

Case C-333/13 Dano v Jobcenter Leipzig ECR ???

Facts: Elisabeta Dano (a Romanian national) and her son Florin (a Romanian national born in Germany) entered Germany in November 2010. Subsequently, Ms Dano was issued the ‘unbefristete Freizügigkeitsbescheinigung’ (certificate of EU residence for an unlimited duration) by the city of Leipzig. On that basis, she was able to secure the ‘Kindergeld’ (a child benefit) from the Federal Employment Agency.

The request for a preliminary ruling under Art. 267 TFEU from the Sozialgericht Leipzig flowed from Ms Dano’s failed attempts to secure benefits under the Sozialgesetzbuch Zweites Buch (‘SGB II’) and the Sozialgesetzbuch Zwölftes Buch (‘SGB XII’). In this regard the Sozialgericht Leipzig considered that Ms Dano was excluded from those benefits by failing to satisfy point 2 of the second sentence of Paragraph 7(1) SGBII, as well as Paragraph 23(3) SGB XII.

The request for a preliminary ruling turned on the effect of Regulation No 883/2004 on the coordination of social security systems, the CRD on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, the non-discrimination principle in Art. 18 TFEU, and the right of residence under Art. 20 TFEU on the provisions of the SGB II and the SGB XII.

Advocate General Wathelet strongly stressed the importance of the Court’s close scrutiny of the facts, for example in the analysis of how a ‘social assistance system’ must be defined, and also in the citizen’s degree of integration in the host Member State. Firstly, Advocate General Wathelet distinguished benefits intended to facilitate access to the labour market from benefits constituting social assistance, in accordance with the principles laid down in *Vatsouras* and *Koupatantz*. Secondly, he noted both the prohibition on discrimination on grounds of nationality and the fundamentality of Union citizenship disabling discrimination. Within this complex of social questions, he conducted a thorough proportionality analysis.

Held: Art. 24(1) CRD did not preclude Member State legislation from excluding nationals of other Member States from receiving ‘special non-contributory cash benefits’ under Art. 70(2) Regulation No 883/2004, despite nationals of the host Member State being entitled to them in identical situations, insofar as those nationals of other Member States did not derive residence under the CRD.

The Court reiterated the *Grzelczyk* adage and then asserted that on this basis every Union citizen may therefore rely on the prohibition of discrimination on grounds of nationality laid down in Art. 18 TFEU in all situations falling within the scope *ratione materiae* in EU law.

It is at this stage that the EU legislation in question gives more specific expression to the non-discrimination principle by importing any lawful conditions attached to the exercise of the right of residence. The relevant conditions attached were that the economically inactive Union citizen had to have ‘sufficient resources for himself and his family members’ in accordance with Art. 7(1)(b) CRD, and could not become an ‘unreasonable burden on the social assistance system of the host Member State’ under Art. 14(1) CRD. The Court then argued that the financial situation of each person concerned should be examined specifically, without taking into account of the social benefits claimed.