Union Citizenship and the ‘De-Nationalisation’ of the Territorial Welfare State

Comments on Case C-456/02 Trojani and Case C-209/03 Bidar

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Judgment of 7 September 2004 in Case C-456/02 Michel Trojani v Centre public d’aide sociale de Bruxelles (CPAS), ECR I-0000

Facts: Mr. Trojani, a French national, resides in Brussels, where he was given accommodation in a Salvation Army hostel. In return for board and lodging and some pocket money, he did various jobs for about 30 hours a week as part of a personal socio-occupational reintegration programme. As he had no resources, Mr. Trojani applied for a minimum subsistence benefit. The competent authorities, however, refused to grant him such a benefit. Belgian law only confers upon nationals of other Member States a right to minimum subsistence benefit where they are covered by Regulation (EEC) No 1612/68 on freedom of movement for workers. Mr. Trojani, so the Belgian authorities claimed, was not a worker. Mr. Trojani, who claimed that he was still in possession of a valid residence card, challenged the refusal in a Belgian Labour Court, which subsequently stayed the proceedings to refer preliminary questions to the ECJ.

Questions: (1) Can a Union citizen such as Mr. Trojani, who lacks sufficient resources, carries out work for a hostel for approximately 30 hours a week in the context of a personal reintegration programme, and receives in return benefits in kind, claim a right of residence in his capacity of a worker within the meaning of Article 39 EC? (2) If not, can such a Union citizen, simply by virtue of being a citizen of the European Union, enjoy a right of residence in the host Member State under Article 18 EC?

Judgment: Responding to the first question, the Court first cited settled case law according to which any person who pursues for and under the direction of another person real and genuine activities in return for which he receives remuneration must be regarded as a worker (Case 53/81 Levin [1982] ECR 1035 and Case 66/85 Lawrie-Blum [1986] ECR 2121). The Court further referred to its judgment in Betray in which it had held that activities cannot be regarded as a real and genuine economic activities if they constitute merely a means of rehabilitation or reintegration for the persons concerned (Case 344/87 Betray [1989] ECR 1621, para. 17).

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According to the Court, however, the conclusion drawn in Bettray must be explained by the particular characteristics of the case in question. That case concerned the situation of persons who, by reason of their addiction to drugs, had been recruited on the basis of a national law intended to provide work for persons who, for an indefinite period, are unable, by reason of circumstances related to their situation, to work under normal conditions. The ECJ left it to the referring national court to establish whether or not the activities of Mr. Trojani can be regarded as real and genuine. It held that the national court must ascertain in particular whether the services actually performed by Mr. Trojani are capable of being regarded as forming part of the normal labour market. For that purpose, the national court may take account of the status and practices of the hostel, the content of the social reintegration programme, and the nature and details of performance of the services.

As regards the second question, the ECJ affirmed that Article 18(1) EC produces direct effect (Case C-413/99 Baumbast and R [2002] ECR I-7091, para. 84). The right to reside guaranteed by that provision is subject, however, to inter alia the condition, laid down in Article 1 of Directive 90/364, that the Union citizen concerned has sufficient resources to avoid becoming a burden on the social assistance system of that State. That condition must be applied in compliance with the limits imposed by Community law, including the proportionality principle. According to the ECJ, the lack of resources was precisely the reason why Mr. Trojani sought to receive a minimum subsistence benefit. In principle, therefore, a Union citizen such as Mr. Trojani does not derive from Article 18 EC a right to reside. However, Mr. Trojani is lawfully resident in Belgium, as is attested by the residence permit which has been issued to him. This implies that such a person can in principle benefit from Article 12(1) EC, prohibiting within the ambit of Community law discrimination on grounds of nationality. In that connection the ECJ observed that it had already held that a social assistance benefit falls within the scope of the Treaty (Case C-184/99 Grzelczyk [2001] ECR I-6193, para.46), and that rules such as the one challenged by Mr. Trojani constitute discrimination on grounds of nationality. The ECJ emphasised that a host Member State may take the view that a national of another Member State who has recourse to social assistance no longer fulfils the conditions of his right of residence and take a measure to remove him, but that recourse to the social assistance system by a citizen of the Union may not automatically entail such a measure (Grzelczyk, paras. 42–43).

**Judgment of 15 March 2005 in Case C-209/03 The Queen (on the application of Dany Bidar) v. London Borough of Ealing, ECR I-0000**

**Facts:** In August 1998 Mr Bidar, a French national, entered the territory of the United Kingdom (UK), accompanying his mother who was to undergo medical treatment there. In the UK he lived with his grandmother, as her dependant, and pursued and completed his secondary education. In September 2001 Mr. Bidar started a course in economics at University College London. He received assistance with respect to tuition fees, but his application for financial assistance to cover his maintenance costs, in the form of a student loan, was refused on the ground that he