

# European Court of Justice upholds UK ban on migrant benefits

**Robert Stevens****16 June 2016**

The European Court of Justice (ECJ) ruled Tuesday that Britain's laws denying many European Union migrants child benefit and child tax credits are legal.

The judgment states that the British government can withhold family welfare benefits to EU migrants who are not working if they do not have the "right to reside" in the UK. While the ECJ acknowledged this means that citizens of other EU nations would be subject to "unequal treatment" in the UK, it ruled that "this difference in treatment can be justified by a legitimate objective such as the need to protect the finances of the host Member State..."

To have the right to reside in the UK, foreigners must be in employment, looking for work or have been in Britain for at least five years.

The ECJ ruling relates to measures originally introduced in 2004 by the EU governing the rights of migrants from the EU and European Economic Area. Those deemed "economically inactive", and their family members, were able to claim certain welfare benefits under the "habitual residence" test.

Had the ruling gone against the UK government, the Conservative government of Prime Minister David Cameron would have been thrown into an even deeper crisis. The judgment was made with just days remaining before the UK votes in the June 23 referendum, currently on knife-edge, on continued membership in the EU.

If the Tory government leading the Remain campaign wins, Cameron will legislate for child benefits for EU migrants to be restricted to the rate of their home country, and for an "emergency brake" on EU migrants claiming in-work benefits for up to seven years. These curbs on EU citizens' democratic rights were agreed by Cameron with the other leaders of EU countries in February, giving the green light for the referendum to

go ahead. These curbs were premised on the government winning the case before the ECJ, and demanded by Cameron in an attempt to satisfy the nearly half of the Tory parliamentary faction, and even wider base of the party, that oppose EU membership.

The EU and its leading powers, Germany and France, are opposed to the UK exiting. The ECJ ruling was a direct intervention in support of the Remain campaign. Cameron's message to the euro-sceptic wing of his party is that cutting immigration levels and imposing austerity against the working class can be achieved within a "reformed" EU supportive of his agenda.

The decision was made all the more vital given that the Cameron government is preparing to oppose the free movement of workers within the EU in an attempt to cut the ground from under the Leave campaign. According to the *Guardian*, this could be done via the government "making a unilateral statement of intent or securing an understanding from European leaders that the issue can be examined under the UK presidency next year."

On Tuesday, senior figures in the Labour Party, Cameron's main backers in the Remain campaign, also came out in opposition to free movement. Former shadow chancellor Ed Balls called for controls on migration and was immediately backed by Deputy Leader Tom Watson and several others.

The legal case was brought against the UK government in 2014 by the European Commission (EC), the executive arm of the EU. It argued that the British process of checking whether claimants of child benefit and child tax credit were legally resident discriminated against foreign EU workers, as British citizens were not treated in the same way.

Last October, the ECJ's Advocate General, Pedro Cruz Villalón, issued a preliminary opinion that the

EC's legal case against Britain should be dismissed. He argued that in order to protect a host EU Member State's public finances, EU migrants to Britain could "suffer the inconvenience" of tougher checks even if this was "indirect discrimination."

The ECJ echoed this stance, ruling that although it was endorsing "indirect discrimination," it rejected the EC's main argument "that the UK legislation imposes a condition supplementing that of habitual residence contained in the regulation."

This verdict was reached despite the judgment noting in its first paragraph, "One of the common principles that the Member States must observe is the principle of equality. In the specific field of social security, the principle of equality takes the form of prohibiting any discrimination on grounds of nationality."

The scapegoating of migrants and denial of access to the basics for subsistence is now the policy of governments across the continent. Last month, Andrea Nahles, the Social Democratic Party Minister of Labour and Social Affairs in Angela Merkel's German coalition, submitted a plan under which migrants from other EU countries "will be excluded on principle from services such as social assistance and basic income for those searching for work."

The Cameron government seized on the ruling as vindicating its position of remaining in the EU. A government spokesman welcomed the judgment, "which supports our view that we are entitled to ensure only EU migrants who have a right to be in the UK can claim our benefits."

Vote Leave responded that it had been vindicated, with leading Tory Iain Duncan Smith stating, "[I]t is clearly an illegitimate challenge to our sovereignty. Although David Cameron didn't want to admit it, this case and others like it are proof positive that the unelected European Court of Justice is now supreme above our elected Parliament."

With Cameron and the Tories widely hated, Labour is tasked with leading the Remain campaign. Its response proves that the election of Jeremy Corbyn, as a nominally left leader, has done nothing to change Labour from being a right-wing nationalist party.

On Tuesday, Alan Johnson, the Blairite chair of Labour In for Britain, insisted that only through the UK's EU membership could immigration be cut back. Speaking to the BBC, he said that Labour had not said

enough in the campaign about opposing immigration. He continued, "There's three types of immigration: there's immigration from outside the EU, there's illegal immigration, and there's free movement. Of those, free movement gives us the benefit of the single market. Our argument is remaining part of the single market helps us to control the other two forms of immigration."

"If anyone believes that our UK border in Calais (France) is going to survive us leaving the EU then once again they're in the realms of fantasy," he added.

In recent weeks, the population of Turkey, the vast majority Muslims, have been designated by both the Remain and Leave campaigns as potentially an invading army of millions of people that only require Turkey's accession to the EU in order to flood the UK and steal everyone's jobs and access to health care, housing and education.

Citing comments 24 hours earlier by Hilary Benn, a Blairite warmonger who Corbyn appointed to his shadow cabinet, Johnson said, "If you are concerned about accession countries like Turkey, stay in the EU because Britain gets a veto [on who can join the EU] and can determine the terms of them coming in, including not allowing free movement from those countries."

The Socialist Equality Party, the British section of the International Committee of the Fourth International, opposes both the Remain and Leave campaigns and is calling for an active boycott of the referendum.



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