

Case C-67/14 Jobcenter Berlin Neukölln v Alimanovic

Facts: Nazifa Alimanovic (a Bosnian-born Swedish national) and her children Sonita, Valentina, and Valentino (German-born Swedish nationals) applied for social benefits and were excluded from those benefits by virtue of point 2 Paragraph 7(1) of the SGB II. A record of employment showed that Ms Alimanovic and her daughter Sonita could not rely on the right of residence as workers. The Bundessozialgericht requested a preliminary ruling from the Court of Justice, the relevant question being whether the principle of equal treatment could be limited by national legislation excluding Member State nationals of other Member States from claiming social benefits in the host State.

Advocate General Wathelet introduced the case by stating that ‘the problem is sensitive in human and legal terms. It will necessarily lead to the Court ruling both on the protection offered by EU law to its citizens, as regards their financial situation and their dignity too, and on the current scope of the fundamental right to free movement, a founding principle on which the European Union is built’. He referred to the unusual stir that Case C-333/13 *Dano v Jobcenter Leipzig* had caused in the European media and all the political interpretations that had accompanied it which confirmed the importance and sensitivity of the subject. He set out the need for a proportionality requirement by similarly highlighting the ‘very varied factual situations’ such cases raised.

Closely following Case C-140/12 *Pensionsversicherungsanstalt v Peter Brey* [2013] ECR 00000, he distinguished between the economic and social contexts, reasserting the fundamentality of citizenship as posited in Case C-184/99 *Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve* and [2001] ECR I-06193 buttressed by the principle of non-discrimination. Given that the principle of non-discrimination can be qualified by conditions and limitations, a proportionality assessment was rendered essential. In performing this proportionality analysis, Advocate General Wathelet considered broader socio-political and economic contingencies, such as the possibility of en masse relocation creating an unreasonable burden on national social security systems.

Held: The Court firstly excluded the availability of economically-derived social benefits by citing *Vatsouras* and *Koupatantze*. The Grand Chamber completely elided the fundamentality of EU citizenship, and instead simply stated that ‘a Union citizen can claim equal treatment with nationals of the host Member State’, citing *Dano v Jobcenter Leipzig*. This was supplemented by

the limitations subsisting with this right, namely that the citizen must not become an unreasonable burden on the social assistance of the host Member State.

The Court asserted that no 'individual assessment is necessary', and that the gradual system established in the CRD regarding eligibility for social assistance was a sufficient consideration in itself of individual characteristics. Consequently, the legislation complied with the principle of proportionality *ab initio*, and so no separate proportionality analysis was required.

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