 14(4)(b)’), which merely reproduces the terms of Antonissen by stipulating that Union citizens seeking employment may not be expelled for ‘as long as [they] can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged’. Within the framework of the Directive, therefore, much uncertainty remained over the resident status of jobseekers. Until now, it has not been clear what length of residence jobseekers are entitled to in the host Member State and when they can be asked to produce the evidence specified in Antonissen and Article 14(4)(b) of Directive 2004/38.

### 4. The judgment of the CJEU

The judgment primarily addressed the first set of questions referred to it. Following the suggestions made by AG Szpunar in his Opinion, the Court focused on three elements to the residence status of jobseekers, around which this section is structured.

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12. Ibid., para. 21.
13. Ibid.
14. On their welfare entitlements, however, see C-138/02 Collins, EU:C:2004:172; Joined Cases C-22/08 and C-23/08 Vatsouras and Koupantatzes, EU:C:2009:344; Case C-67/14 Alimanovic, EU:C:2015:597; Case C-299/14 Garcia Nieto, EU:C:2016:114. More on these rulings, see S. Mantu and P. Minderhoud, ‘Exploring the Links between Residence and Social Rights for Economically Inactive EU Citizens’, 21 European Journal of Migration and Law (2019); S. Devetzis, ‘EU Citizens, Residence Rights and Solidarity in the Post- Dano/Alimanovic Era in Germany’, 21 European Journal of Migration and Law (2019).
15. Emphasis added.
16. The Court found that there was no need to examine the second set of questions as it was established that the applicant should not have been required to demonstrate genuine chances of being engaged during the ‘reasonable period of time’.
17. Opinion of AG Szpunar in Case C-710/19 G.M.A. v État belge, EU:C:2020:739.
A. Jobseekers’ entitlement to a ‘reasonable period of time’

The Court started its judgment by finding that Member States were obliged to grant jobseekers a ‘reasonable period of time’ to acquaint themselves with potentially suitable employment opportunities and take the necessary steps to obtain employment. Much like Antonissen, it reached this conclusion by reiterating the foundational nature of Article 45 TFEU and the need to ensure its effectiveness. According to the Court, resorting to strict interpretation through the exclusion of the right to seek work from the scope of this provision would jeopardize the actual chances of Union citizens to secure employment in other Member States.\(^\text{18}\) The free movement of workers under Article 45 TFEU, therefore, implies the right to move freely throughout the Union for the purpose of employment search and a person exercising that right ought be classified as a ‘worker’.\(^\text{19}\) More specifically, as the Court continued, this right was also recognized by the Union legislature in Article 14(4)(b) of Directive 2004/38.\(^\text{20}\) On this basis, in the Court’s view, the effectiveness of Article 45 TFEU will be secured in so far as Union citizens are provided with ‘a reasonable time’ to seek employment in the host Member State.

B. The right to reside for a minimum of six months

The second issue considered by the Court concerned the actual length of the ‘reasonable period of time’ that jobseekers are entitled to under Article 45 TFEU. To this end, it first recalled Article 6 of Directive 2004/38 that applies to all Union citizens without distinction, irrespective of the intention with which they enter the territory of the host Member State. Union citizens seeking employment are, therefore, entitled to the right of residence for the initial period of three months with no conditions attached, apart from the requirement to hold a valid identity document. The Court then focused on Article 14(4)(b) of Directive 2004/38 by characterizing it as a provision that specifically relates to jobseekers and sets out the conditions governing the retention of their right of residence in the host Member State.\(^\text{21}\) Pursuant to it, according to the Court, the ‘reasonable period of time’ guaranteed for Union citizens seeking employment starts to run from the moment when they decide to register as a jobseeker in the host Member State. However, Article 14(4)(b) does not itself contain any indication as to the minimum duration of the ‘reasonable period of time’.\(^\text{22}\) The Court, therefore, held that the actual length of that period must ensure the effectiveness of Article 45 TFEU. Against this, having referred to its finding in Antonissen, it concluded that a period of six months from the date of registration as a jobseeker was not insufficient and did not call into question the effectiveness of Article 45 TFEU.\(^\text{23}\)

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18. Case C-710/19 G.M.A. v État belge, para. 25.  
19. Ibid., para. 24. Oddly enough, by reiterating this point, the Court only made a reference to its case-law concerning jobseekers that retain the status of worker. See to this end, Case C-507/12 Saint Prix, EU:C:2014:2007, para. 35; Case C-379/11 Caves Krier Frères, EU:C:2012:798, para. 26; Case C-85/96 Martínez Sala, EU:C:1998:217, para. 32.  
20. Ibid., para. 26.  
21. Ibid., para. 33.  
22. Ibid., para. 38.  
23. Ibid., para. 41–42.
C. The conditions for residence as a jobseeker

The final issue addressed in the judgment relates to the nature and timing of obligations that the host Member State can impose on Union citizens seeking employment based on Article 14(4)(b) of Directive 2004/38. The Court started its reasoning by recalling that the objective of the ‘reasonable period of time’ was to allow jobseekers to apprise themselves of offers of employment and take the necessary steps in order to be engaged. According to the Court, during the duration of that period, the national authorities of the host Member State may require a Union citizen to seek employment. However, in the Court’s view, only after the ‘reasonable period of time’ elapses that the national authorities are in a position to assess whether the person concerned is continuing to seek employment and has a genuine chance of being engaged. As such, the obligation to produce the evidence stipulated in Article 14(4)(b) in light of Antonissen only arises after the expiration of the ‘reasonable period of time’. In so far as the types of evidence that can be considered to this effect, the Court held that national authorities and courts would have to carry out an overall assessment of all relevant factors, including among others the fact that a jobseeker is registered with national bodies, that he or she regularly approaches potential employers with letters of application or that he or she attends employment interviews. They are also required to give due regard to the situation of the national labour market in the sector corresponding to the occupational qualifications of a jobseeker. However, according to the Court, under Article 14(4)(b), this does not include the refusals of employment offers made by jobseekers that do not meet their professional qualifications.

5. Commentary

There are two standpoints from which one can view the ruling in G.M.A. v État belge. On first reading, it provides much needed clarification over the extent of residence rights bestowed on jobseekers under Article 45 TFEU. It alleviates the uncertainty that lingered since Antonissen where the Court, resorting to the purposive interpretation of Article 45 TFEU, explicitly recognized Union citizens’ right to seek employment in other Member States. On close analysis, however, the ruling can be construed to nuance the Court’s current methodology to ascertain the extent of residence rights bestowed on jobseekers.

Union citizens enjoy the right to reside throughout the European Union pursuant to the Treaty’s provisions on free movement and Union citizenship, subject to the framework of limitations and conditions enshrined in Directive 2004/38. While according to the Treaty’s free movement provisions, Union citizens are entitled to reside in host Member States without having to fulfil any other conditions, the residence rights originating from the status conferred by Union citizenship are not unconditional. In early rulings, the Court mediated the conferral of primary rights by the Treaty and their qualification by Union secondary law through the insistence on the proportionality assessment of individual circumstances of Union citizens. However, as extensively discussed in the academic

24. Ibid., para. 46.
25. Ibid., para. 47.
26. N. Nic Shuibhne, ‘Limits Rising, Duties Ascending: The Changing Legal Shape of Union Citizenship’, 52 Common Market Law Review (2015), p. 890. See also the Court reasoning in Case C-413/99 Baumbast, EU:C:2002:493, para. 91. More on this see, M. Dougan and E. Spaventa. ‘Wish You Weren’t Here…’: New Models of Social Security in the European Union’, in E. Spaventa and M. Dougan (eds.), Social Welfare and EU Law (Hart Publishing, 2005).
literature, more recent rulings have witnessed a methodological shift whereby the Court when defining the extent of residence rights provided to Union citizens attributes finality to their qualification under Union secondary law without the need for individual-centred proportionality assessment. First to endure this jurisprudential approach were economically inactive persons, subsequently followed by first-time job-seekers and those who temporarily retain the status of worker. Considered against this backdrop, G.M.A. v État belge is predominantly built on the purposive interpretation of the primary right under Article 45 TFEU, thus aligning with the approach of the Court prior to its methodological shift. This seems to be prompted by the potential economic credentials of jobseekers but mainly by the fragmented and dispersed outline of their residence rights within the framework of Directive 2004/38.

The underlying premise of the Court’s reasoning in G.M.A. v État belge is the peculiarity inherent in the status of jobseeker that is wider than that of economically inactive persons yet narrower than that of economically active ones. It is shaped by the prospect that Union citizens in the category of jobseekers offer for a deeper integration in the host Member State through the engagement in an economic activity and, more importantly, contribution to its social and tax system. This is reflected in the Court’s normative characterization of the free movement right enshrined in Article 45 TFEU. The Court recognized the right to seek employment as a necessary precondition for the effective realization of the free movement of workers. As it emphasized, the actual chances of nationals of a Member State securing employment in another Member State would be jeopardized without the ability to seek work there. Thus, unlike the category of economic inactive persons, the concept of ‘worker’ also encompasses Union citizens in the category of jobseekers. They derive the right to reside in the host Member State specifically from Article 45 TFEU. However, within the framework of this provision, jobseekers do not enjoy all the rights and entitlements that are guaranteed to those economically engaged in employed or self-employed capacity.

For a while, the actual extent of residence rights bestowed on jobseekers remained unclear. A significant contributing factor has been the lack of a clear outline of the status of jobseeker in Directive 2004/38, even though it was adopted to simplify and strengthen the right of free movement and residence of all Union citizens. While the original proposal for this Directive did not even mention the right to move and reside for the purpose of employment search, the enacted

27. See e.g.; M. Blauberger et al., ‘ECJ Judges Read the Morning Papers. Explaining the Turnaround of European Citizenship Jurisprudence’, 25 Journal of European Public Policy (2018), p. 1422. E. Spaventa, ‘Earned Citizenship – Understanding Union Citizenship through Its Scope’, in D. Kochenov (ed.) EU Citizenship and Federalism (Cambridge University Press, 2017); C. O’Brien, ‘Civis Capitalist Sum: Class as the New Guiding Principle of EU Free Movement Rights’ 53 Common Market Law Review (2016), p. 937.
28. See e.g., Case C-333/13 Dano, EU:C:2014:2358; Case C-67/14 Alimanovic; Case C-308/14 Commission v UK, EU:C:2016:436; and to some extent Case C-181/19 Jobcenter Krefeld, EU:C:2020:794.
29. See, Case C-333/13 Dano.
30. See, Case C-67/14 Alimanovic.
31. Opinion of AG Szpunar in Case C-483/17 Tarola, EU:C:2018:919, para. 50. See also, K. Lenaerts, ‘European Union Citizenship, National Welfare Systems and Social Solidarity’, 18 Jurisprudence (2011), p. 408.
32. Case C-710/19 G.M.A. v État belge, para. 25.
33. See e.g., Case C-138/02 Collins, para 63; Joined Cases C-22/08 and C-23/08 Vatsouras and Koupatantze, para. 40; Case C-67/14 Alimanovic, para. 45.
34. Preamble 3 to Directive 2004/38/EC.
35. See, Proposal for a European Parliament and Council Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, [2001] OJ C 270E.
version only saw a few fragmented provisions added to it that merely incorporated the safeguard against the expulsion of jobseekers. Within its framework, therefore, the key elements related to their status are left unexplained. As mentioned earlier, the Directive does not state how long Union citizens seeking employment can reside in the host Member State and more importantly, what requirements they should satisfy and at what stage of their stay they can be subject to them. As evinced by the present case, these matters were left for national governments to decide, paving the way for divergent legislative measures that employed a strict delimitation of jobseekers’ residence status.\footnote{In \textit{G.M.A. v État belge}, the Court was handed an opportunity to elucidate the nature and limits of the right of residence as a jobseeker.}

The Court started by placing the status of jobseeker within the graduated system established by Directive 2004/38.\footnote{See, \textit{Jointed Cases C-424/10 and C-425/10 Ziolkowski and Szeja}, para. 38.} Under this system, the residence entitlements of Union citizens in the host Member State increase in proportion to the degree of their integration.\footnote{See \textit{Jointed Cases C-316/16 and C-424/16 B and Vomero}, EU:C:2018:256, para. 48.} While all Union citizens are entitled to reside for the period of three months without any conditions attached, their residence beyond that is subject to specific conditions under Article 7 of Directive 2004/38 (hereafter also as ‘Article 7’). Union citizens can reside beyond three months if they are either engaged in an economic activity as a worker or self-employed person; enrolled in a course of study having a comprehensive sickness insurance; or if neither of them, have sufficient resources and a comprehensive sickness insurance. The Court made it clear that the right of Union citizens seeking employment to reside beyond three months is not subject to the conditions laid down in Article 7 of Directive 2004/38. Rather, it is covered by Article 14(4)(b) of Directive 2004/38/EC that replicates its finding in \textit{Antonissen}. According to the Court, this provision establishes a derogation to Article 7 and itself specifically determines the conditions governing the retention of the right to reside as a jobseeker. This applies not only to Union citizens who leave the Member State of origin with the intention of seeking employment in the host Member State, but also those who seek employment after being temporarily employed there for less than a year.\footnote{Ibid., para. 33. This is in line with its finding in Case C-67/14 \textit{Alimanovic}, para. 57. More on this ruling, see A. Iliopoulou-Penot, ‘Deconstructing the Former Edifice of Union Citizenship: The Alimanovic Judgment’, 53 \textit{Common Market Law Review} (2016), p. 1007; P. Minderhoud, ‘Job-Seekers Have a Right of Residence but no Access to Social Assistance Benefits under Directive 2004/38: Case C-67/14 Alimanovic, EU:C:2015:597’, 23 \textit{Maastricht Journal of European and Comparative Law} (2016), p. 342.} However, the Court evidently framed such characterization of Article 14(4)(b) in light of the aim of Directive 2004/38 to facilitate the exercise of the primary and individual right of movement conferred by Article 21 TFEU and, more importantly, the need to ensure effectiveness of Article 45 TFEU. This stands in stark contrast to the recent case-law where the existence of free movement rights of economic inactive Union citizens was decided against the framework of limitations and conditions under Directive 2004/38 alone with little effect given to the fundamental status of Union citizenship.\footnote{See Case C-333/13 \textit{Dano}.}
G.M.A. v État belge then clarified, though only partially, the extent of residence rights conferred on jobseekers. According to the Court, pursuant to Article 14(4)(b) that reproduces Antonissen, this category of Union citizens is entitled to the ‘reasonable period of time’ to seek employment in the host Member State, during which they are not subject to any requirements. The Court confirmed that the period of six months starting from the date of registration as a jobseeker would be reasonable to enable those concerned to apprise themselves of offers of employment and take the necessary steps in order to be engaged.\(^{42}\) The reference to the registration date as opposed to the arrival date suggests that the criterion of reasonableness is specifically applied to the period during which Union citizens seeking employment formally reside in the capacity of a jobseeker. The significance of this approach is apparent if considered in light of the initial unconditional three-month residence guaranteed to all Union citizens, including jobseekers, under Article 6 of Directive 2004/38. As also pointed out by AG Szpunar,\(^ {43}\) it envisages two instances of Union citizens seeking employment there for the first time. On the one hand, a national of a Member State, who moves to another Member State with the intention to search employment and registers as a jobseeker, would be entitled to reside for the next six months, including the initial period of unconditional residence guaranteed to all Union citizens. On the other hand, if a national of a Member State moves to another Member State but only decides to seek employment at the expiry of the initial period of unconditional residence by registering as a jobseeker, then the ‘reasonable period of time’ identified by the Court commences from that moment onwards.

The Court’s and AG Szpunar’s interpretation is in line with Preamble 9 to Directive 2004/38, which states that jobseekers enjoy ‘a more favourable treatment’ than the unconditional right of residence for the first three months available to all Union citizens. At the same time, however, the emphasis placed on the registration date did not disperse all the uncertainty pertaining to the starting point of ‘the reasonable period of time’ available to jobseekers. Neither the Court nor AG Szpunar referred to the fact that not all Member States require Union citizens to register with the relevant authorities, primarily due to Article 25 of Directive 2004/38 that attributes a declaratory character to registration certificates.\(^ {44}\) Hence, it is unclear what should, in fact, serve as a reference point to determine the start and duration of the ‘reasonable period of time’ in those Member States, when a jobseeker does not possess a registration certificate. In one respect, the actual duration of the ‘reasonable period of time’ may not seem problematic given that the authorities in those Member States, as reported,\(^ {45}\) show tolerance to mere residence of Union citizens with little interest in expelling them. However, there is a risk that jobseekers can be put in a precarious position considering the fact that their access to social assistance in those Member States remains contingent on meeting the residence conditions under Directive 2004/38.

Much of the substantive focus in G.M.A. v État belge, however, relates to the extent of limitations that can be placed on the right of residence as a jobseeker pursuant to 14(4)(b) of Directive 2004/38. The problematic aspect of this provision lies in its restrictive wording for being formulated as a mere safeguard clause against the expulsion of jobseekers. Reproducing Antonissen, it only states that Union citizens in the category of jobseekers cannot be expelled for as long as they can provide evidence of continuing to seek employment and having genuine chances of being

\(^{42}\) Case C-710/19 G.M.A. v État belge, para. 34.

\(^{43}\) Opinion of AG Szpunar in Case C-710/19 G.M.A. v État belge, para. 69.

\(^{44}\) More on the divergence in national policies, see D. Kramer and A. Heindlmaier, ‘Administering the Union Citizen in Need: Between Welfare State Bureaucracy and Migration Control’, 31 Journal of European Social Policy (2021), p. 380.

\(^{45}\) Ibid., p. 383.
engaged. It contains no guidance on the form of evidence that is deemed acceptable and, more importantly, the very moment when jobseekers can be required to produce either. The uncertainty over both aspects has, therefore, allowed Member States much leeway to adopt stringent approaches to the interpretation of jobseekers’ right of residence. The Belgian legislation impugned in *G.M.A. v État belge*, for instance, made the right of jobseekers to reside beyond the initial three-month residence conditional on the proof of continuous search of employment and a genuine chance of being engaged. Similarly, according to the UK legislation that was amended prior to the EU referendum vote, jobseekers were required, pursuant to Article 14(4)(b) of Directive 2004/38, to produce at the end of six months ‘compelling evidence of continuing to seek employment and having a genuine prospect of work’, which could take the form of ‘a genuine job offer’ that would start in three months or ‘a change of location or recent completion of vocational training’ that had led to job interviews.46

*G.M.A. v État belge* clarified the operation of Article 14(4)(b) of Directive 2004/38 as a safeguard clause against the expulsion of jobseekers. Based on the textual formulation of this provision, the Court distinguished between two sets of obligations that apply to jobseekers over the course of the ‘reasonable period of time’ conferred on them under Article 45 TFEU. They can be subject to, first, the requirement to seek employment and, second, the requirement to continue to seek employment and demonstrate genuine chances of being engaged. These two prerequisites differ in their timing. During the ‘reasonable period of time’, jobseekers can only be required to seek employment with no other conditions attached. It is only after the expiry of that period that national authorities are allowed to assess whether the person concerned is continuing to seek employment and has genuine chances of being engaged.47 This is aimed to ensure that jobseekers are indeed able to apprise themselves of offers of employment and take the necessary steps in order to be engaged without the need to demonstrate any progress as such. The assessment of ‘genuine chances of being engaged’, in turn, cannot be based on selective criteria, but must be carry out considering ‘all relevant factors’,48 encompassing among other jobseekers’ registration with the appropriate national bodies, their regular contacts with potential employers through letters of applications or employment interviews, their preference of offers corresponding to their occupational qualifications and the state of the relevant national labour market. Although the Court did not make an explicit reference to the principle of proportionality, the rationale for such an obligation appears to lie in the need to ensure an individual-centred assessment of all factors without an outright reliance on those that would likely work to the detriment of a jobseeker.

Although *G.M.A. v État belge* provides some degree of certainty and transparency in relation to the right of residence guaranteed by Article 45 TFEU and enshrined in Article 14(4)(b) of Directive 2004/38, the underlying significance of this ruling lies in two further factors. On the one hand, it can be construed to highlight the need for a clear and systematic outline of jobseekers’ residence status within the framework of Directive 2004/38. As mentioned earlier, compared to the categories of workers/self-employed, students and economically inactive persons, there are only two provisions that are addressed to Union citizens who move to other Member States for the purpose of finding employment. They are not mentioned anywhere in Article 7 of Directive 2004/38, which determines the eligibility for residence beyond three months. This has fuelled confusion and uncertainty over

46. See, R. Babayev, ‘Re-Shaping the Paradigm of Social Solidarity in the EU: On the UK’s Welfare Reforms and Pre- and Post-EU Referendum Developments’, 18 European Journal of Social Security (2016), p. 370.
47. Case C-710/19 *G.M.A. v État belge*, para. 46.
48. Ibid., para. 47.
the actual length of jobseekers’ residence rights in host Member States. *G.M.A. v État belge* is certainly a significant judicial development for establishing the period of time that would be deemed ‘reasonable’ and not jeopardize the effectiveness of Article 45 TFEU. However, as the Court itself alluded to in its reasoning, it is not in a position to actually fix the minimum duration of the ‘reasonable period of time’ available to jobseekers.\(^4^9\) This is because, using AG Szpunar’s words, it behoves the Union legislature to introduce any fixed period.\(^5^0\) Such a legislative change can, for instance, be achieved by consolidating the fragmented provisions concerning jobseekers within the layout of Article 7(1) of Directive 2004/38 through the guarantee to Union citizens seeking employment of a minimum period of residence of six months. Nevertheless, a consensus on the starting point for that period may not be easily achieved given the difference in the approach of Member States with regard to the requirement to register with relevant authorities.

On the other hand, *G.M.A. v État belge* also appears to add a layer of subtlety to the jurisprudential methodology of ascertaining the extent of residence rights bestowed on Union citizens. The recent case-law suggests that the Court’s approach, in fact, comprises of the purposive interpretation of primary rights under the Treaty and the strict enforcement of the black-letter provisions of Union secondary law without the need for individual-centred proportionality assessment, though the actual parameters of oscillation in either direction are not always clear.\(^5^1\) Considered in this light, *G.M.A. v Étate* confirms that the Court, at least in so far as jobseekers are concerned, attributes finality only to those conditions and limitations laid down in Directive 2004/38 that are explicit in their wording, such as those setting out time limitations. Indeed, *Alimanovic*, for instance, establishes that a Union citizen, who has been employed for less than a year and is entitled to retain the status of worker ‘for no less than six months’ while being registered as a jobseeker, effectively loses that status at the expiry of that period without the need for the assessment of individual circumstances.\(^5^2\) Similarly, in *Garcia Nieto*, the Court saw no reason for such an assessment in the context of Article 24(2) of Directive 2004/38, which allows Member States not to confer social assistance to Union citizens during their first three months of residence.\(^5^3\) In contrast, in *G.M.A. v État belge*, the guiding factors for the Court’s interpretation of Article 14(4)(b) of Directive 2004/38 are the effectiveness of Article 45 TFEU and the individual circumstances of a jobseeker. Unlike *Alimanovic* and *Garcia Nieto*, the Court went beyond the structure of Directive 2004/38 due to the ambiguity inherent in the wording of Article 14(4)(b) of Directive 2004/38. However, pursuant to *Alimanovic* and *Garcia Nieto*, it is questionable whether the Court would be willing to follow the same approach if the right to reside as a jobseeker is confined to a specific time period within the framework of Directive 2004/38.\(^5^4\) As such, while a recast of Directive 2004/38 with a clear layout of residence rights provided to jobseekers would likely contribute to legal certainty and potentially minimize recourse to a restrictive interpretation by national authorities, it may not necessarily guarantee an enhanced protection of Union citizens engaged in employment search, if it depends on what normative role the Court attributes to the black-letter provisions of Union secondary law.

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49. Ibid., para. 40.
50. Opinion of AG Szpunar in Case C-710/19 *G.M.A. v État belge*, para. 74.
51. Cf Case C-709/20 CG, EU:C:2021:602 and Case C-535/19 A, EU:C:2021:59.
52. Case C-67/14 *Alimanovic*, para. 62.
53. Case C-299/14 *Garcia Nieto*, para. 50. See also, Case C-181/19 *Jobcenter Krefeld*, para. 67.
54. This stems from the Court’s approach in Case C-299/14 *Garcia Nieto*, para. 50; Case C-67/14 *Alimanovic*, para. 62.
6. Concluding remarks

*G.M.A. v État belge* provides a long-awaited clarification of residence rights of jobseekers guaranteed by Article 45 TFEU. The judgment focused on three aspects pertaining to this right. The Court, first, confirmed that Union citizens seeking employment were entitled to have a ‘reasonable period of time’ in the host Member State to apprise themselves of offers of employment and take the necessary steps in order to be engaged. While not fixing the minimum duration of this period, the Court found that the period of six months from the date of registration as a jobseeker would be ‘reasonable’ without jeopardizing the effectiveness of Article 45 TFEU. According to the Court, during the duration of the ‘reasonable period of time’, jobseekers can only be asked to seek employment. The requirements of providing evidence of continuing to seek employment and, more importantly, genuine chances of being engaged can only be imposed on them at the expiry of that period. These findings were shown to provide some degree of certainty and transparency in relation to the right of residence guaranteed to Union citizens seeking employment. More broadly, however, it was argued that the ruling in *G.M.A. v État belge* accentuates the need for a clear and systematic outline of the status of jobseeker within the framework of Directive 2004/38, though it is doubtful whether this would guarantee an enhanced protection of jobseekers, considering the fact that, as the present ruling suggests, the Court’s methodology to ascertain the residence rights of Union citizens differs based on the explicit wording of Union secondary law.

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