

The Development of the CJEU Position on the Free Movement of Persons and Access to Social Benefits: Protecting Citizens' Rights or Member States' Interests?

Sose Mayilyan

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Dear Editor,

The Court of Justice of the European Union (CJEU) plays a vital role in the interpretation of provisions of EU law, especially given that a certain level of ambiguity is sometimes present in EU law, a feature which is ‘characteristic of most international treaties’ and indicating that the obligations of the States ‘have been negotiated in a diplomatic setting.’¹ The interpretation of EU law on free movement of persons and social benefits is an area with which the Court has dealt significantly and is a good example of how the CJEU case law can change throughout time. There are some noteworthy cases which demonstrate this shift in the Court’s position.

In a case from 1998, *Martinez Sala*², the CJEU ruled that a requirement put on other Member State nationals to produce a formal residence permit in order to be granted a child-raising allowance (a social advantage) was a case of direct discrimination on the grounds of nationality and, thus, could not be expected to be fulfilled by other Member State nationals, when no such requirement was imposed on the nationals of the host Member State. This was a crucial step in ensuring the prohibition of any discrimination on grounds of nationality as regards access to the social assistance systems of the host Member States by other Member State nationals, since it considered the abovementioned formal requirement to be precluded by the EU law.

This logic was carried on in several further cases, including the landmark case of *Grzelczyk*³, where the CJEU ruled that access to special non-contributory cash benefits for other Member State nationals cannot be conditioned on the fact of them falling within the scope of Regulation 1612/68⁴, when no such requirement is imposed on the nationals of the host Member State. *Grzelczyk* is a notable example of how the Court interpreted Union citizenship as being the *fundamental* status ‘rather than a

¹ Stine Andersen, *The Enforcement of EU Law: The Role of the European Commission* (Oxford University Press 2012).

² Case C-85/96 *Martínez Sala* [1998] ECR I – 2708.

³ Case C-184/99 *Grzelczyk* [2001] ECR I-6229.

⁴ Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on Freedom of Movement for Workers Within the Community [1968] L 257/2.

complementary status to the national citizenship,’ an interpretation that was carried on later through future CJEU judgments.⁵

Such an interpretation of the EU law is, certainly, corresponding with the principle of non-discrimination set out in the EU Treaties and underlying the general thought behind the initiative of the EU in general and the idea of EU citizenship in particular. Nevertheless, the Court did not fully maintain this approach throughout its judgments. This can be seen especially when considering the recent case law of the CJEU. However, the development was a gradual process and before the rather restrictive recent approach of the CJEU occurred, such a movement towards a different interpretation of the EU law could be seen earlier.

In the case of *Bidar*⁶ the Court talked about the necessity of ensuring that the granting of social assistance to other Member State nationals does not make them an ‘unreasonable burden’ and does not, thus, have consequences for the overall level of assistance which may be granted by that State. Therefore, in *Bidar* the condition of demonstrating a certain degree of integration in that State's society was considered by the Court as being a reasonable requirement. The reasoning and the wording of the Court demonstrated a possible trend towards supporting the interests of the Member States by giving them more discretion and leeway in refusing the granting of access to other Member State nationals to their social assistance systems.

Thus, *Bidar* can be deemed the first case where the Court noticeably starts shifting towards an approach which takes into full consideration the interests of EU Member States. In itself, the aim is, certainly, not to be criticised, inasmuch as the Member States should also be protected from the abuse of their social assistance systems, whether it be abuse by their own nationals or nationals of other EU Member States. This alteration, however, has the possibility of becoming somewhat problematic and giving rise to controversial issues, if taken further and resulting in cases where other EU nationals are not treated on the equal footing with the nationals of the host Member State where, according to the provisions of EU law, they have the right to be treated equally, without any discrimination based solely on their nationality and not justified by any of the legitimate aims.

⁵ Roxana Barbulescu, ‘From International Migration to Freedom of Movement and Back? Southern Europeans Moving North in the Era of Retrenchment of Freedom of Movement Rights’ in Jean-Michel Lafleur Mikolaj Stanek (eds), *South-North Migration of EU Citizens in Times of Crisis* (Springer Open 2017) 22.

⁶ Case C-209/03 *Bidar* [2005] ECR I – 2151.

The Court changed its stance more abruptly in its further case law. In the landmark decision of *Dano*⁷ the CJEU ruled that other Member State nationals who do not possess a right to residence in the host Member State according to the EU legislative acts, particularly the Citizenship Directive and Regulation 883/2004, can be refused the grant of social benefits in that Member State. The Court decided that EU citizens may ‘lose the right’ of being granted certain social benefits, when after the first 3 months of their stay in the host Member State they fail to ‘fall under the categories protected by the Citizenship Directive: workers (be them dependent or self-employed), former workers or jobseekers.’⁸ So, in this case the CJEU shifted its approach even more sharply and extended the possibilities for refusing other EU Member State nationals to access the social assistance systems of the host Member States.

In conclusion, it can be observed that throughout time the Court of Justice extensively changed its approach with regard to free movement of persons and access by EU nationals to the social assistance systems of host Member States. As it was shown above, these developments did not happen overnight: on the contrary, they took place through a certain period of time. Such gradual developments and alterations are one of the pieces of evidence proving that the changes in the interpretation of the issues in question by the CJEU did not happen in isolation and were not separated from various social and political dynamics occurring in the European Union: rather, they were influenced by a number of social and political factors and were the result of developments in the social and political sphere in the Union, both at the EU level and at the domestic level in the EU Member States.

Is mise le meas,

Sose Mayilyan

⁷ Case C-333/13 *Dano* [2014] ECR ECLI:EU:C:2014:2358.

⁸ *Barbulescu* (n 5).