



“THE COURT ORDERED that no one shall publish or reveal the names or addresses of the children of the Applicant who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of the Applicant, her children or any member of the Applicant’s family in connection with these proceedings.”

15 November 2017

PRESS SUMMARY

**R (on the application of HC) (Appellant) v Secretary of State for Work and Pensions and others (Respondents) [2017] UKSC 73
On appeal from [2015] EWCA Civ 49**

JUSTICES: Lady Hale, Lord Clarke, Lord Wilson, Lord Sumption, Lord Carnwath

BACKGROUND TO THE APPEAL

Mrs HC is an Algerian national who has been living in the UK since 2009. She arrived with leave but then overstayed. In 2010 she married a British national on whom she depended financially. She had two children by him, in 2011 and 2013. Her children are British nationals. The relationship ended after domestic violence in late 2012, when Mrs HC sought help from her local authority. Oldham City Council, after initially refusing, agreed to provide Mrs HC and her children with temporary housing and £80.50 per week for subsistence and utilities, under section 17 of the Children Act 1989.

It is common ground that Mrs HC is entitled to reside in the UK as the carer of her children, due to decision of the Court of Justice of the European Union (“CJEU”) in *Zambrano v Office nationale de l’emploi* (Case C-34/09) [2012] QB 265. In *Zambrano* the CJEU held that an EU member state could not take measures in respect of a non-EU citizen who was the primary carer (a “*Zambrano* carer”) of an EU citizen, where those measures effectively deprive that dependent EU citizen of the genuine enjoyment of his or her rights under EU law.

In response to the *Zambrano* decision, the UK government introduced regulations which amended legislation to preclude *Zambrano* carers from claiming various income-related benefits: (i) The Social Security (Habitual Residence) (Amendment) Regulations 2012; (ii) The Child Benefit and Child Tax Credit (Miscellaneous Amendments) Regulations 2012; (iii) The Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2012 (collectively, the “Regulations”).

Mrs HC challenges the legality of the Regulations. Mrs HC contends that the denial of mainstream welfare and housing provision to a *Zambrano* carer and her child is unlawful, because it amounts to unlawful discrimination under article 21 of the EU Charter of Fundamental Rights and Freedoms (“the Charter”) and/or under article 14 of the European Convention of Human Rights (“ECHR”).

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Carnwath gives the lead judgment, with which Lord Clarke, Lord Wilson and Lord Sumption agree. Lady Hale gives a concurring judgment.

REASONS FOR THE JUDGMENT

In *Zambrano* and subsequent cases, the reasoning of the CJEU turned solely on the risk that the dependents of *Zambrano* carers might be forced to leave the EU, thereby being deprived of the enjoyment of their rights as EU citizens. That *Zambrano* right of residence is exceptional and is not triggered merely by the desirability of keeping the family together. It is not a right to any particular quality of life or standard of living [8-15].

It was argued on behalf of Mrs HC that in EU law, once a right of residence is established, the *Zambrano* carer is automatically entitled to the same social security assistance as nationals of the host state. That argument relied

on the judgment of the CJEU in *Baumbast v Secretary of State for the Home Department* [2002] ECR I – 7091, as followed in *Ibrahim v Harrow London Borough Council* and *Teixeira v Lambeth Borough Council* (Joined Cases C-310/08 and C-480/08) [16-20].

This Court rejects the analogy with those cases for two reasons. First, those cases concerned whether rights of residence were subject to conditions derived from EU law. The rights asserted in those cases were not limited by domestic law. Conversely the issue in this case is whether the Regulations, which limit Mrs HC's entitlement to assistance, comply with EU law. Second, the argument that a right of residence triggers a right to equal treatment under EU law relies on article 21 of the Charter. This begs the question of whether the Charter applies to this case at all [21].

According to article 51 of the Charter, the Charter applies to EU member states only when they are implementing EU law. As a result, the test for the applicability of the Charter is not whether Mrs HC was personally within the scope of EU law; it is whether the Regulations were implementing EU law [22-28]. EU law requires no more for the children of a *Zambrano* carer than the practical support necessary for them to remain in the EU. It is common ground that the limited financial support provided to Mrs HC and her children is sufficient for them to remain. It follows that Mrs HC cannot rely on the Charter to establish a right to further financial assistance [5, 28-29].

The measures adopted by the UK do not amount to unlawful discrimination under article 14 of the ECHR. Discrimination on the basis of immigration status is an accepted part of EU and national law and cannot in itself give rise to an issue under article 14. Insofar as Mrs HC relies on differences between her treatment as a *Zambrano* carer specifically and the treatment of others, such differences only reflect the rules of EU law which created her *Zambrano* carer status. In any event, the European Court of Human Rights has accepted that the allocation of public funds in the social security context is primarily a matter for national authorities, provided that allocations are not “manifestly without reasonable foundation.” The objectives underlying the Regulations cannot be said to fall outside that wide margin of discretion allowed to national governments [31-32].

No issue arises in the appeal as to the scope of the local authority's duties under section 17 of the Children Act 1989, but that provision is now an important aspect of the government's response to the *Zambrano* principle. Section 17 confers a duty on local authorities to promote the welfare of the children in their area and, insofar as consistent with that, to promote the upbringing of such children by their families [33-34]. In this case, the duty arises from a responsibility imposed by EU law, but the allocation of that responsibility as between central and local government is a matter of domestic law only. That does nothing to diminish the importance of the duty under section 17. It is appropriate to provide guidance at a national level for the various local authorities discharging that duty [36-37].

In her concurring judgment, Lady Hale adds that a local authority reviewing the needs of the children for the purposes of section 17 will no doubt consider: (i) the need to promote actively the welfare of the children, when exercising various statutory powers; (ii) the fact that these children are British, with the right to remain here for the rest of their lives; (iii) the impact on the proper development of the children which would follow if they were denied a level of support equivalent to their peers [43-46]. The other members of the Court agree with those observations [37].

In Lady Hale's view the administration of section 17, unlike the Regulations, could be said to implement EU law by enabling the children to remain in the UK. If the Charter were applicable to the administration of section 17, it might be possible to regard discrimination against the children of *Zambrano* carers in that context as falling within article 21 of the Charter. In that case, the justifications presently offered on behalf of the Secretary of State would be unimpressive. But section 17 is one way of providing these children with what they need and deserve. The availability of alternatives, which are in some ways preferable, does not mean that the UK is in breach of EU law [48-52].

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 the 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>