Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

25 July 2018 *

(Reference for a preliminary ruling – Citizenship of the Union – Articles 20 and 21 TFEU – Freedom to move and reside in the Member States – Social security – Regulation (EC) No 883/2004 – Social assistance – Sickness benefits – Services provided to people with disabilities – Obligation of a municipality in one Member State to provide one of its residents with personal assistance provided for under national legislation while that resident is in higher education in another Member State)

In Case C-679/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Korkein hallinto-oikeus (Supreme Administrative Court, Finland), made by decision of 23 December 2016, received at the Court on 30 December 2016, in the proceedings brought by

A

Intervener:

Espoon kaupungin sosiaali- ja terveyslautakunnan yksilöasioiden jaosto,

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça, President of the Chamber, E. Levits, A. Borg Barthet, M. Berger (Rapporteur) and F. Biltgen, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of

– the Finnish Government, by H. Leppo, acting as Agent,

– the Czech Government, by M. Smolek, J. Vláčil and J. Pavliš, acting as Agents,

– the Swedish Government, by A. Falk, C. Meyer-Seitz, H. Shev, L. Zettergren and L. Swedenborg, acting as Agents,

– the European Commission, by D. Martin and I. Koskinen, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 31 January 2018,

* Language of the case: Finnish.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 20 and 21 TFEU and Article 3(1) 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 corrigendum OJ 2004 L 200, p. 1), as amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009 (OJ 2009 L 284, p. 43) ('Regulation No 883/2004').

2 The request has been made in proceedings brought by A concerning the provision to him, by the Espoon kaupungin sosiaali- ja terveyslautakunnan yksilöasioiden jaosto (Department for individual cases of the Social and Health Board of Espoo, Finland, 'the municipality of Espoo'), of personal assistance in Tallinn, in Estonia, where A is attending a three-year full-time course of study for a degree in law.

Legal context

International law

3 The United Nations Convention on the Rights of Persons with Disabilities, concluded in New York on 13 December 2006 (*United Nations Treaty Series*, Vol. 2515, p. 3, 'the Convention on the Rights of Persons with Disabilities'), entered into force on 3 May 2008. It was approved on behalf of the European Community by Council Decision 2010/48/EC of 26 November 2009 (OJ 2010 L 23, p. 35).

4 Article 19 of the United Nations Convention on the Rights of Persons with Disabilities, headed 'Living independently and being included in the community', provides:

'States Parties to the present Convention … shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

…

(b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;

…'

5 The Court has confirmed that the provisions of the Convention are an integral part of the EU legal order and that provisions of EU legislation must as far as possible be interpreted in a manner that is consistent with the Convention (judgment of 11 April 2013, *HK Danmark*, C-335/11 and C-337/11, EU:C:2013:222, paragraphs 30 and 32).

6 Finland ratified the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto on 11 May 2016. The Convention and its optional protocol came into force in Finland on 10 June 2016.

European Union law

7 Recital 15 of Regulation No 883/2004 states:

'It is necessary to subject persons moving within the Community to the social security scheme of only one single Member State in order to avoid overlapping of the applicable provisions of national legislation and the complications which could result therefrom.'

8 Article 1(j) to (l) of that regulation contains the following definitions:

'(j) "residence" means the place where a person habitually resides;

(k) "stay" means temporary residence;

(l) "legislation" means, in respect of each Member State, laws, regulations and other statutory provisions and all other implementing measures relating to the social security branches covered by Article 3(1);

…'

9 Article 3 of Regulation No 883/2004, entitled 'Matters covered', provides:

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

(a) sickness benefits;

…

2. Unless otherwise provided for in Annex XI, this Regulation shall apply to general and special social security schemes, whether contributory or non-contributory, and to schemes relating to the obligations of an employer or shipowner.

3. This Regulation shall also apply to the special non-contributory cash benefits covered by Article 70.

…

5. This Regulation shall not apply to:

(a) social and medical assistance;

…'

10 Article 9 of Regulation No 883/2004, which is entitled 'Declarations by the Member States on the scope of this Regulation', provides, inter alia, that, every year, the Member States are to notify the European Commission in writing of the legislation and schemes referred to in Article 3 of the regulation.

11 Article 11 is in Title II of Regulation No 883/2004, which is entitled 'Determination of the legislation applicable'. Paragraphs 1 and 3 thereof provide:

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

…

3. Subject to Articles 12 to 16:

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

…

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

Finnish law

The Law on social care

12 Paragraph 13(1) of the Sosiaalihuoltolaki (Law on social care (17.9.1982/710)) provides:

'When performing its duties relating to social care, the municipality must, having due regard to the provision as to content and extent made in legislation, ensure:

1. the provision of social services for the inhabitants;

…'

13 The first subparagraph of Paragraph 14 of the Law on social care provides:

'For the purposes of this law, "inhabitant of the municipality" shall mean a person whose residence is in the municipality, as provided for in the väestökirjalaki (Law on civil registries) (141/69).

…'

The Law on services and support provided on grounds of disability

14 Paragraph 1 of the Laki vammaisuuden perusteella järjestettävistä palveluista ja tukitoimista (Law on services and support provided on grounds of disability (3.4.1987/380)), in the version applicable at the material time ('the Disability Services Law'), provides:

'The purpose of this law is to promote conditions which enable a disabled person to live and act with others as an equal member of society and to prevent and eliminate hindrances and barriers caused by his disability.'

15 Paragraph 3 of that law, entitled 'Responsibility for organising services and support', provides:

'A municipality must ensure that services and support for the disabled are provided in such a way as to take account of the nature and extent of the needs arising in the municipality.

In the provision of services and support as referred to in this law, account must be taken of the customer's individual need for help.'

16 Paragraph 8 of the Disability Services Law, which is headed 'Services for persons with a disability', provides in subparagraph 2:

'A municipality must arrange for persons with severe disabilities reasonable accompanied transport services, day activities, personal assistance and assisted-living accommodation if the person, as a result of his disability or illness, necessarily requires the service in order to carry out everyday activities. However, the municipality has no particular obligation to provide assisted-living accommodation or personal assistance if the necessary care for the severely disabled person cannot be guaranteed as part of community-based care.'

17 Paragraph 8c of the Disability Services Law, entitled 'Personal assistance', provides:

'For the purposes of this law, "personal assistance" means the assistance necessary for a severely disabled person at home and outside the home:

(1) in everyday activity;

(2) in work and study;

(3) in hobbies;

(4) in participation in society; or

(5) in maintaining social interaction.

The purpose of personal assistance is to help a severely disabled person to implement his own choices in performing the activities referred to in the first subparagraph. Provision of personal assistance presupposes that the severely disabled person has the means to determine the content of the assistance and the manner in which it is delivered.

For the purposes of the arrangements for personal assistance, a person is to be regarded as severely disabled if, as a result of long-term or progressive disability or illness, he necessarily and repeatedly needs another person's help in order to carry out the activities referred to in the first subparagraph and this need is not primarily attributable to age-related disability or illness.

Personal assistance is to be arranged for everyday activities, work and study to the extent that the severely disabled person necessarily requires it.

For the activities referred to in points (3) to (5) of the first subparagraph above, personal assistance must be provided for at least 30 hours per month, unless a lesser number of hours is sufficient to ensure the provision of the assistance necessarily required by the severely disabled person.'

18 Paragraph 8d of the Disability Services Law, which is entitled, 'Methods of arranging personal assistance', is worded as follows:

'When deciding on the methods of arranging personal assistance and when providing personal assistance, the municipality must have regard to the severely disabled person's own opinion and wishes, and to the need for individual assistance defined in the service plan and to the life situation as a whole.

The municipality may arrange personal assistance:

(1) by reimbursing a severely disabled person for the costs incurred as a result of employing a personal carer, including statutory contributions and payments owed by the employer, and other reasonable and necessary costs of the carer;

(2) by giving a severely disabled person a service voucher of an appropriate value as referred to in the Laki sosiaali- ja terveyshuollon palvelusetelistä (Law on service vouchers for social and healthcare) (569/2009), for the purpose of obtaining the services of a carer; or

(3) by obtaining for a severely disabled person the services of a carer from a public or private service provider, or by arranging the service itself or together with one or more other municipalities under a contract.

In the case referred to in point (1) of the second subparagraph above, the severely disabled person must, where necessary, be guided and assisted in questions connected with the employment of the carer.

The personal carer referred to in point (1) of the second subparagraph above may not be a relative of the severely disabled person, or another person in a close relationship with that person, unless there is a particularly compelling reason for considering that to be in the interests of the severely disabled person.'

The Law on customer payments for social and health services

19 Paragraph 4 of the Laki sosiaali- ja terveyshuollon asiakasmaksuista (Law on customer payments for social and health services) (3.8.1992/734), which is entitled 'Social services that are free of charge', provides in point 5:

'The following social services are provided free of charge:

…

(5) the services referred to in the first subparagraph of Paragraph 8 of [the Disability Services Law], day activities referred to in the second subparagraph of Paragraph 8 (except for transport and meals), personal assistance and special services related to assisted-living housing, and the tests referred to in Paragraph 11; special costs related to assisted-living accommodation and costs related to personal assistance may be invoiced if the person concerned is reimbursed for those costs under a law other than [the Disability Services Law].'

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

20 The appellant in the main proceedings was born in 1992 and resides in the municipality of Espoo in Finland. According to the findings made by the referring court, he has a substantial need for help, including in the performance of his everyday activities. The municipality of Espoo therefore provided him with a personal carer to enable him to follow secondary school studies in Finland.

21 In August 2013, A applied to the municipality of Espoo, under the Disability Services Law, for personal assistance amounting to about five hours per week to cover the costs of household chores, such as shopping, housework and laundry. At the time of that application, A was in the process of moving to

Tallinn in Estonia to attend a three-year, full-time law course there: as a result of that move, he would be spending three or four days a week in Tallinn but intended to return to Espoo at weekends. The services that he applied for would therefore have had to be provided outside Finland.

22 By decision of 12 November 2013, confirmed by decision of 4 February 2014 following an internal appeal, A's application for personal assistance was rejected on the ground that his stay outside Finland had to be regarded as other than occasional residence, even though his home municipality had not changed. The municipality of Espoo took the view that it was under no obligation to provide services and support outside Finland, since that type of stay approximated to the concept of 'habitual residence'. It was also held that personal assistance can be arranged outside Finland for periods of holiday or business travel, while costs are not reimbursed if a person's home municipality changes because of a stay outside Finland, or in the case of other long-term or permanent residence abroad.

23 By judgment of 27 June 2014, the Helsingin hallinto-oikeus (Helsinki Administrative Court, Finland) in essence upheld that reasoning and dismissed the action brought by A against the decision rejecting his claim for personal assistance.

24 The Korkein hallinto-oikeus (Supreme Administrative Court, Finland), before which an appeal against that judgment has been brought, considers that a preliminary ruling from the Court of Justice is necessary to enable it to decide the case before it.

25 In that regard, the referring court considers that, under the Disability Services Law, personal assistance is a service that the municipality has a special obligation to provide and a person meeting the requisite conditions has a 'personal right' to that assistance, which must be granted to every severely disabled person within the meaning of that law if it is necessary in view of the individual need of the person concerned.

26 The referring court nonetheless points out that, given that it is undisputed that, under national law, A's home municipality continues to be Espoo, even though A is studying in Tallinn, an obligation to provide the claimed assistance during a stay outside Finland cannot be inferred either from the wording of the Disability Services Law or from its *travaux préparatoires*.

27 The Korkein hallinto-oikeus (Supreme Administrative Court) considers that, against that background, an interpretation of EU law is necessary in order to enable it to decide the case before it. It is uncertain, in the first place, about whether, in view of its characteristics, the personal assistance for which the Disability Services Law provides must be classified as a 'sickness benefit', in which case it would fall within the material scope of Regulation No 883/2004, or whether it is a benefit related to social assistance and therefore outside the scope of that regulation. Since it leans more towards the second view, the Korkein hallinto-oikeus (Supreme Administrative Court) enquires, in the second place, whether the provisions of the FEU Treaty on citizenship of the Union preclude a refusal to provide the personal assistance claimed in the case in the main proceedings.

28 In those circumstances, the Korkein hallinto-oikeus (Supreme Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is a benefit such as personal assistance provided for in the Disability Services Law a sickness benefit within the meaning of Article 3(1) of Regulation No 883/2004?

(2) If the answer to Question 1 is in the negative:

Are the rights of Union citizens to move and reside freely in the territory of another Member State, laid down in Articles 20 and 21 TFEU, restricted in a situation in which the grant abroad of a benefit such as personal assistance within the meaning of the Disability Services Law is not

separately provided for and the conditions for grant of the benefit are interpreted in such a way that personal assistance is not granted in another Member State in which the person completes a three-year course of higher education studies leading to a degree?

– Is it relevant, in assessing the matter, that a benefit such as personal assistance may be granted in Finland in a municipality other than the person's home municipality, for example when the person is studying in another municipality in Finland?

– Must relevance be attached, in assessing the matter with respect to EU law, to the rights derived from Article 19 of the United Nations Convention on the Rights of Persons with Disabilities?

(3) If the Court of Justice considers, in its answer to Question 2, that an interpretation of national law such as that in the present case constitutes a restriction of freedom of movement, is such a restriction nonetheless justifiable on compelling grounds of the public interest relating to the obligation of the municipality to supervise the arranging of personal assistance, the municipality's possibilities of choosing the most suitable way of arranging assistance, and the maintenance of the coherence and efficacy of the system of personal assistance in accordance with the Disability Services Law?'

Consideration of the questions referred

The first question

29 By its first question, the referring court asks, in essence, whether Article 3(1)(a) of Regulation No 883/2004 must be interpreted as meaning that a benefit such as the personal assistance at issue in the main proceedings, which entails, inter alia, covering the costs to which a severely disabled person's everyday activities give rise, with the aim of enabling that person, who is not economically active, to study in higher education, falls within the concept of 'sickness benefit' within the meaning of that provision.

30 As a preliminary point, it is apparent from the documents before the Court that the Republic of Finland has not declared that the Disability Services Law is within the scope of Regulation No 883/2004. However, the Court has previously held that the fact that a Member State has failed to declare, as provided for by Article 9 of Regulation No 883/2004, that a law is covered by that regulation does not automatically mean that the law is outside the material scope of the regulation (see, inter alia, by analogy, judgments of 11 July 1996, *Otte*, C-25/95, EU:C:1996:295, paragraph 20 and the case-law cited, and of 19 September 2013, *Hliddal and Bornand*, C-216/12 and C-217/12, EU:C:2013:568, paragraph 46).

31 The distinction between benefits falling within the scope of Regulation No 883/2004 and those which are outside it is based essentially on the constituent elements of each benefit, in particular its purpose and the conditions for its grant, and not on whether it is classified as a social security benefit by national legislation (see, to that effect, inter alia, judgments of 5 March 1998, *Molenaar*, C-160/96, EU:C:1998:84, paragraph 19; of 16 September 2015, *Commission* v *Slovakia*, C-433/13, EU:C:2015:602, paragraph 70; and of 30 May 2018, *Czerwiński*, C-517/16, EU:C:2018:350, paragraph 33).

32 The Court has consistently held that a benefit may be regarded as a social security benefit in so far as it is granted, without any individual and discretionary assessment of personal needs, to recipients on the basis of a legally defined position and provided that it relates to one of the risks expressly listed in Article 3(1) of Regulation No 883/2004 (see, inter alia, judgments of 27 March 1985, *Hoeckx*, 249/83,

EU:C:1985:139, paragraphs 12 to 14; of 16 September 2015, *Commission* v *Slovakia*, C-433/13, EU:C:2015:602, paragraph 71; and of 21 June 2017, *Martinez Silva*, C-449/16, EU:C:2017:485, paragraph 20).

33 Given that the two conditions mentioned in the preceding paragraph are cumulative, the fact that one of them is not satisfied will mean that the benefit in question does not fall within the scope of Regulation No 883/2004.

34 It should be recalled that the first of those two conditions is satisfied if a benefit is granted in the light of objective criteria which, if they are met, confer entitlement to the benefit, the competent authority having no power to take account of other personal circumstances (see to that effect, inter alia, judgments of 16 July 1992, *Hughes*, C-78/91, EU:C:1992:331, paragraph 17, and of 16 September 2015, *Commission* v *Slovakia*, C-433/13, EU:C:2015:602, paragraph 73).

35 In that regard, the referring court finds that, although the individual needs of severely disabled persons are taken into account at the time when the personal assistance provided for by the Disability Services Law is granted, that law confers on recipients what it terms a 'personal right' to be awarded that assistance on the basis of legally defined conditions, irrespective of the level of their income.

36 The Finnish and Swedish Governments submit that the benefit at issue in the main proceedings may be treated in the same way as the benefit in the case that gave rise to the judgment of 16 September 2015, *Commission* v *Slovakia* (C-433/13, EU:C:2015:602), given that the individual needs of the recipient are taken into account and that the municipality is afforded some discretion concerning the arrangements for the provision of that benefit and the extent of the benefit, meaning, in their submission, that the benefit does not satisfy the first condition mentioned in paragraph 32 of this judgment and therefore falls outside the material scope of Regulation No 883/2004. On the other hand, the Commission and the Czech Government contend that the benefit does satisfy that condition.

37 In its judgment of 16 September 2015, *Commission* v *Slovakia* (C-433/13, EU:C:2015:602), the Court found (i) that the Commission had failed to establish that the criteria laid down by the Slovak law concerning the various medical and social examinations that had to be carried out conferred entitlement to the benefits in question without the competent authority having any discretion as to their grant and (ii) that that law provided that the right to a compensatory allowance arose from a valid decision of the competent authority recognising that right: that had supported the Slovak Government's argument that the authorities had some discretion at the time of the award of the benefits at issue.

38 As the Advocate General has noted in point 42 of his Opinion, it follows that the discretionary assessment of the individual needs of the recipient of the benefit in question must, above all, relate to eligibility for the benefit in order for it to be found that the first condition mentioned in paragraph 32 of this judgment is not satisfied; that supported the Slovak Government's argument that the authorities had some discretion at the time of the award of the benefits at issue.

39 It should be noted that the Disability Services Law, more specifically Paragraphs 8c and 8d thereof, makes a number of references to the individual need of the person concerned being taken into account. However, the discretion afforded, in particular by Paragraph 8d of the law, so far as the powers of the home municipality of the beneficiary are concerned, does not relate to eligibility for the personal assistance but to the arrangements for allocating that assistance and the extent thereof, as personal assistance has to be provided by the municipality when the claimant is a severely disabled person who is resident in the municipality, regardless of that person's income. Therefore, the situation in the case before the referring court can be distinguished from that giving rise to the judgment of 16 September 2015, *Commission* v *Slovakia* (C-433/13, EU:C:2015:602).

40 In view of those considerations, the first condition must be found to be satisfied in the case in the main proceedings.

41 As regards the second condition, consideration must be given to whether the benefit at issue in the main proceedings relates to one of the risks expressly listed in Article 3(1) of Regulation No 883/2004.

42 As regards more specifically care insurance, it is true that the Court has held, in essence, that whilst benefits pertaining to the risk of reliance on care have features that are peculiar to them, they must be treated as sickness benefits within the meaning of Article 3(1) of Regulation No 883/2004 (see to that effect, inter alia, judgments of 5 March 1998, *Molenaar*, C-160/96, EU:C:1998:84, paragraphs 23 to 25; of 30 June 2011, *da Silva Martins*, C-388/09, EU:C:2011:439, paragraphs 40 to 45; and of 1 February 2017, *Tolley*, C-430/15, EU:C:2017:74, paragraph 46).

43 However, treating the risk of reliance on care in the same way as the risk of sickness assumes that the purpose of benefits designed to provide cover against the risk of reliance on care is to improve the state of health and the quality of life of persons reliant on care (see, to that effect, judgments of 8 March 2001, *Jauch*, C-215/99, EU:C:2001:139, paragraph 28; of 21 February 2006, *Hosse*, C-286/03, EU:C:2006:125, paragraphs 38 to 44; and of 30 June 2011, *da Silva Martins*, C-388/09, EU:C:2011:439, paragraph 45).

44 That is in particular the case, when, irrespective of the method of financing of those schemes, there is coverage of expenses entailed by the insured person's reliance on care which relate, at the very least concurrently, to the care provided to the person and to the improvement of that person's everyday life, for example, through the provision of equipment and assistance by third parties (see, inter alia, judgments of 5 March 1998, *Molenaar*, C-160/96, EU:C:1998:84, paragraph 23; of 8 July 2004, *Gaumain-Cerri and Barth*, C-502/01 and C-31/02, EU:C:2004:413, paragraphs 3, 21 and 26; and of 12 July 2012, *Commission* v *Germany*, C-562/10, EU:C:2012:442, paragraph 46).

45 It has also been held that benefits relating to the risk of reliance on care are at most supplementary to the 'classic' sickness benefits that fall within Article 3(1)(a) of Regulation No 883/2004 *stricto sensu* and are not necessarily an integral part of them (see, inter alia, judgments of 30 June 2011, *da Silva Martins*, C-388/09, EU:C:2011:439, paragraph 47; and of 1 February 2017, *Tolley*, C-430/15, EU:C:2017:74, paragraph 46 and the case-law cited.)

46 In the case in the main proceedings, as the Finnish and Swedish Governments have submitted and as the Advocate General has observed in his Opinion, the purpose of the personal assistance provided for by the Disability Services Law cannot be regarded as being to improve the beneficiary's state of health associated with his disability.

47 Indeed, Paragraph 1 of the Disability Services Law states that the purpose of the law is to promote conditions which enable a disabled person to live and act with others as an equal member of society and to prevent and eliminate hindrances and barriers caused by disability.

48 In addition, under Paragraph 8c of the Disability Services Law, the purpose of personal assistance is to help severely disabled persons to make their own choices regarding the carrying out of the activities listed in that paragraph, namely everyday activities, work and studies, hobbies, participation in society and the maintenance of social interaction.

49 Finally, it is clear from the *travaux préparatoires* for that law that the care needs which relate to medical care, treatment or supervision are expressly excluded from the scope of personal assistance.

50 Consequently, the benefit at issue in the main proceedings cannot be considered to relate to one of the risks expressly listed in Article 3(1) of Regulation No 883/2004.

51 It follows that the second condition referred to in paragraph 32 of this judgment is not satisfied. Accordingly, the benefit at issue in the main proceedings does not fall within the scope of Regulation No 883/2004.

52 In view of the foregoing, the answer to the first question is that Article 3(1)(a) of Regulation No 883/2004 must be interpreted as meaning that a benefit such as the personal assistance at issue in the main proceedings, which entails, inter alia, covering the costs to which a severely disabled person's everyday activities give rise, with the aim of enabling that person, who is not economically active, to study in higher education, does not fall within the concept of 'sickness benefit' within the meaning of that provision and is therefore outside the scope of Regulation No 883/2004.

The second and third questions

53 By its second and third questions, which are raised in the event of the personal assistance at issue in the main proceedings not being encompassed by the concept of 'sickness benefits' and therefore falling outside the scope of Regulation No 883/2004, the referring court asks, in essence, whether Articles 20 and 21 TFEU preclude the home municipality of a resident of a Member State who is severely disabled from refusing to grant that person a benefit such as the personal assistance at issue in the main proceedings on the ground that he is staying in another Member State in order to pursue his higher education studies there.

54 As a preliminary point, it should be noted that the referring court has explained, first, that it is common ground that the habitual residence of the appellant in the main proceedings continues to be in Finland, in accordance with the relevant national legislation, and that the period he is required to spend in Estonia each week for the purposes of his studies is only temporary inasmuch as the intention is that he should return to his home municipality every weekend. Secondly, the referring court has explained that the pursuit of studies, unlike business travel and holidays, has not been accepted as being among the grounds permitting the person concerned to receive the personal assistance at issue in the main proceedings outside Finland.

55 Having clarified that point, the Court observes that, as a Finnish national, A enjoys the status of citizen of the Union under Article 20(1) TFEU and may therefore rely on the rights conferred on those having that status, including against his Member State of origin (see, inter alia, judgment of 26 February 2015, *Martens*, C-359/13, EU:C:2015:118, paragraph 20 and the case-law cited).

56 As the Court has held on numerous occasions, the status of citizen of the Union is intended to be the fundamental status of nationals of the Member States, enabling those among such nationals who find themselves in the same situation to enjoy, within the scope *ratione materiae* of the Treaty, the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for in that regard (see, inter alia, judgment of 2 June 2016, *Bogendorff von Wolffersdorff*, C-438/14, EU:C:2016:401, paragraphs 29 and 30 and the case-law cited).

57 Situations falling within the scope *ratione materiae* of EU law include those which involve the exercise of the fundamental freedoms guaranteed by the Treaty, in particular those involving the freedom to move and reside within the territory of the Member States, as conferred by Article 21 TFEU (see, inter alia, judgment of 2 June 2016, *Bogendorff von Wolffersdorff*, C-438/14, EU:C:2016:401, paragraph 31 and the case-law cited).

58 In that respect, the Court has stated that, although the Member States are competent, under Article 165(1) TFEU, as regards the content of teaching and the organisation of their respective education systems, they must exercise that competence in compliance with EU law and, in particular,

in compliance with the Treaty provisions on the freedom to move and reside within the territory of the Member States, as conferred by Article 21(1) TFEU on all citizens of the Union (judgment of 26 February 2015, *Martens*, C-359/13, EU:C:2015:118, paragraph 23 and the case-law cited).

59 Moreover, EU law does not impose any obligation on the Member States to provide a system of funding for higher education pursued in a Member State or abroad. However, where a Member State provides for such a system which enables students to receive such grants, it must ensure that the detailed rules for the award of that funding do not create an unjustified restriction of the right to move and reside within the territory of the Member States (judgment of 26 February 2015, *Martens*, C-359/13, EU:C:2015:118, paragraph 24).

60 It also follows from settled case-law that national legislation which places certain nationals at a disadvantage simply because they have exercised their freedom to move and to reside in another Member State constitutes a restriction on the freedoms conferred by Article 21(1) TFEU on every citizen of the Union (judgment of 26 February 2015, *Martens*, C-359/13, EU:C:2015:118, paragraph 25).

61 Indeed, the opportunities offered by the Treaty in relation to freedom of movement for citizens of the Union cannot be fully effective if a national of a Member State can be dissuaded from using them by obstacles resulting from his stay in another Member State, because of legislation of his State of origin which penalises the mere fact that he has used those opportunities (see, inter alia, judgment of 26 February 2015, *Martens*, C-359/13, EU:C:2015:118, paragraph 26).

62 That consideration is particularly important in the field of education, in view of the aims pursued by Article 6(e) TFEU and the second indent of Article 165(2) TFEU, namely, amongst other things, encouraging mobility of students and teachers (see, inter alia, judgment of 26 February 2015, *Martens*, C-359/13, EU:C:2015:118, paragraph 27).

63 The case-law mentioned in paragraphs 55 to 62 of this judgment is applicable even though the personal assistance at issue in the main proceedings is not granted exclusively for the pursuit of studies, but for the social and economic integration of persons who are severely disabled in order to enable them to make their own choices, including as to whether to follow a course of study.

64 In the present case, the referring court has found that the habitual residence of the appellant in the main proceedings continues to be in the municipality of Espoo, in accordance with the relevant national legislation.

65 It is undisputed that the personal assistance at issue in the main proceedings was refused solely because the course of higher education that A –– who was otherwise eligible for that assistance –– was intending to follow took place in a Member State other than Finland.

66 Such a refusal must be regarded as a restriction on the freedom to move and reside within the territory of the Member States, which Article 21(1) TFEU affords to every citizen of the Union.

67 Such a restriction can be justified in the light of EU law only if it is based on objective considerations of public interest independent of the nationality of the persons concerned and if it is proportionate to the legitimate objective of the provisions of national law. It follows from the Court's case-law that a measure is proportionate when, while appropriate for securing the attainment of the objective pursued, it does not go beyond what is necessary in order to achieve it (see, to that effect, inter alia, judgment of 26 February 2015, *Martens*, C-359/13, EU:C:2015:118, paragraph 34 and the case-law cited).

68 So far as justification for the national measure is concerned, the Finnish Government submits that no overriding ground of public interest is capable of justifying the restriction at issue in the main proceedings. The Swedish Government, on the other hand, contends that the municipality's obligations to supervise the arrangements for the personal assistance at issue in the main proceedings and, in that context, the maintenance of the financial balance of the social security system justify that assistance being granted only in Finnish territory. Moreover, the referring court, alluding to paragraphs 89 and 90 of the judgment of 21 July 2011, *Stewart* (C-503/09, EU:C:2011:500), mentions in its order for reference, as a public-interest objective capable of justifying such a restriction, the maintenance of the coherence and efficacy of the system of personal assistance provided for by the Disability Services Law and the securing of a genuine link between the person claiming assistance and the Member State that is competent to grant it.

69 It is true that objectives of national legislation which seek to establish a genuine link between a claimant to short-term incapacity benefit in youth and the competent Member State and to preserve the financial balance of the national social security system, constitute, in principle, legitimate objectives capable of justifying restrictions on the rights of freedom of movement and residence under Article 21 TFEU (judgment of 21 July 2011, *Stewart*, C-503/09, EU:C:2011:500, paragraph 90).

70 However, the Court concluded that the conditions requiring the presence of the person claiming the incapacity benefit could not be justified by the objectives mentioned in the preceding paragraph of this judgment. In particular, the Court held that, although the person claiming that benefit lived in a Member State other than the Member State concerned, the fact that there was a genuine and sufficient connection with the latter Member State could be established on the basis of factors other than the claimant's presence in that Member State prior to her claim, such as the relationship between the claimant and the social security system of that Member State as well as the claimant's family circumstances (judgment of 21 July 2011, *Stewart*, C-503/09, EU:C:2011:500, paragraphs 97 to 102, 104 and 109).

71 The Court also held that that assessment applied with regard to the objective of ensuring the financial balance of the national social security system, since the need to establish a genuine and sufficient connection between the person claiming the benefit in question and the competent Member State enables the latter to satisfy itself that the economic cost of paying that benefit does not become unreasonable (judgment of 21 July 2011, *Stewart*, C-503/09, EU:C:2011:500, paragraph 103).

72 A conclusion to that effect can be applied to A's situation in the case before the referring court. First, it is common ground, as has been noted in paragraph 54 of this judgment, that A's habitual residence continues to be in the municipality of Espoo, to which he applied for personal assistance, and that he goes back to Espoo every week during the period of his studies in Estonia.

73 Therefore, it cannot be validly maintained that that municipality may have particular difficulties in monitoring compliance with the conditions on which that assistance is granted and supervising the arrangements for the organisation and provision of that assistance.

74 Nor can any information be gleaned from the documents before the Court as to the nature of the obstacles that allegedly make it more difficult for the municipality to monitor compliance with the conditions on which use of personal assistance is granted in a situation such as that at issue in the main proceedings, as compared with a situation, permitted by the Finnish legislation, in which the same personal assistance is used outside Finland by a Finnish resident while travelling for business or on holiday.

75 In that context, the Court, echoing the question raised by the Advocate General in his Opinion, draws attention to the fact (alluded to by the referring court) that the personal assistance at issue in the main proceedings can continue to be awarded when the person concerned is in higher education in a Finnish municipality that may be a long way from his home municipality. The home municipality's

ability to monitor the use of the personal assistance in that situation is not much more limited than it is in a situation such as that at issue in the main proceedings, in which A pursues his studies outside Finland but in a neighbouring region, returning every weekend to his Finnish home municipality.

76 Secondly, it is apparent from the documents before the Court that the Finnish Government has stated that there is currently nothing to suggest that the grant of personal assistance in circumstances such as those at issue in the main proceedings may jeopardise the balance of the national system of social security.

77 Therefore, in circumstances such as those in the main proceedings, none of the objectives to which that court and the Swedish Government have drawn attention justify the restriction of the freedom of movement and residence of a Union citizen such as A.

78 Accordingly, there is no need to rule on the interpretation of Article 19 of the Convention on the Rights of Persons with Disabilities, although that was also requested by the referring court, as the answer to the second and third questions will be no different in the light of the convention.

79 In view of the foregoing, the answer to the second and third questions is that Articles 20 and 21 TFEU preclude the home municipality of a resident of a Member State who is severely disabled from refusing to grant that person a benefit, such as the personal assistance at issue in the main proceedings, on the ground that he is staying in another Member State in order to pursue his higher education studies there.

Costs

80 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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 (Fifth Chamber) hereby rules:

1. **Article 3(1)(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, as amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009, must be interpreted as meaning that a benefit such as the personal assistance at issue in the main proceedings, which entails, inter alia, covering the costs to which a severely disabled person's everyday activities give rise, with the aim of enabling that person, who is not economically active, to study in higher education, does not fall within the concept of 'sickness benefit' within the meaning of that provision and is therefore outside the scope of Regulation No 883/2004.**

2. **Articles 20 and 21 TFEU preclude the home municipality of a resident of a Member State who is severely disabled from refusing to grant that person a benefit, such as the personal assistance at issue in the main proceedings, on the ground that he is staying in another Member State in order to pursue his higher education studies there.**

[Signatures]