

Joined cases C-22/08 and C-23/08 Athanasios Vatsouras (C-22/08) and Josif Koupatantze (C-23/08) v Arbeitsgemeinschaft (ARGE) Nürnberg 900 [2009] I-04585

Facts: The applicants were both Greek nationals who entered Germany in order to work. Both had been granted a social benefit from the relevant authority (ARGE), and both had their entitlement suspended after it had been granted. The national courts were unsure as to whether the applicants had the status of 'worker' as defined in Art. 45 TFEU, and if not, whether they could still claim the benefit refused, a preliminary reference was made.

What was important was that following the establishment of citizenship, benefits of a financial nature intended to facilitate access to employment in the labour market of a host Member State could now be paired with the protections in Art. 45 TFEU as a consequence of the non-discrimination principle. What was needed was a real link between the job-seeker and the labour market of that State (following Case C- 224/98 D'Hoop [2002] ECR I- 6191).

Given this, the Court said that benefits of a financial nature which, independently of their status under national law, were intended to facilitate access to the labour market could not be regarded as constituting 'social assistance' within the meaning of Article 24(2) of Directive 2004/38, and so no derogation was permitted from the principle of non-discrimination/equal treatment on the facts.

Held: Following Case 53/81 Levin [1982] ECR 1035, the fact that the income from employment is lower than the minimum required for subsistence does not prevent the person in such employment from being regarded as a 'worker' within the meaning of Art. 45 TFEU. Following Case C 3/90 Bernini [1992] ECR I 1071, the duration of the employment could also not prevent the employment from falling under Art. 45 TFEU, as long as the overall assessment of the employment relationship indicated a genuine status as 'worker'.