Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

6 October 2020*

(Reference for a preliminary ruling – Free movement of persons – Workers – Regulation (EU) No 492/2011 – Article 7(2) – Equal treatment – Social advantages – Article 10 – Children attending school – Directive 2004/38/EC – Article 24 – Social assistance – Regulation (EC) No 883/2004 – Article 4 – Article 70 – Special non-contributory cash benefits – Migrant worker with dependent children attending school in the host Member State)

In Case C-181/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landessozialgericht Nordrhein-Westfalen (Higher Social Court of North Rhine-Westphalia, Germany), made by decision of 14 February 2019, received at the Court on 25 February 2019, in the proceedings

Jobcenter Krefeld – Widerspruchsstelle

v

JD,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, A. Arabadjiev, A. Prechal (Rapporteur), M. Vilaras, M. Safjan, P.G. Xuereb, L.S. Rossi and I. Jarukaitis, Presidents of Chambers, J. Malenovský, L. Bay Larsen, T. von Danwitz, C. Toader, N. Piçarra and A. Kumin, Judges,

Advocate General: G. Pitruzzella,

Registrar: D. Dittert, Head of Unit,

having regard to the written procedure and further to the hearing on 26 February 2020,

after considering the observations submitted on behalf of:

– Jobcenter Krefeld – Widerspruchsstelle, by S. Schwickert, acting as Agent,

– JD, by J. Kruse, Rechtsanwalt,

– the German Government, by J. Möller and S. Eisenberg, acting as Agents,

– the Polish Government, by B. Majczyna, A. Siwek-Ślusarek and E. Borawska-Kędzierska, acting as Agents,

* Language of the case: German.

– the European Commission, by E. Montaguti, B.-R. Killmann, J. Tomkin and M. Kellerbauer, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 May 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of: Article 18 TFEU; Articles 7 and 10 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (OJ 2011 L 141, p. 1); Article 24(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 (OJ 2004 L 158, p. 77 and corrigenda OJ 2004 L 229, p. 35 and OJ 2005 L 197, p. 34), and Article 4 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).

2 The request has been made in proceedings between the Jobcenter Krefeld – Widerspruchsstelle (Krefeld Employment Centre – Complaints Department, Germany) ('Jobcenter Krefeld') and JD concerning the refusal to grant him and his two daughters basic social protection benefits provided for by German legislation.

Legal context

European Union law

Directive 2004/38

3 Recitals 3, 4, 10, 16 and 21 of Directive 2004/38 state:

'(3) 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.

(4) With a view to remedying this sector-by-sector, piecemeal approach to the right of free movement and residence and facilitating the exercise of this right, there needs to be a single legislative act to amend Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition, 1968(II), p. 475) and to repeal the following acts: …

…

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

…

(16) As long as the beneficiaries of the right of residence do not become an unreasonable burden on the social assistance system of the host Member State they should not be expelled. … In no case should an expulsion measure be adopted against workers, self-employed persons or job-seekers as defined by the Court of Justice save on grounds of public policy or public security.

…

(21) However, it should be left to the host Member State to decide whether it will grant social assistance during the first three months of residence, or for a longer period in the case of job-seekers, to Union citizens other than those who are workers or self-employed persons or who retain that status or their family members, or maintenance assistance for studies, including vocational training, prior to acquisition of the right of permanent residence, to these same persons.'

4 Article 7(1) and (3) of that directive, that article being headed 'Right of residence for more than three months', provides:

'1. 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

…

3. For the purposes of paragraph 1(a), a Union citizen who is no longer a worker or self-employed person shall retain the status of worker or self-employed person in the following circumstances:

…

(c) he/she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first twelve months and has registered as a job-seeker with the relevant employment office. In this case, the status of worker shall be retained for no less than six months;

…'

5 Article 14(2) and (4) of that directive, that article being headed 'Retention of the right of residence', provides:

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

…

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

…

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

6 Under Article 24 of Directive 2004/38, headed 'Equal treatment':

'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. …

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), … to persons other than workers, self-employed persons, persons who retain that status, and members of their families.'

Regulation No 883/2004

7 Article 2(1) of Regulation No 883/2004, that article being headed 'Persons covered', states:

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

8 Article 3 of that regulation, headed 'Matters covered', provides:

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

…

(h) unemployment benefits;

…

(j) family benefits.

…

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

9 Article 4 of that regulation, headed 'Equality of treatment', provides:

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

10 Within Title III of Regulation No 883/2004, Chapter 9 relates to 'special non-contributory cash benefits'. Within that chapter, Article 70 of that regulation, headed '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:

(a) are intended to provide either:
   (i) supplementary, substitute or ancillary cover against the risks covered by the branches of social security referred to in Article 3(1), and which guarantee the persons concerned a minimum subsistence income having regard to the economic and social situation in the Member State concerned; or
   (ii) solely specific protection for the disabled, closely linked to the said person's social environment in the Member State concerned,

   and

(b) where the financing exclusively derives from compulsory taxation intended to cover general public expenditure and the conditions for providing and for calculating the benefits are not dependent on any contribution in respect of the beneficiary. However, benefits provided to supplement a contributory benefit shall not be considered to be contributory benefits for this reason alone,

   and

(c) are listed in Annex X.

3. Article 7 and the other Chapters of this Title shall not apply to the benefits referred to in paragraph 2 of this Article.

4. The benefits referred to in paragraph 2 shall be provided exclusively in the Member State in which the persons concerned reside, in accordance with its legislation. Such benefits shall be provided by and at the expense of the institution of the place of residence.'

11 Annex X to Regulation No 883/2004, which lists the 'special non-contributory cash benefits', within the meaning of Article 70(2)(c) of that regulation, provides that, with respect to Germany, such benefits include 'benefits to cover subsistence costs under the basic provision for jobseekers unless, with respect to these benefits, the eligibility requirements for a temporary supplement following receipt of unemployment benefit (Article 24(1) of Book II of the Social Code) are fulfilled'.

Regulation No 492/2011

12 Recital 1 of Regulation No 492/2011 is worded as follows:

'Regulation [No 1612/68] has been substantially amended several times. In the interests of clarity and rationality the said Regulation should be codified.'

13 Article 7(1) and (2) of Regulation No 492/2011 provides:

'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.'

14 Article 10 of that regulation provides:

'The children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory.

Member States shall encourage all efforts to enable such children to attend these courses under the best possible conditions.'

German law

15 Paragraph 7 of the Sozialgesetzbuch Zweites Buch (Book II of the Social Code), in the version of 22 December 2016 (BGBl. I, p. 3155) ('the SGB II'), provides:

(1) [1]Benefits granted under this book shall be received by persons:

1. who have attained the age of 15 years and have not yet reached the age limit referred to in Paragraph 7a,

2. who are fit for work,

3. who are in need of assistance, and

4. whose ordinary place of residence is in the Federal Republic of Germany (beneficiaries fit for work).

[2]2 The following are excluded:

1. …

2. foreign nationals
   (a) who do not have a right of residence,
   (b) whose right of residence arises solely as a result of the objective of seeking employment, or
   (c) who derive their right of residence – exclusively or alongside a right of residence under point (b) – from Article 10 of Regulation No 492/2011,

   and their family members,

3. …

(2) Persons who live in the same household as beneficiaries who are fit for work shall also receive benefits. …

(3) The household shall include

1. beneficiaries fit for work,

…

4. unmarried children who are part of the household of the persons referred to in points 1 to 3, if they have not yet reached the age of 25, provided that they cannot obtain the benefits to enable them to cover their subsistence costs from their own income or assets.'

16 Paragraph 2 of the Gesetz über die allgemeine Freizügigkeit von Unionsbürgern (Law on general freedom of movement of Union citizens), in the version of 2 December 2014 (BGBl. I, p. 1922 ; 'the FreizügG') provides:

'(1) Union citizens who are entitled to freedom of movement and their family members shall have the right to enter and reside in federal territory, subject to the provisions of this Law.

(2) The following are entitled to freedom of movement under EU law:

1. Union citizens who wish to reside as workers or for the purpose of pursuing vocational training,

1a. Union citizens seeking employment, for a period of up to six months, and thereafter only in so far as they can provide evidence that they are continuing to seek employment and that they have a genuine chance of being engaged,

…

6. family members, subject to the conditions laid down in Paragraphs 3 and 4,

(3) … [2]The right derived from subparagraph 1 shall be retained for a period of six months in the event of involuntary unemployment confirmed by the relevant employment office after a period of employment of less than one year.'

17 Paragraph 3 of the FreizügG provides:

'(1) The family members of the Union citizens referred to in Paragraph 2(2), points 1 to 5, shall enjoy the right under Paragraph 2(1) if they are accompanying or joining the Union citizen. …

(2) The following are family members:

1. the spouse, the partner and the descendants of the persons specified in Paragraph 2(2), points 1 to 5 and 7, or of their spouses or partners, who have not yet reached the age of 21,

…

(4) The children of a Union citizen who enjoys freedom of movement and the parent who actually exercises parental authority over the children shall retain their right of residence until they have completed their training even after the death or departure of the Union citizen from whom they derive their right of residence, where the children reside in federal territory and attend an educational or training establishment.'

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

18 JD, a Polish national, was the husband of a Polish woman with whom he had two daughters, born in 2005 and 2010 respectively. JD has been separated from his wife since 2012 or 2013. In late 2012 and early 2013, all the members of the family settled in Germany. The two daughters reside essentially with their father, with whom they have had their home since 2015. JD's wife moved to Poland in 2016.

19 The daughters have attended school in Germany since 1 August 2016.

20 From March 2015 onwards, JD was in paid employment in Germany. He held a position as a locksmith's assistant from 6 March to 1 September 2015, and then a full-time position as a production worker from 18 January to 31 October 2016. From 4 October to 7 December 2016, JD

was not fit for work and continued to receive, for that reason, payment of his wages from his employer until 31 October 2016, when the employment relationship ended, and he then received social security sickness benefits until 7 December 2016.

21 JD then received unemployment benefits from 23 February to 13 April 2017 and from 12 June to 23 October 2017.

22 Since 2 January 2018 JD has again been in full-time employment.

23 JD and his two daughters received, from 1 September 2016 until 7 June 2017, basic social protection benefits under the SGB II, namely the 'subsidiary unemployment benefits' (*Arbeitslosengeld II*) for JD and 'social allowances' (*Sozialgeld*) for the two daughters (together, 'the subsistence benefits at issue in the main proceedings').

24 In June 2017 JD made an application, on behalf of himself and his daughters, for the continued payment of the subsistence benefits at issue in the main proceedings. By a decision of 13 June 2017, confirmed on 27 July 2017 following submission of a complaint by JD, Jobcenter Krefeld rejected that application on the basis of point 2 of the second sentence of Paragraph 7(1) of the SGB II, on the ground that JD had not retained the status of a worker and that he was residing in Germany solely in order to seek employment.

25 JD and his two daughters then brought an action before the Sozialgericht Düsseldorf (Social Court of Düsseldorf, Germany) seeking the annulment of that opinion and asking that court to order Jobcenter Krefeld to grant them the subsistence benefits at issue in the main proceedings for the period between 8 June and 31 December 2017 ('the period at issue').

26 By judgment of 8 May 2018, that court upheld that action and ordered Jobcenter Krefeld to pay the benefits applied for. That court held that, while JD could indeed no longer rely on the retention of the status of a worker during the period at issue as the basis for claiming a right of residence under Paragraph 2 of the FreizügG, he also derived such a right from the right of residence granted to his daughters by virtue of Article 10 of Regulation No 492/2011. Those daughters, who resided in and were attending school in Germany, can claim, as the minor children of a former migrant worker who was employed in that Member State, a right of residence under Article 10, which is then the basis for the right of residence of their father, as the parent primarily caring for them. In the opinion of that court, the right of residence derived from Article 10 for the purposes of education and training of the children of a (former) migrant worker is autonomous and independent of the rights of residence provided for by Directive 2004/38. Therefore, the rule established in Article 24(2) of that directive, derogating from the principle of equal treatment in relation to social assistance, is not applicable where the right of residence of the Union citizen concerned is based on Article 10 of Regulation No 492/2011. The exclusion from entitlement to the social assistance benefits provided for in point 2(c) of the second sentence of Paragraph 7(1) of the SGB II of foreign nationals and members of their families who derive their right of residence from Article 10 of Regulation No 492/2011 is therefore not compatible with EU law.

27 On 4 July 2018 Jobcenter Krefeld brought an appeal against that judgment before the referring court.

28 That court states, first, that the national case-law is divided on the issue of whether the derogating rule in relation to social assistance, provided for in Article 24(2) of Directive 2004/38, may also be applied, directly or by analogy, to Union citizens who have a right of residence under Article 10 of Regulation No 492/2011 and who have made an application to be granted subsistence benefits such as those at issue in the main proceedings, which constitute social assistance within the meaning of Article 24(2).

29 Further, the German legislature, in adopting point 2(c) of the second sentence of Paragraph 7(1) of the SGB II, took the view that it was appropriate to apply Article 24(2) of Directive 2004/38 to situations where Union citizens have, in addition to a right of residence for the purposes of seeking employment, also a right of residence under Article 10 of Regulation No 492/2011, in order to ensure that the rules of Directive 2004/38 are not deprived of any substance and that such Union citizens do not become an unreasonable burden on the social assistance system of the host Member State.

30 The referring court considers, however, that the right of residence granted under Article 10 of Regulation No 492/2011 is not subject to the provisions of Directive 2004/38. The referring court relies in that regard on the judgments of 23 February 2010, *Ibrahim and Secretary of State for the Home Department* (C-310/08, EU:C:2010:80), and of 23 February 2010, *Teixeira* (C-480/08, EU:C:2010:83), where the Court recognised the autonomy of the right of residence based on Article 12 of Regulation No 1612/68, a provision whose wording is identical to that of Article 10 of Regulation No 492/2011. Moreover, the EU legislature did not take the opportunity, when adopting the latter regulation, which repealed and replaced Regulation No 1612/68, to restrict the principle of equal treatment stemming from Regulation No 1612/68, as it has been interpreted by the Court.

31 Second, the question of the applicability of Article 24(2) of Directive 2004/38 also arises in relation to Article 4 of Regulation No 883/2004. That regulation is applicable in this case, since JD was covered, in Germany, by a family benefits system within the meaning of Article 3(1)(j) of that regulation and by a unemployment benefit system within the meaning of Article 3(1)(h) of that regulation. The subsistence benefits provided for by the SGB II are special non-contributory cash benefits, within the meaning of Article 3(3) and Article 70(2) of Regulation No 883/2004, to which the principle of equal treatment laid down in Article 4 of that regulation is applicable.

32 In those circumstances, the Landessozialgericht Nordrhein-Westfalen (Higher Social Court of North Rhine-Westphalia, Germany) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is the exclusion of Union citizens having a right of residence under Article 10 of Regulation No 492/2011 from receipt of social assistance within the meaning of Article 24(2) of Directive 2004/38 compatible with the requirement of equal treatment enshrined in Article 18 TFEU, read in conjunction with Articles 10 and 7 of Regulation No 492/2011?

(a) Does social assistance within the meaning of Article 24(2) of Directive 2004/38 constitute a social advantage within the meaning of Article 7(2) of Regulation No 492/2011?

(b) Does the derogation set out in Article 24(2) of Directive 2004/38 apply to the requirement of equal treatment enshrined in Article 18 TFEU, read in conjunction with Articles 10 and 7 of Regulation No 492/2011?

(2) Is the exclusion of Union citizens from receipt of special non-contributory cash benefits within the meaning of Articles 3(3) and 70(2) of Regulation No 883/2004 compatible with the requirement of equal treatment arising from Article 18 TFEU, read in conjunction with Article 4 of Regulation No 883/2004 if those citizens have a right of residence arising from Article 10 of Regulation No 492/2011 and are covered by a social security system or family benefits system within the meaning of Article 3(1) of Regulation No 883/2004?’

Consideration of the questions referred

The first question

33 By its first question, the referring court seeks, in essence, to ascertain whether the first paragraph of Article 18 TFEU and Article 7(2) and Article 10 of Regulation No 492/2011 must be interpreted as meaning that, in the light of Article 24(2) of Directive 2004/38, those provisions do not preclude legislation of a Member State which provides that a national of another Member State and his or her minor children, all of whom have, in the former Member State, a right of residence based on Article 10 of Regulation No 492/2011, by virtue of those children attending school in that State, are automatically and in all circumstances excluded from entitlement to benefits to cover the costs of their subsistence.

The right of residence based on Article 10 of Regulation No 492/2011

34 It must be recalled that Article 10 of Regulation No 492/2011 provides that the children of a national of a Member State who is or has been employed in the territory of another Member State are, in the host Member State, on condition that they reside there, entitled to equal treatment with the nationals of that Member State as regards access to education. Before the entry into force of Regulation No 492/2011, that right was laid down in Article 12 of Regulation No 1612/68, the wording of which was identical to that of Article 10 of Regulation No 492/2011, the latter regulation having repealed and replaced the former in order to effect the codification of the former, in the interests of clarity and rationality, as stated in recital 1 of Regulation No 492/2011. Consequently, the Court's case-law in relation to Article 12 of Regulation No 1612/68 is also relevant to the interpretation of Article 10 of Regulation No 492/2011.

35 It is clear from that case-law, first, that the child of a migrant worker or of a former migrant worker has an independent right of residence in the host Member State, on the basis of the right to equal treatment as regards access to education, where that child wishes to attend general education courses in that Member State. Second, recognition that that child has an independent right of residence entails that the parent who has primary care of that child should be recognised as having a corresponding right of residence (see, to that effect, judgments of 17 September 2002, *Baumbast and R*, C-413/99, EU:C:2002:493, paragraphs 63 and 75, and of 23 February 2010, *Teixeira*, C-480/08, EU:C:2010:83, paragraph 36).

36 The objective pursued by both Regulation No 1612/68 and Regulation No 492/2011, namely to ensure freedom of movement for workers, requires the best possible conditions for the integration of the worker's family in the host Member State, and a refusal to allow the parents caring for the children to remain in the host Member State while those children are attending school might deprive the children of a right granted to them by the EU legislature (judgment of 23 February 2010, *Ibrahim and Secretary of State for the Home Department*, C-310/08, EU:C:2010:80, paragraph 55 and the case-law cited).

37 Accordingly, Article 10 of Regulation No 492/2011 grants to a child, in parallel with the right that child has to access to education, an independent right of residence that does not depend on the fact that the parent or parents who care for the child should continue to have the status of migrant worker in the host Member State. Likewise, the fact that the parent concerned loses that status has no effect on his or her right of residence, under Article 10 of Regulation No 492/2011, corresponding to that of the child of whom he or she is the primary carer (see, to that effect, judgments of 17 September 2002, *Baumbast and R*, C-413/99, EU:C:2002:493, paragraphs 63, 70 and 75, and of 23 February 2010, *Teixeira*, C-480/08, EU:C:2010:83, paragraphs 37, 46 and 50).

38 It should be added in that regard that Article 10 of Regulation No 492/2011 should be applied independently of the provisions of EU law, such as those of Directive 2004/38, that govern the conditions for the exercise of a right of residence in another Member State (see, to that effect, judgments of 23 February 2010, *Ibrahim and Secretary of State for the Home Department*, C-310/08, EU:C:2010:80, paragraph 42, and of 23 February 2010, *Teixeira*, C-480/08, EU:C:2010:83, paragraphs 53 and 54).

39 It follows that the children of a national of a Member State who works or has worked in the host Member State, together with the parent who is their primary carer, may rely, in the latter State, on an independent right of residence on the sole basis of Article 10 of Regulation No 492/2011, without their being required to satisfy the conditions laid down by Directive 2004/38, including the condition that the persons concerned have sufficient resources and comprehensive sickness insurance cover in that State (see, to that effect, judgment of 23 February 2010, *Ibrahim and Secretary of State for the Home Department*, C-310/08, EU:C:2010:80, paragraph 59).

The right to equal treatment under Article 7 of Regulation No 492/2011

40 The referring court seems to be of the view, a view shared by the European Commission, that the persons who derive a right of residence from Article 10 of Regulation No 492/2011 are justified in relying on the principle of equal treatment laid down in Article 7 of that regulation, in particular in Article 7(2), with respect to the grant of social advantages to which national workers are entitled. The German Government, however, considers that that is not the case.

41 As regards, first, the scope *ratione materiae* of Article 7(2), the concept of a 'social advantage', within the meaning of that provision, 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 18 December 2019, *Generálny riaditeľ Sociálnej poisťovne Bratislava and Others*, C-447/18, EU:C:2019:1098, paragraph 47).

42 In this case, since the purpose of the subsistence benefits at issue in the main proceedings is, as stated by the referring court, to cover the subsistence costs of their recipients, it must be held that those benefits contribute to the integration of those recipients in the society of the host Member State. Those benefits consequently constitute social advantages within the meaning of Article 7(2) of Regulation No 492/2011 (see, to that effect, judgment of 27 March 1985, *Hoeckx*, 249/83, EU:C:1985:139, paragraph 22).

43 As regards, second, the scope *ratione personae* of Article 7(2) of Regulation No 492/2011, it is apparent, first, from the wording of that provision, in particular the use of the term 'He', that its scope corresponds to that of Article 7(1) of that regulation, which includes, according to the wording of the latter provision, workers who, like JD, have 'become unemployed' in the host Member State. Consequently Article 7(2) of Regulation No 492/2011 provides, as stated by the Advocate General in point 63 of his Opinion, a protection that extends beyond just the period of employment of those workers.

44 In addition, Article 7(2) of Regulation No 492/2011 is the particular expression, in the specific area of the grant of social advantages, of the principle of equal treatment enshrined in Article 45(2) TFEU, and must be accorded the same interpretation as that provision (judgment of 18 December 2019, *Generálny riaditeľ Sociálnej poisťovne Bratislava and Others*, C-447/18, EU:C:2019:1098, paragraph 39).

45 Consequently, the scope of Article 7(2) of Regulation No 492/2011 includes workers within the meaning of Article 45 TFEU, on the understanding that, while the nationals of the Member States who move in order to seek employment benefit from the principle of equal treatment only as regards access to the employment market, those who have already entered that employment market may, on the basis of Article 7(2), claim the same social and tax advantages as national workers (see, to that effect, judgment of 23 March 2004, *Collins*, C-138/02, EU:C:2004:172, paragraph 31).

46 While it is undisputed that, during the period at issue, JD was unemployed in Germany, it is equally undisputed that he had earlier been employed in that Member State.

47 Consequently, the fact that JD had become economically inactive during that period cannot lead to the result that the principle of equal treatment laid down in Article 7(2) of Regulation No 492/2011 becomes inapplicable.

48 Moreover, as is apparent from the case-law cited, in particular, in paragraph 37 of the present judgment, the rights enjoyed by the worker who is a Union citizen and his or her family members under Regulation No 492/2011 may, in certain circumstances, persist even after the termination of the employment relationship (see, to that effect, judgment of 17 September 2002, *Baumbast and R*, C-413/99, EU:C:2002:493, paragraph 70).

49 Accordingly, and as also stated, in essence, by the Advocate General in points 54 and 55 of his Opinion, the right of residence of the children of such a worker that is based on Article 10 of Regulation No 492/2011 and, consequently, the right of residence of the parent who cares for those children become, once acquired, independent of the original right of residence that is based on the status of the parent concerned as a worker, and may continue to exist beyond the loss of that status, in order to provide enhanced legal protection to those children, thereby ensuring that their right to equal treatment as regards access to education is not deprived of any practical effect.

50 The same is true, in a situation where the children and the parent who is their primary carer have a right of residence based on Article 10 of Regulation No 492/2011, with respect to the right to equal treatment as regards entitlement to the social advantages laid down in Article 7(2) of that regulation. In that situation, the latter right, like the abovementioned 'derived' rights of residence, originally has its source in the status of the parent concerned as a worker and must be maintained after the loss of that status, for the same reasons as justified the continuation of those rights of residence.

51 That interpretation of Article 7(2) of Regulation No 492/2011, read together with Article 10 thereof, 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.

52 Accordingly, that interpretation ensures that an individual, such as JD, who intends to leave his Member State of origin, with his family, in order to travel to and work in another Member State, where he wants his children to attend school, is not exposed to the risk that, if he were to lose the status of a worker, the schooling of his children would have to be interrupted and he would have to return to his country of origin, because of his inability to claim the social benefits which the host Member State guarantees to its own nationals and which would enable his family to have sufficient means of subsistence in that Member State.

53 In the same vein, the Court has held, moreover, that, in the situation of a child of a worker of a Member State who was employed in another Member State and who returned to his country of origin, that child, who had a right of residence in the host Member State based on Article 12 of Regulation No 1612/68, retained the right to a grant awarded for maintenance and training with a view to the pursuit of secondary or further education, a grant categorised as a 'social advantage'

within the meaning of Article 7(2) of that regulation, since otherwise Article 12 would have no practical effect (see, to that effect, judgment of 15 March 1989, *Echternach and Moritz*, 389/87 and 390/87, EU:C:1989:130, paragraphs 23 and 34).

54 Accordingly, where a child has, in the host Member State, a right of residence based on Article 10 of Regulation No 492/2011, that child is entitled, on the same basis as the parent who is the primary carer of that child, to the right to equal treatment laid down in Article 7(2) of that regulation, even where that parent has lost his or her status as a worker.

55 It follows that persons who have a right of residence on the basis of Article 10 of Regulation No 492/2011 are also entitled to the right to equal treatment in relation to the granting of social advantages laid down in Article 7(2) of that regulation, even where those persons can no longer rely on the worker status from which they initially derived their right of residence.

Whether Article 24(2) of Directive 2004/38 is applicable to Union citizens who have a right of residence based on Article 10 of Regulation No 492/2011

56 Article 24(1) of Directive 2004/38 provides 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. Article 24(2) provides that, by way of derogation from paragraph 1, the host Member State is not to 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) of Directive 2004/38, to persons other than workers or self-employed persons, persons who retain that status, and members of their families.

57 In that regard, it must be stated that benefits such as the subsistence benefits at issue in the main proceedings, which are intended to ensure that their recipients have the minimum means of subsistence necessary to lead a life in keeping with human dignity, must be held to be 'social assistance', within the meaning of Article 24(2) of Directive 2004/38 (see, to that effect, judgments of 15 September 2015, *Alimanovic*, C-67/14, EU:C:2015:597, paragraphs 44 to 46, and of 25 February 2016, *García-Nieto and Others*, C-299/14, EU:C:2016:114, paragraph 37).

58 The Court has also held, in paragraphs 57 and 58 of its judgment of 15 September 2015, *Alimanovic* (C-67/14, EU:C:2015:597), that the host Member State may rely on the derogation provided for in Article 24(2) of Directive 2004/38 to justify a refusal to grant, to a Union citizen who has a right of residence solely on the basis of Article 14(4)(b) of that directive, social assistance, such as the subsistence benefits at issue in the main proceedings.

59 However, in that judgment, the Court's ruling was based, as is clear from paragraph 40 of that judgment, on the premiss that the national court had found that the persons concerned had a right of residence solely by virtue of being jobseekers, based on Article 14(4)(b) of Directive 2004/38. The Court did not give a ruling on the situation in which the persons concerned have, as in this case, a right of residence based on Article 10 of Regulation No 492/2011.

60 As regards that situation, it must be recalled that the Court has previously held on several occasions that, as a derogation from the principle of equal treatment laid down in the first paragraph of Article 18 TFEU, of which Article 24(1) of Directive 2004/38 is merely a specific expression, Article 24(2) must be interpreted strictly, and in accordance with the provisions of the Treaty, including those relating to Union citizenship and freedom of movement for workers (judgment of 21 February 2013, *N.*, C-46/12, EU:C:2013:97, paragraph 33).

61 Further, it should be borne in mind that, in interpreting a provision of EU law, it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 18 January 2017, *NEW WAVE CZ*, C-427/15, EU:C:2017:18, paragraph 19 and the case-law cited).

62 It is clear, first, from the very wording of Article 24(2) of Directive 2004/38 that the Member States may, 'by way of derogation from paragraph 1' of Article 24, refuse, under certain conditions, to grant the right to social assistance to certain categories of persons. That provision is therefore explicitly stated to be a derogation from the principle of equal treatment laid down in Article 24(1) of that directive. However, that derogation is applicable only to the persons who fall within the scope of Article 24(1), namely Union citizens who are residing in the territory of the host Member State 'on the basis of [that] directive'.

63 It is clear, second, from the regulatory context of that provision that Directive 2004/38 was indeed adopted, as the EU legislature states in recitals 3 and 4 of that directive, in order to codify and review 'the existing … instruments [of EU law]' dealing separately with workers, self-employed persons, students and other inactive persons in order to simplify and strengthen the right of free movement and residence of all Union citizens by moving away from the earlier sector-by-sector and piecemeal approach.

64 However, that codification was not exhaustive. When Directive 2004/38 was adopted, Article 12 of Regulation No 1612/68, reproduced in the same wording in Article 10 of Regulation No 492/2011, was neither repealed nor amended. On the contrary, that directive was designed so as to be compatible with Article 12 of Regulation No 1612/68 and with the case-law interpreting that provision. Consequently, that directive cannot, as such, either call into question the independence of the rights based on Article 10 of Regulation No 492/2011 or alter their scope (see, to that effect, judgment of 23 February 2010, *Teixeira*, C-480/08, EU:C:2010:83, paragraphs 54 and 56 to 58).

65 Consequently, consideration of the context of Article 24 of Directive 2004/38 confirms the interpretation that the derogation from the principle of equal treatment, provided for in Article 24(2) thereof, is applicable only in situations that fall within the scope of Article 24(1), namely situations where the right of residence is based on that directive, and not in situations where that right has an independent basis in Article 10 of Regulation No 492/2011.

66 Third and last, that interpretation is not invalidated by the objective of Article 24(2) of Directive 2004/38, which is to maintain the financial equilibrium of the social assistance system of the Member States by ensuring that persons exercising their right of residence do not become an unreasonable burden on the social assistance system of the host Member State, as is stated in recital 10 of that directive.

67 It must be stated, in that regard, that there is an appreciable distinction to be made, having regard to that objective, between the situation of a Union citizen, such as JD, who, before he became unemployed in the host Member State, had worked there and had sent his children to school there, and who, consequently, has the benefit of a right of residence based on Article 10 of Regulation No 492/2011, and the situation of the Union citizens that Article 24(2) of that directive expressly excludes from the right to social assistance, namely (i) those who have, as was the position in the case that gave rise to the judgment of 25 February 2016, *García-Nieto and Others*, (C-299/14, EU:C:2016:114), a right of residence in the host Member State for a period of no more than three months on the basis of Article 6(1) of that directive, and (ii) those who have a right of residence in that Member State based solely on Article 14(4)(b) of Directive 2004/38 by virtue of their seeking employment.

68 The situation which arises in the present case must also be distinguished from that at issue in the case that gave rise to the judgment of 11 November 2014, *Dano*, (C-333/13, EU:C:2014:2358). That case concerned nationals of a Member State who were economically inactive and who had exercised their freedom of movement with the sole aim of receiving social assistance from another Member State and who had no right of residence in the host Member State based on Directive 2004/38 or on any other provision of EU law. In those circumstances, the Court held that if such persons were accepted as having a right to social assistance on the same conditions as those applicable to national citizens, that would be incompatible with the objective set out in paragraph 66 of the present judgment.

69 Further, while it is true that persons, such as JD and his daughters, also fall within the scope of Article 24 of Directive 2004/38, including the derogation provided for in Article 24(2) thereof, on the ground that they have a right of residence based on Article 14(4)(b) of that directive, the fact remains that, since they can also rely on an independent right of residence based on Article 10 of Regulation No 492/2011, that derogation cannot be used against them.

70 First, the Court has previously held, with respect to jobseekers, that the derogation provided for in Article 24(2) of Directive 2004/38 is applicable only to Union citizens who have a right of residence solely on the basis of Article 14(4)(b) of that directive (see, to that effect, judgment of 15 September 2015, *Alimanovic*, C-67/14, EU:C:2015:597, paragraph 58). Second, the fact that jobseekers have specific rights under that directive cannot, having regard to the independence of the bodies of rules established by that directive and by Regulation No 492/2011 respectively, entail a diminution in the rights that such persons can derive from that regulation.

71 Moreover, as correctly observed by the Commission, it would be paradoxical if Article 24(2)of Directive 2004/38 were to be interpreted as meaning that it would be appropriate not to grant entitlement to social assistance to persons who can claim not only a right of residence as a parent, under Regulation No 492/2011, but also a right of residence as a jobseeker, under Directive 2004/38. The consequence of such an interpretation would be to exclude from the benefit of equal treatment with nationals in the matter of social assistance a parent and his or her children who have a right of residence under Article 10 of Regulation No 492/2011, where that parent decides to seek employment in the territory of the host Member State.

Whether there is a difference of treatment having regard to Article 7(2) of Regulation No 492/2011

72 Article 7(2) of Regulation No 492/2011, on which persons who have a right of residence based on Article 10 of that regulation can rely, as stated in paragraph 55 of the present judgment, provides, in essence, that a worker who is a national of a Member State is to enjoy in the host Member State, including when he or she has become unemployed, the same social and tax advantages as the workers who are nationals of that State.

73 The fact that, under a provision of national law such as point 2(c) of the second sentence of Paragraph 7(1) of the SGB II, persons who, like JD and his daughters, are nationals of another Member State who derive their right of residence from Article 10 of Regulation No 492/2011, are excluded from any entitlement to subsistence benefits constitutes a difference in treatment in relation to social advantages as compared with national citizens.

74 In that regard, it was mentioned in paragraph 44 of the present judgment that Article 7(2) of Regulation No 492/2011 is the particular expression, in the specific area of the grant of social advantages, of the principle of equal treatment and non-discrimination on the ground of nationality.

75 It must be added, first, that if children attending school and the parent who is their primary carer are to be granted, in the territory of the host Member State, an independent right of residence, based on Article 10 of Regulation No 492/2011, that presupposes that that parent has entered the employment

market of that Member State, as follows from the case-law cited in paragraph 37 of the present judgment. Therefore, and as stated in paragraph 67 of this judgment, the group of potential beneficiaries of such a right of residence is not the same as the group of nationals of other Member States who have come into the territory of the host Member State in order to seek initial employment there. That right is, moreover, limited since it comes to an end, at the latest, when the child completes his or her studies (see, to that effect, judgment of 8 May 2013, *Alarape and Tijani*, C-529/11, EU:C:2013:290, paragraph 24).

76 Second, the situation of a national of another Member State who has previously entered the employment market of the host Member State and who also has a right of residence based on Article 10 of Regulation No 492/2011 must be distinguished from the situation where there are indications that the former worker concerned has abused his or her rights in a way not covered by the rules of EU law, in that he or she has artificially created the conditions for obtaining the social advantages at issue under Article 7(2) of Regulation No 492/2011 (see, by analogy, judgment of 17 July 2014, *Torresi*, C-58/13 and C-59/13, EU:C:2014:2088, paragraphs 42 and 46). However, as also noted by the Commission, the documents available to the Court contain nothing to suggest that there has been such an abuse of rights or fraud of any sort in this case.

77 Accordingly, the fact that nationals of other Member States who are economically inactive and who have an independent right of residence under Article 10 of Regulation No 492/2011 are excluded from any entitlement to the subsistence benefits at issue in the main proceedings is contrary to Article 7(2) of Regulation No 492/2011, read together with Article 10 of that regulation.

78 As regards, last, the first paragraph of Article 18 TFEU, in accordance with settled case-law that provision is intended to apply independently only to situations governed by EU law in respect to which the FEU Treaty does not lay down specific rules on non-discrimination (judgment of 11 June 2020, *TÜV Rheinland LGA Products and Allianz IARD*, C-581/18, EU:C:2020:453, paragraph 31 and the case-law cited). However, the principle of non-discrimination has been given effect, in the area of freedom of movement for workers, by Article 45 TFEU (judgment of 10 October 2019, *Krah*, C-703/17, EU:C:2019:850, paragraph 19 and the case-law cited), which provision, as stated in paragraph 44 of the present judgment, finds particular expression, in the specific area of the grant of social advantages, in Article 7(2) of Regulation No 492/2011. Consequently, no interpretation of Article 18 TFEU is needed.

79 In the light of all the foregoing, the answer to the first question is that Article 7(2) and Article 10 of Regulation No 492/2011 must be interpreted as precluding legislation of a Member State which provides that a national of another Member State and his or her minor children, all of whom have, in the former Member State, a right of residence based on Article 10 of that regulation, by virtue of those children attending school in that State, are automatically and in all circumstances excluded from entitlement to benefits to cover their subsistence costs. That interpretation is not called into question by Article 24(2) of Directive 2004/38.

The second question

80 By its second question, the referring court seeks, in essence, to ascertain whether Article 4 of Regulation No 883/2004, read together with Article 3(3) and Article 70(2) of that regulation, must be interpreted as meaning that, in the light of Article 24(2) of Directive 2004/38, it does not preclude legislation of a Member State which provides that a national of another Member State and his or her minor children, all of whom have, in the former Member State, a right of residence based on Article 10 of Regulation No 492/2011, by virtue of those children attending school in that State, and are there covered by a social security system within the meaning of Article 3(1) of Regulation No 883/2004, are automatically and in all circumstances excluded from entitlement to special non-contributory cash benefits.

81 The referring court states that JD and his daughters must be regarded as having been, in the period at issue, covered by a social security system, within the meaning of Article 3(1)(h) and (j) of Regulation No 883/2004, since they received, during their period of residence in Germany, unemployment benefits and family benefits. Accordingly, they fall, in accordance with Article 2(1) of that regulation, within the scope *ratione personae* of that regulation.

82 As the referring court has additionally stated, the subsistence benefits at issue in the main proceedings, which constitute benefits intended to cover the costs of subsistence of their recipients, are special non-contributory cash benefits within the meaning of Article 3(3) and Article 70(2) of Regulation No 883/2004, mentioned in Annex X to that regulation (see, to that effect, judgment of 15 September 2015, *Alimanovic*, C-67/14, EU:C:2015:597, paragraph 43).

83 The Court has previously held that Article 4 of Regulation No 883/2004 is also applicable to such special non-contributory cash benefits (see, to that effect, judgment of 11 November 2014, *Dano*, C-333/13, EU:C:2014:2358, paragraph 55).

84 While it is true that, in accordance with settled case-law, Article 70 of Regulation No 883/2004 is not intended to lay down the basic conditions governing entitlement to those benefits and that there is nothing to prevent the grant of such benefits to Union citizens who are not economically active being subject to the requirement that those Union citizens fulfil the conditions for having a right to reside lawfully in the host Member State (see, to that effect, judgment of 14 June 2016, *Commission* v *United Kingdom*, C-308/14, EU:C:2016:436, paragraphs 65 and 68 and the case-law cited), it is clear that JD and his daughters had, during the period at issue, a right of lawful residence based on Article 10 of Regulation No 492/2011.

85 It follows that JD and his daughters are entitled, under Article 4 of Regulation No 883/2004, to the right to equal treatment with respect to the subsistence benefits at issue in the main proceedings.

86 The fact that, under a provision of national law such as point 2(c) of the second sentence of Paragraph 7(1) of the SGB II, persons who, like JD and his daughters, are nationals of another Member State who derive their right of residence from Article 10 of Regulation No 492/2011, are excluded from any entitlement to subsistence benefits constitutes a difference in treatment in relation to social security benefits as compared with national citizens.

87 Further, as has already been found in the course of the answer to the first question, the derogation from the principle of equal treatment in relation to social assistance provided for in Article 24(2) of Directive 2004/38 is not applicable to a situation, such as that at issue in the main proceedings, where nationals of other Member States have a right of residence under Article 10 of Regulation No 492/2011. In that regard, the situation which arises in the present case must be distinguished from those at issue in the cases that gave rise to the judgments of 15 September 2015, *Alimanovic* (C-67/14, EU:C:2015:597), and of 25 February 2016, *García-Nieto and Others* (C-299/14, EU:C:2016:114), where the applicability of that derogation led the Court to recognise a corresponding derogation from the principle of equal treatment laid down in Article 4 of Regulation No 883/2004.

88 Against that background, and for the same reasons as were set out in the course of the answer to the first question, the exclusion laid down in point 2(c) of the second sentence of Paragraph 7(1) of the SGB II, in that it entails that nationals of other Member States who have a right of residence based on Article 10 of Regulation No 492/2011 are categorically and automatically refused any entitlement to the subsistence benefits at issue in the main proceedings, is contrary to Article 4 of Regulation No 883/2004.

89 In the light of the foregoing, the answer to the second question is that Article 4 of Regulation No 883/2004, read together with Article 3(3) and Article 70(2) of that regulation, must be interpreted as precluding legislation of a Member State which provides that a national of another Member State

and his or her minor children, all of whom have, in the former Member State, a right of residence based on Article 10 of Regulation No 492/2011, by virtue of those children attending school in that State, and are there covered by a social security system within the meaning of Article 3(1) of Regulation No 883/2004, are automatically and in all circumstances excluded from entitlement to special non-contributory cash benefits.

Costs

90 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 (Grand Chamber) hereby rules:

1. **Article 7(2) and Article 10 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union must be interpreted as precluding legislation of a Member State which provides that a national of another Member State and his or her minor children, all of whom have, in the former Member State, a right of residence based on Article 10 of that regulation, by virtue of those children attending school in that State, are automatically and in all circumstances excluded from entitlement to benefits to cover their subsistence costs. That interpretation is not called into question by Article 24(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.**

2. **Article 4 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, read together with Article 3(3) and Article 70(2) of that regulation, must be interpreted as precluding legislation of a Member State which provides that a national of another Member State and his or her minor children, all of whom have, in the former Member State, a right of residence based on Article 10 of Regulation No 492/2011, by virtue of those children attending school in that State, and are there covered by a social security system within the meaning of Article 3(1) of Regulation No 883/2004, are automatically and in all circumstances excluded from entitlement to special non-contributory cash benefits.**

[Signatures]