

## **Case C-140/12 Pensionsversicherungsanstalt v Peter Brey [2013] ECR 00000**

**Facts:** Peter Brey and his wife, both German nationals who moved to Austria in 2011, relied on an invalidity pension in Mr Brey's name. Mr Brey applied for the 'Ausgleichzulage' (a compensatory supplement for his pension) and was subsequently excluded from that grant on account of the fact that he lacked sufficient resources to establish his residence in Austria. The Oberster Gerichtshof requested a preliminary ruling on the status of the compensatory supplement under Art. 7(1)(b) CRD.

**Held:** Firstly, the Court made a clear distinction between the economic and social context of the free movement of persons, the former arising from the movement of workers, the latter arising from the conferral of citizenship rights and all the ancillary benefits stemming from that status.

Secondly, the Court stressed the importance of citizenship rights as a way to facilitate and strengthen the exercise of the primary and individual rights – conferred directly on all Union citizens by the Treaty – to move and reside freely within the territory of the Member States.

Thirdly, the principle of equal treatment – highlighted because citizenship rights are fundamental – was expounded upon, with detailed analysis of the situations in which derogations would be justified.

Fourthly, due to the important competing values requiring adjudication, the Court in Brey insisted on a thorough and independent review of the proportionality of the national provisions. What was needed in this respect was an overall assessment of the specific burden which granting the benefit would place on the social assistance system as a whole by reference to the personal circumstances characterising the individual situation of the person concerned.

As such, EU law would work to preclude national legislation which would bar the grant of a benefit to a national of another Member State who was not economically active, on the basis that he did not meet the criteria for obtaining the legal right to reside longer than 3 months in the host Member State just because that national law required applicants for the benefit to have sufficient resources.