Case C-535/19

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

12 July 2019

Referring court:

Augstākā tiesa (Senāts) (Supreme Court, Latvia)

Date of the decision to refer:

9 July 2019

Appellant:

A

Other party to the appeal in cassation:

Veselības ministrija (Ministry of Health)

Subject matter of the main proceedings

Appeal proceedings relating to the decision of the national authorities not to register a foreign citizen in the register of recipients of health care services financed from the State budget and refusing to grant that person a European Health Insurance Card.

Subject matter and legal basis of the reference

On the basis of Article 267 TFEU, the referring court is seeking an interpretation of Regulation No 883/2004 and Directive 2004/38, as well as of Articles 18 TFEU, 20 TFEU and 21 TFEU, in order to clarify the applicability of Regulation No 883/2004 to publicly-funded health care services and the conditions under which a State may refuse to grant access to medical care to a foreign national — an unemployed Union citizen. It also asks whether it is lawful that a situation exists in which that person is denied the right to receive health care services financed by the State in all the Member States concerned.

Questions referred

1. Must publicly-funded health care be regarded as being included in 'sickness benefits' within the meaning of Article 3(1)(a) of Regulation No 883/2004?

2. In the event that the first question is answered in the affirmative, are Member States permitted, under Article 4 of Regulation No 883/2004 and Article 24 of Directive 2004/38, to refuse such benefits — which are granted to their nationals and to family members of a Union citizen having worker status who are in the same situation — to Union citizens who do not at that time have worker status, in order to avoid disproportionate requests for social benefits to ensure health care?

3. In the event that the first question is answered in the negative, are Member States permitted, under Articles 18 and 21 of the Treaty on the Functioning of the European Union and Article 24 of Directive 2004/38, to refuse such benefits — which are granted to their nationals and to family members of a Union citizen having worker status who are in the same situation — to Union citizens who do not at that time have worker status, in order to avoid disproportionate requests for social benefits to ensure health care?

4. Is it compatible with Article 11(3)(e) of Regulation (EC) No 883/2004 for a citizen of the European Union who exercises his right to freedom of movement to be placed in a situation in which he is denied the right to receive public health care services financed by the State in all the Member States concerned in the case?

5. Is it compatible with Articles 18, 20(1) and 21 of the Treaty on the Functioning of the European Union for a citizen of the European Union who exercises his right to freedom of movement to be placed in a situation in which he is denied the right to receive public health care services financed by the State in all the Member States concerned in the case?

6. Should legality of residence, as provided for in Article 7(1)(b) of Directive 2004/38, be understood as giving a person a right of access to the social security system and also as being capable of constituting a reason to exclude him from social security? In particular, in the present case, must the fact that the applicant has comprehensive sickness insurance cover, which constitutes one of the prerequisites for legality of residence under Directive 2004/38, be regarded as capable of justifying the refusal to include him within the health care system financed by the State?

EU legal framework

Treaty on the Functioning of the European Union: Article 18, Article 20(1), Article 20(2), first subparagraph, point (a), Article 21 and Article 168(7).

Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States: recitals 1, 2, 3, 4 and 10. Article 7(1)(b), Article 14(1) and (2) and Article 24.

Regulation No 883/2004 on the coordination of social security systems: recital 45. Article 3(1)(a) and (5), Article 4 and Article 11(3)(e).

Case-law of the Court of Justice

Judgments of the Court of Justice:

of 27 March 1985, *Hoeckx* (249/83, EU:C:1985:139, paragraph 12);

of 27 March 1985, *Scrivner and Cole* (122/84, EU:C:1985:145, paragraph 19);

of 12 June 1986, *Ten Holder* (302/84, EU:C:1986:242, paragraph 21);

of 16 July 1992, *Hughes* (C-78/91, EU:C:1992:331, paragraph 17);

of 11 July 1996, *Otte* (C-25/95, EU:C:1996:295, paragraph 22);

of 5 June 1997, *Uecker* and *Jacquet* (C-64/96, EU:C:1997:285, paragraph 23);

of 5 March 1998, *Molenaar* (C-160/96, EU:C:1998:84, paragraphs 19, 20 and 21);

of 20 September 2001, *Grzelczyk* (C-184/99, EU:C:2001:458, paragraph 31);

of 11 July 2002, *D'Hoop* (C-224/98, EU:C:2002:432, paragraph 28);

of 17 September 2002, *Baumbast and R* (C-413/99, EU:C:2002:493, paragraph 84 et seq., paragraph 91);

of 7 November 2002, *Maaheimo* (C-333/00, EU:C:2002:641, paragraph 23);

of 2 October 2003, *Garcia Avello* (C-148/02, EU:C:2003:539, paragraph 26);

of 7 September 2004, *Trojani*, C-456/02, EU:C:2004:488, paragraph 31 et seq.);

of 19 October 2004, *Zhu and Chen* (C-200/02, EU:C:2004:639, paragraph 32);

of 15 March 2005, *Bidar* (C-209/03, EU:C:2005:169, paragraph 33);

of 12 July 2005, *Schempp* (C-403/03, EU:C:2005:446), paragraphs 17, 18 and 20;

of 18 July 2006, *De Cuyper* (C-406/04, EU:C:2006:491, paragraph 23);

of 1 April 2008, *Government of the French Community and Walloon Government* (C-212/06, EU:C:2008:178, paragraph 39);

of 22 May 2008, *Nerkowska* (C-499/06, EU:C:2008:300, paragraphs 26 and 29).

of 25 July 2008, *Metock and Others* (C-127/08, EU:C:2008:449, paragraph 82);

of 4 March 2010, *Chakroun* (C-578/08, EU:C:2010:117, paragraph 43);

of 5 May 2011, *McCarthy* (C-434/09, EU:C:2011:277, paragraph 39);

of 30 June 2011, *da Silva Martins* (C-388/09, EU:C:2011:439, paragraphs 38, and the case-law cited, and 41);

of 24 April 2012, *Kamberaj* (C-571/10, EU:C:2012:233, paragraph 86);

of 21 February 2013, *L.N.* (C-46/12, EU:C:2013:97, paragraphs 27 and 28);

of 19 September 2013, *Brey* (C-140/12, EU:C:2013:565, paragraphs 46, 70 and 71);

of 11 November 2014, *Dano* (C-333/13, EU:C:2014:2358, paragraphs 59 and 60);

of 26 February 2015, *Martens* (C-359/13, EU:C:2015:118, paragraph 25);

of 15 September 2015, *Alimanovic* (C-67/14, EU:C:2015:597, paragraph 62); Opinion of the Advocate General in that case, point 85;

of 16 September 2015, *Commission* v *Slovakia* (C-433/13, EU:C:2015:602), paragraphs 70, 71 and 73;

of 25 February 2016, *García Nieto and Others* (C-299/14, EU:C:2016:114, paragraphs 38 and 50);

of 14 June 2016, *Commission* v *United Kingdom* (C-308/14, EU:C:2016:436, paragraph 76);

of 30 May 2018, *Czerwiński* (C-517/16, EU:C:2018:350, paragraph 33);

of 25 July 2018, *A* (C-679/16, EU:C:2018:601), paragraphs 33, 56, 57 and 60;

Opinion of Advocate General [Wathelet], of 26 July 2017, in *Gusa* (C-442/16, EU:C:2017:607, point 52).

Basic provisions of national law

Ārstniecības likums (Law on medical treatments) (in force until 31 December 2017), Article 17.

Veselības aprūpes finansēšanas likums (Law on the financing of medical care) (in force as from 1 January 2018), Articles 7, 9 and 11.

Succinct presentation of the facts and procedure in the main proceedings

1 The appellant is an Italian national who married a Latvian national. At the end of 2015 or in January 2016, the appellant left Italy and moved to Latvia to live with his family. The appellant intends to remain in Latvia on a long-term basis to care for his children. The appellant's declared place of residence is in Latvia. The appellant states that he is a highly qualified engineer and was seeking employment when he brought his appeal. In his view, job seeking should be interpreted as a desire to integrate into Latvian society and to become a full member of that society alongside Latvian nationals. At the present time, the appellant is in an employment relationship. The appellant's residence in Latvia is based on an EU citizen's registration certificate, which, under Latvian law, is regarded as a temporary residence permit.

2 At the end of 2015, the appellant informed the competent Italian authorities of his move to Latvia. Accordingly, he was registered with 'AIRE' (*Anagrafe degli Italiani Residenti all'Estero*), a register of Italian nationals living abroad; persons who move to reside outside Italy for a period exceeding 12 months are entered in that register. Since the persons entered in that register have their place of residence abroad, they are refused access to publicly-funded health care in Italy.

3 On 22 January 2016, the appellant requested that the Latvijas Nacionālajais veselības dienests (Latvian National Health Service) enter him in the register of recipients of health care services and issue a European Health Insurance Card. By decision of 17 February 2016, the National Health Service refused to enter the appellant in the register and refused to issue the card. By decision of 8 July 2016, the Veselības ministrija (Ministry of Health) confirmed the decision of the National Health Service, noting that it was clear from Article 17(1) of the Law on medical treatments that Union citizens who were not employed or self-employed were excluded from the categories of persons who could receive health care services financed by the State. Since the appellant is not employed or self-employed in Latvia and is an Italian national residing in Latvia on the basis of an EU citizen's registration certificate, he is not included in the categories of persons referred to in Article 17 of the Law on medical treatments, for whom such services are financed from the State budget. Under Article 17(5) of the Law on medical treatments, the appellant must pay for the provision of health services.

4 The appellant brought an administrative-law action against the decision of the Ministry of Health before the Administratīvā rajona tiesa (District Administrative Court), which dismissed his action.

5 After examining the case on appeal, the Administratīvā apgabaltiesa (Regional Administrative Court) dismissed the appeal by a judgment of 5 January 2018 for the reasons set out below.

6 The appellant is a Union citizen who is not economically active and whose legal residence is in Latvia. Thus, in accordance with Article 11(3)(e) of Regulation

No 883/2004, Latvian law, including Article 17 of the Law on medical treatments, applies to the present case. The appellant is not included in the categories of persons referred to in Article 17 of the Law on medical treatments, for whom the provision of health services is financed from the State budget, which, pursuant to Article 17(5) of that law, means that the appellant must pay to receive those services.

7 Under Articles 7(1)(b), 14(1) and (2) and 24 of Directive 2004/38, and the case-law of the Court of Justice of the European Union ('the Court of Justice' or 'the Court'), for any period of longer than three months and less than five years a Member State is not required to grant a national of another Member State the right to receive social assistance. Those rules pursue the legitimate objective of protecting the financial interests of the host Member State. The appellant wishes to receive comprehensive health services in Latvia but does not fulfil any of the requirements set out in Regulation No 883/2004 for the grant of that right (neither the requirements of Article 17 and Article 12 nor those of Articles 23 to 26).

8 If follows from Article 168(7) TFEU and the Court's case-law that Latvia has the power to adopt specific provisions for its own social security system and that that system cannot be regarded as a ground of discrimination solely because it has adverse effects for the appellant. Both the case-law of the Court of Justice and that of the Satversmes tiesa (Constitutional Court, Latvia) have consistently recognised that Latvia has the discretion to determine, in circumstances where public resources are limited, the categories of persons to whom health services financed from the State budget are to be provided.

9 Although the appellant is legally resident in Latvia in accordance with the requirements of Article 7(1)(b) of Directive 2004/38 and may properly rely on the principle of non-discrimination set out in Article 24(1) of that directive, the difference in treatment is justified, since it is based on objective considerations and has the legitimate objective of protecting the public finances and the right of other persons to receive health care financed from the State budget. Moreover, in the present case, that treatment is also proportionate, since the State guarantees the appellant the provision of emergency medical services, the cost of sickness insurance is not unreasonably high and such a situation continues only until the person acquires a permanent right of residence (after five years).

10 According to the Latvian legislation, only persons who have the right to receive health care services financed from the State budget can obtain the European Health Insurance Card. Consequently, the appellant cannot obtain a health insurance card.

11 The appellant's status as a Union citizen is not comparable to that of a Latvian national, and as a result the appellant does not have the same rights as Latvian nationals. The freedom of movement of persons is not absolute; the host Member State has the right to apply different rules to its nationals, based on objective considerations of the legislation of that State, and to protect its interests as a host

State, so that nationals of another Member State do not become an unreasonable burden on its social assistance system.

12 A family member of a Union citizen who is working in Latvia (who has the right to receive health care financed by the State in accordance with Article 17(1)(3) of the Law on medical treatments) cannot be compared to a family member of a Latvian national who is working in Latvia (who has no right to receive health care financed by the State). The fact that a Latvian national is working in Latvia does not imply the existence of cross-border elements and in such a situation Latvian nationals do not exercise their right to freedom of movement. Moreover, when Union citizens exercise their freedom of movement, they are subject to certain requirements which also depend on whether or not the citizen of the European Union is an employed person in the State of residence.

13 The appellant lodged an appeal in cassation before the Senāts (Supreme Court) against the judgment of the Regional Administrative Court.

Essential arguments of the parties to the main proceedings

14 According to the **appellant**, the Regional Administrative Court erroneously applied the concept of 'social assistance' in so far as he is concerned. The appellant wished to have the right to social security, not to social assistance.

15 He asserts that the Regional Administrative Court misunderstood the relationship between Directive 2004/38 and Regulation No 883/2004, since it misinterpreted Article 7(1)(b) of Directive 2004/38 as applying to the right to the social security requested by the appellant.

16 In the appellant's view, the Regional Administrative Court erroneously held that the difference in treatment resulting from Directive 2004/38 with respect to the right of a Union citizen who is not economically active to receive social assistance in another Member State of the European Union extends to the right to social security. In accordance with Regulation No 883/2004, the appellant is subject to Latvian legislation as regards the right to social security. According to Article 4 of Regulation No 883/2004, Union citizens who are not economically active have the right to social security, that is to say to health care services, under the same conditions as nationals of that Member State.

17 The legitimate objective of restricting the right of Union citizens who are not economically active to social assistance in other Member States of the European Union concerns situations addressing the issue of whether a Union citizen fulfils, in the first place, the requirements of Article 7(1)(b) of Directive 2004/38. If those requirements are fulfilled, the restrictions on social security and social assistance are then not considered.

18 The difference in treatment applied to the appellant, within the meaning of Article 4 of Regulation No 883/2004, is not proportionate, since the appellant

cannot receive health care financed by the State either in Italy or in the State which is currently his habitual place of residence and where his interests are centred. The appellant is not seeking to benefit from the social assistance system of another Member State of the European Union, but to be reunited with his family.

19 Even assuming that the concept of 'social assistance' were applicable to the appellant, that right cannot be automatically denied to a Union citizen who is not economically active without examining the relevant factual circumstances, in the light of his integration into society, or analysing the proportionality of the support granted to the person concerned in relation to the social assistance system of the State as a whole.

20 The guarantee of equal treatment of citizens of the European Union who are not economically active depends solely on whether they meet the requirements of Article 7(1)(b) of Directive 2004/38 when they reside in a given country. This follows from Article 18 TFEU and also from Article 24 of Directive 2004/38 and Article 4 of Regulation No 883/2004.

Succinct presentation of the grounds of the request for a preliminary ruling

21 In the present case, it is necessary to determine whether the appellant was with good reason deprived of the right to receive medical treatment services (medical care) financed by the State, in accordance with Article 17 of the Law on medical treatments (now Articles 9 and 11 of the Law on the financing of medical care), which transposed Article 7(1)(b) of Directive 2004/38 into Latvian national law.

22 Although, according to the appellant, he currently has an employment relationship, he is entitled to ascertain whether he had the right to obtain a favourable decision, inter alia, to prevent a similar situation from occurring in the future. Such an interest must be acknowledged as a legitimate reason for continuing with the proceedings.

23 According to the Supreme Court, this case is relevant in relation to a series of fundamental values of the European Union: (i) citizenship of the Union (Article 20(1) TFEU); (ii) freedom of movement and of residence, a fundamental principle stemming from citizenship of the Union (Articles 20(2)(a) TFEU and 21 TFEU), and (iii) the prohibition of discrimination on grounds of nationality (Article 18 TFEU).

24 As regards Directive 2004/38 and Regulation No 883/2004, the objectives of those provisions are closely linked to the right to freedom of movement of Union citizens.

25 From the first four recitals of Directive 2004/38 and Article 1(a) of that directive, it follows that the main objective of that directive is to facilitate and strengthen the exercise of Union citizens' primary right to move and reside freely within the

territory of the Member States (judgment in *Brey*, paragraph 71; see also *Metock and Others*, paragraph 82). This is reflected, moreover, in the title of that directive.

26 Regulation No 883/2004 was adopted to coordinate the social security systems of the Member States, so that the right to freedom of movement of persons can be exercised effectively (recital 45 of Regulation No 883/2004), and to contribute towards improving standards of living and conditions of employment (recital 1 of the regulation) (judgment in *Brey*, paragraph 41 and the case-law cited).

27 At the same time, another of the objectives of Directive 2004/38 is set out in recital 10 thereof: 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. That second objective nonetheless exists only by reason of the first: since the directive aims to facilitate the exercise of the right of residence, the Member States felt it necessary to ensure that the financial burden of that freedom be kept under control (Opinion of Advocate General Wathelet in *Gusa*, point 52).

28 In view of the Member States' interests of financial protection, the directive lays down a series of requirements and restrictions, permitted by Articles 20 TFEU and 21 TFEU, in relation to the freedom to move and reside freely in the European Union. In the present case, the relevant requirement — laid down in Article 7(1)(b) of Directive 2004/38 — is that which an EU citizen who is not economically active must comply with in order to obtain a right of residence in the host Member State (for more than three months), in other words, the requirement to have sufficient resources not to become a burden on the social assistance system of the host Member State during his period of residence and to have comprehensive sickness insurance cover.

29 In the present case, the competent authorities have applied the provisions of both Directive 2004/38 and Regulation 883/2004. The Supreme Court has no doubt as to the applicability of Directive 2004/38 but considers that the **question of the relevance of Regulation No 883/2004 in the present case** must be clarified.

30 The Court of Justice has held that the distinction between benefits excluded from the scope of Regulation No 883/2004 and those which fall within it is based essentially on the constituent elements of each particular benefit, in particular its purpose and the conditions on which it is granted, and not on whether a benefit is classified as a social security benefit by national legislation (judgments in *Molenaar*, paragraph 19, *Commission* v *Slovakia*, paragraph 70, and *Czerwiński*, paragraph 33).

31 According to settled case-law, a benefit may be regarded as a social security benefit in so far as it (i) is granted, without any individual and discretionary assessment of personal needs, to beneficiaries on the basis of a legally defined position and (ii) relates to one of the risks expressly listed in Article 3(1) of

Regulation No 883/2004 (judgments in *da Silva Martins*, paragraph 38 and the case-law cited, and *Commission* v *Slovakia*, paragraph 71).

32 It follows from settled case-law that the first of the two conditions is satisfied if the grant of a benefit is made with regard to objective criteria which if satisfied, give entitlement to the benefit without the competent authority being able to take other personal circumstances into consideration (judgments in *Hughes*, paragraph 17; *Molenaar*, paragraph 21; *Maaheimo*, paragraph 3; *De Cuyper*, paragraph 23; *Hughes*, paragraph 17; *Commission* v *Slovakia*, paragraph 73, and *A*, paragraph 34).

33 Given that the two conditions are cumulative, the fact that one of them is not satisfied will mean that the benefit in question does not fall within the scope of Regulation No 883/2004 (judgment in *A*, paragraph 33). The list contained in Article 3(1) of Regulation No 883/2004 is exhaustive and as a result a benefit that does not cover one of the risks listed in that article must, in any event, fall outside the scope of Regulation No 883/2004 (judgments in *Hoeckx*, paragraph 12; *Scrivner and Cole*, paragraph 19; *Otte* v *Germany*, paragraph 22; *Molenaar*, paragraph 20, and *da Silva Martins*, paragraph 41).

34 Currently, the Latvian health care system is mainly based on the delivery of health care services financed by the State and is funded through the taxes levied. As of 2018, it has also been funded through mandatory contributions to State social security. Similarly, the following constitute sources of financing for health care: co-payment by patients, funds from voluntary insurance, financing from municipal budgets under municipal provisions, income from health institutions and private investments in medical centres. In general, it may be stated that medical care in Latvia is essentially publicly-funded. In the light of the foregoing, the system of health care in Latvia may currently be described as a compulsory national health insurance system; the Finance Law for the relevant year establishes the level of its financing.

35 Under the Latvian legislation, several categories of persons laid down by law may receive health care financed by the State. Other residents may receive medical treatment services by paying the charges imposed by the health care institution or the fees established for the services of a specialist.

36 Citizens of Member States of the European Union who are not employed or self-employed in Latvia are excluded from the categories of persons who can receive health care services financed by the State.

37 Taking this into account, health services are provided to any Latvian resident included in one of the categories established in the law, irrespective of the economic means available to that resident. The criteria taken into consideration to assess the inclusion of a person are clearly objective and describe the characteristics which must be fulfilled in order to be included in the register of recipients of health services and, therefore, to receive health care services

financed by the State. It does not follow from the legislation that the competent authority has the right or obligation to take into account any other personal circumstances. Therefore, the provision of health care services (as a social security benefit in kind) could fulfil the first requirement for application of Regulation No 883/2004. Similarly, health care services could fulfil the requirements of Article 3(1)(a) of Regulation No 883/2004.

38 The application of Regulation No 883/2004 is shown, inter alia, by the nature of the S1 form, established on the basis of that regulation, which is issued when a national of a Member State resides in a country other than that in which the national is insured. In that situation, a person and his family members are entitled to all benefits in the form of services (such as health care) provided for by the legislation of their country of residence as if they were insured in that country. However, in the present case, the appellant has not received that form. Nevertheless, as is clear from the documents before the Court, this is due only to the fact that the Italian competent authority considered that the appellant should be excluded from its health care system when he moved to Latvia, with the result that that form should not be issued to him. Also relevant in the present case is the E104 form, which contains information on the periods of insurance of the person in the country issuing the form (in the present case, Italy).

39 At the same time, it must be borne in mind that Article 3(5) of Regulation No 883/2004 excludes social and medical assistance from its scope. [1]

40 In the light of the foregoing, it is necessary in the present case to clarify whether Regulation (EC) No 883/2004 can be applied to health care services.

41 **In the event that Regulation No 883/2004 is applicable in the present case**, the following comments must be put forward.

42 The purpose of Article 11(3)(e) of Regulation No 883/2004 is to determine the national legislation applicable to entitlement to the social security benefits included in Article 3(1) of that regulation when the provisions of Article 11(3)(a) to (d) of the regulation are not applicable to a person, in particular, to a person who is not economically active. Article 11(3)(e) of Regulation No 883/2004 is intended to prevent the concurrent application of a number of national legislative systems to a given situation and the complications which might ensue, as well as to ensure that persons covered by that regulation are not left without social security cover because there is no legislation which is applicable to them (see, by analogy, judgment in *Brey*, paragraph 38 et seq.).

43 The system of conflict rules contained in Regulation No 883/2004 has the effect of divesting the legislature of each Member State of the power to determine the ambit and the conditions for the application of its national legislation so far as the

[1] Translator's note: the Latvian-language version, among others, uses the stricter concept of 'medical assistance' instead of 'health care assistance' used in the Spanish-language version.

persons who are subject thereto and the territory within which the provisions of national law take effect are concerned (see judgment in *Ten Holder*, paragraph 21).

44 In the present case, since the appellant has been denied access to the Italian and Latvian health care systems, there has arisen a situation in which he has been left entirely without social security cover. That situation has arisen because the appellant exercised his right to freedom of movement. It should not be permissible for a person to be excluded from the social security systems of all the EU Member States concerned in any particular case. As is clear from the case-law of the Court of Justice referred to above, Article 11(3)(e) of Regulation No 883/2004 was introduced precisely to prevent those situations. At the same time, it is not entirely clear which Member State has made an error when applying its own legislation: Italy, by excluding the appellant from its health care system because he moved, or Latvia, by not including the appellant within the national health care system, because he was not working in Latvia when he made the request.

45 **If the provisions of Regulation No 883/2004 are not applicable in the present case**, it would be necessary, since the appellant is a Union citizen, to determine whether the solution provided for by the Latvian legislation is compatible with Articles 18 TFEU and 21 TFEU.

46 The Court of Justice has held that the status of citizen of the Union 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 receive, as regards the material scope of the FEU Treaty, the same treatment in law irrespective of their nationality, subject to such exceptions as are provided for in that regard (judgments in *Grzelczyk*, paragraph 31; *D'Hoop*, paragraph 28, and *L.N.*, paragraph 27).

47 It has also been held that every Union citizen may rely on the prohibition of discrimination on grounds of nationality laid down in Article 18 of the Treaty on the Functioning of the European Union in all situations falling within the material scope 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 the first subparagraph of Article 20(2) and Article 21 of the Treaty on the Functioning of the European Union (judgments in *L.N.*, paragraph 28 and the case-law cited, and *Dano*, paragraph 59).

48 It also follows from settled case-law that national legislation which places certain nationals at a disadvantage simply because they have exercised their freedom to move and to reside in another Member State constitutes a restriction on the freedoms conferred by Article 21(1) of the Treaty on the Functioning of the European Union on every citizen of the European Union (judgments in *Martens*, paragraph 25, and *A*, paragraph 60).

49 In the judgment in *Trojani*, the Court of Justice held, in essence, that if a Union citizen is in possession of a permit for residence in a Member State, he may rely on Article 18 TFEU in order to be granted a social assistance benefit under the same conditions as nationals of that Member State (judgment in *Trojani*, paragraph 46).

50 The situation in the present case indicates that there may have been a serious infringement of the appellant's rights, thereby limiting his right to freedom of movement and depriving him of rights in relation to which the European Union has adopted a series of social security and social assistance coordination rules. By the mere fact of being a Union citizen, the appellant actually has the right to publicly-funded health care, which is included within the scope of the aforementioned rules. Therefore, that status grants the appellant the right to receive the requested benefits. Consequently, even in the absence of rules of secondary legislation, it is sufficient that the appellant requests health care financed by the State, based solely on his status as a Union citizen.

51 Indeed, the opportunities offered by the Treaty in relation to freedom of movement for citizens of the Union cannot be fully effective if a national of a Member State can be dissuaded from using them by obstacles resulting from his stay in another Member State, because of legislation of his State of origin which penalises the mere fact that he has used those opportunities (judgments in *Martens*, paragraph 26, and *A*, paragraph 61).

52 Article 18(1) of the Treaty on the Functioning of the European Union establishes that, within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality is to be prohibited. At the same time, the Court of Justice has clearly indicated the limited nature of freedom of movement and residence within the territory of the Member States. In particular, the second subparagraph of Article 20(2) of the Treaty on the Functioning of the European Union expressly states that the rights conferred by that article are to be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder. Under Article 21(1) of the Treaty on the Functioning of the European Union, the right of citizens of the Union to move and reside freely within the territory of the Member States is recognised only subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect (judgment in *Brey*, paragraph 46 and the case-law cited; *Dano*, paragraph 60; *Baumbast and R.*, paragraph 84 et seq.; and *Trojani*, paragraph 31 et seq.).

53 A restriction on the freedom of movement can be justified in the light of EU law only if it is based on objective considerations of public interest independent of the nationality of the persons concerned and if it is proportionate to the legitimate objective of the provisions of national law. It follows from the Court's case-law that a measure is proportionate when, while appropriate for securing the attainment of the objective pursued, it does not go beyond what is necessary in

order to achieve it (judgments in *Martens*, paragraph 34 and the case-law cited, and *A*, paragraph 67).

54 Under the Italian legal system, an Italian national registered abroad loses his right to receive health care from that State while he is abroad. If the Latvian legislation is in conformity with the provisions of Directive 2004/38 and Regulation No 883/2004, a situation will arise in which the appellant will continue to receive no publicly-funded health care services from any Member State, a situation which, according to the Supreme Court, runs counter to the efforts made by the European Union to guarantee freedom of movement of persons within the European Union and European integration.

55 The Court of Justice has already had the opportunity to address issues relating to the interaction between Directive 2004/38 and Regulation No 883/2004. In the view of the Supreme Court, the most relevant case in the context of the present dispute is *Brey*. To date, however, no disputes have been examined which directly relate to the provision of publicly-funded health care to citizens of the European Union in Member States in which such medical care is provided to their nationals.

56 The Court of Justice held that, while Regulation No 883/2004 is intended to ensure that Union citizens who have made use of the right to freedom of movement for workers retain the right to certain social security benefits granted by their Member State of origin, Directive 2004/38 allows the host Member State to impose legitimate restrictions in connection with the grant of such benefits to Union citizens who do not or no longer have worker status, so that those citizens do not become an unreasonable burden on the social assistance system of that Member State (judgment in *Brey*, paragraph 57).

57 The Court has referred to the right of workers to freedom of movement and the corollary right to receive social security benefits. The appellant emphasised that he moved to Latvia in order to reunite with his family. Although, as indicated above, Article 11(3)(e) of Regulation (EC) No 883/2004 applies to persons who are not economically active, it is essential to note that it would also be reasonable to examine the issue from the perspective of the freedom of movement of workers. An E104 form has been issued to the applicant with information on the periods of insurance completed by the person in the State issuing the form. Thus, it is possible that the appellant had worker status in Italy and that when he moved to Latvia he also exercised the right to freedom of movement as a worker. Moreover, the appellant had been seeking employment since he moved to Latvia, and has been in an employment relationship since January 2018. At the same time, since the appellant did not (or had ceased to) have worker status when he moved to Latvia, it is, as already stated, reasonable to impose under Directive 2004/38 certain restrictions on the grant of benefits, so that the person does not become a burden on the Latvian social assistance system.

58 Article 24 of Directive 2004/38 and Article 4 of Regulation No 883/2004 clarify the scope of the **principle of non-discrimination** as regards citizens of the

European Union who exercise their freedom to move and reside within the territory of the Member States established in Article 18 TFEU. The Supreme Court is concerned that the principle of equality has been infringed in the present case, because the appellant, as an Italian national who has used his right to freedom of movement, is placed at a disadvantage vis-à-vis Latvian nationals and family members of a Union citizen who has moved to Latvia for employment purposes.

59 In the present case, the Latvian authorities have stated that the protection of Latvia's financial resources is a legitimate objective for the restrictions on the granting of social benefits. That may be a legitimate objective, but the Supreme Court is uncertain whether that objective is proportionate in the present case.

60 Since the right to freedom of movement is — as a fundamental principle of EU law — the general rule, the conditions laid down in Article 7(1)(b) of Directive 2004/38 must be construed narrowly (judgment in *Brey*, paragraph 70; see also, by analogy, the judgments in *Kamberaj*, paragraph 86, and *Chakroun*, paragraph 43) and in compliance with the limits imposed by EU law and the principle of proportionality (judgments in *Baumbast and R*, paragraph 91; *Zhu and Chen*, paragraph 32, and *Brey*, paragraph 70).

61 When examining whether a person has become an unreasonable burden on the social assistance of a Member State, national authorities must apply the guidance established by the case-law of the Court of Justice, in particular the obligation to take into account the circumstances of each case.

62 As regards the individual assessment for the purposes of making an overall appraisal of the specific burden which the grant of a specific benefit would place on the national system of social assistance in question in the main proceedings as a whole, the Court of Justice held that the assistance awarded to a single applicant can scarcely be described as an 'unreasonable burden' for a Member State, within the meaning of Article 14(1) of Directive 2004/38, for an individual claim is not liable to place the Member State concerned under an unreasonable burden, but the accumulation of all the individual claims which might be submitted to it would be bound to do so (judgments in *Alimanovic*, paragraph 62, and *García Nieto and Others*, paragraph 50).

63 The Court of Justice has held that such a mechanism, whereby nationals of other Member States who are not economically active are automatically barred by the host Member State from receiving a particular social security benefit, even for the period following the first three months of residence referred to in Article 24(2) of Directive 2004/38, does not enable the competent authorities of the host Member State, where the resources of the person concerned fall short of the reference amount for the grant of that benefit, to carry out — in accordance with the requirements under, inter alia, Articles 7(1)(b) and 8(4) of that directive and the principle of proportionality — an overall assessment of the specific burden which granting that benefit would place on the social assistance system as a whole by

reference to the personal circumstances characterising the individual situation of the person concerned (judgment in *Brey*, paragraph 77).

64 In the present case, both the competent Latvian authorities and the lower courts have taken the view that the particular situation in the present case constitutes in itself an unreasonable burden on the Latvian social assistance system. However, in the light of the findings of the Court of Justice, there may be doubts as to that assessment. In the present case, the specific situation of the applicant for a benefit must be assessed, taking into account, for example, the fact that the appellant moved to Latvia to be reunited with his family, that he had worked in Italy and was seeking employment in Latvia and that he has two minor children who depend on him and who are both Italian and Latvian nationals. This indicates that the applicant for a benefit has close personal ties with Latvia, which does not allow the appellant to be automatically excluded from the health care system financed by the State.

65 It is relevant that, as regards social assistance benefits, a Union citizen can claim equal treatment with nationals of the host Member State under Article 24(1) of Directive 2004/38 only if his residence in the territory of the host Member State complies with the conditions of Directive 2004/38 (judgments in *Dano*, paragraph 69; *Alimanovic*, paragraph 49, and *García-Nieto and Others*, paragraph 38). There is nothing to prevent national legislation which makes the grant of social security benefits to economically inactive citizens subject to the substantive condition that those citizens meet the requirements necessary for possession of a right to reside lawfully in the host Member State (judgments in *Brey*, paragraph 44, and *Dano*, paragraph 69; Opinion of the Advocate General in *Commission* v *United Kingdom*, point 77). The Court also held, however, that such legislation would nonetheless be indirectly discriminatory. Consequently, in order to be justified, that legislation must pursue a legitimate objective and not go beyond what is necessary to attain that objective (judgment in *Commission* v *United Kingdom*, paragraph 76).

66 In the present case, it is not disputed that the appellant meets the residency requirements provided for in Article 7(1)(b) of Directive 2004/38. However, it follows from the administrative decisions that the prerequisite for legal residence becomes an obstacle resulting in exclusion of the right to a social security benefit (health care financed by the State). The Supreme Court is uncertain whether this is in accordance with the provisions of Directive 2004/38 and Regulation 883/2004. In other words, the question arises as to whether the fact that the applicant has comprehensive health insurance, which is one of the prerequisites for the legality of the residence provided for in Directive 2004/38, can form the basis for refusing to include him within the health care system financed by the State. At the same time, there arises the concern as to whether the restrictions established to protect the financial interests of the Latvian social assistance system are appropriate or whether they go beyond what is necessary to achieve the objective.

67 Moreover, the issue of **reverse discrimination** must be considered. In the present case, as is clear from the Law on the financing of medical care, a member of the family of a citizen of the European Union who is working would have a right to publicly-funded health care. However, since the appellant is married to a Latvian citizen who has not exercised her freedom of movement, he has been denied access to health care as a family member by marriage.

68 The Court of Justice has held that, if the Union citizen concerned has never exercised his right of freedom of movement and has always resided in a Member State of which he is a national, that citizen is not covered by the concept of 'beneficiary' for the purposes of Article 3(1) of Directive 2004/38, so that that directive is not applicable to him (judgment in *McCarthy*, paragraph 39).

69 It has also been held that citizenship of the Union is not intended to extend the material scope of the Treaty to internal situations which have no link with EU law. In such cases, any discrimination against a national of a Member State must be governed by the legal instruments of that country (*Uecker* and *Jacquet*, paragraph 23; see also *Garcia Avello*, paragraph 26; *Schempp*, paragraph 20, and *Government of the French Community and Walloon Government*, paragraph 39).

70 At the same time, the Court of Justice has held that situations which fall within the material scope of EU law include those involving the exercise of the fundamental freedoms guaranteed by the Treaty and those involving the exercise of the freedom to move and reside within the territory of the Member States (judgments in *Nerkowska*, paragraph 26; *Bidar*, paragraph 33; and *Schempp*, paragraphs 17 and 18).

71 If a person has exercised a freedom accorded by EU law and this has an impact on their right to receive a benefit provided for by national legislation, the situation cannot be considered to be an internal matter with no link to EU law (*Nerkowska* judgment, paragraph 29).

72 In one case, the Court of Justice held that EU law was applicable to a situation in which the person who had exercised the right to freedom of movement was not the applicant himself, but his former spouse. The Court of Justice ruled, in essence, that the fact that another person had made use of the rights conferred by the European Union and that the situation as a whole gave rise to a sufficient link with EU law meant that those rights were also to be attributed to the applicant (judgment in *Schempp*, paragraph 25).

73 In the present case, the situation is different from that of the aforementioned case, since the appellant himself, and not his spouse, is the person who has exercised the EU right of freedom of movement. However, as in the aforementioned judgment of the Court of Justice, the matter in question cannot be regarded as a purely internal situation with no link to EU law. It must be taken into account that any discrimination on grounds of nationality is prohibited. In addition, the Supreme Court is concerned that in the present case not only the appellant's

European citizenship but also the essence of the rights derived from it (the right to freedom of movement) will be seriously affected. Thus, in so far as the appellant is concerned, even though his spouse, a Latvian national, has not exercised the right to freedom of movement, the same provisions of EU law that would apply to a family member of a Union citizen should apply to him.

74 The appellant, as the spouse of a Latvian national, should have the possibility of benefiting from the same advantages as a family member of a Union citizen who moves to Latvia for employment purposes.