

Case C-287/05 D. P. W. Hendrix v Raad van Bestuur van het Uitvoeringsinstituut Werknemersverzekeringen [2007] ECR I-06909

Facts: The applicant was a Dutch national with a slight mental disability. He was subsequently awarded a benefit from the State. His benefit was reduced to reflect the number of hours he worked. When the applicant moved to Belgium, the relevant authority ended the benefit on the basis that he had left the country.

The relevant question would be whether the provisions on free movement would work to reverse this result which had been obtained under national law. In particular, the applicant contended that he was a worker and therefore could invoke the protections in Art. 45 TFEU as well as Regulation No 1612/68 which provided that workers could obtain the same tax and social advantages as nationals of the host Member State.

Held: Art. 45 TFEU can be relied upon provided that he exercises his rights of freedom of movement. Following Case C- 152/03 *Ritter-Coulais* [2006] ECR I- 1711, the applicant, by taking up residence in Belgium continuing to work in the Netherlands and then changing employer in that Member State had obtained the status of a migrant worker.

Moreover, under Article 7 of Regulation No 1612/68, a migrant worker is to enjoy the same social advantages as those which are made available to national workers. A 'social advantage' could be classified as any advantage which, whether or not linked to a contract of employment, would generally be granted to national workers primarily because of their status as workers or by virtue of the mere fact of their ordinary residence on the national territory, and the extension of which to migrant workers therefore seems likely to facilitate their mobility within the Community (in line with the principles laid down in Case 249/83 *Hoeckx* [1985] ECR 973). Given that the benefit the applicant was receiving was given to those incapable of earning through their work the same level of experience ordinarily earned, it could be considered to be a 'social advantage'.

Furthermore, it had previously been clarified by the Court that a Member State may not make payment of a social advantage within the meaning of Article 7 of Regulation No 1612/68 dependent on the condition that recipients were resident in the national territory of that Member State. As social advantages were intended to facilitate free movement, and the principle of equal treatment applied, the condition applied to the benefit should not entail an infringement of the

rights which a person in the situation of the applicant derived from that freedom which went beyond what was required to achieve the legitimate objective pursued by the national legislation.

While the national legislation would be disproportionate if absolute, on the facts it was proportionate as the residency condition could be waived if it led to an 'unacceptable degree of unfairness'.

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