



## Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

21 December 2023\*

(Reference for a preliminary ruling – Citizenship of the European Union – Articles 21 and 45 TFEU – Right of Union citizens to move and reside freely in the territory of the Member States – Worker having acquired the nationality of the host Member State while retaining his or her nationality of origin – Directive 2004/38/EC – Article 3 – Beneficiaries – Article 2(2)(d) – Family member – Dependent direct relatives in the ascending line of a worker who is a Union citizen – Article 7(1)(a) and (d) – Right of residence for more than three months – Retention of the status of dependant in the host Member State – Article 14(2) – Retention of the right of residence – Regulation (EU) No 492/2011 – Article 7(2) – Equal treatment – Social advantages – Social assistance benefits – Unreasonable burden on the social assistance system of the host Member State)

In Case C-488/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Court of Appeal (Ireland), made by decision of 27 July 2021, received at the Court on 10 August 2021, in the proceedings

**GV**

v

**Chief Appeals Officer,**

**Social Welfare Appeals Office,**

**Minister for Employment Affairs and Social Protection,**

**Ireland,**

**Attorney General,**

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, A. Prechal, E. Regan, F. Biltgen and N. Piçarra, Presidents of Chambers, S. Rodin, P.G. Xuereb, L.S. Rossi, A. Kumin (Rapporteur), N. Wahl, I. Ziemele, D. Gratsias and M.L. Arastey Sahún, Judges,

Advocate General: T. Ćapeta,

\* Language of the case: English.

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 18 October 2022,

after considering the observations submitted on behalf of:

- GV, by D. Shortall, Senior Counsel, P. Brazil, Barrister-at-Law, and S. Kirwan, Solicitor,
- the Chief Appeals Officer, the Social Welfare Appeals Office, the Minister for Employment Affairs and Social Protection, Ireland and the Attorney General, by M. Browne, Chief State Solicitor, A. Delaney and A. Joyce, acting as Agents, and by N.J. Travers, Senior Counsel, and A. Carroll, Barrister-at-Law,
- the Czech Government, by M. Smolek and J. Vláčil, acting as Agents,
- the Danish Government, by M. Jespersen, C. Maertens, V. Pasternak Jørgensen, M. Søndahl Wolff and Y.T. Thyregod Kollberg, acting as Agents,
- the German Government, by J. Möller, R. Kanitz and N. Scheffel, acting as Agents,
- the European Commission, by E. Montaguti and J. Tomkin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 February 2023,

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 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 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, OJ 2005 L 197, p. 34 and OJ 2007 L 204, p. 28).
- 2 The request has been made in the context of a dispute between GV, on the one hand, and the Chief Appeals Officer (Ireland), the Social Welfare Appeals Office (Ireland), the Minister for Employment Affairs and Social Protection (Ireland), Ireland and the Attorney General (Ireland), on the other hand, concerning the grant of a disability allowance to GV (the ‘disability allowance’).

## Legal context

### *European Union law*

#### *Regulation (EC) No 883/2004*

- 3 Title III 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 (OJ 2004 L 166, p. 1, and corrigenda OJ 2004 L 200, p. 1 and OJ 2007 L 204, p. 30; ‘Regulation No 883/2004’) includes a Chapter 9, entitled ‘Special non-contributory cash benefits’. In that chapter, Article 70 of that regulation, itself entitled ‘General provision’, provides:

‘1. This Article shall apply to special non-contributory cash benefits which are provided under legislation which, because of its personal scope, objectives and/or conditions for entitlement, has characteristics both of the social security legislation referred to in Article 3(1) and of social assistance.

2. For the purposes of this Chapter, “special non-contributory cash benefits” means those which:

...

(c) are listed in Annex X.

...’

- 4 Annex X to the said regulation, which lists the ‘special non-contributory cash benefits’ within the meaning of Article 70(2)(c) thereof, provides that, in relation to Ireland, those benefits include ‘disability allowance (Social Welfare Consolidation Act 2005, Part 3, Chapter 10)’.

#### *Regulation (EU) No 492/2011*

- 5 Article 7 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) provides, in paragraphs 1 and 2 thereof:

‘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.’

*Directive 2004/38*

6 Under recitals 3 and 5 of Directive 2004/38:

‘(3) [European] Union citizenship should be the fundamental status of nationals of the Member States when they exercise their right of free movement and residence. It is therefore necessary to codify and review the existing Community instruments dealing separately with workers, self-employed persons, as well as students and other inactive persons in order to simplify and strengthen the right of free movement and residence of all Union citizens.

...

(5) The right of all Union citizens to move and reside freely within the territory of the Member States should, if it is to be exercised under objective conditions of freedom and dignity, be also granted to their family members, irrespective of nationality. ...’

7 Article 2 of that directive, entitled ‘Definitions’, provides, in point 2(d) thereof:

‘For the purposes of this Directive:

(2) “family member” means:

...

(d) the dependant direct relatives in the ascending line ...’

8 Article 3 of the said directive, entitled ‘Beneficiaries’, provides, in paragraph 1 thereof:

‘This Directive shall apply to all Union citizens who move to or reside in a Member State other than that of which they are a national, and to their family members as defined in point 2 of Article 2 who accompany or join them.’

9 Chapter III of Directive 2004/38, entitled ‘Right of residence’, includes, inter alia, Articles 7 and 14 thereof.

10 Article 7, entitled ‘Right of residence for more than three months’, provides, in paragraph 1 thereof:

‘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; ...

(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).'

11 Article 14 of that directive, entitled 'Retention of the right of residence', provides, in paragraph 2 thereof:

'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.

In specific cases where there is a reasonable doubt as to whether a Union citizen or his/her family members satisfies the conditions set out in Articles 7, 12 and 13, Member States may verify if these conditions are fulfilled. This verification shall not be carried out systematically.'

12 Article 16(1) of the said directive, which is contained in Chapter IV thereof, entitled 'Right of permanent residence', provides:

'Union citizens who have resided legally for a continuous period of five years in the host Member State shall have the right of permanent residence there. This right shall not be subject to the conditions provided for in Chapter III.'

### ***Irish law***

#### *The 2015 Regulations*

13 The legislation intended to transpose Directive 2004/38 into Irish law is the European Communities (Free Movement of Persons) Regulations 2015, which replaced, with effect from 1 February 2016, the European Communities (Free Movement of Persons) (No 2) Regulations 2006, of 18 December 2006 ('the 2015 Regulations').

14 Regulation 3(5)(b) of the 2015 Regulations defines the 'qualifying family member of a ... Union citizen' as follows:

(i) the Union citizen[']s spouse or civil partner,

(ii) a direct descendant of the Union citizen, or the Union citizen's spouse or civil partner and is–  
(I) under the age of 21, or  
(II) a dependent of the Union citizen, or of his or her spouse or civil partner, or

(iii) a dependent direct relative in the ascending line of the Union citizen, or of his or her spouse or civil partner.'

15 The right to reside in Ireland is established by Regulation 6 of those regulations, with paragraph 3(a) thereof stating:

‘A Union citizen ... may reside in the State for a period that is longer than 3 months if he or she–

- (i) is in employment or in self-employment in the State,
- (ii) has sufficient resources for himself or herself and his or her family members not to become an unreasonable burden on the social assistance system of the State, and has comprehensive sickness insurance in respect of himself or herself and his or her family members,
- (iii) is enrolled in an educational establishment accredited or financed by the State for the principal purpose of following a course of study there and has comprehensive sickness insurance in respect of himself or herself and his or her family members and, by means of a declaration or otherwise, satisfies the Minister that he or she has sufficient resources for himself or herself and his or her family members not to become an unreasonable burden on the social assistance system of the State,
- (iv) subject to paragraph (4), is a family member of a Union citizen who satisfies one or more of the conditions referred to in clause (i), (ii) or (iii).’

16 Regulation 11(1) of the said regulations sets out the conditions for retaining a right of residence in Ireland. That provision states:

‘A person residing in the State under Regulation 6, 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.’

*The 2005 Act*

17 Section 210(1) and (9) of the Social Welfare Consolidation Act 2005 (‘the 2005 Act’) provides:

‘(1) Subject to this Act, an allowance (“disability allowance”) shall be payable to a person–

- (a) who has attained the age of 16 years but has not attained pensionable age,
- (b) who is by reason of a specified disability substantially restricted in undertaking employment (in this Chapter referred to as “suitable employment”) of a kind which, if the person was not suffering from that disability, would be suited to that person’s age, experience and qualifications, whether or not the person is availing of a service for the training of disabled persons under section 68 of the Health Act 1970,
- (c) whose weekly means, subject to subsection (2), do not exceed the amount of disability allowance (including any increases of that allowance) which would be payable to the person under this Chapter if that person had no means.

...

9. A person shall not be entitled to disability allowance under this section unless he or she is habitually resident in the State ...’

18 According to Section 246(1) and (5) of the 2005 Act:

‘(1) A requirement, in any of the provisions specified in subsection (3), for a person to be habitually resident in the State means that–

(a) the person must be habitually resident in the State at the date of the making of the application, and the person must remain habitually resident in the State after the making of that application in order for any entitlement to subsist,

(b) the person is a worker or self-employment person, residing in the State pursuant to Article 7 of Directive 2004/38 ...

(c) the person is a family member of a person referred to in paragraph (b), ...

...

(5) Notwithstanding subsections (1) to (4) and subject to subsection (9), a person who does not have a right to reside in the State shall not, for the purposes of this Act, be regarded as being habitually resident in the State.

...’

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

19 GV, a Romanian national, is the mother of AC, also a Romanian national, the latter residing and working in Ireland. AC has moreover acquired Irish nationality by naturalisation.

20 During the period between 2009 and 2016, GV resided on several occasions in Ireland before returning, each time, to Romania or Spain. In addition, she was financially dependent on her daughter, who periodically sent her money.

21 Since 2017, GV has resided in Ireland with her daughter. On 28 September 2017, as a result of the deterioration in her state of health linked to arthritis, GV made an application for the disability allowance, on the basis of the 2005 Act.

22 The referring court states that that allowance, the purpose of which is to protect recipients against poverty, is a social assistance payment which is paid without the person concerned having to have made any social insurance contributions. Moreover, it is apparent from the order for reference that, in order to receive the said allowance, the person concerned must meet certain criteria, namely criteria relating to his or her age, disability and means. Furthermore, Irish law precludes the payment of the allowance to a person who is not habitually resident in Ireland, such as a person who does not have a right to reside in that Member State. Last, that court notes that the disability allowance is a ‘special non-contributory cash benefit’ within the meaning of Regulation No 883/2004.

23 By a decision of 27 February 2018, GV’s application for the disability allowance was refused. The appeal brought against that decision by GV was also dismissed by a decision of 12 February 2019. The ground for refusing that application and dismissing that appeal was that GV did not have a right of residence in Ireland.

- 24 Following an application made on behalf of GV by a non-governmental organisation, that decision of 12 February 2019 was reviewed. By a decision of 2 July 2019, the Appeals Officer (Ireland) concluded that GV, as a dependent direct ascendant of a Union citizen working in Ireland, had a right to reside but was not entitled to receive social welfare assistance.
- 25 An application for revision was made to the Chief Appeals Officer. The latter confirmed, by a decision of 23 July 2019, that GV was not entitled to the disability allowance given that, in accordance with Regulation 11(1) of the 2015 Regulations, if she were granted that allowance, she would become an unreasonable burden on the national social assistance system and, therefore, she would no longer have a right to reside.
- 26 GV brought an appeal against that decision before the High Court (Ireland). By a judgment of 29 May 2020, that court annulled the decision of 23 July 2019. In that judgment, the said court held, in particular, that Regulation 11(1) of the 2015 Regulations, to the extent that it makes the right of residence of a family member of an Irish citizen – such as GV – subject to the condition that that family member must not become an unreasonable burden on the social assistance system of the State, was inconsistent with Directive 2004/38. According to the same court, where it is established, at the time when the said family member joins the Union citizen concerned, that he or she is dependent on that worker, there is no requirement for that family member to remain dependent on the said EU citizen in order to continue to have a right of residence in the host Member State.
- 27 The Chief Appeals Officer and the Minister for Employment Affairs and Social Protection lodged an appeal against the said judgment before the Court of Appeal (Ireland), which is the referring court.
- 28 It is apparent from the order for reference that, according to the Minister for Employment Affairs and Social Protection, the concept of ‘family member’, within the meaning of Article 2(2)(d) of Directive 2004/38, includes the requirement that the family member remain dependant on the Union citizen concerned for so long as the derived right of residence is asserted. Thus, where the relationship of dependency between that family member and that Union citizen ceases, in particular as a result of the payment of a social assistance benefit such as the disability allowance, that family member, who will then become financially dependent on the social assistance system of the host Member State, can no longer have such a right of residence. Such an interpretation, first, is supported both by the wording of that provision and by that of Article 14(2) of that directive and, second, is not contradicted by the case-law of the Court.
- 29 The referring court states that, by contrast, GV submits, in essence, that Regulation 11(1) of the 2015 Regulations, by making access to a social assistance benefit of a family member of a Union citizen who is a worker who enjoys a derived right of residence based on her dependence on that worker subject to the condition relating to the ‘unreasonable burden on the social assistance system of the State’, when such a condition does not feature in Article 7 of Directive 2004/38, is an unlawful provision. According to GV, the case-law of the Court on the concept of ‘dependency’ confirms her position. Moreover, the position advocated by the Minister for Employment Affairs and Social Protection violates her right to equal treatment, guaranteed in Article 24(1) of that directive.



- 30 It is against that background that the Court of Appeal decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(i) Is the derived right of residence of a direct relative in the ascending line of a Union citizen worker pursuant to Article 7[(1)(d)] of Directive 2004/38 ... conditional on the continued dependency of that relative on the worker?
  - (ii) Does Directive 2004/38 ... 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 dependency on that worker, where access to such payment would mean she is no longer dependent on the worker?
  - (iii) Does Directive 2004/38 ... 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 dependency 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?’

### **The application to reopen the oral part of the procedure**

- 31 By document lodged at the Registry of the Court of Justice on 19 March 2023, following the delivery of the Advocate General’s Opinion, the defendants in the main proceedings requested that the oral part of the procedure be reopened, pursuant to Article 83 of the Rules of Procedure of the Court of Justice.
- 32 In support of their request, those defendants submit, in essence, that, in her Opinion, the Advocate General, in proposing the adoption of a broad definition of the concept of ‘dependency’, under Article 2(2)(d) and Article 7(1)(d) of Directive 2004/38, namely to consider that that concept refers to the need for ‘emotional ties or bonds’ and, therefore, to needs which could be other than material and, in particular, financial, exceeded the limits of the subject matter of the dispute in the main proceedings and, consequently, proposed ruling *ultra petita*.
- 33 Moreover, the question whether the said concept could cover, in whole or in part, dependency of an emotional nature was not discussed either during the written part of the procedure or at the hearing. Thus, the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.
- 34 In that regard, it should be noted that, under the second paragraph of Article 252 TFEU, it is the duty of the Advocate General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require his or her involvement. The Court is not bound either by the Advocate General’s Opinion or by the reasoning on which it is based (judgment of 12 May 2022, *Schneider Electric and Others*, C-556/20, EU:C:2022:378, paragraph 30 and the case-law cited).
- 35 In addition, the Court has stated that the disagreement of an interested party referred to in Article 23 of the Statute of the Court of Justice of the European Union with the Opinion of the Advocate General, irrespective of the questions that he or she examines in the Opinion, cannot

in itself constitute grounds justifying the reopening of the oral part of the procedure (judgment of 12 May 2022, *Schneider Electric and Others*, C-556/20, EU:C:2022:378, paragraph 32 and the case-law cited).

- 36 It is true that the Court may, at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in accordance with Article 83 of its Rules of Procedure, in particular if it considers that there is insufficient information, or where a party has submitted, after the closure of that part of the procedure, a new fact capable of exercising a decisive influence on its decision, or where the case is to be decided on the basis of an argument which has not been discussed between the parties or interested parties referred to in Article 23 of the Statute of the Court of Justice of the European Union.
- 37 However, in the case at hand, the Court has all the information necessary to give a ruling and the case does not have to be decided on the basis of an argument which has not been debated during the written and oral parts of the procedure. In that regard, it should be noted that the question of the scope of the concept of ‘dependency’, within the meaning of Article 2(2)(d) and of Article 7(1)(d) of Directive 2004/38, in particular that of whether that dependency may be of an emotional nature, was, in particular, discussed at the hearing.
- 38 In addition, the request that the oral part of the procedure be reopened does not contain any new fact which is of such a nature as to be a decisive factor for the decision which the Court is called upon to give in this case.
- 39 In those circumstances, after hearing the Advocate General, the Court does not find it appropriate to order the reopening of the oral part of the procedure.

### **Consideration of the questions referred**

- 40 As a preliminary point, it should be noted that, even though, formally, the referring court has limited its question to the interpretation of Directive 2004/38, that does not prevent the Court from providing the referring court with all the elements of interpretation of EU law which may be of assistance in adjudicating on the case before it, whether or not that court has specifically referred to them in its question (judgment of 14 November 2017, *Lounes*, C-165/16, EU:C:2017:862, paragraph 28 and the case-law cited).
- 41 In the case at hand, it is apparent from the order for reference that AC, a Romanian citizen and daughter of GV, after having exercised her freedom of movement by residing and working in Ireland, obtained Irish nationality in 2016 by naturalisation.
- 42 In that regard, it should be recalled that any rights that may be conferred by Directive 2004/38 on family members of a Union citizen who themselves hold the nationality of a Member State and who accompany or join that Union citizen are, outside of the autonomous rights which those family members may derive from that directive by virtue of their own status as Union citizens, derived from the rights which the said Union citizen enjoys as a result of having exercised his or her freedom of movement (see, to that effect, judgment of 14 November 2017, *Lounes*, C-165/16, EU:C:2017:862, paragraph 32 and the case-law cited).

- 43 However, Directive 2004/38 governs only the conditions of entry and residence of a Union citizen in Member States other than the one of which he or she is a national. Since, under a principle of international law, a Member State cannot refuse its own nationals the right to enter its territory and remain there and since those nationals thus enjoy an unconditional right of residence there, that directive is not intended to govern the residence of a Union citizen in the Member State of which he or she is a national. Consequently, in view of the case-law referred to in the preceding paragraph of the present judgment, it is also not intended to confer, in the territory of that Member State, a derived right of residence on family members of that Union citizen (see, to that effect, judgment of 14 November 2017, *Lounes*, C-165/16, EU:C:2017:862, paragraphs 33 and 37 and the case-law cited).
- 44 It follows from the foregoing that, in the case at hand, from the moment of AC's naturalisation in Ireland, Directive 2004/38 is, in principle, no longer intended to govern her right of residence in Ireland, or the derived right of residence enjoyed, as the case may be, by her family members, within the meaning of Article 2(2) of that directive, such as GV.
- 45 That being so, the Court has held that the situation of a national of one Member State who has exercised his or her freedom of movement by going to and residing legally in another Member State, cannot be treated in the same way as a purely domestic situation merely because the person concerned has, while resident in the host Member State, acquired the nationality of that State in addition to his or her nationality of origin. It has inferred from this that, if the rights conferred on Union citizens by Article 21(1) TFEU are to be effective, citizens in such a situation must be able to continue to enjoy, in the host Member State, the rights arising under that provision, after they have acquired the nationality of that Member State, as the case may be, in addition to their nationality of origin and, in particular, must be able to lead a normal family life in the said Member State, benefiting from the presence of their family members at their side (see, to that effect, judgment of 14 November 2017, *Lounes*, C-165/16, EU:C:2017:862, paragraphs 49, 52 and 53).
- 46 Article 21(1), 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 particular, in Article 45 TFEU in relation to the freedom of movement for workers (see, to that effect, 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).
- 47 It follows that, if the rights conferred on Union workers by Article 45(1) TFEU are to be effective, a family member of a Union citizen who is a worker who, after having exercised his or her freedom of movement by residing and working in the host Member State, has acquired the nationality of that Member State, must be able to be granted a derived right of residence.
- 48 The conditions for granting the derived right of residence enjoyed by the family member must not be stricter than those provided for in Directive 2004/38 for the grant of a right of residence of the same nature to a family member of a Union citizen who has exercised his or her right of freedom of movement by settling in a Member State other than that of which he or she is a national. Even though Directive 2004/38 does not cover a situation such as that referred to in paragraph 45 of the present judgment, it must be applied, by analogy, to that situation (see, to that effect, judgment of 14 November 2017, *Lounes*, C-165/16, EU:C:2017:862, paragraph 61 and the case-law cited).

- 49 Furthermore, it should be recalled that Article 45(2) TFEU provides that freedom of movement for workers entails 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. That provision, in the specific area of the grant of social advantages, is given concrete form in Article 7(2) of Regulation No 492/2011, which states that a worker who is a national of a Member State is to enjoy, in the territory of other Member States of which he or she is not a national, the same social and tax advantages as national workers (see, to that effect, judgment of 6 October 2020, *Jobcenter Krefeld*, C-181/19, EU:C:2020:794, paragraphs 44 and 78).
- 50 It follows, *mutatis mutandis*, from the case-law cited in paragraphs 45 and 48 of the present judgment that the fact that a national of a Member State who has moved to and resides in another Member State subsequently acquires the nationality of the latter Member State, in addition to his or her nationality of origin, cannot mean that he or she would be deprived of the right to equal treatment under Article 45(2) TFEU, as implemented by Article 7(2) of Regulation No 492/2011, and that the conditions relating to the grant of social advantages must not be stricter than those referred to in the latter provision.
- 51 It is in the light of the foregoing considerations that the questions referred should be answered, which, in that context, must be understood as relating to the interpretation of Article 45 TFEU, as implemented by secondary legislation.
- 52 In that regard, it is apparent from the order for reference that it is not disputed that GV was a direct relative in the ascending line of a worker who is a Union citizen, namely AC, both at the time she joined that worker in that Member State and at the time she applied for the grant of a disability allowance. However, the Minister for Employment Affairs and Social Protection considers, in essence, that the payment of that allowance to GV would mean that she would no longer be dependent on her daughter, but on the Irish social assistance system. Therefore, since GV would no longer satisfy the condition set out in Article 2(2)(d) of Directive 2004/38, she would forfeit her derived right of residence which she enjoys in the host Member State, in accordance with Regulation 11(1) of the 2015 Regulations, which makes the retention of the derived right of residence of a direct relative in the ascending line subject, *inter alia*, to the condition that that direct relative in the ascending line does not become an unreasonable burden on the social assistance system of the host Member State.
- 53 It is in that context that, by its questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 45 TFEU, as implemented by Article 7(2) of Regulation No 492/2011, read in combination with Directive 2004/38, must be interpreted as precluding legislation of a Member State which permits the authorities of that Member State to refuse to grant a social assistance benefit to a direct relative in the ascending line who, at the time the application for that benefit is made, is dependent on a worker who is a Union citizen, or even to withdraw from him or her the right of residence for more than three months, on the ground that the grant of the said benefit would have the effect that that family member would no longer be dependent on the worker who is a Union citizen and would thus become an unreasonable burden on the social assistance system of the said Member State.
- 54 In the first place, according to the wording of Article 7(1)(d) of Directive 2004/38, which must be applied by analogy, as is apparent from the case-law cited in paragraph 48 of the present judgment, ‘family members accompanying or joining a Union citizen who satisfies the conditions referred to in points (a), (b) or (c)’ of that Article 7 have a right of residence for more than three months.

- 55 The concept of ‘family member’, used in Article 7(1)(d) of Directive 2004/38, which must be applied by analogy, is defined in Article 2(2) of that directive and designates, inter alia, in point (d), the ‘dependent direct relatives in the ascending line’.
- 56 Accordingly, it follows from a combined reading of Article 2(2)(d) and Article 7(1)(a) and (d) of Directive 2004/38 that the direct relatives in the ascending line of a worker who is a Union citizen have a derived right of residence for more than three months where they are ‘dependent’ on that worker.
- 57 As far as that condition is concerned, the Court has stated that the situation of dependency must exist, in the country from which the family member concerned comes, at the time when he or she applies to join the Union citizen on whom he or she is dependent (judgment of 16 January 2014, *Reyes*, C-423/12, EU:C:2014:16, paragraph 30 and the case-law cited).
- 58 However, as the Advocate General noted, in essence, in point 44 of her Opinion, in the case which gave rise to the case-law cited in the preceding paragraph of the present judgment, the Court had been invited to consider the conditions to be satisfied at the time when the person concerned applies for a derived right of residence in the host Member State, and not on the conditions to be satisfied by that person in order to retain that right.
- 59 In that regard, it should be recalled that Article 14 of Directive 2004/38, entitled ‘Retention of the right of residence’, provides, in the first subparagraph of paragraph 2 thereof, that Union citizens and their family members are to have the right of residence provided for, inter alia, in Article 7 thereof, as long as they meet the conditions set out in the latter article.
- 60 It thus follows from Article 14(2), read in combination with Article 2(2)(d) and Article 7(1)(a) and (d) of Directive 2004/38, that a direct relative in the ascending line of a worker who is a Union citizen enjoys a derived right of residence as long as he or she remains dependent on that worker, until such time as that relative, having resided lawfully for a continuous period of five years in the host Member State, can claim a right of permanent residence under Article 16(1) of Directive 2004/38.
- 61 Such an interpretation is consistent with the case-law of the Court according to which the concept of ‘beneficiary’ within the meaning of Article 3(1) of Directive 2004/38 implies that, even though acquired in the past, the status of beneficiary may subsequently be forfeited if the requirements, in particular those contained in Article 2(2) of that directive, to which Article 3(1) refers, are no longer met (see, to that effect, judgment of 10 September 2019, *Chenchooliah*, C-94/18, EU:C:2019:693, paragraph 62 and the case-law cited).
- 62 In the case at hand, it is not disputed that GV was dependent on her daughter, AC, both at the time she joined her and at the time she applied for the disability allowance. Therefore, at the time of that application, GV satisfied the condition for benefiting, as a ‘family member’, from a derived right of residence, in accordance with Directive 2004/38.
- 63 In the second place, as follows from paragraphs 49 and 50 of the present judgment, a worker who is a Union citizen enjoys – including in a situation such as that of AC, who acquired, during her residence in the host Member State, the nationality of that State, in addition to her nationality of origin – the right to equal treatment, pursuant to Article 45(2) TFEU, as implemented by Article 7(2) of Regulation No 492/2011.

- 64 So far as concerns the concept of ‘social advantages’, within the meaning of that Article 7(2), the Court has made it clear that it includes 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 (judgment of 6 October 2020, *Jobcenter Krefeld*, C-181/19, EU:C:2020:794, paragraph 41 and the case-law cited).
- 65 That concept may include social assistance benefits which, at the same time, come under the specific scope of Regulation No 883/2004, such as, as the referring court states, the disability allowance (see, by analogy, judgment of 27 May 1993, *Schmid*, C-310/91, EU:C:1993:221, paragraph 17 and the case-law cited).
- 66 Moreover, it should be noted that a social assistance benefit, such as the disability allowance granted to a direct relative in the ascending line, constitutes for the migrant worker a ‘social advantage’ within the meaning of Article 7(2) of Regulation No 492/2011, since that direct relative in the ascending line is dependent on that worker, within the meaning of Article 2(2)(d) of Directive 2004/38 (see, by analogy, judgment of 18 June 1987, *Lebon*, 316/85, EU:C:1987:302, paragraphs 12 and 13). Furthermore, the said dependent direct relative in the ascending line, as an indirect beneficiary of the equal treatment accorded to the said worker, may rely on Article 7(2) in order to obtain that allowance where, under national law, it is granted directly to such relatives in the ascending line (see, to that effect, judgments of 26 February 1992, *Bernini*, C-3/90, EU:C:1992:89, paragraph 26, and of 14 December 2016, *Bragança Linares Verruga and Others*, C-238/15, EU:C:2016:949, paragraph 40).
- 67 After all, as the Advocate General observed in point 106 of her Opinion, if, while a direct relative in the ascending line is dependent on a worker who has exercised his or her right to freedom of movement, that direct relative in the ascending line could not be granted social assistance, which constitutes for the migrant worker a ‘social advantage’ which may be claimed by direct relatives in the ascending line dependent on workers who are nationals of the host Member State, the equal treatment of that migrant worker would thereby be undermined.
- 68 Article 7(2) of Regulation No 492/2011 thus protects against discrimination that the migrant worker and members of his or her family, including those referred to in Article 2(2)(d) of Directive 2004/38, may face in the host Member State.
- 69 It follows that the status of ‘dependent’ relative in the ascending line within the meaning of Article 2(2)(d) of Directive 2004/38 cannot be affected by the grant of a social assistance benefit in the host Member State. To decide otherwise would amount to accepting that the grant of such a benefit could result in the person concerned forfeiting the status of dependent family member and, consequently, justify the withdrawal of that benefit or even the loss of his or her right of residence. Such a solution would, in practice, preclude that dependent family member from claiming that benefit and would, for that reason, undermine the equal treatment accorded to the migrant worker (see, to that effect, judgment of 18 June 1987, *Lebon*, 316/85, EU:C:1987:302, paragraph 20).
- 70 Article 7(2) of Regulation No 492/2011, read in combination with Article 2(2)(d), Article 7(1)(a) and (d) and Article 14(2) of Directive 2004/38, thus contributes to the attainment of the objective pursued by that regulation, namely promoting freedom of movement for workers, since it ensures

the creation of the best possible conditions for the integration of the family members of Union citizens who have made use of that freedom and have worked in the host Member State (see, to that effect, judgment of 6 October 2020, *Jobcenter Krefeld*, C-181/19, EU:C:2020:794, paragraph 51).

- 71 In that regard, it is important to emphasise that, through the taxes which a migrant worker pays in the host Member State in the course of his or her employment, that worker also contributes to the financing of the social policies of that Member State and should, consequently, profit from them under the same conditions as national workers. Therefore, the objective consisting in avoiding an unreasonable financial burden on the host Member State cannot justify the unequal treatment of migrant workers as compared with national workers (see, to that effect, judgment of 14 June 2012, *Commission v Netherlands*, C-542/09, EU:C:2012:346, paragraphs 66 and 69).
- 72 In the light of all the foregoing considerations, the answer to the questions asked is that Article 45 TFEU, as implemented by Article 7(2) of Regulation No 492/2011, read in combination with Article 2(2)(d), Article 7(1)(a) and (d) and Article 14(2) of Directive 2004/38, must be interpreted as precluding legislation of a Member State which permits the authorities of that Member State to refuse to grant a social assistance benefit to a direct relative in the ascending line who, at the time the application for that benefit is made, is dependent on a worker who is a Union citizen, or even to withdraw from him or her the right of residence for more than three months, on the ground that the grant of the said benefit would have the effect that that family member would no longer be dependent on the worker who is a Union citizen and would thus become an unreasonable burden on the social assistance system of the said Member State.

### Costs

- 73 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

**Article 45 TFEU, as implemented by Article 7(2) 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, read in combination with Article 2(2)(d), Article 7(1)(a) and (d) and Article 14(2) 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**

**must be interpreted as precluding legislation of a Member State which permits the authorities of that Member State to refuse to grant a social assistance benefit to a direct relative in the ascending line who, at the time the application for that benefit is made, is dependent on a worker who is a Union citizen, or even to withdraw from him or her the right of residence for more than three months, on the ground that the grant of the said benefit would have the effect that that family member would no longer be dependent on the worker who is a Union citizen and would thus become an unreasonable burden on the social assistance system of the said Member State.**

Lenaerts	Bay Larsen	Arabadjiev
Prechal	Regan	Biltgen
Piçarra	Rodin	Xuereb
Rossi	Kumin	Wahl
Ziemele	Gratsias	Arastey Sahún

Delivered in open court in Luxembourg on 21 December 2023.

A. Calot Escobar  
Registrar

K. Lenaerts  
President