Reports of Cases

OPINION OF ADVOCATE GENERAL
ĆAPETA
delivered on 16 February 2023 [1]

Case C-488/21

GV
v
Chief Appeals Officer,
Social Welfare Appeals Office,
Minister for Employment Affairs and Social Protection,
Ireland,
Attorney General

(Request for a preliminary ruling from the Court of Appeal (Ireland))

(Reference for a preliminary ruling – Free movement of persons – Dependent family member of an EU worker – Rights of residence within the territory of the Member States and to special non-contributory cash benefits – Circle of beneficiaries – Right of residence of the direct ascendant subject to the requirement of continuity of dependent status – Unreasonable burden on the social assistance system of the Member State concerned – Equal treatment of family members of the mobile EU worker)

I. Introduction

1. Under EU law, some family members, including dependent parents, may join a mobile EU worker in the Member State in which he or she lives and works. If that parent claims social benefits in the host Member State, does he or she lose a right of residence based on EU law? Can Member States treat such a parent as an unreasonable burden on their social assistance systems? In addition, what does it mean, in the first place, that a parent is dependent on a mobile EU worker?

2. These are, in essence, the main issues raised by the request for a preliminary ruling referred to the Court by the Court of Appeal (Ireland).

[1] Original language: English.

3. Although the Court has had several occasions to clarify which rights dependent relatives enjoy under EU law and under what circumstances those rights arise, most of those cases concerned dependent direct descendants [2] or spouses. [3] The present case, therefore, provides an opportunity for the Court to expand on the interpretation of the rights of dependent direct ascendants of the mobile EU worker.

II. The dispute in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court

4. GV is a national of Romania and the mother of AC, a Romanian citizen who resides and works in Ireland. AC is also a naturalised Irish citizen. GV joined her daughter in Ireland in 2017 and has resided there ever since. It is undisputed that she is lawfully resident in Ireland as the dependent parent of an EU mobile worker.

5. GV has resided in Ireland on different occasions, including between 2009 and 2011, after which she returned to Romania. In the period 2011 through 2016, she moved between Ireland, Romania and Spain, where her other daughter lives. She has been separated from her husband for the past 15 years and during that period has been financially dependent on AC, who periodically sent her money.

6. During 2017, GV suffered degenerative changes in her arthritis. On 28 September 2017, GV made an application for Disability Allowance under the Social Welfare Consolidation Act 2005, as amended.

7. The referring court explains that Disability Allowance, which GV claims, aims to protect against poverty. It constitutes a social assistance benefit paid from the general budget, without the person concerned having to make any social insurance contributions. In other words, the benefit is financed by general taxation. Disability Allowance is qualified as a 'special non-contributory cash benefit' within the meaning of Regulation No 883/2004. [4] It can therefore be claimed only in the Member State of residence, [5] which means that GV could not claim such a benefit from the state of her nationality, given that she is resident in Ireland.

[2] See, for example, judgments of 18 June 1987, *Lebon* (316/85, EU:C:1987:302; '*Lebon*'); of 26 February 1992, *Bernini* (C-3/90, EU:C:1992:89); of 8 June 1999, *Meeusen* (C-337/97, EU:C:1999:284); of 17 September 2002, *Baumbast and R* (C-413/99, EU:C:2002:493); of 8 May 2013, *Alarape and Tijani* (C-529/11, EU:C:2013:290); of 20 June 2013, *Giersch and Others* (C-20/12, EU:C:2013:411); of 16 January 2014, *Reyes* (C-423/12, EU:C:2014:16; '*Reyes*'); of 15 December 2016, *Depesme and Others* (C-401/15 to C-403/15, EU:C:2016:955; '*Depesme*'); and, judgment of 26 March 2019, *SM (Child placed under Algerian kafala)* (C-129/18, EU:C:2019:248).

[3] See, for example, judgments of 17 April 1986, *Reed* (59/85, EU:C:1986:157); of 30 March 2006, *Mattern and Cikotic* (C-10/05, EU:C:2006:220); of 25 July 2008, *Metock and Others* (C-127/08, EU:C:2008:449); of 12 March 2014, *O. and B.* (C-456/12, EU:C:2014:135); of 16 July 2015, *Singh and Others* (C-218/14, EU:C:2015:476); of 30 June 2016, *NA* (C-115/15, EU:C:2016:487); of 14 November 2017, *Lounes* (C-165/16, EU:C:2017:862; '*Lounes*'); of 5 June 2018, *Coman and Others* (C-673/16, EU:C:2018:385); and of 12 July 2018, *Banger* (C-89/17, EU:C:2018:570).

[4] Regulation 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). According to Article 70(2) of that regulation, such benefits have three main features. They are: (1) intended to cover subsistence costs for persons who cannot cover those costs themselves; (2) not financed through contributions, but through tax revenue; (3) mentioned in Annex X to Regulation No 883/2004.

[5] See Article 70(4) of the Regulation No 883/2004.

8. It appears from the order for reference that, to qualify for Disability Allowance in Ireland, the person concerned must satisfy certain requirements relating to age, disability and resources. In particular, the allowance can be granted only to persons who have not reached general retirement age.[6] The other eligibility criteria include medical criteria and a means test. The latter test includes any income that a person receives from a family member.

9. Even more specifically, Irish law precludes the payment of Disability Allowance to a person who is not habitually resident in Ireland.[7] A condition for habitual residence is that a person enjoys a right of residence in that Member State.

10. By decision of 27 February 2018, GV's application was refused. The appeal against that decision was disallowed on 12 February 2019. On both occasions, the stated reason for the rejection was that GV did not have a right of residence in Ireland.

11. Following an application made on behalf of GV by a non-governmental organisation, the rejection decision of 12 February 2019 was reviewed.

12. By decision of 2 July 2019, the Appeals Officer concluded that GV, as a dependent direct ascendant of a Union citizen employed in Ireland, had a right of residence but was not entitled to social assistance.

13. An application for review of that decision was made to the Chief Appeals Officer (Ireland) (the first respondent before the referring court), who confirmed, by decision of 23 July 2019, that GV was not entitled to Disability Allowance. This was justified by the argument that under the Irish law that transposed the Citizenship Directive,[8] GV must not become an unreasonable burden on the national social assistance system.

14. The relevant Irish law is, as explained by the referring court, the European Communities (Free Movement of Persons) Regulations 2015 (S.I. No. 548 of 2015) ('the 2015 Regulations'). Regulation 11(1) of the 2015 Regulations provides for the retention of a right of residence in Ireland in the following way:

'A person residing in the State under Regulation 6,[9] 9 or 10 shall be entitled to continue to reside in the State for as long as he or she satisfies the relevant provision of the regulation concerned and does not become an unreasonable burden on the social assistance system of the State.'

15. GV sought judicial review of the decision of 23 July 2019 before the High Court (Ireland). By judgment of 29 May 2020, that court annulled the contested decision. It considered that the Irish law, in so far as it makes the right of residence of a family member of a Union citizen subject to the condition that that family member must not become an unreasonable burden on the social assistance system of the State, was incompatible with the Citizenship Directive. Thus, according to the same court, where it is established, at the time when the family member joins the EU

6 See Section 210(1)(a) of the Social Welfare Consolidation Act 2005.

7 See Section 210(9) of the Social Welfare Consolidation Act 2005.

8 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 (OJ 2004 L 158, p. 77; 'the Citizenship Directive').

9 Regulation 6 of Regulations 2015 concerns the right of residence for periods longer than three months. It transposes Article 7(1) of the Citizenship Directive, including subparagraph (d) thereof, into Irish law.

worker, that the family member is dependent on that worker, there is no requirement for that family member to remain dependent on the EU worker in order to continue to enjoy a right of residence in the host Member State.

16. The Chief Appeals Officer and the Minister for Employment Affairs and Social Protection (Ireland) appealed against that judgment to the Court of Appeal, the referring court in the present case.

17. On the one hand, according to the Minister for Employment Affairs and Social Protection, the definition of 'family member' in Article 2(2)(d) of the Citizenship Directive includes the requirement that the family member concerned remain dependent on the EU citizen for as long as the derived right of residence is invoked. Thus, when the dependency relationship ceases, that family member can no longer enjoy such a right of residence. If GV were granted Disability Allowance, her dependency on her daughter would cease, with the result that GV could no longer enjoy a derived right of residence in accordance with that directive.

18. On the other hand, GV contends, in substance, that Regulation 11(1) of the 2015 Regulations, by imposing the 'unreasonable burden' condition on the family members of a Union citizen, whereas such a condition is not contained in Article 7 of the Citizenship Directive, is an invalid provision. According to GV, the case-law of the Court of Justice on the concept of 'dependency' confirms her position. Furthermore, she claims that the argument put forward by the Minister for Employment Affairs and Social Protection is contrary to her right to equal treatment under Article 24(1) of the Citizenship Directive.

19. Having doubts as to whether Irish law is compatible with the Citizenship Directive, the Court of Appeal decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is the derived right of residence of a direct relative in the ascending line of a Union citizen worker pursuant to Article 7(2) of [the Citizenship Directive] conditional on the continued dependence of that relative on the worker?

(2) Does [the Citizenship Directive] preclude a host Member State from limiting access to a social assistance payment benefit by a family member of a Union citizen worker who enjoys a derived right of residence on the basis of her dependence on that worker, where access to such payment would mean she is no longer dependent on the worker?

(3) Does [the Citizenship Directive] preclude a host Member State from limiting access to a social assistance payment benefit by a family member of a Union citizen worker who enjoys a derived right of residence on the basis of her dependence on that worker, on the grounds that payment of the benefit will result in the family member concerned becoming an unreasonable burden on the social assistance system of the State?'

20. Written observations were submitted to the Court by GV; the Chief Appeals Officer, the Social Welfare Appeals Office (Ireland), the Minister for Employment Affairs and Social Protection, the Attorney General ('the defendants'); the Czech, Danish and German Governments; Ireland, as well as the European Commission. A hearing was held on 18 October 2022 at which GV, the defendants, the Czech, Danish and German Governments; Ireland as well as the Commission presented oral arguments.

III. Relevant European Union law

A. The Citizenship Directive

21. Article 2(2) of the Citizenship Directive provides that, for the purposes of that directive:

'"Family member" means:

(a) the spouse;

(b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State;

(c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b);

(d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b)'.

22. Article 7(1) of the Citizenship Directive reads:

'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).

23. Article 24 of the Citizenship Directive states:

'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. The Workers Regulation

24. Article 7 of the Workers Regulation [10] provides, in the relevant part:

'1. A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, should he become unemployed, reinstatement or re-employment.

2. He shall enjoy the same social and tax advantages as national workers.

…'

IV. Analysis

A. Preliminary issues

25. One issue, discussed by the participants to the present proceedings, was that the Citizenship Directive, whose interpretation the referring court has requested, is inapplicable as such to the facts of the present case. While I agree with the participants' arguments on this point, I will provide a short explanation as to why the interpretation of the Citizenship Directive is nevertheless useful to the referring court.

26. According to Article 3(1) of the Citizenship Directive, that directive applies to all EU citizens who move to or reside in a Member State *other than that of which they are a national*, and to their family members who accompany or join them.

27. That directive does not, therefore, govern the derived rights of family members of a Union citizen in a Member State of which that citizen is a national.

28. Given that AC has acquired Irish citizenship, the Citizenship Directive has ceased to apply to rights that her mother enjoys in Ireland from the moment of AC's naturalisation.

[10] 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; 'the Workers Regulation').

29. However, even if the Citizenship Directive is not in itself applicable to the situation which has led to the dispute in the present case, the Court has already considered that it is applicable 'by analogy' to similar situations. [11]

30. The derived right of residence of a family member of a Union citizen may arise directly on the basis of Article 21(1) TFEU. As the Court has clarified, a national of one Member State who has moved to and resides in another Member State cannot be denied the right to lead a family life in that State, as guaranteed under EU law, merely because that citizen subsequently acquires the nationality of that second Member State. [12]

31. In order to avoid a situation in which Union citizens who have exercised their freedom of movement and have integrated into the society of the host Member State to the point of acquiring the nationality of that State are treated, in respect of their family life, less favourably than Union citizens who have also exercised their rights to movement but who retained only the nationality of their state of origin, the Citizenship Directive sets the minimal content of the derived rights of family members of naturalised citizens.

32. The Citizenship Directive thus informs the interpretation of Article 21(1) TFEU, which is applicable in the present case, specifying its minimal content.

33. The Court's interpretation of the Citizenship Directive will be useful to the referring court in order to assess whether, by its decision, the Chief Appeals Officer breached the rights that both AC and GV enjoy under Article 21(1) TFEU. The Court can, therefore, answer the referred questions asking for the interpretation of the Citizenship Directive.

34. In addition, I consider that the Workers Regulation is also indirectly applicable to the main proceedings. It informs the minimum content of the primary free movement rights of mobile EU workers who acquire, by naturalisation, the nationality of the host Member State to which they moved. [13] The fact that the referring court has limited its questions to the interpretation of the Citizenship Directive does not prevent the Court from providing the referring court with all the elements of interpretation of EU law which may be of assistance to it in reaching a decision. [14]

35. For that reason, I will propose an interpretation of Article 45(2) TFEU as informed by the Workers Regulation inasmuch as I find it useful for this case, especially for the assessment of the third question referred. Accordingly, I will also propose to the Court how to reformulate that question in order to provide a useful answer to the referring court.

[11] See, to that effect, *Lounes*, paragraph 61 as well as the case-law cited.

[12] *Lounes*, paragraphs 52 and 53.

[13] The Workers Regulation regulates, inter alia, the equal treatment of a worker, who is a national of one Member State, but works in another Member State, different to that of his or her State of nationality. Like the Citizenship Directive, it therefore does not apply to the rights of workers in the State of their nationality. Thus, it cannot regulate the rights of AC, who holds Irish nationality, in Ireland. However, by the same logic, as explained in relation to the Citizenship Directive, the rights of a person who used his or her freedom of movement in order to take up employment in a Member State different to that of his or her original nationality, which flow directly from Articles 45 and 21(1) TFEU cannot be limited only because that person has also acquired the nationality of the host Member State.

[14] See, for example, judgment of 5 May 2011, *McCarthy* (C-434/09, EU:C:2011:277, paragraph 24), and of 20 October 2022, *Digi* (C-77/21, not published, EU:C:2022:805, paragraph 50 and the case-law cited).

B. Substance

36. The main trigger for the present case is the 2015 Regulations, a statutory measure by which Ireland transposed the Citizenship Directive into its law. That act transposes the definitions of family members almost verbatim,[15] as well as the rules on the entitlement to residence for family members[16] as they are regulated in the Citizenship Directive.

37. The 2015 Regulations also regulate the retention of the right of residence, including for family members. Regulation 11(1) of the 2015 Regulations (see point 14 of the present Opinion) conditions, in essence, the retention of the right of residence of a direct ascendant on two requirements: first, that the direct ascendant is dependent on the mobile Union citizen[17] and, second, that that ascendant does not become an unreasonable burden on the social assistance system of the State.

38. If the direct ascendant does not enjoy a right of residence in Ireland, he or she does not qualify for Disability Allowance. Both arguments, loss of dependency, as well as burdening the social assistance system, were relied on in the different decisions refusing GV's claim for Disability Allowance.

39. By its questions, the referring court wishes to establish whether any of those two conditions for retaining the right of residence in Ireland are permitted under EU law.

40. To address those questions, I will proceed in the following way. I will analyse the questions in the order in which they were asked. However, the first question necessarily raises another question, which is also relevant for the answer to the second question: what does dependency entail? After stating my position on the first question, I will, therefore, deal with that additional issue, before turning to the second and the third questions.

1. First question: Is dependency a continuous requirement for the right of residence?

41. By its first question, the referring court essentially seeks to establish whether, under Article 21(1) TFEU, as informed by Article 7(1)(d) of the Citizenship Directive,[18] it is sufficient that dependency existed at the moment when the direct ascendant joined the mobile EU worker in the host State or if it is an ongoing requirement for the existence of the derived right of residence in that State.

42. In that respect, GV and the Commission claim that dependency need only exist at the moment when a parent joins a mobile worker in the host State. To substantiate that position, they rely on the judgments in *Jia*[19] and *Reyes*.[20] In those cases, the Court confirmed that the

[15] See Regulation 3(5)(b) of the 2015 Regulations which defines qualifying family members in the same way as (almost word for word) Article 2(2) of the Citizenship Directive.

[16] See Regulation 6(3)(a) of the 2015 Regulations transposing Article 7(1) of the Citizenship Directive, relating to the right of residence for any period longer than three months.

[17] It imposes that obligation by stating that a person retains a right of residence for as long as he or she satisfies the relevant provisions on which residence is based, among which is the provision that transposes Article 7(1)(d) of the Citizenship Directive.

[18] All of the participants who submitted written observations to the Court agree that, since the main proceedings concern a Union citizen and not a third-country national, the reference to Article 7(2) of the Citizenship Directive must be regarded as a clerical error and the question must be understood as referring to Article 7(1)(d) of that directive.

[19] Judgment of 9 January 2007, *Jia* (C-1/05, EU:C:2007:1; '*Jia*', paragraph 37).

[20] *Reyes*, paragraph 30 and the case-law cited.

dependency of a family member on a Union citizen who exercised his or her right of movement (or on a Union citizen's spouse who has exercised that right) had to exist in the home country prior to acquiring the right of residence in the host state. [21]

43. The defendants and the other intervening governments claim, on the contrary, that GV can enjoy the derived right of residence only for as long as she is dependent on her daughter. Thus, dependency is an ongoing requirement under Article 7(1)(d) of the Citizenship Directive, and it would cease if she were granted Disability Allowance by the Irish authorities.

44. In *Jia* and *Reyes*, relied upon by the applicant in the main proceedings, the Court was invited to consider the legality of the conditions for the acquisition of a residence permit on arrival in the host state. The conditions for retaining a right of residence were not at issue in either of those cases. Furthermore, unlike those two cases, in which the applicants were refused residence permits, in the present case GV already enjoys a right of residence in Ireland. Therefore, the Court's findings in the judgments in *Jia* and *Reyes* do not resolve the situation in the present case.

45. Those two cases thus do not rule out the conclusion that dependency, as the basis for a derived residence right, must exist for the duration of the parent's stay in the host state, as claimed by the defendants and the intervening governments.

46. I am inclined to accept that latter position.

47. The derived right of residence is, indisputably, not an independent right that direct ascendants enjoy. They enjoy such a right - on a combined reading of Articles 7(1)(d) and 2(2)(d) of the Citizenship Directive - because they are a dependent direct ascendant. Such a right of residence differs from the direct right of residence which such a person might also acquire, [22] by the fact that it relates to and depends on a mobile Union citizen's exercise of their right to free movement, in the present case, as a worker. It therefore seems logical to me that dependency on that EU citizen must continue after a direct family member joins that citizen in the host State.

48. Furthermore, Article 14(2) of the Citizenship Directive, which regulates the retention of the right of residence, makes it clear that family members retain rights under Article 7 thereof as long as they fulfil the conditions set out in that provision. As that provision refers to family members as defined in Article 2(2) of the Citizenship Directive, that can be understood as implying that residence rights exist as long as dependency persists.

49. Finally, it is precisely the dependency of a direct ascendant on their child that justifies the right of the former to be present in the host State. As explained by the Court, the purpose of the Citizenship Directive is to facilitate and strengthen the exercise of the primary right to move. [23] The derived right of residence of a direct ascendant thus contributes to the exercise of the right to movement of the EU mobile worker.

[21] *Jia* concerned the request for a residence permit by the third-country national parents of a spouse of a Union citizen who was using her rights of movement. *Reyes* concerned the request for a residence permit by the third-country national descendant of a spouse of a Union citizen who was using his right of movement.

[22] That same person might acquire a direct right to residence, as opposed to the derived right of residence based on dependency, through other provisions of the Citizenship Directive. For example, this can occur after five years of residence in the host State (Article 16 of the that directive), or if that family member becomes economically active by taking up employment or self-employment in the host State (Article 7(1)(a) of the same directive).

[23] Judgment of 26 March 2019, *SM (Child placed under Algerian kafala)* (C-129/18, EU:C:2019:248, paragraph 53 and the case-law cited).

50. I therefore propose that the Court reply to the referring court's first question that Article 21(1) TFEU, as informed by Articles 2(2)(d) and 7(1)(d) of the Citizenship Directive, must be interpreted as meaning that the condition of dependency of the direct ascendant on a mobile EU worker is required for as long as that ascendant's right of residence is derived from the right of free movement exercised by the worker.

51. However, whether an application for disability allowance means that the dependency has ceased is a different question. That question first calls for an interpretation of what dependency means.

2. The meaning of 'dependency'

52. A combined reading of Articles 2(2)(d) and 7(1)(d) of the Citizenship Directive makes it clear that only *dependent* direct ascendants enjoy the derived right of residence.[24]

53. The Citizenship Directive does not, however, clarify the concept of 'dependency' of direct ascendants any further.[25] Indeed, the different linguistic versions of Article 2(2)(d) of that Directive diverge. To quote but a few, the English language version refers to 'dependent', the French version to 'à charge', the German version to 'Unterhalt gewährt wird', the Italian version to 'a carico', the Croatian version to 'uzdržavanici', the Dutch version to 'te hunnen laste', the Polish version to 'utrzymaniu' and the Romanian version to 'în întreținere'.

54. Even though it seems that some of those language versions suggest only financial or material dependency, there are reasons to inquire whether the Directive concerns only such dependency. In other words, is a person dependent within the meaning of that directive only when in need of financial support from another person? Alternatively, does dependency also include other needs, such as the need for physical or emotional support?

55. The legislative history of the Citizenship Directive does not seem to provide an answer. The definition of family members in Article 2(2) of that directive is the result of the transfer into that legislative act of the substantively identical provision of Article 10(1)(b) of Regulation (EEC) No 1612/68.[26] That provision referred to '*dependent* relatives in the ascending line',[27] but the reason why that adjective was used was not explained, either in the act or in the case-law pertaining thereto. In the Commission's original proposal for the Citizenship Directive, Article 2(2)(d) did not contain that adjective and referred simply to 'direct relatives in the ascending line'.[28] However, in the course of the legislative procedure, the wording as it appeared

[24] The same is true also for direct descendant relatives.

[25] When it comes to direct descendants, the Citizenship Directive (Article 2(2)(c)) automatically holds them dependent if they are under the age of 21 years, but allows for the possibility that they may remain dependent after their coming of age.

[26] Regulation of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition, Series I 1968(II), p. 475).

[27] Emphasis added.

[28] Proposal for a European Parliament and Council Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2001) 257 final (OJ 2001 C 270 E, p. 150).

in Regulation No 1612/68 was restored, including again the word 'dependent'.[29] The reasons behind that change are not evident from the preparatory documents and one may, as a result, only speculate on the legislative intent.

56. The defendants in the main proceedings, as well as the intervening governments, understand the concept of dependency as relating to financial dependency only. They consequently claim that GV will cease being dependent on her daughter if granted Disability Allowance. She will then, it is claimed, become dependent on the State and not on her daughter.

57. Indeed, in cases involving the derived residence rights of direct family members, the Court confirmed that the need for financial support counts as dependency within the meaning of the Citizenship Directive.[30] However, in those cases, the Court was not asked to explain the meaning of dependency. Put simply, the factual situation at issue in each of those cases was one of such a form of dependency.[31]

58. Therefore, that case-law cannot be understood as establishing that only financial dependency is relevant for the purposes of qualifying for derived residence rights under the Citizenship Directive. To my mind, several reasons lead to a different conclusion; that dependency within the meaning of the Citizenship Directive is a broader concept, which also includes emotional and physical needs.

59. First, in my view, material or financial dependency is the least important reason for allowing a mobile EU worker to bring his or her parents to the host State in which he or she lives and works. If all that was at issue was financial support, such support could also be provided to parents who stay in their countries of origin. It is not necessary to bring them to the host State to provide them with housing or financial support for food or clothing. It could even be cheaper to provide for such support in the parents' country of origin, in which the costs of living might be lower than those in the host State. On the contrary, offering emotional and physical support to a parent is, in most circumstances, impossible if the parent does not live close to his or her children.

[29] Common Position (EC) No 6/2004 of 5 December 2003 adopted by the Council, acting in accordance with the procedure referred to in Article 251 of the Treaty establishing the European Community, with a view to adopting a directive of the European Parliament and of the Council 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, C 54 E, p. 12). Article (2)(2)(d) of that version of the text then read 'dependent direct relatives in the ascending line', without any additional explanation.

[30] Most of these cases concerned direct descendants. For example, *Lebon* concerned the daughter of a mobile EU worker, who was herself a Union citizen. *Reyes* concerned the daughter (and third-country national) of a mobile Union citizen. *Depesme* concerned the children of spouses or recognised partners of several mobile frontier workers. The exception is *Jia*, which concerned dependent parents.

[31] The only matter relating to the concept of 'dependency' that the Court expressly clarified in those cases was that the status of dependent family member is the result of a factual situation. See, in that respect, *Lebon* paragraph 22;, *Jia* paragraph 35; and, *Depesme*, paragraph 58.

60. Second, it results clearly from the preparatory documents for the Citizenship Directive that the underlying reason for recognising the derived rights of family members was to enable the actual enjoyment of the right to family life.[32] That fundamental right, recognised by the Charter of Fundamental Rights of the European Union ('the Charter'),[33] encompasses the existence of emotional links between family members.[34]

61. Third, such a broad interpretation of the concept of 'dependency' is consistent with the aim of the Citizenship Directive to contribute to the right of movement of EU mobile workers. Should GV require the companionship and care of her daughter, but be unable to join her in the Member State in which her daughter lives and works, it is (at least until we invent teleportation) likely that the daughter would be forced to leave the host state in order to join her mother in the mother's state of origin.[35] That would represent an obstacle to AC's right to move and reside freely on the territory of the Member States. A mobile EU worker, child of a parent who is a third-country national (TCN) and requires that kind of support, might be forced to leave the territory of the European Union.

62. On that very issue, the case-law of the Court recognises that EU law attributes importance to ensuring the protection of the family life of nationals of the Member States in order to eliminate obstacles to the exercise of the fundamental freedoms guaranteed by the Treaty.[36]

63. Finally, there are indications in the case-law that the Court understands the meaning of dependency as considered in the Citizenship Directive more broadly than in terms of financial needs only. To start with, the Court considered that Article 2(2) of the Citizenship Directive should be given a broad interpretation.[37]

64. Furthermore, the recent case-law relating to Article 3(2) of the Citizenship Directive, which concerns more distant family members, has recognised a broader understanding of dependency.[38] Despite the more limited rights that Article 3(2) grants to family members in comparison to an automatic right of residence granted to family members who fall within the

[32] See, in that respect, Proposal for a European Parliament and Council Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, p. 150, point 2.4. See also Meduna, M., Stockwell, N., Geyer, F., Adamo, C., Nemitz, P., 'Institutional Report', in Neergaard, U., Jacqueson, C. and Holst-Christensen, N., (eds) *Union Citizenship, Development, Impact and Challenges, The XXVI FIDE Congress in Copenhagen, 2014*, Congress Publications, Copenhagen, 2014, vol. 2, p. 247.

[33] Article 7 of the Charter.

[34] See, in that respect, judgment of the ECtHR of 4 March 2013, *Butt v. Norway* (CE:ECHR:2012:1204JUD004701709, including, § 76), in which that court decided on Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which is reflected in Article 7 of the Charter.

[35] See, by analogy, judgment of 8 March 2011, *Ruiz Zambrano* (C-34/09, EU:C:2011:124, paragraphs 42 and 43), in which, although in a situation not involving movement, a right to residence of a parent was considered to exist because otherwise the child, a static EU citizen, would be forced to leave EU territory. See also, more recently judgment of 5 May 2022, *Subdelegación del Gobierno en Toledo* (Residence of a family member – Insufficient resources) (C-451/19 and C-532/19, EU:C:2022:354, paragraph 45), which is based on a similar logic.

[36] See, to that effect, judgments of 11 July 2002, *Carpenter* (C-60/00, EU:C:2002:434, paragraph 38), and of 25 July 2008, *Metock and Others* (C-127/08, EU:C:2008:449, paragraph 56 and the case-law cited).

[37] See, for instance, *Reyes*, paragraph 23, or judgment of 26 March 2019, *SM (Child placed under Algerian kafala)* (C-129/18, EU:C:2019:248, paragraph 53 and the case-law cited).

[38] Judgment of 15 September 2022, *Minister for Justice and Equality (Third-country national cousin of a Union citizen)* (C-22/21, EU:C:2022:683, paragraphs 23 and 27). The support needs that were taken into consideration, other than the need for financial support, were health conditions or close and stable personal ties, resulting, for example, from living in the same household.

scope of Article 2(2)(d) of the Citizenship Directive, there is no reason to understand the concept of 'dependency' differently across that directive nor, indeed, across the different legal acts regulating the rights of family members of EU mobile workers. [39]

65. For the foregoing reasons, I propose that the Court embrace a broad concept of dependency, which exists whenever a person is in need of the material, financial, physical or emotional support of a family member. Therefore, even if GV would no longer need the financial support of her daughter, she might still fulfil the requirement of dependency on which the derived right of residence is based.

3. Second question – Can access to social benefits terminate the derived right of residence of the dependent ascendant of a mobile EU worker?

66. As explained by the referring court, Irish law precludes the payment of Disability Allowance to a person who is not habitually resident in that State. Habitual residence can only exist if the person has a right to reside in Ireland. Irish citizens cannot, as a result of international law, be denied legal residence in Ireland. However, nationals of other countries need to have a legal basis recognised by Irish law on which to rely to enjoy a right of residence. One such legal basis is Article 7(1)(d) of the Citizenship Directive.

67. That is the legal situation which gave rise to the second question of the referring court. By that question, that court asks, in essence, whether Article 21(1) TFEU as informed by the Citizenship Directive must be interpreted as meaning that the payment of a Disability Allowance to the direct ascendant of a Union citizen terminates the ascendant's dependency on the worker and therefore brings to an end his or her derived right of residence.

68. If the Court accepts my proposal for the answer to the first question – that dependency must be continuous to serve as a justification for the right of residence of a direct ascendant grounded in Article 7(1)(d) of the Citizenship Directive – it follows that the cessation of dependency of a direct ascendant on the mobile Union citizen leads to the termination of the derived right of residence of that ascendant on the basis of that provision.

69. That does not mean, however, that applying for a social benefit ends the dependency of the direct ascendant on the mobile Union citizen.

70. In the first place, and in so far as the Court accepts my proposal and interprets dependency broadly, the grant of Disability Allowance might cover financial dependency (or at least part of it), but is unlikely to cover the other support needs of ascendant relatives. [40] Irish state authorities could hardly replace the care and emotional support of one's child.

[39] Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (OJ 2014 L 128, p. 8) provides in recital 1 thereof that the expression 'Members of their family' should be understood as having the same meaning, for the Workers Regulation, as the term defined in Article 2(2) of the Citizenship Directive. That was later confirmed in *Depesme*, paragraphs 51 to 55) and in judgment of 2 April 2020, *Caisse pour l'avenir des enfants (Child of the spouse of a frontier worker)* (C-802/18, EU:C:2020:269, paragraph 51).

[40] Indeed, during the hearing, the intervening Member States conceded that, irrespective of the payment of Disability Allowance, the physical, material and emotional dimensions of the dependency between AC and GV would persist.

71. Thus, even if the host Member State covers part, or even all, of the financial costs for the parent living in that State, that parent would still remain dependent on the mobile Union citizen from whom he or she derives residence rights, where there is a continuing need for material, emotional or physical support.

72. In the second place, even if dependency means only the need for material or financial support, the application for Disability Allowance cannot automatically lead to the conclusion that the right of residence on the basis of the Citizenship Directive would terminate if the benefit was awarded.

73. As suggested by the Commission, such a conclusion would result in an infinite loop, which cannot be allowed: it leads to the scenario that once a family member is awarded a social benefit, their right of residence terminates, precluding, in turn, the possibility of them being awarded a social benefit. However, without that social benefit, the family member reverts to dependency on the mobile Union citizen, which means that he or she enjoys a derived right of residence and satisfies a precondition for applying for the social benefit. And so on, ad infinitum.

74. The way out of such an absurd loop is to close it at a certain point. The status of a dependent member of a worker's family should, therefore, be assessed separately from the grant of a given allowance.

75. The Court has already accepted such an approach in *Lebon*, which considered the right of a dependent daughter of a mobile Union citizen to claim a Belgian social allowance benefit, called the minimex.

76. In that judgment, the Court considered that 'a claim for the grant of the minimex submitted by a member of a migrant worker's family who is dependent on the worker cannot affect the claimant's status as a dependent member of the worker's family. To decide otherwise would amount to accepting that the grant of the minimex could result in the claimant forfeiting the status of dependent member of the family and consequently justify either the withdrawal of the minimex itself or even the loss of the right of residence. Such a solution would in practice preclude a dependent member of a worker's family from claiming the minimex and would, for that reason, undermine the equal treatment accorded to the migrant worker. The status of dependent member of a worker's family should therefore be considered independently of the grant of the minimex'. [41] If *Lebon* concerned a direct descendant, there is no reason why the same logic should not be applied to direct ascendants. [42]

77. Thus, even if dependency is understood only as the need for financial support (which is, in my view, too narrow an interpretation of that concept), the Member State award of financial support does not terminate the dependency of the supported person.

78. Being eligible for Disability Allowance (for which, under Irish law, medical and financial conditions must be met) confirms, rather than denies, dependency. Indeed, if the State authorities would not support the dependent family member, the primary caregiver, a mobile EU worker, would have to cover the associated support costs.

79. Therefore, the grant of a special non-contributory cash benefit, such as Disability Allowance, cannot affect the claimant's dependency.

[41] *Lebon*, paragraph 20.

[42] For the relevant references, see the case-law mentioned in point 107 of the present Opinion.

80. To add an additional argument to support the above conclusion, it is worth noting that neither subparagraph (a) nor subparagraph (d) of Article 7(1) of the Citizenship Directive contain a requirement that either the worker or his family member are self-sufficient so as not to become a burden on the social assistance system of the host Member State.[43] Only Article 7(1)(b) and 7(1)(c) of that directive imposes self-sufficiency as a condition for a residence right. I will come back to this point when discussing the argument that a family member might become a burden on the social assistance system of the host Member State.[44]

81. Furthermore, as argued by the European Commission, measures taken by a dependent family member to enhance his or her autonomy in the host Member State should not in any way deprive him or her of a right of residence.

82. Otherwise, it would mean that only people who do not need a special non-contributory allowance would be eligible for it. The law should not be read as leading to such an absurd result.[45]

83. Accordingly, I propose that the Court answer the second question of the referring court by explaining that Article 21(1) TFEU, as informed by Articles 2(2)(d) and 7(1)(d) of the Citizenship Directive, must be interpreted as meaning that an application for a special non-contributory cash benefit by the direct relative in the ascending line of a mobile Union citizen, does not terminate the dependency of that relative on the worker and therefore does not alter that relative's derived right of residence.

4. Third question: The right to equal treatment and the budgetary concerns of the Member States

84. As explained at the outset,[46] Irish law provides that a direct ascendant may retain a derived right of residence on two conditions: (1) if he or she is dependent on the mobile Union citizen and (2) if he or she is not an unreasonable burden on the social assistance system of the State. Thus, even if the ascendant continues to be dependent, he or she would lose his or her right of residence if he or she became an unreasonable burden.

85. On that basis, the Chief Appeals Officer, in the decision under review before the referring court, considered that, even though GV has a right of residence, she is not entitled to claim Disability Allowance, because that would make her an unreasonable burden on the social assistance system and would occasion the loss of her right of residence.

86. By its third question, the referring court seeks essentially to ascertain whether EU law precludes limiting the access of a direct ascendant of a mobile EU worker to Disability Allowance in the host State on the ground that payment of such a benefit results in the dependent ascendant becoming an unreasonable burden on the social assistance system of the State.

[43] That argument was also made by Mr. Justice Garrett Simons (High Court, Ireland) in the first instance judgment in the main proceedings. Simons, J. considered that '[t]here is no requirement under Article 7(1)(a) or 7(1)(d) [of that directive] for self-sufficiency in the case of a worker and dependent family member'. Judgment of 29 May 2020, High Court (Ireland), *GV v Chief Appeals Officer, Social Welfare Appeals Office*, [2020] IEHC 258, paragraph 76.

[44] On that matter, see points 118 et seq. of the present Opinion.

[45] See, for instance, MacCormick, N., *Rhetoric and the Rule of Law: A Theory of Legal Reasoning*, Oxford University Press, Oxford, 2005, p. 138.

[46] See, above, point 37 of the present Opinion.

87. It is necessary to remind ourselves at the outset that EU law does not grant a right to social assistance to mobile Union citizens and their family members. Organisation of the welfare state comes, in principle, within the competence retained by Member States. That competence includes the choice of the types of social assistance benefits as well as the conditions for becoming a beneficiary.

88. Therefore, the question is not whether GV is entitled to Disability Allowance. That is a matter of Irish law. However, EU law steps in through the principle of equal treatment on grounds of nationality.[47] It prohibits discrimination by Members States against nationals of other EU Member States in comparison with the treatment of their own nationals. Even if it is operational directly on the basis of the Treaty, the principle of equal treatment on the ground of nationality found its specific expression in different acts of secondary EU law, including in Article 24 of the Citizenship Directive and Article 7 of the Workers Regulation.

89. Consequently, GV can claim access to Disability Allowance by invoking the principle of equal treatment. If such an allowance is accessible to Irish nationals, it should be accessible to her.

90. In the present case, I contend that there are two persons whose right to equal treatment might provide a basis for GV's right to claim Disability Allowance.

91. The first person is GV herself: as a dependent direct ascendant of a mobile Union citizen, she must, under Article 24 of the Citizenship Directive, be treated in the same way as Irish citizens in respect of her access to Disability Allowance.

92. Second, there is her daughter, AC. By refusing access to Disability Allowance for the benefit of her dependent mother, she is placed in a less advantageous position than that enjoyed by Irish workers whose dependent parent can claim Disability Allowance. The prohibition on discrimination of AC can be based not only on her status as a Union citizen who resides in the host State under Article 7(1)(a) of the Citizenship Directive, but also, as suggested by the Commission, on the basis of her status as a worker who exercised her right to free movement under Article 45 TFEU, as informed by the Workers Regulation. That regulation, in Article 7 thereof, expresses the principle of equal treatment.

93. The referring court emphasised, in its order for reference and the framing of the present question, that the primary caregiver in the case at hand is a mobile worker. The possible discrimination against that worker cannot, therefore, be ignored in the present case.

94. As a consequence, I propose that the Court take both perspectives into consideration.

95. I will first examine how GV's claim for Disability Allowance can be indirectly based on AC's right to equal treatment (a) and thereafter how it can be directly based on her own right to equal treatment as provided for in the Citizenship Directive (b).[48] I will then assess whether such rights can be limited on the basis of the concern that, by receiving social benefits, an ascendant relative becomes an unreasonable burden on the social assistance of the host State (c).

[47] This prohibition of discrimination on the basis of nationality is one of the foundations of EU law. It is expressed today in Article 18 TFEU, and is part of all Treaty provisions on the fundamental freedoms. It is also replicated in Article 21(2) of the Charter.

[48] I have chosen this order because, since the introduction of Union citizenship in the Treaties, the free movement of workers can be understood as its specific expression. As explained by the Court 'Article 21(1) TFEU, which sets out in general terms the right of every citizen of the Union to move and reside freely within the territory of the Member States, finds specific expression in Article 45 TFEU concerning freedom of movement for workers …'. Judgment of 11 November 2021, *MH and ILA (Pension rights in bankruptcy)* (C-168/20, EU:C:2021:907, paragraph 61 and the case-law cited).

(a) Equal treatment of AC as a basis for GV's claim for Disability Allowance

96. In my view, GV's right to claim Disability Allowance may result from the right of equal treatment enjoyed by AC as a worker who has exercised her right to free movement.

97. Article 45(2) TFEU provides that freedom of movement for workers 'shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.'

98. Can the differential treatment of the mobile EU worker's parent in relation to the parents of workers who are nationals of the host State be understood as discrimination prohibited by Article 45(2) of TFEU?

99. That provision of the Treaty was further implemented and clarified by the Workers Regulation. Article 7(2) of that regulation provides that a worker who is a Union citizen shall 'enjoy the same social and tax advantages as national workers' in another Member State. [49]

100. That raises the question of whether a social benefit received by a worker's parent can be considered a social advantage accruing to that worker.

101. That question must be answered in the affirmative for the following reasons. First, the Court has adopted a broad understanding of the concept of 'social advantage' in the Workers Regulation. [50] It covers 'all the advantages which, whether or not they are linked to a contract of employment, are granted to national workers generally, primarily because of their objective status as workers or by virtue of the mere fact of their residence in the national territory, and which it therefore appears appropriate to extend to workers who are nationals of other Member States in order to facilitate their mobility within the European Union and, consequently, their integration into the host Member State.' [51]

102. The Court's case-law has already confirmed that that concept might include a social benefit such as Disability Allowance. [52] It has equally confirmed that the term 'social advantages' within the meaning of Article 7(2) of the Workers Regulation can apply to benefits, which at the same time fall within the scope of Regulation No 883/2004, such as Disability Allowance in the present case. [53]

103. Second, the term worker's 'social advantage' also includes a social benefit, such as Disability Allowance, when it is granted to a worker's parent and not to the worker herself.

[49] Article 7(2) of the Workers Regulation was previously Article 7(2) of its predecessor, Regulation No 1612/68. Thus, the case-law relating to that regulation is relevant for understanding the concept of 'social advantage' in the current regulation. To that effect, see, judgment of 6 October 2020, *Jobcenter Krefeld* (C-181/19, EU:C:2020:794, paragraph 34).

[50] Judgment of 30 September 1975, *Cristini* (32/75, EU:C:1975:120, paragraph 12).

[51] Judgment of 6 October 2020, *Jobcenter Krefeld* (C-181/19, EU:C:2020:794, paragraph 41 and the case-law cited). This is a standing phrase repeated in the case-law of the Court ever since judgment of 31 May 1979, *Even and ONPTS* (207/78, EU:C:1979:144, paragraph 22).

[52] Judgments of 27 May 1993, *Schmid* (C-310/91, EU:C:1993:221, paragraph 18), and of 5 May 2011, *Commission v Germany* (C-206/10, EU:C:2011:283, paragraph 34).

[53] See, to that effect, judgments of 27 May 1993, *Schmid* (C-310/91, EU:C:1993:221, paragraph 17), as well as of 2 April 2020, *Caisse pour l'avenir des enfants (Child of the spouse of a frontier worker)* (C-802/18, EU:C:2020:269, paragraphs 45 and 46).

104. Originally the Court limited the term 'social advantages' to encompass only benefits granted to workers themselves,[54] but the case-law changed after *Lebon*. It follows from that judgment that a benefit granted to a direct descendant can constitute the worker's 'social advantage' if that descendant is supported by the worker.[55]

105. To my mind, the same logic is applicable to dependent ascendants. GV is dependent on AC. What she does not obtain from public assistance would necessarily be provided by AC. In other words, if GV receives Disability Allowance, that payment would also ease AC's situation.[56] If, on the contrary, Irish authorities deny such assistance to her mother, AC would be placed in a disadvantageous position in comparison with Irish workers in a similar situation.

106. To assess whether she is placed in a disadvantageous position, AC must be compared to workers who are Irish nationals. Such workers may also have parents who are Union citizens, but not Irish nationals, and who could be denied disability benefits if they resided in that State for less than five years.[57] However, in most situations, the parents of the Irish workers will also be Irish nationals and, therefore, entitled to claim Disability Allowance. In that respect, the discrimination of AC resulting from the fact that her mother may not apply for Disability Allowance could be categorised as an indirect discrimination in relation to social advantages enjoyed by national workers.

107. Finally, a consistent line of case-law confirms that dependent family members are the indirect beneficiaries of the equal treatment accorded to mobile EU workers within the meaning of Article 7(2) of the Workers Regulation.[58] The Court has already included direct ascendants in the group of such indirect beneficiaries.[59]

108. Even if only indirect beneficiaries of the worker's right to equal treatment, dependent relatives can claim social benefits in their own name.[60] Thus, the arguments raised by the defendants and participating Member States' governments – that AC's right to equal treatment is irrelevant as GV introduced the claim in her own name – have no bearing.

109. The suggested interpretation of Article 7(2) of the Workers Regulation promotes the freedom of movement for workers, since it ensures, as recently stated by the Court, the creation of the best possible conditions for the integration of the family members of EU workers who have made use of that freedom and have worked in the host Member State.[61]

54 Judgment of 11 April 1973, *S.* (76/72, EU:C:1973:46, paragraph 9).

55 In that case, however, the Court concluded to the contrary, that the benefit at issue did not constitute a worker's advantage, because the applicant's father was no longer supporting his descendant. See *Lebon*, paragraph 13.

56 Spaventa, E.(ed.), Rennuy, N., Minderhoud, P., *The legal status and rights of the family members of EU mobile workers*, European Commission, Directorate-General for Employment Social Affairs and Inclusion, Directorate E – Labour Mobility and International Affairs, Publications Office of the European Union, Luxembourg, 2022 p. 17.

57 That is, in fact, the situation of AC after her naturalisation. However, there might also be Irish nationals who acquired that nationality by birth, but whose parents are not Irish nationals.

58 In relation to a dependent descendant of a migrant worker, see *Lebon*, paragraph 12, and judgments of 26 February 1992, *Bernini* (C-3/90, EU:C:1992:89, paragraph 26), and of 2 April 2020, *PF and Others* (C-830/18, EU:C:2020:275, paragraph 26). In relation to a spouse of a migrant worker, see judgment of 10 September 2009, *Commission v Germany* (C-269/07, EU:C:2009:527, paragraph 65).

59 Judgments of 12 July 1984, *Castelli* (261/83, EU:C:1984:280, paragraph 10); of 6 June 1985, *Frascogna* (157/84, EU:C:1985:243, paragraph 23); and of 9 July 1987, *Frascogna* (256/86, EU:C:1987:359, paragraph 6).

60 *Lebon*, paragraph 13.

61 Judgment of 6 October 2020, *Jobcenter Krefeld* (C-181/19, EU:C:2020:794, paragraph 51 and the case-law cited).

110. To conclude, dependent direct ascendants of a mobile EU worker thus derive a right to claim benefits, which can be considered as a social advantage for the EU worker on whom they are dependent, on the basis of Article 7(2) of the Workers Regulation.

111. Therefore, in the light of GV's situation of dependency on AC, GV can rely on Article 45(2) TFEU as informed by Article 7(2) of the Workers Regulation to claim, as an indirect beneficiary of the right to equal treatment of her daughter, a special non-contributory cash benefit, such as Disability Allowance in the present case.

112. Hence, the free movement of workers and the Workers Regulation already contain an answer to the dispute before the referring court. Nevertheless, I will now look at the possibility of answering that court's question with regard to the Citizenship Directive.

(b) Equal treatment of GV as the basis for a right to claim Disability Allowance

113. Article 24(1) of the Citizenship Directive states that all Union citizens residing on the basis of that directive in the territory of the host Member State are to enjoy equal treatment with the nationals of that Member State within the scope of the Treaty.

114. The case-law has clarified that a Union citizen can claim equal treatment with nationals of the host Member State if his or her residence in the territory of the host Member State complies with the conditions of the Citizenship Directive.[62]

115. As GV is the dependent ascendant of a mobile EU worker, as explained in the first part of the present Opinion, she complies with the conditions of the Citizenship Directive and therefore enjoys a derivative right of residence in Ireland. She is consequently entitled to equal treatment.

116. GV's entitlement to equal treatment under the Workers Regulation is a derived right based on her daughter's direct right to equal treatment. However, GV enjoys her own direct right to equal treatment pursuant to Article 24(1) of the Citizenship Directive. Once she has a derived right of residence, she acquires her own direct right to be treated in the same way as Irish citizens. She should thus be entitled to claim Disability Allowance under the same conditions as Irish citizens.

117. Yet the defendants in the main proceedings and the Czech, Danish and German Governments consider that a Member State is not obliged to grant such an allowance if the claimant would become an unreasonable burden on the social assistance system.

(c) A matter of 'unreasonable burden'

118. The claim that GV might represent an unreasonable burden on the social assistance system of the State ('the unreasonable burden argument') was used in the present case to express three different types of concern. The first one concerns the constraining effect that granting access to the social benefits might have on Member States' choices of welfare policy. The second matter is about solidarity. The third one, connected to the foregoing, considers fears of so-called 'welfare tourism'. I will analyse all three in turn, before concluding that arguments based on those concerns cannot be relied on in order to limit GV's right to equal treatment, either as an indirect

[62] Judgment of 11 November 2014, *Dano* (C-333/13, EU:C:2014:2358, paragraph 69).

right based on her daughter's direct right to be treated equally as a mobile worker, or as her own direct entitlement to equal treatment, which GV has acquired through her derived right of residence.

(1) Unreasonable burden as a concern for social assistance systems

119. It is indisputable that concerns as to the sustainability of national social policies should be taken seriously.

120. In relation to the freedom of movement of workers, the Court has recognised that 'budgetary considerations may underlie a Member State's choice of social policy and influence the nature or scope of the social protection measures which it wishes to adopt'.[63] However, the Court excluded the possibility that such considerations can justify discrimination against migrant EU workers.[64]

121. As the unreasonable burden argument cannot be used as a justification to limit entitlements to the equal treatment of mobile EU workers, neither can it be used to limit the derived right of equal treatment of that worker's dependent ascendant, whose entitlement to claim social benefits is a social advantage for the worker at issue.

122. Ireland cannot, therefore, consider GV to be an unreasonable burden on its social assistance system when her claim for Disability Allowance is analysed on the basis of her daughter's right to be treated in the same way as national workers.

123. The answer is, in my view, the same if GV's legal situation is assessed as one of a direct ascendant of a mobile EU worker enjoying a direct right to equal treatment under Article 24(1) of the Citizenship Directive, on the basis of her derived right of residence under Article 7(1)(d) thereof.

124. Let me explain: primary law grants free movement rights (which include the right to reside and the right to equal treatment) to all EU citizens, but it allows that these rights be subjected to conditions set out in EU secondary law or in national law. The Citizenship Directive sets out the framework for acceptable conditions on free movement rights. Recognising the concerns of the Member States, it envisaged that conditions may be imposed on residence rights for Union citizens in order to prevent them from becoming an unreasonable burden on the social assistance system of the host Member State.[65] It therefore allowed Member States to limit the residence rights of certain, expressly envisaged categories of citizens (but not of others), by allowing the unreasonable burden argument as a justification.

125. That is, however, only possible in expressly stated situations and only in relation to certain groups of Union citizens who are not economically active. Such situations concern, first, those citizens whose movement rights are based on the assumption that they have sufficient resources to support themselves and their families (Article 7(1)(b) of the Citizenship Directive) and students (Article 7(1)(c) thereof). Outside of such situations, the unreasonable burden argument cannot be invoked.

63 Judgment of 14 June 2012, *Commission v Netherlands* (C-542/09, EU:C:2012:346, paragraph 57).

64 Ibid. See also judgments of 20 June 2013, *Giersch and Others* (C-20/12, EU:C:2013:411, paragraphs 51 and 52), and of 24 October 2013, *Thiele Meneses* (C-220/12, EU:C:2013:683, paragraph 43).

65 Recital 10 of the Citizenship Directive.

126. I would go further and state that, even when it comes to the limitations of residence rights of named categories of citizens, such limitations cannot be automatic. Despite a certain amount of academic criticism directed at the clarity of the Court's case-law regarding such limitations,[66] it is clear to me that the State wishing to rely on such an argument would first have to demonstrate systemic threats to its social assistance system,[67] and further show that such threats justify limiting a specific person's right in a particular case. Thus, when choosing to rely on the unreasonable burden argument permitted by EU legislation, Member States must still observe the proportionality principle.[68]

127. All persons who enjoy a right of residence on the basis of the Citizenship Directive must be treated by the host State in the same way as their own nationals. The only derogations to that principle are expressly envisaged by Article 24(2) of the Citizenship Directive. Being a derogation from the principle of equal treatment, that provision must be interpreted strictly.[69]

128. Direct ascendants of EU mobile workers do not come within the scope of Article 24(2) of the Citizenship Directive.

129. To summarise, the residence rights of dependent direct ascendants cannot be limited by the justification that they are an unreasonable burden on the social assistance system of a State, nor can the entitlement to equal treatment that flows from the right of residence be limited on any grounds.

130. That is, in my understanding, the result of the legislative consensus at the EU level about the acceptable balance between the interests of free movement and the concerns for the welfare systems of the Member States. Legitimate concerns of Member States for their social assistance systems were, as stated by the Commission, taken into consideration during the legislative process which led to the adoption of the Citizenship Directive.

131. The outcome of that legislative consensus is the current situation whereby neither mobile EU workers, nor their dependent direct ascendants can be regarded as an unreasonable burden by the host State. In other words, such family members are an (un)reasonable burden in the same way as nationals of that State are an (un)reasonable burden.

132. In that regard, Member States are free to organize their social assistance systems in the manner that they see fit. They may choose which types of allowances to offer, or may decide to remove an existing allowance or to decrease its amount. However, when making those choices, the Member States must include dependent family members of mobile EU workers resident in their country as factors influencing their policy decisions.

66 See, for example, Verschueren, H., 'Free Movement or Benefit Tourism: The Unreasonable Burden of *Brey*', *European Journal of Migration and Law*, Vol. 16, 2014, pp. 147-179; Thym, D., 'The Elusive Limits of Solidarity: Residence Rights of and Social Benefits for Economically Inactive Union Citizens', *CML Rev* Vol. 52, 2015, pp. 17-50, p. 28.

67 For such an argument to be taken into consideration as a possible justification of limits imposed on movement rights, the Member State that invokes the unreasonable burden argument should substantiate that there is a genuine threat to its social assistance system by submitting solid and consistent data in that respect. See, for instance, judgment of 13 April 2010, *Bressol and Others* (C-73/08, EU:C:2010:181, paragraph 71). See also Opinion of Advocate General Sharpston in joined cases *Prinz and Seeberger* (C-523/11 and C-585/11, EU:C:2013:90, points 61 to 64).

68 See and compare, Dougan, M., 'The constitutional dimension to the case-law on Union citizenship', *E.L. Rev.*, Vol. 31(5), 2006, pp. 613-641.

69 Judgment of 1 August 2022, *Familienkasse Niedersachsen-Bremen* (C-411/20, EU:C:2022:602, paragraph 50 and the case-law cited).

133. Ireland cannot, therefore, consider GV as an unreasonable burden on its social assistance system when her claim for Disability Allowance is analysed on the basis of her direct entitlement to equal treatment which results from her derived right of residence.

(2) Unreasonable burden as an issue of solidarity

134. The second way in which the unreasonable burden argument can be understood is in terms of solidarity, viewed as a readiness to participate in burden sharing. Such solidarity is usually based on belonging to a community, be it national, professional, family or European,[70] which allows for the exclusion of those who are not members of the community, given that burden sharing with them is perceived as unreasonable.[71]

135. In that regard, the defendants claim that dependent direct ascendants should be eligible for social benefits such as Disability Allowance only once they acquire permanent residence status, but not during the first five years of their stay in the host State. According to them, that is reflected in the structure of the Citizenship Directive, which distinguishes between short stays in the country of up to three months,[72] stays longer than three months,[73] and, finally, permanent residence status, which can be achieved after five years of staying in the host State.[74] In the view of those defendants, during the first five years, family members should remain the responsibility of the EU mobile workers whom they joined in the host State and should not require the taxpayers in that State to bear the costs associated with those family members.

136. Indeed, the Citizenship Directive recognises a gradual system of rights based on the length of stay in the host State.[75] However, that does not reflect the gradation of solidarity. That directive does not envisage that the rights of dependent direct relatives of the mobile Union citizen can be limited after the three months of their stay in the host State.[76]

137. Treating direct ascendants equally in respect of their access to social benefits actually promotes their own gradual integration in the society of the host Member State.[77]

[70] Supiot, A., L*a solidarité*, *Enquête sur un principe juridique*, Odile Jacob, Paris, 2015, p. 12; De Witte, F., *Justice in the EU*, *The Emergence of Transnational Solidarity*, Oxford University Press, Oxford, 2015, Chapter 4 (arguing specifically for a communitarian approach when it comes to minimum subsistence benefits, such as special non-contributory benefits), pp. 151-155.

[71] Such an understanding of the unreasonable burden argument may, in my view, explain the case-law that recognised the requirement of a genuine link or of a certain degree of integration into the society of the host State for acquiring residence rights and adjacent claims to social assistance as justified. See, for example, in relation to job seekers, judgments of 11 July 2002, *D'Hoop* (C-224/98, EU:C:2002:432, paragraph 39); of 23 March 2004, *Collins* (C-138/02, EU:C:2004:172, paragraphs 67 to 69); and of 4 June 2009, *Vatsouras and Koupatantze* (C-22/08 and C-23/08, EU:C:2009:344, paragraphs 38 and 39). In relation to students, see, for example, judgments of 15 March 2005, *Bidar* (C-209/03, EU:C:2005:169, paragraphs 62 and 63); of 23 October 2007, *Morgan and Bucher* (C-11/06 and C-12/06, EU:C:2007:626, paragraphs 43 and 44); of 18 November 2008, *Förster* (C-158/07, EU:C:2008:630, paragraph 54); of 18 July 2013, *Prinz and Seeberger* (C-523/11 and C-585/11, EU:C:2013:524, paragraph 36 and 37); and of 24 October 2013, *Thiele Meneses* (C-220/12, EU:C:2013:683, paragraph 35 and 36), or of 26 February 2015, *Martens* (C-359/13, EU:C:2015:118, paragraphs 36 to 39).

[72] Article 6 of the Citizenship Directive.

[73] Article 7 of the Citizenship Directive.

[74] Chapter IV of the Citizenship Directive.

[75] That system in fact reproduces, in essence, the stages and conditions of residence status laid down in the various instruments of EU law and case-law preceding that directive. Belonging to a given community may thus culminate in the right of permanent residence. Judgments of 21 December 2011, *Ziolkowski and Szeja* (C-424/10 and C-425/10, EU:C:2011:866, paragraph 38), and of 1 August 2022, *Familienkasse Niedersachsen-Bremen* (C-411/20, EU:C:2022:602, paragraph 30).

[76] Even during that period, the ability to exclude extends only to special non-contributory cash benefits and not to other social security allowances. On that point, see judgment of 1 August 2022, *Familienkasse Niedersachsen-Bremen* (C-411/20, EU:C:2022:602, paragraph 53).

[77] See, for example, *Lounes*, paragraph 56.

138. The Citizenship Directive as well as the Workers Regulation thus reflect the 'certain degree of financial solidarity between nationals of a host Member State and nationals of other Member States', which the Court has recognised in its seminal judgment in *Grzelczyk*.[78]

139. Finally, it should not be forgotten that, according to Article 70(4) of Regulation No 883/2004, a benefit such as Disability Allowance can only be claimed in the Member State of residence (see point 7 of the present Opinion). In other words, if that type of special non-contributory benefit existed in Romania, GV could not claim it from that State as she resides in Ireland.

140. Ireland cannot, therefore, consider GV as an unreasonable burden on its social assistance system because she was not part of its society long enough to merit solidarity.

(3) Unreasonable burden and welfare tourism

141. Finally, I need to address an additional concern expressed by the Member State governments participating in the present proceedings, but which is also present in EU political life as well as in legal scholarship. It relates to the fear of so-called 'welfare tourism'. Member States, especially those with higher social protection levels, were vocal in expressing concerns about the Union citizens who choose to move to those countries solely in order to benefit from their social assistance systems.[79] That practice, often considered to be an abuse of the free movement rights, was addressed in *Dano*.[80] That case established that economically inactive Union citizens who have exercised their freedom of movement solely with the aim of receiving social assistance in the host State cannot benefit from equal treatment under the Citizenship Directive.[81]

142. Can such abuse occur when the economically inactive citizen derives his or her right of residence and to right to equal treatment from the movement of a mobile EU worker, who is an economically active citizen? One could possibly imagine a situation in which a Union citizen decided to work (or become self-employed) in a Member State different to that of his or her Member State of origin solely in order to enable his or her direct ascendant(s) to claim social assistance in the host State. Even in such an unlikely scenario,[82] the EU citizen from whose right the beneficiary status of the direct dependent is derived would be a worker in the host State. A citizen's movement to another Member State in order to work cannot be regarded as abuse, but rather as an exercise of a fundamental Treaty-based right. If a person enters the host State only as a jobseeker, Article 24(2) of the Citizenship Directive allows Member States to exclude him and his family members from entitlement to certain social assistance benefits, but not necessarily

[78] Judgment of 20 September 2001, *Grzelczyk* (C-184/99, EU:C:2001:458, paragraph 44). On the principle of solidarity and social schemes, see, as cited already in judgment of 17 February 1993, *Poucet and Pistre* (C-159/91 and C-160/91, EU:C:1993:63).

[79] For example, in May 2013, the ministers of four Member States, the Republic of Austria, the Federal Republic of Germany, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland, complained about the 'fraud and systematic abuse in connection with the freedom of movement'. See, for example, Blauberger, M. and Schmidt, S.K., 'Welfare migration? Free movement of EU citizens and access to social benefits', *Research and Politics*, October-December 2014, pp. 1–7. See also, Pascouau, Y., 'Strong attack against the freedom of movement of EU citizens: Turning back the clock', Commentary on the European Policy Centre web page of 30/04/2013.

[80] Judgment of 11 November 2014, *Dano* (C-333/13, EU:C:2014:2358).

[81] See, to that effect, the interpretation of judgment of 11 November 2014, *Dano* (C-333/13, EU:C:2014:2358) in judgment of 6 October 2020, *Jobcenter Krefeld* (C-181/19, EU:C:2020:794, paragraph 68).

[82] A study commissioned by the Commission in 2016 did not find any basis for the suggestion that the motivation of Union citizens to move is related to benefits. See, for example, 'A fact finding analysis on the impact on the Member States' social security systems of the entitlements of non-active intra-EU migrants to special non-contributory cash benefits and healthcare granted on the basis of residence', Final report submitted by ICF GHK in association with Milieu Ltd., DG Employment, Social Affairs and Inclusion via DG Justice Framework contract, 2013. See also Mantu, S. and Minderhoud, P., 'Exploring the limits of social solidarity: welfare tourism and EU citizenship' *UNIO – EU Law Journal*, Vol. 2(2), 2016, pp 4-19.

to all benefits, such as social security benefits.[83] However, when the rights of family members are based on the rights of a mobile EU worker, I do not see how one can claim that that worker has moved solely with the aim of receiving social assistance.

143. Even if I cannot imagine it, I cannot entirely exclude the possibility of abuse. For such situations, Article 35 of the Citizenship Directive, which was adopted specifically to prevent the risk of abuse, as well as the *Dano* case-law could be used to prevent the materialisation of such risks.

144. The situation in the present case does not seem to raise such concerns. AC has already worked and resided in Ireland for a long period of time. She has established strong links with Irish society, which are evident from the fact that she obtained Irish nationality on 17 July 2015.[84] It is hard to believe that all of this was planned solely for the purpose of bringing her mother to Ireland to claim a social benefit.[85]

145. The arguments above, taken together or separately, lead to the conclusion that, where the conditions for equal treatment are met,[86] the concept of unreasonable burden on the social assistance system of the Member State does not constitute a lawful ground for a Member State to refuse access to special non-contributory cash benefits to dependent direct ascendants of mobile EU workers.

146. Consequently, I consider that Article 45(2) TFEU, as informed by Article 7(2) of the Workers Regulation and Article 21(1) TFEU, as informed by Article 24(1) of the Citizenship Directive, must be interpreted as precluding national legislation limiting access to a special non-contributory cash benefit to a direct ascendant of a mobile EU worker, who enjoys a derived right of residence on the basis of their dependency on that worker, and has lawfully resided for more than three months in the State of residence, on the grounds that payment of that benefit will result in the family member concerned becoming an unreasonable burden on the social assistance system of that State.

V. Conclusion

147. In the light of the foregoing, I propose that the Court answers the questions referred by the Court of Appeal (Ireland) as follows:

(1) Article 21 TFEU, as informed by Articles 2(2)(d) and 7(1)(d) 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,

[83] Judgment of 1 August 2022, *Familienkasse Niedersachsen-Bremen* (C-411/20, EU:C:2022:602, paragraph 53).

[84] As the applicant's lawyers made clear at the hearing. According to the Irish Nationality and Citizenship Act 1956, in its consolidated amended version, this is the list of the criteria that an adult, unmarried EEA resident would have to satisfy to be naturalised (Section 15 of the Act): (a) be over 18; (b) be of good character; (c) have had a period of one year's continuous residence in the State immediately before the date of the application and, during the eight years immediately preceding that period, have had a total residence in the State amounting to four years; (d) intend in good faith to continue to reside in the State after naturalisation; and (e) be willing to attend a citizenship ceremony and make a declaration of loyalty.

[85] In relation to a debate about the influence of facts underpinning cases in which the Court is invited to decide, see Davies, G., 'Has the Court changed, or have the cases? The deservingness of litigants as an element in Court of Justice citizenship adjudication', *Journal of European Public Policy*, Vol. 25, 2018, pp. 1442-1460.

[86] Which is, in essence, when the conditions of residence are fulfilled.

must be interpreted as meaning that

the condition of dependency of the direct ascendant on a mobile EU worker is required for as long as that ascendant's right of residence is derived from the right of free movement exercised by the worker.

(2) Article 21 TFEU, as informed by Articles 2(2)(d) and 7(1)(d) of Directive 2004/38,

must be interpreted as meaning that

an application for a special non-contributory cash benefit by the direct relative in the ascending line of a mobile Union citizen does not terminate the dependency of that relative on the worker and therefore does not alter that relative's derived right of residence.

(3) Article 45(2) TFEU, as informed by Article 7(2) of Regulation No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union and Article 21(1) TFEU, as informed by Article 24(1) of Directive 2004/38,

must be interpreted as

precluding national legislation limiting access to a special non-contributory cash benefit to a direct ascendant of a mobile EU worker, who enjoys a derived right of residence on the basis of their dependency on that worker, and has lawfully resided for more than three months in the State of residence, on the grounds that payment of that benefit will result in the family member concerned becoming an unreasonable burden on the social assistance system of that State.