



1 December 2021

PRESS SUMMARY

Fratila and another (Respondents) v Secretary of State for Work and Pensions (Appellant)
[2021] UKSC 53

On appeal from: [2020] EWCA Civ 1741

JUSTICES: Lord Reed (President), Lord Hodge (Deputy President), Lord Lloyd-Jones, Lord Sales, Lord Hamblen

BACKGROUND TO THE APPEAL

Ms Fratila and Mr Tanase (the “**Respondents**”) are Romanian nationals residing in the UK. They both made applications for universal credit in June 2019. At the time of their applications, the Respondents’ right to reside in the UK arose solely from their pre-settled status under the EU Settlement Scheme. The Respondents’ applications were refused because the Universal Credit Regulations 2013, as amended by the Social Security (Income Related Benefits) (Updating and Amendment) (EU exit) Regulations 2019 (the “**2019 Regulations**”) do not permit universal credit to be granted solely on the basis of an individual’s pre-settled status.

The Respondents challenged the refusals of their applications for universal credit by way of judicial review. They argued that the 2019 Regulations should be quashed as contrary to the prohibition on discrimination on the grounds of nationality in Article 18 of the Treaty on the Functioning of the European Union (“**article 18 TFEU**”). In the High Court, Swift J dismissed the Respondents’ claim. However, the Court of Appeal (McCombe and Moylan LJ, Dingemans LJ dissenting) allowed the Respondents’ appeal. The Secretary of State for Work and Pensions now appeals to the Supreme Court.

JUDGMENT

The Supreme Court unanimously allows the appeal. The Respondents’ challenge to the 2019 Regulations therefore fails. Lord Lloyd-Jones gives the Court’s judgment.

REASONS FOR THE JUDGMENT

On 15 July 2021, the Court of Justice of the European Union (the “**CJEU**”) delivered its judgment in Case C-709/20 *CG v The Department for Communities in Northern Ireland*. The CJEU held that article 18 TFEU has no application to the Universal Credit Regulations (Northern Ireland) 2016, as amended by the Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations (Northern Ireland) 2019 (which are materially similar to the Universal Credit Regulations 2013, as amended by the 2019 Regulations) [8], [10]. The CJEU’s judgment is binding because this case concerns the application of EU law during the transition period following the UK’s withdrawal from the EU [1], [8]. In accordance with the CJEU’s judgment in *CG*, the Respondents are therefore not entitled to rely on article 18 TFEU [7], [11].

By letter to the Supreme Court dated 23 July 2021, the Respondents then sought to advance a new case based on the EU Charter of Fundamental Rights [13]. It would be inappropriate to permit this case to be raised at this stage in the proceedings because it concerns issues of fact which have not been determined [14].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for that decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>

The Supreme Court of the United Kingdom

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