Analysis of Union Citizenship under Article 18 TFEU based on ECJ Decisions

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Abstract

Non discrimination and Union Citizenship is regulated in Art. 18-25 of TFEU. The legal status of residence in a Member State through employment has improved, but contains certain reservations,[1] which were regulated by the 2004 Directive/38 about General Freedom of Movement. According to it, every EU citizen who has a valid travel document with him enjoys the right of residence for himself and his family for up to three months in a member state. These articles foresee the following conditions for a period of stay in a Member State longer than 3 months:
purpose of paid or independent employment;
evidence of sufficient living and health insurance;
performance of a qualifying professional qualification, or of belonging to that State.
EU citizens, who have legally stayed for a period of five years in the host country, have the possibility to request the permanent residence for their families. In this sense, main objective of this manuscript is the analysis of Union Citizenship based on the latest ECJ decisions.

Keywords: freedom of movement, ECJ, Decisions, EU.

Introduction

In addition to freedom of movement, the general prohibition of discrimination on the basis of Article 12 TFEU is of particular importance. The combined effect of Articles 12 and 18 is particularly relevant in relation to the right to benefit from social assistance for EU nationals in other member states (ex. the right to compensation for an increase in *Martinez Sala* case, social assistance for the minimum existence in the *Grzelczyk case*, student aid for graduation in the *D'Hoop case*). It is a competence of Member States to implement the freedom of movement, if a national of another Member State seeks social assistance in the absence of resources and does not meet the conditions of residence. The use of social benefits based on *Trojani* decision should not automatically lead to such an extent. It is the first ECJ decision, which is also the starting point for recognizing the social and legal equality of all EU citizens.

Martinez Sala v. Bayern, from 12.5.1998[2]

The plaintiff is a Spanish citizen, that has been living in the Federal Republic of Germany since May 1968. She has been working in the Land of Bayern since 1976,

[1] For more information see Article 18, point 1 TFEU, according to which also in the rules of application of the limitations and conditions laid down.

[2] Case C-85/96, Martinez Sala v. Freistaat Bayern.

lately in 1986 and then again in the fall of 1989. Since then she has received social assistance. The plaintiff was granted a residence permit by the competent authorities without major interruptions until 19.05.1984. Subsequently, she received documents proving her application for her residence permit was completed. In January 1993, when she did not have a residence permit, the plaintiff asked the Land of Bayern to help her with social assistance for her child's birth, who was born this month. The European Convention on the Care of Citizens of 11 December 1953 prohibits the expulsion of individuals. By decision of 21 January 1993, Land of Bayern rejected her request because the person in question did not have a German nationality or a residence permit. Subsequently, the plaintiff appealed to the High Bavarian Social Court (Bayerisches Sozialgerisht), based on the Regulation No 1612/68 on the free movement of workers within the Community and No 1408/71 on the social protection of migrant workers and their families. The High Bavarian Social Court raised the question and case to the ECJ Court.

The ECJ assessed that the residence permit related to the recognition of the right of residence solely in the declarative sense and therefore should not automatically lead to the right to benefit. If a member state requests the delivery of such documents to the nationals of other member states, while local residents do not need such a document, this will be classified as unlawful discrimination based on Article 12 TFEU. This is true, regardless of whether the national court will consider the plaintiff in further proceedings as an employee or not. Moreover, the ECJ ruled that an EU citizen (Article 18 TFEU), who legally resides in a country, can basically rely on the prohibition of discrimination under Article 12 TFEU. Therefore, the ECJ concludes that the application for a residence permit as a condition for social service benefits constitutes a discrimination because of citizenship. Citizens of other member states therefore have the same rights and demands as locals for the benefit of social assistance.

In the *Grzelezyk* case, ECJ decision no. 248 of 20 September 2001,[3] the raised question is related to whether the host member state can provide students of other member states with social assistance as provided for its citizens.

French citizen *Rudy Grzelezyk* lived until the completion of his high school education in France. He then went to Belgium to pursue studies in the field of sports. During this period he self-financed his studies with his part-time employment as a student for three years. At the beginning of his fourth year, he filed an application with the local authorities responsible for social assistance, claiming the minimum income.[4] His request was rejected by the competent authorities because the service did not fall within the scope of the Regulation No. 1681/68.[5] *Grzelezyk* appealed against this decision, arguing that there was discrimination on the basis of citizenship. The local court passed the case to the ECJ for a preliminary decision. In the process of presenting the case to the ECJ, the Belgian Government claimed that such social benefits are not

[3] Case C-184/99, Rudy *Grzelczyk* v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve.

[4] Guaranteed income is an umbrella term for a number of models designed to deliver funds to a given population. Some models are needs-based and/or require willingness to work, while others require only citizenship for eligibility, https://whatis.techtarget.com/definition/guaranteed-income

[5] Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community.

within the scope of Community law. Also by Directive No. 93/96[6], it results that the Member States in which students from another Member State wish to exercise their right to remain in the territory must first demonstrate to the national authorities that they have sufficient existence means existence in order not to seek social assistance from the host Member State.

The ECJ notes that in the case of Belgian students or employees from other member countries, they have the right to seek social assistance if they meet the conditions for the recognition of the minimum income. In its reasoning the court concludes that a request for the granting of social assistance to students derives directly from the prohibition of discrimination of TFEU. Regarding the Belgian Government's opposition, the ECJ clarifies that the member states in which students are enrolled in Universities and have the right to stay in that territory may require to foreign students based on Directive No. 93/96 to have the necessary means at their disposal so that they and their family do not raise claims for social assistance benefits in the host member state. This assessment remains to be done by the states at the time the residence permit is issued. The Court continues to argue that a student's financial situation may change over time for reasons beyond his control and that the provisions of the Community Directive do not consistently refer to the fact that students no longer can raise claims regarding social assistance .

The situation is somewhat different in the *D'Hoop* case, ECJ Decision no. 224 from 29.4.2004.[7]

The plaintiff, a Belgian citizen, has completed high school in France, where she graduated in 1991, with a mature diploma. This evidence was accepted in Belgium to continue university studies. The plaintiff eventually studied until 1995 in Belgium. In 1996, the applicant requested from the National Employment Office (ONEM) the right provided by Belgian law for financial assistance for the transition from school to work, aimed at facilitating the graduates in schools and universities to start their careers after completing their education. By decision of 17 September 1996, ONEM refused the request for this type of assistance, arguing that the complainant had not completed secondary school education in Belgium (as provided for in Article 36 of the Royal Decree of 25 November 1991 of the Regulation on Unemployment) but in France. The plaintiff appealed this decision to the Tribunal du Travail in Liege, which suspended the proceedings and asked the ECJ for a decision. The Belgian national court sought to know with its question whether the Community law prohibited a Member State from requiring a national who is a student seeking the first job, to deny the assistance request solely because he or she she has completed secondary education in another member state.

The ECJ argues that the relevant Belgian legislation constitutes an unequal treatment of Belgian nationals in accordance with the criterion of whether they have received all their education in Belgium or exercising their right to free movement have acquired their diploma in one other member state. The situation in question would have been justified if it would be based on an independent and objective consideration of the nationality of the person concerned and would remain in reasonable relations with the legitimate purpose to be expressed in the national legislation. Since assistance for the transitional period is envisaged to facilitate young graduates for the transition

[6] **Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students.**

[7] Case C-224/98, Marie-Nathalie *D'Hoop* v Office national de l'emploi.

from education to the labor market, it is a legitimate right of the legislator to make a connection between persons seeking social assistance for the transitional period and the labor market. In this case, according to ECJ, the lawmaker has not sought to evaluate this, but has gone beyond the target.

There is no discrimination on grounds of nationality under Article 12 TFEU because the applicant is indeed a national of Belgian nationality. Rather, it is a violation of the free movement of persons as EU citizens (Article 38 TFEU) due to the plaintiff's request for employment in the Belgian market and possibly a restriction on the free movement of workers under Article 39 TFEU. According to the ECJ's final argument, in this case, people who have benefited from their right to freedom of movement within the EU are treated worse by the Belgian state than those who have not used this right (note the parallels with matters in *Schöning - Kougebetopoulou and Köbler)*.[8]

Conclusions

The manuscript showed that the free movement of persons, establishment and workers (Art 18-25 TFEU) are drafted in a way in order to fulfill each other. They are found on the one hand in the Lisbon Treaty and, on the other hand, in the ECJ jurisprudence, which has profoundly created the right of the EU's internal market. This is not so much about the true content of fundamental freedoms (ie goods, services, persons, and capital circulation), but the composition and systematics of every fundamental freedom. ECJ has determined that all fundamental freedoms are enforceable in a direct form, in a form that citizens can address and seek their rights based on them. ECJ has gradually extended the prohibition of discrimination to a general restriction ban. State measures that are discriminatory can only be justified through the legitimate causes of the Treaty of Lisbon. According to the ECJ's continued jurisprudence non-discriminatory measures can be justified by the mandatory causes of the general interest and at the same time the state measures that restrict a fundamental freedom should be proportionate. The above discussed ECJ Decisions clearly show a regulatory power under Article 18 TFEU related to the freedom of establishment and work under Article 22 and 25 TFEU.

References

Streinz, R. (2014). Europarecht.
Case C-85/96, Martinez Sala v. Freistaat Bayern.
Case C 224/01, Köbler v Austria.
Case C 15/96, Kalliope Schöning-Kougebetopoulou v Freie und Hansestadt Hamburg.
Case C-184/99, Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve.
Case C-224/98, Marie-Nathalie D'Hoop v Office national de l'emploi.
Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community.
Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students.
https://whatis.techtarget.com/definition/guaranteed-income.

[8] For more info: Case C 224/01, Köbler v Austria and Case C 15/96, Kalliope Schöning-Kougebetopoulou v Freie und Hansestadt Hamburg.