

JUDGMENT OF THE COURT (Grand Chamber)

15 July 2021 (*)

(Reference for a preliminary ruling – Citizenship of the Union – National of a Member State without an activity residing in the territory of another Member State on the basis of national law – The first paragraph of Article 18 TFEU – Non-discrimination based on nationality – Directive 2004/38/EC – Article 7 – Conditions for obtaining a right of residence for more than three months – Article 24 – Social assistance – Concept – Equal treatment – Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland – Transition period – National provision excluding Union citizens with a right of residence for a fixed period under national law from social assistance – Charter of Fundamental Rights of the European Union – Articles 1, 7 and 24)

In Case C-709/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Appeal Tribunal for Northern Ireland (United Kingdom), made by decision of 21 December 2020, received at the Court on 30 December 2020, in the proceedings

CG

v

The Department for Communities in Northern Ireland,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, J.-C. Bonichot, A. Prechal, E. Regan, M. Ilešič, L. Bay Larsen, A. Kumin and N. Wahl, Presidents of Chambers, T. von Danwitz, K. Jürimäe (Rapporteur), C. Lycourgos, I. Jarukaitis, N. Jääskinen, I. Ziemele and J. Passer, Judges,

Advocate General: J. Richard de la Tour,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 4 May 2021,

after considering the observations submitted on behalf of:

- CG, by R. Drabble and T. de la Mare QC, T. Royston and G. Sarathy, Barristers, and by M. Black and S. Park, Solicitors,
- the Department for Communities in Northern Ireland, by C. Cooley, acting as Agent, and by T. McGleenan QC and L. McMahon, Barrister at law,
- the United Kingdom Government, by F. Shibli and S. McCrory, acting as Agents, and by D. Blundell QC, and J. Smyth, Barrister,
- the European Commission, by E. Montaguti and J. Tomkin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 24 June 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 18 TFEU.

2 The request has been made in proceedings between CG, who has dual Croatian and Netherlands nationality and has resided in Northern Ireland (United Kingdom) since 2018, and the Department for Communities in Northern Ireland (United Kingdom), concerning the latter's refusal to grant her social assistance.

Legal context

European Union law

3 The first paragraph of Article 18 TFEU provides:

‘Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.’

4 In accordance with Article 20(1) TFEU:

‘Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.’

5 Article 21(1) TFEU provides:

‘Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.’

The Agreement on the withdrawal of the United Kingdom

6 The sixth, eighth and ninth paragraphs of the preamble to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ 2020 L 29, p. 7, ‘the Agreement on the withdrawal of the United Kingdom’), which was adopted on 17 October 2019 and entered into force on 1 February 2020, state:

‘Recognising that it is necessary to provide reciprocal protection for Union citizens and for United Kingdom nationals, as well as their respective family members, where they have exercised free movement rights before a date set in this Agreement, and to ensure that their rights under this Agreement are enforceable and based on the principle of non-discrimination; recognising also that rights deriving from periods of social security insurance should be protected,

...

Considering that it is in the interest of both the Union and the United Kingdom to determine a transition or implementation period during which – notwithstanding all consequences of the United Kingdom's withdrawal from the Union as regards the United Kingdom's participation in the institutions, bodies, offices and agencies of the Union, in particular the end, on the date of entry into force of this Agreement, of the mandates of all members of institutions, bodies and agencies of the Union nominated, appointed or elected in relation to the United Kingdom's membership of the Union – Union law, including international agreements, should be applicable to and in the United Kingdom, and, as a general rule, with the same effect as regards the Member States, in order to avoid disruption in the period during which the agreement(s) on the future relationship will be negotiated,

Recognising that, even if Union law will be applicable to and in the United Kingdom during the transition period, the specificities of the United Kingdom as a State having withdrawn from the Union mean that it will be important for the United Kingdom to be able to take steps to prepare and establish new international arrangements of its own, including in areas of Union exclusive competence, provided such agreements do not enter into force or apply during that period, unless so authorised by the Union’.

7 Part one of that agreement, enshrined in the common provisions, includes Articles 1 to 8. Article 2(a) and (c) of the agreement states:

‘For the purposes of this Agreement, the following definitions shall apply:

(a) “Union law” means:

- (i) the Treaty on European Union (“TEU”), the Treaty on the Functioning of the European Union (“TFEU”) and the Treaty establishing the European Atomic Energy Community (“Euratom Treaty”), as amended or supplemented, as well as the Treaties of Accession and the Charter of Fundamental Rights of the European Union, together referred to as “the Treaties”;
- (ii) the general principles of the Union’s law;
- (iii) the acts adopted by the institutions, bodies, offices or agencies of the Union;

...

(c) “Union citizen” means any person having the nationality of a Member State’.

8 Article 4 of that agreement, entitled ‘Methods and principles relating to the effect, the implementation and the application of this Agreement’, provides in paragraphs 1 to 4:

‘1. The provisions of this Agreement and the provisions of Union law made applicable by this Agreement shall produce in respect of and in the United Kingdom the same legal effects as those which they produce within the Union and its Member States.

Accordingly, legal or natural persons shall in particular be able to rely directly on the provisions contained or referred to in this Agreement which meet the conditions for direct effect under Union law.

2. The United Kingdom shall ensure compliance with paragraph 1, including as regards the required powers of its judicial and administrative authorities to disapply inconsistent or incompatible domestic provisions, through domestic primary legislation.

3. The provisions of this Agreement referring to Union law or to concepts or provisions thereof shall be interpreted and applied in accordance with the methods and general principles of Union law.

4. The provisions of this Agreement referring to Union law or to concepts or provisions thereof shall in their implementation and application be interpreted in conformity with the relevant case-law of the Court of Justice of the European Union handed down before the end of the transition period.’

9 Part two of the Agreement on the withdrawal of the United Kingdom, entitled ‘Citizens’ rights’, contains Articles 9 to 39. Under Article 9(c)(i) of that agreement:

‘For the purposes of this Part, and without prejudice to Title III, the following definitions shall apply:

...

(c) “host State” means:

- (i) in respect of Union citizens and their family members, the United Kingdom, if they exercised their right of residence there in accordance with Union law before the end of the transition period and continue to reside there thereafter’.

10 Article 10(1) of that agreement states:

‘Without prejudice to Title III, this Part shall apply to the following persons:

- (a) Union citizens who exercised their right to reside in the United Kingdom in accordance with Union law before the end of the transition period and continue to reside there thereafter;

...’

11 Article 12 of the Agreement on the withdrawal of the United Kingdom provides:

‘Within the scope of this Part, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality within the meaning of the first subparagraph of Article 18 TFEU shall be prohibited in the host State and the State of work in respect of the persons referred to in Article 10 of this Agreement.’

12 Article 13(1) of that agreement provides:

‘Union citizens and United Kingdom nationals shall have the right to reside in the host State under the limitations and conditions as set out in Articles 21, 45 or 49 TFEU and in Article 6(1), points (a), (b) or (c) of Article 7(1), Article 7(3), Article 14, Article 16(1) or Article 17(1) 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)].’

13 Under Article 18 of that agreement, entitled ‘Issuance of residence documents’:

‘1. The host State may require Union citizens or United Kingdom nationals, their respective family members and other persons, who reside in its territory in accordance with the conditions set out in this Title, to apply for a new residence status which confers the rights under this Title and a document evidencing such status which may be in a digital form.

Applying for such a residence status shall be subject to the following conditions:

...

- (k) the host State may only require Union citizens and United Kingdom nationals to present, in addition to the identity documents referred to in point (i) of this paragraph, the following supporting documents as referred to in Article 8(3) of Directive 2004/38/EC:

...

- (ii) where they reside in the host State in accordance with point (b) of Article 7(1) of Directive 2004/38/EC as economically inactive persons, evidence that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host State during their period of residence and that they have comprehensive sickness insurance cover in the host State;

...

4. Where a host State has chosen not to require Union citizens or United Kingdom nationals, their family members, and other persons, residing in its territory in accordance with the conditions set out in this Title, to apply for the new residence status referred to in paragraph 1 as a condition for legal residence, those eligible for residence rights under this Title shall have the right to receive, in accordance with the conditions set out in Directive 2004/38/EC, a residence document, which may be in a digital form, that includes a statement that it has been issued in accordance with this Agreement.'

14 Article 19 of the Agreement on the withdrawal of the United Kingdom, entitled 'Issuance of residence documents during the transition period', provides in paragraph 1:

'During the transition period, a host State may allow applications for a residence status or residence document as referred to in Article 18(1) and (4) to be made voluntarily from the date of entry into force of this Agreement.'

15 Article 23 of that agreement, entitled 'Equal treatment', provides:

'1. In accordance with Article 24 of Directive 2004/38/EC, subject to the specific provisions provided for in this Title and Titles I and IV of this Part, all Union citizens or United Kingdom nationals residing on the basis of this Agreement in the territory of the host State shall enjoy equal treatment with the nationals of that State within the scope of this Part. The benefit of this right shall be extended to those family members of Union citizens or United Kingdom nationals who have the right of residence or permanent residence.

2. By way of derogation from paragraph 1, the host State shall not be obliged to confer entitlement to social assistance during periods of residence on the basis of Article 6 or point (b) of Article 14(4) of Directive 2004/38/EC, nor shall it be obliged, prior to a person's acquisition of the right of permanent residence in accordance with Article 15 of this Agreement, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status or to members of their families.'

16 Under Article 38(1) of that agreement:

'This Part shall not affect any laws, regulations or administrative provisions applicable in a host State or a State of work which would be more favourable to the persons concerned. This paragraph shall not apply to Title III.'

17 Part three of the Agreement on the withdrawal of the United Kingdom, entitled 'Separation provisions', contains Articles 40 to 125. Article 86 of that agreement, entitled 'Pending cases before the Court of Justice of the European Union', provides in paragraphs 2 and 3:

'2. The Court of Justice of the European Union shall continue to have jurisdiction to give preliminary rulings on requests from courts and tribunals of the United Kingdom made before the end of the transition period.

3. For the purposes of this Chapter, proceedings shall be considered as having been brought before the Court of Justice of the European Union, and requests for preliminary rulings shall be considered as having been made, at the moment at which the document initiating the proceedings has been registered by the Registry of the Court of Justice or the General Court, as the case may be.'

18 Under Article 89(1) of that agreement:

'Judgments and orders of the Court of Justice of the European Union handed down before the end of the transition period, as well as such judgments and orders handed down after the end of the transition period in proceedings referred to in Articles 86 and 87, shall have binding force in their entirety on and in the United Kingdom.'

19 Article 126 of the Agreement on the withdrawal of the United Kingdom, entitled 'Transition period', states:

'There shall be a transition or implementation period, which shall start on the date of entry into force of this Agreement and end on 31 December 2020.'

20 Article 127 of that regulation, entitled 'Scope of the transition', provides in paragraphs 1 and 3:

'1. Unless otherwise provided in this Agreement, Union law shall be applicable to and in the United Kingdom during the transition period.

...

3. During the transition period, the Union law applicable pursuant to paragraph 1 shall produce in respect of and in the United Kingdom the same legal effects as those which it produces within the Union and its Member States, and shall be interpreted and applied in accordance with the same methods and general principles as those applicable within the Union.'

Directive 2004/38

21 Recitals 10 and 16 to Directive 2004/38 state:

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

...

(16) As long as the beneficiaries of the right of residence do not become an unreasonable burden on the social assistance scheme of the host Member State they should not be expelled. Therefore, an expulsion measure should not be the automatic consequence of recourse to the social assistance system. The host Member State should examine whether it is a case of temporary difficulties and take into account the duration of residence, the personal circumstances and the amount of aid granted in order to consider whether the beneficiary has become an unreasonable burden on its social assistance system and to proceed to his expulsion. 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.'

22 Article 1 of that directive states:

'This Directive lays down:

- (a) the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members;
- (b) the right of permanent residence in the territory of the Member States for Union citizens and their family members;
- (c) the limits placed on the rights set out in (a) and (b) on grounds of public policy, public security or public health.'

23 Under Article 3(1) of that directive:

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

join them.’

24 Article 7 of that directive, entitled ‘Right of residence for more than three months’, provides in paragraph 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:

...

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

...’

25 Under Article 24 of Directive 2004/38, entitled ‘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. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence.

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

26 Article 37 of that directive, entitled ‘More favourable national provisions’, provides:

‘The provisions of this Directive shall not affect any laws, regulations or administrative provisions laid down by a Member State which would be more favourable to the persons covered by this Directive.’

UK law

The settlement scheme contained in Appendix EU

27 The EU Settlement Scheme – Appendix EU of the UK Immigration Rules (‘the Settlement Scheme contained in Appendix EU’) is an act by which the British authorities adopted, in preparation for the withdrawal of the United Kingdom from the European Union, new legal rules applicable to nationals of the European Economic Area (EEA) and, consequently, EU citizens living in the United Kingdom. It permits all Union citizens resident in the United Kingdom before 31 December 2020, and their family members, to apply for leave to remain in the United Kingdom. Those new rules entered into force on 30 March 2019.

28 The Settlement Scheme contained in Appendix EU lays down the procedure and conditions for obtaining a permanent right of residence and a temporary right of residence in the territory of the United Kingdom for different categories of Union citizens and their family members. It thus provides that Union citizens who had a permanent right to reside on that territory are to have the status of a permanent resident and those who have resided for less than five years in the United Kingdom are to be accorded the status of a non-permanent resident (Pre-Settled Status), which confers on them a temporary right to reside for five years.

The 2016 Universal Credit Regulations

29 The Universal Credit Regulations (Northern Ireland) 2016, as amended by the Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations (Northern Ireland) 2019 ('the 2016 Universal Credit Regulations') provide, in Article 9:

'Persons treated as not being in Northern Ireland

(1) For the purposes of determining whether a person meets the basic condition to be in Northern Ireland, except where a person falls within paragraph (4), a person is to be treated as not being in Northern Ireland if the person is not habitually resident in the United Kingdom, the Channel Islands the Isle of Man or the Republic of Ireland.

(2) A person must not be treated as habitually resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland unless the person has a right to reside in one of those places.

(3) For the purposes of paragraph (2), a right to reside does not include a right which exists by virtue of, or in accordance with:

(a) regulation 13 of the [Immigration (European Economic Area) Regulations 2016 (SI 2016/1052) (EEA Regulations)] or Article 6 of [Directive 2004/38],

(b) regulation 14 of the EEA Regulations, but only in cases where the right exists under that regulation because the person is:

(i) a qualified person for the purposes of regulation 6(1) of those Regulations as a jobseeker, or

(ii) a family member (within the meaning of regulation 7 of those Regulations) of such a jobseeker,

(c) regulation 16 of the EEA Regulations, but only in cases where the right exists under that regulation because the person satisfies the criteria in regulation 16(5) of those Regulations or Article 20 [TFEU] (in a case where the right to reside arises because a British citizen would otherwise be deprived of the genuine enjoyment of their rights as a European citizen), or

(d) a person having been granted limited leave to enter, or remain in, the United Kingdom under the Immigration Act 1971 by virtue of:

(i) [the Settlement Scheme contained in Appendix EU] made under section 3(2) of [the Immigration Act], or

...'

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

30 CG, a national with dual Croatian and Netherlands nationality, is the single mother of two young children. She declared her arrival in Northern Ireland with her partner, who has Netherlands nationality and is the father of her children, in 2018. She has never carried out any economic activity in the United Kingdom and lived there with her partner until she moved to a women's refuge. CG has no resources at all to support herself and her two children.

31 On 4 June 2020, the Home Office (United Kingdom) granted CG, on the basis of the Settlement Scheme contained in Appendix EU, Pre-Settled Status, on which basis she was recognised as having a temporary right of residence. The grant of that status is not subject to any condition as to resources.

32 On 8 June 2020, CG applied to the Department for Communities in Northern Ireland for the social assistance benefit known as Universal Credit. By decision of 17 June 2020, that application was refused,

on the ground that CG did not meet the residence requirements in order to receive it.

- 33 The competent administrative authority considered that only persons having a right to reside in the United Kingdom, within the meaning of Regulation 9(2) of the 2016 Universal Credit Regulations, may be regarded as having their habitual residence in the United Kingdom and, accordingly, are entitled to claim Universal Credit. By contrast, nationals of Member States, such as CG, who have a right of residence under the Settlement Scheme contained in Appendix EU, are, by virtue of Regulation 9(3)(d)(i) of the 2016 Universal Credit Regulations, excluded from the category of potential beneficiaries of Universal Credit.
- 34 The right of residence created by the Settlement Scheme contained in Appendix EU, for nationals of Member States does not feature, as is apparent from Regulation 9(3)(d)(i), among the rights of residence which can be used to demonstrate habitual residence in the United Kingdom. By that provision, inserted in the 2016 Universal Credit Regulations by the Social Security (Income-related Benefits) (Updating and Amendment) (EU Exit) Regulations (Northern Ireland) 2019 ('the 2019 Regulations'), the national authorities wished to exclude persons from the category of potential beneficiaries of Universal Credit, by providing that the right of residence currently held by those persons is not relevant for the purposes of establishing 'habitual residence' within the meaning of Regulation 9(2) of the 2016 Universal Credit Regulations.
- 35 The decision of 17 June 2020 of the Department for Communities in Northern Ireland was confirmed on 30 June 2020, following a request for reconsideration made by CG.
- 36 CG then appealed against the decision of 17 June 2020 before the Appeal Tribunal (Northern Ireland, United Kingdom). CG disputes, inter alia, the legality of Regulation 9(3)(d)(i) of the 2016 Universal Credit Regulations, on which that decision was based. She claims that that measure infringed Article 18 TFEU and the obligations incumbent on the United Kingdom by virtue of the European Communities Act 1972 concerning the accession of the United Kingdom to the European Union, in so far as it excluded Union citizens from social assistance whom the United Kingdom recognised as residing legally on its territory.
- 37 CG claims, in that regard, that, since she has a temporary right of residence which derives from the Pre-Settled Status awarded to her on 4 June 2020 she should be regarded as being in the territory of Northern Ireland, within the meaning of Article 9 of the 2016 Universal Credit Regulations. Accordingly, she should be entitled to receive Universal Credit. The refusal to grant her that social assistance, on the ground that her status is not relevant for the purposes of establishing 'habitual residence' in the United Kingdom, constitutes a difference in treatment between Union citizens residing legally in the United Kingdom and British nationals and, accordingly, discrimination based on nationality for the purposes of the first paragraph of Article 18 TFEU. She maintains that, in accordance with the judgment of 7 September 2004, *Trojani* (C-456/02, EU:C:2004:488) and the relevant national case-law, she is entitled to rely directly on that provision in order to be granted social assistance on account of the fact that she has a right of residence under national law, even if she does not satisfy the conditions for obtaining a right of residence under EU law.
- 38 The Department for Communities in Northern Ireland contends, on the contrary, that under national law Pre-Settled Status does not, in itself, confer any right to social benefits, which remain subject to their own eligibility conditions.
- 39 In those circumstances, the Appeal Tribunal (Northern Ireland) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '1. 'Is Regulation 9(3)[d](i) of the [2016 Universal Credit Regulations], which was inserted by [the 2019 Social Security Regulations], which excludes from entitlement to social security benefits [EU citizens] with a domestic right of residence (Limited Leave to Remain) [in this case "pre-settled status" under Appendix EU] unlawfully discriminatory (either directly or indirectly) pursuant to Article 18 [TFEU] and inconsistent with the [United Kingdom's] obligations under the European Communities Act 1972?

2. If the answer to question 1 is in the affirmative, and Regulation 9(3)[d](i) of the [2016 Universal Credit Regulations] is held to be indirectly discriminatory, is [that provision] justified pursuant to Article 18 [TFEU] and inconsistent with the [United Kingdom's] obligations under the European Communities Act 1972?'

The application for an expedited procedure

- 40 The Appeal Tribunal for Northern Ireland asked that the present case be determined pursuant to the expedited procedure laid down in Article 105 of the Rules of Procedure of the Court of Justice, given the manifest urgency of that case and CG's difficult financial situation.
- 41 Article 105(1) of the Rules of Procedure provides that, at the request of the referring court or tribunal or, exceptionally, of his own motion, the President of the Court may, where the nature of the case requires that it be dealt with within a short time, after hearing the Judge-Rapporteur and the Advocate General, decide that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure.
- 42 By decision of the President of the Court of 26 January 2021, a request for information was sent to the referring Court. The referring court was asked, in particular, to clarify whether there was a potential risk of violation of the fundamental rights of CG and her children, enshrined in Articles 7 and 24 of the Charter of Fundamental Rights ('the Charter') and to indicate the financial resources of CG and the nature of her accommodation and that of her children.
- 43 By email of 5 February 2021, the referring court confirmed, first, that CG had no financial resources, did not currently have access to State benefits and was living in a women's refuge and, secondly, that the fundamental rights of her children risked being violated.
- 44 In those circumstances, in the light of the destitution of CG and her children and the impossibility, under national law, of her receiving social assistance, the President of the Court, by decision of 11 February 2021, having heard the Judge-Rapporteur and the Advocate General, granted the request for an expedited procedure laid down in Article 105 of the Rules of Procedure.

The jurisdiction of the Court

- 45 According to settled case-law, it is for the Court to examine the conditions in which the case was referred to it by the national court, in order to assess whether it has jurisdiction (judgment of 10 December 2020, *J & S Service*, C-620/19, EU:C:2020:1011, paragraph 32 and the case-law cited).
- 46 In that regard, it follows from Article 19(3)(b) TEU and the first paragraph of Article 267 TFEU that the Court has jurisdiction to give a preliminary ruling on the interpretation of EU law or on the validity and interpretation of acts of the EU institutions. The second paragraph of Article 267 states, in essence, that whenever a question that is capable of being the subject of a reference for a preliminary ruling is raised in a case pending before a court of a Member State, that court may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to rule on it.
- 47 In the present case, on 1 February 2020, the date on which the Agreement on the withdrawal of the United Kingdom entered into force, that State withdrew from the European Union, thus becoming a third State. It follows that the courts and tribunals of the United Kingdom, as from that date, can no longer be regarded as courts of a Member State.
- 48 That agreement provides, however, in Article 126, for a transition period between the date of its entry into force on 1 February 2020 and 31 December 2020. Article 127 of that agreement provides that, during that period, unless otherwise provided in that agreement, EU law is to be applicable in the United Kingdom and in its territory, produce the same legal effects as those which it produces within the Union and its Member

States, and is to be interpreted and applied in accordance with the same methods and general principles as those applicable within the European Union.

- 49 Article 86 of the Agreement on the withdrawal of the United Kingdom also provides, in paragraph 2, that the Court is to continue to have jurisdiction to give preliminary rulings on requests from courts and tribunals of the United Kingdom made before the end of the transition period. Moreover, under paragraph 3 of that article, a request for a preliminary ruling is to be considered as having been made, within the meaning of paragraph 2, on the date on which the document initiating the proceedings was registered by the Court Registry.
- 50 The present request for a preliminary ruling was submitted to the Court by a UK court on 30 December 2020, that is to say, before the end of the transition period, in the context of a dispute concerning an application for social assistance made on 8 June 2020 by CG to the Department for Communities in Northern Ireland.
- 51 It follows, first, that the situation at issue in the main proceedings falls within the scope *ratione temporis* of EU law, pursuant to Articles 126 and 127 of the Agreement on the withdrawal of the United Kingdom and, secondly, that the Court has jurisdiction to give a preliminary ruling on the request from the referring court, pursuant to Article 86(2) of that agreement, in so far as that request seeks an interpretation of the first paragraph of Article 18 TFEU.
- 52 By contrast, the Court does not have jurisdiction to rule on the first question in so far as it seeks to assess the compatibility of Article 9(3)(d)(i) of the 2016 Universal Credit Regulations with the United Kingdom's obligations under the European Communities Act 1972, since that question concerns neither the interpretation of EU law, nor the validity of an act of the EU institutions, within the meaning of the first paragraph of Article 267 TFEU.

Consideration of the questions referred

Admissibility of the questions

- 53 The United Kingdom Government states, in its written observations, that the situation at issue in the main proceedings is governed by national law alone and, therefore, does not fall within the scope of EU law. It considers that the temporary right of residence at issue in the main proceedings was granted to CG on the sole basis of national law and that the fact that that person was entitled to access the territory of the United Kingdom under EU law for an initial period of three months is irrelevant for the purposes of assessing the situation at issue in the main proceedings.
- 54 It should be noted that, according to settled case-law, in the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of EU law, the Court of Justice is, in principle, bound to give a ruling (judgment of 10 December 2020, *J & S Service*, C-620/19, EU:C:2020:1011, paragraph 31 and the case-law cited).
- 55 The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 26 and the case-law cited).

- 56 In the present case, it is apparent from the information available to the Court that CG, who has dual Croatian and Netherlands nationality, entered the territory of the United Kingdom in 2018 and has resided on that territory, on the basis of national law, since 4 June 2020.
- 57 Since EU law is applicable in that State until the end of the transition period by virtue of Article 127 of the Agreement on the withdrawal of the United Kingdom, unless otherwise provided in that agreement, it must be recalled that a Union citizen, a national of a Member State, who has moved to another Member State has made use of his or her right to move freely, meaning that his or her situation falls within the scope of EU law (see, to that effect, judgment of 19 November 2020, *ZW*, C-454/19, EU:C:2020:947, paragraph 23 and the case-law cited).
- 58 Likewise, it follows from the Court's case-law that a national of a Member State, who by virtue of that fact has Union citizenship, and who is lawfully residing in the territory of another Member State, falls within the scope of EU law. Accordingly, by virtue of having Union citizenship, a national of a Member State residing in another Member State is entitled to rely on Article 21(1) TFEU and falls within the scope of the Treaties, within the meaning of Article 18 TFEU, which sets out the principle of non-discrimination on grounds of nationality (judgment of 17 December 2020, *Generalstaatsanwaltschaft Berlin (Extradition to Ukraine)*, C-398/19, EU:C:2020:1032, paragraphs 29 and 30 and the case-law cited).
- 59 It follows that CG's situation falls within the scope of EU law until the end of the transition period laid down by the Agreement on the withdrawal of the United Kingdom. In those circumstances, it must be held that the questions referred are admissible in so far as they concern the interpretation of the first paragraph of Article 18 TFEU.

Substance

The first question

- 60 By its first question, the referring court asks whether Article 18 TFEU must be interpreted as meaning that a national provision that excludes from social benefits Union citizens with a temporary right of residence under national law is covered by the prohibition of discrimination on grounds of nationality laid down in that article.
- 61 As a preliminary point, it should be borne in mind that, according to settled case-law, in the procedure laid down by Article 267 TFEU, providing for cooperation between national courts and the Court, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it (judgment of 17 December 2020, *Generalstaatsanwaltschaft Hamburg*, C-416/20 PPU, EU:C:2020:1042, paragraph 27 and the case-law cited).
- 62 In the present case, as regards, in the first place, the provisions that are relevant in order to answer the referring court's questions, it should be observed that Article 20(1) TFEU confers on any person holding the nationality of a Member State the status of citizen of the Union and that that status is destined 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 FEU Treaty, the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for in that regard (judgment of 11 November 2014, *Dano*, C-333/13, EU:C:2014:2358, paragraphs 57 and 58 and the case-law cited).
- 63 Every Union citizen may therefore rely on the prohibition of discrimination on grounds of nationality laid down in Article 18 TFEU in all situations falling within the scope *ratione materiae* of EU law. These situations include those relating to the exercise of the right to move and reside within the territory of the Member States conferred by point (a) of Article 20(2) TFEU and Article 21 TFEU (judgment of 11 November 2014, *Dano*, C-333/13, EU:C:2014:2358, paragraph 59 and the case-law cited).

- 64 Since CG is a Union citizen who has made use of her right to move and to reside, in order to settle in the United Kingdom, her situation falls within the scope *ratione materiae* of EU law, with the result that she may, in principle, rely on the prohibition of discrimination on grounds of nationality contained in Article 18 TFEU.
- 65 However, in accordance with settled case-law, the first paragraph of Article 18 TFEU is intended to apply independently only to situations governed by EU law with respect to which the FEU Treaty does not lay down specific rules on non-discrimination (judgment of 6 October 2020, *Jobcenter Krefeld*, C-181/19, EU:C:2020:794, paragraph 78). Moreover, the second subparagraph of Article 20(2) TFEU expressly states that the rights conferred on Union citizens by that article are to be exercised ‘in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder’, while Article 21 TFEU also makes the right of Union citizens to move and reside freely within the territory of the Member States subject to compliance with the ‘limitations and conditions laid down in the Treaties and by the measures adopted to give them effect’ (see, to that effect, judgment of 11 November 2014, *Dano*, C-333/13, EU:C:2014:2358, paragraph 60 and the case-law cited).
- 66 Thus, the principle of non-discrimination is given specific expression in Article 24 of Directive 2004/38 in relation to Union citizens who exercise their right to move and reside within the territory of the Member States.
- 67 In that regard, it must be noted that, in accordance with Article 3(1) of Directive 2004/38, Union citizens who move to or reside in a Member State other than that of which they are a national, and their family members, as defined in Article 2(2) of that directive, who accompany or join them, fall within the scope of the directive and are beneficiaries of the rights conferred by it (judgment of 10 September 2019, *Chenchooliah*, C-94/18, EU:C:2019:693, paragraph 54 and the case-law cited). That is the case for a person such as CG, a dual Croatian and Netherlands national, who has made use of the right to move and reside in the territory of the United Kingdom before the end of the transition period laid down in Article 126 of the Agreement on the withdrawal of the United Kingdom. It follows that a person in CG’s situation falls within the scope of that directive, with the result that it is in the light of Article 24 of Directive 2004/38, and not of the first paragraph of Article 18 TFEU, that it is necessary to assess whether that person faces discrimination on the grounds of nationality.
- 68 As regards, in the second place, the nature of the social benefits at issue in the main proceedings, it must be stated that ‘social assistance’, within the meaning of Article 24(2) of Directive 2004/38, refers to all assistance schemes established by the public authorities, whether at national, regional or local level, to which recourse may be had by an individual who does not have sufficient resources to meet his or her own basic needs and those of his or her family and who by reason of that fact may, during his or her period of residence, become a burden on the public finances of the host Member State which could have consequences for the overall level of assistance which may be granted by that State (judgment of 11 November 2014, *Dano*, C-333/13, EU:C:2014:2358, paragraph 63 and the case-law cited).
- 69 Thus, subsistence benefits, 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, judgment of 6 October 2020, *Jobcenter Krefeld*, C-181/19, EU:C:2020:794, paragraph 57 and the case-law cited).
- 70 It is apparent from the information available to the Court that the benefit claimed by CG, namely Universal Credit, is a cash subsistence benefit under a welfare system funded by taxation, the grant of which is means tested. Its objective is to replace other social benefits, such as income-based jobseeker’s allowance, the income-related employment and support allowance, income support, working tax credit, child tax credit and housing benefit.
- 71 It follows that Universal Credit must, subject to the checks which it is for the referring court to carry out, be categorised as social assistance, within the meaning of Article 24(2) of Directive 2004/38.

- 72 In those circumstances, it is necessary to reformulate the first question to the effect that, by that question, the referring court asks in essence whether Article 24 of Directive 2004/38 must be interpreted as precluding legislation of a host Member State which excludes from social assistance economically inactive Union citizens who do not have sufficient resources and to whom that State has granted, on the basis of national law, a temporary right of residence, where those benefits are guaranteed to nationals of the Member State concerned who are in the same situation.
- 73 It is apparent from the order for reference that the applicant in the main proceedings has resided in the United Kingdom for longer than three months, that she is not looking for work and that she entered the territory of that State in order to accompany her partner, the father of her young children, from whom she is separated on account of domestic violence. Such a situation is not covered by any of the scenarios in which Article 24(2) of Directive 2004/38 permits derogation from equal treatment, in particular concerning access to social assistance such as Universal Credit.
- 74 In accordance with Article 24(1) of that directive, 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.
- 75 The Court has held that, so far as concerns access to social assistance, a Union citizen can claim equal treatment, by virtue of that provision, with nationals of the host Member State only if his or her residence in the territory of that Member State complies with the conditions of Directive 2004/38 (see, to that effect, judgment of 11 November 2014, *Dano*, C-333/13, EU:C:2014:2358, paragraphs 68 and 69).
- 76 In that regard, it must be noted that, for periods of residence longer than three months but less than five years in the territory of the host Member State, the right of residence is subject to the conditions set out in Article 7(1) of Directive 2004/38, which lays down, inter alia, in point (b), for an economically inactive citizen, the obligation to have sufficient resources sufficient for himself or herself and the members of his or her family. It is apparent from recital 10 of that directive that those conditions are intended, inter alia, to prevent such persons from becoming an unreasonable burden on the social assistance system of the host Member State (see, to that effect, judgment of 11 November 2014, *Dano*, C-333/13, EU:C:2014:2358, paragraph 71 and the case-law cited).
- 77 To accept that persons who do not have a right of residence under Directive 2004/38 may claim entitlement to social benefits under the same conditions as those applicable to nationals of the host Member State would run counter to that objective and would risk allowing economically inactive Union citizens to use the host Member State's welfare system to fund their means of subsistence (see, to that effect, judgment of 11 November 2014, *Dano*, C-333/13, EU:C:2014:2358, paragraphs 74, 76 and 77 and the case-law cited).
- 78 It follows that a Member State has the possibility, pursuant to Article 7 of Directive 2004/38, of refusing to grant social benefits to economically inactive Union citizens who exercise their right to freedom of movement and who do not have sufficient resources to claim a right of residence under that directive (see, to that effect, judgment of 11 November 2014, *Dano*, C-333/13, EU:C:2014:2358, paragraph 78).
- 79 Therefore, the financial situation of each person concerned should be examined specifically, without taking account of the social benefits claimed, in order to determine whether he or she meets the condition of having sufficient resources laid down in Article 7(1)(b) of Directive 2004/38 and whether he or she can accordingly invoke, in the host Member State, the principle of non-discrimination laid down in Article 24(1) of that directive in order to enjoy equal treatment with the nationals of that Member State (see, to that effect, judgment of 11 November 2014, *Dano*, C-333/13, EU:C:2014:2358, paragraphs 80 and 81).
- 80 In the case in the main proceedings, it follows from the answer of the referring court to the request for information made by the Court that CG does not have sufficient resources. Accordingly, such a person is likely to become an unreasonable burden on the social assistance system of the United Kingdom and

cannot therefore rely on the principle of non-discrimination laid down in Article 24(1) of Directive 2004/38.

81 That assessment cannot be called into question by the fact that CG has a right of temporary residence, under national law, which was granted without conditions as to resources. If an economically inactive Union citizen who does not have sufficient resources and resides in the host Member State without satisfying the requirements laid down in Directive 2004/38 could rely on the principle of non-discrimination set out in Article 24(1) of that directive, he or she would enjoy broader protection than he or she would have enjoyed under the provisions of that directive, under which that citizen would be refused a right of residence.

82 In addition, it must indeed be noted that national provisions which, like the provisions at issue in the dispute in the main proceedings, grant a right of residence to a Union citizen, even where all the requirements laid down by Directive 2004/38 for that purpose have not been met, fall within the scenario referred to in Article 37 of that directive, to the effect that that directive does not preclude the law of the Member States from establishing more favourable rules than those laid down by the provisions of that directive.

83 Such a right of residence cannot however be regarded in any way as being granted ‘on the basis of’ Directive 2004/38 within the meaning of Article 24(1) of that directive. The Court has held that the fact that national provisions concerning the right of residence of Union citizens, that are more favourable than those laid down in Directive 2004/38, are not to be affected does not in any way mean that such provisions must be incorporated into the system introduced by that directive and it has concluded, in particular, that it is for each Member State that has decided to adopt a system that is more favourable than that established by that directive to specify the consequences of a right of residence granted on the basis of national law alone (judgment of 21 December 2011, *Ziolkowski and Szeja*, C-424/10 and C-425/10, EU:C:2011:866, paragraphs 49 and 50).

84 That said, as pointed out in paragraph 57 of the present judgment, a Union citizen who, like CG, has moved to another Member State, has made use of his or her fundamental freedom to move and to reside within the territory of the Member States, conferred by Article 21(1) TFEU, with the result that his or her situation falls within the scope of EU law, including where his or her right of residence derives from national law.

85 In that regard, it must be noted that the Charter’s scope is defined in Article 51(1) according to which, so far as action of the Member States is concerned, the provisions of the Charter are addressed to the Member States only when they are implementing EU law (judgment of 13 June 2017, *Florescu and Others*, C-258/14, EU:C:2017:448, paragraph 44 and the case-law cited). According to Article 51(2) thereof, the Charter does not extend the field of application of EU law beyond the powers of the European Union or establish any new power or task for the European Union, or modify the powers and tasks as defined in the Treaties (judgment of 19 November 2019, *TSN and AKT*, C-609/17 and C-610/17, EU:C:2019:981, paragraph 42).

86 Moreover, according to settled case-law, the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by EU law (judgment of 19 November 2019, *TSN and AKT*, C-609/17 and C-610/17, EU:C:2019:981, paragraph 43 and the case-law cited).

87 In the present case, it is apparent from the order for reference that the UK authorities granted CG a right of residence even though she did not have sufficient resources. As noted in paragraph 82 of the present judgment, those authorities applied more favourable rules, in terms of the right of residence, than those established by the provisions of Directive 2004/38, with the result that that action cannot be regarded as an implementation of that directive. In so doing, those authorities by contrast recognised the right of a national of a Member State to reside freely on its territory conferred on EU citizens by Article 21(1) TFEU, without relying on the conditions and limitations in respect of that right laid down by Directive 2004/38.

- 88 It follows that, where they grant that right in circumstances such as those in the main proceedings, the authorities of the host Member State implement the provisions of the FEU Treaty on Union citizenship, which, as pointed out in paragraph 62 of the present judgment, is destined to be the fundamental status of nationals of the Member States, and that they are accordingly obliged to comply with the provisions of the Charter.
- 89 In particular, it is for the host Member State, in accordance with Article 1 of the Charter, to ensure that a Union citizen who has made use of his or her freedom to move and to reside within the territory of the Member States, who has a right of residence on the basis of national law, and who is in a vulnerable situation, may nevertheless live in dignified conditions.
- 90 Furthermore, Article 7 of the Charter recognises the right to respect for private and family life. That article must be read in conjunction with the obligation to take into consideration, in all acts relating to children, the best interests of the child, which are recognised in Article 24(2) thereof (see, to that effect, judgment of 26 March 2019, *SM (Child placed under Algerian kafala)*, C-129/18, EU:C:2019:248, paragraph 67 and the case-law cited).
- 91 The host Member State is required to permit children, who are particularly vulnerable, to stay in dignified conditions with the parent or parents responsible for them.
- 92 In the present case, it is apparent from the order for reference that CG is a mother of two young children, with no resources to provide for her own and her children's needs, who is isolated on account of having fled a violent partner. In such a situation, the competent national authorities may refuse an application for social assistance, such as Universal Credit, only after ascertaining that that refusal does not expose the citizen concerned and the children for which he or she is responsible to an actual and current risk of violation of their fundamental rights, as enshrined in Articles 1, 7 and 24 of the Charter. In the context of that examination, those authorities may take into account all means of assistance provided for by national law, from which the citizen concerned and his or her children may actually and currently benefit. In the dispute in the main proceedings, it will be for the referring court, in particular, to ascertain whether CG and her children may benefit actually and currently from the assistance, other than Universal Credit, referred to by the representatives of the United Kingdom Government and the Department for Communities in Northern Ireland in their observations submitted to the Court.
- 93 In the light of all the foregoing considerations, the answer to the first question is as follows:
- Article 24 of Directive 2004/38 must be interpreted as not precluding the legislation of a host Member State which excludes from social assistance economically inactive Union citizens who do not have sufficient resources and to whom that State has granted a temporary right of residence, where those benefits are guaranteed to nationals of the Member State concerned who are in the same situation.
 - However, provided that a Union citizen resides legally, on the basis of national law, in the territory of a Member State other than that of which he or she is a national, the national authorities empowered to grant social assistance are required to check that a refusal to grant such benefits based on that legislation does not expose that citizen, and the children for which he or she is responsible, to an actual and current risk of violation of their fundamental rights, as enshrined in Articles 1, 7 and 24 of the Charter. Where that citizen does not have any resources to provide for his or her own needs and those of his or her children and is isolated, those authorities must ensure that, in the event of a refusal to grant social assistance, that citizen may nevertheless live with his or her children in dignified conditions. In the context of that examination, those authorities may take into account all means of assistance provided for by national law, from which the citizen concerned and her children are actually entitled to benefit.

The second question

94 In view of the answer given to the first question, there is no need to examine the second question.

Costs

95 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:

Article 24 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC must be interpreted as not precluding the legislation of a host Member State which excludes from social assistance economically inactive Union citizens who do not have sufficient resources and to whom that State has granted a temporary right of residence, where those benefits are guaranteed to nationals of the Member State concerned who are in the same situation.

However, provided that a Union citizen resides legally, on the basis of national law, in the territory of a Member State other than that of which he or she is a national, the national authorities empowered to grant social assistance are required to check that a refusal to grant such benefits based on that legislation does not expose that citizen, and the children for which he or she is responsible, to an actual and current risk of violation of their fundamental rights, as enshrined in Articles 1, 7 and 24 of the Charter of Fundamental Rights of the European Union. Where that citizen does not have any resources to provide for his or her own needs and those of his or her children and is isolated, those authorities must ensure that, in the event of a refusal to grant social assistance, that citizen may nevertheless live with his or her children in dignified conditions. In the context of that examination, those authorities may take into account all means of assistance provided for by national law, from which the citizen concerned and her children are actually entitled to benefit.

Lenaerts

Bonichot

Prechal

Regan

Ilešič

Bay Larsen

Kumin

Wahl

von Danwitz

Jürimäe

Lycourgos

Jarukaitis

Jääskinen

Ziemele

Passer

Delivered in open court in Luxembourg on 15 July 2021.

A. Calot Escobar

K. Lenaerts

Registrar

President

* Language of the case: English.