

# EU citizenship: The CJEU retreats

Political pressure in some EU member states appears to be influencing the meaning of EU citizenship more than the existing case law, believes **Denis Edwards**



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In Case C-67/14 *Jobcenter Berlin Neukölln v Alimanovic*, decided on 15 September 2015, the Court of Justice of the European Union (CJEU) continued the retreat, begun in Case 333/13 *Dano*, from its earlier case law on EU citizenship – so much so that the retreat is in danger of becoming a rout.

The CJEU may be reacting to political developments in some member states, where the wind has turned chilly against EU migrants. In *Alimanovic*, the court departed from the earlier advocate general's opinion (without explaining where he went wrong) by showing an uncharacteristic faithfulness to the text of the Free Movement of Citizens Directive and disregarding some of its own case law on the scope of free movement of workers guaranteed by article 45 of the EU Treaty.

The result is that the CJEU's jurisprudence on EU citizenship is more complex than ever. Yet the facts of *Alimanovic* indicate that this was not a case which should have made it so.

### 'Worker status'

Ms Alimanovic and her three children were all Swedish and therefore EU citizens. Between June 2010 and May 2011, Alimanovic worked in Germany and therefore acquired the status of an article 45 'worker' in EU law. Although the point is unclear, it must have been the case that Alimanovic's younger children (aged 12 and 13 respectively) were in schools in Germany when their mother was an EU citizen 'worker'.

After losing her job, Alimanovic received German social security benefits. But after six months, at the end of May 2012, the payments ceased. The authorities decided that, in accordance with article 7(3)(c) of the directive, EU citizen migrant workers who had worked for less than a year only retained 'worker status' for six months after they ceased working. Losing worker status meant losing the EU law rights to equal treatment with German citizens, including equal entitlement to some social security benefits.

Alimanovic continued to look for work and was therefore a jobseeker. Significantly, however, she was a jobseeker who had been a worker, rather than

someone who had never before worked in Germany. As long as she continued to look for work, article 14 of the directive meant that she could not be removed from Germany. But article 24(2) of the directive means that, once 'worker status' is lost, equal rights to social benefits with host state citizens is also lost.

The CJEU concluded Alimanovic retained 'worker status' for only six months, pursuant to article 7(3)(c). While she could lawfully reside in Germany while looking for work, there was no EU obligation on Germany to pay her the non-contributory social benefits available to German citizens for more than six months after her employment ended. In this way, EU migrant workers would not become an 'unreasonable burden' on the host state's social assistance schemes, which is an evil the directive seeks to avoid.

Significantly, varying its earlier judgment in Case C-140/12 *Brey*, the court concluded there was no scope for the EU principle of proportionality to apply in cases such as this. The directive had already done the balancing: it established a 'gradual system' for retention of worker status. Ending equal rights to social benefits six months after employment ended took into account 'various factors characterising the individual situation', and it would be inimical to legal certainty in the field of social security to require specific, individual assessments.

### Problematic decision

*Alimanovic* is problematic in several respects. First, the court ignores the fact that Alimanovic's two younger children were in school in Germany when she was a 'worker'. In Case C-310/08 *Ibrahim*, the CJEU ruled article 10 of Regulation 492/2011 gave schoolgoing children of an EU citizen 'worker', and their mother as their primary carer, an independent EU law right to reside in the UK. This entailed a right to social security benefits for the family. It is far from clear how *Alimanovic* impacts on *Ibrahim*.

Second, as an EU constitutional principle, all decisions applying EU legislation should comply with the principle of proportionality. To say that the legislature has already done the balancing undermines both the principle and judicial review. Moreover, given that the directive prohibits only an 'unreasonable' burden on social assistance schemes, it seems to invite application of the proportionality principle.

Third, the rights on which the Alimanovics were relying are treaty rights, which cannot be cut down by EU legislation (Case C-507/12 *St Prix*). The court's failure to approach *Alimanovic* in light of the treaty, together with its failure to reconcile its earlier case law, suggests that politics, rather than law, have the upper hand in this field. **SJ**