Reports of Cases

OPINION OF ADVOCATE GENERAL
SAUGMANDSGAARD ØE
delivered on 11 February 2021 [1]

Case C-535/19

A
in the presence of
Latvijas Republikas Veselības ministrija

(request for a preliminary ruling
from the Augstākā tiesa (Senāts), (Supreme Court (Senate), Latvia))

(Reference for a preliminary ruling – Citizenship of the Union – Right to move and reside freely within the territory of the Member States – Economically inactive Union citizen who has left his Member State of origin to settle in a host Member State for family reunification purposes – Refusal to affiliate that Union citizen to the social security system of the host Member State and to provide public health care benefits – Directive 2004/38/EC – Article 7(1)(b) – Condition requiring 'comprehensive sickness cover' – Concept of 'unreasonable burden' – Article 24 – Right to equal treatment – Regulation (EC) No 883/2004 – Article 3(1)(a) – Concept of 'sickness benefit' – Article 4 and Article 11(3)(e) – Scope – Genuine link of integration with the host Member State – Consequences)

I. Introduction

1. The present case concerns the right of an economically inactive Union citizen, who has exercised his right to freedom of movement by moving to a Member State for family reunification purposes, to be affiliated to that State's social security and to receive health care benefits provided by the State.

2. This case raises once again the question of the interaction between Directive 2004/38/EC [2] and Regulation (EC) No 883/2004, [3] but in a different context. In three earlier cases, [4] the Union citizens concerned did not meet the conditions set out in Directive 2004/38 which they were

[1] Original language: French.

[2] Directive of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).

[3] Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1, and corrigendum OJ 2004 L 200, p. 1), as amended by Commission Regulation (EU) No 1372/2013 of 19 December 2013 (OJ 2013 L 346, p. 27) ('Regulation No 883/2004').

[4] See judgments of 11 November 2014, *Dano* (C-333/13, 'the judgment in *Dano*', EU:C:2014:2358); of 15 September 2015, *Alimanovic* (C-67/14, 'the judgment in *Alimanovic*' EU:C:2015:597); and of 25 February 2016, *García-Nieto and Others* (C-299/14, 'the judgment in *García-Nieto*', EU:C:2016:114).

required to fulfil in order to have a right of legal residence in the host Member States, namely the requirements to have *sufficient resources* and *comprehensive sickness insurance*. They did not have such resources and one of them had entered the territory of the host Member State for purposes described as 'social tourism', with the sole aim of receiving social benefits in that State. The Court concluded that those Union citizens could be refused social benefits in the host Member State on an equal basis with nationals when they had not been lawfully resident in that State for five years and acquired a permanent right of residence.

3. In the present case, on the contrary, the Union citizen meets *both* requisite conditions and the question arises whether he is therefore entitled to equal treatment with nationals of the host Member State as regards access to State funded health care.

4. Can the host Member State nonetheless refuse, in the interest of maintaining the financial balance of its social security system, to affiliate the person concerned and to provide him with such health care on the same basis as its own nationals by relying on the condition that he must have comprehensive sickness insurance?

5. That is the main question put by the Augstākā tiesa (Senāts) (Supreme Court (Senate), Latvia) in proceedings between an Italian national and the Latvijas Republikas Veselības ministrija (Ministry of Health of the Republic of Latvia, the 'Latvian Ministry of Health'). It is a question of great significance both for Member States and for citizens of the Union.

6. After analysing Directive 2004/38 and Regulation No 883/2004, in the light of the Court's case-law, I shall propose that the Court rule that a Union citizen who is economically inactive but satisfies the conditions set out in Article 7(1)(b) of Directive 2004/38, who moved the centre of all of his interests to a host Member State and who has a genuine link of integration with that State cannot be systematically refused affiliation to the social security of that Member State and health care benefits provided by the State, on the same terms as nationals, on the ground that he is not employed or self-employed in that State.

II. Legal framework

A. European Union law

1. Regulation No 883/2004

7. Article 2(1) of Regulation No 883/2004 provides:

'This Regulation shall apply to nationals of a Member State, stateless persons and refugees residing in a Member State who are or have been subject to the legislation of one or more Member States, as well as to the members of their families and to their survivors.'

8. Article 3 of that regulation, entitled 'Matters covered', provides in paragraphs 1 and 5:

'1. This Regulation shall apply to all legislation concerning the following branches of social security:

(a) sickness benefits;

…

5. This Regulation shall not apply to:

(a) social and medical assistance

….'

9. Article 4 of that regulation, entitled 'Equality of treatment', is worded as follows:

'Unless otherwise provided for by this Regulation, persons to whom this Regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals thereof.'

10. According to Article 11 of that regulation:

'1. Persons to whom this Regulation applies shall be subject to the legislation of a single Member State only. Such legislation shall be determined in accordance with this Title.

…

3. Subject to Articles 12 to 16:

(a) a person pursuing an activity as an employed or self-employed person in a Member State shall be subject to the legislation of that Member State;

…

(e) any other person to whom subparagraphs (a) to (d) do not apply shall be subject to the legislation of the Member State of residence, without prejudice to other provisions of this Regulation guaranteeing him benefits under the legislation of one or more other Member States.

…'

2. Directive 2004/38

11. Directive 2004/38, inter alia, repealed Directives 90/365/EEC,[5] 90/366/EEC[6] and 90/364/EEC,[7] which concerned the rights of residence of, respectively, retired persons, students and other inactive persons.

[5] Council Directive of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity (OJ 1990 L 180, p. 28).

[6] Council Directive of 28 June 1990 on the right of residence of students (OJ 1990 L 180, p. 30).

[7] Council Directive of 28 June 1990 on the right of residence (OJ 1990 L 180, p. 26).

12. Recitals 9 and 10 of that directive state:

‘(9) Union citizens should have the right of residence in the host Member State for a period not exceeding three months without being subject to any conditions or any formalities other than the requirement to hold a valid identity card or passport, without prejudice to a more favourable treatment applicable to jobseekers as recognised by the case-law of the Court of Justice.

(10) Persons exercising their right of residence should not, however, become an unreasonable burden on the social assistance system of the host Member State during an initial period of residence. Therefore, the right of residence for Union citizens and their family members for periods in excess of three months should be subject to conditions.’

13. Article 7(1) of that directive provides:

‘All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:

(a) are workers or self-employed persons in the host Member State; or

(b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State; or

(c) – are enrolled at a private or public establishment, accredited or financed by the host Member State on the basis of its legislation or administrative practice, for the principal purpose of following a course of study, including vocational training; and

– have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence; or

(d) are family members accompanying or joining a Union citizen who satisfies the conditions referred to in points (a), (b) or (c).’

14. Pursuant to Article 14(1), (2) and (4) of that directive:

‘1. Union citizens and their family members shall have the right of residence provided for in Article 6, as long as they do not become an unreasonable burden on the social assistance system of the host Member State.

2. Union citizens and their family members shall have the right of residence provided for in Articles 7, 12 and 13 as long as they meet the conditions set out therein.

…

4. By way of derogation from paragraphs 1 and 2 and without prejudice to the provisions of Chapter VI, an expulsion measure may in no case be adopted against Union citizens or their family members if:

…

(b) the Union citizens entered the territory of the host Member State in order to seek employment. In this case, the Union citizens and their family members may not be expelled for as long as the Union citizens can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged.'

15. Article 24 of Directive 2004/38, entitled 'Equal treatment', provides:

'1. Subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence.

2. By way of derogation from paragraph 1, the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 14(4)(b), nor shall it be obliged, prior to acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families.'

B. Latvian law

16. Article 17 of the Ārstniecības likums (Law on medical care), in the version in force at the time of the facts of the main proceedings, provided:

'1. Medical care funded by the general State budget and by the resources of the recipient of the care, according to the detailed rules defined in the Council of Ministers, shall be supplied to the following persons:

(1) Latvian nationals;

(2) Latvian non-citizens;

(3) nationals of Member States of the European Union, the European Economic Area and the Swiss Confederation residing in Latvia because of employment or self-employment, and members of their family;

(4) aliens authorised to reside permanently in Latvia;

…

3. Persons who are spouses of Latvian nationals and of Latvian non-citizens and who are in possession of a residence permit of limited duration in Latvia shall be entitled, according to the

detailed rules defined in the Council of Ministers, to receive obstetric care funded by the general State budget and by the resources of the recipients of the care.

…

5. Persons not mentioned in paragraphs 1, 3 and 4 of this Article shall receive medical care in return for payment.'

17. According to Article 7 of the Veselības aprūpes finansēšanas likums (Law on the funding of medical care), in the version in force at the time of the facts of the main proceedings:

'Every person shall be entitled to receive emergency medical assistance. The Council of Ministers shall establish the detailed rules.'

III. The main proceedings, the questions for a preliminary ruling and the procedure before the Court

18. At the end of 2015, A, an Italian national, left Italy to settle in Latvia in order to live with his spouse, of Latvian nationality, and their two infant children, of Latvian and Italian nationality.

19. Before leaving, A was entered in a register of Italian nationals who settle outside Italy for a period of at least 12 months. Those whose names are entered in that register are unable to obtain State-funded medical care in Italy.

20. On 22 January 2016, A requested the Latvian national health service to enter him in the register of recipients of public sickness insurance that would entitle him to receive health care funded by the Republic of Latvia, in other words to become affiliated to the Latvian social security system, and to issue him a European Sickness Insurance Card. [8]

21. By decision of 17 February 2016, the Latvian national health service refused those requests.

22. That decision was confirmed by a decision of 8 July 2016 of the Latvian Ministry of Health on the ground that A was neither employed nor self-employed in Latvia, but was residing in that country on the basis of an EU citizen's registration certificate. As confirmed at the hearing before the Court, it was only on 4 January 2018 that the applicant found his first job in Latvia. He was therefore not included in the category of persons referred to in Article 17(1), (3) or (4) of the Law on medical care who could benefit from public sickness cover and thus be entitled to health care funded by the State. The referring court points out that Union citizens, such as A, can receive only obstetric care and emergency medical assistance funded by the State. Otherwise, they may receive health care within the public health system, but must fund it from their own resources.

23. The applicant brought an action against that decision before the administratīvā rajona tiesa (District Administrative Court, Latvia). That Court rejected it considering, in essence, that although A was lawfully resident in Latvia in accordance with the requirements of Article 7(1)(b) of Directive 2004/38 and that A could therefore rely on the principle of non-discrimination set out in Article 24(1) of that directive, a difference in treatment could be justified, because it was based on objective considerations and pursued the legitimate objective of protecting public finances.

[8] This card gives the holder access to State-provided healthcare during a temporary stay in one of the 27 Member States of the Union, Iceland, Liechtenstein, Norway or Switzerland under the same conditions and at the same costs as people insured in that country.

Such a difference in treatment was also proportionate, since A was entitled to emergency medical assistance, the premiums for private sickness insurance were not high and, after only five years, he would be able to obtain a permanent right of residence that would allow him to receive health care provided by the State.

24. By judgment of 5 January 2018, the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia) dismissed A's appeal against that judgment.

25. The Augstākā tiesa (Senāts) (Supreme Court (Senate)), on appeal against the judgment of 5 January 2018, considers that it is necessary to obtain a preliminary ruling from the Court in order to determine the dispute in the main proceedings.

26. The referring court observes that the Law on medical care transposes Article 7(1)(b) of Directive 2004/38. Although it has no doubt that that directive is applicable, it wonders, on the other hand, whether Regulation No 883/2004 applies. It considers it necessary to determine whether health care provided by the State, such as that provided in Latvia, comes under Regulation No 883/2004. It asks itself that question in the light of, first, the funding of the Latvian social security system, which in 2016 was based mainly on taxation and, second, the fact that 'social and medical assistance' is excluded from the scope of Regulation No 883/2004 under Article 3(5) of that regulation. The referring court states that access to State-funded health care is granted according to objective criteria and that the Latvian system may be described as a compulsory public sickness insurance system.

27. In the event that Regulation No 883/2004 is applicable, the referring court wonders whether Article 11(3)(e) of that regulation, which provides that the applicable law is to be that of the Member State in which the person concerned is resident, precludes the applicant from being refused affiliation to the State-funded health system in both Italy and Latvia and thus being wholly deprived of access to such protection.

28. In addition, the referring court is concerned that the principle of non-discrimination laid down in Article 18 TFEU, and referred to in Article 24 of Directive 2004/38 and Article 4 of Regulation No 883/2004, has not been observed. It seems to that court that the Latvian legislation places on economically inactive Union citizens a disproportionate restriction on access to the compulsory public sickness insurance scheme.

29. The referring court considers that it is necessary to assess the applicant's specific situation. It emphasises, in particular, that A moved to Latvia to join his family, that he was employed in Italy, that he has sought work in Latvia and that he has, in that Member State, two infant children with dual Latvian and Italian nationality. In its view, those factors argue in favour of the existence of close personal links between the applicant and the Republic of Latvia that do not allow him to be automatically excluded from affiliation to its public health system.

30. However, the referring court acknowledges that a Union citizen can claim equal treatment with the nationals of the host Member State pursuant to Article 24(1) of Directive 2004/38 only if his residence within the territory of that host Member State meets the conditions of that directive. It observes, in that regard, that A meets the residence conditions set out in Article 7(1)(b) of that directive, since he has sufficient resources and comprehensive sickness insurance in Latvia, while emphasising that he was excluded from the benefit of public sickness cover that would entitle him to State-funded health care. Thus, it wonders whether the fact that

a Union citizen has comprehensive sickness insurance, which is one of the conditions of legality of residence laid down by Directive 2004/38, may justify the refusal to affiliate him to the public health system.

31. In those circumstances, the Augstākā tiesa (Senāts) (Supreme Court (Senate)) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must publicly funded health care be regarded as being included in "sickness benefits" within the meaning of Article 3(1)(a) of Regulation No 883/2004?

(2) In the event that the first question is answered in the affirmative, are Member States permitted, under Article 4 of Regulation No 883/2004 and Article 24 of Directive 2004/38, to refuse such benefits – which are granted to their nationals and to family members of a Union citizen having worker status who are in the same situation – to Union citizens who do not at the relevant time have worker status, in order to avoid disproportionate requests for social benefits to ensure health care?

(3) In the event that the first question is answered in the negative, are Member States permitted, under Articles 18 and 21 of the Treaty on the Functioning of the European Union and Article 24 of Directive 2004/38, to refuse such benefits – which are granted to their nationals and to family members of a Union citizen having worker status who are in the same situation – to Union citizens who do not at the relevant time have worker status, in order to avoid disproportionate requests for social benefits to ensure health care?

(4) Is it compatible with Article 11(3)(e) of Regulation (EC) No 883/2004 for a citizen of the European Union who exercises his right to freedom of movement to be placed in a situation in which he is denied the right to receive public health care services financed by the State in all the Member States concerned in the case?

(5) Is it compatible with Articles 18, 20(1) and 21 of the Treaty on the Functioning of the European Union for a citizen of the European Union who exercises his right to freedom of movement to be placed in a situation in which he is denied the right to receive public health care services financed by the State in all the Member States concerned in the case?

(6) Should legality of residence, as provided for in Article 7(1)(b) of Directive 2004/38, be understood as giving a person a right of access to the social security system and also as being capable of constituting a reason to exclude him from social security? In particular, in the present case, must the fact that the applicant has comprehensive sickness insurance cover, which constitutes one of the prerequisites for legality of residence under Directive 2004/38, be regarded as capable of justifying the refusal to include him within the health care system financed by the State?'

32. The request for a preliminary ruling, dated 9 July 2019, was received at the Court on 12 July 2019.

33. Written observations were lodged by the Latvian and Spanish Governments, the Latvian Ministry of Health and the European Commission. Those parties and A were represented at the hearing on 28 September 2020.

IV. Analysis

A. The first question

34. By its first question, the referring court asks whether public health care, such as that provided pursuant to Article 17 of the Law on medical care, comes within the concept of 'sickness benefits' within the meaning of Article 3(1)(a) of Regulation No 883/2004.

35. The referring court states that it has doubts in that respect because of the wording of Article 3(5) of Regulation No 883/2004, which excludes 'social and medical assistance' from the scope of that directive.

36. Like all the parties that commented on the first question, I consider that it should be answered in the affirmative.

37. The problem of the distinction between the social security benefits covered by Regulation No 883/2004 and the 'social and medical assistance' excluded from that regulation arose at a very early stage, when the applicable legislation was Regulation (EEC) No 1408/71,[9] which preceded Regulation No 883/2004 and contained that distinction.[10]

38. First of all, I would point out that that distinction is based essentially on the constituent elements of the particular benefit, in particular its purposes and the conditions on which it is granted, and not on whether a benefit is classified as a social security benefit by national legislation.[11]

39. Next, I would emphasise that, according to settled case-law, in order for a benefit not to constitute 'social and medical assistance' within the meaning of Article 3(5)(a) of Regulation No 883/2004, but to constitute a social security benefit covered by that regulation, two cumulative conditions must be satisfied. First, the benefit must be granted, without any individual and discretionary assessment of personal needs, to recipients on the basis of a legally defined position and, second, it must relate to one of the risks expressly listed in Article 3(1) of Regulation No 883/2004.[12]

40. As regards the first condition, the referring court states that medical care is guaranteed for everyone residing in Latvia who comes within one of the categories defined objectively by the Law on medical care for inclusion in the register of beneficiaries of care without any other personal circumstance being taken into account.

41. I consider that such characteristics permit the first condition to be regarded as satisfied.

9 Council Regulation of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416).

10 See judgment of 27 March 1985, *Hoeckx* (249/83, EU:C:1985:139, paragraph 10).

11 See, to that effect, judgment of 16 July 1992, *Hughes* (C-78/91, EU:C:1992:331, paragraph 14).

12 See, in particular, judgments of 27 November 1997, *Meints* (C-57/96, EU:C:1997:564, paragraph 24) and of 25 July 2018, *A (Assistance for a person with a disability)* (C-679/16, EU:C:2018:601, paragraph 32 and the case-law cited).

42. I would add that the way in which health care benefits are funded [13] is immaterial for the purposes of the classification of a benefit as a social security benefit within the meaning of that regulation. [14]

43. As for the second condition, it makes it necessary to ascertain that health care, such as that provided for in the Law on medical care, relates to one of the risks referred to in Article 3(1) of Regulation No 883/2004, in this instance the 'sickness benefits' referred to in subparagraph (a) of that provision.

44. Although 'sickness benefits' are not defined in Regulation No 883/2004, the Court has nonetheless ruled on that point and held, in particular, that that concept covers benefits the essential aim of which is to cure the invalid. [15]

45. It is clear from the decision to refer and from the very title of the Latvian law at issue in the main proceedings that the health care at issue in the main proceedings is medical care and, accordingly, care intended to cure diseases.

46. I therefore consider that public health care, such as that at issue in the main proceedings, relates to the risk of sickness referred to in Article 3(1)(a) of Regulation No 883/2004 and that the second condition is also satisfied.

47. In those circumstances, I propose that the Court's answer to the first question should be that public health care benefits, such as those at issue in the main proceedings, which are granted to recipients without any individual and discretionary assessment of personal needs, on the basis of a legally defined situation, do not come within the concept of 'social and medical assistance' within the meaning of Article 3(5)(a) of Regulation No 883/2004, but come within the concept of 'sickness benefits' within the meaning of Article 3(1)(a) of that regulation.

48. Having regard to the proposed answer to the first question, I consider that there is no need to answer the third question, which is put only in the event that benefits, such as those at issue in the main proceedings, do not come under Regulation No 883/2004.

49. I propose to examine the second question in conjunction with the fifth and sixth questions, after I have examined the fourth question.

B. The fourth question

50. By its fourth question, the referring court asks, in essence, whether Article 11(3)(e) of Regulation No 883/2004 must be interpreted as meaning that it precludes national legislation from excluding from the right to receive health care benefits provided by the State a Union citizen, such as A, who exercises his right to freedom of movement by leaving his Member State of origin to settle in another Member State, on the ground that he is not employed or self-employed within the territory of the latter State.

[13] The referring court explains that since 2018 these benefits have been funded by both compulsory contributions and by taxation.

[14] See judgment of 16 July 1992, *Hughes* (C-78/91, EU:C:1992:331, paragraph 21).

[15] See, in the context of Regulation No 1408/71, judgment of 16 November 1972, *Heinze* (14/72, EU:C:1972:98, paragraph 8).

51. In that regard, I would observe at the outset that Article 11(3)(e) of Regulation No 883/2004 sets out *only* a 'conflict rule' for determining the national legislation applicable to social security benefits listed in Article 3(1) of that regulation, in this instance sickness benefits. [16] Economically inactive persons, such as A, who do not come within subparagraphs (a) to (d) of Article 11(3), come within subparagraph (e) of that provision, which constitutes a residual category, and are subject to the legislation of the Member State of residence. In a case such as that in the main proceedings, it is common ground that as A is resident in Latvia, the law applicable to him is Latvian law.

52. Article 11(3)(e), like Regulation No 883/2004 in its entirety, is thus intended to avoid the concurrent application of a number of national legislative systems and to ensure that persons covered by that regulation are not left without social security cover because there is no legislation which is applicable to them. [17]

53. On the other hand, that provision does not harmonise the conditions governing the grant of social security benefits, such as health care benefits. The latter benefits are the responsibility of the Member States, which remain competent to define their health policies in accordance with Article 168(7) TFEU, to organise their social security systems and to determine, in their national legislation, the conditions for granting and, therefore, for refusing social security benefits. [18]

54. In determining those conditions, the Member States must, however, comply with EU law, in particular primary law and the principle of equal treatment laid down, inter alia, in Article 4 of Regulation No 883/2004 and Article 24(1) of Directive 2004/38, but the content of those conditions is not set out in Article 11(3)(e) of that regulation. The question whether conditions such as those set out in the national legislation at issue in the main proceedings are consistent with the FEU Treaty and with the instruments of secondary law forms the subject matter of the second, fifth and sixth questions, which I shall examine in the sections that follow.

55. I propose that the answer to the fourth question should be that Article 11(3)(e) of Regulation No 883/2004 must be interpreted as allowing only the legislation applicable to sickness benefits, such as those at issue in the main proceedings, to be determined and does not affect the substantive conditions relating to entitlement to such benefits. That provision does not in itself make it possible to assess the compatibility with EU law of national legislation that excludes from the right to receive health benefits provided by the State a Union citizen, who exercises his right to freedom of movement by leaving his Member State of origin to settle in another Member State, on the ground that he is not employed or self-employed within the territory of the latter State.

C. The second, fifth and sixth questions

56. I would observe, by way of preliminary point, that, according to the decision to refer, at the time when A left his Member State of origin for an unlimited period, he was no longer working there and was no longer covered by its social security system. Although he sought employment in the host Member State, he did not enter that State mainly for that purpose, but did so in order to join his wife and children. It was therefore not as a worker that he relied on his right to reside in

[16] See judgment of 14 June 2016, *Commission* v *United Kingdom* (C-308/14, 'the judgment in *Commission* v *United Kingdom*', EU:C:2016:436, paragraph 63) and recitals 3 and 4 of Regulation No 883/2004.

[17] See judgments of 19 September 2013, *Brey*, C-140/12, EU:C:2013:565, paragraph 40), and paragraph 64 of the judgment in *Commission* v *United Kingdom* and also recital 15 of Regulation No 883/2004.

[18] See, in particular, judgments of 10 March 2009, *Hartlauer*, (C-169/07, EU:C:2009:141, paragraph 29 and the case-law cited), and of 16 July 2009, *von Chamier-Glisczinski* (C-208/07, EU:C:2009:455, paragraph 63).

the host Member State. Furthermore, although he may also have come within Article 14(4)(b) of Directive 2004/38, on Union citizens who remain in the host Member State for more than three months after entering that State in order to seek employment, it is apparent from that decision to refer that it was as an economically inactive person that A was residing in the host Member State at the time of his application to be affiliated to social security and that his right of residence was based on Article 7(1)(b) and Article 14(2) of that directive. [19]

57. I consider, therefore, that by its second, fifth and sixth questions, which should be examined together, the referring court is asking, in essence, whether Article 4 of Regulation No 883/2004 and Article 24 of Directive 2004/38, read in conjunction with Article 7(1)(b) and Article 14(2) of that directive, must be interpreted as permitting Member States, in their capacity as host Member State, in order to avoid an unreasonable burden being placed on the balance of their social security system, to refuse to affiliate to their social security system and to allow to benefit from health care benefits provided by the State, Union citizens who at the time they request affiliation are economically inactive, but who satisfy the conditions set out in Article 7(1)(b) of that directive, when their own nationals, in the same situation, are entitled to those benefits.

58. In order to answer that question, I shall examine the guidance provided by the Court's recent case-law on the interaction between Directive 2004/38 and Regulation No 883/2004, in connection with the condition that the person concerned must have sufficient resources, before applying that guidance to the condition that he have comprehensive sickness insurance. When examining that second condition, I shall demonstrate that an essential element of the analysis relates to the question whether affiliation to the social security of the host Member State creates an unreasonable burden for the financial balance of that State.

1. Guidance from recent case-law

59. As is apparent from its wording, Article 4 of Regulation No 883/2004, entitled 'Equality of treatment', provides that, in principle, persons to whom that regulation applies are to enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals of that State. Those benefits include, in particular, the sickness benefits referred to in Article 3(1)(a) of that regulation.

60. Article 24 of Directive 2004/38, which has the similar title 'Equal treatment', provides, in paragraph 1, that Union citizens who have exercised their right to freedom of movement and reside in a host Member State are to enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. That right is to be exercised subject to such specific provisions as are expressly provided for in the Treaty and in secondary law.

61. Those two provisions are the expression in specific areas – that of social security benefits and that of citizenship – of the principle of non-discrimination laid down generally in Article 18 TFEU. [20]

62. As regards Article 24(1) of Directive 2004/38, the Court has held that, so far as concerns access to social benefits, such as a claim for a minimum wage, which is a non-contributory social benefit within the meaning of Article 70 of Regulation No 883/2004, an economically inactive

[19] On the difference between Article 14(4)(b) and Article 14(2) of Directive 2004/38, see footnote 43 of this Opinion.

[20] See, to that effect, judgments in *Dano*, paragraph 61, and of 6 October 2020, *Jobcenter Krefeld* (C-181/19, 'the judgment in *Jobcenter Krefeld*', EU:C:2020:794, paragraph 60).

Union citizen can claim equal treatment with nationals of the host Member State only if his residence in the territory of that State complies with the conditions of Directive 2004/38. [21] In the case of a period of residence of more than three months, but less than five years, of an economically inactive Union citizen, those conditions are set out in Article 7(1)(b) of that directive and provide that the citizen must have sufficient resources and comprehensive sickness insurance. [22] In accordance with Article 14(2) of that directive, the right of residence is retained only if the Union citizen continues to satisfy those conditions. [23] Those conditions are intended to prevent that Union citizen from becoming an unreasonable burden for the social assistance system of the host Member State. [24]

63. The Court thus made clear that there is a link between the right to equal treatment under Article 24 of Directive 2004/38, which may be subject to compliance with Articles 7 and 14 of that directive, and the right to social benefits under Regulation No 883/2004. The right to receive those benefits on an equal basis with nationals of the host Member State may thus depend on the existence of a legal right to reside in the host Member State in accordance with the conditions set out in Article 7(1)(b) of that directive and on those conditions being satisfied throughout that period of residence in accordance with Article 14(2) of that directive.

64. The Court concluded that Article 24(1) of Directive 2004/38, read in conjunction with Article 7(1)(b) of that directive, does not preclude legislation which excludes from certain benefits provided for in Regulation No 883/2004 nationals of other States who are not lawfully resident, under that directive, in the host Member State. [25] The Court made clear that the same conclusion must be reached in respect of the interpretation of Article 4 of Regulation No 883/2004. [26]

65. Those considerations, which originated in the judgment in *Brey*, [27] were confirmed in the subsequent judgments in *Alimanovic*, [28] *García-Nieto and Others* [29] and *Commission* v *United Kingdom*. [30]

66. In the judgment in *García-Nieto*, the Court stated that in order to determine whether a Union citizen may be refused social assistance benefits, it is necessary to determine, first of all, whether the principle of equal treatment set out in Article 24(1) of Directive 2004/38 applies and, accordingly, whether the person concerned is lawfully resident in the territory of the host Member State for the purposes of that directive, [31] then whether that person's situation

21 See judgment in *Dano*, paragraph 69.

22 See, in particular, paragraphs 71 and 73 of judgment in *Dano*; judgments of 30 June 2016, *NA* (C-115/15, EU:C:2016:487, paragraph 76) and of 2 October 2019, *Bajratari* (C-93/18, EU:C:2019:809, paragraph 29).

23 See judgment in *Dano*, paragraph 71.

24 See judgment in *Dano*, paragraph 71.

25 See judgment in *Dano*, paragraph 82.

26 See judgment in *Dano*, paragraph 83.

27 Judgment of 19 September 2013 (C-140/12, EU:C:2013:565). See, in particular, paragraphs 44 and 47 of that judgment, where the Court established a link between the right to social security benefits under Regulation No 883/2004 and the legality of residence in the host Member State, which may be subject to satisfaction of the conditions laid down in Article 7(1)(b) of Directive 2004/38.

28 Judgment in *Alimanovic*, paragraph 69.

29 Judgment in *García-Nieto*, paragraph 38.

30 Judgment of *Commission* v *United Kingdom*, paragraph 68.

31 See, to that effect, judgment in *García-Nieto*, paragraph 40. I would emphasise that, in the case of a person such as Ms Dano, she was legally resident in the host Member State, according to the legislation of that State. She had also obtained there a residence certificate of unlimited duration (see paragraph 36 of the judgment in *Dano*). Conversely, since she did not have sufficient resources within the meaning of Article 7(1)(b) of Directive 2004/38, she was not lawfully resident there for the purposes of that directive.

nonetheless does not come within the scope of the derogation in Article 24(2).[32] By virtue of that derogation, the right to be treated equally with nationals may be refused in three cases, namely, during the first three months of residence in the host Member State; during any period in excess of three months during which the person concerned is seeking employment in accordance with Article 14(4)(b) of that directive; and, as concerns a request for maintenance aid for students, so long as they have not acquired a permanent right of residence in that Member State.

67. Following those judgments, some doubt may have persisted as to whether the Court's reasoning concerning the link between Article 24 of Directive 2004/38 and Article 4 of Regulation No 883/2004 related only to non-contributory social benefits, such as the minimum wage, or whether they applied to the social security benefits covered by that regulation. The judgment in *Commission* v *United Kingdom* makes clear that that reasoning applies in the same way to social security benefits.[33]

68. I infer from that case-law that the conditions set out in Article 7(1)(b) of Directive 2004/38 also apply to all social security benefits and in particular to those coming within the first type of social security referred to in Article 3(1)(a) of Regulation No 883/2004, namely to sickness benefits.

69. The question that arises in the present case is whether, once those conditions are satisfied, the Union citizen enjoys equal treatment with nationals of the host Member State as regards entitlement to health benefits provided by the State.

70. It should be emphasised that A satisfies the two conditions set out in Article 7(1)(b) of Directive 2004/38. It is apparent from the decision to refer[34] and it is common ground between the parties that, at the time when he requested affiliation to the Latvian social security in order to receive such benefits, A had sufficient resources and comprehensive sickness insurance. As regards the latter condition, it was stated at the hearing before the Court that he had taken out that insurance with a private insurance company. Nor is it disputed that he continued to satisfy both of those conditions at all times, after requesting to be affiliated to the social security of the host Member State. Such a Union citizen should therefore, in principle, enjoy equal treatment with nationals, under Article 24(1) of Directive 2004/38, provided that he does not come within one of the three cases referred to in paragraph 2 of that provision, and should therefore be able to be affiliated to the social security of the host Member State on the same conditions as nationals.[35] That would mean that he could not only have access to health care benefits coming within the public health system, but also that those benefits should be provided by the State on the same conditions as those applicable to nationals.[36]

71. Nonetheless, the logic set out in the preceding point is not self-evident, as may be seen from the observations lodged by the Latvian and Spanish Governments and by the Commission.

[32] See, to that effect, paragraph 43 of the judgment in *García-Nieto*.

[33] In the case that gave rise to that judgment, the Commission had maintained that Directive 2004/38 did not apply to social security benefits (see paragraphs 44 and 46 of the judgment). After stating that the benefits in question, namely family allowances, were indeed social security benefits (paragraph 61 of the judgment), the Court applied the directive to those benefits (see paragraphs 66 and 68 of the judgment) and dismissed the application for a declaration that the United Kingdom had failed to fulfil its obligations by making the grant of those benefits subject to a condition of legal residence in its territory.

[34] See paragraph 3.7 and the second subparagraph of paragraph 20 of the decision to refer.

[35] See also point 84 of this Opinion.

[36] See, by comparison, point 22 of this Opinion.

72. The Latvian Government submits that the condition requiring comprehensive sickness insurance is not a random choice, but that it pursues a specific objective. Just as the requirement of sufficient resources is intended to ensure that a person is himself able to provide for his needs while he is resident for more than three months in another Member State and that the latter State is not required to grant him social assistance benefits in the form of a minimum subsistence allowance, the requirement of comprehensive insurance also has the objective of ensuring that a person who is not employed or self-employed is himself able to cover his health costs and that the Member State concerned is not required to assume responsibility for such costs. In the Latvian Government's view, it cannot be accepted that a person should claim the equal treatment provided for in Article 24(1) of Directive 2004/38 in order to receive health care benefits provided by the State when, in accordance with Article 7(1)(b) of that directive, he must have comprehensive health insurance in order to be entitled to reside lawfully in the host Member State for more than three months.

73. The Commission likewise considers, referring to the judgment in *Dano*,[37] that the host Member State's refusal to grant access to its social security system to a Union citizen, such as A, on equal terms with its own nationals residing within its territory is merely an inevitable consequence of Directive 2004/38, in this instance of the condition requiring comprehensive health insurance, in accordance with Article 7(1)(b) of that directive.

74. The Spanish Government supports the position of the Latvian Government and the Commission.

75. If I summarise their positions, those parties consider that, since the conditions requiring sufficient resources and comprehensive sickness insurance must be satisfied in order to claim equal treatment under Article 24(1) of Directive 2004/38, read in conjunction with Articles 7 and 14 of that directive, that right can be invoked only for the grant of benefits other than those that enable those conditions to be satisfied, as otherwise those conditions would be rendered meaningless.

76. In other words, the right to equal treatment cannot, according to those Governments and the Commission, relate to the grant of a minimum income or to affiliation to the public health system of the host Member State, which specifically make it possible to satisfy the conditions set out in Article 7(1)(b) of Directive 2004/38.

77. I understand that reasoning. I consider, as I shall show, that the condition set out in Article 7(1)(b) of Directive 2004/38 that the person concerned must have comprehensive sickness insurance is intended to ensure that an economically inactive Union citizen does not become an unreasonable burden for the host Member State before he has acquired a permanent right of residence in accordance with Article 16 of that directive, that is to say, at the end of the first five years of residence. I consider that during that period the host Member State is, in principle, entitled to require the Union citizen to subscribe, at his own expense, to sickness insurance that covers his health expenses in the host Member State.[38] In the great majority of cases, therefore, that Member State is entitled, in my view, to refuse to allow that citizen to be affiliated to its social security system.

[37] Paragraph 77 of that judgment.

[38] I recall that the freedom of movement of economically inactive citizens of the European Union may be limited by secondary law in accordance with Article 21 TFEU, which provides that 'every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.'

78. However, the question which the Court must resolve in this instance is whether a Member State may 'automatically and in all circumstances' [39] refuse to affiliate an economically inactive Union citizen to its social security scheme on the same conditions as its own nationals. I would emphasise that, even for nationals, the public health care provided by the State is not generally 'free of charge'. They pay towards it either by contributions or by taxes, depending on the method of funding social security established by each Member State.

79. That problem arises quite particularly in the case of a Union citizen who, while meeting the conditions set out in Article 7(1)(b) of Directive 2004/38, has permanently left his Member State of origin, where for that reason he is no longer affiliated to the social security, and who has settled for family reunification purposes in another Member State to which he has removed the centre of all of his interests, both family interests and personal and occupational interests.

80. I consider, in that respect, that it is appropriate to adopt a more nuanced interpretation than that proposed both by the Latvian and Spanish Governments and by the Commission, as the judgment in *Jobcenter Krefeld*, concerning the condition requiring sufficient resources, suggests. Such an approach is all the more desirable, to my mind, in the case of the condition requiring comprehensive sickness insurance. I shall demonstrate that the systematic refusal to allow economically inactive nationals of other Member States to receive public health care benefits, on the same conditions as nationals, before they have acquired a permanent right of residence, after residing for five years in the territory of the host Member State, is not supported by the wording of Articles 7, 14 and 24 of Directive 2004/38 and that it is contrary to the objective of freedom of movement for Union citizens and to the very concept of 'citizenship of the Union'.

2. The concept of 'comprehensive sickness insurance' in the light of the wording of Article 7(1) of Directive 2004/38

81. The 'comprehensive sickness insurance' condition is set out in Article 7(1)(b) and (c) of Directive 2004/38.

82. I would observe, first of all, that Directive 2004/38, in particular in Articles 7, 14 and 24, does not expressly state that a Member State may refuse to affiliate a Union citizen to its social security scheme and thus to grant him public sickness cover on the ground that he is economically inactive during the period of residence between three months and five years after his arrival in that Member State.

83. In particular, the derogation set out in Article 24(2) of Directive 2004/38 does not provide for such a limit to the right to equal treatment. I recall that, as a derogation from a fundamental freedom, that provision must, according to the Court, be interpreted strictly. In addition, the Court clarified the scope of that derogation in its recent judgment in *Jobcenter Krefeld*, [40] when it stated, first, that the derogation is applicable only in situations referred to in Article 24(1) of Regulation No 883/2004 and, accordingly, only to Union citizens whose right of residence is

[39] See judgment in *Jobcenter Krefeld*, paragraph 79, from which those words are taken.

[40] See paragraph 60 et seq. of that judgment. The judgment concerns a Union citizen who was economically inactive at the time when he applied for subsistence benefits for himself and his children in the host Member State, where he had previously worked. As he was no longer classified as a worker, but was seeking fresh employment in that Member State, he came within the scope of Article 14(4)(b) of Directive 2004/38. He also had a right to reside in the host Member State on the basis of Article 10 of 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 (OJ 2011 L 141, p. 1) on the ground that his children were attending school in that State and was thus entitled to equal treatment with nationals of that State in the matter of social assistance.

based on that directive.[41] Second, as regards the application of the derogation to a jobseeker, the derogation is aimed at persons whose right of residence is based *solely* on Article 14(4)(b) of Directive 2004/38.[42]

84. It follows that a Union citizen, such as A, who has a right of residence on the basis of Article 7(1)(b) and of Article 14(2) of Directive 2004/38, and not solely on the basis of Article 14(4)(b) of that directive, does not come within the derogation referred to in Article 24(2) of that directive.[43]

85. I would observe, next, that, unlike the wording of Article 7(1)(b) of Directive 2004//38 which requires the Union citizen to have sufficient resources 'not to become a *burden* on the social assistance system of the host Member State during their period of residence',[44] the EU legislature did not establish such a link between the condition requiring comprehensive sickness insurance and the existence of such a burden. Thus, the legislature considered that the lack of sufficient resources may constitute a *burden* that might justify a refusal to grant social benefits on equal terms as nationals.[45] As regards comprehensive sickness insurance, on the other hand, the legislature's intention was to ensure that a Union citizen residing in a host Member State would not become, not simply a burden, but an *unreasonable burden*, for that Member State.[46]

86. I shall examine the concept of 'unreasonable burden' in detail in point 92 et seq. of this Opinion. I would merely state at this stage that the qualification as 'unreasonable' constitutes a significant difference.

87. As regards, last, the scope of the concept of 'comprehensive sickness insurance', I would emphasise that it is not defined in Directive 2004/38.

88. In everyday language, 'insurance' refers to 'an agreement whereby an insurer guarantees to the insured, in return for a premium or a contribution, payment of an agreed sum in the event that a specific risk should materialise'.[47] In this case, sickness insurance is designed to cover risks in health care matters. The word 'comprehensive' relates to the extent of the risks that must be covered in the host Member State.

89. However, Directive 2004/38 contains no detail of the scope of those terms. In particular, it does not state whether the sickness insurance must be private or public. The Governments which have intervened in the present case and the Commission proceeded from the premiss that the insurance in question is private insurance, but that is not apparent from the wording of the provision. Nor is it stated whether the insurance must be provided by a body or an undertaking in the host Member State or whether it may be provided from another Member State, in particular from the Union citizen's Member State of origin.

41 See judgment in *Jobcenter Krefeld*, paragraph 65.

42 See judgment in *Jobcenter Krefeld*, paragraphs 69 and 70.

43 I would emphasise that, while *Article 14(4)(b)* of Directive 2004/38 refers to persons who reside in the host Member State after the first three months following their arrival in order to seek employment there and are not entitled to social assistance benefits from that Member State because of the application of the derogation set out in Article 24(2) of that directive, *Article 14(2)* of that directive refers to other persons who have a right of residence on the basis of Article 7 of that directive and continue to satisfy the conditions of that provision and who are therefore entitled in principle to equal treatment with nationals, under Article 24(1) of that directive.

44 Emphasis added.

45 See, to that effect, judgment in *Dano*, paragraph 77.

46 See, to that effect, judgment in *Dano*, paragraph 71.

47 Translation of the definition in the *dictionnaire Le Robert*.

90. The judgment *Baumbast and R*[48] and the Commission's Guidance on the application of Directive 2004/38[49] provide some clarification in that respect. It is apparent from that judgment that the Union citizen concerned, who claimed a right to reside in the host Member State in which he had exercised his freedom of movement, in that instance the United Kingdom, had comprehensive sickness insurance in his Member State of origin, Germany, provided by its social security system.[50]

91. The mode of insurance does not therefore appear to be decisive. What matters is having sickness cover.[51]

92. The context of Directive 2004/38, moreover, sheds further light on the matter. I note that, according to recital 10 of that directive, the conditions set out in Article 7 of that directive are intended, in particular, to ensure that the Union citizens concerned do not become an 'unreasonable burden' on the social assistance system of the host Member State.[52]

93. The origin of the provision and the Guidance on the application of Directive 2004/38 also highlight the importance for Member States of ensuring that an economically inactive Union citizen does not become such a burden.

94. That economic concern was already evident in the three directives dating from 1990 that preceded Directive 2004/38,[53] in particular Directive 90/364, and followed the Report from the ad hoc Committee on a People's Europe, known as the 'Adonnino Report', of 1985.[54] That report had suggested that, in addition to the condition requiring adequate resources, a condition requiring 'adequate provisions in case of illness' be imposed in order to facilitate the adoption of the Proposal for Directive 90/364 providing for a right of residence for economically inactive Union citizens.[55]

[48] Judgment of 17 September 2002 (C-413/99, 'the judgment in *Baumbast*' EU:C:2002:493), which concerned Directive 90/364, which preceded Directive 2004/38 and contained a similar sickness insurance obligation.

[49] Communication from the Commission to the European Parliament and the Council on guidance for better transposition and application of Directive 2004/38 (COM(2009) 313 final ('the Guidance on the application of Directive 2004/38').

[50] See, to that effect, judgment in *Baumbast*, paragraph 89, and Opinion of Advocate General Geelhoed in *Baumbast* (C-413/99, EU:C:2001:385, point 116). That consideration is also supported by the Guidance referred to in the preceding footnote, which states that sickness insurance may result from affiliation to the social security scheme of the Union citizen's Member State of origin. The Commission gives the example of persons in receipt of a pension who would be entitled to health treatment on behalf of the Member State which pays their pension. It also mentions the case in which the legislation of the Member State of origin would cover the health care benefits of a student who travelled to another Member State in order to study without transferring his residence to that State in the sense of Regulation No 1408/71, now Regulation No 883/2004.

[51] The requirement to be covered by sickness insurance appears in two other provisions of Directive 2004/38, in Article 12(2) and Article 13(2), second paragraph. The requirement is expressed somewhat more strictly, in that those concerned are required to have 'comprehensive sickness insurance cover' in the host Member State, but as in Article 7(1)(b) and (c) of that directive, the wording is neutral as to the mode of cover.

[52] This recital reflects the fourth recital of Directive 90/364. See also judgment of 21 December 2011, *Ziolkowski and Szeja* (C-424/10 and C-425/10, EU:C:2011:866, paragraph 40).

[53] See point 11 of this Opinion.

[54] Adonnino Report presented to the European Council, Brussels, 29 and 30 March 1985 (Bulletin of the European Communities, supplement No 7, 1985, p. 9 and 10). That report made a number of proposals, at the request of the Heads of State and of Government, in order to increase the rights of citizens of the Union, in particular the right of residence. See also, to that effect, Opinion of Advocate General La Pergola in *Kaba* (C-356/98, EU:C:1999:470, footnote 123), which refers to that report.

[55] See Proposal for a Council Directive on the right of residence (COM(89) 275 final (OJ 1989 C 191, p. 5)). I note that the first proposal relating to a general right of residence dates from the late 1970s. It does not mention the condition that the person concerned have sickness insurance. See Proposal for a Council Directive on a right of residence for nationals of Member States in the territory of another Member State, submitted by the Commission to the Council on 31 July 1979 (OJ 1979 C 207, p. 14).

95. As for the Guidance on the application of Directive 2004/38, it states that 'any insurance cover, private or public, contracted in the host Member State or elsewhere, is acceptable in principle, as long as it provides [comprehensive coverage] and *does not create a burden on the public finances of the host Member State*'. [56]

96. I note, moreover, that in its proposal for a review of Regulation No 883/2004 with the aim of taking the Court's case-law into account, the Commission envisaged that a Union citizen would have access to the social security system of the host Member State, if he habitually resides there, by contributing in a proportionate manner to a sickness insurance scheme. [57]

97. It follows from the foregoing considerations that comprehensive sickness insurance may be private or public and may result from affiliation to the social security system of a Member State, in particular the Union citizen's Member State of origin, as in the case that gave rise to the judgment in *Baumbast*, but also that of the host Member State. [58] In the absence of detail in Directive 2004/38 on the concept of 'comprehensive sickness insurance', I consider that the condition requiring comprehensive sickness insurance must be understood as the obligation to have comprehensive health care cover, irrespective of the origin of that cover and any mode of affiliation. The reference to 'comprehensive sickness insurance' as a condition of lawful residence of a Union citizen in accordance with Directive 2004/38 cannot, in my view, in itself preclude the existence of an economically inactive Union citizen's right to be affiliated to the social security system of the host Member State. A further requirement is that such affiliation would create an 'unreasonable burden' for the financial balance of the host Member State.

98. As I shall demonstrate below, that consequence is not automatic.

3. The concept of 'unreasonable burden'

99. In the judgment in *Baumbast*, the Court held that the right to freedom of movement and residence was extended by the FEU Treaty to *every* Union citizen, whether or not he carries on an economic activity, but observed that that right is subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect. [59] It explained that those limitations are based on the idea that the exercise of the right of residence of citizens of the Union can be subordinated to the 'legitimate interests' of the Member States, which include their interest in the beneficiaries of that right not becoming an '"unreasonable" burden on the public finances of the host Member State'. [60]

100. The Court further held that those limitations and conditions must be applied in compliance with the limits imposed by EU law and in accordance with the principle of proportionality. [61]

[56] Emphasis added (see point 2.3.2 of that Guidance). I would add that that Guidance is not legally binding, but it may be a source of interpretation.

[57] See Proposal for a Regulation of the European Parliament and of the Council of 13 December 2016, amending Regulation No 883/2004 and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (COM(2016) 815 final), in particular Article 1(3) of that proposal.

[58] I note that, at the hearing in that case, in answer to a question from the Court about voluntary affiliation to the social security of the host Member State, the Commission stated that if the host Member State provides for the possibility of joining its public health system by making a contribution that is more than symbolic, that method must be followed so that an inactive citizen of the Union who has exercised his right to freedom of movement is not required to take out private insurance.

[59] See, to that effect, judgment in *Baumbast*, paragraphs 81 to 85. See also footnote 38 of this Opinion.

[60] See judgment in *Baumbast*, paragraph 90.

[61] See judgment in *Baumbast*, paragraph 91.

101. In that regard, I note that Article 14(3) of Directive 2004/38 provides that an expulsion measure is not to be the automatic consequence of a Union citizen's recourse to the social assistance system. That provision reflects the Court's finding in the judgment in *Grzelczyk* [62] that the mere fact that a student applies for a minimum subsistence allowance in the host Member State cannot automatically result in the loss of his right of residence and in a refusal to grant him the requested social benefit. [63] I infer that the grant of such a social benefit does not always constitute an unreasonable burden.

102. When does a burden become unreasonable?

103. The concept of 'unreasonable burden' was applied, in particular, in the judgments in *García-Nieto*, *Alimanovic* and *Dano* and clarified in the judgment in *Jobcenter Krefeld* (section a). It was also examined in cases in which the Union citizen's situation had a link of integration with the host Member State (section b). Although the cases giving rise to the judgments referred to in section a did not lend themselves to an individual examination of the situation of the citizens concerned, such an examination is necessary in a case such as that in the main proceedings (section c).

(a) The concept of 'unreasonable burden' within the meaning of the judgments in García-Nieto, Alimanovic and Dano as clarified in the judgment in Jobcenter Krefeld

104. In the judgment in *Jobcenter Krefeld*, the Court took care to explain that a person such as the applicant in the case that gave rise to that judgment did not constitute an unreasonable burden on the social security system of the host Member State, distinguishing his situation from that of Ms García-Nieto, Mr Alimanovic and Ms Dano, namely the Union citizens concerned, respectively, in the judgments bearing their names.

105. Unlike Ms García-Nieto, the Union citizen concerned in the case that gave rise to the *Jobcenter Krefeld* judgment, a father and former employee in the host Member State, did not claim a social benefit for the first three months of his residence in the territory of that State.

106. Nor, unlike Mr Alimanovic, did that Union citizen claim such a benefit on the basis of a right of residence for a period in excess of those first three months, based solely on the fact that he was seeking employment in the host Member State, since he had an autonomous right of residence based on Article 10 of Regulation No 492/2011.

107. Last, unlike Ms Dano, that Union citizen had not entered the territory of the host Member State without work or sufficient resources solely in order to receive the social assistance benefits granted by that State to its own nationals.

108. Consequently, although he requested a subsistence allowance, the Union citizen in question could not be considered to constitute an unreasonable burden on the social security system of the host Member State. [64]

[62] Judgment of 20 September 2001 (C-184/99, 'the judgment in *Grzelczyk*', EU:C:2001:458).

[63] See, to that effect, judgment in *Grzelczyk*, paragraphs 44 and 45.

[64] I recall, however, as I explain in footnote 40 of this Opinion, that that person derived his right to reside in the host Member State from Regulation No 492/2011, because he had previously worked there and his children were educated there.

109. Those considerations are relevant for a Union citizen such as A, since his situation is also clearly distinguished from those of Ms García-Nieto, Mr Alimanovic and Ms Dano.

110. His claim does not relate to the first three months following his entry to the host Member State, but to a subsequent period. His right of residence is not based solely on the fact that he is seeking work in the host Member State, on the basis of Article 14(4)(b) of Directive 2004/38, since it is common ground that he is lawfully resident in the host Member State on the basis of Article 7(1)(b) of that directive. Last, unlike Ms Dano, A did not enter the territory of the host Member State in order to obtain social assistance benefits from that Member State or free health care. Whereas Ms Dano had never worked and was not seeking employment in the host Member State, A had already worked in Italy and was seeking employment in Latvia. [65]

111. Such findings in my view make it possible to discount the risk that a Union citizen, such as A, constitutes an unreasonable burden in the sense of the three cases previously examined by the Court.

112. Furthermore, far from acting as a 'social tourist', an expression used to describe Ms Dano's conduct, A formed special links with the host Member State, which, in accordance with the Court's case-law, have consequences for the concept of 'unreasonable burden'. I shall examine those links in the next section.

(b) The concept of 'unreasonable burden' examined in the light of the link of integration with the host Member State

113. The Court found it necessary to examine the impact that the link of integration of an economically inactive Union citizen with a host Member State might have on that citizen's entitlement to social assistance benefits on the same basis as nationals. The Court's case-law has evolved, in particular, in the context of cases relating to economically active students pursuing their studies in the host Member State. [66]

114. The Court thus examined in the judgment in *Bidar* [67] whether the provision of financial assistance to students in the form of grants to help them to cover their day-to-day living costs was likely to constitute an unreasonable burden capable of having consequences for the overall level of assistance that might be granted by that State.

115. The Court held in that judgment that in order to prevent such an effect, it is permissible for a Member State to grant such assistance only to students who have demonstrated a certain degree of integration into society in that State. [68] It considered it relevant that the Union citizen has established a genuine link with society in that State by lawfully residing there and receiving a

[65] As I stated in point 22 of this Opinion, A found a job in Latvia in 2018. I would point out that that does not in any way alter his interest in bringing an action and, accordingly, the admissibility of the questions for a preliminary ruling – which, moreover, has not been raised. The referring court itself states, first, that the decision refusing affiliation may have been vitiated by illegality, giving rise to a right to take proceedings. Second, if the employment relationship ended, a finding of illegality would prevent the authority that took that decision from adopting a new similar decision in respect of him (see, by analogy, judgment of 28 May 2013, *Abdulrahim* v *Council and Commission*, C-239/12 P, EU:C:2013:331, paragraphs 61, 63 and 64).

[66] See, in particular, judgments of 11 July 2002, *D'Hoop* (C-224/98, EU:C:2002:432); of 15 March 2005, *Bidar* (C-209/03, 'the judgment in *Bidar*', EU:C:2005:169); of 23 October 2007, *Morgan and Bucher* (C-11/06 and C-12/06, EU:C:2007:626); of 18 November 2008, *Förster* (C-158/07, EU:C:2008:630); of 25 October 2012, *Prete* (C-367/11, EU:C:2012:668); of 18 July 2013, *Prinz and Seeberger* (C-523/11 and C-585/11, EU:C:2013:524); of 24 October 2013, *Thiele Meneses* (C-220/12, EU:C:2013:683); of 26 February 2015, *Martens* (C-359/13, EU:C:2015:118), and of 25 July 2018, *A (Assistance for a person with a disability)* (C-679/16, EU:C:2018:601).

[67] Paragraph 56 of that judgment.

[68] See the judgment in *Bidar*, paragraph 57.

substantial part of his secondary education there. The Court held that national legislation which prevents such a citizen from pursuing university studies in the host Member State on the same terms as nationals in regard to financial assistance, without taking into account that citizen's genuine integration into society in that State, is not justified by the legitimate objective which that legislation is intended to ensure.[69]

116. In the judgment in *Förster*,[70] which post-dated the judgment in *Bidar*, the Court held, however, relying on the terms of Directive 2004/38, that a Member State may consider it permissible not to grant such maintenance assistance to students from other Member States residing in its territory for the purposes of their studies so long as they have not resided in its territory for five years. However, I would emphasise that Directive 2004/38 contains an express provision to that effect in Article 24(2).

117. Consequently, in the absence of an express provision permitting a derogation from the right to equal treatment in the case of a request to be affiliated to the social security of the host Member State, I consider that the Court's case-law relating to the genuine link of integration with society in the host Member State and to the concept of 'unreasonable burden' is relevant in the context of the present case.[71]

118. That genuine link of integration in the host Member State, which must be proved, may be based on a range of indicia such as the family circumstances and the extent to which the family has established roots in that Member State,[72] the existence of social or economic links[73] or personal links such as marriage with a national of that Member State and habitual residence within its territory[74] or, again, the fact that family members on whom the Union citizen depends are employed there.[75]

119. I recall that the genuine link of integration cannot be fixed in a uniform manner, but should be established according to the constituent elements of the benefit in question, including its nature and its purpose.[76] As regards affiliation to the social security, the Member State may in my view consider that the link of integration characterised in particular by the fact that the person concerned is resident in the host Member State is demonstrated only after a reasonable period of residence in that Member State, provided that such a period does not exceed what is necessary to ensure that he has transferred his centre of interests to that State.[77]

120. In the case of a Union citizen such as A, I recall that it is common ground that he left his Member State of origin, Italy, to settle for an unlimited period with his wife and infant children in Latvia and that, according to the actual words of the referring court, he has transferred the

69 See judgment in *Bidar*, paragraphs 61 and 63.

70 Judgment of 18 November 2008 (C-158/07, EU:C:2008:630).

71 I would emphasise that, in the judgment of 25 July 2018, *A (Assistance for a person with a disability)* (C-679/16, EU:C:2018:601, paragraphs 69 to 71), the Court held that the existence of a genuine and sufficient connection with the Member State concerned has the objective of ensuring the financial balance of the social security system while enabling that Member State to satisfy itself that the economic cost of paying that benefit does not become unreasonable.

72 See judgment of 21 July 2011, *Stewart* (C-503/09, EU:C:2011:500, paragraph 100).

73 See, to that effect, judgment of 24 October 2013, *Thiele Meneses* (C-220/12, EU:C:2013:683, paragraph 38).

74 See judgment of 25 October 2012, *Prete* (C-367/11, EU:C:2012:668, paragraph 50).

75 See judgment of 26 February 2015, *Martens* (C-359/13, EU:C:2015:118, paragraph 41).

76 See judgment of 4 October 2012, *Commission* v *Austria* (C-75/11, EU:C:2012:605, paragraph 63).

77 See, to that effect, by analogy, judgment of 23 March 2004, *Collins* (C-138/02, EU:C:2004:172, paragraphs 70 and 73).

'centre of his interests' to that Member State, with which he has formed 'close personal links'. It thus appears, subject to verification by the referring court, that he has a genuine link of integration with society in that Member State.

121. That being so, the consequences that follow from such a link of integration must still be assessed, in the light of the fact that the public health sector has particular characteristics that are recognised by the FEU Treaty and reflected in the Court's case-law. The Court has consistently held that the protection of public health is one of the overriding reasons in the general interest which can, under Article 52 TFEU, justify restrictions of freedom of establishment [78] and freedom to provide services. [79] The same applies with respect to the freedom of movement and of residence of a Union citizen under Article 27 of Directive 2004/38. That derogation covers, more specifically, two objectives, namely the objective of maintaining a balanced high-quality medical or hospital service open to all and the objective of preventing the *risk of serious harm to the financial balance of the social security system*. [80]

122. In the light of those considerations, I consider that when an economically inactive Union citizen, with a genuine link of integration in the host Member State and with sufficient resources, makes a financial contribution to the social security system of that Member State on an equal basis with nationals either by means of premiums, when the system is based on an insurance mechanism, or through taxation, in the case of a national health system like that in force in Latvia in 2016, [81] his affiliation to that system on the same conditions as nationals should not, in principle, create a risk of serious harm to the financial balance of that system, or indeed constitute an unreasonable burden. However, it is for each Member State to verify whether that is so.

123. In fact, it cannot be precluded that an economically inactive Union citizen in the same situation as a national of the host Member State will not be required to pay either taxes or social security premiums or will be required to make only a token payment. I consider that in that case, if it appears that the Union citizen's affiliation on the same conditions as nationals is liable to create a risk of serious harm to the financial balance of the host Member State, that State is not required to confer equal treatment on that citizen. The existence of such a risk should, however, be verified on the basis of objective, detailed data, supported by figures. [82]

124. In such circumstances, I consider that there is nothing to preclude a system of additional contributions being put in place by the host Member State or, failing that, in the case of a national health system based on taxation, to preclude that Member State from asking the Union citizen to maintain his private comprehensive sickness insurance in return for being affiliated to the national system. [83]

78 See, to that effect, judgment of 10 March 2009, *Hartlauer* (C-169/07, EU:C:2009:141, paragraph 46).

79 See, to that effect, judgment of 28 April 1998, *Kohll* (C-158/96, EU:C:1998:171, paragraph 45).

80 See judgments of 10 March 2009, *Hartlauer* (C-169/07, EU:C:2009:141, paragraph 47), and of 16 May 2006, *Watts* (C-372/04, EU:C:2006:325, paragraphs 103 and 104 and the case-law cited).

81 See, concerning the different ways of funding the Member States' social security systems, Mantu, S, and Minderhoud, P, *Exploring the Links between Residence and Social Rights for Economically Inactive EU Citizens*, European Journal of Migration and Law, 2019, Vol. 21, No 3, p. 313-337, in particular point 2.3.

82 See, to that effect and by analogy, judgment of 13 April 2010, *Bressol and Others* (C-73/08, EU:C:2010:181, paragraph 71).

83 In such a case, there is nothing to prevent Member States from including in their legislation a provision requiring insurance companies to include in their contracts a clause providing for direct reimbursement to the State of the health costs incurred in respect of the citizen of the Union, in order to prevent the citizen of the Union from becoming an unreasonable burden. In addition, when they set the level of additional contributions or the requirement to maintain private comprehensive health insurance, Member States should ensure, in accordance with the principle of proportionality, that that citizen is able to meet those requirements and, accordingly, that the sums required do not make those requirements impossible or excessively difficult to meet.

125. I thus consider, in the light of the foregoing analysis, that an economically inactive Union citizen who has sufficient resources and shows a genuine link of integration in the host Member State may, where appropriate, benefit from affiliation to the social security of that Member State, even before he has found employment or become self-employed in that Member State or has acquired a permanent right of residence in accordance with Article 16 of Directive 2004/38. [84]

126. It follows that the automatic refusal, in all circumstances, to affiliate a Union citizen such as A to the social security system of the host Member State and to allow him to receive public health benefits on the same conditions as nationals is in my view inconsistent with Article 24(1) of Directive 2004/38, read in conjunction with Article 7(1)(b) and with Article 14(2) of that directive.

127. That consideration is not called into question by the fact that the situation of such a Union citizen requires an individual examination for the purpose of verifying that he is indeed integrated in that host Member State.

(c) The need for an individual examination of the Union citizen's situation in order to determine whether he constitutes an unreasonable burden

128. I recall that the case-by-case examination of the Union citizen's situation, for the purpose of determining whether he may claim a social benefit on an equal basis with nationals, must be carried out in numerous situations so that there is no breach of the right to freedom of movement and of residence. That is notably the case of a student, such as Mr Grzelczyk who is claiming a minimum subsistence allowance, where it must be ascertained whether his need is temporary. [85] That is also the case of a Union citizen such as Mr Baumbast, where examination of his situation requires verification of various parameters, including whether he had previously been dependent on the host Member State.

129. In the judgments in *Alimanovic* and *García-Nieto*, the Court admittedly held that cases of the type forming the basis of those judgments and of the judgment in *Dano* do not lend themselves to an individual examination of the persons concerned for the purpose of assessing whether they constitute an unreasonable burden. [86] The Court observed that the assistance granted to *a single* claimant can scarcely be described as an 'unreasonable burden' for a Member State, within the meaning of Article 14(1) of Directive 2004/38, and that it was necessary to take all the individual claims submitted to that State into account. [87]

130. It follows implicitly from those considerations that, taken in their entirety, the situations underlying cases of that type must be considered to constitute an unreasonable burden and that the Member States concerned are not required to grant the social benefits requested.

[84] It follows that it cannot be precluded that such a citizen of the Union, who initially took out private comprehensive health insurance, in order to meet the requirements of Article 7(1)(b) of Directive 2004/38, may, subject to the situation described in point 124 of this Opinion, cancel that insurance, in which case affiliation to the social security of the host Member State then takes over from the private insurance.

[85] See, to that effect, judgment in *Grzelczyk*, paragraph 44.

[86] See, to that effect, judgments in *García-Nieto*, paragraph 46, and *Alimanovic*, paragraph 62.

[87] See judgment in *García-Nieto*, paragraph 50. The Court thus observed that Directive 2004/38, in establishing a gradual system as regards the retention of the status of 'worker', which seeks to safeguard the right of residence and access to social assistance, itself takes into consideration various factors characterising the individual situation of each applicant for social assistance (see judgments in *García-Nieto*, paragraph 47, and *Alimanovic*, paragraph 60).

131. Thus, the fact that the situation of each of those persons, taken individually, does not constitute an unreasonable burden is not decisive. If their situation corresponds to one of the cases expressly referred to by the legislature, in particular in Article 24(2) of Directive 2004/38, as in the cases forming the basis of the judgments in *García-Nieto* and *Alimanovic*, or concerns a person who, like Ms Dano, has exercised her freedom of movement for the sole purpose of receiving social benefits from the host Member State, such requests must be considered to be capable of causing an unreasonable burden for the financial balance of the host Member State and that State is not required to grant them.

132. Conversely, as regards the situation of a person such as A, who does not come within those cases, the opposite approach is required, in my view. An examination of the individual situation of the person concerned must be carried out in order to ensure that he is indeed integrated in the host Member State, in particular that he 'habitually resides' there, in the sense of Regulation No 883/2004, and, accordingly, that he can be affiliated to its social security system on the same conditions as nationals, provided that he does not come within the situation referred to in points 123 and 124 of this Opinion. The relevant elements include, in particular, those set out in Article 11 of Regulation (EC) No 987/2009,[88] such as his family situation, how permanent his housing situation is, the Member State in which he is deemed to reside for taxation purposes or the reasons that led that citizen to move.

133. The foregoing analysis, relating to the concept of an 'unreasonable burden', is applicable in the same way in the context of the interpretation of Regulation No 883/2004.

4. The consequences that follow from the concept of 'unreasonable burden' as regards the interpretation of Regulation No 883/2004

134. As is apparent from the decision to refer, the Latvian courts considered that the law of the Member State of residence, in this instance Latvian law, was applicable, pursuant to Article 11(3)(e) of Regulation No 883/2004.

135. That law may define the scope of the sickness benefits covered by the Member State and the conditions that need to be satisfied in order to claim those benefits. As I stated in point 53 of this Opinion, the Member States are competent to organise their social security systems and, accordingly, to define the extent of the benefits offered and the conditions governing entitlement to those benefits. It follows that a move by a Union citizen may, depending on the case, be more or less advantageous or disadvantageous for him, depending on the combination of national rules applicable pursuant to Regulation No 883/2004.[89]

136. However, the problem in the present case is not whether the Union citizen who has exercised his freedom of movement may be granted less extensive benefits than those which he could have received in his Member State of origin, but whether he can be refused any State health care benefits at all apart from emergency care and obstetric care.

[88] Regulation of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (OJ 2009 L 284, p. 1). See, also, point 118 of this Opinion.

[89] See, to that effect, judgment of 16 July 2009, *von Chamier-Glisczinski* (C-208/07, EU:C:2009:455, paragraph 85). It may even be the case that that move results in the total loss, for a period, of certain rights, in particular pension rights. I observe that in such a case, the Court nonetheless emphasised in the judgment of 19 September 2019, *van den Berg and Others* (C-95/18 and C-96/18, EU:C:2019:767, paragraph 65) that it was particularly appropriate, in order to avoid such a loss, that Member States should take advantage of the possibility afforded them by Regulation No 883/2004 to agree on exceptions to the principle of single applicable legislation.

137. As I observed in point 52 of this Opinion, the objective pursued by Regulation No 883/2004 and in particular in Article 11(3)(e) thereof is, in particular, to prevent persons who come within the scope of the regulation being left without social security cover because there is no legislation applicable to them. [90]

138. In a case such as A's, the Union citizen is no longer insured in his Member State of origin because he has ceased to be employed there and has moved his place of residence to another Member State. [91] The designation of the law of the Member State of residence is intended, in principle, to ensure that he is not deprived of any affiliation. [92]

139. The Court has thus held that, in a situation governed by Article 11(3)(e) of Regulation No 883/2004 and thus by the law of the interested party's Member State of residence, the application of that law cannot be called into question by the fact that some Member States make the interested party's affiliation to the national social security scheme subject to the condition that he must work as an employee on their territory, so that, if the interested party does not meet that condition, he might not be affiliated to a social security scheme and be left without protection. [93]

140. The Court stated that, although it is for the legislation of each Member State to lay down the conditions for creating the right to become affiliated to a social security scheme, the Member States are nevertheless required when setting those conditions to abide by the provisions of EU law. In accordance with settled case-law, the conditions establishing the right to affiliate to a social security scheme cannot have the effect of excluding from the scope of the legislation at issue persons to whom, pursuant to Regulation No 883/2004, that legislation is applicable. [94]

141. In that regard, in order to determine whether the conditions laid down by national legislation, such as the Law on medical care, are consistent with Regulation No 883/2004, it is important, in the light of the connection between Article 4 of Regulation No 883/2004 and Article 24 of Directive 2004/38, to take account of the interpretation of Article 24 of that directive and, in particular, of the result at which I arrive in points 125 and 126 of this Opinion.

142. It follows that the condition of being employed or self-employed in the territory of the host Member State, such as that provided for in the Law on medical care, imposed *solely* on nationals of other Member States, and in all circumstances, provided that they have not acquired a permanent right of residence in the host Member State, is also inconsistent with the right to equal treatment laid down in Article 4 of Regulation No 883/2004.

143. Furthermore, I note that that difference in treatment does not correspond to the objective of Regulation No 883/2004 of facilitating the freedom of movement of all Union citizens. Unlike its predecessor, Regulation No 1408/71, which concerned only employed persons, self-employed persons and members of their families, Regulation No 883/2004 now applies to all citizens of the Union, including those who are economically inactive and therefore unemployed. [95]

[90] See judgment of 8 May 2019, *Inspecteur van de Belastingdienst* (C-631/17, EU:C:2019:381, paragraphs 38 and 39).

[91] See judgment of 5 March 2020, *Pensionsversicherungsanstalt (rehabilitation allowance)* (C-135/19, EU:C:2020:177, paragraph 52).

[92] See, to that effect, judgment of 8 May 2019, *Inspecteur van de Belastingdienst* (C-631/17, EU:C:2019:381, paragraphs 38, 39 and 42).

[93] See, to that effect, judgment of 8 May 2019, *Inspecteur van de Belastingdienst* (C-631/17, EU:C:2019:381, paragraphs 42 and 43).

[94] See judgment of 8 May 2019, *Inspecteur van de Belastingdienst* (C-631/17, EU:C:2019:381, paragraphs 45 and 46 and also the case-law cited).

[95] See, to that effect, recital 42 of Regulation No 883/2004.

144. It follows from the foregoing analysis that the law of the host Member State cannot automatically, and in all circumstances, refuse a Union citizen who has moved the centre of his interests to the territory of that Member State and who has a genuine link of integration with that State all entitlement to affiliation on the sole ground that he is not employed or self-employed within its territory.

145. As regards in particular a Union citizen like A, who moves to another Member State for family reunification purposes, if it were considered that he would lose all rights to social security in health matters as long as he has not lived there for five years or has not found employment or self-employment, that in my view would not be consistent with the right to freedom of movement of citizens of the Union guaranteed in Article 21 TFEU and implemented by Directive 2004/38 and Regulation No 883/2004 or with the very concept of 'citizenship of the Union'.

5. The objective of the freedom of movement of the citizen of the Union

146. The right to freedom of movement is reflected in the right of a Union citizen to move temporarily to a Member State other than his Member State of origin for work, study or leisure purposes. However, that right also includes the right to settle in another Member State in the long term and to build his life there. The latter choice, which is inherent in freedom of movement, entails the right to integrate fully into society in the host Member State and to be treated there in the same way as its own nationals.

147. If the Union citizen, such as A, demonstrates to the satisfaction of the authorities of the host Member State that he has moved the centre of his interests to that State, so that he has a genuine link of integration with the territory of that State, there would be a breach of his freedom of movement, as the referring court states, if he could not be affiliated to the social security of the host Member State on the same conditions as its nationals. [96]

148. I recall that the right to social security is a fundamental principle enshrined in Article 34 of the Charter of Fundamental Rights of the European Union, just like the right to health care, enshrined in Article 35 of that Charter.

149. The impossibility of being thus affiliated, when the Union citizen no longer comes under the social security system of his Member State of origin, precisely because he has made the life choice to leave the latter State and to settle in the long term in another Member State, is capable of depriving the person concerned of a fundamental protection.

150. In its decision to refer, the Augstākā tiesa (Senāts) (Supreme Court (Senate)) states that 'it would be unacceptable for a person to be thus excluded from the social security systems of all the Member States of the Union concerned' solely because his has exercised his right to freedom of movement. I share that point of view and consider that that exclusion would constitute a breach of the essence of the status of citizen of the Union, which has become the fundamental status of nationals of the Member States. [97]

[96] Subject to the situation referred to in points 123 and 124 of this Opinion.

[97] See judgment in *Grzelczyk*, paragraph 31.

151. Like the referring court, I consider that such exclusion from the social security system is inconsistent with the objective of the Union of ensuring freedom of movement of persons on the territory of the Union and consolidating European integration [98] by increased solidarity between Member States. [99]

152. The fact that, even if he made the financial contribution which he makes to the social security system of the host Member State, the economically inactive Union citizen would benefit from a system created by that Member State mainly for its own nationals and based on a mechanism of solidary established for those nationals cannot affect that analysis.

153. It must be emphasised that EU law is based on values of solidarity which have been further reinforced since the creation of citizenship of the Union and which are specifically intended to apply in a case such as that in the main proceedings.

154. I thus consider that to systematically deny a person such as A the possibility of being affiliated to the social security of the host Member State on the ground that, at the time of requesting affiliation, he does not have worker status, is not supported by the wording of Directive 2004/38 nor by that of Regulation No 883/2004 and does not meet the objective of freedom of movement guaranteed by those two instruments of secondary law or that of the authors of the Treaties, set out, in particular, in Article 21 TFEU.

155. In the light of all of the foregoing considerations, I propose that the Court should rule that Article 21 TFEU, Article 4 of Regulation No 883/2004 and Article 24 of Directive 2004/38, read in conjunction with Article 7(1)(b) and Article 14(2) of that directive, must be interpreted as precluding national legislation which, in the case of an economically inactive Union citizen who satisfies the conditions set out in Article 7(1)(b) of that directive and who, after moving the centre of all of his interests to a host Member State, demonstrates a genuine link of integration with that State, permits that State to refuse automatically and in all circumstances to affiliate that Union citizen to its social security system and to allow him to receive health care benefits provided by the State, on the same conditions as nationals, on the ground that he is not employed or self-employed within its territory.

V. Conclusion

156. In the light of the foregoing considerations, I propose that the Court answer the questions for a preliminary ruling referred by the Augstākā tiesa (Senāts), (Supreme Court (Senate), Latvia) as follows:

(1) Public health care benefits, such as those at issue in the main proceedings, which are granted to recipients without any individual and discretionary assessment of personal needs, on the basis of a legally defined situation, do not come within the concept of 'social and medical assistance' within the meaning of Article 3(5)(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, as amended by Commission Regulation (EU) No 1372/2013 of 19 December 2013, but come within the concept of 'sickness benefits' within the meaning of Article 3(1)(a), of that regulation.

[98] See judgment of 10 December 2018, *Wightman and Others* (C-621/18, EU:C:2018:999, paragraph 61), where the Court emphasised the objective of the Treaties that is the creation of 'ever-closer union among the peoples of Europe'.

[99] See the sixth recital of the Treaty of the EU.

(2) Article 11(3)(e) of Regulation No 883/2004, as amended by Regulation No 1372/2013, allows only the legislation applicable to sickness benefits, such as those at issue in the main proceedings, to be determined and does not affect the substantive conditions for entitlement to such benefits. That provision does not in itself make it possible to assess the compatibility with EU law of national legislation which excludes from the right to receive health care benefits provided by the State a Union citizen who exercises his right to freedom of movement by leaving his Member State of origin to settle in another Member State, on the ground that he is no longer employed or self-employed on the territory of the latter Member State.

(3) Article 21 TFEU, Article 4 TFUE of Regulation No 883/2004, as amended by Regulation No 1372/2013 and also Article 24 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, read in conjunction with Article 7(1)(b) and Article 14(2) of that directive, must be interpreted as precluding national legislation which, in the case of an economically inactive Union citizen who satisfies the conditions set out in Article 7(1)(b) of that directive and who, after moving the centre of all of his interests to a host Member State, demonstrates a genuine link of integration with that State, permits that State to refuse automatically and in all circumstances to affiliate that Union citizen to its social security system and to allow him to receive health care benefits provided by the State, on the same conditions as nationals, on the ground that he is not employed or self-employed within its territory.