



The UK legislation on Universal Credit, which deprives of that benefit Union citizens who have a right to reside on the basis of the scheme established in the context of Brexit but who do not satisfy all of the conditions of Directive 2004/38, is compatible with the principle of equal treatment guaranteed by EU law

However, the competent national authorities must check that a refusal to grant such social assistance does not expose the Union citizen and his or her children to a risk of infringement of their rights enshrined in the Charter of Fundamental Rights of the European Union, in particular the respect for human dignity

CG, who has dual Croatian and Netherlands nationality, has lived in the United Kingdom since 2018 but has not carried out any economic activity there. She lived there with her partner, a Netherlands national, and their two children before moving to a women's refuge. CG has no resources.

On 4 June 2020, the Home Office (United Kingdom) granted her a temporary right of residence in the United Kingdom on the basis of a new UK scheme applicable to Union citizens residing in the United Kingdom, established in the context of the withdrawal of the United Kingdom from the European Union. The grant of such a right of residence is not subject to any condition as to resources.

On 8 June 2020, CG lodged with the Department for Communities in Northern Ireland an application for the social assistance benefit known as Universal Credit. That application was refused on the ground that the Universal Credit Regulations exclude Union citizens with a right of residence granted on the basis of the new scheme from the category of potential beneficiaries of Universal Credit.

CG challenged that refusal before the Appeal Tribunal (Northern Ireland), arguing, inter alia, that there was a difference in treatment between Union citizens residing legally in the United Kingdom and UK nationals. That court decided to refer to the Court of Justice a question concerning the potential incompatibility of the UK Universal Credit Regulations with the prohibition of discrimination on grounds of nationality, laid down in the first paragraph of Article 18 TFEU.

The Court of Justice, sitting as the Grand Chamber, finds that the UK legislation is compatible with the principle of equal treatment laid down by Article 24 of Directive 2004/38,¹ while requiring the competent national authorities to check that a refusal to grant social assistance based on that legislation does not expose the Union citizen and his or her children to an actual and current risk of infringement of their fundamental rights, as enshrined in the Charter of Fundamental Rights of the European Union.

Findings of the Court

¹ 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).

Since the request by the referring court for a preliminary ruling was referred before the end of the transition period, that is to say, before 31 December 2020, the Court has jurisdiction to give a preliminary ruling on that request, pursuant to Article 86(2) of 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.²

The Court sets out, first, the provisions of EU law that are applicable in the present case and concludes that the question as to whether CG faces discrimination on grounds of nationality must be assessed in the light of Article 24 of Directive 2004/38, and not in that of Article 18 TFEU, since the first of those articles gives specific expression to the principle of non-discrimination on grounds of nationality enshrined among others in the second, in relation to Union citizens who exercise their right to move and reside within the territory of the Member States.

After finding that the Universal Credit at issue must be categorised as social assistance, within the meaning of that directive, the Court notes that access to those benefits is reserved for Union citizens who meet the requirements set out in Directive 2004/38. In that regard, the Court recalls that, by virtue of Article 7 of that directive, the obligation, for an economically inactive Union citizen, to have sufficient resources constitutes a requirement in order for that person to enjoy a right of residence for longer than three months but less than five years.

Next, the Court confirms its case-law to the effect that a Member State has the possibility, pursuant to that article, of refusing to grant social benefits to economically inactive Union citizens who, like CG, exercise their right of free movement and do not have sufficient resources to claim a right of residence under that directive. The Court states that, in the context of the specific examination of the economic situation of each person concerned, the benefits claimed are not taken into account in order to determine whether the person in question has sufficient resources.

The Court stresses, moreover, that, in accordance with its Article 37, Directive 2004/38 does not prevent the Member States from establishing more favourable rules than those laid down by that directive. A right of residence granted on the basis of national law alone, as is the case in the dispute in the main proceedings, cannot in any way be regarded as being granted 'on the basis of' that directive.

Nevertheless, CG made use of her fundamental freedom to move and reside in the territory of the Member States, laid down by the Treaty, with the result that her situation comes within the scope of EU law, even though her right to reside derives from UK law, which has established more favourable rules than those laid down by Directive 2004/38. The Court holds that, where they grant a right of residence such as that at issue in the main proceedings, without relying on the conditions and limitations in respect of that right laid down by Directive 2004/38, the authorities of the host Member State implement the provisions of the FEU Treaty on Union citizenship, which is destined to be the fundamental status of nationals of the Member States.

In accordance with Article 51(1) of the Charter of Fundamental Rights, those authorities are thus obliged, when examining an application for social assistance such as that made by CG, to comply with the provisions of that Charter, in particular with Articles 1 (human dignity), 7 (respect for private and family life) and 24 (the rights of the child). 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.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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² OJ 2020 L 29, p. 7.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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