Newsletter on European Free Movement Issues for Judges

2023/1

NEFIS

Quarterly update (since 2019) of a full overview of

- *Legislation and*
- *Jurisprudence*

on

- *European*
- *Free Movement Issues*

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Latest judgments, AG opinions and new pending cases

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§ 3 Equal Treatment

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CJEU AG	16 Feb 2023	C-488/21	*G.V. v Social Welfare (IE)*	FMofW Reg.	Art. 7(2)

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§ 6 Procedural Rights

CJEU	(pending)	C-62/23	*Pedro Francisco*	Citizens Dir.	Art. 27

About

NEFIS is designed for judges who need to keep up to date with EU developments on EU citizenship and free movement.
NEFIS contains EU legislation and ALL relevant case law on EU citizens and their family members in relation to:
* exit and entry * residence * equal treatment * loss of rights * family members * procedural rights and * Brexit.
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 first issue of NEFIS in 2023.
In this issue we would like to draw your attention to the following.

New Orders
On 1 March 2023, case ***Z.K. & M.S.*** (C-248/22) is removed from the Court Register because the Irish High Court has withdrawn its request for a preliminary ruling.

New Judgments
In ***D.V.*** (C-30/22) the CJEU ruled that the objective of the Withdrawal Agreement (WA) with the United Kingdom (UK) is to protect rights that have been acquired before the transitional period ended that involve the nationals, legislation or territory of the UK. The case concerns a Bulgarian national who had worked in the UK for a number of years and returns to Bulgaria after the transitional period has ended, where she applies for unemployment benefits. The Bulgarian authorities have refused to grant her an unemployment benefit, stating that the WA does not apply to her situation as she has interrupted her cross-border situation by returning to Bulgaria after the transitional period had expired. The CJEU first establishes that Art. 31(1) WA explicitly provides that Reg. 883/2004 applies to beneficiaries of Title II WA. It then considers whether that regulation would have applied to D.V. if the UK had not left the EU. According to Art. 65(5)(a) Reg. 883/2004 eligibility for an unemployment benefit can be conditional on having completed periods of insurance in the MS of which the legislation on benefits applies, as is the case in Bulgaria. As D.V. has not completed periods of insurance in Bulgaria after her return to that MS, she cannot rely on Art. 65(2) Reg. 883/2004 to claim unemployment benefits in Bulgaria.

New Conclusions
In ***X. v. Udlæn. Min. (DK)*** (C-689/21) AG Szpunar delivered an opinion on 26 January 2023. The case concerns the compatibility of the Danish rules on the loss of citizenship with EU law. Danish nationals, born abroad and who have never lived in Denmark, lose their nationality by operation of law upon reaching the age of 22 on ground of lack of a genuine link with Denmark if no application to retain Danish nationality has been made before that date. The CJEU is asked to decide whether the Danish rules are consistent with Art. 20 TFEU (EU citizenship) read in conjunction with Art. 7 of the EU Charter (right to private and family life). AG Szpunar advises the CJEU to rule that Danish legislation is not compatible with EU law as it fails to provide for an individual examination, based on the principle of proportionality, of the consequences of the loss of nationality and of EU citizenship in light of EU law. AG Szpunar considers that following ***Tjebbes a.o.*** (C-221/17) all situations involving loss of nationality also entailing the loss of EU citizenship have to be examined in light of the principle of proportionality. The second ground of incompatibility concerns the lack of the possibility to recover ex tunc Danish nationality when the person applies for a travel document or any other document providing evidence of their nationality. According to the AG, the possibility to regain Danish nationality via the general naturalization procedure does not meet the requirements set out in ***Tjebbes a.o.***

In ***G.V. v. Social Welfare (IE)*** (C-488/21) AG Ćapeta has proposed that the CJEU rules that Art. 21 TFEU is interpreted as meaning that the right of residence of direct ascendants of mobile EU workers depends on them being dependent on that worker as long as their right to remain is derived from an EU worker. An application for a special non-contributory cash benefit made by the direct ascendant does not, according to the AG, mean that they are no longer dependent on the EU worker. The case concerned a Romanian national who is the mother of AC, a Romanian citizen who is also an Irish citizen following naturalization. residing and working in Ireland. GV joined her daughter AC in Ireland in 2017 and has legally resided there ever since. During the past 15 years, she has been financially dependent on AC. In 2017, G.V. suffered degenerative changes in her arthritis, after which she made an application for Disability Allowance under the Irish Social Welfare Consolidation Act 2005. That request was refused on the ground that under the relevant Irish law GV must not become an unreasonable burden on the national social assistance system. According to the AG Art. 45(2) TFEU read in conjunction with Art. 7(2) Reg. 492/2011, an EU mobile worker's mother, who was a direct dependent ascendant, can claim a social benefit without this calling into question her right of residence, as the principle of equal treatment does not allow such a relative to be considered an unreasonable burden on the social assistance system of the State of residence because she has applied for a benefit.

New Cases
In ***Pedro Franciso*** (C-62/23), the Spanish *Juzgado Contencioso-Administrativo n.º 5 de Barcelona* requested the CJEU to clarify whether police information establishing a suspicion that a criminal offence has been committed by an applicant for a right of residence, who is a registered partner of an EU citizen, can be evidence of 'personal conduct', within the meaning of Art. 27 Dir. 2004/38. The national court's second question seeks guidance how to establish that such police information is not merely an initial

(editorial continued)

presumption.

Adopted Measures

Relevant provisions concerning free movement of persons and EU citizenship are contained in the following measures:
Art. 16, 18, 20, 21, 26 and 45 TFEU, the Regulation on Free Movement of Workers, the Citizens Directive and some artt of the ID Cards regulation.

Treaty — **TFEU**

Treaty on the Functioning of the Union

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

Agreement with UK — **WA**

Brexit: Withdrawal Agreement of the UK of the EU

* OJ 2020 L 29 — impl. date 1 Jan. 2021

Regulation 492/2011 — **FMofW**

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

Regulation 2019/1157 — **ID Cards**

On strengthening the security of identity cards of Union citizens and of residence documents issued to Union citizens and their family members exercising their right of free movement

* OJ 2019 L 188 — into force 2 Aug. 2021

1 Exit and Entry

Cases on Exit and Entry

case law sorted in chronological order

CJEU judgments

☞	CJEU	24 June	2022,	C-2/21	*K.S. & S.V.D.*	Citizens Dir.	Art. 4(3)
						TFEU	Art. 20+21
☞	CJEU	14 Dec.	2021,	C-490/20	*V.M.A. v Pancharevo (BU)*	TFEU	Art. 18+20+21
☞	CJEU	6 Oct.	2021,	C-35/20	*A. v Syyttäjä (FI)*	TFEU	Art. 21(1)
☞	CJEU	18 June	2020,	C-754/18	*Ryan Air*	Citizens Dir.	Art. 5(2)+20
☞	CJEU	10 Jan.	2019,	C-169/18	*Mahmood a.o.*	Citizens Dir.	Art. 5
☞	CJEU	18 Dec.	2014,	C-202/13	*Sean McCarthy*	Citizens Dir.	Art. 5+10+35
☞	CJEU	4 Oct.	2012,	C-249/11	*Byankov*	Citizens Dir.	Art. 27
☞	CJEU	17 Nov.	2011,	C-430/10	*Gaydarov*	Citizens Dir.	Art. 4+27
☞	CJEU	17 Nov.	2011,	C-434/10	*Aladzhov*	Citizens Dir.	Art. 4+27
☞	CJEU	19 July	2008,	C-33/07	*Jipa*	Citizens Dir.	Art. 18+27
						Citizens Dir.	Art. 20

CJEU pending cases

☞	CJEU	(pending)		C-491/21	*W.A. v Dir. Persoanelor (RO)*	TFEU	Art. 26(2)
☞	CJEU	(pending)		C-607/21	*X.X.X. v State (BE)*	Citizens Dir.	Art. 2(2)(d)
☞	CJEU	(pending)		C-128/22	*NORDIC*	Citizens Dir.	Art. 2+27+29

See further details on these cases in § 7

2 Residence

Cases on residence rights

case law sorted in chronological order

CJEU judgments

☞	CJEU	7 Sep.	2022,	C-624/20	*E.K. v Stscr. (NL)*	TFEU	Art. 20
☞	CJEU	5 May	2022,	C-451/19	*X.U. & Q.P. v Toledo (ES)*	TFEU	Art. 20
☞	CJEU	2 Sep.	2021,	C-930/19	*X. v Belgium (BE)*	Citizens Dir.	all Art.
☞	CJEU	22 June	2021,	C-719/19	*F.S. v Stscr. (NL)*	Citizens Dir.	Art. 15(1)+6(1)
☞	CJEU	17 Dec.	2020,	C-398/19	*B.Y.*	TFEU	Art. 18+21
☞	CJEU	17 Dec.	2020,	C-710/19	*G.M.A.*	Citizens Dir.	Art. 14(4)(b)+15+31
						TFEU	Art. 45
☞	CJEU	27 Feb.	2020,	C-836/18	*R.H.*	TFEU	Art. 20
☞	CJEU	22 Jan.	2020,	C-32/19	*A.T.*	Citizens Dir.	Art. 17(1)(a)
☞	CJEU	2 Oct.	2019,	C-93/18	*Bajratari*	Citizens Dir.	Art. 7(1)(b)
☞	CJEU	19 Sep.	2019,	C-544/18	*Dakneviciute*	TFEU	Art. 49
☞	CJEU	11 Apr.	2019,	C-483/17	*Tarola*	Citizens Dir.	Art. 7(1)(a)+7(3)(c)
☞	CJEU	13 Sep.	2018,	C-618/16	*Rafal Prefeta*	Citizens Dir.	Art. 7(3)
						Citizens Dir.	Art. 7(2)
☞	CJEU	20 Dec.	2017,	C-442/16	*Gusa*	Citizens Dir.	Art. 7(1)+7(3)+14(4)
☞	CJEU	10 May	2017,	C-133/15	*Chavez-Vilchez*	TFEU	Art. 20
☞	CJEU	13 Sep.	2016,	C-165/14	*Rendón Marín*	TFEU	Art. 20+21
☞	CJEU	30 June	2016,	C-115/15	*N.A.*	Citizens Dir.	Art. 13(2)
						Citizens Dir.	Art. 10
						TFEU	Art. 20+21
☞	CJEU	14 June	2016,	C-308/14	*Com. v UK*	Citizens Dir.	Art. 7+14(2)+24(2)
☞	CJEU	15 Sep.	2015,	C-67/14	*Alimanovic*	Citizens Dir.	Art. 14(4)+24(2)
						Citizens Dir.	Art. 4
						TFEU	Art. 18+45
☞	CJEU	26 July	2015,	C-218/14	*Kuldip Singh a.o.*	Citizens Dir.	Art. 7(1)(b)+13(2)(a)
☞	CJEU	11 Nov.	2014,	C-333/13	*Dano a.o.*	Citizens Dir.	Art. 7(1)(b)+24(1)
						Citizens Dir.	Art. 4
☞	CJEU	10 July	2014,	C-244/13	*Ogieriakhi*	Citizens Dir.	Art. 16(2)
☞	CJEU	19 June	2014,	C-507/12	*Saint Prix*	Citizens Dir.	Art. 7(3)
						TFEU	Art. 45
☞	CJEU	12 Mar.	2014,	C-456/12	*O. & B.*	Citizens Dir.	Art. 3+6+7
						TFEU	Art. 20+21
☞	CJEU	12 Mar.	2014,	C-457/12	*S. & G.*	Citizens Dir.	Art. 3+6+7
						TFEU	Art. 20+21
☞	CJEU	16 Jan.	2014,	C-378/12	*Onuekwere*	Citizens Dir.	Art. 16
☞	CJEU	19 Sep.	2013,	C-140/12	*Brey*	Citizens Dir.	Art. 7(1)(b)
☞	CJEU	13 June	2013,	C-45/12	*Hadj Ahmed*	Citizens Dir.	Art. 13(2)+14
						Citizens Dir.	Art. 10
						TFEU	Art. 18
☞	CJEU	8 May	2013,	C-529/11	*Alarape & Tijani*	Citizens Dir.	Art. 10
☞	CJEU	8 May	2013,	C-87/12	*Ymeraga*	Citizens Dir.	Art. 3(1)
						TFEU	Art. 20
☞	CJEU	6 Dec.	2012,	C-356/11	*O., S. & L.*	Citizens Dir.	Art. 3(1)
						TFEU	Art. 20
☞	CJEU	8 Nov.	2012,	C-40/11	*Iida*	TFEU	Art. 20
☞	CJEU	6 Sep.	2012,	C-147/11	*Czop & Punakova*	Citizens Dir.	Art. 16
						Citizens Dir.	Art. 10
☞	CJEU	21 Dec.	2011,	C-424/10	*Ziolkowski & Szeja*	Citizens Dir.	Art. 16
☞	CJEU	21 July	2011,	C-325/09	*Dias*	Citizens Dir.	Art. 16
☞	CJEU	5 May	2011,	C-434/09	*Shirley McCarthy*	TFEU	Art. 21

☞	CJEU	8 Mar.	2011,	C-34/09	*Ruiz Zambrano*	TFEU	Art. 20
☞	CJEU	7 Oct.	2010,	C-162/09	*Lassal*	Citizens Dir.	Art. 16
☞	CJEU	23 Feb.	2010,	C-310/08	*Ibrahim*	Citizens Dir.	Art. 10
☞	CJEU	23 Feb.	2010,	C-480/08	*Teixeira*	Citizens Dir.	Art. 10
	CJEU pending cases						
☞	CJEU	(pending)		C-540/22	*S.N. a.o.*	TFEU	Art. 56+57
☞	CJEU AG	16 Jun	2022,	C-459/20	*X. v Stscr. (NL)*	TFEU	Art. 20
	EFTA Advisory Opinions						
☞	EFTA	26 July	2016,	E-28/15	*Jabbi v Imm. Appeals Board (NO)*	Citizens Dir.	Art. 7(1)(b)+7(2)
☞	EFTA	26 July	2011,	E-4/11	*Clauder v Government (LI)*	Citizens Dir.	Art. 16(1)+7(1)

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

CJEU judgments

New	☞	CJEU	24 Mar. 2023,	C-30/22	*D.V.*	WA	Art. 30(2)+31(1)
	☞	CJEU	8 Dec. 2022,	C-731/21	*G.V. v Caisse (LU)*	FMofW Reg.	Art. 7(2)
	☞	CJEU	24 Nov. 2022,	C-638/20	*M.C.M.*	FMofW Reg.	Art. 7(2)
						TFEU	Art. 45
	☞	CJEU	3 Nov. 2022,	C-32/21	*Institut National*	WA	Art. 2+3+10+12
	☞	CJEU	1 Aug. 2022,	C-411/20	*S. v Familienkasse (DE)*	Citizens Dir.	Art. 6+24(2)
						TFEU	Art. 20
	☞	CJEU	28 Apr. 2022,	C-86/21	*Delia*	Citizens Dir.	Art. 7
						TFEU	Art. 45
	☞	CJEU	10 Mar. 2022,	C-247/20	*V.I. v Customs (UK)*	Citizens Dir.	Art. 7(1)+16
						TFEU	Art. 21
	☞	CJEU	15 July 2021,	C-535/19	*A. v Min. (LV)*	Citizens Dir.	Art. 7(1)(b)+24
	☞	CJEU	15 July 2021,	C-709/20	*C.G. v N-IRL (UK)*	Citizens Dir.	Art. 24
	☞	CJEU	22 June 2021,	C-718/19	*Ordre des barreaux*	TFEU	Art. 20+21
	☞	CJEU	11 Feb. 2021,	C-407/19	*Katoen Natie*	TFEU	Art. 45
	☞	CJEU	19 Nov. 2020,	C-454/19	*Z.W. v Heilbronn (DE)*	TFEU	Art. 21
	☞	CJEU	6 Oct. 2020,	C-181/19	*Jobcenter Krefeld*	Citizens Dir.	Art. 24(2)
						Citizens Dir.	Art. 10
	☞	CJEU	10 Oct. 2019,	C-703/17	*Krah*	Citizens Dir.	Art. 7(1)
						TFEU	Art. 45
	☞	CJEU	13 Sep. 2018,	C-618/16	*Rafal Prefeta*	Citizens Dir.	Art. 7(3)
						Citizens Dir.	Art. 7(2)
	☞	CJEU	22 June 2017,	C-20/16	*Bechtel*	TFEU	Art. 45
	☞	CJEU	8 June 2017,	C-541/15	*Freitag*	TFEU	Art. 18+21
	☞	CJEU	15 Mar. 2017,	C-3/16	*Aquino*	Citizens Dir.	Art. 28
						TFEU	Art. 267
	☞	CJEU	15 Dec. 2016,	C-401/15	*Depesme & Kerrou*	Citizens Dir.	Art. 7(2)
						TFEU	Art. 45
	☞	CJEU	14 Dec. 2016,	C-238/15	*Brangança*	Citizens Dir.	Art. 7(2)
	☞	CJEU	6 Sep. 2016,	C-182/15	*Petruhhin*	TFEU	Art. 18+21
	☞	CJEU	14 June 2016,	C-308/14	*Com. v UK*	Citizens Dir.	Art. 7+14(2)+24(2)
	☞	CJEU	2 June 2016,	C-233/14	*Com. v NL*	Citizens Dir.	Art. 24(2)
						TFEU	Art. 18+20
	☞	CJEU	25 Feb. 2016,	C-299/14	*Garcia-Nieto*	Citizens Dir.	Art. 24(2)
	☞	CJEU	6 Oct. 2015,	C-650/13	*Delvigne*	TFEU	Art. 20(2)(b)
	☞	CJEU	15 Sep. 2015,	C-67/14	*Alimanovic*	Citizens Dir.	Art. 14(4)+24(2)
						Citizens Dir.	Art. 4
						TFEU	Art. 18+45
	☞	CJEU	26 Feb. 2015,	C-359/13	*Martens*	TFEU	Art. 20+21
	☞	CJEU	5 Feb. 2015,	C-317/14	*Com. v BE*	TFEU	Art. 45
	☞	CJEU	11 Nov. 2014,	C-333/13	*Dano a.o.*	Citizens Dir.	Art. 7(1)(b)+24(1)
						Citizens Dir.	Art. 4
	☞	CJEU	10 Sep. 2014,	C-270/13	*Haralambidis*	TFEU	Art. 4+45(1)
	☞	CJEU	27 Mar. 2014,	C-322/13	*Rüffer*	TFEU	Art. 18+21
	☞	CJEU	19 Sep. 2013,	C-140/12	*Brey*	Citizens Dir.	Art. 7(1)(b)
	☞	CJEU	18 June 2013,	C-523/11	*Prinz & Seeberger*	TFEU	Art. 20+21
	☞	CJEU	21 Feb. 2013,	C-46/12	*L.N.*	Citizens Dir.	Art. 7(2)+24
						TFEU	Art. 45(2)
	☞	CJEU	4 Oct. 2012,	C-75/11	*Com. v AT*	Citizens Dir.	Art. 24
						TFEU	Art. 20+21

☞	CJEU	14 June 2012,	C-542/09	*Com. v NL*	Citizens Dir.	Art. 7(2)
					TFEU	Art. 45
☞	CJEU	12 Mar. 2011,	C-391/09	*Runevič-Vardyn*	TFEU	Art. 21
☞	CJEU	6 Oct. 2009,	C-123/08	*Wolzenburg*	TFEU	Art. 18
☞	CJEU	4 June 2009,	C-22/08	*Vatsouras & Koupatantze*	Citizens Dir.	Art. 24(2)
					TFEU	Art. 18
☞	CJEU	16 Dec. 2008,	C-524/06	*Huber*	TFEU	Art. 18
☞	CJEU	18 Nov. 2008,	C-158/07	*Föster*	TFEU	Art. 18+20
	CJEU pending cases					
☞	CJEU	(pending)	C-491/21	*W.A. v Dir. Persoanelor (RO)*	TFEU	Art. 26(2)
☞	CJEU	(pending)	C-112/22	*C.U. & N.D.*	TFEU	Art. 18+45
					FMofW Reg.	Art. 7(2)
☞	CJEU	(pending)	C-128/22	*NORDIC*	Citizens Dir.	Art. 2+27+29
☞	CJEU	(pending)	C-235/22	*Abel*	TFEU	Art. 18+21
☞	CJEU AG	6 Oct 2021,	C-368/20	*N.W. v Steiermark (AT)*	TFEU	Art. 21(1)
☞	CJEU	(pending)	C-411/22	*Thermalhotel*	Citizens Dir.	Art. 7(2)
					TFEU	Art. 45
☞	CJEU AG	16 Feb 2023,	C-488/21	*G.V. v Social Welfare (IE)*	FMofW Reg.	Art. 7(2)
☞	CJEU	(pending)	C-61/22	*R.L. v Landesh. Wiesbaden (DE)*	Citizens Dir.	Art. 4(3)
					ID Cards Reg.	Art. 3(5)

See further details on these cases in § 7

4 Loss of Rights

Cases on loss of residence rights or Union citizenship, expulsion and BREXIT

case law sorted in chronological order

	CJEU judgments						
☞	CJEU	9 June	2022,	C-673/20	*E.P. v Prefet (FR)*	WA	Art. 2+3+10+12
☞	CJEU	15 Mar.	2022,	C-85/21	*W.Y. v Steiermark (AT)*	TFEU	Art. 21
☞	CJEU	18 Jan.	2022,	C-118/20	*J.Y. v W. LReg. (AT)*	TFEU	Art. 20+21
☞	CJEU	29 Oct.	2021,	C-206/21	*X. v Prefet (FR)*	Citizens Dir.	Art. 7(1)(b)+8(4)
☞	CJEU	17 Dec.	2020,	C-398/19	*B.Y.*	TFEU	Art. 18+21
☞	CJEU	10 Sep.	2019,	C-94/18	*Chenchooliah*	Citizens Dir.	Art. 3+15+27+28+30+31
						TFEU	Art. 21
☞	CJEU	12 Mar.	2019,	C-221/17	*Tjebbes*	TFEU	Art. 20+21
☞	CJEU	8 May	2018,	C-82/16	*K.A. a.o.*	Citizens Dir.	Art. 27+28
						TFEU	Art. 20
☞	CJEU	2 May	2018,	C-331/16	*K. & H.F.*	Citizens Dir.	Art. 27(2)+28(3)
☞	CJEU	17 Apr.	2018,	C-316/16	*B. & Vomero*	Citizens Dir.	Art. 28(3)(a)
☞	CJEU	17 Sep.	2017,	C-184/16	*Petrea*	Citizens Dir.	Art. 27+32
☞	CJEU	13 July	2017,	C-193/16	*E.*	Citizens Dir.	Art. 27
☞	CJEU	13 Sep.	2016,	C-304/14	*C.S.*	TFEU	Art. 20
☞	CJEU	17 Mar.	2016,	C-161/15	*Bensada Benallal*	Citizens Dir.	Art. 28+30+31
☞	CJEU	16 Jan.	2014,	C-378/12	*Onuekwere*	Citizens Dir.	Art. 16
☞	CJEU	16 Jan.	2014,	C-400/12	*M.G.*	Citizens Dir.	Art. 28(3)(a)
☞	CJEU	4 June	2013,	C-300/11	*Z.Z.*	Citizens Dir.	Art. 30(2)+31
☞	CJEU	22 May	2012,	C-348/09	*P.I.*	Citizens Dir.	Art. 28(3)
☞	CJEU	23 Nov.	2010,	C-145/09	*Tsakouridis*	Citizens Dir.	Art. 28(3)
☞	CJEU	2 Mar.	2010,	C-135/08	*Rottmann*	TFEU	Art. 20
	CJEU pending cases						
☞	CJEU	(pending)		C-420/22	*N.W.*	TFEU	Art. 20
☞	CJEU	(pending)		C-684/22	*S.Ö.*	TFEU	Art. 20
☞	CJEU AG	26 Jan	2023,	C-689/21	*X v ministeriet (DK)*	Citizens Dir.	Art. 7(2)
	EFTA Advisory Opinions						
☞	EFTA	9 Feb.	2021,	E-1/20	*Kerim v Government (NO)*	Citizens Dir.	Art. 35

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

		CJEU judgments					
New	☞	CJEU	10 Mar. 2023,	C-248/22	*Z.K. & M.S.*	Citizens Dir.	Art. 2(2)+3(2)
	☞	CJEU	15 Sep. 2022,	C-22/21	*S.R.S. & A.A. v Justice (IE)*	Citizens Dir.	Art. 3
	☞	CJEU	7 Sep. 2022,	C-624/20	*E.K. v Stscr. (NL)*	TFEU	Art. 20
	☞	CJEU	5 May 2022,	C-451/19	*X.U. & Q.P. v Toledo (ES)*	TFEU	Art. 20
	☞	CJEU	14 Dec. 2021,	C-490/20	*V.M.A. v Pancharevo (BU)*	TFEU	Art. 18+20+21
	☞	CJEU	18 June 2020,	C-754/18	*Ryan Air*	Citizens Dir.	Art. 5(2)+20
	☞	CJEU	10 Sep. 2019,	C-94/18	*Chenchooliah*	Citizens Dir.	Art. 3+15+27+28+30+31
						TFEU	Art. 21
	☞	CJEU	26 Mar. 2019,	C-129/18	*S.M.*	Citizens Dir.	Art. 2(2)+3(2)
	☞	CJEU	12 July 2018,	C-89/17	*Banger*	Citizens Dir.	Art. 3(2)+15(1)
						TFEU	Art. 21
	☞	CJEU	27 June 2018,	C-230/17	*Deha-Altiner & Ravn*	TFEU	Art. 21(1)
	☞	CJEU	27 June 2018,	C-246/17	*Diallo*	Citizens Dir.	Art. 10(1)
	☞	CJEU	5 June 2018,	C-673/16	*Coman a.o.*	Citizens Dir.	Art. 2(2)(a)+3
	☞	CJEU	14 Nov. 2017,	C-165/16	*Lounes*	Citizens Dir.	Art. 3(1)+7+16
						TFEU	Art. 21
	☞	CJEU	10 May 2017,	C-133/15	*Chavez-Vilchez*	TFEU	Art. 20
	☞	CJEU	13 Sep. 2016,	C-165/14	*Rendón Marín*	TFEU	Art. 20+21
	☞	CJEU	13 Sep. 2016,	C-304/14	*C.S.*	TFEU	Art. 20
	☞	CJEU	26 July 2015,	C-218/14	*Kuldip Singh a.o.*	Citizens Dir.	Art. 7(1)(b)+13(2)(a)
	☞	CJEU	18 Dec. 2014,	C-202/13	*Sean McCarthy*	Citizens Dir.	Art. 5+10+35
	☞	CJEU	12 Mar. 2014,	C-456/12	*O. & B.*	Citizens Dir.	Art. 3+6+7
						TFEU	Art. 20+21
	☞	CJEU	12 Mar. 2014,	C-457/12	*S. & G.*	Citizens Dir.	Art. 3+6+7
						TFEU	Art. 20+21
	☞	CJEU	16 Jan. 2014,	C-423/12	*Reyes*	Citizens Dir.	Art. 2(2)(c)
	☞	CJEU	8 May 2013,	C-529/11	*Alarape & Tijani*	Citizens Dir.	Art. 10
	☞	CJEU	8 May 2013,	C-87/12	*Ymeraga*	Citizens Dir.	Art. 3(1)
						TFEU	Art. 20
	☞	CJEU	6 Dec. 2012,	C-356/11	*O., S. & L.*	Citizens Dir.	Art. 3(1)
						TFEU	Art. 20
	☞	CJEU	8 Nov. 2012,	C-40/11	*Iida*	TFEU	Art. 20
	☞	CJEU	6 Sep. 2012,	C-147/11	*Czop & Punakova*	Citizens Dir.	Art. 16
						Citizens Dir.	Art. 10
	☞	CJEU	5 Sep. 2012,	C-83/11	*Rahman a.o.*	Citizens Dir.	Art. 3(2)
	☞	CJEU	15 Nov. 2011,	C-256/11	*Dereci*	TFEU	Art. 20
	☞	CJEU	5 May 2011,	C-434/09	*Shirley McCarthy*	TFEU	Art. 21
	☞	CJEU	8 Mar. 2011,	C-34/09	*Ruiz Zambrano*	TFEU	Art. 20
	☞	CJEU	19 Dec. 2008,	C-551/07	*Deniz Sahin*	Citizens Dir.	Art. 3+6+7
	☞	CJEU	25 July 2008,	C-127/08	*Metock*	Citizens Dir.	Art. 3(1)
		CJEU pending cases					
	☞	CJEU	(pending)	C-607/21	*X.X.X. v State (BE)*	Citizens Dir.	Art. 2(2)(d)
	☞	CJEU AG	16 Jun 2022,	C-459/20	*X. v Stscr. (NL)*	TFEU	Art. 20

See further details on these cases in § 7

6 Procedural Rights

Cases on procedural rights, guarantees and miscellaneous

case law sorted in chronological order

CJEU judgments

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

CJEU pending cases

☞	CJEU	(pending)	C-280/22	*Kinderrechtencoalitie*	TFEU	Art. 16+21
					ID Cards Reg.	Art. 3(5)+6+14
New ☞	CJEU	(pending)	C-62/23	*Pedro Francisco*	Citizens Dir.	Art. 27

See further details on these cases in § 7

7 Case Law

§ 7.1 CJEU judgments
§ 7.2 CJEU pending cases
§ 7.3 EFTA advisory opinions
§ 7.4 EFTA pending cases

case law sorted in alphabetical order

7.1 CJEU Judgments

☞ CJEU 15 July 2021, C-535/19 ***A. v Min. (LV)*** EU:C:2021:595
AG 11 Feb 2021 Subject: Equal Treatment

* Art. 7(1)(b)+24 Dir. 2004/38

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

* *The Court is asked whether publicly funded health care can be classed as 'sickness benefits'. And if so, whether MS are permitted to refuse Union citizens who do not, at that time, have worker status, ifsuch benefits — which are granted to their nationals and the family members of a Union citizen with worker status who are in the same situation — in order to avoid disproportionate requests for social benefits that will affect the availability of health care.*
The CJEU confirmed the right of economically inactive EU citizens who have exercised their free movement rights, to be affiliated to the compulsory public sickness insurance system of their host-Member State. The difference in treatment between, on the one hand, an Italian national A, who was lawfully resident in Latvia on the basis of Art. 7(1)(b) Dir. 2004/38 and who could rely on Art. 24(1), and, on the other hand, economically inactive Latvian nationals, the CJEU found cannot be justified by a legitimate objective, i.e. the protection of public finances, and is not proportionate. However, to prevent economically inactive EU citizens from becoming an unreasonable burden on the public finances of the host-MS access to a MS's compulsory public health system does not have to come free of charge

☞ CJEU 6 Oct. 2021, C-35/20 ***A. v Syyttäjä (FI)*** EU:C:2021:813
AG 3 Jun 2021 EU:C:2021:456
* Art. 21(1) TFEU Subject: Exit and Entry
Ref. from Korkein oikeus, Finland, 24 Jan. 2020
* *The right of Union citizens to free movement must, be interpreted as not precluding national legislation by which a MS obliges its nationals, on pain of criminal penalties, to carry a valid identity card or passport when travelling to another MS, by whatever means of transport and by whatever route, provided that the detailed rules for those penalties comply with the general principles of EU law, including those of proportionality and non-discrimination.*
The right of Union citizens to freedom of movement must be interpreted as not precluding national legislation by which a MS requires its nationals to carry a valid identity card or passport, on pain of criminal sanctions, when they enter its territory from another MS, provided that that obligation does not make the right of entry conditional and that the detailed rules on penalties for failure to comply with that obligation comply with the general principles of EU law, including those of proportionality and non-discrimination. A journey to the MS concerned from another MS made on board a pleasure boat and through international waters is listed, under the conditions laid down in the second paragraph of point 3.2.5 of Annex VI to that regulation, among the cases in which the submission of such a document may be requested.
Art. 21(1) TFEU and Artt. 4 + 36 of Dir. 2004/38, read in the light of Art. 49(3) of the Charter, must be interpreted as precluding rules on criminal sanctions by which a MS makes the crossing of its national border without a valid identity card or passport punishable by a fine which may, by way of example, amount to 20% of the offender's net monthly income, where such a fine is not proportionate to the seriousness of the offence, which is of a minor nature.
The CJEU confirmed its consistent case law that MSs may oblige their own nationals to carry a valid identity card or passport when they cross the internal border in order to travel to and from another MS. Violations of this obligation may be penalised under criminal law as long as the sanction is proportional and non-discriminatory. A financial sanction that amounts 20% of the offender's net monthly income, the Court labels as disproportionate to the seriousness of the offence, which it qualifies as 'minor by nature'.

☞ CJEU 22 Jan. 2020, C-32/19 ***A.T.*** 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.*
The CJEU ruled that for the purpose of acquiring a right of permanent residence before completion of a continuous period of 5 years of residence in Art. 17(1)(a) Dir. 2004/38, workers must satisfy cumulatively the two conditions set out in that provision, namely:
(a) they must have worked in their host MS during - at least - the preceding 12 months; and
(b) they must have resided in that MS continuously for more than 3 years.
The mere fact that a worker, at the time that she stops working, has reached the legal age that entitles her to an old age pension in the host MS is irrelevant in the context of Art. 17(1)(a) Dir. 2004/38.

☞ CJEU 17 Nov. 2011, C-434/10 ***Aladzhov*** EU:C:2011:750
AG 6 Sep 2011 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*** EU:C:2013:290
AG 15 Jan 2013 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 (GC) 15 Sep. 2015, C-67/14 ***Alimanovic*** EU:C:2015:597
AG 26 Mar 2015 EU:C:2015:210
* Art. 14(4)+24(2) Dir. 2004/38 Subject: Residence
Art. 4 Reg. 492/2011 and Equal Treatment
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*** EU:C:2017:209
* Art. 28 Dir. 2004/38 Subject: Equal Treatment
Art. 267 TFEU and Procedural Rights
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 (GC) 17 Apr. 2018, C-316/16 ***B. & Vomero*** EU:C:2018:296
AG 24 Oct 2017 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 (GC) 17 Dec. 2020, C-398/19 ***B.Y.*** EU:C:2020:1032
AG 24 Sep 2020 EU:C:2020:748
* Art. 18+21 TFEU Subject: Residence
Ref. from Kammergericht Berlin, Germany, 23 May 2019 and Loss of Rights
* *The CJEU clarifies the obligations of a MS (Germany) when a third-State (Ukraine) makes an extradition request concerning an EU citizen (Ukrainian-Romanian national) resident on its territory. Firstly, the CJEU ruled that Arts 18 and 21 TFEU are applicable to the extradition request concerning an EU citizen irrespective of the moment when he acquired that citizenship.*
Secondly, the MS receiving the extradition request must inform the EU citizen's State of nationality of the third State's request, including all the elements of fact and law communicated by the third State and of any changes in the situation of the requested person that may be relevant to the possibility of issuing a European Arrest Warrant (EAW). Where the State of nationality fails to issue an EAW within a reasonable time limit, as set by the requested State, the latter may extradite the EU citizen without having to wait for the State of nationality to waive an EAW through a formal decision.
Thirdly, Arts 18 and 21 TFEU only oblige the requested MS to decide whether surrender to the State of nationality is less prejudicial EU citizen's right to free movement than extradition to a third State. They do not oblige the requested State to refuse extradition and conduct the criminal prosecution itself, even if this possibility exists under national law.

☞ CJEU 2 Oct. 2019, C-93/18 ***Bajratari*** EU:C:2019:809
AG 19 Jun 2019 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
* *In this case the CJEU ruled that a minor Union citizen can have sufficient resources (within the meaning of Art. 7(1)(b) Citizens Directive) even if these resources are derived from an income obtained from unlawful employment of his father. This judgment implies that the focus of 'sufficient resources' is on the quantity, i.e. sufficient not to become an unreasonable burden on the host-Member States financial resources. The origin of these resources is irrelevant. Thus, there is no obligation to make a distinction between lawful and unlawful employment or the origin of these resources. Also, the qualification of lawful or unlawful employment has no bearing on the withdrawal or granting of the right of residence in the context of the Citizens directive.*

☞ CJEU 12 July 2018, C-89/17 ***Banger*** EU:C:2018:570
AG 10 Apr 2018 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*** 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*** EU:C:2016:175
AG 13 Jan 2016 EU:C:2016:3
* Art. 28+30+31 Dir. 2004/38 Subject: Loss of Rights
Ref. from Conseil d'État, France, 9 Apr. 2015 and Procedural Rights
* *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*** EU:C:2016:949
AG 2 Jun 2016 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*** EU:C:2013:565
AG 29 May 2013 EU:C:2013:337
* Art. 7(1)(b) Dir. 2004/38 Subject: Residence
Ref. from Oberster Gerichtshof, Austria, 19 Mar. 2012 and Equal Treatment
* *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*** EU:C:2012:608
AG 21 Jun 2012 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 15 July 2021, C-709/20 ***C.G. v N-IRL (UK)*** EU:C:2021:602
AG 24 Jun 2021 EU:C:2021:515
* Art. 24 Dir. 2004/38 Subject: Equal Treatment
Ref. from Appeal Tribunal for Northern Ireland, UK, 30 Dec. 2020
* *This case concerns an EU citizen in Northern Ireland who holds a temporary leave to remain, which does not give access to social assistance. According to the Advocate General the question referred to the CJEU concerns, in essence, the protection owed to an EU citizen with respect to access to social assistance, in application of the principle of equal treatment, when the host MS has granted her a right of residence, based on national law, where the conditions in national law are more favourable than those in Directive 2004/38.*
The AG had advised the CJEU to qualify the refusal of social assistance by a MS to an economically inactive national of another MS on the sole basis of his or her right of residence, as indirect discrimination on the ground of nationality and instruct the referring court to ascertain whether this is the case and if so, whether the national legislation is disproportional as it goes beyond what is necessary to maintain the equilibrium of the social assistance system of the host MS.
The CJEU, however, decided otherwise. It found that the UK legislation on Universal Credit, which deprives Union citizens who have a right to reside on the basis of the scheme established in the context of Brexit but who do not satisfy all of the conditions of Dir. 2004/38, from this benefit is compatible with the principle of equal treatment as guaranteed by EU law. The CJEU instructed the competent national authorities to check whether a refusal to grant social assistance under this scheme does not expose the Union citizen and his or her children to a risk of an infringement of their rights enshrined in the Charter, in particular the right to respect for human dignity and private and family life and the rights of the child. In the context of that examination, those authorities may take into account all means of assistance provided for by national law from which the citizen concerned and her children are actually entitled to benefit.

☞ CJEU (GC) 13 Sep. 2016, C-304/14 ***C.S.*** EU:C:2016:674
AG 4 Feb 2016 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 (GC) 10 May 2017, C-133/15 ***Chavez-Vilchez*** EU:C:2017:354
AG 8 Sep 2016 EU:C:2016:659
* Art. 20 TFEU Subject: Residence and Family Members
Ref. from Centrale Raad van Beroep, 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 (GC) 10 Sep. 2019, C-94/18 ***Chenchooliah*** EU:C:2019:693
AG 21 May 2019 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.
In this case the question is: what procedural rights do TCN family members of EU citizens enjoy in expulsion cases when they no longer qualify as a beneficiary of Dir. 2004/38/EC because the EU citizen from which they derive their rights no longer resides in the host State?
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.
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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*** EU:C:2016:436
AG 6 Oct 2015 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*** EU:C:2016:396
AG 26 Jan 2016 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 AT*** EU:C:2012:605
AG 6 Sep 2012 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 BE*** 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*** EU:C:2012:346
AG 16 Feb 2012 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 (GC) 5 June 2018, C-673/16 ***Coman a.o.*** EU:C:2018:385
AG 11 Jan 2018 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*** 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.

New ☞ CJEU 24 Mar. 2023, C-30/22 ***D.V.*** EU:C:2023:259

Art. 30(2)+31(1) WA Subject: Equal Treatment

Ref. from Administrativen sad Veliko Tarnovo, Bulgaria, 12 Jan. 2022

* *The Bulgarian court has raised questions concerning the interpretation of Art. 30 and 31 of the Withdrawal Agreement. The CJEU ruled that the objective of the Withdrawal Agreement (WA) with the United Kingdom (UK) is to protect rights that have been acquired before the transitional period ended that involve the nationals, legislation or territory of the UK. The case concerns a Bulgarian national who had worked in the UK for a number of years and returns to Bulgaria after the transitional period has ended, where she applies for unemployment benefits. The Bulgarian authorities have refused to grant her an unemployment benefit, stating that the WA does not apply to her situation as she has interrupted her cross-border situation by returning to Bulgaria after the transitional period had expired. The CJEU first establishes that Art. 31(1) WA explicitly provides that Reg. 883/2004 applies to beneficiaries of Title II WA. It then considers whether that regulation would have applied to D.V. if the UK had not left the EU. According to Art. 65(5)(a) Reg. 883/2004 eligibility for an unemployment benefit can be conditional on having completed periods of insurance in the MS of which the legislation on benefits applies, as is the case in Bulgaria. As D.V. has not completed periods of insurance in Bulgaria after her return to that MS, she cannot rely on Art. 65(2) Reg. 883/2004 to claim unemployment benefits in Bulgaria.*

☞ CJEU 19 Sep. 2019, C-544/18 ***Dakneviciute*** 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.*

At stake is the issue of a self-employed mother. This case confirms the Court's approach of treating employed and self-employed persons in a unitary manner as it clarifies that self-employed status can be retained by a previously self-employed new mother. Dakneviciute is the logical continuation of the Saint Prix case where the court found that worker status can be retained based on Art. 45 TFEU in situations not expressly mentioned in Art. 7(3) of Dir. 2004/38 where the EU citizen returns to work within a reasonable period after the birth of her child. Self-employed status can be retained based on Art. 49 TFEU in situations not expressly mentioned in Art. 7(3) of Dir. 2004/38 where the new mother returns either 'to the same or another self-employment or employment within a reasonable period after the birth of her child'.

☞ CJEU (GC) 11 Nov. 2014, C-333/13 ***Dano a.o.*** EU:C:2014:2358

AG 20 May 2014 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*** 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 28 Apr. 2022, C-86/21 ***Delia*** EU:C:2022:310

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

Art. 45 TFEU

Ref. from Tribunal Superior de Justicia de Castilla y Leon , Spain, 4 Feb. 2021

* *In **Delia** (C-86/21) the Court struck down Spanish legislation that prevents professional experience gained by nurses such as Ms Delia in other national health services (i.e., Portugal) from being taken into account for the purposes of calculating length of service to achieve career progression on the grounds that it constitutes a restriction of the free movement of workers (combined reading of Art. 45 TFEU and Art. 7 of Reg. 492/2011). Such a restriction can only be justified if it serves to fulfil an objective in the general interest, makes it possible to ensure the attainment of that objective, and does not go beyond what is necessary to achieve that objective.*

☞ CJEU (GC) 6 Oct. 2015, C-650/13 ***Delvigne*** EU:C:2015:118
AG 24 Sep 2014 EU:C:2014:2240
* Art. 20(2)(b) TFEU Subject: Equal Treatment
Ref. from Centrale Raad van Beroep, Netherlands, 27 June 2013
* *Article 39(2) and the last sentence of Article 49(1) 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 excludes, by operation of law, from those entitled to vote in elections to the European Parliament persons who, like the applicant in the main proceedings, were convicted of a serious crime and whose conviction became final before 1 March 1994.*

☞ CJEU (GC) 19 Dec. 2008, C-551/07 ***Deniz Sahin*** 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*** EU:C:2016:955
AG 9 Jun 2016 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 (GC) 15 Nov. 2011, C-256/11 ***Dereci*** EU:C:2011:734
AG 29 Sep 2011 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*** EU:C:2018:499
AG 7 Mar 2018 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*** EU:C:2011:498
AG 17 Feb 2011 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.*** 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 (GC) 7 Sep. 2022, C-624/20 ***E.K. v Stscr. (NL)*** EU:C:2022:639
AG 17 Mar 2022 EU:C:2022:194
* Art. 20 TFEU Subject: Residence and Family Members
Ref. from Raad van State, Netherlands, 24 Nov. 2020
* *Art. 3(2)(e) LTR Dir. must be interpreted as meaning that the concept of residence 'solely on temporary grounds', which is referred to therein, is an autonomous concept of EU law, which must be interpreted uniformly throughout the MSs.*
Art. 3(2)(e) LTR Dir. must be interpreted as meaning that the concept of residence 'solely on temporary grounds', which is referred to therein, does not cover the residence of a third-country national under Art. 20 TFEU within the territory of the Member State of which the Union citizen concerned is a national.
This case concerns the right of a parent of minor EU citizens resident in their MS of nationality who have been issued an Art. 20 TFEU status right to long term residence after five years uninterrupted residence. The CJEU first establishes that, as there is no reference to national law, 'temporary by nature' in Art. 3(2)(e) Directive 2003/109 is an autonomous Union law concept. Then it holds that the right of residence under Art. 20 TFEU does not qualify as 'temporary by nature'. Therefore parents of minor EU citizens are eligible for the long-term residence status after five years of uninterrupted residence in the Member State of which their minor EU citizen child is a national.

☞ CJEU 9 June 2022, C-673/20 ***E.P. v Prefet (FR)*** EU:C:2022:449
AG 22 Feb 2022 EU:C:2022:104
Art. 2+3+10+12 WA Subject: Loss of Rights
Ref. from Tribunal judiciaire d'Auch, France, 17 Nov. 2020
* *1. Art. 9+50 TEU and Art. 20 to 22 TFEU, read in conjunction with the Brexit Agreement, must be interpreted as meaning that, as of the withdrawal of the UK from the EU, on 1 February 2020, nationals of that State who exercised their right to reside in a MS before the end of the transition period no longer enjoy the status of citizen of the Union, nor, more specifically, by virtue of Art. 20(2)(b)+22 TFEU, the right to vote and to stand as a candidate in municipal elections in their MS of residence, including where they are also deprived, by virtue of the law of the State of which they are nationals, of the right to vote in elections held by that State.*
2. The examination of the other questions referred for a preliminary ruling has not revealed any factor capable of affecting the validity of Council Decision (EU) 2020/135 of 30 January 2020 on the Brexit Agreement.
In this case the Court rules that Arts. 9 and 50 TEU and Arts. 0-22 TFEU read in conjunction with the Withdrawal Agreement concluded between the EU and the UK are to be interpreted as meaning that UK citizens have lost their status as EU citizen when the UK left the EU on 1 February 2020 as they are no longer nationals of an EU Member State. In this context it is irrelevant whether they have exercised free movement rights in the past. Loss of the status of EU citizenship also entails the loss of the right to vote for and stand as a candidate for the EP and in municipal elections of the host-Member State; no proportionality test is required in this context. Art. 18 TFEU no longer covers the situation of the nationals of a State that has withdrawn its membership of the EU as from the moment of the withdrawal the citizens of that State are third-country nationals and according to consistent case law Art. 18 TFEU does not apply to the situation of third-country nationals. As far as the arguments put forward, challenging the validity of the Withdrawal Agreement, the Court does not find any reason to assume that the validity of the Decision approving that Agreement is affected.

☞ CJEU 22 June 2021, C-719/19 ***F.S. v Stscr. (NL)*** EU:C:2021:506
AG 10 Feb 2021 EU:C:2021:104
* Art. 15(1)+6(1) Dir. 2004/38 Subject: Residence
Ref. from Raad van State, Netherlands, 30 Sep. 3019
* *Art. 15(1) Citizens Directive must be interpreted as meaning that a decision to expel a citizen of the Union from the territory of the host MS adopted on the basis of that provision on the basis that that citizen is no longer a citizen of the Union is not fully complied with. a temporary right of residence in that territory under that Directive merely because that Union citizen has physically left that territory within the period of voluntary departure laid down in that decision.*
In order to be eligible for a new right of residence under Art. 6(1) of that directive in that same territory, the Union citizen in respect of whom such an expulsion decision has been taken must not only have physically left the territory of the host Member State, but have also effectively and effectively ended his stay in that territory, so that on his return to that territory it cannot be assumed that his stay is in reality a continuation of his previous stay in that same territory.
It is for the referring court to determine whether that is the case, taking into account all the specific circumstances which characterize the specific situation of the Union citizen concerned. If such verification shows that the Union citizen has not effectively and effectively terminated his temporary stay in the territory of the host Member State, that Member State is not required to adopt a new expulsion decision on the basis of the same facts as those which led to the expulsion decision already taken with regard to the citizen of the Union, but may rely on the latter decision in order to oblige that citizen to leave his territory.

☞ CJEU (GC) 18 Nov. 2008, C-158/07 ***Föster*** EU:C:2008:630
AG 10 Jul 2008 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*** EU:C:2017:432
AG 24 Nov 2016 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 17 Dec. 2020, C-710/19 ***G.M.A.*** EU:C:2020:1037
AG 17 Sep 2020 EU:C:2020:739
* Art. 14(4)(b)+15+31 Dir. 2004/38 Subject: Residence
Art. 45 TFEU
Ref. from Conseil d'État, Belgium, 12 Sep. 2019
* *The CJEU confirms and clarifies its settled case law Antonissen (C-292/89) and Saint Prix (C-507/12) on 'a reasonable of time to seek employment that corresponds with their occupational qualifications' within the meaning of Art. 45 TFEU. It reiterates that art. 14(4)(b) of Dir. 2004/38 sees to the right to remain as a jobseeker (Alimanovic, C -67/14), and adds to this finding that Art. 6 of that Directive applies to all EU Citizens during the first three months of their stay in a MS. From the moment of registration, a jobseeker enjoys 'a reasonable period' to become acquainted with potentially suitable employment opportunities and to take the necessary steps to obtain employment. The CJEU qualifies a six-month period (Antonissen) as sufficient 'not [to] call into question the effectiveness of Art. 45 TFEU'. During this initial period, MSs may only require evidence that employment is still being sought. On expiry of this period, MSs may also require evidence that there is a genuine chance that the jobseeker will be engaged. National courts must take the labour market situation that corresponds with the jobseekers qualifications into consideration. Refusals for jobs that do not match these qualifications may not be classed as evidence that the EU citizen does not satisfy the conditions in Art. 14 (4)(b) of Dir. 2004/38.*

☞ CJEU 8 Dec. 2022, C-731/21 ***G.V. v Caisse (LU)*** EU:C:2022:969
* Art. 7(2) Reg. 492/2011 Subject: Equal Treatment
* *Art. 45 TFEU and Art. 7 of Reg. on Freedom of Movement for Workers must be interpreted as precluding legislation of a host MS which provides that the grant, to the surviving partner of a partnership that was validly entered into and registered in another MS, of a survivor's pension due on account of the exercise, in the first MS, of a professional activity by the deceased partner, is subject to the condition that the partnership was first recorded in the register kept by that State.*

☞ CJEU 25 Feb. 2016, C-299/14 ***Garcia-Nieto*** EU:C:2016:114
AG 4 Jun 2015 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*** 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*** EU:C:2017:1004
AG 26 Jul 2017 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*** 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*** EU:C:2014:2185
AG 5 Jun 2014 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 (GC) 16 Dec. 2008, C-524/06 ***Huber*** EU:C:2008:724
AG 3 Apr 2008 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 (GC) 23 Feb. 2010, C-310/08 ***Ibrahim*** EU:C:2010:80
AG 20 Oct 2009 EU:C:2009:641
* Art. 10 Reg. 492/2011 Subject: Residence
Ref. from Court of Appeal (England & Wales) (Civil Division), UK, 11 July 2008
* *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*** EU:C:2012:691
AG 15 May 2012 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 3 Nov. 2022, C-32/21 ***Institut National*** EU:C:2022:861
Art. 2+3+10+12 WA Subject: Equal Treatment
Ref. from Tribunal Judiciaire de Perpignan , France, 19 Jan. 2021
* *Non-discrimination on grounds of nationality.*

☞ CJEU 18 Jan. 2022, C-118/20 ***J.Y. v W. LReg. (AT)*** EU:C:2022:34
AG 1 Jul 2021 EU:C:2021:530
* Art. 20+21 TFEU Subject: Loss of Rights
Ref. from Verwaltungsgerichtshof, Austria, 13 Feb. 2020
* *This case concerns an Estonian national who renounced her nationality and therefore her EU citizenship in order to acquire Austrian nationality. Upon renunciation of her Estonian nationality, **J.Y.** became stateless. The Austrian authorities revoked the assurance given to the applicant that she would be granted Austrian nationality and rejected her application on grounds that she committed several road offences prior to the assurance being given to her.*
The CJEU ruled:
(1) The situation of a person who, having the nationality of one MS only, renounces that nationality and loses, as a result, his or her status of citizen of the Union, with a view to obtaining the nationality of another MS, following the assurance given by the authorities of the latter MS that he or she will be granted that nationality, falls, by reason of its nature and its consequences, within the scope of EU law where that assurance is revoked with the effect of preventing that person from recovering the status of citizen of the Union.
(2). Article 20 TFEU must be interpreted as meaning that the competent national authorities and, as the case may be, the national courts of the host MS are required to ascertain whether the decision to revoke the assurance as to the grant of the nationality of that MS, which makes the loss of the status of citizen of the Union permanent for the person concerned, is compatible with the principle of proportionality in the light of the consequences it entails for that person's situation. That requirement of compatibility with the principle of proportionality is not satisfied where such a decision is based on administrative traffic offences which, under the applicable provisions of national law, give rise to a mere pecuniary penalty.

☞ CJEU 19 July 2008, C-33/07 ***Jipa*** EU:C:2008:396
AG 14 Feb 2008 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 (GC) 6 Oct. 2020, C-181/19 ***Jobcenter Krefeld***
AG 14 May 2020 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
* *In this case the CJEU ruled that a national of another MS and his or her children, who have a right to reside on the basis of Art. 10 Reg. 492/2011 can rely on the principle of equal treatment in Art. 7(2) when claiming social advantages, even if the parent has lost the status of mobile worker.*
The derogation from equal treatment and social assistance for jobseekers in Art. 24(2) Dir. 2004/38 does not apply to those who derive a right to reside from Art. 10 Reg. 492/2011, even if they also derive a right to reside as a jobseeker from Art. 14(4)(b) of Dir. 2004/38.
Art. 4 Reg. 883/2004, read together with Artt. 3(3) and 70(2), also preclude legislation excluding persons lawfully residing on the basis of Article 10 Reg. 492/2011 from special non-contributory cash benefits within the meaning of Reg. 883/2004. This is also the case if the benefits constitute social assistance within the meaning of Dir. 2004/38.

☞ CJEU (GC) 2 May 2018, C-331/16 ***K. & H.F.*** EU:C:2018:296
AG 14 Dec 2017 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 (GC) 8 May 2018, C-82/16 ***K.A. a.o.*** EU:C:2018:308
AG 26 Oct 2017 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 24 June 2022, C-2/21 ***K.S. & S.V.D.*** EU:C:2022:502
* Art. 4(3) Dir. 2004/38 Subject: Exit and Entry
Art. 20+21 TFEU
Ref. from Wojewódzki Sąd Adm. Krakowie , Poland, 9 Dec. 2020
* *Art. 20+21 TFEU, read in conjunction with Art. 7+24 Charter, must be interpreted as meaning that, in the case of a minor child who is a citizen of the Union and whose birth certificate, issued by the authorities of a Member State, designates as that child's parents two persons of the same sex, the Member State of which that child is a national (i) is obliged to issue to that child an identity card or a passport without requiring the prior transcription of a birth certificate of that child into the national register of civil status, and (ii) is obliged to recognise, as is any other Member State, the document from another Member State that permits that same child to exercise without impediment, with each of those two persons, his or her right to move and reside freely within the territory of the Member States.*
*In this case the CJEU confirms its ruling in **V.M.A.** (C-490/20) that the MS of which a child is a national has to acknowledge as the parents of that child the parents identified in the child's birth certificate issued by the MSs in which that child was born even if the MS of which the child is a national does not accept same sex parenthood, as the transcription of the birth certificate is a prerequisite to issue identity documents.*

☞ CJEU 11 Feb. 2021, C-407/19 ***Katoen Natie*** EU:C:2021:107
AG 10 Sep 2020 EU:C:2020:707
* Art. 45 TFEU Subject: Equal Treatment
Ref. from Raad van State, Belgium, 24 May 2019
joined cases: C-407/19 + C-471/19
* *The CJEU decided that (Belgian) legislation which reserves dock work to recognised workers may be compatible with EU law provided it is aimed at ensuring safety in port areas and preventing workplace accidents. This legislation constitutes not only a restriction on both the freedom of establishment and the freedom to provide services, guaranteed by Arts 49 and 56 TFEU, but also on the free movement of workers under Art. 45 TFEU in so far as it is liable to have a dissuasive effect on employers and workers from other MSs. The CJEU examines whether the different parts of this legislation are necessary and appropriate for attaining the objective pursued.*

☞ CJEU 10 Oct. 2019, C-703/17 ***Krah*** EU:C:2019:850
AG 23 May 2019 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.
The CJEU ruled in this case on indirect discrimination. The question was whether previous professionally-relevant periods of services of a member of the teaching staff of a university in a MS can be recognized if these are not worked in that MS but elsewhere in the Union. The university of Vienna decided not to count this period of experience of more than 13 years in full but limited this period to 4 years. The Court ruled that such a calculus would discriminate EU citizens and that such a national provision is precluded (Art. 45 TFEU).
In addition the Court made it clear that such previous professionally-relevant periods of services could only be taken into account if these services are identical or equivalent to the services performed, excluding periods which can only be qualified as 'useful' (Art. 7(1) Reg. 492/2011).

☞ CJEU (GC) 26 July 2015, C-218/14 ***Kuldip Singh a.o.*** EU:C:2015:476
AG 7 May 2015 EU:C:2015:306
* Art. 7(1)(b)+13(2)(a) Dir. 2004/38 Subject: Residence
Ref. from High Court, Ireland, 5 May 2014 and Family Members
* *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.*** 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 (GC) 7 Oct. 2010, C-162/09 ***Lassal*** EU:C:2010:592
AG 11 May 2010 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 (GC) 14 Nov. 2017, C-165/16 ***Lounes*** EU:C:2017:862
AG 30 May 2017 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 24 Nov. 2022, C-638/20 ***M.C.M.*** EU:C:2022:916
AG 7 Apr 2022 EU:C:2022:285
* Art. 7(2) Dir. 2004/38 Subject: Equal Treatment
Art. 45 TFEU
Ref. from National Board of Appeal for Student Aid, Sweden, 25 Nov. 2020
* *The applicant is the Swedish child of a Swedish worker. MCM was born and lived his entire life in Spain where his father worked for 20 years. In 2011, the father returned to Sweden to work but the child remained in Spain. The child's request for financial aid from Sweden to pursue his studies abroad (in Spain) was rejected because under Swedish law the child had to be resident in Sweden or show that he had a connection with Sweden. The CJEU ruled that a worker cannot rely on Art. 7 of Reg. 492/2011 to claim equal treatment in respect of social benefits (in casu, student finance) against the authorities of his state of origin. Unequal treatment experienced by a worker in his state of origin may nonetheless be covered by Art. 45 TFEU which has a larger scope than Art. 7 of Reg. 492/2011 since it prohibits 'any other measure liable to constitute an obstacle to freedom of movement for workers' (para 29). The CJEU agrees with AG Medina that workers can rely on Art. 45 TFEU against their state of nationality to challenge measures liable to prevent or deter them from leaving their country of origin (para 32).*
The Court found that the Swedish legislation on the exportation of study finance could not be said to make the exercise of free movement rights less desirable since the award of the study finance would depend not only on the conduct of the father but also on a succession of hypothetical and uncertain future factors (para 34). Therefore, it ruled that the Swedish legislation cannot be interpreted as liable to hinder or make less attractive the exercise of the right to work by the father of the child. The Court's reasoning is based on the fact that the child had lived since birth in the host Member State and that the condition to show a connection with Sweden applied in respect of other nationals who did not meet the residence condition.
The CJEU ruled: Art. 45 TFEU and Art. 7(2) of Free Movement of Workers Regulation must be interpreted as meaning that those provisions do not preclude legislation of a MS by which the grant of financial aid for the pursuit of studies in the host MS, to the child of a person who has left the host MS in which that person worked in order to return to live in the first MS, of which he or she is a national, is made subject to the requirement that the child has a connection with the MS of origin, in a situation where:
** first, the child has lived since birth in the host MS and,*
** second, the MS of origin makes other nationals not satisfying the residence requirement and who apply for such financial aid to study in another MS subject to the requirement of the existence of a connection.*

☞ CJEU 16 Jan. 2014, C-400/12 ***M.G.*** 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.*** 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*** EU:C:2015:118
AG 24 Sep 2014 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 (GC) 25 July 2008, C-127/08 ***Metock*** EU:C:2008:449
AG 11 Jun 2008 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.*** EU:C:2016:487
AG 14 Apr 2016 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.*** EU:C:2014:135
AG 12 Dec 2013 EU:C:2013:837
* Art. 3+6+7 Dir. 2004/38 Subject: Residence
Art. 20+21 TFEU and Family Members
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.*** EU:C:2012:776
AG 27 Sep 2012 EU:C:2012:595
* Art. 3(1) Dir. 2004/38 Subject: Residence
Art. 20 TFEU and Family Members
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*** EU:C:2014:2068
AG 14 May 2014 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*** EU:C:2014:13
AG 3 Oct 2013 EU:C:2013:640
* Art. 16 Dir. 2004/38 Subject: Residence
Ref. from Upper Tribunal (Immigration and Asylum Chamber), UK, 3 Aug. 2012 and Loss of Rights
* *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 June 2021, C-718/19 ***Ordre des barreaux*** EU:C:2021:505
AG 10 Feb 2021 EU:C:2021:103
* Art. 20+21 TFEU Subject: Equal Treatment
Ref. from Cour Constitutionelle, Belgium, 27 Sep. 2019
* *Arts. 20 and 21 TFEU and the Citizens Directive do not preclude national regulations which apply to Union citizens and members of their families, during the period allotted to them to leave the territory of the host MS following the adoption of an expulsion decision taken in their regard for reasons of public order or during the extension of this period. The also do not preclude provisions aimed at avoiding the risk of absconding which are similar to those which, with regard to nationals of third countries, aim to transpose into national law Art. 7(3) Return Directive (2008/115), provided that the first provisions respect the general principles provided for in Art. 27 of Directive 2004/38 and that they are no less favorable than the second.*
However, these Arts. do oppose national regulations, which apply to Union citizens and members of their families, who, after the expiration of the allotted time limit or of the extension of that time limit, have not complied with a decision of removal taken against them for reasons of public order or public security, a detention measure for a maximum period of eight months for the purpose of removal.
This period (of 8 months) being identical to that applicable, in national law, to third-country nationals who have not complied with a return decision taken for such reasons, under Art. 6(1) Return Directive (2008/115).

☞ CJEU (GC) 22 May 2012, C-348/09 ***P.I.*** EU:C:2012:300
AG 6 Mar 2012 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*** EU:C:2017:684
AG 27 Apr 2017 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 (GC) 6 Sep. 2016, C-182/15 ***Petruhhin*** EU:C:2016:630
AG 10 May 2016 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*** EU:C:2013:524
AG 21 Feb 2013 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.*** EU:C:2020:119
AG 21 Nov 2019 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.
The CJEU was asked to interpret the implications of a refusal to grant residence to a third-country national family member (spouse) of an EU citizen when Spanish domestic legislation requires that spouses live together. This is a follow up on K.A. (C-82/16) in which the CJEU ruled that an application for residence of a third-country national family member of an EU citzen cannot be excluded from examination without any account being taken of the details of his or her family life.

☞ CJEU 13 Sep. 2018, C-618/16 ***Rafal Prefeta*** EU:C:2018:719
AG 28 Feb 2018 EU:C:2018:125
* Art. 7(3) Dir. 2004/38 Subject: Residence
Art. 7(2) Reg. 492/2011 and Equal Treatment
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 (GC) 5 Sep. 2012, C-83/11 ***Rahman a.o.*** EU:C:2012:519
AG 27 Mar 2012 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 (GC) 13 Sep. 2016, C-165/14 ***Rendón Marín*** EU:C:2016:675
AG 4 Feb 2016 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*** EU:C:2014:16
AG 6 Nov 2013 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 (GC) 2 Mar. 2010, C-135/08 ***Rottmann*** EU:C:2010:104
AG 30 Sep 2009 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*** 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 (GC) 8 Mar. 2011, C-34/09 ***Ruiz Zambrano*** EU:C:2011:124
AG 30 Sep 2010 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*** 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.

☞ CJEU 18 June 2020, C-754/18 ***Ryan Air*** EU:C:2020:478

AG 27 Feb 2020 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

* *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.

☞ CJEU (GC) 1 Aug. 2022, C-411/20 ***S. v Familienkasse (DE)*** EU:C:2022:602

AG 16 Dec 2021 EU:C:2021:1017

* Art. 6+24(2) Dir. 2004/38 Subject: Equal Treatment

Art. 20 TFEU

Ref. from Finanzgericht Bremen, Germany, 2 Sep. 2020

* *Art. 4 of Reg. 883/2004 (on the coordination of social security systems) must be interpreted as precluding legislation of a MS under which a Union citizen, who is a national of another MS, who has established his or her habitual residence on the territory of the first MS and who is economically inactive in so far as he or she is not in gainful employment in that State, is refused an entitlement to 'family benefits', within the meaning of Art. 3(1)(j) of that regulation, read in conjunction with Art. 1(z) thereof, during the first three months of his or her residence in the territory of that MS, whereas an economically inactive national of that MS is entitled to such benefits, including during the first three months following his or her return to the same MS after having made use, under EU law, of his or her right to move and reside in another MS.*

Art. 24(2) of Dir. 2004/38 must be interpreted as meaning that it is not applicable to such legislation.

In this case the Court held that as a family benefit falls within the scope of Reg. 4883/2004, mobile EU citizens enjoy equal treatment by virtue of Art. 4 of that Regulation in their host-MS if their right to reside follows from Art. 6(1) read in conjunction with Art. 14(1) Dir. 2004/38. Art. 24(2) Dir. 2004/38 does not apply to these cases as family benefits are not intended to cover an individual's basic needs, but rather, are granted automatically to those who satisfy objective criteria without an individual assessment.

☞ CJEU (GC) 12 Mar. 2014, C-457/12 ***S. & G.*** EU:C:2014:136
AG 12 Dec 2013 EU:C:2013:842
* Art. 3+6+7 Dir. 2004/38 Subject: Residence
Art. 20+21 TFEU and Family Members
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 (GC) 26 Mar. 2019, C-129/18 ***S.M.*** EU:C:2019:248
AG 26 Feb 2019 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.
This case is on the issue of a foster child and whether the concept of a direct descendant of an EU citizen includes a child that has been put in the care and legal guardianship of an EU citizen under the Islamic Kafala system. The CJEU ruled that such a child can not be seen as a direct descendant because the Kafala system does not create any parent-child relationship. However, the CJEU also ruled that if the child and its guardian lead a genuine family life, the fundamental right to respect for family life and the obligation to take account of the best interests of the child demand that the child be granted a right of entry and residence to enable it to live with its guardian in his or her host Member State.

☞ CJEU 15 Sep. 2022, C-22/21 ***S.R.S. & A.A. v Justice (IE)*** EU:C:2022:683
AG 10 Mar 2022 EU:C:2022:183
* Art. 3 Dir. 2004/38 Subject: Family Members
Ref. from Supreme Court, Ireland, 12 Jan. 2021

* *The question in this case concerns the interpretation of the notion of family member who is a member of the household of a Union citizen under Art. 3(2)(a) Citizens Dir. The applicants are a UK national (S.R.S.) who has moved to Ireland for work-related reasons in 2015, and his cousin (A.A.) a Pakistan national who moved to the UK for study purposes and who joined S.R.S. in Ireland two months after his move. In the UK, they lived together with other direct family members of S.R.S. in the same house for which S.R.S. paid the rent. Irish authorities rejected A.A.'s application for residence on grounds that mere cohabitation at the same address was not sufficient to establish that S.R.S. and A.A. were members of the same household, nor that S.R.S. was the head of that household as required under Irish law.*
According to the CJEU Art. 3(2)(a) Citizens Dir. must be interpreted as meaning that the concept of 'any other family members who are members of the household of the Union citizen having the primary right of residence', mentioned in that provision, refers to persons who have a relationship of dependence with that citizen, based on close and stable personal ties, forged within the same household, in the context of a shared domestic life going beyond a mere temporary cohabitation entered into for reasons of pure convenience. See for the conclusion of the AG in this case the editorial of NEFIS 2022/1.

☞ CJEU 19 June 2014, C-507/12 ***Saint Prix*** 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 (GC) 18 Dec. 2014, C-202/13 ***Sean McCarthy*** EU:C:2014:2450
AG 20 May 2014 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*** EU:C:2011:277
AG 25 Nov 2010 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*** 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 (GC) 23 Feb. 2010, C-480/08 ***Teixeira*** 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 (GC) 12 Mar. 2019, C-221/17 ***Tjebbes*** EU:C:2019:189
AG 12 Jul 2018 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.*
After Rottmann (C-135/08), this is the second case ever addressing loss of nationality leading to loss of EU citizenship and the rights attached to it. The Court of Justice has stated that loss of nationality on grounds which aim at ensuring that there is a genuine link between the person concerned and his State of nationality is not precluded by EU law. However, the competent national authorities must be able to examine the consequences of such loss for the person concerned and his or her family members from the point of view of EU law, including the principle of proportionality. Moreover, national law must allow for such a person to recover nationality ex tunc where appropriate.

☞ CJEU (GC) 23 Nov. 2010, C-145/09 ***Tsakouridis*** 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 10 Mar. 2022, C-247/20 ***V.I. v Customs (UK)***
AG 30 Sep 2021 EU:C:2021:778
* Art. 7(1)+16 Dir. 2004/38 Subject: Equal Treatment
Art. 21 TFEU
Ref. from Appeals Service Northern Ireland, UK, 7 Apr. 2020
* *Is a child EEA Permanent Resident required to maintain Comprehensive Sickness Insurance in order to maintain a right to reside, as s/he would as a self-sufficient person, pursuant to Reg. 4(1) of the 2016 Regulations? The CJEU ruled:*
(1) Article 21 TFEU and Art. 16(1) Citizens Dir. must be interpreted as meaning that neither a child, a Union citizen, who has acquired a right of permanent residence, nor the parent who is the primary carer of that child is required to have comprehensive sickness insurance cover, within the meaning of Art. 7(1)(b) of that directive, in order to retain their right of residence in the host State.
2. Art. 21 TFEU and Art. 7(1)(b) Citizens Dir. must be interpreted as meaning that, as regards periods before a child, a Union citizen, has acquired a right of permanent residence in the host State, both that child, where a right of residence is claimed for him or her on the basis of that Art. 7(1)(b), and the parent who is the primary carer of that child must have comprehensive sickness insurance cover within the meaning of that directive.

☞ CJEU 14 Dec. 2021, C-490/20 ***V.M.A. v Pancharevo (BU)*** EU:C:2021:1008
AG 15 Apr 2021 EU:C:2021:296
* Art. 18+20+21 TFEU Subject: Exit and Entry and Family Members
Ref. from Administrativen sad Sofia-grad, Bulgaria, 2 Oct. 2020
* *Art. 4(2) TEU, Artt. 20 and 21 TFEU and Artt. 7, 24 and 45 of the Charter, read in conjunction with Art. 4(3) of Dir. 2004/38, must be interpreted as meaning that, in the case of a child, being a minor, who is a Union citizen and whose birth certificate, issued by the competent authorities of the host MS, designates as that child's parents two persons of the same sex, the MS of which that child is a national is obliged:*
(i) to issue to that child an identity card or a passport without requiring a birth certificate to be drawn up beforehand by its national authorities, and
(ii) to recognise, as is any other MS, the document from the host MS that permits that child to exercise, with each of those two persons, the child's right to move and reside freely within the territory of the MSs.

☞ CJEU 4 June 2009, C-22/08 ***Vatsouras & Koupatantze*** 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 15 Mar. 2022, C-85/21 ***W.Y. v Steiermark (AT)*** EU:C:2022:192
* Art. 21 TFEU Subject: Loss of Rights
Ref. from Landesverwaltungsgericht Steiermark, Austria, 3 Feb. 2021
* *In **W.Y.** (C-85/21) the Court rejected as manifestly ill-founded an application concerning loss of EU citizenship. **W.Y.** acquired Austrian nationality in 1992 after having renounced his Turkish nationality. In 2018, an Austrian court confirmed that **W.Y.** had lost automatically Austrian nationality in 1994 upon reacquisition of Turkish nationality.*
*__W.Y.__ argued that the Austrian authorities upon deciding on his loss of Austrian nationality failed to perform a proportionality assessment in line with CJEU jurisprudence (i.e. **Tjebbes,** C-221/17) and that the loss of EU citizenship had important consequences for his private and professional life. The CJEU rejected the application as manifestly ill-founded since **W.Y.**'s loss of Austrian nationality occurred before that country's accession to the EU in 1995. Since **W.Y.** never had EU citizenship (similar to the reasoning in **Kaur** (C-192/99), Articles 20 and 21 TFEU are not applicable to his situation.*

☞ CJEU (GC) 6 Oct. 2009, C-123/08 ***Wolzenburg*** 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 2 Sep. 2021, C-930/19 ***X. v Belgium (BE)*** EU:C:2021:657
AG 22 Mar 2021 EU:C:2021:225
* all Art. Dir. 2004/38 Subject: Residence
Ref. from Conseil du Contentieux des Étrangers, Belgium, 20 Dec. 2019
* *The CJEU is asked whether there is an infringement of Art. 20 and 21 Charter by Art. 13(2) Dir. 2004/38. This provision provides that a Union citizen's family member who is not a national of a MS retains a right of residence after divorce, annulment of marriage or termination of a registered partnership if, 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, if the persons concerned provide evidence that they themselves qualify for a right of residence as set out in sections a-d of Art. 7(1) Dir., if this is not required by Art. 15(3) of Dir. 2003/86 (Family Reunification) for family members of third-country nationals?*
The CJEU held that the consideration of this question did not disclose any reasons that affect the validity of Art. 13(2) Dir. 2004/38 in the light of Art. 20 Charter

☞ CJEU 29 Oct. 2021, C-206/21 ***X. v Prefet (FR)***
Art. 7(1)(b)+8(4) Dir. 2004/38 EU:C:2021:920
* Ref. from Tribunal administratif de Dijon, France, 11 Mar. 2021 Subject: Loss of Rights
* *Withdrawn.*

☞ CJEU 5 May 2022, C-451/19 ***X.U. & Q.P. v Toledo (ES)*** EU:C:2022:354
AG 13 Jan 2022 EU:C:2022:24
* Art. 20 TFEU Subject: Residence and Family Members
joined cases: C-451/19 + C-532/19
* *1. Art, 20 TFEU must be interpreted as precluding a MS from refusing an application for family reunification made for the benefit of a TCN who is family member of a Union citizen, the latter being a national of that MS and who has never exercised his or her right of freedom of movement, on the sole ground that that Union citizen does not have, for himself or herself and for that family member, sufficient resources so as not to become a burden on the national social assistance system, without there having been an examination of whether there exists, between that Union citizen and that member of his or her family, a relationship of dependency of such a nature that, in the event of a refusal to grant a derived right of residence to that family member, that Union citizen would be forced to leave the territory of the EU as a whole and would thereby be deprived of the genuine enjoyment of the substance of the rights conferred by his or her status as a Union citizen.*
2. Art. 20 TFEU must be interpreted as meaning, first, that a relationship of dependency capable of justifying the grant of a derived right of residence under that article does not exist on the sole ground that a national of a MS who is an adult and has never exercised his or her right of freedom of movement, and his or her spouse, who is an adult and a third-country national, are required to live together under the obligations arising from marriage according to the law of the MS of which the Union citizen is a national and in which the marriage was entered into and, second, that, where the Union citizen is a minor, the assessment of the existence of a relationship of dependency capable of justifying the grant of a derived right of residence under that article to that child's parent, who is a third-country national, must be based on the taking into account, in the child's best interests, of all of the circumstances of the case. Where that parent lives on a stable basis with the other parent, who is a Union citizen, of that minor, there is a rebuttable presumption of such a relationship of dependency.
3. Art. 20 TFEU must be interpreted as meaning that a relationship of dependency capable of justifying the grant of a derived right of residence under that article to a minor child, who is a third-country national, of the spouse, who himself or herself is a third-country national, of a Union citizen who has never exercised his or her right of freedom of movement exists where the marriage between that Union citizen and his or her spouse produces a child who is a Union citizen and who has never exercised his or her right of freedom of movement, and where that child would be forced to leave the territory of the EU as a whole if the minor child who is a third-country national were forced to leave the territory of the MS concerned.

☞ CJEU 8 May 2013, C-87/12 ***Ymeraga*** 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.*

New ☞ CJEU 10 Mar. 2023, C-248/22 ***Z.K. & M.S.*** EU:C:2023:260
* Art. 2(2)+3(2) Dir. 2004/38 Subject: Family Members
Ref. from High Court, Ireland, 8 Apr. 2022
* *The Irish High Court has withdrawn its request for a preliminary ruling.*

☞ CJEU 19 Nov. 2020, C-454/19 ***Z.W. v Heilbronn (DE)***
AG 4 Jun 2020 EU:C:2020:430
* Art. 21 TFEU Subject: Equal Treatment
Ref. from Amtsgericht Heilbronn, Germany, 14 June 2019
* *This case concerns a Romanian national who has been resident in Germany with her child (also a Romanian national) who was placed under curatorship by the German authorities since 2009. In 2017, the mother agreed for the child's father to take him to Romania where they both reside, which resulted in her criminal prosecution for international kidnapping. The CJEU ruled that the provisions of German criminal law that stipulate tougher penalties for international kidnapping as opposed to national kidnapping contravene Art. 21 TFEU. According to the Court the German rules amount to a difference in treatment that affects or limits the exercise of the right to freedom of movement since EU citizens are more likely than German nationals to be prosecuted for international kidnapping, especially upon return to their State of origin. The Court ruled that this difference in treatment was not justified as it is not proportional, i.e goes beyond what is necessary to protect the legitimate interest protected by the rules. More specifically, the Court found that the reasons put forward by the German authorities as to the difficulties of enforcing judicial decisions concerning abducted children in other States contradicted Council Reg. 2201/2003 that establishes the principle of the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility.*

☞ CJEU (GC) 4 June 2013, C-300/11 ***Z.Z.*** 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 (GC) 21 Dec. 2011, C-424/10 ***Ziolkowski & Szeja*** 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-235/22 ***Abel***

* Art. 18+21 Dir. 2004/38 Subject: Equal Treatment

Ref. from Audiencia Nacional, Spain, 28 Mar. 2022

* *The Spanish Court raises questions about the interaction between on one hand, the Withdrawal agreement between the UK and the EU, and on the other hand, the CJEU's jurisprudence concerning the protection that mobile EU citizens can expect against extradition to a third non-EU state (USA) where the host state does not extradite its own nationals.*

☞ CJEU C-112/22 ***C.U. & N.D.***

* Art. 18+45 Dir. 2004/38 Subject: Equal Treatment

Art. 7(2) Reg. 492/2011

Ref. from Tribunale di Napoli, Italy, 17 Feb. 2022

joined cases: C-112/22 + C-223/22

* *Does Union Law preclude national legislation in so far as it makes access to basic income subject to the condition relating to residence in Italy for at least ten years (the final two of which, as at the time the application is made and for the entire duration of the benefit, must be consecutive), thus affording treatment to Italian nationals, EU nationals with a right of residence or permanent residence, or non-EU long-term residents who have been resident for less than ten years or for ten years, the final two of which were not consecutive, which is less favourable than that accorded to the same categories who have been resident for ten years, the final two of which were consecutive?*

☞ CJEU C-488/21 ***G.V. v Social Welfare (IE)***

AG 16 Feb 2023 EU:C:2023:115

* Art. 7(2) Dir. 2004/38 Subject: Equal Treatment

Ref. from Court of Appeal, Ireland, 10 Aug. 2021

* *This case concerns a national of Romania who is the mother of A.C., a Romanian citizen residing and working in Ireland. A.C. is also a naturalised Irish citizen. G.V. joined her daughter A.C. in Ireland in 2017 and has legally resided there ever since. During the past 15 years, she has been financially dependent on AC. In 2017, G.V. suffered degenerative changes in her arthritis, after which she made an application for Disability Allowance under the Irish Social Welfare Consolidation Act 2005. That request was refused on the ground that under the relevant Irish law G.V. must not become an unreasonable burden on the national social assistance system.*
A.G. Capeta has proposed that the CJEU rules that Art. 21 TFEU is interpreted as meaning that the right of residence of direct ascendants of mobile EU workers depends on them being dependent on that worker as long as their right to remain is derived from an EU worker. An application for a special non-contributory cash benefit made by the direct ascendant does not, according to the AG, mean that they are no longer dependent on the EU worker. The case concerned a Romanian national who is the mother of AC, a Romanian citizen who is also an Irish citizen following naturalization. residing and working in Ireland. GV joined her daughter AC in Ireland in 2017 and has legally resided there ever since. During the past 15 years, she has been financially dependent on AC. In 2017, GV suffered degenerative changes in her arthritis, after which she made an application for Disability Allowance under the Irish Social Welfare Consolidation Act 2005. That request was refused on the ground that under the relevant Irish law GV must not become an unreasonable burden on the national social assistance system. According to the AG Art. 45(2) TFEU read in conjunction with Art. 7(2) reg. 492/2011, an EU mobile worker's mother, who was a direct dependent ascendant, can claim a social benefit without this calling into question her right of residence, as the principle of equal treatment does not allow such a relative to be considered an unreasonable burden on the social assistance system of the State of residence because she has applied for a benefit.

☞ CJEU C-280/22 ***Kinderrechtencoalitie***

* Art. 16+21 Dir. 2004/38 Subject: Procedural Rights

Art. 3(5)+6+14 Reg. 492/2011

* *This case concerns the compatibility with Arts. 16 and 21 TFEU and Arts. 7, 8 and 52 Charter Fundamental Rights of the rules on the storage of two fingerprints in interoperable digital formats on a storage medium including identity cards issued to Union citizens and their family members and on an electronic microprocessor chip which uses RFID and cen be read wirelessly/in contactless form.*

☞ CJEU C-368/20 ***N.W. v Steiermark (AT)***

AG 6 Oct 2021 EU:C:2021:821

* Art. 21(1) TFEU Subject: Equal Treatment

Ref. from Landesverwaltungsgericht Steiermark, Austria, 5 Aug. 2020

* *The AG Saugmandsgaard advises the CJEU to find that the rules on free movement of persons within the internal market are not violated if MSs reintroduce checks at the internal border if in doing so they comply with the rules set out in the Schengenbordercode.*

☞ CJEU C-420/22 ***N.W.***

* Art. 20 Dir. 2004/38 Subject: Loss of Rights

Ref. from Szeged High Court, Hungary, 8 Aug. 2022

* *(1) Must Art. 20 TFEU in conjunction with Art. 7 and 24 Charter, be interpreted as precluding the practice of a MS of adopting a decision ordering the withdrawal of a residence permit which had previously been issued to a third-country national whose minor child and whose spouse are nationals of a MS of the European Union and live in that State, without first examining whether the family member concerned, who is a third-country national, is entitled to a derived right of residence pursuant to Article 20 TFEU?*

(2) Must Article 20 TFEU, in conjunction with Art. 7, 24, 51(1) and 52(1) Charter, be interpreted as meaning that, in so far as a derived right of residence is applicable pursuant to Art. 20 TFEU, the effect of EU law is that national administrative and judicial authorities must also apply EU law when adopting an immigration decision ordering the withdrawal of a permanent residence permit, and when applying the national security, public policy or public security exceptions on which that decision is based and, where such grounds are established, when examining the necessity and proportionality justifying the limitation of the right of residence?

☞ CJEU C-128/22 ***NORDIC***

* Art. 2+27+29 Dir. 2004/38 Subject: Equal Treatment and Exit and Entry

Ref. from Rechtbank van Eerste Aanleg Brussel, Belgium, 23 Feb. 2022

* *Must Art. 2, 4, 5, 27 and 29 of the Citizenship Directive, be interpreted as not precluding the regulations of a MS (to limit the spread of COVID),*

** to impose, in principle, on Belgian nationals and their family members as well as on Union citizens residing in Belgian territory and their family members an exit ban for non-essential travel from Belgium to countries within the EU and the Schengen Area that are coloured red in accordance with a colour code drawn up on the basis of epidemiological data; and*

** to impose on non-Belgian Union citizens and their family members (who may or may not have the right to reside in Belgian territory) entry restrictions (such as quarantines and tests) for non-essential travel from countries within the EU and the Schengen Area to Belgium which are coloured red in accordance with a colour code drawn up on the basis of epidemiological data?*

New ☞ CJEU C-62/23 ***Pedro Francisco***

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

Ref. from Juzgado Admin. Barcelona , Spain, 9 Jan. 2023

* *The Spanish court requested the CJEU to clarify whether police information establishing a suspicion that a criminal offence has been committed by an applicant for a right of residence, who is a registered partner of an EU citizen, can be evidence of 'personal conduct', within the meaning of Art. 27 Dir. 2004/38/EC. The national court's second question seeks guidance how to establish that such police information is not merely an initial presumption.*

☞ CJEU C-61/22 ***R.L. v Landesh. Wiesbaden (DE)***

* Art. 4(3) Dir. 2004/38 Subject: Equal Treatment

Art. 3(5) TFEU

Ref. from Verwaltungsgericht Wiesbaden, Germany, 1 Feb. 2022

* *Does the obligation to take fingerprints and store them in identity cards in accordance with Art. 3(5) of Reg. 2019/1157, infringe higher-ranking EU law?*

☞ CJEU C-540/22 ***S.N. a.o.***

* Art. 56+57 Dir. 2004/38 Subject: Residence

Ref. from Rechtbank Den Haag (zp Middelburg), Netherlands, 11 Aug. 2022

* *This is a follow-up of the old judgment CJEU 9 August 1994, C-43/93, Vander Elst. In this case the Dutch District Court wants to know whether the free movement of services guaranteed by Art. 56 and 57 TFEU include a right derived therefrom of residence in a MS for third-country workers who may be employed in that MS by a service provider established in another MS?*

And if not, where the duration of the provision of services exceeds three months, does Art. 56 TFEU preclude an application having to be made for a residence permit for each individual worker in addition to a simple obligation to declare on the part of the service provider?

☞ CJEU C-684/22 ***S.Ö.***

* Art. 20 Dir. 2004/38 Subject: Loss of Rights

Ref. from Verwaltungsgericht Düsseldorf, Germany, 8 Nov. 2022

joined cases: C-684/22 + C-685/22 + C-686/22

* *Three new prejudicial questions are asked by the Verwaltungsgericht Düsseldorf (Germany) (C-684/22, C-685/22, and C -686/22) in the context of acquiring German nationality by naturalisation and the subsequent withdrawal of Turkish nationality, on the issue whether Art. 20 TFEU is to be interpreted as meaning that, in the procedure for the grant of the retention permit, no conditions may be laid down as a result of which an individual assessment of the situation of the person concerned and that of his or her family with regard to the consequences of the loss of citizenship of the Union does not take place or is superseded by other requirements?*

☞ CJEU C-411/22 ***Thermalhotel***

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

Art. 45 TFEU

* *This case concerns the granting of compensation for loss of earnings suffered by frontier workers as a result of isolation ('quarantine') ordered by the health authorities in the case of a positive COVID-19 test result. If this is not seen as a sickness benefit within the meaning of Reg. 883/2004, it is the question whether Art. 45 TFEU and Art. 7(2) Reg. 492/2011 preclude national legislation which does not compensate workers who, as frontier workers, are resident in another MS and whose isolation ('quarantine') is ordered by the health authorities of their MS of residence.*

☞ CJEU C-491/21 ***W.A. v Dir. Persoanelor (RO)***

* Art. 26(2) TFEU Subject: Exit and Entry and Equal Treatment

Ref. from Înalta Curte de Casație, Romania, 10 Aug. 2021

* *This case concerns a Romanian national domiciled in France but residing in Romania whose application for a national ID card that constitutes a valid document for the purpose of travel within the EU was rejected on grounds that he is not domiciled in Romania. Romanian law makes it compulsory for Romanian nationals who have established their domicile abroad to surrender their identity document proving the existence of a domicile in Romania when surrendering a passport mentioning the country of domicile. Mr WA was issued with a passport but refused an ID card; he was issued with a temporary ID card but that document is not recognized as a travel document. The referring national court considers the different treatment of nationals domiciled in Romania and nationals domiciled abroad in respect of the issuance of an ID card to possible amount to discriminatory treatment on the basis of nationality considering that it does not seem justified by reasons of general interest nor proportionate. The CJEU is asked to clarify if Romanian law is in conformity with relevant provisions of EU law addressing the right to free movement.*

☞ CJEU C-689/21 ***X v ministeriet (DK)***

AG 26 Jan 2023 EU:C:2023:53

* Art. 7(2) Dir. 2004/38 Subject: Loss of Rights

Ref. from High Court, Denmark, 16 Nov. 2021

* *On 26 January 2023 AG Szpunar delivered an opinion. The case concerns the compatibility of the Danish rules on the loss of citizenship with EU law. Danish nationals, born abroad and who have never lived in Denmark, lose their nationality by operation of law upon reaching the age of 22 on ground of lack of a genuine link with Denmark if no application to retain Danish nationality has been made before that date. The CJEU is asked to decide whether the Danish rules are consistent with Art. 20 TFEU (EU citizenship) read in conjunction with Art. 7 of the EU Charter (right to private and family life). AG Szpunar advises the CJEU to rule that Danish legislation is not compatible with EU law as it fails to provide for an individual examination, based on the principle of proportionality, of the consequences of the loss of nationality and of EU citizenship in light of EU law. AG Szpunar considers that following* ***Tjebbes a.o.*** *(C-221/17) all situations involving loss of nationality also entailing the loss of EU citizenship have to be examined in light of the principle of proportionality. The second ground of incompatibility concerns the lack of the possibility to recover ex tunc Danish nationality when the person applies for a travel document or any other document providing evidence of their nationality. According to the AG, the possibility to regain Danish nationality via the general naturalization procedure does not meet the requirements set out in the* ***Tjebbes a.o.*** *case.*

☞ CJEU C-459/20 ***X. v Stscr. (NL)***

AG 16 Jun 2022 EU:C:2022:475

* Art. 20 TFEU Subject: Family Members and Residence

Ref. from Rechtbank Den Haag (zp Utrecht), Netherlands, 10 Sep. 2020

* *In this case the CJEU is asked to develop its rulings in the **Ruiz Zambrano** and **Chavez-Vilchez** cases. The case concerns a minor Dutch citizen who was born in Thailand, the State of which his mother is a national, and where it has lived ever since. Initially, the child was cared for by his maternal grandmother. After her divorce, his Thai mother returns to Thailand and assumes the role of his sole carer. At the time of the reference, there is no contact between the Dutch father and the child, and the mother has sole parental responsibility over him according to a Thai court ruling.*

AG De La Tour concludes that Art. 20 TFEU is not precluding legislation of a MS under which it refuses to grant a secondary right of residence in the territory of that State to a third country national who is the parent of a minor child who is a national of that State where that child has never resided in the territory of the Union, has his habitual residence outside that territory and does not intend to exercise the rights attaching to his status as a citizen of the Union by applying to enter and reside in that State together with that parent, on whom he would be dependent.

Art. 20 TFEU also states that when that parent submits an application for the grant of a derived right of residence in the MS of which the child is a national and to which the child intends to go in order to reside, the competent authority of that MS must establish, in accordance with Art. 24 of the Charter, that the transfer of the child is in the child's best interests. In order to make that determination, it is necessary to consider, in the light of all the circumstances of the case, the extent to which that transfer is likely to affect the physical and mental well-being of the child, his material situation and his affective, family and social ties. That determination must also be based on evidence showing that the transfer of the child is real and that the child's stay in the MS concerned is not temporary or accidental and is not for the sole purpose of providing one of the parents with a derived right of residence under Art. 20 TFEU.

For the purposes of assessing whether there is a dependency relationship capable of giving rise to a derived right of residence under Article 20 TFEU, a decisive factor is the moment when the parent who is a third-country national has assumed the daily care of his child, a citizen of the Union. It is for the competent national authority to determine, on the basis of all the concrete circumstances of the case, the extent to which that parent has custody of the child or bears the legal, financial or affective burden for the child at the time when its application is decided, and to satisfy itself that that custody is exercised or that that burden is borne in the context of a real and stable family life.

On the other hand, the fact that the other parent, a citizen of the Union, and another relative who is a third-country national have in the past exercised custody of the child or borne the legal, financial or affectionate burden for the child, or are in a position to do so not be inferred that there is not such a relationship of dependency between the parent who is a third-country national and that child that the child would be prevented from exercising his right to travel and reside in the territory of the Member State of which he is a national if the parent who is a third-country national had been refused a right of residence in the Member State concerned.

☞ CJEU C-607/21 ***X.X.X. v State (BE)***

* Art. 2(2)(d) Dir. 2004/38 Subject: Exit and Entry and Family Members

Ref. from Conseil d'État, Belgium, 30 Sep. 2021

* *The CJEU is asked to determine the interpretation of the notion of dependent family member of an EU citizen, where the family member lodges the application after residing for some years in the host state. The applicant is the Moroccan mother of a Belgian citizen whose applications to reside in Belgium, at first as the family member of a Belgian citizen, and later as a dependent family member of her son's EU citizen cohabitating partner under Art. 2(2)(d) of Dir. 2004/38 have been rejected.*

The last rejection was on grounds that the evidence submitted concerning dependency in Morocco was too old to be considered. The CJEU is asked to clarify if the determination of dependency may take into account:

a) the situation of the family member in the host state as opposed to only in the country of origin;

b) the applicant's lawful residence in the host state;

c) how recent the evidence submitted is, and finally

d) in the event where old evidence should be disregarded, what criteria should national courts rely on.

7.3 EFTA Advisory Opinions

☞ EFTA 26 July 2011, E-4/11 ***Clauder v Government (LI)***

* Art. 16(1)+7(1) Dir. 2004/38 Subject: Residence

Ref. from Verwaltungsgerichtshof, Liechtenstein, 16 Feb. 2011

* *Art. 16(1) 2004/38 is to be interpreted such that an EEA national with a right of permanent residence, who is a pensioner and in receipt of social welfare benefits in the host EEA State, may claim the right to family reunification even if the family member will also be claiming social welfare benefits.*

☞ EFTA 26 July 2016, E-28/15 ***Jabbi v Imm. Appeals Board (NO)***

* 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.*

☞ EFTA 9 Feb. 2021, E-1/20 ***Kerim v Government (NO)***

* Art. 35 Dir. 2004/38 Subject: Loss of Rights

Ref. from Norges Høyesterett, Norway, 3 Mar. 2020

* *In order to determine whether a marriage of convenience for the purposes of Art. 35 Dir. 2004/38 exists, in circumstances in which reasonable doubts exist as to whether the marriage in question is in fact genuine, it is necessary for the national authorities to establish, on the basis of a case-by-case examination, that at least one spouse in the marriage has essentially entered into it for the purpose of improperly obtaining the right of free movement and residence by a third-country national spouse rather than for the establishment of a genuine marriage.*

For the determination of whether a marriage of convenience for the purposes of Art. 35 Dir. 2004/38 exists, in circumstances in which reasonable doubts exist as to whether the marriage in question is in fact genuine, facts must be established and assessed in their entirety, which includes taking into account the subjective intention of an EEA national for entering into a marriage with a third-country national.