Newsletter on European 2020/2 Free Movement Issues for Judges

NEFIS

Quarterly update on

- *Legislation and*
- *Jurisprudence*

on

- *European*
- *Free Movement Issues*

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Latest judgments, AG opinions and new pending cases

		Name	Dir. 2004/38	Reg. 492/2011	TFEU
§ 1 Exit and Entry					
CJEU	18 June 2020, C-754/18	*Ryan Air*	Art. 5(2)+20	-	-
CJEU	C-35/20	*Syyttäjä*	-	-	Art. 21(1)
-					
§ 2 Residence					
CJEU	27 Feb. 2020, C-836/18	*R.H.*	-	-	Art. 20
-					
§ 3 Equal Treatment					
CJEU AG	14 May 2020, C-181/19	*Jobcenter Krefeld*	Art. 24(2)	Art. 10	-
CJEU AG	4 Jun 2020, C-454/19	*Z.W.*	all Art.	-	-
-					
§ 4 Loss of Rights					
CJEU	C-118/20	*Wiener Landesregierung*	-	-	Art. 20
-					
§ 5 Family Members					
CJEU	18 June 2020, C-754/18	*Ryan Air*	Art. 5(2)+20	-	-
-					
§ 6 Procedural Rights					
-					

About

NEFIS is a newsletter designed for judges who need to keep up to date with EU developments on EU citizenship and free movement. NEFIS contains EU legislation and case law on EU citizens and their family members in relation to: * exit and entry * residence * equal treatment * loss of rights * family members and * procedural rights. NEFIS does not include case law on regular migration or asylum. We would like to refer to separate Newsletters on these issues: NEMIS and NEAIS.

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Editorial

Welcome to the **second** issue of NEFIS in 2020.
In this issue we would like to draw your attention to the following:

Citizenship
The *Wiener Landesregierung* case (C-118/20) is a reference from the Austrian Supreme Administrative Court asking the CJEU to clarify whether the revocation of a guarantee to grant of Austrian citizenship falls within the scope of EU citizenship if the applicant has subsequently renounced her Estonian nationality and, in doing so, lost her status as EU citizen. If, in the affirmative the Court of Justice finds that this situatian falls within the rules on EU citizenship, then the referring court would like the CJEU to clarify whether this revocation needs to be reviewed in light of the EU law principle of proportionality. In this case, the applicant voluntarily renounced her Estonian nationality after obtaining a guarantee from the Austrian authorities that she would be granted Austrian citizenship. As a result of that renunciation, the applicant lost her status of EU citizenship with very slim chances of regaining this status due to the revocation of the guarantee to grant her Austrian nationality. The justification given for revocation was that the applicant had been penalised for committing several serious administrative (road traffic) offences before and after the guarantee to grant Austrian nationality was given to her and, therefore, did not satisfy the good conduct requirement for naturalisation.
The Austrian Supreme Court seeks clarification on two issues. Firstly, if EU law and the EU citizenship provisions in particular apply as at the moment of revocation the applicant was stateless and therefore, unlike the applicants in the *Rottmann* (C-135/08) or *Tjebbes* (C-221/17) cases, not an EU citizen when the guarantee was revoked. Secondly, in case that the matter falls within the scope of EU law, the Austrian court seeks clarification whether the EU principle of proportionality applies to the revocation of the guarantee as required by EU law and the CJEU's jurisprudence, especially after the *Tjebbes case* (C-221/17).

Free movement & Schengen Borders Code
In the *Ryanair* case (C-754/18), the CJEU first of all clarifies the exemption for TCN family members of EU citizens from holding a visa when entering a MS other than the MS state where they are permanent resident. The CJEU interpreted the short stay visa exemption in Art. 5(2) of Dir. 2004/38 as meaning that the possession of a permanent residence card referred to in Art. 20 of that directive also applies to a TCN family member of a Union citizen with a permanent residence card.
Secondly, the fact that the permanent residence card is issued by a MS which is not part of the Schengen area is irrelevant. Thirdly, as a MS can only issue a permanent residence card ex Art. 20(1) of Dir. 2004/38 to persons who have the status of TCN family member of an EU citizen, possession of a permanent residence card constitutes sufficient proof that the holder of that card is a family member of a Union citizen. The person concerned is entitled, without further verification or justification, to enter the territory of a MS without a short stay visa under Art. 5(2) of that directive.

In *Syyttäjä* (C-35/20) the Supreme Court of Finland (*Korkein oikeus*) seeks guidance as to whether the national obligation to carry a valid passport or another valid travel document when travelling from one MS to another or upon entering Finland from another MS by pleasure boat via international waters, is compatible with EU law, more specifically Art. 21 SBC and Arts. 4&5 Dir 2004/38 respectively. Under Finnish law a failure to comply with this obligation may lead to an imposition of criminal law penalties, normally in the form of daily fines. Moreover, the CJEU is asked to rule on the proportionality of daily fines in light of Art. 27(2) of Dir. 2004/38.

Employed and self-employed persons
Finally, we would like to bring the *Yodel* case (C-692/19) top your attention. In this ruling the CJEU clarifies the differences between an *employed* and *self-employed* person in the gig economy, i.e. the free market system in which temporary positions are common. The case concerns a driver for a parcel delivery courier who claimed worker status for the purposes of Dir. 2003/88 (directive on the organisation of working time), although his contract with *Yodel* classified him as a self-employed independent contractor. The CJEU relied on its autonomous interpretation of the notion of 'EU worker' in its judgment in the 1986 *Lawrie Blum* case (C-66/85) stressing that 'independence' in the performance of an economic activity and the lack of subordination remain the criteria to distinguish between worker and self-employed person under EU law.

Nijmegen June 2020, Carolus Grütters, Sandra Mantu, Helen Oosterom-Staples & Paul Minderhoud.

Adopted Measures

Relevant provisions concerning free movement of persons and EU citizenship are contained in the following measures:
Art. 20, 21 and 45 of the TFEU, the Regulation on Free movement of workers and the Directive on EU citizens and their family members.

Treaty — **TFEU**

Treaty on the Functioning of the Union

* OJ 2006 L 105/1 — into force 1 Dec. 2009

Regulation 492/2011 — **Free Movement of Workers**

On freedom of movement for workers within the Union

* OJ 2011 L 141 — into force 16 May 2011
* codifies Regulation 1612/68 due to amendments by Council Regulation EEC 312/76, Council Regulation EEC 2434/92 and Art. 38(1) of Dir. 2004/38

Directive 2004/38 — **Citizens**

Right of EU citizens and their family members to move and reside freely within the territory of the Member States

* OJ 2004 L 158 — impl. date 30 Apr. 2006
* amending Regulation (EEC) No 1612/68 and repealing Directive 64/221/EEC, Directive 68/360/EEC, Directive 72/194/EEC, Directive 73/148/EEC, Directive 75/34/EEC, Directive 75/35/EEC, Directive 90/364/EEC, Directive 90/365/EEC and Directive 93/96/EEC

1 Exit and Entry

Cases on Exit and Entry

case law sorted in chronological order

						Dir. 2004/38	Reg. 492/2011	TFEU
		CJEU judgments						
New	☞	CJEU	18 June 2020,	C-754/18	*Ryan Air*	5(2)+20	-	-
	☞	CJEU	10 Jan. 2019,	C-169/18	*Mahmood a.o.*	5	-	-
	☞	CJEU	18 Dec. 2014,	C-202/13	*Sean McCarthy*	5+10+35	-	-
	☞	CJEU	4 Oct. 2012,	C-249/11	*Byankov*	27	-	-
	☞	CJEU	17 Nov. 2011,	C-430/10	*Gaydarov*	4+27	-	-
	☞	CJEU	17 Nov. 2011,	C-434/10	*Aladzhov*	4+27	-	-
	☞	CJEU	19 July 2008,	C-33/07	*Jipa*	18+27	20	-
		CJEU pending cases						
New	☞	CJEU		C-35/20	*Syyttäjä*	-	-	21(1)

See further details on these cases in § 7

2 Residence

Cases on residence rights

case law sorted in chronological order

						Dir. 2004/38	Reg. 492/2011	TFEU
	CJEU judgments							
☞	CJEU	27 Feb.	2020,	C-836/18	*R.H.*	-	-	20
☞	CJEU	22 Jan.	2020,	C-32/19	*A.T.*	17(1)(a)	-	-
☞	CJEU	2 Oct.	2019,	C-93/18	*Bajratari*	7(1)(b)	-	-
☞	CJEU	19 Sep.	2019,	C-544/18	*Dakneviciute*	-	-	49
☞	CJEU	11 Apr.	2019,	C-483/17	*Tarola*	7(1)(a)+7(3)(c)	-	-
☞	CJEU	13 Sep.	2018,	C-618/16	*Rafal Prefeta*	7(3)	7(2)	-
☞	CJEU	20 Dec.	2017,	C-442/16	*Gusa*	7(1)+7(3)+14(4)	-	-
☞	CJEU	10 May	2017,	C-133/15	*Chavez-Vilchez*	-	-	20
☞	CJEU	13 Sep.	2016,	C-165/14	*Rendón Marín*	-	-	20+21
☞	CJEU	30 June	2016,	C-115/15	*N.A.*	13(2)	10	20+21
☞	CJEU	14 June	2016,	C-308/14	*Com. v. UK*	7+14(2)+24(2)	-	-
☞	CJEU	15 Sep.	2015,	C-67/14	*Alimanovic*	14(4)+24(2)	4	18+45
☞	CJEU	26 July	2015,	C-218/14	*Kuldip Singh a.o.*	7(1)(b)+13(2)(a)	-	-
☞	CJEU	11 Nov.	2014,	C-333/13	*Dano a.o.*	7(1)(b)+24(1)	4	-
☞	CJEU	10 July	2014,	C-244/13	*Ogieriakhi*	16(2)	-	-
☞	CJEU	19 June	2014,	C-507/12	*Saint Prix*	7(3)	-	45
☞	CJEU	12 Mar.	2014,	C-456/12	*O. & B.*	3+6+7	-	20+21
☞	CJEU	12 Mar.	2014,	C-457/12	*S. & G.*	3+6+7	-	20+21
☞	CJEU	16 Jan.	2014,	C-378/12	*Onuekwere*	16	-	-
☞	CJEU	19 Sep.	2013,	C-140/12	*Brey*	7(1)(b)	-	-
☞	CJEU	13 June	2013,	C-45/12	*Hadj Ahmed*	13(2)+14	10	18
☞	CJEU	8 May	2013,	C-529/11	*Alarape & Tijani*	-	10	-
☞	CJEU	8 May	2013,	C-87/12	*Ymeraga*	3(1)	-	20
☞	CJEU	6 Dec.	2012,	C-356/11	*O., S. & L.*	3(1)	-	20
☞	CJEU	8 Nov.	2012,	C-40/11	*Iida*	-	-	20
☞	CJEU	6 Sep.	2012,	C-147/11	*Czop & Punakova*	16	10	-
☞	CJEU	21 Dec.	2011,	C-424/10	*Ziolkowski & Szeja*	16	-	-
☞	CJEU	21 July	2011,	C-325/09	*Dias*	16	-	-
☞	CJEU	5 May	2011,	C-434/09	*Shirley McCarthy*	-	-	21
☞	CJEU	8 Mar.	2011,	C-34/09	*Ruiz Zambrano*	-	-	20
☞	CJEU	7 Oct.	2010,	C-162/09	*Lassal*	16	-	-
☞	CJEU	23 Feb.	2010,	C-310/08	*Ibrahim*	-	-	-
☞	CJEU	23 Feb.	2010,	C-480/08	*Teixeira*	-	10	-
	CJEU pending cases							
☞	CJEU			C-719/19	*F.S.*	15(1)	-	-
☞	CJEU			C-930/19	*Belgian State*	all Art.	-	-
	EFTA Advisory Opinions							
☞	EFTA	26 July	2016,	E-28/15	*Jabbi*	7(1)(b)+7(2)	-	-

See further details on these cases in § 7

3 Equal Treatment

Cases on equal treatment of EU citizens and workers

case law sorted in chronological order

						Dir. 2004/38	Reg. 492/2011	TFEU
	CJEU judgments							
☞	CJEU	10 Oct.	2019,	C-703/17	*Krah*	-	7(1)	45
☞	CJEU	13 Sep.	2018,	C-618/16	*Rafal Prefeta*	7(3)	7(2)	-
☞	CJEU	22 June	2017,	C-20/16	*Bechtel*	-	-	45
☞	CJEU	8 June	2017,	C-541/15	*Freitag*	-	-	18+21
☞	CJEU	15 Mar.	2017,	C-3/16	*Aquino*	28	-	267
☞	CJEU	15 Dec.	2016,	C-401/15	*Depesme & Kerrou*	-	7(2)	45
☞	CJEU	14 Dec.	2016,	C-238/15	*Brangança*	-	7(2)	-
☞	CJEU	6 Sep.	2016,	C-182/15	*Petruhhin*	-	-	18+21
☞	CJEU	14 June	2016,	C-308/14	*Com. v. UK*	7+14(2)+24(2)	-	-
☞	CJEU	2 June	2016,	C-233/14	*Com. v. NL*	24(2)	-	18+20
☞	CJEU	25 Feb.	2016,	C-299/14	*Garcia-Nieto*	24(2)	-	-
☞	CJEU	6 Oct.	2015,	C-359/13	*Delvigne*	-	-	20(2)(b)
☞	CJEU	15 Sep.	2015,	C-67/14	*Alimanovic*	14(4)+24(2)	4	18+45
☞	CJEU	26 Feb.	2015,	C-359/13	*Martens*	-	-	20+21
☞	CJEU	5 Feb.	2015,	C-317/14	*Com. v. Belgium*	-	-	45
☞	CJEU	11 Nov.	2014,	C-333/13	*Dano a.o.*	7(1)(b)+24(1)	4	-
☞	CJEU	10 Sep.	2014,	C-270/13	*Haralambidis*	-	-	4+45(1)
☞	CJEU	27 Mar.	2014,	C-322/13	*Rüffer*	-	-	18+21
☞	CJEU	19 Sep.	2013,	C-140/12	*Brey*	7(1)(b)	-	-
☞	CJEU	18 June	2013,	C-523/11	*Prinz & Seeberger*	-	-	20+21
☞	CJEU	21 Feb.	2013,	C-46/12	*L.N.*	7(2)+24	-	45(2)
☞	CJEU	4 Oct.	2012,	C-75/11	*Com. v. Austria*	24	-	20+21
☞	CJEU	14 June	2012,	C-542/09	*Com. v. NL*	-	7(2)	45
☞	CJEU	12 Mar.	2011,	C-391/09	*Runevič-Vardyn*	-	-	21
☞	CJEU	6 Oct.	2009,	C-123/08	*Wolzenburg*	-	-	18
☞	CJEU	4 June	2009,	C-22/08	*Vatsouras & Koupatantze*	24(2)	-	18
☞	CJEU	16 Dec.	2008,	C-524/06	*Huber*	-	-	18
☞	CJEU	18 Nov.	2008,	C-158/07	*Föster*	-	-	18+20
	CJEU pending cases							
☞	CJEU	AG 14 May 2020,		C-181/19	*Jobcenter Krefeld*	24(2)	10	-
☞	CJEU	AG 4 Jun 2020,		C-454/19	*Z.W.*	all Art.	-	-
☞	CJEU			C-535/19	*A.*	7(1)(b)+24	-	-
☞	CJEU			C-710/19	*G.M.A.*	15+31	-	45
☞	CJEU			C-718/19	*Bar Association*	-	-	20+21

See further details on these cases in § 7

4 Loss of Rights

Cases on loss of residence rights or Union citizenship and expulsion

case law sorted in chronological order

						Dir. 2004/38	Reg. 492/2011	TFEU
	CJEU judgments							
	☞ CJEU	10 Sep. 2019,	C-94/18	*Chenchooliah*		3+15+27+28+30+31	-	21
	☞ CJEU	12 Mar. 2019,	C-221/17	*Tjebbes*		-	-	20+21
	☞ CJEU	8 May 2018,	C-82/16	*K.A. a.o.*		27+28	-	20
	☞ CJEU	2 May 2018,	C-331/16	*K. & H.F.*		27(2)+28(3)	-	-
	☞ CJEU	17 Apr. 2018,	C-316/16	*B. & Vomero*		28(3)(a)	-	-
	☞ CJEU	17 Sep. 2017,	C-184/16	*Petrea*		27+32	-	-
	☞ CJEU	13 July 2017,	C-193/16	*E.*		27	-	-
	☞ CJEU	13 Sep. 2016,	C-304/14	*C.S.*		-	-	20
	☞ CJEU	17 Mar. 2016,	C-161/15	*Bensada Benallal*		28+30+31	-	-
	☞ CJEU	16 Jan. 2014,	C-378/12	*Onuekwere*		16	-	-
	☞ CJEU	16 Jan. 2014,	C-400/12	*M.G.*		28(3)(a)	-	-
	☞ CJEU	4 June 2013,	C-300/11	*Z.Z.*		30(2)+31	-	-
	☞ CJEU	22 May 2012,	C-348/09	*P.I.*		28(3)	-	-
	☞ CJEU	23 Nov. 2010,	C-145/09	*Tsakouridis*		28(3)	-	-
	☞ CJEU	2 Mar. 2010,	C-135/08	*Rottmann*		-	-	20
	CJEU pending cases							
New	☞ CJEU		C-118/20	*Wiener Landesregierung*		-	-	20

See further details on these cases in § 7

5 Family Members

Cases on (third country national) family members of European Union citizens

case law sorted in chronological order

						Dir. 2004/38	Reg. 492/2011	TFEU
	CJEU judgments							
New ☞	CJEU	18 June	2020,	C-754/18	*Ryan Air*	5(2)+20	-	-
☞	CJEU	10 Sep.	2019,	C-94/18	*Chenchooliah*	3+15+27+28+30+31	-	21
☞	CJEU	26 Mar.	2019,	C-129/18	*S.M.*	2(2)+3(2)	-	-
☞	CJEU	12 July	2018,	C-89/17	*Banger*	3(2)+15(1)	-	21
☞	CJEU	27 June	2018,	C-230/17	*Deha Altiner & Ravn*	-	-	21(1)
☞	CJEU	27 June	2018,	C-246/17	*Diallo*	10(1)	-	-
☞	CJEU	5 June	2018,	C-673/16	*Coman a.o.*	2(2)(a)+3	-	-
☞	CJEU	14 Nov.	2017,	C-165/16	*Lounes*	3(1)+7+16	-	21
☞	CJEU	10 May	2017,	C-133/15	*Chavez-Vilchez*	-	-	20
☞	CJEU	13 Sep.	2016,	C-165/14	*Rendón Marín*	-	-	20+21
☞	CJEU	13 Sep.	2016,	C-304/14	*C.S.*	-	-	20
☞	CJEU	26 July	2015,	C-218/14	*Kuldip Singh a.o.*	7(1)(b)+13(2)(a)	-	-
☞	CJEU	18 Dec.	2014,	C-202/13	*Sean McCarthy*	5+10+35	-	-
☞	CJEU	12 Mar.	2014,	C-456/12	*O. & B.*	3+6+7	-	20+21
☞	CJEU	12 Mar.	2014,	C-457/12	*S. & G.*	3+6+7	-	20+21
☞	CJEU	16 Jan.	2014,	C-423/12	*Reyes*	2(2)(c)	-	-
☞	CJEU	8 May	2013,	C-529/11	*Alarape & Tijani*	-	10	-
☞	CJEU	8 May	2013,	C-87/12	*Ymeraga*	3(1)	-	20
☞	CJEU	6 Dec.	2012,	C-356/11	*O., S. & L.*	3(1)	-	20
☞	CJEU	8 Nov.	2012,	C-40/11	*Iida*	-	-	20
☞	CJEU	6 Sep.	2012,	C-147/11	*Czop & Punakova*	16	10	-
☞	CJEU	5 Sep.	2012,	C-83/11	*Rahman a.o.*	3(2)	-	-
☞	CJEU	15 Nov.	2011,	C-256/11	*Dereci*	-	-	20
☞	CJEU	5 May	2011,	C-434/09	*Shirley McCarthy*	-	-	21
☞	CJEU	8 Mar.	2011,	C-34/09	*Ruiz Zambrano*	-	-	20
☞	CJEU	19 Dec.	2008,	C-551/07	*Deniz Sahin*	3+6+7	-	-
☞	CJEU	25 July	2008,	C-127/08	*Metock*	3(1)	-	-

See further details on these cases in § 7

6 Procedural Rights

Cases on procedural rights, guarantees and miscellaneous

case law sorted in chronological order

						Dir. 2004/38	Reg. 492/2011	TFEU
	CJEU judgments							
☞	CJEU	10 Sep.	2019,	C-94/18	*Chenchooliah*	3+15+27+28+30+31	-	21
☞	CJEU	17 Sep.	2017,	C-184/16	*Petrea*	27+32	-	-
☞	CJEU	15 Mar.	2017,	C-3/16	*Aquino*	28	-	267
☞	CJEU	17 Mar.	2016,	C-161/15	*Bensada Benallal*	28+30+31	-	-
☞	CJEU	4 June	2013,	C-300/11	*Z.Z.*	30(2)+31	-	-
☞	CJEU	4 Oct.	2012,	C-249/11	*Byankov*	27	-	-

See further details on these cases in § 7

7 Case Law

The summaries are based on the operative part of the judgments as published on the Curia site

case law sorted in alphabetical order

7.1 CJEU Judgments

☞ CJEU 22 Jan. 2020, C-32/19 ***A.T.*** ECLI:EU:C:2020:25

* Art. 17(1)(a) Dir. 2004/38 Subject: Residence

Ref. from Oberster Gerichtshof, Austria, 18 Jan. 2019

* *Article 17(1)(a) must be interpreted as meaning that, for the purpose of acquiring the right of permanent residence in the host Member State before completion of a continuous period of 5 years of residence, the conditions that a person must have been working in that Member State at least for the preceding 12 months and must have resided in that Member State continuously for more than 3 years apply to workers who, at the time they stop working, have reached the age laid down by the law of that Member State for entitlement to an old age pension.*

☞ CJEU 17 Nov. 2011, C-434/10 ***Aladzhov*** ECLI:EU:C:2011:750

AG 6 Sep 2011 ECLI:EU:C:2011:547

* Art. 4+27 Dir. 2004/38 Subject: Exit and Entry

Ref. from Administrativen sad Sofia-grad, Bulgaria, 6 Sep. 2010

* *Even if a measure imposing a prohibition on leaving the territory has been adopted under the conditions laid down in Article 27(1), the conditions laid down in Article 27(2) thereof preclude such a measure:*
– if it is founded solely on the existence of the tax liability of the company of which he is one of the joint managers, and on the basis of that status alone, without any specific assessment of the personal conduct of the person concerned and with no reference to any threat of any kind which he represents to public policy, and
– if the prohibition on leaving the territory is not appropriate to ensure the achievement of the objective it pursues and goes beyond what is necessary to attain it.

☞ CJEU 8 May 2013, C-529/11 ***Alarape & Tijani*** ECLI:EU:C:2013:290

AG 15 Jan 2013 ECLI:EU:C:2013:9

* Art. 10 Reg. 492/2011 Subject: Residence and Family Members

Ref. from Upper Tribunal (Immigration and Asylum Chamber), UK, 17 Sep. 2011

* *The parent of a child who has attained the age of majority and who has obtained access to education on the basis of Article 12 of Regulation 1612/68 as amended by Directive 2004/38, may continue to have a derived right of residence under that article if that child remains in need of the presence and care of that parent in order to be able to continue and to complete his or her education, which it is for the referring court to assess, taking into account all the circumstances of the case before it.*
Periods of residence in a host Member State which are completed by family members of a Union citizen who are not nationals of a Member State solely on the basis of Article 12 of Regulation 1612/68, as amended by Directive 2004/38, where the conditions laid down for entitlement to a right of residence under that directive are not satisfied, may not be taken into consideration for the purposes of acquisition by those family members of a right of permanent residence under that directive.

☞ CJEU 15 Sep. 2015, C-67/14 ***Alimanovic*** ECLI:EU:C:2015:597

AG 26 Mar 2015 ECLI:EU:C:2015:210

* Art. 14(4)+24(2) Dir. 2004/38 Subject: Residence and Equal Treatment
Art. 4 Reg. 492/2011
Art. 18+45 TFEU

Ref. from Bundessozialgericht, Germany, 10 Feb. 2014

* *Article 24 of Directive 2004/38 must be interpreted as not precluding legislation of a Member State under which nationals of other Member States who are in a situation such as that referred to in Article 14(4)(b) of that directive are excluded from entitlement to certain 'special non-contributory cash benefits' within the meaning of Article 70(2) of Regulation No 883/2004, which also constitute 'social assistance' within the meaning of Article 24(2) of Directive 2004/38, although those benefits are granted to nationals of the Member State concerned who are in the same situation.*

☞ CJEU 15 Mar. 2017, C-3/16 ***Aquino*** ECLI:EU:C:2017:209

* Art. 28 Dir. 2004/38 Subject: Equal Treatment and Procedural Rights
Art. 267 TFEU
Ref. from Hof van beroep te Brussel, Belgium, 4 Jan. 2016

* *The third paragraph of Article 267 TFEU must be interpreted as meaning that a court against whose decisions there is a judicial remedy under national law may not be regarded as a court adjudicating at last instance, where an appeal on a point of law against a decision of that court is not examined because of discontinuance by the appellant.*
The third paragraph of Article 267 TFEU must be interpreted as meaning that a court adjudicating at last instance may decline to refer a question to the Court for a preliminary ruling where an appeal on a point of law is dismissed on grounds of inadmissibility specific to the procedure before that court, subject to compliance with the principles of equivalence and effectiveness.

☞ CJEU 17 Apr. 2018, C-316/16 ***B. & Vomero*** ECLI:EU:C:2018:296
AG 24 Oct 2017 ECLI:EU:C:2017:797

* Art. 28(3)(a) Dir. 2004/38 Subject: Loss of Rights
Ref. from Verwaltungsgerichtshof Baden-Württemberg, Germany, 3 June 2016

* *Article 28(3)(a) of Directive 2004/38 must be interpreted as meaning that it is a prerequisite of eligibility for the protection against expulsion provided for in that provision that the person concerned must have a right of permanent residence within the meaning of Article 16 and Article 28(2) of that directive.*
Article 28(3)(a) of Directive 2004/38 must be interpreted as meaning that, in the case of a Union citizen who is serving a custodial sentence and against whom an expulsion decision is adopted, the condition of having 'resided in the host Member State for the previous ten years' laid down in that provision may be satisfied where an overall assessment of the person's situation, taking into account all the relevant aspects, leads to the conclusion that, notwithstanding that detention, the integrative links between the person concerned and the host Member State have not been broken. Those aspects include, inter alia, the strength of the integrative links forged with the host Member State before the detention of the person concerned, the nature of the offence that resulted in the period of detention imposed, the circumstances in which that offence was committed and the conduct of the person concerned throughout the period of detention.
Article 28(3)(a) of Directive 2004/38 must be interpreted as meaning that the question whether a person satisfies the condition of having 'resided in the host Member State for the previous ten years', within the meaning of that provision, must be assessed at the date on which the initial expulsion decision is adopted.

☞ CJEU 2 Oct. 2019, C-93/18 ***Bajratari*** ECLI:EU:C:2019:809
AG 19 Jun 2019 ECLI:EU:C:2019:512

* Art. 7(1)(b) Dir. 2004/38 Subject: Residence
Ref. from Court of Appeal in Northern Ireland, UK, 9 Feb. 2018

* *Art. 7(1)(b) must be interpreted as meaning that a Union citizen minor has sufficient resources not to become an unreasonable burden on the social assistance system of the host Member State during his period of residence, despite his resources being derived from income obtained from the unlawful employment of his father, a third-country national without a residence card and work permit.*

☞ CJEU 12 July 2018, C-89/17 ***Banger*** ECLI:EU:C:2018:570
AG 10 Apr 2018 ECLI:EU:C:2018:225

* Art. 3(2)+15(1) Dir. 2004/38 Subject: Family Members
Art. 21 TFEU
Ref. from Upper Tribunal (Immigration and Asylum Chamber), UK, 20 Feb. 2017

* *Article 21(1) TFEU must be interpreted as requiring the Member State of which a Union citizen is a national to facilitate the provision of a residence authorisation to the unregistered partner, a third-country national with whom that Union citizen has a durable relationship that is duly attested, where the Union citizen, having exercised his right of freedom of movement to work in a second Member State, in accordance with the conditions laid down in Directive 2004/38, returns with his partner to the Member State of which he is a national in order to reside there.*
Article 21(1) TFEU must be interpreted as meaning that a decision to refuse a residence authorisation to the third−country national and unregistered partner of a Union citizen, where that Union citizen, having exercised his right of freedom of movement to work in a second Member State, in accordance with the conditions laid down in Directive 2004/38, returns with his partner to the Member State of which he is a national in order to reside there, must be founded on an extensive examination of the applicant's personal circumstances and be justified by reasons.
Article 3(2) of Directive 2004/38 must be interpreted as meaning that the third-country nationals envisaged in that provision must have available to them a redress procedure in order to challenge a decision to refuse a residence authorisation taken against them, following which the national court must be able to ascertain whether the refusal decision is based on a sufficiently solid factual basis and whether the procedural safeguards were complied with. Those safeguards include the obligation for the competent national authorities to undertake an extensive examination of the applicant's personal circumstances and to justify any denial of entry or residence.

☞ CJEU 22 June 2017, C-20/16 ***Bechtel*** ECLI:EU:C:2017:488

* Art. 45 TFEU Subject: Equal Treatment

Ref. from Bundesfinanzhof, Germany, 15 Jan. 2016

* *Article 45 TFEU must be interpreted to the effect that it precludes legislation of a Member State, such as that at issue in the main proceedings, under which a taxpayer residing in that Member State and working for the public administration of another Member State may not deduct from the income tax basis of assessment in her Member State of residence the pension and health insurance contributions deducted from her wages in the Member State of employment, in contrast to comparable contributions paid to the social security fund of her Member State of residence, where, under the Convention for the avoidance of double taxation between the two Member States, the wages must not be taxed in the worker's Member State of residence and merely increase the tax rate to be applied to other income.*

☞ CJEU 17 Mar. 2016, C-161/15 ***Bensada Benallal*** ECLI:EU:C:2016:175

AG 13 Jan 2016 ECLI:EU:C:2016:3

* Art. 28+30+31 Dir. 2004/38 Subject: Loss of Rights and Procedural Rights

Ref. from Conseil d'État, France, 9 Apr. 2015

* *EU law must be interpreted as meaning that where, in accordance with the applicable national law, a plea alleging infringement of national law raised for the first time before the national court hearing an appeal on a point of law is admissible only if that plea is based on public policy, a plea alleging infringement of the right to be heard, as guaranteed by EU law, raised for the first time before that same court, must be held to be admissible if that right, as guaranteed by national law, satisfies the conditions required by national law for it to be classified as a plea based on public policy, this being a matter for the referring court to determine.*

☞ CJEU 14 Dec. 2016, C-238/15 ***Brangança*** ECLI:EU:C:2016:949

AG 2 Jun 2016 ECLI:EU:C:2016:389

* Art. 7(2) Reg. 492/2011 Subject: Equal Treatment

Ref. from Tribunal administratif, France, 2 June 2016

* *Article 7(2) of Regulation 492/2011 must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which, with the aim of encouraging an increase in the proportion of residents with a higher education degree, makes the grant of financial aid for higher education studies to a non-resident student conditional on at least one of that student's parents having worked in that Member State for a minimum and continuous period of five years at the time the application for financial aid is made, but which does not lay down such a condition in respect of a student residing in the territory of that Member State.*

☞ CJEU 19 Sep. 2013, C-140/12 ***Brey*** ECLI:EU:C:2013:565

AG 29 May 2013 ECLI:EU:C:2013:337

* Art. 7(1)(b) Dir. 2004/38 Subject: Residence and Equal Treatment

Ref. from Oberster Gerichtshof, Austria, 19 Mar. 2012

* *EU law – in particular, as it results from Article 7(1)(b), Article 8(4) and Article 24(1) and (2) of Directive 2004/38 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which, even as regards the period following the first three months of residence, automatically – whatever the circumstances – bars the grant of a benefit, such as the compensatory supplement provided for in Paragraph 292(1) of the Federal Act on General Social Insurance (Allgemeines Sozialversicherungsgesetz), as amended, from 1 January 2011, by the 2011 Budget Act (Budgetbegleitgesetzes 2011), to a national of another Member State who is not economically active, on the grounds that, despite having been issued with a certificate of residence, he does not meet the necessary requirements for obtaining the legal right to reside on the territory of the first Member State for a period of longer than three months, since obtaining that right of residence is conditional upon that national having sufficient resources not to apply for the benefit.*

☞ CJEU 4 Oct. 2012, C-249/11 ***Byankov*** ECLI:EU:C:2012:608

AG 21 Jun 2012 ECLI:EU:C:2012:380

* Art. 27 Dir. 2004/38 Subject: Exit and Entry and Procedural Rights

Ref. from Administrativen sad Sofia-grad, Bulgaria, 19 May 2011

* *European Union law must be interpreted as precluding the application of a national provision which provides for the imposition of a restriction on the freedom of movement, within the European Union, of a national of a Member State, solely on the ground that he owes a legal person governed by private law a debt which exceeds a statutory threshold and is unsecured.*

European Union law must be interpreted as precluding legislation of a Member State under which an administrative procedure that has resulted in the adoption of a prohibition on leaving the territory, may be reopened — in the event of the prohibition being clearly contrary to European Union law — only in circumstances such as those exhaustively listed in Article 99 of the Code of Administrative Procedure (Administrativnoprotsesualen kodeks), despite the fact that such a prohibition continues to produce legal effects with regard to its addressee.

☞ CJEU 13 Sep. 2016, C-304/14 ***C.S.*** ECLI:EU:C:2016:674
AG 4 Feb 2016 ECLI:EU:C:2016:75

* Art. 20 TFEU Subject: Loss of Rights and Family Members
Ref. from Upper Tribunal (Immigration and Asylum Chamber), UK, 24 June 2014

* *Article 20 TFEU must be interpreted as precluding legislation of a Member State which requires a third-country national who has been convicted of a criminal offence to be expelled from the territory of that Member State to a third country notwithstanding the fact that that national is the primary carer of a young child who is a national of that Member State, in which he has been residing since birth without having exercised his right of freedom of movement, when the expulsion of the person concerned would require the child to leave the territory of the European Union, thereby depriving him of the genuine enjoyment of the substance of his rights as a Union citizen. However, in exceptional circumstances a Member State may adopt an expulsion measure provided that it is founded on the personal conduct of that third-country national, which must constitute a genuine, present and sufficiently serious threat adversely affecting one of the fundamental interests of the society of that Member State, and that it is based on consideration of the various interests involved, matters which are for the national court to determine.*

☞ CJEU 10 May 2017, C-133/15 ***Chavez-Vilchez*** ECLI:EU:C:2017:354
AG 8 Sep 2016 ECLI:EU:C:2016:659

* Art. 20 TFEU Subject: Residence and Family Members
Ref. from Centrale Raad van Beroep, The Netherlands, 18 Mar. 2015

* *Article 20 TFEU must be interpreted as meaning that for the purposes of assessing whether a child who is a citizen of the European Union would be compelled to leave the territory of the European Union as a whole and thereby deprived of the genuine enjoyment of the substance of the rights conferred on him by that article if the child's third-country national parent were refused a right of residence in the Member State concerned, the fact that the other parent, who is a Union citizen, is actually able and willing to assume sole responsibility for the primary day-to-day care of the child is a relevant factor, but it is not in itself a sufficient ground for a conclusion that there is not, between the third-country national parent and the child, such a relationship of dependency that the child would indeed be so compelled were there to be such a refusal of a right of residence. Such an assessment must take into account, in the best interests of the child concerned, all the specific circumstances, including the age of the child, the child's physical and emotional development, the extent of his emotional ties both to the Union citizen parent and to the third-country national parent, and the risks which separation from the latter might entail for the child's equilibrium.*
Article 20 TFEU must be interpreted as not precluding a Member State from providing that the right of residence in its territory of a third-country national, who is a parent of a minor child that is a national of that Member State and who is responsible for the primary day-to-day care of that child, is subject to the requirement that the third-country national must provide evidence to prove that a refusal of a right of residence to the third-country national parent would deprive the child of the genuine enjoyment of the substance of the rights pertaining to the child's status as a Union citizen, by obliging the child to leave the territory of the European Union, as a whole. It is however for the competent authorities of the Member State concerned to undertake, on the basis of the evidence provided by the third-country national, the necessary enquiries in order to be able to assess, in the light of all the specific circumstances, whether a refusal would have such consequences.

☞ CJEU 10 Sep. 2019, C-94/18 ***Chenchooliah*** ECLI:EU:C:2019:693
AG 21 May 2019 ECLI:EU:C:2019:433

* Art. 3+15+27+28+30+31 Dir. 2004/38 Subject: Loss of Rights and Family Members
Art. 21 TFEU
Ref. from High Court, Ireland, 12 Feb. 2018

* *The Court ruled that Art. 15 of Dir. 2004/38 applies to the decision to expel a TCN on the ground that this person no longer has a right of residence under the Directive where that TCN married an EU citizen who, at the time, was exercising his right to freedom of movement and where the EU citizen subsequently returns to the State of his nationality.*
The procedural guarantees laid down in Arts. 30 and 31 of Dir. 2004/38 apply by analogy and subject to the necessary adjustments to such a TCN family member whom the host State wishes to expel on grounds of unlawful residence. The Court clarifies that the right of residence of a TCN family member who has resided with an EU citizen on the basis of Art. 6 of Dir. 2004/38 in a host State, is lost if he no longer resides in the host State with the EU citizen.
Directive 2004/38, more importantly its procedural rights, however still govern any decision to expel that TCN family member by the host State authorities. The words 'by analogy' in Art. 15 Dir. 2004/38 mean that Arts. 30 and 31 Dir. 2004/38 apply to such decisions to the extent that these provisions also apply to expulsion decisions made on grounds of public policy, public security or public health and subject to the necessary adjustments. Art. 15(3) Dir. 2004/38 explicitly prohibits imposing an entry ban if the expulsion decision concerns a situation of loss of residence rights.

☞ CJEU 14 June 2016, C-308/14 ***Com. v. UK*** ECLI:EU:C:2016:436
AG 6 Oct 2015 ECLI:EU:C:2015:666

* Art. 7+14(2)+24(2) Dir. 2004/38 Subject: Residence and Equal Treatment
Ref. from European Commission, EU, 27 June 2014

* *Under Article 14(2) of Directive 2004/38, Union citizens and their family members are to enjoy the right of residence referred to in Articles 7, 12 and 13 of the directive as long as they meet the conditions set out therein. In specific cases, where there is a reasonable doubt as to whether a Union citizen or his family members satisfy the conditions set out in those articles, Member States may verify if those conditions are fulfilled. Article 14(2) provides that this verification is not to be carried out systematically.*
The fact that, under the national legislation at issue in the present action, for the purpose of granting the social benefits at issue the competent United Kingdom authorities are to require that the residence in their territory of nationals of other Member States who claim such benefits must be lawful does not amount to discrimination prohibited under Article 4 of Regulation No 883/2004.

☞ CJEU 2 June 2016, C-233/14 ***Com. v. NL*** ECLI:EU:C:2016:396
AG 26 Jan 2016 ECLI:EU:C:2016:50

* Art. 24(2) Dir. 2004/38 Subject: Equal Treatment
Art. 18+20 TFEU
Ref. from European Commission, EU, 12 May 2014

* *It must be concluded that financial support for travel costs is covered by the concept of 'maintenance aid for studies ... consisting in student grants or student loans' in Article 24(2) of Directive 2004/38 and that the Kingdom of the Netherlands may rely on the derogation in that regard in order to refuse to grant such support, before the person concerned has acquired the right of permanent residence, to persons other than employed persons, self-employed persons, persons who retain such status or their family members.*

☞ CJEU 4 Oct. 2012, C-75/11 ***Com. v. Austria*** ECLI:EU:C:2012:605
AG 6 Sep 2012 ECLI:EU:C:2012:536

* Art. 24 Dir. 2004/38 Subject: Equal Treatment
Art. 20+21 TFEU
Ref. from European Commission, EU, 21 Feb. 2011

* *By granting reduced fares on public transport in principle only to students whose parents are in receipt of Austrian family allowances, the Republic of Austria has failed to fulfil its obligations under the combined provisions of Articles 18 TFEU, 20 TFEU and 21 TFEU and also Article 24 of Directive 2004/38.*

☞ CJEU 5 Feb. 2015, C-317/14 ***Com. v. Belgium*** ECLI:EU:C:2015:63

* Art. 45 TFEU Subject: Equal Treatment
Ref. from European Commission, EU, 2 July 2014

* *Declares that by requiring candidates for posts in the local services established in the French-speaking or German-speaking regions, whose diplomas or certificates do not show that they were educated in the language concerned, to provide evidence of their linguistic knowledge by means of one particular type of certificate, issued only by one particular Belgian body following an examination conducted by that body in Belgium, the Kingdom of Belgium has failed to fulfil its obligations under Article 45 TFEU and Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union.*

☞ CJEU 14 June 2012, C-542/09 ***Com. v. NL*** ECLI:EU:C:2012:346
AG 16 Feb 2012 ECLI:EU:C:2012:79

* Art. 7(2) Reg. 492/2011 Subject: Equal Treatment
Art. 45 TFEU
Ref. from European Commission, EU, 18 Dec. 2009

* *By requiring that migrant workers and dependent family members comply with a residence requirement — namely, the 'three out of six years' rule — in order to be eligible to receive funding for higher educational studies pursued outside the Netherlands, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 45 TFEU and Article 7(2) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, as amended by Council Regulation (EEC) No 2434/92 of 27 July 1992.*

☞ CJEU 5 June 2018, C-673/16 ***Coman a.o.*** ECLI:EU:C:2018:385
AG 11 Jan 2018 ECLI:EU:C:2018:2

* Art. 2(2)(a)+3 Dir. 2004/38 Subject: Family Members
Ref. from Curtea Constituțională a României, Romania, 30 Dec. 2016

* *In a situation in which a Union citizen has made use of his freedom of movement by moving to and taking up genuine residence, in accordance with the conditions laid down in Article 7(1) of Directive 2004/38, in a Member State other than that of which he is a national, and, whilst there, has created or strengthened a family life with a third-country national of the same sex to whom he is joined by a marriage lawfully concluded in the host Member State, Article 21(1) TFEU must be interpreted as precluding the competent authorities of the Member State of which the Union citizen is a national from refusing to grant that third-country national a right of residence in the territory of that Member State on the ground that the law of that Member State does not recognise marriage between persons of the same sex.*
Article 21(1) TFEU is to be interpreted as meaning that, in circumstances such as those of the main proceedings, a third-country national of the same sex as a Union citizen whose marriage to that citizen was concluded in a Member State in accordance with the law of that state has the right to reside in the territory of the Member State of which the Union citizen is a national for more than three months. That derived right of residence cannot be made subject to stricter conditions than those laid down in Article 7 of Directive 2004/38.

☞ CJEU 6 Sep. 2012, C-147/11 ***Czop & Punakova*** ECLI:EU:C:2012:538

* Art. 16 Dir. 2004/38 Subject: Residence
Art. 10 Reg. 492/2011 and Family Members

Ref. from Upper Tribunal (Administrative Appeals Chamber), UK, 25 Mar. 2011

* *Article 12 of Regulation 1612/68 (now Art. 10 Reg 492/2011) must be interpreted as conferring on the person who is the primary carer of a migrant worker's or former migrant worker's child who is attending educational courses in the host Member State a right of residence in that State, although that provision cannot be interpreted as conferring such a right on the person who is the primary carer of the child of a person who is self-employed.*
Article 16(1) of Directive 2004/38 must be interpreted as meaning that a European Union citizen who is a national of a Member State which recently acceded to the European Union may, pursuant to that provision, rely on a right of permanent residence where he or she has resided in the host Member State for a continuous period of more than five years, part of which was completed before the accession of the former State to the European Union, provided that the residence was in accordance with the conditions laid down in Article 7(1) of Directive 2004/38.

☞ CJEU 19 Sep. 2019, C-544/18 ***Dakneviciute*** ECLI:EU:C:2019:761

* Art. 49 TFEU Subject: Residence

Ref. from Upper Tribunal (Administrative Appeals Chamber), UK, 7 Aug. 2018

* *Article 49 TFEU must be interpreted as meaning that a woman who ceases self-employed activity in circumstances where there are physical constraints in the late stages of pregnancy and the aftermath of childbirth retains the status of being self-employed, provided that she returns to the same or another self-employed activity or employment within a reasonable period after the birth of her child.*

☞ CJEU 11 Nov. 2014, C-333/13 ***Dano a.o.*** ECLI:EU:C:2014:2358
AG 20 May 2014 ECLI:EU:C:2014:341

* Art. 7(1)(b)+24(1) Dir. 2004/38 Subject: Residence
Art. 4 Reg. 492/2011 and Equal Treatment

Ref. from Sozialgericht Leipzig, Germany, 19 June 2013

* *Article 24(1) of Directive 2004/38, read in conjunction with Article 7(1)(b) thereof, and Article 4 of Regulation No 883/2004, as amended by Regulation No 1244/2010, must be interpreted as not precluding legislation of a Member State under which nationals of other Member States are excluded from entitlement to certain 'special non-contributory cash benefits' within the meaning of Article 70(2) of Regulation No 883/2004, although those benefits are granted to nationals of the host Member State who are in the same situation, in so far as those nationals of other Member States do not have a right of residence under Directive 2004/38 in the host Member State.*

☞ CJEU 27 June 2018, C-230/17 ***Deha-Altiner & Ravn*** ECLI:EU:C:2018:497

* Art. 21(1) TFEU Subject: Family Members

Ref. from Østre Landsret, Denmark, 2 May 2017

* *Article 21(1) TFEU must be interpreted as not precluding legislation of a Member State which does not provide for the grant of a derived right of residence in another Member State, under Union law, to a third-country national family member of a Union citizen who is a national of that Member State and who returns there after having resided, pursuant to and in conformity with Union law, in another Member State, when the family member of the Union citizen concerned has not entered the territory of the Member State of origin of the Union citizen or has not applied for a residence permit as a 'natural consequence' of the return to that Member State of the Union citizen in question, provided that such rules require, in the context of an overall assessment, that other relevant factors also be taken into account, in particular factors capable of showing that, in spite of the time which elapsed between the return of the Union citizen to that Member State and the entry of the family member who is a third-country national, in the same Member State, the family life created and strengthened in the host Member State has not ended, so as to justify the granting to the family member in question of a derived right of residence; it is for the referring court to verify whether this is the case.*

☞ CJEU 6 Oct. 2015, C-359/13 ***Delvigne*** ECLI:EU:C:2015:648
AG 24 Sep 2014 ECLI:EU:C:2014:2240

* Art. 20(2)(b) TFEU Subject: Equal Treatment

Ref. from Centrale Raad van Beroep, Netherlands, 27 June 2013

* *Articles 20 TFEU and 21 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which makes the continued grant of funding for higher education outside that State subject to the rule that the student applying for such funding has resided in that Member State for a period of at least three out of the six years preceding his enrolment.*

☞ CJEU 19 Dec. 2008, C-551/07 ***Deniz Sahin*** ECLI:EU:C:2008:755

* Art. 3+6+7 Dir. 2004/38 Subject: Family Members

Ref. from Verwaltungsgerichtshof, Austria, 11 Dec. 2007

* *Articles 3(1), 6(2) and 7(1)(d) and (2) of Directive 2004/38 must be interpreted as applying also to family members who arrived in the host Member State independently of the Union citizen and acquired the status of family member or started to lead a family life with that Union citizen only after arriving in that State. In that regard, the fact that, at the time the family member acquires that status or starts to lead a family life, he resides temporarily in the host Member State pursuant to that State's asylum laws has no bearing.*
Articles 9(1) and 10 of Directive 2004/38 preclude a national provision under which family members of a Union citizen who are not nationals of a Member State, and who, in accordance with Community law, and in particular Article 7(2) of the directive, have a right of residence, cannot be issued with a residence card of a family member of a Union citizen solely because they are entitled temporarily to reside in the host Member State under that State's asylum laws.

☞ CJEU 15 Dec. 2016, C-401/15 ***Depesme & Kerrou*** ECLI:EU:C:2016:955
AG 9 Jun 2016 ECLI:EU:C:2016:430

* Art. 7(2) Reg. 492/2011 Subject: Equal Treatment
Art. 45 TFEU
Ref. from Cour administrative, Luxembourg, 24 July 2015

* *Article 45 TFEU and Article 7(2) of Regulation No 492/2011must be interpreted as meaning that a child of a frontier worker, who is able to benefit indirectly from the social advantages referred to in the latter provision, such as study finance granted by a Member State to the children of workers pursuing or who have pursued an activity in that Member State, means not only a child who has a child-parent relationship with that worker, but also a child of the spouse or registered partner of that worker, where that worker supports that child. The latter requirement is the result of a factual situation, which it is for the national authorities and, if appropriate, the national courts, to assess, and it is not necessary for them to determine the reasons for that contribution or make a precise estimation of its amount.*

☞ CJEU 15 Nov. 2011, C-256/11 ***Dereci*** ECLI:EU:C:2011:734
AG 29 Sep 2011 ECLI:EU:C:2011:626

* Art. 20 TFEU Subject: Family Members
Ref. from Verwaltungsgerichtshof, Austria, 25 May 2011

* *European Union law and, in particular, its provisions on citizenship of the Union, must be interpreted as meaning that it does not preclude a Member State from refusing to allow a third country national to reside on its territory, where that third country national wishes to reside with a member of his family who is a citizen of the Union residing in the Member State of which he has nationality, who has never exercised his right to freedom of movement, provided that such refusal does not lead, for the Union citizen concerned, to the denial of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a citizen of the Union, which is a matter for the referring court to verify.*
Article 41(1) of the Additional Protocol (signed in Brussels on 23 November 1970 and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972), must be interpreted as meaning that the enactment of new legislation more restrictive that the previous legislation, which, for its part, relaxed earlier legislation concerning the conditions for the exercise of the freedom of establishment of Turkish nationals at the time of the entry into force of that protocol in the Member State concerned must be considered to be a 'new restriction' within the meaning of that provision.

☞ CJEU 27 June 2018, C-246/17 ***Diallo*** ECLI:EU:C:2018:499
AG 7 Mar 2018 ECLI:EU:C:2018:171

* Art. 10(1) Dir. 2004/38 Subject: Family Members
Ref. from Conseil d'État, Belgium, 10 May 2017

* *Article 10(1) of Directive 2004/38, must be interpreted as meaning that the decision on the application for a residence card of a family member of a Union citizen must be adopted and notified within the period of six months laid down in that provision.*
Directive 2004/38 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which requires competent national authorities to issue automatically a residence card of a family member of a European Union citizen to the person concerned, where the period of six months, referred to in Article 10(1) of Directive 2004/38, is exceeded, without finding, beforehand, that the person concerned actually meets the conditions for residing in the host Member State in accordance with EU law.
EU law must be interpreted as precluding national case-law, such as that at issue in the main proceedings, under which, following the judicial annulment of a decision refusing to issue a residence card of a family member of a Union citizen, the competent national authority automatically regains the full period of six months referred to in Article 10(1) of Directive 2004/38.

☞ CJEU 21 July 2011, C-325/09 ***Dias*** ECLI:EU:C:2011:498
AG 17 Feb 2011 ECLI:EU:C:2011:86

* Art. 16 Dir. 2004/38 Subject: Residence
Ref. from Court of Appeal (England & Wales) (Civil Division), UK, 12 Aug. 2009

* *Article 16(1) and (4) of Directive 2004/38 must be interpreted as meaning that:*
– periods of residence completed before 30 April 2006 on the basis solely of a residence permit validly issued pursuant to Council Directive 68/360/EEC of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families, without the conditions governing entitlement to any right of residence having been satisfied, cannot be regarded as having been completed legally for the purposes of the acquisition of the right of permanent residence under Article 16(1) of Directive 2004/38, and
– periods of residence of less than two consecutive years, completed on the basis solely of a residence permit validly issued pursuant to Directive 68/360, without the conditions governing entitlement to a right of residence having been satisfied, which occurred before 30 April 2006 and after a continuous period of five years' legal residence completed prior to that date, are not such as to affect the acquisition of the right of permanent residence under Article 16(1) of Directive 2004/38.

☞ CJEU 13 July 2017, C-193/16 ***E.*** ECLI:EU:C:2017:542

* Art. 27 Dir. 2004/38 Subject: Loss of Rights
Ref. from Tribunal Superior de Justicia del País Vasco, Spain, 7 Apr. 2016

* *The second subparagraph of Article 27(2) of Directive 2004/38 must be interpreted as meaning that the fact that a person is imprisoned at the time the expulsion decision was adopted, without the prospect of being released in the near future, does not exclude that his conduct represents, as the case may be, a present and genuine threat for a fundamental interest of the society of the host Member State.*

☞ CJEU 18 Nov. 2008, C-158/07 ***Föster*** ECLI:EU:C:2008:630
AG 10 Jul 2008 ECLI:EU:C:2008:399

* Art. 18+20 TFEU Subject: Equal Treatment
Ref. from Centrale Raad van Beroep, Netherlands, 22 Mar. 2007

* *A student in the situation of the applicant in the main proceedings cannot rely on Article 7 of Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State in order to obtain a maintenance grant.*
A student who is a national of a Member State and travels to another Member State to study there can rely on the first paragraph of Article 12 EC in order to obtain a maintenance grant where he or she has resided for a certain duration in the host Member State. The first paragraph of Article 12 EC does not preclude the application to nationals of other Member States of a requirement of five years' prior residence.
In circumstances such as those of the main proceedings, Community law, in particular the principle of legal certainty, does not preclude the application of a residence requirement which makes the right of students from other Member States to a maintenance grant subject to the completion of periods of residence which occurred prior to the introduction of that requirement.

☞ CJEU 8 June 2017, C-541/15 ***Freitag*** ECLI:EU:C:2017:432
AG 24 Nov 2016 ECLI:EU:C:2016:902

* Art. 18+21 TFEU Subject: Equal Treatment
Ref. from Amtsgericht Wuppertal, Germany, 16 Oct. 2015

* *Article 21 TFEU must be interpreted as precluding the registry office of a Member State from refusing to recognise and enter in the civil register the name legally acquired by a national of that Member State in another Member State, of which he is also a national, and which is the same as his birth name, on the basis of a provision of national law which makes the possibility of having such an entry made, by declaration to the registry office, subject to the condition that that name must have been acquired during a period of habitual residence in that other Member State, unless there are other provisions of national law which effectively allow the recognition of that name.*

☞ CJEU 25 Feb. 2016, C-299/14 ***Garcia-Nieto*** ECLI:EU:C:2016:114
AG 4 Jun 2015 ECLI:EU:C:2015:366

* Art. 24(2) Dir. 2004/38 Subject: Equal Treatment
Ref. from Landessozialgericht Nordrhein-Westfalen, Germany, 17 June 2014

* *Art. 24 of Dir. 2004/38 must be interpreted as not precluding legislation of a Member State under which nationals of other Member States who are in a situation such as that referred to in Art. 6(1) of that directive are excluded from entitlement to certain 'special non-contributory cash benefits' within the meaning of Article 70(2) of Regulation No 883/2004, which also constitute 'social assistance' within the meaning of Article 24(2) of Directive 2004/38.*

☞ CJEU 17 Nov. 2011, C-430/10 ***Gaydarov*** ECLI:EU:C:2011:749

* Art. 4+27 Dir. 2004/38 Subject: Exit and Entry
Ref. from Administrativen sad Sofia-grad, Bulgaria, 2 Sep. 2010

* *Article 21 TFEU and Article 27 of Directive 2004/38/EC, do not preclude national legislation that permits the restriction of the right of a national of a Member State to travel to another Member State in particular on the ground that he has been convicted of a criminal offence of narcotic drug trafficking in another State, provided that :*
(i) the personal conduct of that national constitutes a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society,
(ii) the restrictive measure envisaged is appropriate to ensure the achievement of the objective it pursues and does not go beyond what is necessary to attain it and
(iii) that measure is subject to effective judicial review permitting a determination of its legality as regards matters of fact and law in the light of the requirements of European Union law.

☞ CJEU 20 Dec. 2017, C-442/16 ***Gusa*** ECLI:EU:C:2017:1004
AG 26 Jul 2017 ECLI:EU:C:2017:607

* Art. 7(1)+7(3)+14(4) Dir. 2004/38 Subject: Residence
Ref. from Court of Appeal, Ireland, 8 Aug. 2016

* *Article 7(3)(b) of Directive 2004/38 must be interpreted as meaning that a national of a Member State retains the status of self-employed person for the purposes of Article 7(1)(a) of that directive where, after having lawfully resided in and worked as a self-employed person in another Member State for approximately four years, that national has ceased that activity, because of a duly recorded absence of work owing to reasons beyond his control, and has registered as a jobseeker with the relevant employment office of the latter Member State.*

☞ CJEU 13 June 2013, C-45/12 ***Hadj Ahmed*** ECLI:EU:C:2013:390

* Art. 13(2)+14 Dir. 2004/38 Subject: Residence
Art. 10 Reg. 492/2011
Art. 18 TFEU
Ref. from Cour du travail de Bruxelles, Belgium, 30 Jan. 2012

* *Articles 13(2) and 14 of Directive 2004/38 read in conjunction with Article 18 TFEU, must be interpreted as not precluding the legislation of a Member State by which the latter subjects the grant of guaranteed family benefits to a third-country national, while her situation is as described in point 1 of this operative part, to a length−of−residence requirement of five years although its own nationals are not subject to that requirement.*

☞ CJEU 10 Sep. 2014, C-270/13 ***Haralambidis*** ECLI:EU:C:2014:2185
AG 5 Jun 2014 ECLI:EU:C:2014:1358

* Art. 4+45(1) TFEU Subject: Equal Treatment
Ref. from Consiglio di Stato, Italy, 17 May 2013

* *Article 45(4) TFEU must be interpreted as not authorising a Member State to reserve to its nationals the exercise of the duties of President of a Port Authority.*

☞ CJEU 16 Dec. 2008, C-524/06 ***Huber*** ECLI:EU:C:2008:724
AG 3 Apr 2008 ECLI:EU:C:2008:194

* Art. 18 TFEU Subject: Equal Treatment
Ref. from Oberverwaltungsgericht Nordrhein-Westfalen, Germany, 28 Dec. 2006

* *A system for processing personal data relating to Union citizens who are not nationals of the Member State concerned, such as that put in place by the Law on the central register of foreign nationals (Gesetz über das Ausländerzentralregister) of 2 September 1994, as amended by the Law of 21 June 2005, and having as its object the provision of support to the national authorities responsible for the application of the law relating to the right of residence does not satisfy the requirement of necessity laid down by Article 7(e) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, interpreted in the light of the prohibition on any discrimination on grounds of nationality, unless:*
– it contains only the data which are necessary for the application by those authorities of that legislation, and
– its centralised nature enables the legislation relating to the right of residence to be more effectively applied as regards Union citizens who are not nationals of that Member State.
It is for the national court to ascertain whether those conditions are satisfied in the main proceedings.
The storage and processing of personal data containing individualised personal information in a register such as the Central Register of Foreign Nationals for statistical purposes cannot, on any basis, be considered to be necessary within the meaning of Article 7(e) of Directive 95/46.
Article 12(1) EC must be interpreted as meaning that it precludes the putting in place by a Member State, for the purpose of fighting crime, of a system for processing personal data specific to Union citizens who are not nationals of that Member State.

☞ CJEU 23 Feb. 2010, C-310/08 ***Ibrahim*** ECLI:EU:C:2010:80
AG 20 Oct 2009 ECLI:EU:C:2009:641

Ref. from Court of Appeal (England & Wales) (Civil Division), UK, 11 July 2008 Subject: Residence

* *In circumstances such as those of the main proceedings, the children of a national of a Member State who works or has worked in the host Member State and the parent who is their primary carer can claim a right of residence in the latter State on the sole basis of Article 12 of Regulation 1612/68 (now: Art. 10 Reg 492/2011), without such a right being conditional on their having sufficient resources and comprehensive sickness insurance cover in that State.*

☞ CJEU 8 Nov. 2012, C-40/11 ***Iida*** ECLI:EU:C:2012:691
AG 15 May 2012 ECLI:EU:C:2012:296

* Art. 20 TFEU Subject: Residence and Family Members
Ref. from Verwaltungsgerichtshof Baden-Württemberg, Germany, 28 Jan. 2011

* *Outside the situations governed by Directive 2004/38 and where there is no other connection with the provisions on citizenship of European Union law, a third-country national cannot claim a right of residence derived from a Union citizen.*

☞ CJEU 19 July 2008, C-33/07 ***Jipa*** ECLI:EU:C:2008:396
AG 14 Feb 2008 ECLI:EU:C:2008:92

* Art. 18+27 Dir. 2004/38 Subject: Exit and Entry
Art. 20 Reg. 492/2011
Ref. from Tribunalul Dâmbovița, Romania, 24 Jan. 2007

* *Article 18 EC and Article 27 of Directive 2004/38/EC do not preclude national legislation that allows the right of a national of a Member State to travel to another Member State to be restricted, in particular on the ground that he has previously been repatriated from the latter Member State on account of his 'illegal residence' there, provided that the personal conduct of that national constitutes a genuine, present and sufficiently serious threat to one of the fundamental interests of society and that the restrictive measure envisaged is appropriate to ensure the achievement of the objective it pursues and does not go beyond what is necessary to attain it. It is for the national court to establish whether that is so in the case before it.*

☞ CJEU 2 May 2018, C-331/16 ***K. & H.F.*** ECLI:EU:C:2018:296
AG 14 Dec 2017 ECLI:EU:C:2017:973

* Art. 27(2)+28(3) Dir. 2004/38 Subject: Loss of Rights

Ref. from Rechtbank Den Haag, Netherlands, 13 June 2016

* *Article 27(2) of Directive 2004/38 must be interpreted as meaning that the fact that a European Union citizen or a third-country national family member of such a citizen, who applies for a right of residence in the territory of a Member State, has been the subject, in the past, of a decision excluding him from refugee status under Article 1F or Article 12(2) of Directive 2011/95 (Qual.Dir.), does not enable the competent authorities of that Member State to consider automatically that the mere presence of that individual in its territory constitutes, whether or not there is any risk of re-offending, a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, capable of justifying the adoption of measures on grounds of public policy or public security.*
Article 28(1) of Directive 2004/38 must be interpreted as meaning that, where the measures envisaged entail the expulsion of the individual concerned from the host Member State, that State must take account of, inter alia, the nature and gravity of the alleged conduct of the individual concerned, the duration and, when appropriate, the legality of his residence in that Member State, the period of time that has elapsed since that conduct, the individual's behaviour during that period, the extent to which he currently poses a danger to society, and the solidity of social, cultural and family links with that Member State.
Article 28(3)(a) of Directive 2004/38 must be interpreted as meaning that it is not applicable to a European Union citizen who does not have a right of permanent residence in the host Member State, within the meaning of Article 16 and Article 28(2) of that directive.

☞ CJEU 8 May 2018, C-82/16 ***K.A. a.o.*** ECLI:EU:C:2018:308
AG 26 Oct 2017 ECLI:EU:C:2017:821

* Art. 27+28 Dir. 2004/38 Subject: Loss of Rights

Art. 20 TFEU

Ref. from Raad voor de Vreemdelingenbetwistingen, Belgium, 12 Feb. 2016

* *Article 20 TFEU must be interpreted as meaning that:-*
– a practice of a Member State that consists in not examining such an application solely on the ground stated above, without any examination of whether there exists a relationship of dependency between that Union citizen and that third-country national of such a nature that, in the event of a refusal to grant a derived right of residence to the third-country national, the Union citizen would, in practice, be compelled to leave the territory of the European Union as a whole and thereby be deprived of the genuine enjoyment of the substance of the rights conferred by that status, is precluded;
– where the Union citizen is an adult, a relationship of dependency, capable of justifying the grant, to the third-country national concerned, of a derived right of residence under Article 20 TFEU, is conceivable only in exceptional cases, where, in the light of all the relevant circumstances, any form of separation of the individual concerned from the member of his family on whom he is dependent is not possible;
– where the Union citizen is a minor, the assessment of the existence of such a relationship of dependency must be based on consideration, in the best interests of the child, of all the specific circumstances, including the age of the child, the child's physical and emotional development, the extent of his emotional ties to each of his parents, and the risks which separation from the third-country national parent might entail for that child's equilibrium; the existence of a family link with that third-country national, whether natural or legal, is not sufficient, and cohabitation with that third-country national is not necessary. in order to establish such a relationship of dependency;
– it is immaterial that the relationship of dependency relied on by a third-country national in support of his application for residence for the purposes of family reunification comes into being after the imposition on him of an entry ban;
– it is immaterial that the entry ban imposed on the third-country national has become final at the time when he submits his application for residence for the purposes of family reunification; and
– it is immaterial that an entry ban, imposed on a third-country national who has submitted an application for residence for the purposes of family reunification, may be justified by non-compliance with an obligation to return; where such a ban is justified on public policy grounds, such grounds may permit a refusal to grant that third-country national a derived right of residence under Article 20 TFEU only if it is apparent from a specific assessment of all the circumstances of the individual case, in the light of the principle of proportionality, the best interests of any child or children concerned and fundamental rights, that the person concerned represents a genuine, present, and sufficiently serious threat to public policy.

☞ CJEU 10 Oct. 2019, C-703/17 ***Krah*** ECLI:EU:C:2019:850
AG 23 May 2019 ECLI:EU:C:2019:450

* Art. 7(1) Reg. 492/2011 Subject: Equal Treatment

Art. 45 TFEU

Ref. from Oberlandesgericht Wien, Austria, 15 Dec. 2017

* Art. 20+21 Charter

* *Art. 45 TFEU must be interpreted as precluding a provision under which previous professionally-relevant periods of service of a member of the teaching staff of a university in a MS can be recognised only up to a total period of four years if these services are equivalent or even identical to the services to be performed.*
Art. 7(1) of Reg. 492/2011 does not preclude such a provision if the previously performed services are not equivalent but only useful for the performance of the function.

☞ CJEU 26 July 2015, C-218/14 ***Kuldip Singh a.o.*** ECLI:EU:C:2015:476
AG 7 May 2015 ECLI:EU:C:2015:306

* Art. 7(1)(b)+13(2)(a) Dir. 2004/38 Subject: Residence and Family Members
Ref. from High Court, Ireland, 5 May 2014

* *Article 13(2) of Directive 2004/38 must be interpreted as meaning that a third-country national, divorced from a Union citizen, whose marriage lasted for at least three years before the commencement of divorce proceedings, including at least one year in the host Member State, cannot retain a right of residence in that Member State on the basis of that provision where the commencement of the divorce proceedings is preceded by the departure from that Member State of the spouse who is a Union citizen.*
Article 7(1)(b) of Directive 2004/38 must be interpreted as meaning that a Union citizen has sufficient resources for himself and his family members not to become a burden on the social assistance system of the host Member State during his period of residence even where those resources derive in part from those of his spouse who is a third-country national.

☞ CJEU 21 Feb. 2013, C-46/12 ***L.N.*** ECLI:EU:C:2013:97

* Art. 7(2)+24 Dir. 2004/38 Subject: Equal Treatment
Art. 45(2) TFEU
Ref. from Ankenævnet for Uddannelsesstøtten, Denmark, 26 Jan. 2012

* *Articles 7(1)(c) and 24(2) of Directive 2004/38 must be interpreted as meaning that a European Union citizen who pursues a course of studies in a host Member State whilst at the same time pursuing effective and genuine employment activities such as to confer on him the status of 'worker' within the meaning of Article 45 TFEU may not be refused maintenance aid for studies which is granted to the nationals of that Member State.*
It is for the national court to make the necessary findings of fact in order to ascertain whether the employment activities of the applicant in the main proceedings are sufficient to confer that status on him. The fact that the person entered the territory of the host Member State with the principal intention of pursuing a course of study is not relevant for determining whether he is a 'worker' within the meaning of Article 45 TFEU and, accordingly, whether he is entitled to that aid under the same terms as a national of the host Member State under Article 7(2) of Regulation 1612/68.

☞ CJEU 7 Oct. 2010, C-162/09 ***Lassal*** ECLI:EU:C:2010:592
AG 11 May 2010 ECLI:EU:C:2010:266

* Art. 16 Dir. 2004/38 Subject: Residence
Ref. from Court of Appeal (England & Wales) (Civil Division), UK, 8 May 2009

* *Article 16(1) and (4) of Directive 2004/38 must be interpreted as meaning that:*
– continuous periods of five years' residence completed before the date of transposition of Directive 2004/38, namely 30 April 2006, in accordance with earlier European Union law instruments, must be taken into account for the purposes of the acquisition of the right of permanent residence pursuant to Article 16(1) thereof, and
– absences from the host Member State of less than two consecutive years, which occurred before 30 April 2006 but following a continuous period of five years' legal residence completed before that date do not affect the acquisition of the right of permanent residence pursuant to Article 16(1) thereof.

☞ CJEU 14 Nov. 2017, C-165/16 ***Lounes*** ECLI:EU:C:2017:862
AG 30 May 2017 ECLI:EU:C:2017:407

* Art. 3(1)+7+16 Dir. 2004/38 Subject: Family Members
Art. 21 TFEU
Ref. from High Court of Justice (England and Wales) (Adm. Court), UK, 21 Mar. 2016

* *Directive 2004/38 must be interpreted as meaning that, in a situation in which a citizen of the European Union (i) has exercised his freedom of movement by moving to and residing in a Member State other than that of which he is a national, under Article 7(1) or Article 16(1) of that directive, (ii) has then acquired the nationality of that Member State, while also retaining his nationality of origin, and (iii) several years later, has married a third-country national with whom he continues to reside in that Member State, that third-country national does not have a derived right of residence in the Member State in question on the basis of Directive 2004/38.*
The third-country national is however eligible for a derived right of residence under Article 21(1) TFEU, on conditions which must not be stricter than those provided for by Directive 2004/38 for the grant of such a right to a third-country national who is a family member of a Union citizen who has exercised his right of freedom of movement by settling in a Member State other than the Member State of which he is a national.

☞ CJEU 16 Jan. 2014, C-400/12 ***M.G.*** ECLI:EU:C:2014:9

* Art. 28(3)(a) Dir. 2004/38 Subject: Loss of Rights
Ref. from Upper Tribunal (Immigration and Asylum Chamber), UK, 31 Aug. 2012

* *On a proper construction of Article 28(3)(a) of Directive 2004/38, the 10-year period of residence referred to in that provision must, in principle, be continuous and must be calculated by counting back from the date of the decision ordering the expulsion of the person concerned.*
Article 28(3)(a) of Directive 2004/38 must be interpreted as meaning that a period of imprisonment is, in principle, capable both of interrupting the continuity of the period of residence for the purposes of that provision and of affecting the decision regarding the grant of the enhanced protection provided for thereunder, even where the person concerned resided in the host Member State for the 10 years prior to imprisonment. However, the fact that that person resided in the host Member State for the 10 years prior to imprisonment may be taken into consideration as part of the overall assessment required in order to determine whether the integrating links previously forged with the host Member State have been broken.

☞ CJEU 10 Jan. 2019, C-169/18 ***Mahmood a.o.*** ECLI:EU:C:2019:5

* Art. 5 Dir. 2004/38 Subject: Exit and Entry

Ref. from Court of Appeal, Ireland, 2 Mar. 2018

* *Since the referring court has noted that the Court's answer can no longer benefit the applicants in the main proceedings, the dispute in the main proceedings has become devoid of purpose and, consequently, an answer to the questions referred appears to be no longer necessary.*

☞ CJEU 26 Feb. 2015, C-359/13 ***Martens*** ECLI:EU:C:2015:118

AG 24 Sep 2014 ECLI:EU:C:2014:2240

* Art. 20+21 TFEU Subject: Equal Treatment

Ref. from Centrale Raad van Beroep, Netherlands, 27 June 2013

* *Articles 20 TFEU and 21 TFEU must be interpreted as precluding legislation of a Member State, such as that at issue in the main proceedings, which makes the continued grant of funding for higher education outside that State subject to the rule that the student applying for such funding has resided in that Member State for a period of at least three out of the six years preceding his enrolment.*

☞ CJEU 25 July 2008, C-127/08 ***Metock*** ECLI:EU:C:2008:449

AG 11 Jun 2008 ECLI:EU:C:2008:355

* Art. 3(1) Dir. 2004/38 Subject: Family Members

Ref. from High Court, Ireland, 25 Mar. 2008

* *Directive 2004/38 precludes legislation of a Member State which requires a national of a non-member country who is the spouse of a Union citizen residing in that Member State but not possessing its nationality to have previously been lawfully resident in another Member State before arriving in the host Member State, in order to benefit from the provisions of that directive.*
Article 3(1) of Directive 2004/38 must be interpreted as meaning that a national of a non-member country who is the spouse of a Union citizen residing in a Member State whose nationality he does not possess and who accompanies or joins that Union citizen benefits from the provisions of that directive, irrespective of when and where their marriage took place and of how the national of a non-member country entered the host Member State.

☞ CJEU 30 June 2016, C-115/15 ***N.A.*** ECLI:EU:C:2016:487

AG 14 Apr 2016 ECLI:EU:C:2016:259

* Art. 13(2) Dir. 2004/38 Subject: Residence

Art. 10 Reg. 492/2011

Art. 20+21 TFEU

Ref. from Court of Appeal (England & Wales) (Civil Division), UK, 30 Apr. 2015

* *Article 13(2)(c) of Directive 2004/38 must be interpreted as meaning that a third-country national, who is divorced from a Union citizen at whose hands she has been the victim of domestic violence during the marriage, cannot rely on the retention of her right of residence in the host Member State, on the basis of that provision, where the commencement of divorce proceedings post-dates the departure of the Union citizen spouse from that Member State.*
Article 12 of Regulation 1612/68 [now Art. 10 Reg. 492/2011] must be interpreted as meaning that a child and a parent who is a third-country national and who has sole custody of that child qualify for a right of residence in the host Member State, under that provision, in a situation, such as that in the main proceedings, where the other parent is a Union citizen and worked in that Member State, but ceased to reside there before the child began to attend school in that Member State.
Article 20 TFEU must be interpreted as meaning that it does not confer a right of residence in the host Member State either on a minor Union citizen, who has resided since birth in that Member State but is not a national of that State, or on a parent who is a third-county national and who has sole custody of that minor, where they qualify for a right of residence in that Member State under a provision of secondary EU law.
Article 21 TFEU must be interpreted as meaning that that it confers on that minor Union citizen a right of residence in the host Member State, provided that that citizen satisfies the conditions set out in Article 7(1) of Directive 2004/38, which it is for the referring court to determine. If so, that same provision allows the parent who is the primary carer of that Union citizen to reside with that citizen in the host Member State.

☞ CJEU 12 Mar. 2014, C-456/12 ***O. & B.*** ECLI:EU:C:2014:135

AG 12 Dec 2013 ECLI:EU:C:2013:837

* Art. 3+6+7 Dir. 2004/38 Subject: Residence and Family Members

Art. 20+21 TFEU

Ref. from Raad van State, Netherlands, 10 Oct. 2012

* *Article 21(1) TFEU must be interpreted as meaning that where a Union citizen has created or strengthened a family life with a third−country national during genuine residence, pursuant to and in conformity with the conditions set out in Article 7(1) and (2) and Article 16(1) and (2) of Directive 2004/38, in a Member State other than that of which he is a national, the provisions of that directive apply by analogy where that Union citizen returns, with the family member in question, to his Member State of origin. Therefore, the conditions for granting a derived right of residence to a third−country national who is a family member of that Union citizen, in the latter's Member State of origin, should not, in principle, be more strict than those provided for by that directive for the grant of a derived right of residence to a third−country national who is a family member of a Union citizen who has exercised his right of freedom of movement by becoming established in a Member State other than the Member State of which he is a national.*

☞ CJEU 6 Dec. 2012, C-356/11 ***O., S. & L.*** ECLI:EU:C:2012:776
AG 27 Sep 2012 ECLI:EU:C:2012:595

* Art. 3(1) Dir. 2004/38 Subject: Residence and Family Members
Art. 20 TFEU
Ref. from Korkein hallinto-oikeus, Finland, 7 July 2011

* *Article 20 TFEU must be interpreted as not precluding a Member State from refusing to grant a third country national a residence permit on the basis of family reunification where that national seeks to reside with his spouse, who is also a third country national and resides lawfully in that Member State and is the mother of a child from a previous marriage who is a Union citizen, and with the child of their own marriage, who is also a third country national, provided that such a refusal does not entail, for the Union citizen concerned, the denial of the genuine enjoyment of the substance of the rights conferred by the status of citizen of the Union, that being for the referring court to ascertain.*
Applications for residence permits on the basis of family reunification such as those at issue in the main proceedings are covered by Council Directive 2003/86 (on family reunification). Article 7(1)(c) of that directive must be interpreted as meaning that, while Member States have the faculty of requiring proof that the sponsor has stable and regular resources which are sufficient to maintain himself and the members of his family, that faculty must be exercised in the light of Articles 7 and 24(2) and (3) of the Charter of Fundamental Rights of the European Union, which require the Member States to examine applications for family reunification in the interests of the children concerned and also with a view to promoting family life, and avoiding any undermining of the objective and the effectiveness of that directive. It is for the referring court to ascertain whether the decisions refusing residence permits at issue in the main proceedings were taken in compliance with those requirements.

☞ CJEU 10 July 2014, C-244/13 ***Ogieriakhi*** ECLI:EU:C:2014:2068
AG 14 May 2014 ECLI:EU:C:2014:323

* Art. 16(2) Dir. 2004/38 Subject: Residence
Ref. from High Court, Ireland, 30 Apr. 2013

* *Article 16(2) of Directive 2004/38 must be interpreted as meaning that a third-country national who, during a continuous period of five years before the transposition date for that directive, has resided in a Member State as the spouse of a Union citizen working in that Member State, must be regarded as having acquired a right of permanent residence under that provision, even though, during that period, the spouses decided to separate and commenced residing with other partners, and the home occupied by that national was no longer provided or made available by his spouse with Union citizenship.*

☞ CJEU 16 Jan. 2014, C-378/12 ***Onuekwere*** ECLI:EU:C:2014:13
AG 3 Oct 2013 ECLI:EU:C:2013:640

* Art. 16 Dir. 2004/38 Subject: Residence and Loss of Rights
Ref. from Upper Tribunal (Immigration and Asylum Chamber), UK, 3 Aug. 2012

* *Article 16(2) of Directive 2004/38 must be interpreted as meaning that the periods of imprisonment in the host Member State of a third-country national, who is a family member of a Union citizen who has acquired the right of permanent residence in that Member State during those periods, cannot be taken into consideration in the context of the acquisition by that national of the right of permanent residence for the purposes of that provision.*
Article 16(2) and (3) of Directive 2004/38 must be interpreted as meaning that the continuity of residence is interrupted by periods of imprisonment in the host Member State of a third−country national who is a family member of a Union citizen who has acquired the right of permanent residence in that Member State during those periods.

☞ CJEU 22 May 2012, C-348/09 ***P.I.*** ECLI:EU:C:2012:300
AG 6 Mar 2012 ECLI:EU:C:2012:123

* Art. 28(3) Dir. 2004/38 Subject: Loss of Rights
Ref. from Oberverwaltungsgericht für das Land Nordrhein-Westfalen, Germany, 31 Aug. 2009

* *Article 28(3)(a) of Directive 2004/38 must be interpreted as meaning that it is open to the Member States to regard criminal offences such as those referred to in the second subparagraph of Article 83(1) TFEU as constituting a particularly serious threat to one of the fundamental interests of society, which might pose a direct threat to the calm and physical security of the population and thus be covered by the concept of 'imperative grounds of public security', capable of justifying an expulsion measure under Article 28(3), as long as the manner in which such offences were committed discloses particularly serious characteristics, which is a matter for the referring court to determine on the basis of an individual examination of the specific case before it.*
The issue of any expulsion measure is conditional on the requirement that the personal conduct of the individual concerned must represent a genuine, present threat affecting one of the fundamental interests of society or of the host Member State, which implies, in general, the existence in the individual concerned of a propensity to act in the same way in the future. Before taking an expulsion decision, the host Member State must take account of considerations such as how long the individual concerned has resided on its territory, his/her age, state of health, family and economic situation, social and cultural integration into that State and the extent of his/her links with the country of origin.

☞ CJEU 17 Sep. 2017, C-184/16 ***Petrea*** ECLI:EU:C:2017:684
AG 27 Apr 2017 ECLI:EU:C:2017:324

* Art. 27+32 Dir. 2004/38 Subject: Loss of Rights and Procedural Rights

Ref. from Dioikitiko Protodikeio Thessalonikis, Greece, 1 Apr. 2016

* *Directive 2004/38 and the protection of legitimate expectations do not preclude a Member State from, first, withdrawing a registration certificate wrongly issued to an EU citizen who was still subject to an exclusion order, and, secondly, adopting a removal order against him based on the sole finding that the exclusion order was still valid.*
Directive 2004/38 and Return Directive 2008/115 do not preclude a decision to return an EU citizen, such as that at issue in the main proceedings, from being adopted by the same authorities and according to the same procedure as a decision to return a third-country national staying illegally referred to in Article 6(1) of Directive 2008/115, provided that the transposition measures of Directive 2004/38 which are more favourable to that EU citizen are applied.
The principle of effectiveness does not preclude a legal practice according to which a national of a Member State who is subject to a return order in circumstances such as those at issue in the main proceedings may not rely, in support of an action against that order, on the unlawfulness of the exclusion order previously adopted against him, in so far as the person concerned had effectively the possibility to contest that latter order in good time in the light of the provisions of Directive 2004/38.
Article 30 of Directive 2004/38 requires the Member States to take every appropriate measure with a view to ensuring that the person concerned understands the content and implications of a decision adopted under Article 27(1) of that directive but that it does not require that decision to be notified to him in a language he understands or which it is reasonable to assume he understands, although he did not bring an application to that effect.

☞ CJEU 6 Sep. 2016, C-182/15 ***Petruhhin*** ECLI:EU:C:2016:630
AG 10 May 2016 ECLI:EU:C:2016:330

* Art. 18+21 TFEU Subject: Equal Treatment

Ref. from Augstākā tiesa, Latvia, 22 Apr. 2015

* *Article 18 TFEU and Article 21 TFEU must be interpreted as meaning that, when a Member State to which a Union citizen, a national of another Member State, has moved receives an extradition request from a third State with which the first Member State has concluded an extradition agreement, it must inform the Member State of which the citizen in question is a national and, should that Member State so request, surrender that citizen to it, in accordance with the provisions of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, provided that that Member State has jurisdiction, pursuant to its national law, to prosecute that person for offences committed outside its national territory.*
Where a Member State receives a request from a third State seeking the extradition of a national of another Member State, that first Member State must verify that the extradition will not prejudice the rights referred to in Article 19 of the Charter of Fundamental Rights of the European Union.

☞ CJEU 18 June 2013, C-523/11 ***Prinz & Seeberger*** ECLI:EU:C:2013:524
AG 21 Feb 2013 ECLI:EU:C:2013:90

* Art. 20+21 TFEU Subject: Equal Treatment

Ref. from Verwaltungsgericht Hannover, Germany, 13 Oct. 2011

* *Articles 20 TFEU and 21 TFEU must be interpreted as meaning that they preclude legislation of a Member State which makes the award of an education grant for studies in another Member State for a period of more than one year subject to a sole condition, such as that laid down in Paragraph 16(3) of the Federal Law on assistance for education and training [Bundesgesetz über individuelle Förderung der Ausbildung (Bundesausbildungsförderungsgesetz)], as amended on 1 January 2008, by the twenty-second law amending the Federal Law on assistance for education and training, requiring the applicant to have had a permanent residence, within the meaning of that law, in national territory for at least three years before commencing those studies.*

☞ CJEU 27 Feb. 2020, C-836/18 ***R.H.*** ECLI:EU:C:2020:119
AG 21 Nov 2019 ECLI:EU:C:2019:1004

* Art. 20 TFEU Subject: Residence

Ref. from Tribunal Superior de Justicia de Castilla-La Mancha, Spain, 28 Dec. 2018

* *Article 20 TFEU must be interpreted as precluding a MS from rejecting an application for family reunification submitted by the spouse, who is a TCN, of a Union citizen who holds the nationality of that MS and who has never exercised the freedom of movement, on the sole ground that that Union citizen does not have, for him or herself and his or her spouse, sufficient resources not to become a burden on the national social assistance system, without it having been examined whether there is a relationship of dependency between that Union citizen and his or her spouse of such a kind that, if the latter were refused a derived right of residence, that Union citizen would be obliged to leave the territory of the European Union as a whole and would thus be deprived of the effective enjoyment of the substance of the rights conferred by his or her status.*
Article 20 TFEU must be interpreted as meaning that a relationship of dependency, such as to justify the grant of a derived right of residence under that article, does not exist on the sole ground that the national of a MS, who is of full age and has never exercised the freedom of movement, and his or her spouse, who is of full age and a TCN, are required to live together, by virtue of the obligations arising out of the marriage under the law of the MS of which the Union citizen is a national.

☞ CJEU 13 Sep. 2018, C-618/16 ***Rafal Prefeta*** ECLI:EU:C:2018:719
AG 28 Feb 2018 ECLI:EU:C:2018:125

* Art. 7(3) Dir. 2004/38 Subject: Residence and Equal Treatment
Art. 7(2) Reg. 492/2011
Ref. from Upper Tribunal, UK, 29 Nov. 2016

* *Chapter 2 of Annex XII to the Act concerning the conditions of accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakis, must be interpreted as permitting, during the transitional period provided for by that act, the United Kingdom to exclude a Polish national, such as Mr Rafal Prefeta, from the benefits of Article 7(3) of Directive 2004/38 when that person has not satisfied the requirement imposed by national law of having completed an uninterrupted 12-month period of registered work in the United Kingdom.*

☞ CJEU 5 Sep. 2012, C-83/11 ***Rahman a.o.*** ECLI:EU:C:2012:519
AG 27 Mar 2012 ECLI:EU:C:2012:174

* Art. 3(2) Dir. 2004/38 Subject: Family Members
Ref. from Upper Tribunal (Administrative Appeals Chamber), UK, 22 Feb. 2011

* *On a proper construction of Article 3(2) of Directive 2004/38:*
– the Member States are not required to grant every application for entry or residence submitted by family members of a Union citizen who do not fall under the definition in Article 2(2) of that directive, even if they show, in accordance with Article 10(2) thereof, that they are dependants of that citizen;
– it is, however, incumbent upon the Member States to ensure that their legislation contains criteria which enable those persons to obtain a decision on their application for entry and residence that is founded on an extensive examination of their personal circumstances and, in the event of refusal, is justified by reasons;
– the Member States have a wide discretion when selecting those criteria, but the criteria must be consistent with the normal meaning of the term 'facilitate' and of the words relating to dependence used in Article 3(2) and must not deprive that provision of its effectiveness; and
– every applicant is entitled to a judicial review of whether the national legislation and its application satisfy those conditions.

In order to fall within the category, referred to in Article 3(2) of Directive 2004/38, of family members who are 'dependants' of a Union citizen, the situation of dependence must exist in the country from which the family member concerned comes, at the very least at the time when he applies to join the Union citizen on whom he is dependent.
On a proper construction of Article 3(2) of Directive 2004/38, the Member States may, in the exercise of their discretion, impose particular requirements relating to the nature and duration of dependence, provided that those requirements are consistent with the normal meaning of the words relating to the dependence referred to in Article 3(2)(a) of the directive and do not deprive that provision of its effectiveness.
The question whether issue of the residence card referred to in Article 10 of Directive 2004/38 may be conditional on the requirement that the situation of dependence for the purposes of Article 3(2)(a) of that directive has endured in the host Member State does not fall within the scope of the directive.

☞ CJEU 13 Sep. 2016, C-165/14 ***Rendón Marín*** ECLI:EU:C:2016:675
AG 4 Feb 2016 ECLI:EU:C:2016:75

* Art. 20+21 TFEU Subject: Residence and Family Members
Ref. from Tribunal Supremo, Sala de lo Contencioso-Administrativo, Spain, 7 Apr. 2014

* *Article 21 TFEU and Directive 2004/38 must be interpreted as precluding national legislation which requires a third-country national to be automatically refused the grant of a residence permit on the sole ground that he has a criminal record where he is the parent of a minor child who is a Union citizen and a national of a Member State other than the host Member State and who is his dependant and resides with him in the host Member State.*
Article 20 TFEU must be interpreted as precluding the same national legislation which requires a third-country national who is a parent of minor children who are Union citizens in his sole care to be automatically refused the grant of a residence permit on the sole ground that he has a criminal record, where that refusal has the consequence of requiring those children to leave the territory of the European Union.

☞ CJEU 16 Jan. 2014, C-423/12 ***Reyes*** ECLI:EU:C:2014:16
AG 6 Nov 2013 ECLI:EU:C:2013:719

* Art. 2(2)(c) Dir. 2004/38 Subject: Family Members
Ref. from Kammarrätten i Stockholm, Migrationsöverdomstolen, Sweden, 17 Sep. 2012

* *Article 2(2)(c) of Directive 2004/38, must be interpreted as meaning that a Member State cannot require a direct descendant who is 21 years old or older, in circumstances such as those in the main proceedings, in order to be regarded as dependent and thus come within the definition of a family member under Article 2(2)(c) of that provision, to have tried unsuccessfully to obtain employment or to obtain subsistence support from the authorities of his country of origin and/or otherwise to support himself.*
Article 2(2)(c) of Directive 2004/38 must be interpreted as meaning that the fact that a relative – due to personal circumstances such as age, education and health – is deemed to be well placed to obtain employment and in addition intends to start work in the Member State does not affect the interpretation of the requirement in that provision that he be a 'dependant'.

☞ CJEU 2 Mar. 2010, C-135/08 ***Rottmann*** ECLI:EU:C:2010:104
AG 30 Sep 2009 ECLI:EU:C:2009:558

* Art. 20 TFEU Subject: Loss of Rights
Ref. from Bundesverwaltungsgericht, Germany, 3 Apr. 2008

* *It is not contrary to European Union law, in particular to Article 17 EC, for a Member State to withdraw from a citizen of the Union the nationality of that State acquired by naturalisation when that nationality was obtained by deception, on condition that the decision to withdraw observes the principle of proportionality.*

☞ CJEU 27 Mar. 2014, C-322/13 ***Rüffer*** ECLI:EU:C:2014:189

* Art. 18+21 TFEU Subject: Equal Treatment
Ref. from Tribunale di Bolzano, Italy, 13 June 2013

* *Articles 18 TFEU and 21 TFEU must be interpreted as precluding national rules, such as those at issue in the main proceedings, which grant the right to use a language other than the official language of that State in civil proceedings brought before the courts of a Member State which are situated in a specific territorial entity, only to citizens of that State who are domiciled in the same territorial entity.*

☞ CJEU 8 Mar. 2011, C-34/09 ***Ruiz Zambrano*** ECLI:EU:C:2011:124
AG 30 Sep 2010 ECLI:EU:C:2010:560

* Art. 20 TFEU Subject: Residence and Family Members
Ref. from Tribunal du travail de Bruxelles, Belgium, 26 Jan. 2009

* *Article 20 TFEU is to be interpreted as meaning that it precludes a Member State from refusing a third country national upon whom his minor children, who are European Union citizens, are dependent, a right of residence in the Member State of residence and nationality of those children, and from refusing to grant a work permit to that third country national, in so far as such decisions deprive those children of the genuine enjoyment of the substance of the rights attaching to the status of European Union citizen.*

☞ CJEU 12 Mar. 2011, C-391/09 ***Runevič-Vardyn*** ECLI:EU:C:2011:291

* Art. 21 TFEU Subject: Equal Treatment
Ref. from Vilniaus Miesto 1 Apylinkės Teismas, Lithuania, 2 Oct. 2009

* *National rules which provide that a person's surnames and forenames may be entered on the certificates of civil status of that State only in a form which complies with the rules governing the spelling of the official national language relate to a situation which does not come within the scope of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.*
Article 21 TFEU must be interpreted as:
– not precluding the competent authorities of a Member State from refusing, pursuant to national rules which provide that a person's surnames and forenames may be entered on the certificates of civil status of that State only in a form which complies with the rules governing the spelling of the official national language, to amend, on the birth certificate and marriage certificate of one of its nationals, the surname and forename of that person in accordance with the spelling rules of another Member State;
– not precluding the competent authorities of a Member State from refusing, in circumstances such as those at issue in the main proceedings and pursuant to those same rules, to amend the joint surname of a married couple who are citizens of the Union, as it appears on the certificates of civil status issued by the Member State of origin of one of those citizens, in a form which complies with the spelling rules of that latter State, on condition that that refusal does not give rise, for those Union citizens, to serious inconvenience at administrative, professional and private levels, this being a matter which it is for the national court to decide. If that proves to be the case, it is also for that court to determine whether the refusal to make the amendment is necessary for the protection of the interests which the national rules are designed to secure and is proportionate to the legitimate aim pursued;
– not precluding the competent authorities of a Member State from refusing, in circumstances such as those at issue in the main proceedings and pursuant to those same rules, to amend the marriage certificate of a citizen of the Union who is a national of another Member State in such a way that the forenames of that citizen are entered on that certificate with diacritical marks as they were entered on the certificates of civil status issued by his Member State of origin and in a form which complies with the rules governing the spelling of the official national language of that latter State.

New ☞ CJEU 18 June 2020, C-754/18 ***Ryan Air*** ECLI:EU:C:2020:478
AG 27 Feb 2020 ECLI:EU:C:2020:31

* Art. 5(2)+20 Dir. 2004/38 Subject: Exit and Entry and Family Members
Ref. from Fővárosi Közigazgatási és Munkaügyi Bíróság, Hungary, 3 Dec. 2018

* *Must Art. 5(2) Citizens Dir. be interpreted as meaning that both the holding of a valid residence card, as referred to in Art. 10, and the holding of a permanent residence card, as referred to in Art. 20, exempt a family member from the requirement to be in possession of a visa at the time of entry to the territory of a Member State?*
Where an air carrier is unable to establish that a traveller who intends to travel with the permanent residence card referred to in Art. 20 of Dir. 2004/38 is actually a family member of an EU citizen at the time of entry, is that carrier required to deny boarding onto the aircraft and to refuse to transport that person to another Member State?
Where an air carrier does not check that circumstance or does not refuse to transport a traveller who is unable to provide evidence that he is a family member — and who, moreover, holds a permanent residence card — is it possible to impose a fine on that carrier on that ground pursuant to Article 26(2) of the Convention implementing the Schengen Agreement?

☞ CJEU 12 Mar. 2014, C-457/12 ***S. & G.*** ECLI:EU:C:2014:136
AG 12 Dec 2013 ECLI:EU:C:2013:842

* Art. 3+6+7 Dir. 2004/38 Subject: Residence and Family Members
Art. 20+21 TFEU
Ref. from Raad van State, Netherlands, 10 Oct. 2012

* *Directive 2004/38 must be interpreted as not precluding a refusal by a Member State to grant a right of residence to a third−country national who is a family member of a Union citizen where that citizen is a national of and resides in that Member State but regularly travels to another Member State in the course of his professional activities.*
Article 45 TFEU must be interpreted as conferring on a third−country national who is the family member of a Union citizen a derived right of residence in the Member State of which that citizen is a national, where the citizen resides in that Member State but regularly travels to another Member State as a worker within the meaning of that provision, if the refusal to grant such a right of residence discourages the worker from effectively exercising his rights under Article 45 TFEU, which it is for the referring court to determine.

☞ CJEU 26 Mar. 2019, C-129/18 ***S.M.*** ECLI:EU:C:2019:248
AG 26 Feb 2019 ECLI:EU:C:2019:140

* Art. 2(2)+3(2) Dir. 2004/38 Subject: Family Members
Ref. from Supreme Court, UK, 19 Feb. 2018

* *The concept of a 'direct descendant' of a citizen of the Union referred to in Art. 2(2)(c) must be interpreted as not including a child who has been placed in the permanent legal guardianship of a citizen of the Union under the Algerian Kafala system, because that placement does not create any parent-child relationship between them.*
However, it is for the competent national authorities to facilitate the entry and residence of such a child as one of the other family members of a citizen of the Union pursuant to Article 3(2)(a) of that directive, read in the light of Article 7 and Article 24(2) of the Charter, by carrying out a balanced and reasonable assessment of all the current and relevant circumstances of the case which takes account of the various interests in play and, in particular, of the best interests of the child concerned.
In the event that it is established, following that assessment, that the child and its guardian, who is a citizen of the Union, are called to lead a genuine family life and that that child is dependent on its guardian, the requirements relating to the fundamental right to respect for family life, combined with the obligation to take account of the best interests of the child, demand, in principle, that that child be granted a right of entry and residence in order to enable it to live with its guardian in his or her host Member State.

☞ CJEU 19 June 2014, C-507/12 ***Saint Prix*** ECLI:EU:C:2014:2007

* Art. 7(3) Dir. 2004/38 Subject: Residence
Art. 45 TFEU
Ref. from Supreme Court, UK, 8 Nov. 2012

* *Article 45 TFEU must be interpreted as meaning that a woman who gives up work, or seeking work, because of the physical constraints of the late stages of pregnancy and the aftermath of childbirth retains the status of 'worker', within the meaning of that article, provided she returns to work or finds another job within a reasonable period after the birth of her child.*

☞ CJEU 18 Dec. 2014, C-202/13 ***Sean McCarthy*** ECLI:EU:C:2014:2450
AG 20 May 2014 ECLI:EU:C:2014:345

* Art. 5+10+35 Dir. 2004/38 Subject: Exit and Entry and Family Members
Ref. from High Court of Justice (England and Wales) (Adm. Court), UK, 17 Apr. 2013

* *Both Article 35 of Directive 2004/38 and Article 1 of the Protocol (No 20) on the application of certain aspects of Article 26 of the TFEU must be interpreted as not permitting a Member State to require, in pursuit of an objective of general prevention, family members of a citizen of the European Union who are not nationals of a Member State and who hold a valid residence card, issued under Article 10 of Directive 2004/38 by the authorities of another Member State, to be in possession, pursuant to national law, of an entry permit, such as the EEA (European Economic Area) family permit, in order to be able to enter its territory.*

☞ CJEU 5 May 2011, C-434/09 ***Shirley McCarthy*** ECLI:EU:C:2011:277
AG 25 Nov 2010 ECLI:EU:C:2010:718

* Art. 21 TFEU Subject: Residence and Family Members
Ref. from Supreme Court, UK, 5 Nov. 2009

* *Article 3(1) of Directive 2004/38, must be interpreted as meaning that that directive is not applicable to a Union citizen who has never exercised his right of free movement, who has always resided in a Member State of which he is a national and who is also a national of another Member State.*
Article 21 TFEU is not applicable to a Union citizen who has never exercised his right of free movement, who has always resided in a Member State of which he is a national and who is also a national of another Member State, provided that the situation of that citizen does not include the application of measures by a Member State that would have the effect of depriving him of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a Union citizen or of impeding the exercise of his right of free movement and residence within the territory of the Member States.

☞ CJEU 11 Apr. 2019, C-483/17 ***Tarola*** ECLI:EU:C:2019:309

* Art. 7(1)(a)+7(3)(c) Dir. 2004/38 Subject: Residence

Ref. from Court of Appeal, Ireland, 9 Aug. 2017

* *Art. 7(1)(a) and (3)(c) must be interpreted as meaning that a national of a Member State who, having exercised his right to free movement, acquired, in another Member State, the status of worker within the meaning of Article 7(1)(a) of that directive, on account of the activity he pursued there for a period of two weeks, otherwise than under a fixed-term employment contract, before becoming involuntarily unemployed, retains the status of worker for a further period of no less than six months under those provisions, provided that he has registered as a jobseeker with the relevant employment office.*
It is for the referring court to determine whether, in accordance with the principle of equal treatment guaranteed in Art. 24(1) of Directive 2004/38, that national is, as a result, entitled to receive social assistance payments or, as the case may be, social security benefits on the same basis as if he were a national of the host Member State.

☞ CJEU 23 Feb. 2010, C-480/08 ***Teixeira*** ECLI:EU:C:2010:83

* Art. 10 Reg. 492/2011 Subject: Residence

Ref. from Court of Appeal (England & Wales) (Civil Division), UK, 7 Nov. 2008

* *1. A national of a Member State who was employed in another Member State in which his or her child is in education can claim, in the capacity of primary carer for that child, a right of residence in the host Member State on the sole basis of Article 12 of Regulation 1612/68 (Now: Art. 10 Reg. 492/2011) without being required to satisfy the conditions laid down in Directive 2004/38.*
2. The right of residence in the host Member State of the parent who is the primary carer of a child exercising the right to pursue his or her education in accordance with Article 12 of Regulation 1612/68 is not conditional on that parent having sufficient resources not to become a burden on the social assistance system of that Member State during the period of residence and having comprehensive sickness insurance cover there.
3. The right of residence in the host Member State of the parent who is the primary carer for a child of a migrant worker, where that child is in education in that State, is not conditional on one of the child's parents having worked as a migrant worker in that Member State on the date on which the child started in education.
4. The right of residence in the host Member State of the parent who is the primary carer for a child of a migrant worker, where that child is in education in that State, ends when the child reaches the age of majority, unless the child continues to need the presence and care of that parent in order to be able to pursue and complete his or her education.

☞ CJEU 12 Mar. 2019, C-221/17 ***Tjebbes*** ECLI:EU:C:2019:189
AG 12 Jul 2018 ECLI:EU:C:2018:572

* Art. 20+21 TFEU Subject: Loss of Rights

Ref. from Raad van State, Netherlands, 27 Apr. 2017

* Art. 7+24 Charter

* *Article 20 TFEU, read in the light of Articles 7 and 24 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding legislation of a Member State such as that at issue in the main proceedings, which provides under certain conditions for the loss, by operation of law, of the nationality of that Member State, which entails, in the case of persons who are not also nationals of another Member State, the loss of their citizenship of the Union and the rights attaching thereto, in so far as the competent national authorities, including national courts where appropriate, are in a position to examine, as an ancillary issue, the consequences of the loss of that nationality and, where appropriate, to have the persons concerned recover their nationality ex tunc in the context of an application by those persons for a travel document or any other document showing their nationality. In the context of that examination, the authorities and the courts must determine whether the loss of the nationality of the Member State concerned, when it entails the loss of citizenship of the Union and the rights attaching thereto, has due regard to the principle of proportionality so far as concerns the consequences of that loss for the situation of each person concerned and, if relevant, for that of the members of their family, from the point of view of EU law.*

☞ CJEU 23 Nov. 2010, C-145/09 ***Tsakouridis*** ECLI:EU:C:2010:708

* Art. 28(3) Dir. 2004/38 Subject: Loss of Rights

Ref. from Verwaltungsgerichtshof Baden-Württemberg, Germany, 24 Apr. 2009

* *Article 28(3)(a) of Directive 2004/38 must be interpreted as meaning that, in order to determine whether a Union citizen has resided in the host Member State for the 10 years preceding the expulsion decision, which is the decisive criterion for granting enhanced protection under that provision, all the relevant factors must be taken into account in each individual case, in particular the duration of each period of absence from the host Member State, the cumulative duration and the frequency of those absences, and the reasons why the person concerned left the host Member State, reasons which may establish whether those absences involve the transfer to another State of the centre of the personal, family or occupational interests of the person concerned.*
Should the referring court conclude that the Union citizen concerned enjoys the protection of Article 28(3) of Directive 2004/38, that provision must be interpreted as meaning that the fight against crime in connection with dealing in narcotics as part of an organised group is capable of being covered by the concept of 'imperative grounds of public security' which may justify a measure expelling a Union citizen who has resided in the host Member State for the preceding 10 years. Should the referring court conclude that the Union citizen concerned enjoys the protection of Article 28(2) of Directive 2004/38, that provision must be interpreted as meaning that the fight against crime in connection with dealing in narcotics as part of an organised group is covered by the concept of 'serious grounds of public policy or public security'.

☞ CJEU 4 June 2009, C-22/08 ***Vatsouras & Koupatantze*** ECLI:EU:C:2009:344

* Art. 24(2) Dir. 2004/38 Subject: Equal Treatment
Art. 18 TFEU
Ref. from Sozialgericht Nürnberg, Germany, 22 Jan. 2008

* *With respect to the rights of nationals of Member States seeking employment in another Member State, examination of the first question has not disclosed any factor capable of affecting the validity of Article 24(2) of Directive 2004/38.*
Article 12 EC does not preclude national rules which exclude nationals of Member States of the European Union from receipt of social assistance benefits which are granted to nationals of non-member countries.

☞ CJEU 6 Oct. 2009, C-123/08 ***Wolzenburg*** ECLI:EU:C:2009:616

* Art. 18 TFEU Subject: Equal Treatment
Ref. from Rechtbank Amsterdam, Netherlands, 21 Mar. 2008

* *A national of one Member State who is lawfully resident in another Member State is entitled to rely on the first paragraph of Article 12 EC against national legislation, such as the Law on the surrender of persons (Overleveringswet), of 29 April 2004, which lays down the conditions under which the competent judicial authority can refuse to execute a European arrest warrant issued with a view to the enforcement of a custodial sentence.*
Article 4(6) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States must be interpreted as meaning that, in the case of a citizen of the Union, the Member State of execution cannot, in addition to a condition as to the duration of residence in that State, make application of the ground for optional non-execution of a European arrest warrant laid down in that provision subject to supplementary administrative requirements, such as possession of a residence permit of indefinite duration.
Article 12 EC is to be interpreted as not precluding the legislation of a Member State of execution under which the competent judicial authority of that State is to refuse to execute a European arrest warrant issued against one of its nationals with a view to the enforcement of a custodial sentence, whilst such a refusal is, in the case of a national of another Member State having a right of residence on the basis of Article 18(1) EC, subject to the condition that that person has lawfully resided for a continuous period of five years in that Member State of execution.

☞ CJEU 8 May 2013, C-87/12 ***Ymeraga*** ECLI:EU:C:2013:291

* Art. 3(1) Dir. 2004/38 Subject: Residence and Family Members
Art. 20 TFEU
Ref. from Cour administrative, Luxembourg, 20 Feb. 2012

* *Article 20 TFEU must be interpreted as not precluding a Member State from refusing to allow a third-country national to reside in its territory, where that third-country national wishes to reside with a family member who is a European Union citizen residing in the Member State of which he holds the nationality and has never exercised his right of freedom of movement as a Union citizen, provided such refusal does not lead, for the Union citizen concerned, to the denial of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a Union citizen.*

☞ CJEU 4 June 2013, C-300/11 ***Z.Z.*** ECLI:EU:C:2013:363

* Art. 30(2)+31 Dir. 2004/38 Subject: Loss of Rights and Procedural Rights
Ref. from Court of Appeal (England & Wales) (Civil Division), UK, 17 June 2011

* *Articles 30(2) and 31 of Directive 2004/38 read in the light of Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as requiring the national court with jurisdiction to ensure that failure by the competent national authority to disclose to the person concerned, precisely and in full, the grounds on which a decision taken under Article 27 of that directive is based and to disclose the related evidence to him is limited to that which is strictly necessary, and that he is informed, in any event, of the essence of those grounds in a manner which takes due account of the necessary confidentiality of the evidence.*

☞ CJEU 21 Dec. 2011, C-424/10 ***Ziolkowski & Szeja*** ECLI:EU:C:2011:866

* Art. 16 Dir. 2004/38 Subject: Residence
Ref. from Bundesverwaltungsgericht, Germany, 31 Aug. 2010

* *Article 16(1) of Directive 2004/38 must be interpreted as meaning that a Union citizen who has been resident for more than five years in the territory of the host Member State on the sole basis of the national law of that Member State cannot be regarded as having acquired the right of permanent residence under that provision if, during that period of residence, he did not satisfy the conditions laid down in Article 7(1) of the directive.*
Periods of residence completed by a national of a non−Member State in the territory of a Member State before the accession of the non−Member State to the European Union must, in the absence of specific provisions in the Act of Accession, be taken into account for the purpose of the acquisition of the right of permanent residence under Article 16 (1) of Directive 2004/38, provided those periods were completed in compliance with the conditions laid down in Article 7 (1) of the directive.

7.2 CJEU pending cases

☞ CJEU C-930/19 ***Belgian State***

* all Art. Dir. 2004/38 Subject: Residence

Ref. from Conseil du Contentieux des Étrangers, Belgium, 20 Dec. 2019

* *Does Article 13(2) infringe Articles 20 and 21 of the Charter, in that it provides that divorce, annulment of marriage or termination of a registered partnership does not entail loss of the right of residence of a Union citizen's family members who are not nationals of a MS where, inter alia, this is warranted by particularly difficult circumstances, such as having been a victim of domestic violence while the marriage or registered partnership was subsisting, but only on the condition that the persons concerned show that they are workers or self-employed persons or that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host MS during their period of residence and have comprehensive sickness insurance cover in the host MS, or that they are members of the family, already constituted in the host MS, of a person satisfying these requirements, whereas Article 15(3) of Directive 2003/86 (on the right to family reunification), which makes the same provision for the right of residence to continue, does not make its continuation subject to that condition?*

☞ CJEU C-535/19 ***A.***

* Art. 7(1)(b)+24 Dir. 2004/38 Subject: Equal Treatment

Ref. from Augusta tiesa (Supreme Court), Latvia, 9 July 2019

* *Must publicly-funded health care be regarded as being included in 'sickness benefits'. And if so, are MS permitted to to refuse such benefits — which are granted to their nationals and to family members of a Union citizen having worker status who are in the same situation — to Union citizens who do not at that time have worker status, in order to avoid disproportionate requests for social benefits to ensure health care?*

☞ CJEU C-718/19 ***Bar Association***

* Art. 20+21 TFEU Subject: Equal Treatment

Ref. from Cour Constitutionelle, Belgium, 27 Sep. 2019

* *Must artt. 20+21 TFEU be interpreted as precluding national legislation according to which a provision that applies to EU citizens and members of their families who have not complied with a decision terminating residence on grounds of public policy is identical to that applied to third-country nationals in the same situation in relation to the maximum period of detention for the purposes of removal, that is to say, eight months?*

☞ CJEU C-719/19 ***F.S.***

* Art. 15(1) Dir. 2004/38 Subject: Residence

Ref. from Raad van State, Netherlands, 30 Sep. 3019

* *Must Article 15(1) be interpreted as meaning that the decision to expel a Union citizen from the territory of the host MS taken on the basis of that provision has been complied with and that that decision no longer has any legal effects once that Union citizen has demonstrably left the territory of that host MS within the period for voluntary departure laid down in that decision?*
If the first Question must be answered in the affirmative, does that Union citizen, in the event of an immediate return to the host MS, have the right of residence of up to three months referred to in Article 6(1), or may the host MS take a new expulsion decision in order to prevent the Union citizen from entering the host MS for a short period of time?
If the first Question must be answered in the negative, must that Union citizen in that case then reside outside the territory of the host MS for a certain period of time and, if so, how long is that period?

☞ CJEU C-710/19 ***G.M.A.***

* Art. 15+31 Dir. 2004/38 Subject: Equal Treatment

Art. 45 TFEU

Ref. from Conseil d'État, Belgium, 25 Sep. 2019

* *Are Artt. 15+31 to be interpreted and applied as meaning that the national courts of the host Member State are required, in the context of an action for annulment brought against a decision refusing to recognise a right of residence of more than three months of an EU citizen, to have regard to new facts and matters arising after the decision of the national authorities, where such facts and matters are capable of altering the situation of the person concerned in such a way that it is no longer permissible to restrict his right of residence in the host Member State?*

☞ CJEU C-181/19 ***Jobcenter Krefeld***

AG 14 May 2020 ECLI:EU:C:2020:377

* Art. 24(2) Dir. 2004/38 Subject: Equal Treatment

Art. 10 Reg. 492/2011

Ref. from Landessozialgericht Nordrhein-Westfalen, Germany, 25 Feb. 2019

* *Is the exclusion of Union citizens from receipt of social assistance within the meaning of Article 24(2) of Directive 2004/38 compatible with the requirement of equal treatment arising from Article 18 TFEU read in conjunction with Articles 10 and 7 of Regulation No 492/2011?*

New ☞ CJEU C-35/20 ***Syyttäjä***

* Art. 21(1) TFEU Subject: Exit and Entry

Ref. from Korkein oikeus, Finland, 24 Jan. 2020

* *Does EU law, in particular Art. 4(1) of Dir. 2004/38 preclude the application of a national provision requiring a person (whether or not an EU citizen), under threat of criminal penalties, to carry a valid passport or other valid travel document when travelling from one MS to another by pleasure boat via international waters without entering the territory of a third country?*
Does EU law, in particular Art. 5(1) of Dir. 2004/38 and Art. 21 of Schengen Borders Code, or the right of EU citizens to move freely within the territory of the European Union, preclude the application of a national provision requiring a person (whether or not an EU citizen), under threat of criminal penalties, to carry a valid passport or other valid travel document upon entering the MS concerned from another MS State by pleasure boat via international waters without having entered the territory of a third country?
In so far as no obstacle within the meaning of these questions arises under EU law: Is the penalty normally imposed in Finland in the form of daily fines for crossing the Finnish border without carrying a valid travel document compatible with the principle of proportionality that follows from Art. 27(2) of Dir. 2004/38?

New ☞ CJEU C-118/20 ***Wiener Landesregierung***

* Art. 20 TFEU Subject: Loss of Rights

Ref. from Verwaltungsgerichtshof, Austria, 13 Feb. 2020

* *Does the situation of a natural person who has renounced her only nationality of a MS of the European Union, and thus her citizenship of the Union, in order to obtain the nationality of another MS, having been given a guarantee by the other MS of grant of the nationality applied for, and whose possibility of recovering citizenship of the Union is subsequently eliminated by revocation of that guarantee, fall, by reason of its nature and its consequences, within the scope of EU law, such that regard must be had to EU law when revoking the guarantee of grant of citizenship?*
If so, Is it for the competent national authorities, including any national courts, involved in the decision to revoke the guarantee of grant of nationality of the MSs, to establish whether the revocation of the guarantee that prevented the recovery of citizenship of the Union is compatible with the principle of proportionality from the point of view of EU law in terms of its consequences for the situation of the person concerned?

☞ CJEU C-454/19 ***Z.W.***

AG 4 Jun 2020 ECLI:EU:C:2020:430

* all Art. Dir. 2004/38 Subject: Equal Treatment

Ref. from Amtsgericht Heilbronn, Germany, 14 June 2019

* *Does the interpretation of primary and/or secondary European law preclude the application of a national criminal provision which penalises the retention of a child from his guardian abroad where the provision does not differentiate between Member States of the European Union and third countries?*

7.3 EFTA Advisory Opinions

☞ EFTA 26 July 2016, E-28/15 ***Jabbi***

* Art. 7(1)(b)+7(2) Dir. 2004/38 Subject: Residence

Ref. from Oslo Tingrett, Norway, 8 Nov. 2015

* *Where an EEA national, pursuant to Article 7(1)(b) and Article 7(2) of Directive 2004/38/EC, has created or strengthened a family life with a third country national during genuine residence in an EEA State other than that of which he is a national, the provisions of that directive will apply by analogy where that EEA national returns with the family member to his home State.*