



Overview of judgments by Court of Justice of the European Union on EU citizenship

JUST/2021/OP/0002

Written by VVA
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European Commission

Directorate-General Justice and Consumers (JUST),
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ECONOMICS & POLICY

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List of acronyms and abbreviations

Acronym/ Abbreviation	The text for the abbreviation used
Charter	Charter of Fundamental Rights of the European Union
CJEU	Court of Justice of the European Union
EU	European Union
EP	European Parliament
ECI	European Citizens' Initiative
TFEU	Treaty on the Functioning of the European Union
TEU	Treaty on European Union

1 Executive summary

This overview of judgments by the Court of Justice of the European Union (CJEU) on EU citizenship covers CJEU case-law for the period from 30 June 2020 to 25 August 2023. It reviews the provisions from Part II of the TFEU regarding:

- i. Non-discrimination on grounds of nationality (Article 18 TFEU);
- ii. Combating discrimination on the basis of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (Article 19 TFEU);
- iii. Citizenship of the Union (Article 20(1) TFEU);
- iv. Right to move and reside freely in the territory of the Member States (Articles 20(2) and 21 TFEU);
- v. Right to vote and stand as a candidate in municipal and European Parliament elections (Articles 20(2)(b) and 22 TFEU);
- vi. European Citizens' Initiative (Art. 24 TFEU, Art. 11(4) TEU);
- vii. Right to consular protection (Art. 20(2)(c) and Art. 23 TFEU); and
- viii. Right to petition to EP and address Ombudsman/right to address institutions (Art. 20(d) TFEU, Art. 24(2), (3) and (4)).

It is based on an analysis of a total of 47 court decisions identified as relevant for the subject matter and distributed across topics in the following manner:

- i. Non-discrimination on grounds of nationality (Article 18 TFEU) – 5 decisions were identified as having been issued on the subject and [3] were considered as relevant;
- ii. Combating discrimination on the basis of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (Article 19 TFEU) – 4 decisions were identified as having been issued on the subject and [4] considered as relevant;
- iii. Citizenship of the Union (Article 20(1) TFEU) – 8 decisions were identified as having been issued on the subject and [6] considered as relevant;
- iv. Right to move and reside freely in the territory of the Member States (Articles 20(2) and 21 TFEU) – 23 decisions were identified as having been issued on the subject and [18]¹ considered as relevant;
- v. Right to vote and stand as a candidate in municipal and European Parliament elections (Articles 20(2)(b) and 22 TFEU) – no decisions were identified as having been issued on the subject²;
- vi. European Citizens' Initiative (Art. 24 TFEU, Art. 11(4) TEU) – 3 decisions were identified as having been issued on the subject and [2] considered as relevant;
- vii. Right to consular protection (Art. 20(2)(c) and Art. 23 TFEU) – 4 decisions were identified as having been issued on the subject, but none considered as relevant;
- viii. Right to petition to EP and address Ombudsman/right to address institutions (Art. 20(d) TFEU, Art. 24(2), (3) and (4)) - no decisions were identified as having been issued on the subject.

¹ This number includes cases on residence rights derived from EU citizenship based on Article 20 TFEU.

² Case C-673/20EP v Préfet du Gers and Institut national de la statistique et des études économiques (INSEE) is considered relevant under Citizenship of the Union and summary has been provided in sub-section 'Loss of EU citizenship due to loss of nationality of a Member State'. However, the section on the 'Right to vote and stand as a candidate in municipal and European Parliament elections (Articles 20(2)(b) and 22 TFEU)' contains short summary of the case focusing only on election related elements.

One of the main highlights for the period is the decision on the Case C-490/20 *V.M.A. v. Stolichna Obshtina, rayon Pancharevo* issued under Art. 21 TFEU, which clarified that, if one parent is an EU citizen, all Member States have to recognise the parent-child relationship as established in the birth certificate drawn up by a Member State for the purposes of the exercise of the rights enjoyed under EU law, without any additional formality. This applies regardless of the status of such a relationship in the law of other Member States and particularly the Member State(s) of nationality of the child.

Another interesting aspect of the case-law from the examined period are the decisions of the Court adopted on the impact of the withdrawal of the United Kingdom from the EU on EU citizenship. Three cases (i.e. C-499/21 P *Silver and Others v Council*³, C-501/21 P *Shindler and Others v Council*⁴ and C-502/21 P *David Price v Council*⁵) had been brought forward by UK nationals residing in the UK and EU Member States and demanding the full or partial annulment of Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion 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 (OJ L 029, 31 January 2020). They claimed that the Council's decision had deprived them of the rights they had exercised and acquired as EU citizens. Like the General Court before it, the CJEU ruled that the loss of EU rights is an "*automatic consequence of the sole sovereign decision taken by the United Kingdom to withdraw from the European Union, and not of the withdrawal agreement or the Council's decision.*" With this, the Court refused to divert from the wording of Article 20(1) TFEU according to which EU citizenship requires the possession of the nationality of a Member State, without replacing it, and as such is an automatic consequence of the citizenship of a particular Member State. Additionally, the Court clarified in the case C-673/20 *EP v Préfet du Gers and Institut national de la statistique et des études économiques (INSEE)*, that after the withdrawal of the United Kingdom from the European Union, UK nationals who exercised their right to reside in a Member State before the end of the transition period, do not have the guaranteed right to vote and to stand as a candidate in municipal elections in the Member State of residence.

Case C-118/20 *JY v Wiener Landesregierung*⁶ is another judgment that is highlighted in this report as it tackles the relationship between Member State nationality and EU citizenship. The case builds on the two previous judgments *Rottmann* and *Tjebbes*, in which the CJEU was confronted with the question whether EU law imposed limits on the competence of national authorities withdrawing the nationality of a Member State in situations where the status of EU citizen is equally lost. In *JY v Wiener Landesregierung*, the Court concluded that a situation of a person who, having the nationality of one Member State only, renounces that nationality and loses, as a result, his or her status of EU citizen, with a view to obtaining the nationality of another Member State, following the assurance given by the authorities of the latter Member State that he or she will be granted that nationality, falls, by reason of its nature and its consequences, within the scope of EU law. Such a decision to revoke the assurance is thus subject to the principle of proportionality. In this case the Court⁷ confirmed that the principle of proportionality has not been satisfied where such a decision is based on administrative traffic offences which, under the applicable provisions of national law, give rise to a mere pecuniary penalty.⁸

³ Judgment of the Court (Eighth Chamber) of 15 June 2023, *Silver and Others v Council*, [C-499/21 P](#), EU:C:2023:479.

⁴ Judgment of the Court (Eighth Chamber) of 15 June 2023, *Shindler and Others v Council*, [C-501/21 P](#), EU:C:2023:480.

⁵ Judgment of the Court (Eighth Chamber) of 15 June 2023, *David Price v Council*, [C-502/21 P](#), EU:C:2023:482.

⁶ Judgment of the Court (Grand Chamber) of 18 January 2022, *JY v Wiener Landesregierung*, C-118/20, EU:C:2022:34.

⁷ The Court has relied on the prior case-law: judgments of 2 March 2010, *Rottmann*, [C-135/08](#), EU:C:2010:104, para.55 and 56, and of 12 March 2019, *Tjebbes and Others*, [C-221/17](#), EU:C:2019:189, para. 40.

⁸ Judgment of the Court (Grand Chamber) of 18 January 2022, *JY v Wiener Landesregierung*, [C-118/20](#), EU:C:2022:34, para. 74.

2 Methodology

The methodology section outlines the approach, techniques and procedures employed to conduct this study and analyse the judgments related to EU citizenship and non-discrimination issued by the CJEU in order to outline the key developments in the field of:

- i. Non-discrimination on grounds of nationality (Article 18 TFEU);
- ii. Combating discrimination on the basis of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (Article 19 TFEU);
- iii. Citizenship of the Union (Article 20(1) TFEU);
- iv. Right to move and reside freely in the territory of the Member States (Articles 20(2) and 21 TFEU);
- v. Right to vote and stand as a candidate in municipal and European Parliament elections (Articles 20(2)(b) and 22 TFEU);
- vi. European Citizens' Initiative (Art. 24 TFEU, Art. 11(4) TEU);
- vii. Right to consular protection (Art. 20(2)(c) and Art. 23 TFEU); and
- viii. Right to petition to EP and address Ombudsman/right to address institutions (Art. 20(d) TFEU, Art. 24(2), (3) and (4)).

The time frame of the search covers the period from 30 June 2020 to 25 August 2023.

The CJEU judgments were accessed and collected from the Curia database as available at <https://curia.europa.eu/>. For accuracy, the experts have also cross-checked the data obtained thereby with the one available on EUR-Lex search engine for verification purposes.

The criteria selected for the search consisted of exploring relevant case-law under "subject matter". Under this criterion the study team has searched the following items: "Citizenship of the Union", "non-discrimination", "Freedom of establishment", "Freedom of movement for workers".

Furthermore, the search has been performed on the basis of the relevant articles of TFEU. The experts have screened the CJEU judgments by using the filter "Article X TFEU" and thus including all relevant TFEU articles: 18, 19, 20, 20(1), 20(2)(b), 20(2)(c), 20(2)(d), 21, 22, 23 and 24 for the corresponding period.

To ensure reliability and to verify the information, the team has reviewed and compared the search results with the Monthly Case-law Digest of CJEU from year 2023 to 2021⁹, the Court's Annual Reports for the years 2022, 2021, 2020¹⁰, as well as the yearly selection of major judgments.¹¹ The team has also checked the information when it was only available in French.

⁹ Available at: https://curia.europa.eu/jcms/jcms/p1_3471594/en/

¹⁰ Available at: https://curia.europa.eu/jcms/jcms/Jo2_7000/en/

¹¹ Available at: https://curia.europa.eu/jcms/jcms/p1_3874044/en/

3 Overview of the CJEU case-law on EU citizenship rights

The Treaty on the Functioning of the European Union (TFEU) in its Part II sets out the foundational principles of non-discrimination, free movement, and political rights within the context of EU citizenship.

The study team has thus collected the corresponding case-law that encompasses the mentioned principles for the period from 30 June 2020 to 25 August 2023 spread as follows:

- Non-discrimination (Articles 18 and 19 TFEU);
- EU citizenship and nationality (Article 20 TFEU);
- Free movement of persons (Articles 20 and 21 TFEU)¹²;
- Political rights (Articles 22 and 24 TFEU); and
- European Citizens' Initiative (Article 24 TFEU, Article 11(4) TEU).

A number of cases has been detected where the decision was issued on the basis of the specific topics and on the grounds of Articles 18-24 TFEU. These judgments hold particular significance for EU citizenship rights, and they have been summarized under the relevant topics in Section 4. Others have a limited impact and only refer to the TFEU articles by confirming prior CJEU decisions and case-law. Both of these have been listed under the table below, whereas the comments provided focus on those that contribute to the development of EU law in the field of EU citizenship.

3.1 List of CJEU judgments related to Citizenship rights

The table below provides an exhaustive list of the 47 judgments by the CJEU that are related to the EU citizenship rights topics. The list covers decisions issued from 30 June 2020 till the date of finishing the present study, i.e. 25 August 2023. The cases that have been found relevant and summarized in the report are highlighted in light grey. Each listed case contains a clickable link to the judgment published in the InfoCuria Case-law database for ease of reference.

Table 1: List of judgments of CJEU

Case No	Date of the judgment	Title of the case	Subject-matter	TFEU/TEU article
C-339/21	16 March 2023	Colt Technology Services SpA and Others v Ministero della Giustizia and Others	Non-discrimination on grounds of nationality	Article 18 TFEU
C-237/21	22 December 2022	Generalstaatsanwaltschaft München v S.M.	Non-discrimination on grounds of nationality	Article 18 TFEU

¹² This report does not address several cases which are, while not based on Article 21 TFEU or on the Free Movement Directive, still relevant in the context of the exercise of free movement during the COVID-19 pandemic. They concern in particular the EU Digital COVID Certificate Regulation (Regulation (EU) 2021/953). These are T-527/21 (Abenante and Others v Parliament and Council), T-101/22 (OG and Others v Commission), T-103/22 (ON v European Commission) and T-503/21 (Lagardère, unité médico-sociale v Commission).

Case No	Date of the judgment	Title of the case	Subject-matter	TFEU/TEU article
C-522/20	2 October 2022	OE v VY	Non-discrimination on grounds of nationality	Article 18 TFEU
T-259/20	17 February 2021	Ryanair DAC v European Commission	Non-discrimination on grounds of nationality	Article 18 TFEU
C-398/19	17 December 2020	Generalstaatsanwaltschaft Berlin v BY	Non-discrimination on grounds of nationality	Article 18 TFEU
C-587/20	2 June 22	A v HK/Danmark and HK/Privat	Non-discrimination on the basis of age	Article 19 TFEU
C-344/20	13 October 22	L.F. v S.C.R.L.	Non-discrimination on the basis of religion or belief	Article 19 TFEU
Joined Cases C-804/18 and C-341/19	15 July 2021	IX v WABE eV and MH Müller Handels GmbH v MJ	Non-discrimination on the basis of religion or belief	Article 19 TFEU
C-356/21	12 January 2023	J.K. v TP S.A	Non-discrimination on the basis of sexual orientation	Article 19(1) TFEU
C-528/21	27 April 2023	M.D. v Országos Idegenrendészeti Főigazgatóság Budapesti és Pest Megyei Regionális Igazgatósága	Citizenship of the Union – Free movement of persons	Article 20 TFEU
C-624/20	9 July 2022	E.K. v Staatssecretaris van Justitie en Veiligheid	Citizenship of the Union – Free movement of persons	Article 20 TFEU
C-459/20	22 June 2023	X v Staatssecretaris van Justitie en Veiligheid	Citizenship of the Union – Free movement of persons	Article 20 TFEU
Joined cases C-451/19 and C-532/19	5 May 2022	Subdelegación del Gobierno en Toledo v XU and QP	Citizenship of the Union – Free movement of persons	Article 20 TFEU
C-285/22 P	6 July 2023	Julien v Council	Citizenship of the Union	Article 20(1) TFEU
C-502/21 P	15 June 2023	David Price v Council of the European Union	Citizenship of the Union	Article 20(1) TFEU

Case No	Date of the judgment	Title of the case	Subject-matter	TFEU/TEU article
C-501/21 P	15 June 2023	Shindler and Others v Council	Citizenship of the Union	Article 20(1) TFEU
C-499/21 P	15 June 23	Silver and Others v Council	Citizenship of the Union	Article 20(1) TFEU
C-118/20	18 January 2022	JY v Wiener Landesregierung	Citizenship of the Union	Article 20(1) TFEU
C-85/21	15 March 2022	WY v Steiermärkische Landesregierung	Citizenship of the Union	Article 20(1) TFEU
C-112/20	11 March 2021	Belgian State Retour du parent d'un mineur	Citizenship of the Union	Article 20(1) TFEU
C-673/20	6 September 2022	EP v Préfet du Gers and Institut national de la statistique and des études économiques	Citizenship of the Union - Right to vote	Articles 20 and 22 TFEU
C-49/22	8 June 2023	Austrian Airlines AG v TW	Consular protection	Article 20(2)(c) TFEU
C-1/23	18 April 2023	Afrin	Consular protection	Article 20(2)(c) TFEU
C-347/21	15 September 2022	DD (Rétération de l'audition d'un témoin)	Consular protection	Article 20(2)(c) TFEU
C-660/21	22 June 2023	K.B. and F.S. (Relevé d'office dans le domaine pénal)	Consular protection	Article 20(2)(c) TFEU
C-709/20	15 July 2021	CG v The Department for Communities in Northern Ireland	Free movement of persons	Article 21 TFEU
C-576/20	7 July 2022	CC v Pensionsversicherungsanstalt	Free movement of persons	Article 21 TFEU
C-490/20	14 December 2021	V.M.A. v Stolichna obshtina, rayon „Pancharevo“	Free movement of persons	Article 21 TFEU
C-411/20	1 August 2022	S v Familienkasse Niedersachsen-Bremen der Bundesagentur für Arbeit	Free movement of persons	Article 21 TFEU
C-247/20	10 March 2022	VI v Commissioners for Her Majesty's Revenue and Customs	Free movement of persons	Article 21 TFEU
C-168/20	11 November 2021	BJ and OV v Mrs M and Others	Free movement of persons	Article 21 TFEU

Case No	Date of the judgment	Title of the case	Subject-matter	TFEU/TEU article
C-35/20	6 October 2021	Syyttäjä v A	Free movement of persons	Article 21 TFEU
C-930/19	2 September 2021	X v Belgian State	Free movement of persons	Article 21 TFEU
C-719/19	22 June 2021	FS v Staatssecretaris van Justitie en Veiligheid	Free movement of persons	Article 21 TFEU
C-718/19	22 June 2021	Ordre des barreaux francophones et germanophone, Association pour le droit des Étrangers ASBL, Coordination et Initiatives pour et avec les Réfugiés et Étrangers ASBL, Ligue des Droits de l'Homme ASBL, Vluchtelingenwerk Vlaanderen ASBL v Conseil des ministres	Free movement of persons	Article 21 TFEU
C-535/19	15 July 2021	A v Latvijas Republikas Veselības ministrija (Soins de santé public)	Free movement of persons	Article 21 TFEU
C-505/19	12 May 2021	WS v Bundesrepublik Deutschland	Free movement of persons	Article 21 TFEU
C-454/19	19 November 2020	Staatsanwaltschaft Heilbronn vs ZW	Free movement of persons	Article 21 TFEU
C-181/19	6 October 2020	Jobcenter Krefeld	Free movement of persons	<i>Directive 2004/38/EC</i>
C-22/21	15 September 2022	SRS and AA v Minister for Justice and Equality	Free movement of persons	<i>Directive 2004/38/EC</i>
C-2/21	24 June 2022	Rzecznik Praw Obywatelskich	Free movement of persons	Article 21 TFEU
C-394/19	12 October 2020	CPAS d'Anderlecht	Free movement of persons	<i>Directive 2004/38/EC</i>
C-710/19	17 December 2020	GMA Demandeur d'emploi	Free movement of persons	<i>Directive 2004/38/EC</i>
C-817/19	21 June 2022	Ligue des droits humains	Free movement of persons	Article 21 TFEU
T-158/21	9 November 2022	Citizens' Committee of the European Citizens' Initiative 'Minority SafePack – one million signatures for diversity in Europe' v European Commission	European Citizens' Initiative	Article 24 TFEU and 11 TEU
C-899/19 P	20 January 2022	Romania v European Commission, Hungary	European Citizens' Initiative	Article 24 TFEU and 11 TEU

Case No	Date of the judgment	Title of the case	Subject-matter	TFEU/TEU article
T-495/19	10 November 2021	Romania v European Commission	European Citizens' Initiative	Article 24 TFEU and 11 TEU

The CJEU adjudicated on 47 cases concerning EU citizenship rights, that cover articles 18, 19, 20, 21, 22, and 24 TFEU and 11(4) TEU. Some of the examined decisions include reference to more than 1 of the above articles and encompass Court interpretation of equal importance on numerous grounds relevant for this study. For precision though, these judgments are counted merely once and are included in the above list as relevant for their first (main) topic.

Topics where no relevant case-law has been found are:

- Right to consular protection (Article 20(2)(c) and Article 23 TFEU); and
- Right to petition to EP and address Ombudsman/right to address institutions (Article 20(d) TFEU, Article 24(2), (3) and (4)).

4 CJEU case-law per specific topic

This chapter provides more detailed explanations as well as case-law developments on the specific topics under the Citizenship rights. These topics are listed below:

- Non-discrimination on grounds of nationality (Article 18 TFEU);
- Combating discrimination on the basis of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (Article 19 TFEU);
- Citizenship of the Union (Article 20(1) TFEU);
- Right to move and reside freely in the territory of the Member States (Articles 20(2) and 21 TFEU);
- Right to vote and stand as a candidate in municipal and European Parliament elections (Articles 20(2)(b) and 22 TFEU); and
- European Citizens' Initiative (Article 24 TFEU, Article 11(4) TEU).

4.1 Non-discrimination on grounds of nationality (Article 18 TFEU)

4.1.1 Introduction

Article 18(1) TFEU prohibits any discrimination against EU citizens on grounds of nationality.

In the period covered by this report 30 June 2020 to 25 August 2023, the Court has issued 5 judgments on this subject matter of which 3 were identified as key with respect to non-discrimination on grounds of nationality. These decisions dealt with the treatment of mobile EU citizens in cases of extradition, and the residency requirements a Member State may adopt in order for its courts to gain jurisdiction in matrimonial matters and the matters of parental responsibility, and whether those may differ from the applicable ones to its own nationals.

4.1.2 Case-law developments

4.1.2.1 Non-discrimination on grounds of nationality and extradition of mobile EU citizens

When it comes to non-discrimination on the basis of nationality and extradition to a third country of EU citizens residing in a Member State other than the Member State of their nationality, we can single out the case **C-237/21 *Generalstaatsanwaltschaft München v S.M***¹³ and the case **C-398/19 *Generalstaatsanwaltschaft Berlin v BY***¹⁴. In each case, the issue at hand was the interaction between national rules precluding the extradition of the host Member State's own nationals and the EU principle of non-discrimination of EU citizens on grounds of nationality.

The case **C-237/21 *Generalstaatsanwaltschaft München v S.M*** concerns the extradition of an EU citizen for the purpose of enforcing a custodial sentence. As a preliminary issue, the Court clarified that the fact that the EU citizen held also the nationality of the third country which made the extradition request could not prevent the EU citizen from asserting the rights and freedoms guaranteed by Articles 18 and 21 TFEU¹⁵. Then, the Court, referred to its previous case-law¹⁶ and confirmed that if the rules on extradition of a Member State introduce a difference in treatment between its nationals and nationals of other Member States permanently residing in its territory by prohibiting only the extradition of its own nationals, that Member State is under an obligation to ascertain whether there is an alternative measure to extradition that is less prejudicial to the exercise of the freedom of movement and residence of an EU citizen who is a permanent resident of that Member State¹⁷. In the case at stake, according to national law of the requested Member State, the individual concerned could serve his sentence in its territory if the third State which made the request for extradition consented to that.

Thus, where the application of such an alternative to extradition consists in EU citizens being able to serve their sentence in that Member State under the same conditions as its own nationals, but such application is conditional upon obtaining the consent of the requesting third State, the requested Member State should actively seek the consent of that third State and use all the mechanisms for cooperation and assistance in criminal matters which are available to it¹⁸. If the third State which made the request for extradition consents to the custodial sentence being enforced in the territory of the requested Member State, that Member State will be in a position to allow EU citizens who reside permanently in its territory to serve their sentence there, and thus to ensure that they are treated in the same way as its own nationals. If such consent is not obtained, the extradition of the person would constitute a justified restriction to the right to move and reside, so far as the extradition itself does not infringe obligations under the Charter of Fundamental Rights of the European Union.¹⁹

In the case **C-398/19 *Generalstaatsanwaltschaft Berlin v BY***²⁰ an extradition request, for the purposes of criminal prosecution of a dual Ukrainian and Romanian national living in

¹³ Judgement of the Court (Grand Chamber) of 22 December 2022, *Generalstaatsanwaltschaft München v S.M.*, [C-237/21](#), EU:C:2022:1017.

¹⁴ Judgement of the Court (Grand Chamber) of 17 December 2020, *BY*, [C-398/19](#), EU:C:2020:1032.

¹⁵ Judgement of the Court (Grand Chamber) of 22 December 2022, *Generalstaatsanwaltschaft München v S.M.*, [C-237/21](#), EU:C:2022:1017, para. 31.

¹⁶ See: Judgment of the Court (Grand Chamber) of 13 November 2018, *Raugeivicius*, [C-247/17](#), EU:C:2018:898.

¹⁷ Judgement of the Court (Grand Chamber) of 22 December 2022, *Generalstaatsanwaltschaft München v S.M.*, [C-237/21](#), EU:C:2022:1017, para. 31.

¹⁸ Judgement of the Court (Grand Chamber) of 22 December 2022, *Generalstaatsanwaltschaft München v S.M.*, [C-237/21](#), EU:C:2022:1017, para. 35-42.

¹⁹ Judgment of the Court (Grand Chamber) of 2 April 2020, *I.N. v Ruska Federacija*, [C-897/19 PPU](#), EU:C:2020:262.

²⁰ Judgement of the Court (Grand Chamber) of 17 December 2020, *Generalstaatsanwaltschaft Berlin v BY*, [C-398/19](#), EU:C:2020:1032, para. 28.

Germany, was filed by the Ukrainian authorities. The citizen in question had moved from Ukraine to Germany, at a time when he did not possess EU citizenship. As a follow up to its *Petruhhin* judgment²¹, the Court clarifies the obligations incumbent on the Member States in the exchanging of information in the framework of an extradition request. The Court also held that Articles 18 and 21 TFEU are applicable to the situation of an EU citizen-who has acquired the nationality of a Member State, and, therefore, EU citizenship, after having moved to another Member State.²²

In particular, the Court confirmed that priority must be given to informing the offender's Member State of the request for extradition to afford the authorities of that Member State the opportunity to issue a European arrest warrant for the purposes of prosecution.²³ However, neither the Member State from which extradition is requested nor the Member State of which the requested EU citizen is a national are obliged to ask the third State requesting extradition to send to them a copy of the criminal investigation file in order to enable the Member State of which that person is a national to assess the possibility that it might itself conduct a criminal prosecution of that person. Moreover, the host Member State does not have a duty to refuse extradition and take charge of the prosecution even if admissible under its national law.²⁴

See also Case **C-505/19 *WS v Bundesrepublik Deutschland*** (under Section 4.4.2.5).

4.1.2.2 Non-discrimination on grounds of nationality and rules on jurisdiction

When it comes to non-discrimination on the basis of nationality and the question of court jurisdiction, the Court issued a judgment in the case **C-522/20 *OE v VY***²⁵. The matter concerned a couple, married in Ireland, where they had their habitual residence. After their split, one of the husbands changed residence to Austria in whose courts the divorce papers were filed. The issue at hand concerned whether national requirements for holding a residence of a minimum period for the courts of a particular Member State (Austria in the case) to gain jurisdiction are discriminatory in the context of matrimonial matters and parental responsibilities. The Court was called to provide clarification in light of the Regulation No 2201/2003²⁶ ("Brussels IIa Regulation") and the national rules on a minimum period of stay of 6 months for the rules on court jurisdiction to apply. In this context, CJEU established that article 18 must be interpreted as meaning that the requirement for a minimum period of residence for the purposes of granting jurisdiction to the courts of the host Member State should not be considered a case of discrimination based on nationality.²⁷ The Court reasoning concluded that differentiated rules on court jurisdiction in cases of nationals of that particular Member State as opposed to non-nationals, who must reside in that country for a minimum period, are justifiable on the account of the need to establish a real link with the Member State whose courts exercise jurisdiction to rule on the dissolution of the matrimonial ties concerned.²⁸ According to the Court, a person who is a national of a Member State does not only have institutional and legal ties with that Member State but "as a general rule" also "cultural, linguistic, social, family or property ties".²⁹

²¹ Judgment of the Court (Grand Chamber) of 6 September 2016, Aleksei Petruhhin, [C-182/15](#), EU:C:2016:630.

²² Judgement of the Court (Grand Chamber) of 17 December 2020, Generalstaatsanwaltschaft Berlin v BY, [C-389/19](#), EU:C:2020:1032, para. 31.

²³ Judgement of the Court (Grand Chamber) of 17 December 2020, Generalstaatsanwaltschaft Berlin v BY, [C-389/19](#), EU:C:2020:1032, para. 43-47.

²⁴ Judgement of the Court (Grand Chamber) of 17 December 2020, Generalstaatsanwaltschaft Berlin v BY, [C-389/19](#), EU:C:2020:1032, para. 67.

²⁵ Judgment of the Court (Third Chamber) of 10 February 2022, *OE v VY*, [C-522/20](#), EU:C:2022:87.

²⁶ Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1).

²⁷ Judgment of the Court (Third Chamber) of 10 February 2022, *OE v VY*, [C-522/20](#), EU:C:2022:87, para. 19 - 21.

²⁸ Judgment of the Court (Third Chamber) of 10 February 2022, *OE v VY*, [C-522/20](#), EU:C:2022:87, para. 38-44.

²⁹ Judgment of the Court (Third Chamber) of 10 February 2022, *OE v VY*, [C-522/20](#), EU:C:2022:87, para. 31.

4.2 Combating discrimination on the basis of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (Article 19 TFEU)

4.2.1 Introduction

Article 19 TFEU provides that the EU may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.³⁰ Within the timeframe of 30 June 2020 to August 2023 the Court handled 4 cases in respect of non-discrimination on the basis of religion or belief, age and sexual orientation, which are all presented below.

4.2.2 Case-law developments

4.2.2.1 Non-discrimination on the basis of religion or belief

Regarding the freedom of religion, the Court found that an internal rule of prohibiting the visible wearing of religious, philosophical or spiritual signs does not constitute direct discrimination if it is applied to all workers in a general and undifferentiated way. This has been confirmed in the judgment **C-344/20 L.F. v S.C.R.L.**³¹ where the Court ruled that religion and belief must be regarded as a single ground of discrimination, covering both religious belief and philosophical or spiritual belief, otherwise the general framework for equal treatment in employment and occupation provided for by EU law will be undermined.³² Indeed, the judgment of the Court explicitly states that Article 1 of Directive 2000/78 of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (“Equality Framework Directive”) refers to ‘religion’ and ‘belief’ together, as does the wording of various provisions of primary EU law, namely Article 19 TFEU, according to which the EU legislature may take appropriate action to combat discrimination based on, inter alia, ‘religion or belief’.³³

In a similar judgment in the joined cases **C-804/18 and C-341/19 IX v WABE eV and MH Müller Handels GmbH v MJ**³⁴ two employees of companies governed by German law wore an Islamic headscarf at their respective workplaces. In both cases, the employees were subject to instructions and warnings against displaying any major signs of political, philosophical or religious beliefs, and were told not to wear their headscarves. The Court stated that a prohibition on wearing any visible form of expression of political, philosophical or religious beliefs in the workplace may be justified by the employer's need to present a neutral image towards customers or to prevent social disputes. However, it added that such obligation cannot put persons adhering to a particular religion or belief at a particular disadvantage.³⁵ In any case, the justification of such prohibition must correspond to a genuine need from the employer, and national courts should take into account the specific context of their Member State when weighting the rights and interests at issue.³⁶

³⁰ See also Article 21(1) of the Charter of Fundamental Rights.

³¹ Judgement of the Court (Second Chamber) of 13 October 2022, L.F. v S.C.R.L., [C-344/20](#), EU:C:2022:774, para. 33. See also judgment of 14 March 2017, G4S Secure Solutions, [C-157/15](#), EU:C:2017:203, paragraphs 30 and 32.

³² [See press release](#).

³³ Judgement of the Court (Second Chamber) of 13 October 2022, L.F. v S.C.R.L., [C-344/20](#), EU:C:2022:774, para. 25

³⁴ Judgement of the Court (Grand Chamber) of 15 July 2021, IX v WABE eV and MH Müller Handels GmbH v MJ, [Joined Cases C-804/18 and C-341/19](#), EU:C:2021:594, para. 52.

³⁵ Judgement of the Court (Grand Chamber) of 15 July 2021, IX v WABE eV and MH Müller Handels GmbH v MJ, [Joined Cases C-804/18 and C-341/19](#), EU:C:2021:594, para. 44.

³⁶ See: <https://www.europeansources.info/record/joined-cjeu-cases-c-804-18-c-341-19-wabe-and-mh-muller-handel/>

4.2.2.2 Non-discrimination on the basis of age

As per the case **C-587/20 A v HK Danmark and HK/Privat**³⁷ it has been ruled that an age limit laid down in the articles of association of an employees' organisation to be eligible for the post of president of that organisation is discriminatory on the basis of age.³⁸ Indeed, an individual born in 1948 was recruited in 1978 as a trade union officer by a local branch of a Danish workers' organization, and subsequently elected as president. Although political, this position had certain elements that were characteristic of a job (full time employment, monthly salary and paid holidays). At the age of 63, the individual had exceeded the age limit provided in the association's statutes for standing for re-election to the presidency. Following a complaint, the Danish Equal Treatment Commission ruled that prohibiting the individual from standing for re-election to the presidency on the grounds of her age was contrary to the Danish Anti-Discrimination Act. As a result of the failure to comply with that decision, the Court of Appeal held that the resolution of the dispute depended on whether, as the elected chair of the worker's organization and a member of its political staff, the individual fell within the scope of the Equality Framework Directive³⁹. In its ruling, the Court confirmed the opinion of the Advocate General that the Equality Framework Directive, being legally based on Article 19(1) TFEU, aims at eliminating, on grounds of social and public interest, all obstacles based on discriminatory grounds to access to livelihoods and to the capacity to contribute to society through work, irrespective of the legal form in which it is provided.⁴⁰

4.2.2.3 Non-discrimination on the basis of sexual orientation

In the case **C-356/21 J.K. v TP S.A**⁴¹ the CJEU has ruled that sexual orientation cannot be a reason to refuse or conclude a contract with a self-employed worker⁴². In this matter, a self-employed worker and his partner published a music video on YouTube aimed at promoting tolerance towards same-sex couples. Shortly after the video went public, although J.K. had previously concluded a series of consecutive short-term contracts on a self-employed basis with the Poland's public television channel, no new contract for specific work was concluded with him. The Court in its judgment recognized the rights of self-employed persons not to be discriminated on the basis of their sexual orientation. Indeed, the Court stated that the concept of 'conditions for access to employment, self-employment and occupation' must be construed broadly, covering the access to any occupational activity, whatever the nature and characteristics of such activity.⁴³

The Court's decision thus reasserted that the Equality Framework Directive aims to eliminate, on grounds relating to social and public interest, all discriminatory obstacles to access to livelihoods and to the capacity to contribute to society through work, irrespective of the legal form in which they are provided.⁴⁴

³⁷ Judgement of the Court (Second Chamber) of 2 June 2022, A v HK Danmark and HK/Privat, [C-587/20](#), EU:C:2022:419.

³⁸ Judgement of the Court (Second Chamber) of 2 June 2022, A v HK Danmark and HK/Privat, [C-587/20](#), EU:C:2022:419, para. 54.

³⁹ See also [press release](#).

⁴⁰ Judgement of the Court (Second Chamber) of 2 June 2022, A v HK Danmark and HK/Privat, [C-587/20](#), EU:C:2022:419, para. 34.

⁴¹ Judgment of the Court (Second Chamber) of 12 January 2023, J.K. v TP S.A, [C 356/21](#), EU:C:2023:9.

⁴² See also [press release](#).

⁴³ Judgment of the Court (Second Chamber) of 12 January 2023, J.K. v TP S.A, [C 356/21](#), EU:C:2023:9, para. 36.

⁴⁴ Judgment of the Court (Second Chamber) of 12 January 2023, J.K. v TP S.A, [C 356/21](#), EU:C:2023:9, para. 43.

4.3 Citizenship of the Union (Article 20(1) TFEU)

4.3.1 Introduction

Article 20(1) TFEU provides that any person who is a national of an EU Member State is also a citizen of the Union. Furthermore, the citizenship of the Union is additional to and does not replace national citizenship.

From 30 June 2020 up to August 2023 the Court handled 8 cases in respect of EU citizenship, 6 of which are described below. These cases include loss of EU citizenship due to loss of nationality of a Member State. Cases on the topic of derived rights of residence for non-EU family members of EU citizens based on Article 20 TFEU are discussed under Section 4.4 on free movement.

4.3.2 Case-law developments

4.3.2.1 Loss of EU citizenship due to loss of nationality of a Member State

The three cases **C-499/21 P *Silver and Others v Council***⁴⁵, **C-501/21 P *Shindler and Others v Council***⁴⁶ and **C-502/21 P *David Price v Council***⁴⁷ are particularly interesting in the context of British citizens who have lost their rights as EU citizens as a result of the United Kingdom's withdrawal from the EU⁴⁸. The three actions were brought separately before the Court by British citizens that tried to challenge the EU-UK Withdrawal Agreement and the Council's decision, claiming, among other things, that those acts had deprived them of rights that they had exercised and acquired as EU citizens. The Court rejected these actions and confirmed that the loss of the status of citizen of the European Union, and consequently the loss of the rights attached to that status, is an automatic consequence of the sole sovereign decision taken by the United Kingdom to withdraw from the European Union, and not of the withdrawal agreement or the Council's decision.⁴⁹

Another case on the loss of EU citizenship worth mentioning is **C-118/20 *JY v Wiener Landesregierung***.⁵⁰ In this matter, an Estonian national voluntarily renounced her Estonian nationality after having obtained assurances as to the grant of Austrian nationality. However, due to several administrative offences the Austrian competent authority later revoked its assurance as to the grant of Austrian nationality. The Court in its judgment confirmed that the loss of the status of EU citizen falls, by reason of its nature and its consequences, within the scope of EU law where the assurance as to the grant of another Member State nationality is revoked with the effect of preventing that person from recovering the status of EU citizen. Although it is ascertained that the Member States hold exclusive competence to establish the rules for the acquisition or loss of nationality, the authorities of the naturalising Member State must take into account the EU law principle of proportionality when seeking to revoke a previously given assurance as to the grant of the host Member State's nationality. In this case the Court⁵¹ confirmed that the principle of proportionality has not been satisfied where such a decision is based on administrative

⁴⁵ Judgment of the Court (Eighth Chamber) of 15 June 2023, *Silver and Others v Council*, [C-499/21 P](#), EU:C:2023:479.

⁴⁶ Judgment of the Court (Eighth Chamber) of 15 June 2023, *Shindler and Others v Council*, [C-501/21 P](#), EU:C:2023:480.

⁴⁷ Judgment of the Court (Eighth Chamber) of 15 June 2023, *David Price v Council*, [C-502/21 P](#), EU:C:2023:482.

⁴⁸ For loss of EU citizenship and loss of rights as EU citizens see also: Judgment of 9 June 2022, *EP v Préfet du Gers and Institut national de la statistique et des études économiques (INSEE)*, [C-673/20](#), EU:C:2022:449.

⁴⁹ Judgment of the Court (Eighth Chamber) of 15 June 2023, *Silver and Others v Council*, [C-499/21 P](#), EU:C:2023:479, para. 46 and 47; Judgment of the Court (Eighth Chamber) of 15 June 2023, *Shindler and Others v Council*, [C-501/21 P](#), EU:C:2023:480, para. 69 and 70; Judgment of the Court (Eighth Chamber) of 15 June 2023, *David Price v Council*, [C-502/21 P](#), EU:C:2023:482, para. 75 and 76.

⁵⁰ Judgment of the Court (Grand Chamber) of 18 January 2022, *JY v Wiener Landesregierung*, [C-118/20](#), EU:C:2022:34.

⁵¹ The Court has relied on the prior case-law: judgments of 2 March 2010, *Rottmann*, [C-135/08](#), EU:C:2010:104, para.55 and 56, and of 12 March 2019, *Tjebbes and Others*, [C-221/17](#), EU:C:2019:189, para. 40.

traffic offences which, under the applicable provisions of national law, give rise to a mere pecuniary penalty.⁵²

In the case **C-673/20 EP v Préfet du Gers and Institut national de la statistique et des études économiques (INSEE)**⁵³, the Court considered, in essence, the question of whether, after the withdrawal of the United Kingdom from the European Union, nationals of that State who exercised their right to reside in a Member State before the end of the transition period, have the guaranteed right to vote and to stand as a candidate in municipal elections in the Member State of residence, especially where they are deprived of the right to vote on elections held in the Member State of nationality⁵⁴. The Court ruled that, as of the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union, on 1 February 2020, nationals of that State who exercised their right to reside in a Member State before the end of the transition period no longer enjoy the status of citizen of the Union, nor, more specifically, by virtue of Article 20(2)(b) TFEU and Article 22 TFEU, the right to vote and to stand as a candidate in municipal elections in their Member State of residence, including where they are also deprived, by virtue of the law of the State of which they are nationals, of the right to vote in elections held by that State.

Finally, in the order **C-85/21, WY v Steiermärkische Landesregierung**⁵⁵ the CJEU dealt with another case concerning the loss of nationality. The case concerned WY who had acquired the Austrian nationality in 1992 after having renounced his Turkish nationality. In 2018, an Austrian court confirmed that WY had automatically lost Austrian nationality in 1994 upon reacquisition of the Turkish nationality. This means that WY ceased to be an Austrian citizen before the accession of the Austria on 1 January 1995. The Court confirmed that WY was no longer an Austrian national when the provisions on EU citizenship came into force in Austria, and thus never obtained the EU citizenship.⁵⁶ In these circumstances, the specific situation of WY does not fall within the scope of Article 20 TFEU or Article 21 TFEU⁵⁷.

4.4 Right to move and reside freely in the territory of the Member States (Articles 20(2) and 21 TFEU)

4.4.1 Introduction

Under Articles 20(2)(a) and 21 TFEU, EU citizens are entitled to move and reside freely in the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and measures adopted to give them effect.

In the period between 30 June 2020 to August 2023, the Court has delivered multiple judgements in relation to Article 21 TFEU (including its implementation through the Free Movement Directive)⁵⁸. The cases dealt, for example, with free movement and (derived)

⁵² Judgment of the Court (Grand Chamber) of 18 January 2022, *JY v Wiener Landesregierung*, [C-118/20](#), EU:C:2022:34, para. 74.

⁵³ Judgment of 9 June 2022, *EP v Préfet du Gers and Institut national de la statistique et des études économiques (INSEE)*, [C-673/20](#), EU:C:2022:449.

⁵⁴ Judgment of 9 June 2022, *EP v Préfet du Gers and Institut national de la statistique et des études économiques (INSEE)*, [C-673/20](#), EU:C:2022:449, para. 45.

⁵⁵ Order of the Court (Ninth Chamber) of 15 March 2022, *WY v Steiermärkische Landesregierung*, [C-85/21](#), EU:C:2022:192

⁵⁶ Order of the Court (Ninth Chamber) of 15 March 2022, *WY v Steiermärkische Landesregierung*, [C-85/21](#), EU:C:2022:192, para. 29.

⁵⁷ Order of the Court (Ninth Chamber) of 15 March 2022, *WY v Steiermärkische Landesregierung*, [C-85/21](#), EU:C:2022:192, para. 31.

⁵⁸ This section will not address the judgments of the CJEU based primarily on the status of 'Union worker' pursuant to Article 45 et seq. TFEU.

residence rights, entry and residence rights of “other family members”, or access to benefits and/or social assistance by mobile EU citizens.

The Court has also delivered multiple judgments on the topic of derived rights of residence for non-EU family members of EU citizens, following the Court’s line of rulings starting from Ruiz Zambrano, based on Article 20 TFEU.

4.4.2 Case-law developments

4.4.2.1 Free movement rights and (derived) residence rights

C-710/19 G.M.A. (Demandeur d’emploi)⁵⁹ concerned the right of residence of jobseekers. Article 45 TFEU and Article 14(4)(b) of Directive 2004/38/EC require the host Member State to grant the EU citizen ‘a reasonable period of time’ to look for work which, should the EU citizen decide to register as a jobseeker in the host Member State, starts from the time of registration⁶⁰. This reasonable period of time should ‘allow that person to acquaint himself or herself with potentially suitable employment opportunities and take the necessary steps to obtain employment’⁶¹. ‘During that period, the host Member State may require the jobseeker to provide evidence that he or she is seeking employment’⁶². A period of 6 months from the date of registration ‘does not appear, in principle, to be insufficient’⁶³. ‘It is only after the reasonable period of time has elapsed that the jobseeker is required to provide evidence not only that he or she is continuing to seek employment but also that he or she has a genuine chance of being engaged’. Where an EU citizen enters a host Member State with the intention of seeking employment there, his or her right of residence during the first 3 months is also covered under Art. 6 of Directive 2004/38/EC. Accordingly, during that three-month period, no condition other than the requirement to hold a valid identity document is to be imposed on that citizen⁶⁴.

In case **C-719/19 Staatssecretaris van Justitie en Veiligheid**⁶⁵ the Court held that an expulsion decision taken on the ground that an EU citizen no longer enjoys a right of residence under Article 7 of Directive 2004/38/EC in the territory of a Member State, cannot be regarded as having fully been complied with, merely because the person concerned has physically left the host Member State. The EU citizen needs to have genuinely and effectively terminated his or her residence there under the referred to Article 7⁶⁶. Only once these EU citizens have genuinely and effectively terminated that residence, can they again exercise their right of residence under Article 6 of Directive 2004/38/EC in the same host Member State, as their new residence cannot be regarded as constituting in fact a continuation of their preceding residence in that territory⁶⁷.

In the event of failure to comply with such an expulsion decision, the Member State is not obliged to adopt a new decision but may rely on the initial one in order to oblige the person

⁵⁹ Judgment of the Court (First Chamber) of 17 December 2020, GMA Demandeur d’emploi, [C-710/2019](#), EU:C:2020:1037.

⁶⁰ Judgment of the Court (First Chamber) of 17 December 2020, GMA Demandeur d’emploi, [C-710/2019](#), EU:C:2020:1037, para. 51.

⁶¹ Judgment of the Court (First Chamber) of 17 December 2020, GMA Demandeur d’emploi, [C-710/2019](#), EU:C:2020:1037, para. 45.

⁶² Judgment of the Court (First Chamber) of 17 December 2020, GMA Demandeur d’emploi, [C-710/2019](#), EU:C:2020:1037, para. 43.

⁶³ Judgment of the Court (First Chamber) of 17 December 2020, GMA Demandeur d’emploi, [C-710/2019](#), EU:C:2020:1037, para. 42.

⁶⁴ Judgment of the Court (First Chamber) of 17 December 2020, GMA Demandeur d’emploi, [C-710/2019](#), EU:C:2020:1037, para. 28.

⁶⁵ Judgement of the Court (Grand Chamber) of 22 June 2021, Staatssecretaris van Justitie en Veiligheid, [C-719/19](#), EU:C:2021:506.

⁶⁶ Judgement of the Court (Grand Chamber) of 22 June 2021, Staatssecretaris van Justitie en Veiligheid, [C-719/19](#), EU:C:2021:506, para. 81.

⁶⁷ Judgement of the Court (Grand Chamber) of 22 June 2021, Staatssecretaris van Justitie en Veiligheid, [C-719/19](#), EU:C:2021:506, para. 81.

concerned to leave its territory⁶⁸. However, a material change in circumstances enabling the EU citizen to satisfy the conditions of the right of residence, for more than 3 months under Article 7 (e.g. the EU citizen becomes a worker), would deprive the expulsion decision of any effect and would require, despite the failure to comply with that decision, that the residence on the territory of the Member State be regarded as legal⁶⁹. Finally, an expulsion decision taken under Article 15(1) of Directive 2004/38/EC does not preclude the exercise of the right of entry under Article 5 of that directive, when the EU citizen travels to the territory of the Member State 'on an *ad hoc* basis for purposes other than to reside there'⁷⁰.

In its judgment **C-490/20 V.M.A. v Stolichna obshtina, rayon Pancharevo**⁷¹, the Court has held that, if a child is an EU citizen, he or she has a right to be issued a passport or identity card by the Member State of nationality, stating the nationality and the name as it appears on the birth certificate drawn up by another Member State⁷². In addition, such a document, alone or accompanied by others (such as the birth certificate issued by the Member State of birth), must enable the child to travel with either parent whose parenthood has been established by another Member State⁷³. The parents, too, are each entitled to a document mentioning them as persons who can travel alone with that child⁷⁴. This does not entail an obligation for the Member State of nationality to issue a birth certificate with the same content as the one issued in the other Member State. The Court clarified however that the Member State of nationality is obliged to issue the identity card or passport without requiring a birth certificate drawn up by its national authorities. A Member State cannot rely on such a requirement, or on any other requirement stemming from its national law, in order to refuse issuing a passport or identity card⁷⁵. The Court also recalled that the rights of EU citizens under Article 21 TFEU include the right to lead a normal family life, together with their family members, both in their host Member State and in the Member State of which they are nationals when they return to the territory of that Member State⁷⁶. As a consequence, all Member States must recognise the parent-child relationship for the purposes of the exercise of the rights that the child derives from EU law⁷⁷. The Court also insisted on the importance of fundamental rights, in particular the right to private and family life and the rights of the child – 'in the situation with which the main proceedings are concerned, the right to respect for private and family life guaranteed in Article 7 of the Charter of Fundamental Rights and the rights of the child guaranteed in Article 24 of the Charter of Fundamental Rights, in particular the right to have the child's best interests taken into account as a primary consideration in all actions relating to children, and the right to

⁶⁸ Judgement of the Court (Grand Chamber) of 22 June 2021, Staatssecretaris van Justitie en Veiligheid, [C-719/19](#), EU:C:2021:506, para. 94.

⁶⁹ Judgement of the Court (Grand Chamber) of 22 June 2021, Staatssecretaris van Justitie en Veiligheid, [C-719/19](#), EU:C:2021:506, para. 95.

⁷⁰ Judgement of the Court (Grand Chamber) of 22 June 2021, Staatssecretaris van Justitie en Veiligheid, [C-719/19](#), EU:C:2021:506, para. 102-103.

⁷¹ Judgment of the Court (Grand Chamber) of 14 December 2021, V.M.A. v Stolichna obshtina, rayon 'Pancharevo', [C-490/20](#), EU:C:2021:1008.

⁷² Judgment of the Court (Grand Chamber) of 14 December 2021, V.M.A. v Stolichna obshtina, rayon 'Pancharevo', [C-490/20](#), EU:C:2021:1008, para. 44.

⁷³ Judgment of the Court (Grand Chamber) of 14 December 2021, V.M.A. v Stolichna obshtina, rayon 'Pancharevo', [C-490/20](#), EU:C:2021:1008, para. 46.

⁷⁴ Judgment of the Court (Grand Chamber) of 14 December 2021, V.M.A. v Stolichna obshtina, rayon 'Pancharevo', [C-490/20](#), EU:C:2021:1008, para. 50.

⁷⁵ Judgment of the Court (Grand Chamber) of 14 December 2021, V.M.A. v Stolichna obshtina, rayon 'Pancharevo', [C-490/20](#), EU:C:2021:1008, para. 45.

⁷⁶ Judgment of the Court (Grand Chamber) of 14 December 2021, V.M.A. v Stolichna obshtina, rayon 'Pancharevo', [C-490/20](#), EU:C:2021:1008, para. 45.

⁷⁷ Judgment of the Court (Grand Chamber) of 14 December 2021, V.M.A. v Stolichna obshtina, rayon 'Pancharevo', [C-490/20](#), EU:C:2021:1008, para. 49 and 57.

maintain on a regular basis a personal relationship and direct contact with both his or her parents, are fundamental'⁷⁸.

This does not require the Member State of which the child concerned is a national to provide, in its national law, for the parenthood of persons of the same sex, or to recognise, for purposes other than the exercise of the rights which that child derives from EU law, the parent-child relationship between that child and the persons mentioned on the birth certificate drawn up by the authorities of the host Member State as being the child's parents'⁷⁹.

The holding in the *V.M.A* judgment was confirmed by the Court in its order **C-2/21, *Rzecznik Praw Obywatelskich***⁸⁰.

In the case **C-930/19 X v Belgian State**⁸¹, the Court confirmed the validity of Article 13(2) of Directive 2004/38/EC in the light of Articles 20 and 21 of the Charter of Fundamental Rights of the European Union.

More specifically, it ruled that Article 13(2) of Directive 2004/38/EC is valid though, in the event of divorce, annulment of marriage or termination of a registered partnership, that provision makes the retention of the right of residence by a non-EU citizen whose spouse is a mobile EU citizen and who has been a victim of domestic violence subject to the condition, inter alia, of having sufficient resources⁸²; whereas Article 15(3) of Directive 2003/86/EC does not make the retention of the right of residence by a non-EU national who has benefited from the right to family reunification subject to that condition in the event of divorce or separation.

The ruling concludes that a difference in the treatment of non-EU citizens who are victims of domestic violence by their spouse, depending on whether they have been granted family reunification with an EU citizen or with a non-EU citizen does not infringe the right to 'equality before the law', enshrined in Article 20 of the Charter, of non-EU citizens in either situation because of their differences of status and rights⁸³.

In addition, the Court took the opportunity of this case to reverse its position adopted in the **C-115/15 NA**⁸⁴ on the application of Article 13(2)(c) of Directive 2004/38/EC. While in NA, the Court had ruled that the divorce proceedings must have started before the EU mobile citizen leaves the Member State of residence in order for the non-EU citizen to retain his/her right of residence, in the present case, it ruled that where a non-EU citizen has been the victim of acts of domestic violence committed by his or her EU spouse, the non-EU citizen can rely on the retention of his or her right of residence based on Article 13(2)(c) as long as the divorce proceedings are initiated within a reasonable period following the departure of the EU citizen from the host Member State⁸⁵.

In case **C-535/19 A (*Soins de santé publics*)**⁸⁶, the Court examined how Regulation 883/2004 (on social security) interacts with the requirement to hold a comprehensive

⁷⁸ Judgment of the Court (Grand Chamber) of 14 December 2021, *V.M.A. v Stolichna obshtina, rayon 'Pancharevo'*, [C-490/20](#), EU:C:2021:1008, para. 59.

⁷⁹ Judgment of the Court (Grand Chamber) of 14 December 2021, *V.M.A. v Stolichna obshtina, rayon 'Pancharevo'*, [C-490/20](#), EU:C:2021:1008, para. 47-49, 52, 57, 67 and 68.

⁸⁰ Order of the Court (Tenth Chamber) of 24 June 2022, *Rzecznik Praw Obywatelskich*, C-2/21, EU:C:2022:502.

⁸¹ Judgment of the Court (Grand Chamber) of 2 September 2021, *X v Belgian State*, C-930/219, EU:C:2021:657.

⁸² Judgment of the Court (Grand Chamber) of 2 September 2021, *X v Belgian State*, C-930/219, EU:C:2021:657, para. 61 – 62 - 64.

⁸³ Judgment of the Court (Grand Chamber) of 2 September 2021, *X v Belgian State*, C-930/219, EU:C:2021:657, para. 61 – 90.

⁸⁴ Judgment of the Court (First Chamber) of 30 June 2016, N.A. [C-115/15](#), EU:C:2016:487, para. 51.

⁸⁵ See Judgment of the Court (Grand Chamber) of 2 September 2021, *X v Belgian State*, C-930/219, EU:C:2021:657, para. 43 and 45, clarifying that initiating divorce proceedings almost 3 years after the EU spouse has left the host Member State does not appear to represent a reasonable period.

⁸⁶ Judgment of the Court (Grand Chamber) of 15 July 2021, *A (Soins de santé publics)*, [C-535/19](#), EU:C:2021:595.

sickness insurance laid down under Article 7(1)(b) of Directive 2004/38. Pursuant this article, Member States may require EU citizens who are nationals of another Member State and who wish to have the right of residence in their territory for a period of longer than three months without being economically active to have, for themselves and their family members, comprehensive sickness insurance cover in the host Member State and sufficient resources not to become a burden on the social assistance system of that Member State during their period of residence.

The Court held that economically non-active EU citizens who move to another Member State and are exercising their right of residence for a period of more than three months but of less than five years have the right to be affiliated to the public sickness insurance scheme of the host Member State. Indeed, the Court considered that a Member State cannot, under its national legislation, refuse to affiliate to its public sickness insurance scheme an EU citizen who, under Article 11(3)(e) of Regulation No 883/2004, on the determination of the legislation applicable, comes under the legislation of that Member State⁸⁷.

Nevertheless, under such circumstances, the host Member State may provide that, until the EU citizen obtains the right of permanent residence, access to this system is not free of charge, in order to prevent economically non-active EU citizens from becoming an unreasonable burden on its public finances⁸⁸.

As a result, the host Member State may, subject to compliance with the principle of proportionality, make the affiliation to its public sickness insurance system of an economically non-active EU citizen subject to conditions intended to ensure that the EU citizen does not become an unreasonable burden on its public finances. These conditions may include the EU citizen concluding or maintaining a comprehensive private sickness insurance enabling the host Member State to be reimbursed for the health expenses it has incurred for that citizen's benefit, or the EU citizen paying a contribution to that Member State's public sickness insurance system⁸⁹. The Court has held that, in this context, the host Member State must ensure that the principle of proportionality is observed 'and, therefore, that it is not excessively difficult for that citizen to comply with such conditions'⁹⁰.

Case C-247/20 VI v The Commissioners for Her Majesty's Revenue & Customs⁹¹, concerned the situation of an Irish child and her non-EU citizen parent and primary carer, both residing in the UK. The issue was related to the requirement to have comprehensive sickness insurance within the meaning of the Free Movement Directive.

First, the Court recalled that a minor's right of permanent residence in the host Member State, in order to ensure the effectiveness of that right of residence, necessarily implies a right for the parent who is the primary carer of that child to reside with him or her in the host Member State. As a consequence, the inapplicability of the condition of, among others, having comprehensive sickness insurance after the minor has acquired permanent residence extends to that parent. Therefore, after the child has acquired permanent residence, neither of them is required to have comprehensive sickness insurance in order to retain their right of residence⁹².

⁸⁷ Judgment of the Court (Grand Chamber) of 15 July 2021, A (Soins de santé publics, [C-535/19](#), EU:C:2021:595, para. 50.

⁸⁸ Judgment of the Court (Grand Chamber) of 15 July 2021, A (Soins de santé publics, [C-535/19](#), EU:C:2021:595, para. 58.

⁸⁹ Judgment of the Court (Grand Chamber) of 15 July 2021, A (Soins de santé publics, [C-535/19](#), EU:C:2021:595, paragraph 59 and C-247/20, VI, ECLI:EU:C:2022:177, para. 69.

⁹⁰ Judgment of the Court (Grand Chamber) of 15 July 2021, A (Soins de santé publics, [C-535/19](#), EU:C:2021:595, paragraph 59.

⁹¹ Judgment of the Court (Fifth Chamber) of 10 March 2022, VI v Commissioners for Her Majesty's Revenue and Customs, [C-247/20](#), EU:C:2022:177.

⁹² Judgment of the Court (Fifth Chamber) of 10 March 2022, VI v Commissioners for Her Majesty's Revenue and Customs, C-247/20, EU:C:2022:177, para. 60.

In addition, the Court clarified that, before the child acquires permanent residence, both the child and the parent who is the primary carer are required to have comprehensive sickness insurance. This requirement is satisfied both where this child has comprehensive sickness insurance which covers his or her parent, and in the inverse case where this parent has such insurance covering the child⁹³.

The Court recalled that host Member State may, subject to compliance with the principle of proportionality, make an economically non-active EU citizen's affiliation to its public sickness insurance system subject to conditions intended to ensure that that citizen does not become an unreasonable burden on its public finances. The Court also stressed that, once an EU citizen is affiliated to such a public sickness insurance system in the host Member State, he or she has comprehensive sickness insurance within the meaning of the Free Movement Directive⁹⁴. In a situation where the parent has worked and was subject to tax in the host State during the period at issue, it would be disproportionate to deny that child and the parent a right of residence on the sole ground that, during that period, they were affiliated free of charge to the public sickness insurance system of that State. In these circumstances, such affiliation cannot be considered to constitute an unreasonable burden on the public finances of the Member State.

4.4.2.2 Entry and residence rights of “other family members” of EU citizens

Pursuant to Article 3(2) of the Free Movement Directive, Member States must facilitate the entry and residence of ‘extended family members’ of EU citizens. The case **C-22/21 Minister for Justice and Equality (Ressortissant de pays tiers cousin d’un citoyen de l’Union)**,⁹⁵ concerned ‘members of the household’, one of the categories of ‘extended family members’. First, the Court held that the three situations falling under the category ‘extended family members’ - financial dependence, physical dependence and household membership - are not cumulative. This means that a person can be considered an ‘extended family members’ if he or she falls within one of these three situations. Second, the Court clarified that the term ‘Member of the household refers’ to persons having a relationship of dependence with the EU citizen based on ‘close and stable personal ties, forged within the same household, in the context of a shared domestic life going beyond a mere temporary cohabitation entered into for reasons of pure convenience’⁹⁶. Factors to consider in assessing whether such ties exist include the degree of kinship and, depending on the specific circumstances of the case, ‘the closeness of the family relationship in question, reciprocity and the strength of the ties’⁹⁷. The ties must be of such a nature that, if the family member were prevented from being a member of the household of the EU citizen, ‘at least one of the two persons would be affected’⁹⁸. The duration of the shared domestic life is also an important factor⁹⁹. The EU citizen and the other family member need to be members of the same household, but the EU citizen does not need to be the head of this household¹⁰⁰.

⁹³ Judgment of the Court (Fifth Chamber) of 10 March 2022, VI v Commissioners for Her Majesty's Revenue and Customs, C-247/20, EU:C:2022:177, para. 67.

⁹⁴ Judgment of the Court (Fifth Chamber) of 10 March 2022, VI v Commissioners for Her Majesty's Revenue and Customs, C-247/20, EU:C:2022:177, paragraph 69.

⁹⁵ Judgment of the Court (Third Chamber) of 15 September 2022, SRS and AA v Minister for Justice and Equality, C-22/21, EU:C:2022:683.

⁹⁶ Judgment of the Court (Third Chamber) of 15 September 2022, SRS and AA v Minister for Justice and Equality, C-22/21, EU:C:2022:683, paragraph 30.

⁹⁷ Judgment of the Court (Third Chamber) of 15 September 2022, SRS and AA v Minister for Justice and Equality, C-22/21, EU:C:2022:683, paragraph 27.

⁹⁸ Judgment of the Court (Third Chamber) of 15 September 2022, SRS and AA v Minister for Justice and Equality, C-22/21, EU:C:2022:683, paragraph 27.

⁹⁹ Judgment of the Court (Third Chamber) of 15 September 2022, SRS and AA v Minister for Justice and Equality, C-22/21, EU:C:2022:683, paragraph 29.

¹⁰⁰ Judgment of the Court (Third Chamber) of 15 September 2022, SRS and AA v Minister for Justice and Equality, C-22/21, EU:C:2022:683, paragraph 22.

4.4.2.3 Access to benefits and/or social assistance by mobile EU citizens

C-411/20, S. v Familienkasse Niedersachsen-Bremen der Bundesagentur für Arbeit¹⁰¹ concerned the issue whether mobile EU citizens who habitually reside in the host Member State and are economically inactive can be excluded from entitlement to family benefits during the first three months of residence. The Court ruled that such a condition is not compatible with EU law, insofar as it concerns persons having their habitual residence in the host Member State where they are lawfully resident. For what concerns the Free Movement Directive, the Court confirmed that an economically non-active EU citizen has the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport. While, under Article 24(2) of the Free Movement Directive, Member States are entitled not to confer social assistance during the first three months of residence to EU citizens other than those who are workers or self-employed and their family members, the Court clarified that this derogation did not apply in this case. Indeed, where family benefits are granted independently of the individual needs of the beneficiary and are not intended to cover means of subsistence but to meet family expenses, they do not fall under the concept of 'social assistance' within the meaning of Directive 2004/38/EC. This is in particular the case for family benefits granted automatically to families meeting certain objective criteria relating in particular to their size, income and capital resources without any individual and discretionary assessment of personal needs¹⁰².

Case **C-181/19, Jobcenter Krefeld**¹⁰³ concerned the case of an EU citizen, who, before he became unemployed in the host Member State, had worked there and had sent his minor children to school there, and who, consequently, has the benefit of a right of residence based on Article 10 of Regulation No 492/2011 on freedom of movement for workers within the Union, by virtue of the children attending school in that State. The case relates to the right to equal treatment in relation to social advantages.

The Court held that Regulation No 492/2011 precludes legislation of a Member State which provides that a national of another Member State, and his or her minor children, all of whom have, in the former Member State, a right of residence based on Article 10 of that regulation, by virtue of those children attending school in that State, are automatically and in all circumstances excluded from entitlement to benefits to cover their subsistence costs. The Court recalled that the right of residence granted to the children of a (former) migrant worker in order to guarantee their right to access to education and, secondarily, to the parent caring for those children has its original source in the status of that parent as a worker. However, once acquired, that right becomes independent and can continue after the loss of that status. The Court considered that persons who have a right of residence on the basis of Article 10 of Regulation No 492/2011 are also entitled to the right to equal treatment in relation to the granting of social advantages laid down in Article 7(2) of that regulation, even where those persons can no longer rely on the worker status from which they initially derived their right of residence.¹⁰⁴

The Court held that this interpretation is not called into question by Article 24(2) of the Free Movement Directive. In that regard, the Court clarified that the derogation from the principle of equal treatment laid down in Article 24(2) of the Free Movement Directive is not applicable to an EU citizen, who, before he or she became unemployed in the host Member

¹⁰¹ Judgment of the Court (Grand Chamber) of 1 August 2022, S. v Familienkasse Niedersachsen-Bremen der Bundesagentur für Arbeit, [C-411/20](#), EU:C:2022:602.

¹⁰² Judgment of the Court (Grand Chamber) of 1 August 2022, S. v Familienkasse Niedersachsen-Bremen der Bundesagentur für Arbeit, [C-411/20](#), EU:C:2022:602, paragraphs 34, 35, 47, 48, 53 and 55.

¹⁰³ Judgment of the Court (Grand Chamber) of 6 October 2020, Jobcenter Krefeld - Widerspruchsstelle v JD, Case [C-181/19](#), EU:C:2020:794.

¹⁰⁴ Judgment of the Court (Grand Chamber) of 6 October 2020, Jobcenter Krefeld - Widerspruchsstelle v JD, Case [C-181/19](#), EU:C:2020:794, paragraphs 50, 54 and 55.

State, had worked there and had sent his or her minor children to school there, and who, consequently, has the benefit of a right of residence based on Article 10 of Regulation No 492/2011, by virtue of the children attending school in that State.¹⁰⁵

Lastly, the Court held that Regulation (EC) No 883/2004 on the coordination of social security systems precludes legislation of a Member State which provides that a national of another Member State and his or her minor children, all of whom have, in the former Member State, a right of residence based on Article 10 of Regulation No 492/2011, by virtue of those children attending school in that State, and are there covered by a social security system within the meaning of Regulation No 883/2004, are automatically and in all circumstances excluded from entitlement to special non-contributory cash benefits.¹⁰⁶

Case Department for Communities in Northern Ireland (Case C-709/20)¹⁰⁷ concerns an EU citizen who arrived in the UK in 2019 and who has never exercised an economic activity in the UK. In June 2020, the EU citizen was granted a national law residence right in the UK, with immediate effect, in the form of “pre-settled status” under the UK’s EU Settlement Scheme. The EU Settlement Scheme avows to implement Article 18(1) of the EU-UK Withdrawal Agreement (new residence status for EU citizens and family who had exercised free movement rights in the UK) but at the same time includes, as a matter of domestic UK policy, EU citizens who do not fall under Article 10 of the Withdrawal Agreement due to not having fulfilled the residence right conditions of EU law on free movement of EU citizens. In 2020, the UK authorities decided that the EU citizen did not qualify for universal credit, given that the person did not have a right to reside under EU rules on free movement.

The ruling clarifies under which conditions economically inactive EU citizens, who reside in the host Member State based on national law, can invoke the prohibition of discrimination on grounds of nationality in order to access social benefits in the host Member State.

The Court considers that the question as to whether such citizen faces discrimination on grounds of nationality must be assessed in the light of Article 24 of Directive 2004/38/EC, and not in that of Article 18 TFEU. Indeed, in that regard, the Court recalls that Article 24 of Directive 2004/38/EC gives specific expression to the principle of non-discrimination on grounds of nationality laid down on Article 18 TFEU, in relation to EU citizens who exercise their right to move and reside within the territory of the Member States.¹⁰⁸

As concerns access to social assistance, the Court recalls that an EU citizen can claim equal treatment, by virtue of Article 24 of Directive 2004/38/EC, 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/EC. An economically inactive EU citizen who does not have sufficient resources and resides in the host Member State without satisfying the residence requirements laid down in Directive 2004/38/EC cannot rely on the principle of non-discrimination set out in Article 24(1) of that Directive. Indeed, otherwise, 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.¹⁰⁹

Where Article 24 of Directive 2004/38/EC does not apply because the EU citizen does not reside in accordance with Directive 2004/38/EC but resides legally on the basis of national

¹⁰⁵ Judgment of the Court (Grand Chamber) of 6 October 2020, Jobcenter Krefeld - Widerspruchsstelle v JD, Case [C-181/19](#), EU:C:2020:794, paragraph 67.

¹⁰⁶ Judgment of the Court (Grand Chamber) of 6 October 2020, Jobcenter Krefeld - Widerspruchsstelle v JD, Case [C-181/19](#), EU:C:2020:794, paragraph 75 - 79.

¹⁰⁷ Judgment of the Court (Grand Chamber) of 15 July 2021, CG v The Department for Communities in Northern Ireland, [C-709/20](#), EU:C:2021:602.

¹⁰⁸ Judgment of the Court (Grand Chamber) of 15 July 2021, CG v The Department for Communities in Northern Ireland, [C-709/20](#), EU:C:2021:602, paragraph 66.

¹⁰⁹ Judgment of the Court (Grand Chamber) of 15 July 2021, CG v The Department for Communities in Northern Ireland, [C-709/20](#), EU:C:2021:602, paragraph 81.

law in the territory of the host Member State, the Court considers that competent national authorities may only refuse an application for social assistance after ascertaining that that refusal does not expose the mobile EU citizen to an actual and current risk of violation of their fundamental rights, as enshrined under the Charter of Fundamental Rights¹¹⁰.

4.4.2.4 Derived rights of residence for non-EU family members of EU citizens on the basis of Article 20 TFEU

In the case **C-528/21 M.D. v Országos Idegenrendészeti Főigazgatóság Budapesti és Pest Megyei Regionális Igazgatósága**¹¹¹ the Court had to provide interpretation of Article 20 TFEU. In this matter a non-EU citizen living with his EU partner and their EU minor child in their Member State of nationality, made a request for a permanent residence permit which was rejected as the applicant was sentenced for a criminal offence. The national authorities found that the conduct of the applicant represented a threat to the national security. They adopted a decision banning entry and stay, for a period of three years, and entered an alert relating to that ban in the Schengen Information System ('the SIS'). At the date on which his permit to reside was withdrawn, the non-EU citizen had a right of residence in a Member State other than the one of nationality of his partner and child.

The Court recalled that there are specific situations in which a right of residence must be granted to a non-EU national who is a family member of that EU citizen, since the effectiveness of EU citizenship would otherwise be undermined.¹¹² On that basis, the Court confirmed that Article 20 TFEU precludes national measures which have the effect of depriving EU citizens of the genuine enjoyment of the substance of the rights conferred by virtue of their status as EU citizens.¹¹³ The Court observed that the decision banning entry and stay of the non-EU citizen had a European dimension. It could not a priori be excluded that the ban on entry and stay would lead to the partner and the minor child -EU citizens- being, de facto, deprived of the genuine enjoyment of the substance of the rights which derive from their status as EU citizens. That would be the case if there exists, between that non-EU citizen and the EU citizen who is a family member, *a relationship of dependency* of such a nature that it would lead to the EU citizen being compelled to accompany the non-EU national concerned and to leave the territory of the European Union as a whole.¹¹⁴ The Court also recalled Member States may rely on an exception on grounds of public policy or public security in order to limit the right of residence based on Article 20 TFEU, where the person represents a real, immediate and sufficiently serious threat to public order or public or national security. The Court thus concluded that EU law precludes a Member State from adopting a decision banning entry into the EU of a non-EU citizen, who is a family member of a static EU citizen - a national of that Member State who has never exercised his or her right to free movement- without having examined whether there is, between those persons, a relationship of dependency which would de facto compel that EU citizen to leave the European Union and, if so, whether the grounds on which that decision was adopted allow a derogation from the derived right of residence of that non-EU citizen¹¹⁵.

¹¹⁰ Judgment of the Court (Grand Chamber) of 15 July 2021, CG v The Department for Communities in Northern Ireland, [C-709/20](#), EU:C:2021:602, paragraph 93.

¹¹¹ Judgment of the Court (Fourth Chamber) of 27 April 2023, M.D. v Országos Idegenrendészeti Főigazgatóság Budapesti és Pest Megyei Regionális Igazgatósága, [C-528/21](#), EU:C:2023:341.

¹¹² Judgment of the Court (Fourth Chamber) of 27 April 2023, M.D. v Országos Idegenrendészeti Főigazgatóság Budapesti és Pest Megyei Regionális Igazgatósága, [C-528/21](#), EU:C:2023:341, para. 58.

¹¹³ Judgment of the Court (Fourth Chamber) of 27 April 2023, M.D. v Országos Idegenrendészeti Főigazgatóság Budapesti és Pest Megyei Regionális Igazgatósága, [C-528/21](#), EU:C:2023:341, para. 57.

¹¹⁴ Judgment of the Court (Fourth Chamber) of 27 April 2023, M.D. v Országos Idegenrendészeti Főigazgatóság Budapesti és Pest Megyei Regionális Igazgatósága, [C-528/21](#), EU:C:2023:341, para. 59.

¹¹⁵ Judgment of the Court (Fourth Chamber) of 27 April 2023, M.D. v Országos Idegenrendészeti Főigazgatóság Budapesti és Pest Megyei Regionális Igazgatósága, [C-528/21](#), EU:C:2023:341, para. 70.

In the case **C-624/20 E.K. v Staatssecretaris van Justitie en Veiligheid**¹¹⁶, the Court confirmed that a non-EU national who enjoys a right of residence under Article 20 TFEU as a family member of a static EU citizen may acquire long-term resident status where the individual satisfies the conditions provided for by EU law. Firstly, the Court confirms that Council Directive 2003/109/EC of 25 November 2003 concerning the status of non-EU nationals who are long-term residents (“Long-term Residents Directive”) excludes from its scope non-EU nationals who reside solely on temporary grounds¹¹⁷. However, the Court considers that the residence of a non-EU citizen in the territory of a Member State under Article 20 TFEU cannot be regarded as constituting residence “solely on temporary grounds” within the meaning of the Long-term Residents Directive. Indeed, the right of residence of a non-EU citizen under Article 20 TFEU is justified on the ground that such residence is necessary in order for the EU citizen to be able to genuinely enjoy the substance of the rights conferred by that status for as long as the relationship of dependency with that non-EU citizen persists. Such a relationship of dependency is not, in principle, intended to be of short duration, but may extend over a considerable period¹¹⁸. Secondly, the Court concludes that a non-EU national who enjoys a right of residence under Article 20 TFEU as a family member of a static EU citizen must satisfy the conditions laid down by that Directive (on length of residence, sufficient resources and sickness insurance as well as proof of integration in the Member State, if required by the latter) in order to acquire long-term resident status¹¹⁹.

In the case **C-459/20 X v Staatssecretaris van Justitie en Veiligheid**¹²⁰ a minor Dutch citizen, born in Thailand, the State of which his mother is a national, has lived in this country all his life. There is no contact between the Dutch father and the child, and the mother has sole parental responsibility over him. The Court had to interpret the application of Article 20 TFEU in cases where the minor EU citizen has never lived in the EU. The Court confirmed that Article 20 TFEU does not preclude the parent, non-EU national, of a minor child, who is an EU citizen and who since birth has never resided in the territory of the European Union, from benefiting from a derived right of residence flowing from Article 20 TFEU provided that:

- the required relationship of dependency exists between the child and the parent – as laid down per settled case law;
- it is established that that child will enter and reside in the territory of the Member State of which he or she has the nationality with the parent¹²¹.

Secondly, the Court considered that a Member State seized of an application for a derived right of residence by a non-EU national upon whom a minor EU child, who has never resided in the Union, is dependent, may not reject it on the ground that moving to the child’s Member State of nationality – which the exercise by that child of his or her rights as an EU citizen presupposes – is not in the real or plausible interests of that child.¹²² Finally, for the assessment whether a minor child, who is an EU citizen, is dependent on his or her non-

¹¹⁶ Judgment of the Court (Grand Chamber) of 7 September 2022, *E.K. v Staatssecretaris van Justitie en Veiligheid*, [C-624/20](#), EU:C:2022:639.

¹¹⁷ Judgment of the Court (Grand Chamber) of 7 September 2022, *E.K. v Staatssecretaris van Justitie en Veiligheid*, [C-624/20](#), EU:C:2022:639, para. 42.

¹¹⁸ Judgment of the Court (Grand Chamber) of 7 September 2022, *E.K. v Staatssecretaris van Justitie en Veiligheid*, [C-624/20](#), EU:C:2022:639, para. 41.

¹¹⁹ Judgment of the Court (Grand Chamber) of 7 September 2022, *E.K. v Staatssecretaris van Justitie en Veiligheid*, [C-624/20](#), EU:C:2022:639, para. 49.

¹²⁰ Judgment of the Court (First Chamber) of 22 June 2023, *X v Staatssecretaris van Justitie en Veiligheid*, [C-459/20](#), EU:C:2023:499.

¹²¹ Judgment of the Court (First Chamber) of 22 June 2023, *X v Staatssecretaris van Justitie en Veiligheid*, [C-459/20](#), EU:C:2023:499, para. 38.

¹²² Judgment of the Court (First Chamber) of 22 June 2023, *X v Staatssecretaris van Justitie en Veiligheid*, [C-459/20](#), EU:C:2023:499, para. 45.

EU national parent, the Member State concerned is required to take into account all the relevant circumstances.¹²³

At last, the joined cases **C-451/19 and C-532/19 *Subdelegación del Gobierno en Toledo v XU and QP***¹²⁴ concerned also the right of residence, on the basis of Article 20 TFEU, of non-EU family members of an EU citizen who has not exercised their right of free movement. The non-EU family members concerned were the spouse's minor child of an EU citizen (C-451/19) and the spouse of an EU citizen (C-532/19). In addition, the family units concerned included children who were EU citizens: the brother of the spouse's minor child (C-451/19) and the daughter of the spouse (C-532/19).

The Court recalled that Article 20 TFEU recognises a derived right of residence to the non-EU family members of an EU citizen who has not exercised free movement, when there is a relationship of dependency between those family members and the EU citizen that, in the event of that non-EU family member being refused a derived right of residence, would oblige the EU citizen to accompany the non-EU national and to leave the territory of the EU as a whole¹²⁵.

The Court considered that there is a rebuttable presumption of a relationship of dependency with respect to an EU child who has not exercised his or her right of free movement in the following situation: where the non-EU parent lives on a stable basis with the other parent, who is an EU citizen, sharing the daily care of that child and the legal, emotional and financial responsibility for that child. The relationship of dependency may be presumed, irrespective of the fact that the other parent has an unconditional right to remain in the Member State of which he or she is a national¹²⁶.

In addition, the Court looked into the situation of a minor non-EU sibling of an EU citizen minor whose non-EU parent-carer is eligible for a right of residence under Article 20 TFEU. It concluded that a relationship of dependency capable of justifying the grant of a derived right of residence to the non-EU minor child of the non-EU spouse of an EU citizen who has never exercised his or her right of freedom of movement exists where (i) the marriage between that EU citizen and the non-EU spouse produced an EU child who has never exercised free movement rights, and (ii) that the EU child would be forced to leave the territory of the EU as a whole if the non-EU minor child was forced to leave the territory of the Member State concerned. Indeed, in such a situation, the non-EU parent-carer could be forced to accompany the non-EU minor sibling. This, in turn, could also force the other EU citizen child to leave that territory¹²⁷.

4.4.2.5 Other cases on free movement rights

Case **C-505/19 *WS v Bundesrepublik Deutschland***¹²⁸ concerned a German national who had been subject to an Interpol notice. In such cases, if the person is in a State affiliated to Interpol, that State must provisionally arrest the person or restrict his or her movements. Prior to the notice, Germany had initiated investigations into that national on the same facts and had discontinued the procedure. Germany informed Interpol that it considered that the *ne bis in idem* applied in this case. Under the *ne bis in idem* principle, a person whose trial has been finally disposed of cannot be prosecuted again for the same offence. The German

¹²³ Judgment of the Court (First Chamber) of 22 June 2023, *X v Staatssecretaris van Justitie en Veiligheid*, [C-459/20](#), EU:C:2023:499, para. 61.

¹²⁴ Judgment of the Court (Fourth Chamber) of 5 May 2022, *Subdelegación del Gobierno en Toledo v XU and QP*, [joined C-451/19 and C-532/19](#), EU:C:2022:354.

¹²⁵ Judgment of the Court (Fourth Chamber) of 5 May 2022, *Subdelegación del Gobierno en Toledo v XU and QP*, [joined C-451/19 and C-532/19](#), EU:C:2022:354, para. 45 - 47.

¹²⁶ Judgment of the Court (Fourth Chamber) of 5 May 2022, *Subdelegación del Gobierno en Toledo v XU and QP*, [joined C-451/19 and C-532/19](#), EU:C:2022:354, para. 69.

¹²⁷ Judgment of the Court (Fourth Chamber) of 5 May 2022, *Subdelegación del Gobierno en Toledo v XU and QP*, [joined C-451/19 and C-532/19](#), EU:C:2022:354, para. 83-86.

¹²⁸ Judgment of the Court (Grand Chamber) of 12 May 2021, *WS v Bundesrepublik Deutschland*, [C-505/19](#), EU: C:2021:376.

national subsequently brought proceedings seeking a judicial order requiring Germany to take all necessary measures to arrange for the notice to be withdrawn. The citizen relied, among others, on his free movement rights, as he could not travel to any State that is a party to the Schengen Agreement or to any Member State without risking arrest.

The Court thus examined whether Article 21 TFEU on the free movement of persons, together with EU law provisions on the *ne bis in idem* principle, precludes the provisional arrest of the person in such a situation.

The Court held that, while a provisional arrest constitutes a restriction of free of movement rights¹²⁹, it is justified by the legitimate aim of preventing evasion of punishment where the applicability of the *ne bis in idem* principle is uncertain. By contrast, subjecting the person to provisional arrest or custody is precluded if it is established by a final judicial decision that the *ne bis in idem* applies.

In **C-454/19, Staatsanwaltschaft Heilbronn vs ZW**¹³⁰, the Court dealt with Romanian nationals who moved the residence of their child from Germany to Romania without the necessary consent of a government-appointed carer who was empowered to fix that child's place of residence. The questions referred to the Court concerned German criminal law providing for a different treatment depending on whether the child is retained by his parent inside or outside Germany, in particular in another Member State: only in the latter case, this attracts criminal penalties even in the absence of force, threat of serious harm or deception.¹³¹ The Court stressed that non-German EU citizens residing in Germany are more likely than German citizens to remove or send their child to another Member State and retain them there. Therefore, such difference in treatment is likely to affect or even restrict the free movement of EU citizens. While the protection of the child is a legitimate interest which, in principle, justifies a restriction on free movement, the national provision at issue was considered to go beyond what is necessary to attain that legitimate objective. The Court referred in particular to the EU legislation on judicial cooperation in international child abduction.¹³² The Court concluded that Article 21 TFEU on the free movement of persons precludes a provision such as that at issue in the case.

Case **C-817/19 Ligue des droits humains**¹³³ provided important clarifications on the interpretation of the PNR (Passenger Name Record) Directive and on data protection issues. It also clarified the modalities for the use of PNR data on intra-EU flights.

The PNR Directive requires the systematic processing of a significant amount of PNR (Passenger Name Record) data relating to air passengers on extra-EU flights entering and leaving the European Union, for the purposes of combating terrorist offences and serious crime. In addition, Article 2 of that Directive provides Member States with the possibility to apply the directive to intra-EU flights also.

In the framework of a domestic action for annulment launched with the Cour constitutionnelle (Constitutional Court, Belgium) against the Belgian Law which transposed into domestic law the PNR Directive and the API Directive, the Belgian Constitutional Court referred ten questions to the CJEU for a preliminary ruling on, among other things, the validity of the PNR Directive and the compatibility of the Belgian law with EU law.

¹²⁹ Judgment of the Court (Grand Chamber) of 12 May 2021, *WS v Bundesrepublik Deutschland*, [C-505/19](#), C:2021:376, para. 84-86.

¹³⁰ Judgment of the Court (Fourth Chamber) of 19 November 2020, *Staatsanwaltschaft Heilbronn vs ZW*, [C-454/19](#), EU:C:2020:947.

¹³¹ Judgment of the Court (Fourth Chamber) of 19 November 2020, *Staatsanwaltschaft Heilbronn vs ZW*, [C-454/19](#), EU:C:2020:947, para. 31-32.

¹³² Judgment of the Court (Fourth Chamber) of 19 November 2020, *Staatsanwaltschaft Heilbronn vs ZW*, [C-454/19](#), EU:C:2020:947, para. 40 and 50.

¹³³ Judgment of the Court (Grand Chamber) of 21 June 2022, *Ligue des droits humains*, C-817/19, EU: C: C:2022:491.

The Court concluded that the examination of the questions referred had revealed nothing capable of affecting the validity of the said Directive¹³⁴.

In addition, and among other issues, the Court provided clarifications on a possible application of the PNR Directive for the purpose of combating terrorist offences and serious crime, to intra-EU flights and other modes of transport carrying passengers in the EU. In that regard, the Court held that EU law precludes national legislation which, in the absence of a genuine and present or foreseeable terrorist threat with which the Member State concerned is confronted, establishes a system for the transfer, by air carriers and tour operators, as well as for the processing, by the competent authorities, of the PNR data of all intra-EU flights and transport operations carried out by other means within the European Union, departing from, going to or transiting through that Member State, for the purposes of combating terrorist offences and serious crime¹³⁵.

In such a situation, the application of the system established by the PNR Directive must be limited to the transfer and processing of the PNR data of flights and/or transport operations relating, inter alia, to certain routes or travel patterns or to certain airports, stations or seaports for which there are indications that are such as to justify that application. It is for the Member State concerned to select the intra-EU flights and/or the transport operations carried out by other means within the European Union for which there are such indications and to review regularly that application in accordance with changes in the circumstances that justified their selection, for the purposes of ensuring that the application of that system to those flights and/or those transport operations continues to be limited to what is strictly necessary¹³⁶.

4.5 Right to vote and stand as a candidate in municipal and European Parliament elections (Articles 20(2)(b) and 22 TFEU)

4.5.1 Introduction

Under Articles 20(2)(b) and 22 TFEU, all EU citizens residing in a Member State of which they are not nationals are entitled to vote and to stand as candidates in European Parliament and municipal elections in their Member State of residence, under the same conditions as that state's nationals.

4.5.2 Case-law developments

As explained under Section 4.3.2.1, in the case **C-673/20 EP v Préfet du Gers and Institut national de la statistique et des études économiques (INSEE)**¹³⁷, the Court argued, that since the entry into force of the withdrawal of the United Kingdom, 1 February 2020, United Kingdom nationals are treated as non-EU nationals and are not guaranteed the right to vote and to stand as candidate in municipal elections in their Member State of residence. To this effect, the loss of voting rights in the Member State of nationality has no bearing on

¹³⁴ Judgment of the Court (Grand Chamber) of 21 June 2022, Ligue des droits humains, C-817/19, EU: C: C:2022:491, para. 227-228.

¹³⁵ Judgment of the Court (Grand Chamber) of 21 June 2022, Ligue des droits humains, C-817/19, EU: C: C:2022:491, para. 171.

¹³⁶ Judgment of the Court (Grand Chamber) of 21 June 2022, Ligue des droits humains, C-817/19, EU: C: C:2022:491, para. 256 – 260.

¹³⁷ Judgment of 9 June 2022, EP v Préfet du Gers and Institut national de la statistique et des études économiques (INSEE), [C-673/20](#), EU:C:2022:449.

this conclusion.¹³⁸ Separately, CJEU affirmed that such position does not breach the prohibition on discrimination as the right to vote is a right of which he or she is deprived following the United Kingdom's sovereign decision to withdraw from the EU.

4.6 European Citizens' Initiative (Art. 24 TFEU, Art. 11(4) TEU)

4.6.1 Introduction

Under Article 11(4) 'Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties'. This "European Citizens' Initiative" was introduced by the Lisbon Treaty and has been operational since 2012. The conditions governing the submission and admissibility of any such initiative by citizens are set out in Regulation (EU) No 211/2011 of the European Parliament and of the Council.

From 30 June 2020 up to August 2023 the Court handled 3 cases in respect of European Citizens' Initiative, 2 of which are presented below.

4.6.2 Case-law developments

In the case **T-495/19 Romania v Commission**¹³⁹, the Court addresses explicitly, for the first time, the question whether a Commission decision to register an ECI proposal is a challengeable act. It also clarified the characteristics of the review exercised by the Commission for the purpose of adopting such a decision and, on the other hand, the nature of the Court's review of the legality of that decision. On 18 June 2013, the proposal for a European's citizens' initiative (ECI) entitled 'Cohesion policy for the equality of the regions and sustainability of the regional cultures' was submitted to the European Commission. By decision of 25 July 2013,¹⁴⁰ the Commission refused the request for registration of the ECI proposal at issue on the ground that that ECI fell manifestly outside the framework of its powers to submit a proposal for an EU legal act for the purposes of implementing the Treaties. The action for annulment brought against that decision was dismissed by the General Court.¹⁴¹ On appeal, the CJEU set aside the judgment of the General Court and annulled the decision of 25 July 2013.¹⁴² On 30 April 2019, the Commission adopted a new decision by which it registered the ECI at issue.¹⁴³ Romania brought an action for annulment of that decision. The Court dismissed Romania's action. The case is now under appeal (C-54/22).

¹³⁸ Judgment of 9 June 2022, EP v Préfet du Gers and Institut national de la statistique et des études économiques (INSEE), C-673/20, EU:C:2022:449, para. 58.

¹³⁹ Judgment of the General Court (Tenth Chamber) of 10 November 2021, Romania v European Commission, [T-495/19](#), under appeal, EU:T:2021:781.

¹⁴⁰ Commission Decision C(2013) 4975 final of 25 July 2013 refusing to register the proposed citizens' initiative entitled 'Cohesion policy for the equality of the regions and sustainability of the regional cultures'.

¹⁴¹ Judgment of 10 May 2016, Izsák and Dabis v Commission, T-529/13, EU:T:2016:282).

¹⁴² Judgment of 7 March 2019, Izsák and Dabis v Commission (C-420/16 P, EU:C:2019:177).

¹⁴³ Commission Decision (EU) 2019/721 of 30 April 2019 on the proposed citizens' initiative entitled 'Cohesion policy for the equality of the regions and sustainability of the regional cultures' (OJ 2019 L 122, p. 55; 'the contested decision').

In this regard, it is also relevant to mention a case from the General Court, case **T-158/21, *Minority SafePack v. European Commission***¹⁴⁴. In this case, organisers challenged the Commission's Communication refusing to take the action requested in the European citizens' initiative 'Minority SafePack – one million signatures for diversity in Europe'. The General Court confirmed in its ruling that the Commission has a broad discretion when deciding whether or not to take action in response to an ECI¹⁴⁵. The General Court also pointed out that, in accordance with the principle of equal treatment, the number of meetings organised by the Commission with the organisers of an ECI may vary, depending on the nature or complexity of the ECI¹⁴⁶. Therefore, the Commission is not required to organise an identical number of meetings with the organisers of every ECI. The General Court also confirmed that this does not relieve the Commission from its obligation to state sufficient reasons for taking or not taking the requested actions, in line with its obligations under the ECI Regulation¹⁴⁷. On 21 January 2023, the organisers filed an appeal against the judgment of the General Court.

4.7 Other relevant judgments

In **C-328/20 *European Commission v Austria***¹⁴⁸, the European Commission brought infringement proceedings against Austria for its indexation mechanism applicable to family benefits as well as social and tax benefits for children residing outside its national borders. Austria has introduced an indexation mechanism, based on the place of residence, when outside Austria. The Court highlighted that family allowances and child tax credit are considered family benefits under Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems¹⁴⁹. Article 7 of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union strictly prohibits any form of discrimination based on a residence criteria. Furthermore, Article 67 of Regulation (EC) No 883/2004 states that a person may claim family benefits for members of his or her family who reside in a Member State other than the one paying those benefits, as if they resided in the latter Member State. However, it was established that the difference in treatment was not on the actual costs incurred for the maintenance of the children but on the number and age of those children. Since any differential treatment based on residence and/or age constitutes indirect discrimination on the ground of nationality, it must be determined whether the objectives of such provisions may not be achieved with less limiting measures. In its conclusions the Court found that the differential treatment arising from the indexation mechanism was not necessary to ensure the fairness of the social system in place in Austria and hence, that the national legislation was discriminative. This case puts an end to a long debate surrounding the mechanism of indexation of family benefits and what conditions could be applied to it.

In another case **C-625/20 *KM v INSS***¹⁵⁰, the CJEU had to rule on indirect discrimination on grounds of sex. In this matter, the question was to determine if a Spanish anti-cumulation

¹⁴⁴ Judgment of the General Court (Eighth Chamber) of 9 November 2022, Citizens' Committee of the European Citizens' Initiative 'Minority SafePack – one million signatures for diversity in Europe' v European Commission, [T-158/21](#), under appeal, EU:T:2022:696.

¹⁴⁵ Judgment of the General Court (Eighth Chamber) of 9 November 2022, Citizens' Committee of the European Citizens' Initiative 'Minority SafePack – one million signatures for diversity in Europe' v European Commission, [T-158/21](#), under appeal, EU:T:2022:696, para. 20.

¹⁴⁶ Judgment of the General Court (Eighth Chamber) of 9 November 2022, Citizens' Committee of the European Citizens' Initiative 'Minority SafePack – one million signatures for diversity in Europe' v European Commission, [T-158/21](#), under appeal, EU:T:2022:696, para. 39 and 40.

¹⁴⁷ Judgment of the General Court (Eighth Chamber) of 9 November 2022, Citizens' Committee of the European Citizens' Initiative 'Minority SafePack – one million signatures for diversity in Europe' v European Commission, [T-158/21](#), under appeal, EU:T:2022:696., para. 23.

¹⁴⁸ Judgment of the Court (Second Chamber) of 16 June 2022, European Commission v Austria, [C-328/20](#), EU:C:2022:468.

¹⁴⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004R0883>

¹⁵⁰ Judgment of the Court (Second Chamber) of 30 June 2022, KM v INSS, [C-625/20](#), EU:C:2022:508.

provision for occupational invalidity pensions from the same scheme favours male workers without any objective justification and hence constitutes gender discrimination. Firstly, the Court determined that the legislation at issue falls within the scope of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security¹⁵¹. The question at stake was whether the provisions of the said Directive precluded on grounds of indirect discrimination national legislation which prevents workers affiliated to the social security scheme from receiving a combination of two occupational invalidity pensions where those pensions come under the same social security scheme, while permitting such a combination where those pensions come under different social security schemes. The Court ruled that Art. 4(1) of Directive 79/7 must be interpreted as precluding such national legislation as it places female workers at a particular disadvantage as compared with male workers, as it permits a significantly higher proportion of male workers, determined on the basis of all male workers subject to that legislation, as compared with the corresponding proportion of female workers, to benefit from that combination and where that legislation is not justified by objective factors unrelated to any discrimination on ground of sex.¹⁵² This case was also particularly interesting as the Court discussed the methodology or statistical data needed to be taken into account for establishing indirect discrimination on grounds of sex and the reliability of such data.

¹⁵¹ Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31979L0007>.

¹⁵² Judgment of the Court (Second Chamber) of 30 June 2022, *KM v INSS*, [C-625/20](#), EU:C:2022:508, para. 66.

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