

EU: Case C-336/94

Celex No. 694J0336

European Union Case Law

COURT OF JUSTICE

Judgment of the Court of 2 December 1997. **Eftalia Dafeiki v Landesversicherungsanstalt Wurtemberg.** Reference for a preliminary ruling: Sozialgericht Hamburg - Germany. Freedom of movement of workers - Equal treatment - Social security - Rule of national law according different probative value to certificates of civil status depending on whether they are of national or foreign origin. Case C-336/94.

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ISSUE 1

In Case [C-336/94](#),

REFERENCE to the Court under Article 177 of the EC Treaty by the Sozialgericht Hamburg (Germany) for a preliminary ruling in the proceedings pending before that court between

Eftalia Dafeiki

and

Landesversicherungsanstalt Wurtemberg

on the interpretation of Articles 48 and 51 of the EC Treaty in the light of German provisions under which certificates of civil status are accorded different probative value, depending on whether they are German or foreign,

THE COURT,

composed of: H. Ragnemalm (President of the Fourth and Sixth Chambers), acting for the President, G.F. Mancini, J.C. Moitinho de Almeida, J.L. Murray, D.A.O. Edward, J.-P. Puissochet, G. Hirsch, P. Jann (Rapporteur) and L. Sevon, Judges,

Advocate General: A. La Pergola,

Registrar: H.A. Ruhl, Principal Administrator,

after considering the written observations submitted on behalf of:

- Mrs **Dafeiki**, by Johann S. Politis, of the Athens Bar,

- the German Government, by Ernst Roder, Ministerialrat in the Federal Ministry of the Economy, and Bernd Kloke, Regierungsrat in the same Ministry, acting as Agents,

- the Greek Government, by Panagiotis Kamarineas, Legal Adviser at the State Legal Council, Kyriaki Grigoriou, legal representative to the State Legal Council, and Ioanna Galani-Maragkoudaki, Deputy Special Legal Adviser in the Special Community Legal Affairs Department of the Ministry of Foreign Affairs, acting as Agents,

- the Commission of the European Communities, by Jorn Sack, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Mrs Dafeiki, represented by Johann S. Politis the Landesversicherungsanstalt Wurtemberg, represented by Eberhard Graner, Regierungsdirektor, acting as Agent the German Government, represented by Sabine Maass, Regierungsratin zur Anstellung in the Federal Ministry of the Economy, acting as Agent the Greek Government, represented by Fokion Georgakopoulos, Deputy Legal Adviser at the State Legal Council, acting as Agent, and Ioanna Galani-Maragkoudaki and the Commission, represented by Jorn Sack, at the hearing on

22 October 1996,

after hearing the Opinion of the Advocate General at the sitting on 3 December 1996,
gives the following

Judgment

GROUNDS

1 By order of 12 September 1994, received at the Court on 28 December 1994, the Sozialgericht (Social Court) Hamburg referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Articles 48 and 51 of the EC Treaty in the light of German provisions under which certificates of civil status are accorded different probative value, depending on whether they are German or foreign.

2 That question was raised in proceedings between Mrs **Dafeiki** and the Landesversicherungsanstalt Wurtemberg (a German retirement pension fund, hereinafter 'the pension fund').

3 Mrs **Dafeiki** was born in Greece and has Greek nationality. She has worked in Germany since May 1966. Her civil-status documents gave her date of birth as 3 December 1933. By judgment of a single judge of the District Court of Trikala of 4 April 1986, that date was rectified in accordance with the procedure applicable where archives and registers have disappeared. Since then, the register of civil status and Mrs **Dafeiki's** civil-status documents have shown that she was born on 20 February 1929. She was accordingly issued with a new birth certificate.

4 On 19 December 1988 Mrs **Dafeiki** applied to the pension fund for the early retirement benefit for women who have reached the age of 60. For that purpose, she produced first of all the new birth certificate issued by the competent Greek authorities and then, at the request of the pension fund, the judgment ordering rectification. Although she satisfied all the other conditions of entitlement, the pension fund refused her application, basing its decision on the date of birth before rectification. Since her subsequent objection was also rejected, Mrs Dafeiki brought an action before the Sozialgericht Hamburg.

5 In German law, Paragraph 66 of the Personenstandsgesetz (Law on Civil Status) (.PStG') provides that documents relative to civil status have the same probative value as registers of civil status according to Paragraph 60(1) of the PStG, provided that they are properly maintained, those registers constitute in principle proof of marriages, births and the particulars entered in relation to those events. Evidence of their inaccuracy may however be adduced. According to the case-law of the Bundessozialgericht (Federal Social Court) and academic legal writing, Paragraph 66 of the PStG applies only to German and not to foreign documents, including those relating to subsequent rectifications. It follows that where certificates have been drawn up in another country, they do not benefit from the presumption of accuracy, so that the court seised of the matter proceeds to an evaluation of the documents before it in accordance with the rule of free assessment of evidence. In so doing, the court must take account in particular of a rule of case-law which establishes a presumption that, in the event of inconsistency between several documents of differing dates, the document which prevails is generally, in the absence of other sufficient evidence, the one closest in time to the event, and hence, in this case, the first extract from the register of births.

6 The Sozialgericht Hamburg questions whether application of the rule of free assessment of evidence to the probative value of certificates of civil status is compatible with Community law, in particular with Articles 48 and 51 of the Treaty, as amounting to indirect discrimination on grounds of nationality. If Mrs Dafeiki had produced documents issuing from the German register of civil status, her rectified date of birth would have been accepted without further enquiry.

7 The Sozialgericht Hamburg accordingly decided to stay proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Are German social security authorities and courts bound, and if so to what extent, by the rule of Community law to the effect that foreign certificates of civil status, and judgments of foreign courts determining or rectifying data concerning matters of civil status, have binding force in proceedings concerning entitlement to social security benefit?'

8 By its question, the national court is in substance asking whether, in proceedings for determining entitlements to social security benefits of a migrant worker who is a Community national, Article 48 of the Treaty requires that the competent social security authorities and the courts of a Member State recognize certificates and analogous documents relative to civil status which have been issued by the competent authorities of other Member States.

9 It should be borne in mind at the outset that, by virtue of Article 48 (2) of the Treaty, freedom of movement for workers entails the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

10 The situation of Mrs Dafeiki, a national of a Member State who has been employed in another Member State where she seeks the award of a retirement pension on the basis of that employment, falls within the scope of that provision.

11 In order to invoke the right to a social security benefit flowing from the exercise of the right of free movement for workers guaranteed by the Treaty, workers must necessarily supply proof of certain particulars entered in the registers of civil status.

12 It is clear from the provisions of German law, as set out by the national court, that the probative value accorded by those provisions to certificates of civil status issued by the competent authorities of another Member State is lower

than that accorded to certificates drawn up by the German authorities.

13 Thus, although they apply irrespective of the nationality of the worker, those rules operate in practice to the detriment of workers who are nationals of other Member States.

14 The German Government submits, however, that there are significant differences between the Member States as regards the provisions governing the maintenance and rectification of registers of civil status, in view of the widely varying factual circumstances and legal considerations affecting legislative decisions. In particular, the rules of authentication are not the same in the Hellenic Republic and the Federal Republic of Germany. In the former State, amongst other things, alteration of a date of birth by judgment of a single judge, for which the evidence of two witnesses suffices, is not uncommon. Not a few migrant workers of Greek nationality have availed themselves of this possibility. The competent German insurance institution has noted some hundreds of cases in which the date of birth declared on taking up employment differed significantly from the date given on application for the award of a pension. As a general rule, the alteration operates to the worker's advantage.

15 The Commission too points out that questions relating to civil status differ considerably from one Member State to another, since the respective systems have been strongly influenced by an extremely wide variety of cultural phenomena and by various external events, such as wars and transfers of territory. It is therefore difficult to start from the premiss that the factual and legal situations are identical or equivalent. There are no common measures at Community level. Moreover, the Community has no general competence to lay down rules concerning the law applicable to civil status or questions related to the probative value of documents relative to civil status. In those circumstances, the Commission considers that, as Community law now stands, it does not preclude the German practice.

16 Account must be taken, first, of the considerable differences that exist between the national legal orders as regards the conditions and procedures for rectification of a date of birth and, second, of the fact that, for the time being, the Member States have neither harmonized the matter nor established a system of mutual recognition of such decisions, as has been done for judgments falling within the scope of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1972 L 299, p. 32).

17 The possibility of successfully challenging the accuracy of a certificate of civil status, such as that in issue in the main proceedings, depends to a large extent on the procedure followed and on the conditions which have to be satisfied in order for such a birth certificate to be altered. These may vary considerably from one Member State to another.

18 Consequently, the administrative and judicial authorities of a Member State are not required under Community law to treat as equivalent subsequent rectifications of certificates of civil status made by the competent authorities of their own State and those made by the competent authorities of another Member State.

19 Nevertheless, exercise of the rights arising from freedom of movement for workers is not possible without production of documents relative to personal status, which are generally issued by the worker's State of origin. It follows that the administrative and judicial authorities of a Member State must accept certificates and analogous documents relative to personal status issued by the competent authorities of the other Member States, unless their accuracy is seriously undermined by concrete evidence relating to the individual case in question.

20 In those circumstances, a rule of national law which establishes a general and abstract presumption that, in the event of inconsistency between several documents of differing dates, it is the document closest in time to the event to be proved which prevails in the absence of other sufficient evidence, cannot justify refusal to take account of a rectification made by a court in another Member State.

21 The answer to be given to the question put to the Court must therefore be that, in proceedings for determining the entitlements to social security benefits of a migrant worker who is a Community national, the competent social security institutions and the courts of a Member State must accept certificates and analogous documents relative to personal status issued by the competent authorities of the other Member States, unless their accuracy is seriously undermined by concrete evidence relating to the individual case in question.

COSTS

Costs

22 The costs incurred by the German and Greek Governments and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

RULING

On those grounds,

THE COURT,

in answer to the question referred to it by the Sozialgericht Hamburg by order of 12 September 1994, hereby rules:

In proceedings for determining the entitlements to social security benefits of a migrant worker who is a Community national, the competent social security institutions and the courts of a Member State must accept certificates and

analogous documents relative to personal status issued by the competent authorities of the other Member States, unless their accuracy is seriously undermined by concrete evidence relating to the individual case in question.

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Subject
SOCIAL SECURITY FOR MIGRANT WORKERS

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References

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Case citations
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Freedom of movement of workers - Equal treatment - Social security - Rule of national law according different probative value to certificates of civil status depending on whether they are of national or foreign origin.
Case C-336/94.

Plaintiff
Eftalia Dafeiki

Defendant
Landesversicherungsanstalt Wurttemberg

Observations
Federal Republic of Germany
Greece
Commission

Judge
Jann

Advocate-General
La Pergola

National Court
A9 Sozialgericht Hamburg, Vorlagebeschuß vom 12/09/94 (15 J 653/91)

Nationality
FEDERAL REPUBLIC OF GERMANY

Commentary

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