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| Subject-matter concerned | <input type="checkbox"/> 1) non-discrimination on grounds of nationality x 2) freedom of movement and residence - Articles 6, 7, 8, 14 and 24 of the Directive 2004/38 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition |
| Decision date | 3/03/2017 |
| Deciding body (in original language) | The High Court |
| Deciding body (in English) | The High Court |
| Case number (also European Case Law Identifier (ECLI) where applicable) | [2017] IEHC 161 |
| Parties | Loti Munteanu v Minister for Social Protection, Ireland and the Attorney General |
| Web link to the decision (if available) | http://www.courts.ie/Judgments.nsf/0/C6A2160A8CD11324802580F3005EFD2E |
| Legal basis in national law of the rights under dispute | Sections 139, 141, 189, 219, 246 of the Social Welfare Consolidation Act 2005; the European Communities (Free Movement of Person) (No. 2) Regulations 2006 (S.I. No. 656 of 2006) |
| Key facts of the case (max. 500 chars) | The applicant is a Romanian national living in Ireland with her partner and two children since 2008. Ms. Munteanu has had intermittent employment, selling the Big Issue magazine, begging and reliant on charitable organisations. In September 2014, she made an application for Jobseekers' Allowance, but this was refused on the basis that her right to reside expired when she her period of self-employment (selling the Big Issue) ended. In August 2014, Ms. Munteanu applied for Child Benefit, but this was rejected on the basis that she did not satisfy the habitual residence conditions set out in section 246 of the Social Welfare Consolidation Act 2005. Ms. Munteanu also applied for a Basic Supplementary Allowance Payment, which again was rejected on the habitual residence grounds. Her solicitor queried the test that the government applied and argued that to automatically exclude the applicant by consideration of the right to reside test was contrary to EU |

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| | law. Justice O'Malley noted that since "the institution of these proceedings the applicant's partner has obtained employment and there is no longer an issue as to her right of residence. However, the parties are agreed that the case is not moot." [para. 70] |
| Main reasoning / argumentation (max. 500 chars) | The High Court referenced several cases litigated before the CJEU, in consideration of the issue as to whether the applicant had a well-established link to the labour market in Ireland. Justice O'Malley opined that "[a] member State is entitled to refuse to grant social benefits to economically inactive Union citizens who exercise their freedom of movement in order to obtain another Member State's social assistance although they do not have sufficient resources to claim a right of residence. Otherwise, persons who arrive in a Member State without sufficient resources to provide for themselves could automatically claim a benefit intended to cover the beneficiary's subsistence costs (Dano)." [para. 113] |
| Key issues (concepts, interpretations) clarified by the case (max. 500 chars) | A key issue was whether the social welfare payments claimed could be considered assistance payments to enable the applicant to access the labour market in Ireland (which could be covered by the Directive), or whether these were forms of social assistance legitimately governed by national legislation. Justice O'Malley ruled that EU law did not preclude the statutory residence requirements contained in the Social Welfare Consolidation Act 2005. |
| Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars) | The Court concluded that Ms. Munteanu was never a worker in the Irish state, and that she was an "economically inactive person who has not shown a real link to the Irish labour market." [para. 123] In these circumstances, the judge refused the reliefs sought (to apply a Directive 2004/38 test to her application for social welfare assistance payments, whereby some consideration of the applicant's personal circumstances would be taken into account). |
| Key quotations in original language and translated into English with reference details (max. 500 chars) | "I accept the argument made on behalf of the applicant that Brey has not been overruled by subsequent cases such as Alimanovic or Commission v. United Kingdom, and that some level of consideration of the personal circumstances of a claimant is clearly necessary. However, the reference in Brey to aid granted before the assessment takes place does not, in my view, mean that the State must in every case grant one or more payments of every benefit applied for before it can reach a determination. In this case, the applicant's history of some degree of self-employment was considered, as was the fact that she had not had any other source of income apart from charitable donations by individuals and organisations. She had previously needed and been granted exceptional needs payments. The level of debt incurred by her in respect of accommodation was taken into account. The conclusion that her difficulties were not temporary cannot be considered irrational. I consider that the degree of individual assessment was adequate for the purpose. It is also clear that Brey must be read in the light of subsequent judgments which establish that the question is not simply whether the one person in question would, by himself or herself, become an unreasonable burden (since the answer to that question would always be in the negative), but the effect of granting the benefit sought to all others in similar circumstances." [para. 128] |
| Has the deciding body refer to the Charter of Fundamental Rights. If yes, to which specific Article. | No |