

Fratila and another (AP) (Respondents) v Secretary of State for Work and Pensions (Appellant)

Case ID: UKSC 2021/0008

Case summary

Issue

This appeal concerns the entitlement of EU citizens to UK benefits in light of UK's withdrawal from the EU ("Brexit"). The Supreme Court is asked to consider: 1. whether a person with no EU law right to reside in an EU Member State is entitled to rely on the prohibition on nationality discrimination contained in Article 18 of the Treaty on the Functioning of the European Union ("TFEU"); and 2. the proper approach to the distinction between direct and indirect discrimination and whether indirect discrimination may, in the circumstances of the present case, be objectively justified.

Facts

The UK Government established a settled status scheme to enable EU citizens living in the UK to continue to do so after Brexit (the "EUSS"). The EUSS operates to protect the existing benefit entitlements of EU citizens. The eligibility rules for universal credit ("UC"), a consolidated benefit entitlement, include the requirement for the recipient to be habitually resident in the UK, Ireland or certain Crown dependencies and have a qualifying right to reside in one of those locations. Amendments to the statutory framework in light of Brexit do not permit an applicant for UC to rely upon "leave to remain" in the UK as a result of pre-settled status ("PSS") granted under the EUSS. The two Respondents are Romanian nationals. Each resides in the UK but they have been economically inactive for a period of time. They submit that the change introduced by amendments to the statutory framework establishing the UC regime constitute unlawful discrimination against them on the grounds of their nationality.

Judgment appealed

[\[2020\] EWCA Civ 1741](#)

Parties

Appellant(s)

Secretary of State for Work and Pensions

Respondent(s)

Fratila and another (AP)

Appeal

Justices

Lord Reed, Lord Hodge, Lord Lloyd-Jones, Lord Sales, Lord Hamblen

Hearing start date

This hearing has been adjourned as a result of information provided to the Court.

Judgment details

Judgment date

1 December 2021

Neutral citation

[2021] UKSC 53