Migrant jobseekers, right of residence and access to welfare benefits: One step forward, two steps backwards?

**Maxime Tecqmenne[[1]](#footnote-2)\***

*University of Liège*

*In the aftermath of the Court’s judgments in Dano and Alimanovic, there remained considerable uncertainty about the interplay between the equal treatment guarantees vested in Union citizens by Articles 18, 21 and 45 TFEU and the different legislative measures adopted to give effect to these Treaty provisions. In this context, this article seeks to cast some light on the rather ambiguous relationship between Directive 2004/38 and Regulation 492/2011. It is essentially suggested that the limitations on the right of equal treatment featured in Article 24(2) of the Citizenship Directive cannot be relied upon as such in order to circumscribe the equal treatment guarantees conferred upon “workers” by Article 7(2) of the Workers’ Regulation. At the same time, though, it would appear that the Court has accepted – albeit somewhat implicitly – that the Member States may effectively restrict migrant workers’ equality rights on the basis of integration requirements inspired to some extent by the requirements expressed in the Directive.*

## Introduction

Over the past few years, some of the most basic tenets of freedom of movement of persons - including, but not limited to free movement itself and equal treatment - have been subject to heated legal and political debates across the European Union (“EU”). There is, in particular, considerable controversy about the extent to which migrant Union citizens should be granted access to social assistance in another Member State.[[2]](#footnote-3) It is generally recognised that EU Member States should in principle demonstrate a certain degree of financial solidarity towards Union citizens. At the same time, the European Court of Justice (“the Court”) has recognised that the host State authorities ultimately remain competent to control the conditions for entitlement to their national social assistance schemes.[[3]](#footnote-4) In the absence of harmonisation in the area of social security, the Member States effectively retain a wide degree of regulatory autonomy when it comes to defining the conditions for cross-border access to their national social assistance and social security systems.[[4]](#footnote-5) In its “real link” case-law, the Court essentially recognized that the Member States may foreclose cross-border access to social assistance on the basis of indirectly discriminatory right-to-reside tests,[[5]](#footnote-6) provided that they are objectively justified by a legitimate public interest. In the exercise of that power, they must nevertheless ensure compliance with the fundamental freedoms featured in the Treaties and, in particular, the principle of equal treatment flowing therefrom[[6]](#footnote-7).

It remains somewhat unclear, however, whether and to what extent the principle of equal treatment may be relied upon by different categories of individuals in order to obtain social benefits in the host State. The adoption of Directive 2004/38 (“the Citizenship Directive”)[[7]](#footnote-8) was intended to bring about much-needed clarity in that respect. Its stated aim was indeed to “remedy the piecemeal approach to the right to free movement”[[8]](#footnote-9) in favour of “more predictable rights for economically inactive Union citizens”.[[9]](#footnote-10) Perhaps somewhat surprisingly, though, the Citizenship Directive continues to co-exist with other legislative instruments intended to flesh out the limits of the principle of equal treatment in relation to social assistance. Amongst those instruments features Regulation 492/2011 (“the Workers’ Regulation”),[[10]](#footnote-11) which offers far-reaching equal treatment rights to “workers” in relation to “social advantages” (art. 7(2)). The interaction between those two legislative instruments raises some challenging questions about the interplay between the equal treatment guarantees vested in Union citizens by Articles 18, 21 and 45 of the Treaty on the Functioning of the European Union (“TFEU”) and the different legislative measures adopted to give effect to these Treaty provisions.[[11]](#footnote-12)

One of the most thorny issues encountered by national administrations concerns the extent to which migrant Union jobseekers may rely on equal treatment guarantees in order to obtain financial support from the host Member State. As potential or past market actors, jobseekers indeed feature at the borderline between economically active and inactive Union citizens. Because they do not, or no longer, perform an economic activity, they do not belong per seto the category of economically active citizens. At the same time, they may have undertaken an economic activity in the host state – or are likely to do so in the foreseeable future. As such, the Court has consistently recognised that they may derive broad equal treatment guarantees as “workers” within the meaning of Article 7(2) of the Workers’ Regulation;[[12]](#footnote-13) while, at the same time, being subject to the limitations imposed on “retained workers” (art. 7(3)) and “first-time jobseekers” (art. 14(4)) by Article 24(2) of the Citizenship Directive. In the event of overlap between these two instruments, the question therefore arises as to which specific expression of the equality rights linked to the status of worker should prevail. It is sometimes suggested that after the Court’s judgments in *Dano* and *Alimanovic*,[[13]](#footnote-14) the limitations expressed in the Citizenship Directive have attained “super-norm status” and may be deemed to “supersede other specific expressions of free movement rights”.[[14]](#footnote-15) In those judgments, the Court focused almost exclusively on a literal interpretation of the conditions expressed by the Directive. More specifically, the Court considerered in *Alimanovic* that as migrant jobseekers Ms Alimanovic and her daughter could be subject to the limitations imposed on individuals belonging to the categories of “retained workers” and “first-time jobseekers” by virtue of Article 24(2) of the Directive. In doing so, the Court remained oblivious to the possibility vested in those same migrant jobseekers to draw equal treatment guarantees as regards “social advantages” from their status as “workers” in accordance with Articles 45(2) TFEU and 7(2) of the Workers’ Regulation. By the same token, the Court left unaddressed some challenging questions about the interaction between the Workers’ Regulation and the Citizenship Directive. In the wake of the Court’s judgments in *Dano* and *Alimanovic*, it remains particularly unclear whether and to what extent the residence requirements set out in the Citizenship Directive may be used to curtail the equal treatment guarantees offered to migrant workers by Regulation 492/2011.

Against that backdrop, an analysis of the legal status of jobseekers is in order as it may help to shed some light on the thorny issues raised by the interaction between the Citizenship Directive and the Workers’ Regulation and, more generally, the intricate set of rules governing the legal status of Union citizens. In that perspective, the aim of the present article is to offer an overview of the Court’s recent jurisprudence in relation to the scope of equal treatment guarantees offered to migrant Union jobseekers for the purpose of obtaining social welfare in the host State. It is essentially suggested here that the limitations on the right of equal treatment featured in Article 24(2) of the Citizenship Directive may not be relied upon as such in order to circumscribe the equal treatment guarantees set forth in Article 7(2) of the Workers’ Regulation. Nonetheless, the Court seems willing to accept – albeit somewhat implicitly – that the Member States may effectively restrict migrant workers’ equality rights on the basis of integration requirements inspired to some extent by the requirements expressed in the Directive.

This article is structured as follows. Before embarking upon an analysis of the rather ambiguous relationship between the Citizenship Directive and the Workers’ Regulation in the light of the Court’s recent case law on Article 7(2) of that Regulation (2), the first section deals with the *Dano-Alimanovic* line of case law and, in particular, seeks to revisit the oft-repeated argument that it represents a radical departure from the early cases on Union citizenship which sets the Citizenship Directive as the “horizon indépassable” of EU free movement law.

The Court’s interpretation of Directive 2004/38 in *Dano* and *Alimanovic*: A break away from the Court’s traditional case law on Union citizenship?

In the aftermath of the Court’s well-known judgments in *Dano* and *Alimanovic*, it has often been suggested that the limitations expressed in the Citizenship Directive have attained “super-norm status” and may be deemed to “supersede other specific expressions of free movement rights”.[[15]](#footnote-16) One of the most striking features of these judgments is indeed the Court’s treatment – or lack thereof - of other provisions on free movement - such as the provisions on free movement of workers. The Court focused almost exclusively on a literal interpretation of the conditions expressed by the Directive. More specifically, it insisted on the importance for economically inactive citizens to comply with the right-to-reside tests featured in Article 7 of the Citizenship Directive in order to be able to rely on the equal treatment guarantees provided for by Article 24 of that Directive. The Court’s strict emphasis on the conditions set out in the Citizenship Directive in *Dano* may admittedly have been justified by the distinctive features of that case - Ms. Dano was unemployed and, perhaps more importantly, had not even sought employment after her arrival in Germany;[[16]](#footnote-17) but, in contrast, its lack of engagement with the rules on free movement of workers in *Alimanovic* is rather more surprising.

In its *Alimanovic* judgment, the Grand Chamber of the Court effectively concluded that Ms. Alimanovic and her daughter Sonita, two Swedish nationals who had both been employed in Germany for temporary jobs lasting less than a year before becoming unemployed, could no longer rely on their right of residence as retained workers since the period of six months laid down in Article 7(3)(c) of the Citizenship Directive had elapsed.[[17]](#footnote-18) As a result, they could not derive a right to reside *on the basis* of the Directive. The Court subsequently pointed out that, as jobseekers, Ms. Alimanovic and her daughter nevertheless enjoyed a right to reside pursuant to Article 14(4)(b) even after the six-month period mentioned in Article 7(3)(c) of the Citizen’s Rights Directive. At the same time, however, it results from Article 24(2) of that Directive that the Member States retain the power to exclude Union citizens whose right of residence is based solely on Article 14(4)(b) from any entitlement to social assistance.[[18]](#footnote-19) The Court therefore accepted to consider them as first-time jobseekers, which means that the status of a former migrant worker who has worked for less than one year in the host state will be governed by Article 14(4)(b) upon expiry of the six-month period of retention of the worker status (Article 7(3)(c)).[[19]](#footnote-20) By the same token, it remained oblivious to the possibility for those same migrant jobseekers to draw equal treatment guarantees as regards “social advantages” from their status as “workers” in accordance with Articles 45(2) TFEU and 7(2) of the Workers’ Regulation. Rather, the Court’s analysis of the scope of equal treatment guarantees conferred upon Ms Alimanovic and her daughter was based upon a strict interpretation of the limitations and conditions established by the Directive. Taken together with *Dano*, that judgment has therefore given rise to a widespread suggestion in academic literature that the right-to-reside standards laid down in that Directive had been transformed into a general norm of benefit restriction superseding other specific expressions of the principle of equal treatment.[[20]](#footnote-21) It has essentially been alleged in that respect that Union citizens may only be able to claim equal treatment with respect to social assistance if they can rely on a lawful right to reside in the territory of the host state in compliance with the conditions featured in Directive 2004/38.

Viewed from that perspective, the Court’s approach seems to offer a stark contrast compared to the Court’s early case law on the interpretation of the principle of non-discrimination conferred upon Union citizens by virtue of Articles 18, 20 and 21 TFEU. In the Court’s early – or traditional - case law on Union citizenship,[[21]](#footnote-22) the scope of that principle was construed in a broad manner to include Union citizens residing lawfully within the territory of another Member State.[[22]](#footnote-23) One of the first judgments delivered by the Court following the introduction of Union citizenship in the Maastricht Treaty was *Martinez Sala*. In that judgment, the Court was keen to emphasise that Union citizens could rely on the principle of equal treatment provided that they resided lawfully in the host state.[[23]](#footnote-24) Because the individual concerned was residing lawfully in the host state, he or she could rely on equal treatment guarantees to receive social assistance. The Court nevertheless left unanswered questions about whether “lawful residence” should be established on the basis of EU law or national law.[[24]](#footnote-25) In subsequent judments,[[25]](#footnote-26) it insisted again on the importance of establishing lawful residence in order to obtain the same treatment as nationals of the host state in relation to social assistance. By the same token, it clarified that migrant Union citizens’ access to social assistance could be limited by reference to the “conditionality of the residence right exercised” in the host state.[[26]](#footnote-27) It was deemed irrelevant, for that purpose, whether they enjoyed a right to reside in the host state on the basis of EU law or national law.[[27]](#footnote-28) The Court considered that Union citizens could avail themselves of the principle of equal treatment featured in Article 18 TFEU provided that they possessed a right to reside on the basis of national law even if they did not satisfy the conditions established in the Residence Directives.[[28]](#footnote-29)

The *Dano-Alimanovic* line of case law would appear to turn this approach on its head as it has allegedly become necessary to establish lawful residence in compliance with the requirements featured in the Citizenship Directive in order to trigger the right to equal treatment conferred upon Union citizens by Article 24 of the Directive.[[29]](#footnote-30) It is sometimes suggested that the Court’s approach is based upon a “reversal” of the order between the Union citizens’ right to equal treatment and their right of residence.[[30]](#footnote-31) The main thrust of that argument is that, in contrast to the early cases, whereby Union citizens could rely on equal treatment guarantees irrespective of the basis of their right to reside, the Court has clarified in *Dano-Alimanovic* that they may only rely on the right to equal treatment if they can establish lawful residence in compliance with the residence requirements featured in the Citizenship Directive.[[31]](#footnote-32) In other words, it is essentially submitted that the right-to-reside requirements set out in the Citizenship Directive have become the “horizon indépassable” of Union citizenship law.[[32]](#footnote-33) It hardly matters, for that purpose, whether the individual concerned enjoys a right to reside in the host state on another basis, be it under national law or on the basis of another EU secondary legislative instrument.[[33]](#footnote-34) What matters most is that the individual concerned satisfies the conditions for lawful residence enshrined in the Directive. But simply because the Court’s analysis of the scope of equal treatment in *Dano* and *Alimanovic* focuses heavily on the conditions for lawful residence established under the Citizenship Directive does not mean that the order between the Union citizens’ right to reside and right of equal treatment has been “reversed” by the Court.

It must be stressed in that regard that the preliminary ruling context within which the Court is called upon to intervene has evolved considerably since its early judments on Union citizenship. In most of these early cases, with the exception of *Baumbast*, the Court intervened in relation to (more favourable) provisions of national law on lawful residence.[[34]](#footnote-35) It was indeed confronted with the situation of migrant Union citizens who were residing lawfully or, at the very least, authorised to reside in another Member State on the basis of national law even though the conditions featured in the Residence Directives were not satisfied.[[35]](#footnote-36) In that context, the Court considered that migrant Union citizens could rely on the principle of equal treatment on the basis of Article 18 TFEU provided that they were residing lawfully on the territory of the host Member State in accordance with national law. At the same time, though, the Court clarified that the scope of equal treatment guarantees offered to Union citizens *could* be fleshed out by reference to the limitations and conditions laid down in the EU Residence Directives and, in particular, the requirement of financial self-sufficiency contained therein. In other words, the conditions and limitations enshrined in the Residence Directives were not regarded as absolute conditions for lawful residence, but rather as conditions that the “host Member State may but does not have to enforce”.[[36]](#footnote-37) The Member States were offered discretion in the implementation of these limitations and conditions into national law, subject to compliance with the general principles of Union law.[[37]](#footnote-38) More specifically, the Court proceeded to interpret the requirements enshrined in the Residence Directives and especially the requirement relating to financial self-sufficiency in the light of the principle of proportionality deriving from the Treaty prohibition of non-discrimination.[[38]](#footnote-39) In doing so, the Court was adamant that the Member States could introduce restrictions intended to prevent migrant Union citizens from becoming an unreasonable burden on public finances, provided that these restrictions complied with the principle of proportionality.[[39]](#footnote-40)

Following the entry into force of Directive 2004/38, the Court was invited to revisit its case law on the relationship between the right-to-reside tests featured in EU secondary law and the scope of equal treatment guarantees offered to Union citizens in relation to social assistance. Some Member States had effectively relied on the Citizenship Directive to introduce far-reaching restrictions on cross-border access to their national social assistance systems.[[40]](#footnote-41) It has been observed in that respect that “[o]ne of the root causes” for the Court’s (strict) emphasis on the requirements for lawful residence set out in Article 7 of Directive 2004/38 is “the attempt by many Member States to introduce restrictions on Union citizens’ access to social benefits while conforming to [that] Directive”.[[41]](#footnote-42) The introduction of such restrictive measures has been fuelled by academic and political debates echoing (unfounded) fears about abusive “social tourism” and “poverty migration” in the context of the economic downturn which has plagued the EU in recent years.[[42]](#footnote-43) Germany features amongst those member states as the German authorities introduced far-reaching restrictions on economically inactive Union citizens’ access to their social welfare system during the implementation of that Directive.[[43]](#footnote-44) One of the most problematic provisions adopted in that context prescribes that inactive citizens whose lawful residence arises solely out of the search for employment can be automatically refused the grant of social benefits (para. 7(1)(2) SGB II). It is that provision that was at the heart of the Court’s judgments in *Dano* and *Alimanovic*.

In contrast to the early cases, which involved more favourable national measures in comparison with the conditions established under secondary law, the Court had to determine in *Dano* and *Alimanovic* whether the Member States could adopt national restrictive measures based upon the Citizenship Directive.[[44]](#footnote-45) It is therefore submitted here that in those judgments, the Court merely emphasized that the Member States had the *possibility* to award social benefits only to Union citizens residing lawfully in the host state in accordance with the conditions laid down in the Directive. In contrast, there was nothing to suggest that they were *compelled* to restrict access to their social assistance schemes on the basis of that Directive. In the same vein, these judgments did not address specifically the relationship between the Treaty principle of equal treatment and other residence rights deriving from national law or other strands of EU law.[[45]](#footnote-46) They cannot therefore be taken to mean that a right of equal treatment may never be derived from lawful residence on a different basis outside the conditions established under the Citizenship Directive - be it under another provision of secondary law or even, perhaps, (more favourable) national provisions.[[46]](#footnote-47) Even in its subsequent *Commission v United Kingdom* judgment, where the Court was called upon to determine if access to the family benefits covered by Regulation 883/2004 could be limited by reference to the Citizenhip Directive, the Court’s findings were framed in a permissive manner.[[47]](#footnote-48) In doing so, the Court essentially allowed, but did not oblige, national authorities to introduce additional residence requirements based upon the Citizenship Directive in relation to the benefits covered by Regulation 883/2004.[[48]](#footnote-49)

The Court’s interpretation of the principle of equal treatment of workers in *Jobcenter Krefeld*: Beyond the “horizon indépassable” of *Dano-Alimanovic*?

The *Dano-Alimanovic* line of case law sets a worrying trend that could pave the way to further limitations on equal treatment.[[49]](#footnote-50) Specifically, the Member States could be tempted to introduce additional restrictions on transnational access to social welfare in the light of the restrictive stance adopted by the Court in those judgments.[[50]](#footnote-51) A recurring question, in that regard, concerns whether access to social advantages under Regulation 492/2011 may be subject to the right-to-reside tests featured in Directive 2004/38. In the light of the *Dano-Alimanovic* line of case law, it remains rather unclear whether the conditions and limitations enshrined in that Directive may also be used to circumscribe the equality rights featured in Regulation 492/2011.[[51]](#footnote-52)

*Germany’s restrictive implementation of Dano-Alimanovic*

In *Jobcenter Krefeld*,[[52]](#footnote-53) the Court was precisely given an opportunity to shed light on the scope of the principle of non discrimination enshrined in Article 7(2) of Regulation 492/2011 in relation to migrant jobseekers and their family members.[[53]](#footnote-54) Specifically, the Court had to ascertain whether a former migrant worker whose school-age children enjoy a right of access to education in the host state under Article 10 of Regulation 492/2011 may rely on the principle of equal treatment as regards social advantages featured in Article 7(2) of that Regulation. The reference for a preliminary ruling submitted to the Court in that case was introduced after the German legislature modified Book II of the German Social Code to reflect the changes brought about by the *Dano* and *Alimanovic* judgments.[[54]](#footnote-55) The new rules confirm the Court’s jurisprudence at paragraph 7 of SGB II. According to that provision, foreign nationals who “do not have a right of residence” in Germany (Para. 7(1)(2)(a)) or whose right of residence “arises solely as a result of seeking employment” (Para. 7(1)(2)(b)) are automatically excluded from obtaining the subsistence benefits covered by that law. In addition, the new rules also feature an automatic exclusion from access to social assistance addressed to foreign nationals “who derive their right of residence - exclusively or alongside a right of residence under point (b) - from Article 10 of Regulation 492/2011” (Para. 7(1)(2)(c)).

This new provision was presumably adopted as a reaction to the argument brought to the fore by Advocate General Wathelet in *Alimanovic* that Ms Alimanovic and her children could possibly derive residence rights from Article 10 of that Regulation.[[55]](#footnote-56) That provision confers a right of equal treatment as regards access to education to the children of (former) migrant workers.[[56]](#footnote-57) The Court has repeatedly held that the (former) workers’ children and their primary carer also derive a right of residence in the host state from that provision.[[57]](#footnote-58) At the same time, however, the question remains open as to the extent to which they may rely on Article 10 of Regulation 492/2011 in order to be granted equal treatment as regards entitlement to social benefits in the host state. It is generally recognised that the protection afforded by that provision extends to study assistance for students.[[58]](#footnote-59) Perhaps somewhat unsurprisingly, this derives from the very objective pursued by Article 10 of Regulation 492/2011, which is to ensure that the children of (former) migrant workers benefit from equal treatment guarantees as regards access to education in the host state. Accordingly, Article 10 refers not only to the rules on admission to educational courses, but also to “general measures intended to facilitate educational attendance”. The Court has ruled in that regard that “such children must be eligible for study assistance from the state in order to make it possible for them to achieve integration in the society of the host country”.[[59]](#footnote-60) Whether they may, in contrast, rely on equal treatment guarantees to receive financial aid intended to cover the costs of living is an entirely different matter.

As Advocate General Wathelet so eloquently pointed out in *Alimanovic*, the Court had already concluded that Directive 2004/38 did not make the right of residence enjoyed by the children of a (former) migrant worker and their primary carer conditional upon the fulfilment of the conditions derived from that Directive.[[60]](#footnote-61) In other words, this right was considered by the Court as independent of the conditions governing the right of residence of Union citizens under the Citizenship Directive. This meant, in particular, that it was not subject to the requirements relating to their financial self-sufficiency and comprehensive health insurance coverage or, more generally, to the conditions featured in that Directive.[[61]](#footnote-62) The Advocate General subsequently inferred from the foregoing that a former migrant worker and his or her children deriving a right to reside from Article 10 of the Regulation could not be excluded from obtaining social advantages pursuant to Article 7(2)(b) of SGB II as their residence right did not arise solely out of the search for employment[[62]](#footnote-63). While this argument was not taken up by the Court in its judgment - probably because the referring court had not raised that issue in its request for a preliminary ruling, as the Advocate General alluded to -, it has presumably generated significant legal developments in Germany as the German Federal Social Court later decided to follow the Advocate General’s reasoning in three similar cases.[[63]](#footnote-64) It seems as though the German authorities subsequently decided to take the bulls by the horns by introducing an automatic exclusion from entitlement to social benefits addressed to that category of Union citizens. It is that exclusion which lies at the heart of the Court’s judgment in *Jobcenter Krefeld*.

In that case, the claimant, JD, was a Polish national who moved to Germany with his wife and their two school-age daughters in early 2013. Following their arrival in Germany, the couple split up and the claimant’s wife ultimately returned to Poland in 2016. In the meantime, their two daughters were principally residing with their father, who took up employment in Germany in early 2015. The claimant was subsequently employed for temporary jobs lasting less than one year, whilst his daughters started attending school in Germany in August 2015. While he was still employed, JD was declared unfit for work. He continued to receive remuneration from his employer until the end of his employment tenure and then obtained social security sickness benefits until 7 December 2016. He and his two daughters subsequently continued to receive subsistence benefits in accordance with Book II of the German Code of Social Law (SGB II) for six months. After that period elapsed, the claimant applied, on behalf of him and his daughters, for the continued payment of these benefits. That request was nevertheless rejected by Jobcenter Krefeld on the basis of Paragraph 7(2)(b) of the SGB II. That interpretation was subsequently challenged by the claimant in front of the Social Court of Düsseldorf. In contrast to Jobcenter Krefeld, the Social Court considered that JD and his two daughters could not be denied access to the subsistence benefits at issue insofar as they enjoyed a right to reside under Article 10 of Regulation 492/2011. The Social Court of Düsseldorf stressed that the rights derived from that provision are independent and autonomous of the provisions featured in Directive 2004/38. More specifically, it held that the derogation from the principle of equal treatment in relation to social assistance benefits enshrined in Article 24(2) therein does not apply in relation to Union citizens who enjoy a right to reside under Article 10 of the Regulation. The question therefore remained open as to the extent to which they could rely on the principle of equal treatment in order to be granted social assistance benefits in the host state. In the appeal proceedings initiated by Jobcenter Krefeld, the referring court therefore asked the Court of Justice to ascertain, in essence, whether the residence and welfare rights conferred upon the claimants and his children by Regulation 492/2011 may be subject to the provisions of the Citizenship Directive. Seized of that matter in *Jobcenter Krefeld*, the Grand Chamber of the Court opined that a migrant Union job-seeker and his minor children, all of whom enjoy a right of residence in the host state under Article 10 of Regulation 492/2011, could not *automatically and in all circumstances* be denied access to subsistence benefits in that state.[[64]](#footnote-65)

*The Court’s broad interpretation of the concept of “worker” for the purposes of Article 7(2) of the Workers’ Regulation*

The Court’s analysis revolved around a broad understanding of the concept of “worker” within the meaning of Article 7(2) of the Regulation. Because JD and his children enjoyed a right to reside on the basis of Article 10 of the Regulation, the former was able to retain his status as a worker in relation to the principle of equal treatment featured in that provision. In doing so, the Court agreed with Advocate General Pitruzzella that the claimant and his two daughters enjoyed a right to equal treatment as regards the subsistence benefits at issue. Nevertheless, the approaches taken in reaching that conclusion differed greatly. Advocate General Pitruzzella established a distinction depending on whether “the view is taken that JD has a right to equal treatment [under Article 7 of the Regulation] or whether the view is taken that it is his two daughters who have that right [under Article 10 of the Regulation]”.[[65]](#footnote-66) By contrast, the Court refused to assess the claims to social assistance on the basis of each legal bases separately. According to the Court, it is precisely because JD and his children enjoy an autonomous right of residence on the basis of Article 10 of Regulation 492/2011 that they should be granted equal treatment guarantees by virtue of Article 7(2) of Regulation 492/2011. In support of that assessment, the Court stated that Article 7(1) of the Regulation offers equal treatment guarantees to workers who have “become unemployed”. Accordingly, the protection laid down in Article 7(2), which refers to the term “worker” as expressed in the first paragraph of that provision, extends beyond “just the period of employment” of workers’.[[66]](#footnote-67) At first glance, that interpretation would appear to stand on shaky premises. It results from a literal interpretation of Article 7(1) of the Regulation that it offers equal treatment to unemployed workers only in relation to reinstatement and re-employment.[[67]](#footnote-68) To interpret that very limited reference to unemployed workers as meaning that Article 7(2) offers equal treatment guarantees as regards social advantages to unemployed migrant workers seems to stretch the personal scope of that provision a bit too far.

The Court, however, found further support for that interpretation in Article 45 TFEU. The meaning of “worker” as referred to in Article 7(2) of the Regulation was indeed construed in the light of the personal scope of the equal treatment guarantees offered to workers on the basis of 45 TFEU. As Article 7(2) of the Regulation is the concrete expression, in the area of social advantages, of the equal treatment rule enshrined in Article 45 TFEU, it must indeed be interpreted in the same way as the latter provision.[[68]](#footnote-69) The Court was therefore able to rely on its previous interpretation of that provision in *Collins* to establish a distinction between first-time jobseekers and former migrant workers. In contrast to first-time jobseekers, who enjoy equal treatment only in relation to access to the employment market, former migrant workers qualify for the same social advantages as national workers on the basis of Article 7(2) of the Regulation. As a result, an inactive Union citizen who has been employed in the host state may in certan circumstances continue to rely on the right to equal treatment laid down in that provision even after the termination of the employment relationship.[[69]](#footnote-70) Such is the case when a former worker and his or her children enjoy a right of residence on the basis of Article 10 of Regulation 492/2011.[[70]](#footnote-71) Consequently, they are entitled to rely on the principle of equal treatment in order to be granted subsistence benefits in the host state. The children’s right of access to education would otherwise be rendered ineffective since, as the Advocate General points out, “indigence is clearly an obstacle to access to education for any child”.[[71]](#footnote-72)

The Court’s broad approach towards the concept of migrant worker seems to reflect a broader interpretative trend in the Court’s jurisprudence. It is submitted, in particular, that the Court’s interpretation of the concept of “worker” in *Jobcenter Krefeld* falls in line with recent judgments delivered by the Court on the status of retained workers and self-employed persons for the purposes of Article 7(3) of Directive 2004/38. In recent judgments, the Court has indeed shaped a protective regime with regard to vulnerable categories of workers and self-employed persons on the basis of that provision.[[72]](#footnote-73) All those cases have in common that the benefit applicants were working - either as self-employed or workers - on a marginal basis before becoming unemployed owing to circumstances beyond their control (such as an economic downturn or the late stages of pregnancy and the aftermath of childbirth).[[73]](#footnote-74) They did not have sufficient resources to cover their costs of living in the host state. Upon application for the grant of social welfare benefits (jobseekers’ allowance and child benefit), their claim was rejected by the Irish authorities on the ground that they lacked a right to reside for the purpose of obtaining the desired benefits. The core issue addressed by these judgments concerned the Irish national authorities’ restrictive reading of the right-to-reside test deriving from the combined application of Articles 7(1)(a) and 7(3) of the Citizenship Directive[[74]](#footnote-75).

Perhaps the most protective stance adopted by the Court in that context occurred in its judgment in the *Tarola* case. In that case, the retention of worker status was made conditional upon the claimant having worked for a minimum period of time in Ireland. Crucially, the minimum period required by Irish law to be considered as a worker and establish habitual residence for the purpose of obtaining a jobseeker’s allowance was in excess of the period provided for in Article 7(3)(c) of the Citizenship Directive. The question as to whether the introduction of such requirements complied with that provision was subsequently brought to the fore in front of the Court of Justice. In that judgment, the Court had to decide whether a migrant Union citizen who has worked in the host state as a self-employed for a period of two weeks before becoming involuntarily unemployed could derive a right of residence from the status as retained worker in accordance with Article 7(3)(c) of the Citizenship Directive. The Court concluded that the minimum period of economic activity described in that provision applies “regardless of the nature of the activity of the type of employment contract entered into for that purpose”.[[75]](#footnote-76) As a result, even those migrant workers who have worked for a (very) short period of time in the host state must be offered a right to reside and thus equal treatment guarantees in relation to social assistance on the basis of the Directive.[[76]](#footnote-77)

It has been suggested that this line of case law “recovers the notion of a European citizen as a promoter of European integration”.[[77]](#footnote-78) It must be noted, however, that contrary to the Court’s early case law, where the status of Union citizen was relied upon - in conjunction with other free movement provisions - to carve out a protective regime in relation to economically inactive persons, the Court’s recent judments rely on a statutory interpretation of the Citizenship Directive. In particular, the status of Union citizen played next to no role in the Court’s understanding of Article 7(3) of that Directive. With the exception of *Dakneviciute*, where the Court used Article 49 TFEU in order to afford protection to a Union citizen falling outside the scope of Article 7(3), the economic free movement provisions featured in the Treaties were not even contemplated in the construction of the protective regime envisioned by the Court in those judgments. It can therefore be argued that these provisions may essentially be used in a subsidiary role to fill in the gaps resulting from the (literal) interpretation of the standards contained in the Citizenship Directive. In a similar vein, the Court in *Jobcenter Krefeld* relied on Article 45 TFEU in order to support its somewhat questionable and counterintuitive reading of the concept of worker for the purposes of Article 7(2) of the Workers’ Regulation. On the basis of the freedom of movement of workers enshrined in the Treaty, it was then able to confer equal treatment guarantees upon a former migrant worker and his or her school-age children despite the fact that they were not financially self-sufficient. It is suggested here that the Court’s broad approach towards the concept of migrant worker echoes a broader trend in the Court’s jurisprudence. In spite of the different interpretative strategies followed in those judgments, the outcome of these cases is indeed evolutionary as the Court seems keen to ensure that the most vulnerable individuals are afforded equal treatment guarantees even on account of previous (minor) economic activity in the host state.[[78]](#footnote-79)

*A sneak peek into the future: The relationship between the Workers’ Regulation and the Citizenship Directive*

One of the most significant features of the judgment in *Jobcenter Krefeld* is that it sheds light on the relationship between the right-to-reside tests set forth in the Citizenship Directive and the Treaty principle of equal treatment. After *Dano-Alimanovic*, it was indeed suggested that economically inactive migrant Union citizens could only claim equal treatment with respect to social assistance provided that they could establish lawful residence in compliance with the Citizenship Directive. At the same time, however, these judgments did not address specifically the relationship between the principle of equal treatment and other residence rights deriving from national law or other strands of EU law. As a result, the question of whether the equality doctrine elaborated in *Dano-Alimanovic* expressed a general limiting principle applicable in relation to other free movement provisions remained unanswered. It was unclear, in particular, whether the scope of equal treatment guarantees based on Regulation 492/2011 could be fleshed out by reference to the conditions and limitations enshrined in that Directive.[[79]](#footnote-80) It may now be inferred from *Jobcenter Krefeld* that the Citizenship Directive does not as such constitute a “general norm of benefit restriction” inscribed into the principle of equal treatment expressed in Article 18 TFEU and other free movement provisions.

In that judgment, the Grand Chamber of the Court made clear that in circumstances where a Union citizen can rely on a right to reside based on another strand of EU law to claim equal treatment guarantees, these guarantees cannot be made subject to the limitations and conditions enshrined in the Citizenship Directive. More specifically, the Court ruled that the derogatory regime established by Article 24(2) of the Citizenship Directive does not apply in relation to Union citizens who reside lawfully on the territory of the host state independently from the requirements of the Citizenship Directive. According to the Court, that provision,

“is applicable only in situations that fall within the scope of Article 24(1), namely situations where the right of residence is based on that directive, and not in situations where that right has an independent basis in Article 10 of Regulation No 492/2011”.[[80]](#footnote-81)

In other words, the derogation brought about by Article 24(2) of the Directive only applies in relation to individuals who enjoy a right to reside *on the basis of that Directive* as prescribed by the first paragraph of that provision. This means that a former worker cannot be excluded from entitlement to social assistance on the basis of that provision if he or she enjoys a right to reside for the purposes of Article 10 of Regulation 492/2011. Because he or she is residing lawfully on the basis of that provision, he or she does not fall within the scope of the derogatory regime established by Article 24(2) of the Citizenship Directive. Once they are acquired, the rights conferred by Article 10 of the Workers’ Regulation take a life of their own and must accordingly be regarded as independent of the conditions and requirements governing the right of residence of Union citizens under Directive 2004/38.[[81]](#footnote-82) As a consequence, they are not subject to the self-sufficiency requirements featured in that Directive.[[82]](#footnote-83) The Court also clarified that the adoption of the Citizenship Directive does not affect the independence of the rights based on Article 10 of the Regulation. As a result, the equality rights enjoyed by a former migrant worker and his or her children, all of whom possess a right to reside on the basis of Article 10 of the Regulation, are not subject to the derogation enshrined in Article 24(2) of Directive 2004/38.[[83]](#footnote-84)

The Court nevertheless left open salient questions relating to the interaction between those two legislative instruments. After *Jobcenter Krefeld*, it remains to be seen whether the right-to-reside tests listed in the Citizenship Directive may be used as preconditions for the enjoyment of the rights featured in the Workers’ Regulation even in the absence of an independent right to reside. It would appear from the Court’s judgment that it seems inclined to take the reasoning one step further. In paragraph 70 of its judgment, the Court indeed considers that,

“the fact that jobseekers have specific rights under that Directive cannot, having regard to the independence of the bodies of rules established by that Directive and by Regulation No 492/2011 respectively, entail a diminution in the rights that such persons can derive from that Regulation”.[[84]](#footnote-85)

In doing so, the Court appears to rely on the independence of the equality regime established by the Regulation *as a whole* to rule out the application of the residence requirements established by the Citizenship Directive in relation to the principle of equal treatment fleshed out in Article 7(2) of the Workers’ Regulation. As that provision is the specific expression, in the area of the grant of social advantages, of the principle of equal treatment enshrined in Article 45(2) TFEU,[[85]](#footnote-86) it is meant to apply specifically to migrant workers independently of the rights and duties deriving from the Citizenship Directive. In the event of overlap in the application of these two legislative instruments, the rule most favourable for the individual concerned takes precedence. It appears as though the Court considers that the autonomy of the Workers’ Regulation would be adversely affected if the requirements listed in the Citizenship Directive were used as pre-conditions for the enjoyment of the principle of equal treatment set out therein. In other words, it would seem that the equality rights enjoyed by migrant workers on the basis of Regulation 492/2011 cannot be made subject to the limitations featured in the Citizenship Directive even in the absence of an independent right of residence. It is submitted here that such an interpretation should be followed in future judgments since it falls in line with the very purpose of the rules on free movement of workers. As stated in the Preamble to the Worker’s Regulation, the aim of that freedom is to remove obstacles to the mobility of workers in a way that guarantees the best possible conditions for the integration of the worker’s family into the host country.[[86]](#footnote-87) To my mind, imposing discriminatory integration requirements – including residence conditions - on (former) migrant workers applying for social benefits in the host state runs counter to the achievement of that objective, thereby depriving the equal treatment guarantees conferred upon migrant workers of their effectiveness. As a consequence, it is suggested that (former) migrant workers should be able to rely on Article 7(2) of the Regulation as long as they retain their status of worker within the meaning of that provision without having to satisfy the right-to-reside tests featured in the Citizenship Directive.

That approach is likely to have far-reaching implications considering the broad construction of the material scope of Article 7(2) of the Regulation. According to the Court, the concept of “social advantages” includes,

“all advantages which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory and the extension of which to workers who are nationals of other Member States therefore seems suitable to facilitate their mobility within the EU and, consequently, their integration into the host state”.[[87]](#footnote-88)

When it is called upon to interpret that concept, the Court focuses on the “inclusive role” played by social advantages in furthering the integration of the workers in the host state.[[88]](#footnote-89) It follows that the protection afforded by Article 7(2) of the Workers’ Regulation is not merely intended to cover advantages that facilitate the integration of the worker in the *employment market of the host state*. What matters most, for the purposes of that provision, is that the advantage claimed by the migrant worker contributes to the integration of that worker and his or her family members in the *society of the host state*. This broad interpretation is borne out by reference to the objective underlying the freedom of movement of workers.[[89]](#footnote-90) It has indeed been demonstrated above that the aim of that freedom is to guarantee the best possible conditions for the integration of migrant workers and their family members into the society of the host state. Building upon that integrationist premise, the Court has construed broadly the concept of “social advantages” as encompassing a potentially unlimited range of financial benefits such as inter alia study grants, financial aid for higher education studies, maintenance aid for studies, unemployment benefits, child-raising allowances, reimbursement of school transport costs etc. It has also been confirmed in *Jobcenter Krefeld* that the equal treatment guarantees featured in Article 7(2) of the Workers’ Regulation extend to the costs of living. As the Court puts it,

“since the purpose of the subsistence benefits at issue in the main proceedings is, as stated by the referring court, to cover the subsistence costs of their recipients, it must be held that those benefits contribute to the integration of those recipients in the society of the host Member State”.[[90]](#footnote-91)

It follows that such advantages should be awarded to migrant workers without nationality discrimination. As a consequence, it is suggested that (former) migrant workers should be able to rely on comprehensive equal treatment guarantees provided for in Article 7(2) of the Workers’ Regulation without being required to comply with the right-to-reside tests enshrined in the Citizenship Directive.

Unfortunately, that does not mean that the right of equal treatment conferred upon (former) migrant workers by virtue of Article 7(2) of the Workers’ Regulation may never be subject to similar requirements at the domestic level. It must be recalled in that respect that the Member States are entitled to introduce restrictions on the principle of equal treatment enshrined in that provision provided that these restrictions are objectively justified by a legitimate public interest. The Member States’ regulatory autonomy in relation to the award of specific social benefits is therefore preserved by the possibility to justify retrictions on the principle of equal treatment as regards such award. In recent judgments, the Court has displayed growing acceptance of the use of integration requirements as a means to foreclose economic migrants and their family members’ right to obtain social advantages on the basis of Articles 7(2) of Regulation 492/2011 and 45(2) TFEU.[[91]](#footnote-92) At least in relation to frontier workers, the Court has accepted that the fact of work is no longer considered sufficient in itself to justify the award of state support.[[92]](#footnote-93) Instead, it has been transformed into a mere presumption.[[93]](#footnote-94) As the Court puts it in *Commission v Netherlands*:

“As regards migrant workers and frontier workers, the fact that they have participated in the employment market of a Member State establishes, *in principle*, a sufficient link of integration with the society of that Member State, allowing them to benefit from the principle of equal treatment, as compared with national workers, as regards social advantages”.[[94]](#footnote-95)

In spite of the criticism expressed by Advocate General Wathelet,[[95]](#footnote-96) that statement has been reiterated by the Court in subsequent judgments dealing with the non-resident children of migrant workers’ right to obtain financial aid for higher education studies on the basis of Article 7(2) of Regulation 492/2011 (“the student aid cases”).[[96]](#footnote-97) It follows from that line of case law that (former) migrant workers are no longer regarded as necessarily having a sufficient degree of attachment to the host state for the purpose of obtaining that state support. More specifically, the Court is adamant that,

“the frontier worker is not always integrated in the Member State of employment in the same way as a worker who is resident in that State”.[[97]](#footnote-98)

This means that the Member States may make access to social benefits subject to the worker and his or her family being able to demonstrate other forms of connection with the host state beyond the mere fact of work.

The Court has so far only allowed the Member States to use real link tests in relation to frontier workers (and their children) whose residence is established outside the Member State where they work. In contrast, it has not yet endorsed the use of additional integration requirements in relation to migrant workers who reside in their country of employment. This would suggest that, in contrast to frontier workers, resident migrant workers qualify for equal treatment without having to satisfy further requirements.[[98]](#footnote-99) At the same time, however, it must be stressed that the Court’s statement in *Commission v Netherlands* is addressed more generally to migrant workers as a whole. Furthermore, that statement was made in the context of infringement proceedings and may accordingly be seen as the expression of a broad principle reaching beyond the specific set of circumstances of that case. The Court’s reasoning may therefore have implications for the status of migrant worker in general. Specifically, it may create a precedent allowing the Member States to use real link requirements to restrict the right to obtain social advantages enjoyed by Union migrant workers who work *and* reside in the host state under Regulation 492/2011. As a result, it would seem that even the rights enjoyed by (former) migrant workers on the basis of the Workers’ Regulation may effectively be curtailed by national authorities on the basis of integration requirements inspired to a certain extent by the right-to-reside standards enshrined in the Citizenship Directive.

When they decide to adopt such requirements, the Member States should nevertheless be careful to comply with the principle of equal treatment and, in particular, the principle of proportionality flowing therefrom. This means that national authorities may only restrict cross-border access to social assistance provided that such restriction is objectively justified by a legitimate public interest following an individual assessment of the particular circumstances of the benefit claimant. If the Court’s students finance cases are anything to go by, though, it would appear that the Member States retain considerable regulatory autonomy within those constraints. Those judgments demonstrate that the Court has been rather lenient (if not downwards inconsistent) in its approach towards the proportionality of restrictive measures.[[99]](#footnote-100) One of the most worrying features of these cases is indeed that the Member States’ reliance on objectives underpinned at least partially by financial considerations is concealed by the Court’s lenient approach in the examination of the appropriateness of such measures in the light of other objectives invoked by the Member State concerned. In doing so, the Court leaves great leeway to national public authorities when they introduce restrictions on migrant workers’ rights. By the same token, it leaves open thorny issues on whether the Member States may actually rely on purely economic justifications to foreclose cross-border access to their social assistance systems even in relation to migrant workers.[[100]](#footnote-101)

Conclusion

In the wake of the Court’s judgments in *Dano* and *Alimanovic*, there was considerable uncertainty about the interplay between the equal treatment guarantees vested in Union citizens by Articles 18, 21 and 45 TFEU and the different legislative measures adopted to give effect to these Treaty provisions. More specifically, the Court left open tricky questions about whether and to what extent the requirements set out in the Citizenship Directive could be used to curtail the equal treatment guarantees offered to migrant workers by Regulation 492/2011. It has been suggested in that respect that the limitations expressed in the Citizenship Directive had attained “super-norm status” and could be deemed to “supersede other specific expressions of free movement rights”.[[101]](#footnote-102) By contrast, it is submitted here that the limitations on the right of equal treatment featured in Article 24(2) of the Citizenship Directive cannot be relied upon per se in order to circumscribe the equal treatment guarantees set forth in Article 7(2) of the Workers’ Regulation. From the foregoing considerations it may nevertheless be inferred that the relationship between the Directive and other specific expressions of the principle of equal treatment - such as Article 7(2) of the Workers’ Regulation - is rather ambiguous. As the judgment in *Jobcenter Krefeld* demonstrates, the Court itself is often keen to reiterate that a distinction should be drawn between economically inactive and active Union citizens. Although economic actors enjoy unconditional equal treatment guarantees in relation to the award of social assistance, economically inactive Union citizens may be subject to additional integration requirements for the purpose of obtaining financial support from the host State. In *Jobcenter Krefeld*, the Court seems to rely on that distinction to rule out the application of the limitations enshrined in Article 24(2) of the Directive in relation to the equal treatment guarantees enjoyed by individuals that belong to the category of “worker” within the meaning of Article 7(2) of the Workers’ Regulation.

It appears, however, that the integration requirements featured in the Citizenship Directive are sometimes re-introduced through the back door by the Member States in order to circumscribe transnational access to social assistance even in relation to economically active Union citizens. In addition to residence requirements, these additional integration requirements may take the form of requirements that the migrant worker has worked for a certain period of time in the host state,[[102]](#footnote-103) or has contributed substantially to the national labour market (by meeting a threshold of minor employment as defined in national law).[[103]](#footnote-104) Such requirements reflect a broader shift towards criteria based on the duration of one’s integration - be it through work or residence - in the host State which were developed as a result of the Member States’ implementation of the Court’s jurisprudence on Directive 2004/38.[[104]](#footnote-105) It is somewhat unclear, though, how that development may be reconciled with the Court’s assertion, in *Jobcenter Krefeld*, that the application of the Citizenship Directive may not entail a diminution of the rights laid down in the Workers’ Regulation. Quite surprisingly, the Court seems willing to endorse - albeit sometimes implicitly - the use of such integration requirements in relation to specific categories of migrant workers. As a consequence, it would appear that the Member States retain significant regulatory autonomy to circumscribe cross-border access to social assistance within the constraints imposed by EU law and, in particular, the principle of proportionality.

That jurisprudential development may entail far-reaching implications in relation to the very scope of the Treaty principle of equal treatment. The status of worker has traditionally been recognized as sufficient in and of itself to justify full equal treatment in relation to the award of social assistance, but it has been observed that “the privileged position of EU workers has been weakened by the economic crisis and Brexit”.[[105]](#footnote-106)/[[106]](#footnote-107) As the concept of work evolves towards more precarious forms of employment relationships, migrant workers have come to rely more heavily on financial support from the host state in order to make ends meet. As a consequence, the debate on equal treatment - initially centered on (unfounded) allegations of “benefit tourism” in relation to economically inactive Union migrants - has gradually spread over to the field of free movement of workers. As integration requirements based on duration of work or residence become more prevalent across the Member States, even in relation to economically active Union citizens, the Court’s case law may therefore lead to the introduction of further restrictions on migrant workers in general.[[107]](#footnote-108) In this context, and barring any potential reform of EU free movement law intended to establish clear and objective criteria in relation to migrant workers’ right to social assistance,[[108]](#footnote-109) it falls upon the Court to adopt a strict stance on the proportionality of such restrictions. It may be argued in that respect that the Court’s general reluctance to admit that restrictive integration tests are - at least partially - underpinned by financial considerations comes in the way of establishing a consistent approach to the proportionality of restrictions on migrant workers’ right to social assistance. By recognizing the true nature of such restrictions, the Court would be able to insist on the importance of establishing the proportionality of restrictive measures on the basis of,

“objective, detailed analysis, supported by figures, [that] must be capable of demonstrating, with solid and consistent data, that there are genuine risks to the balance of the social security system”.[[109]](#footnote-110)

Whilst that approach might admittedly come at the expense of national administrations in the context of mass administrative procedures, it is the price to pay for preserving the hardcore of EU free movement law.

1. \*Research and teaching assistant in EU internal market law, Cité Research Unit (Uliège), mtecqmenne@uliege.be. I am most grateful for the invaluable guidance offered by Professor Dr. Van Cleynenbreugel in relation to earlier versions of this draft. All errors remain, of course, my own. [↑](#footnote-ref-2)
2. A. Amelina, “Theorizing European Social Citizenship: Governance, Discourses and Experiences of Transnational Social Security”, in A. Amelina et al. (eds), *Boundaries of European Social Citizenship: EU Citizens’ Transnational Social Security in Regulations, Discourses, and Experiences* (London: Routledge, 2020), p. 19. [↑](#footnote-ref-3)
3. See, e.g. *Brian Francis Collins v Secretary of State for Work and Pensions* (C-138/02) EU:C:2004:172. S. Giubonni, ‘Free Movement of Persons and European Solidarity’, 13(3) *European Law Journal* (2007) pp. 371 ff. [↑](#footnote-ref-4)
4. N. Nic Shuibhne, “Reconnecting Free Movement of Workers and Equal Treatment in an Unequal Europe” (2018) 43 *European Law Journal* 4, 481-482. [↑](#footnote-ref-5)
5. O’Brien, “Civis Capitalist Sum: Class as the New Guiding Principle of EU Movement Rights” (2016) 53 C.M.L. Rev. 4, 943. On the rather controversial nature of discriminatory requirements resulting from the introduction of such tests, see N. Nic Shuibhne, “What I Tell you Three Times is True: Lawful Residence and Equal Treatment after Dano” (2016) 23 Maastricht Journal of European and Comparative Law 6, 918. [↑](#footnote-ref-6)
6. Amelina, “European Welfare between Complex Regulatory Frameworks and Mobile Europeans’ Experiences of Social (In)security”, in Amelina et al. (eds), *Boundaries of European Social Citizenship* (2020), p. 1. [↑](#footnote-ref-7)
7. Directive 2004/38/EC on the right of citizens of the Union and their family members to mover and reside freely within the territory of the Member States [2004] OJ L 158/177. [↑](#footnote-ref-8)
8. Recital 4 in the Preamble to the Citizenship Directive. [↑](#footnote-ref-9)
9. E. Spaventa, “Earned Citizenship - Understanding Union Citizenship through its Scope”, in D. Kochenov (ed.), *EU Citizenship and Federalism – The Role of Rights* (Cambridge: Cambridge University Press, 2017), p. 208. [↑](#footnote-ref-10)
10. Regulation (EU) No. 492/2011 on freedom of movement for workers within the Union [2011] OJ L 141/1. [↑](#footnote-ref-11)
11. Nic Shuibhne, “What I Tell you Three Times is True” (2016), 926. [↑](#footnote-ref-12)
12. See, e.g. *The Queen and The Immigration Appeal Tribunal, ex parte Gustaff Desiderius Antonissen* (C-292/89) EU:C:1991:80 at [12-13]; *Maria Martinez Sala and Freistaat Bayern* (C-85/96) EU:C:1998:217 at [32]; *Collins* (C-138/02) at [26]; *Athanasios Vatsouras, Josif Koupatantze v Arbeitsgemeinschaft (ARGE) Nürnberg900* (C-22/08 & C-23/08) EU:C:2009:344 at [36-37]; *Caves Krier Frères Sàrl v Directeur de l’Administration de l’Emploi* (C-379/11) EU:C:2012 :798 at [26]; *Jessy Saint Prix v Secretary of State for Home and Pensions* (C-507/12) EU:C:2014:2007 at [35]; *G.M.A. v État belge* (C-710/19) EU:C:2020:1037 at [24]. [↑](#footnote-ref-13)
13. *Elisabeta* *Dano, Florin Dano v Jobceter Leipzig* (C-333:13) EU:C:2014:2358 ; *Jobcenter Berlin Neukölln v Nazifa Alimanovic, Sonita Alimanovic, Valentina Alimanovic, Valentino Alimanovic* (C-67/14) EU:C:2015:597. See also *Vestische Arbeit Jobcenter Kreis Recklinghausen v Jovanna García-Nieto, Joel Peña Cuevas, Jovanlis Peña García, Joel Luis Peña Cruz* (C-299/14) EU:C:2016:114; *A, Latvijas Republikas Veselības ministrija* (C-535/19) EU:C:2021:595. [↑](#footnote-ref-14)
14. Nic Shuibhne, “What I Tell you Three Times is True” (2016), 926-927. [↑](#footnote-ref-15)
15. Nic Shuibhne, “What I Tell you Three Times is True” (2016), 926-927; E. Muir, *EU Equality law: The First Fundamental Rights Policy of the EU* (Oxford: Oxford University Press, 2018), p. 102. [↑](#footnote-ref-16)
16. H. Verschueren, “Preventing ‘Benefit Tourism’ in the EU: A Narrow or Broad Interpretation of the Possibilities Offered by the ECJ in Dano?” (2015) 52 C.M.L. Rev.2, 370-376. [↑](#footnote-ref-17)
17. *Alimanovic* (C-67/14) EU:C:2015:597 at [55]. [↑](#footnote-ref-18)
18. *Alimanovic* (C-67/14) at [57-58]. [↑](#footnote-ref-19)
19. The Court has subsequently confirmed that position in *G.M.A*. See *G.M.A v État belge* (C-710/19) EU:C:2020:1037 at [33]. [↑](#footnote-ref-20)
20. See amongst others Nic Shuibhne, “Limits Rising, Duties Ascending: the Changing Legal Shape of Union Citizenship” (2015) 52 C.M.L. Rev. 4, 930; D. W. Carter and M. Jesse, “The ‘Dano Evolution’: Assessing Legal Integration and Access to Social Benefits for EU Citizens” (2018) 3 *European Papers* 3, 1195-1196; C. Jacqueson, “EU Social Citizenship: Between Individual Rights and National Concerns”, in F. Pennings and M. Seeleib-Kaiser (eds), *EU Citizenship and Social Rights – Entitlements and Impediments to Accessing Welfare* (Cheltenham: Edward Elgar Publishing, 2018), p. 37. [↑](#footnote-ref-21)
21. See, in particular, *Martinez Sala* (C-85/96) EU:C:1998:217; *Rudy Grzelczyk v Centre Public d’Aide Sociale d’Ottignies Louvain-la-Neuve* (C-184/99) EU:C:2001:458; *Baumbast, R and Secretaty of State for the Home Department* (C-431:99) EU:C:2002:493; *Michel Trojani v Centre Public d’Aide Sociale (CPAS)* (C-456/02) EU:C:2004:488; *The Queen (on the application of Dany Bidar) v London Borough of Ealing, Secretary of State for Education and Skills* (C-209/03) EU:C:2005:169; *Jacqueline Förster v Hoofddirectie van de Informatie Beheer Groep* (C-158/07)EU:C:2008:630. [↑](#footnote-ref-22)
22. *Martinez Sala* (C-85/96) at [63]; *Grzelczyk* (C-184/99) at [32-33]. [↑](#footnote-ref-23)
23. *Martinez Sala* (C-85/96) at [61-63]. [↑](#footnote-ref-24)
24. S. O’Leary, “Putting Flesh on the Bones of European Union Citizenship” (1999) 24 E.L. Rev. 1, 77. [↑](#footnote-ref-25)
25. *Grzelczyk* (C-184/99) EU:C:2001:458; *Baumbast* (C-431:99) EU:C:2002:493; *Trojani* (C-456/02) EU:C:2004:488; *Bidar* (C-209/03) EU:C:2005:169. [↑](#footnote-ref-26)
26. O’Brien, “Real Links, Abstract Rights and False Alarms” (2008), 649. [↑](#footnote-ref-27)
27. Muir, *EU Equality law* (2018), p. 248; Carter and Jesse, “Life after the ‘Dano-Trilogy’: Legal Certainty, Choices and Limitations in EU Citizenship Case Law”, in N. Cambien, D. Kochenov and E. Muir (eds), *European Citizenship Under Stress: Social Justice, Brexit and Other Challenges* (Leiden: Brill Nijhoff, 2020), p. 140. [↑](#footnote-ref-28)
28. Respectively, Directive 93/96/EEC on the right of residence for students [1993] OJ L 317/59; Directive 90/365/EEC on the right of residence for employees and self-employed persons who have ceased their occupational activity [1990] OJ L 180/28; and Directive 90/364/EEC on the right of residence [1990] OJ L 180/26. [↑](#footnote-ref-29)
29. Guild et al., *The EU Citizenship Directive: A Commentary*,2nd edn(Oxford: Oxford University Press, 2019), p. 248. [↑](#footnote-ref-30)
30. D. Kramer, “Earning Social Citizenship in the European Union: Free Movement and Access to Social Assistance Benefits Reconstructed” (2016) 18 C.Y.E.L.S. 270, 289. See alsoMuir, *EU Equality law* (2018), p. 248; S. Coutts, “The Shifting Geometry of Union Citizenship: A Supranational Status from Transnational Rights” (2019) 21 C.Y.E.L.S. 318, 325-326; O. Garner, “The Existential Crisis of Citizenship of the European Union: The Argument for an Autonomous Status” (2018) 20 C.Y.E.L.S. 116, 128; Carter and Jesse, “The ‘Dano Evolution’” (2018), 1188. [↑](#footnote-ref-31)
31. See, e.g. Muir, *EU Equality law* (2018), p. 248. [↑](#footnote-ref-32)
32. Spaventa, “Earned Citizenship” (2017), p. 220. [↑](#footnote-ref-33)
33. Nic Shuibhne, “What I Tell You Three Times is True” (2016), 918. See alsoA. Iliopoulou-Penot, “Deconstructing the Former Edifice of Union Citizenship? The *Alimanovic* Judgment” (2016) 53 C.M.L. Rev. 4, 1016. [↑](#footnote-ref-34)
34. The possibility to adopt more protective national guarantees in relation to residence and social rights is recognised in Article 37 of the Citizenship Directive. [↑](#footnote-ref-35)
35. In *Martinez Sala*, for instance, the Court proceeded upon the assumption - derived from the documents submitted to the Court – that the claimant had been authorised to reside in the Member State concerned (*Martinez Sala* (C-85/96) at [47-60]). [↑](#footnote-ref-36)
36. A. P. Van Der Mei, “Union Citizenship and the ‘De-nationalisation’ of the Territorial Welfare State” (2005) 7 E.J.M.L. 2, 209. [↑](#footnote-ref-37)
37. *Grzelczyk* (C-184/99) EU:C:2001:458 at [42]; *Baumbast* (C-431:99) EU:C:2002:493 at [91]. See in that relationGarner, “The Existential Crisis of Citizenship” (2018), 125. [↑](#footnote-ref-38)
38. On the requirement relating to comprehensive health insurance coverage, see also *Baumbast* (C-431:99) at [87-93]. [↑](#footnote-ref-39)
39. *Trojani* (C-456/02) EU:C:2004:488 at [34-39]; *Grzelczyk* (C-184/99) at [42-43]; *Baumbast* (C-431:99) at [91-93]. See alsoVan der Mei, “Residence and the Evolving Notion of European Union Citizenship” (2003) 5 E.J.M.L. 3, 428; C. Jacqueson, “Union Citizenship and the Court of Justice: Something New under the Sun? Towards Social Citizenship” (2002) 27 E.L. Rev.3, 275. [↑](#footnote-ref-40)
40. R. Barbulescu and A. Favell, “Commentary: A Citizenship Without Social Rights? EU Freedom of Movement and Changing Access to Welfare Rights” (2019) 58 International Migration 1, 151; A. Heindlmaier, “‘Social Citizenship’ at the Street Level? EU Member State Administrations Setting a Firewall” (2020) 58 J.C.M.S. 5, 1252. [↑](#footnote-ref-41)
41. A. Turmo, “The Pernicious Influence of Citizenship Rights on Worker’s Rights in the EU: The Case of Student Finance” (2018) 3 European Papers3, 1136. [↑](#footnote-ref-42)
42. M. Blauberger and S. K. Schmidt, “Welfare Migration? Free Movement of EU Citizens and Access to Social Benefits” (2014) Research and Politics 1; Barbulescu and Favell, “Commentary: A Citizenship Without Social Rights?” (2019), 153 [↑](#footnote-ref-43)
43. S. Devetzi, “EU Citizens, Residence Rights and Solidarity in the Post-Dano/Alimanovic Era in Germany” (2019) 21 E.J.M.L. 3, 340-341. [↑](#footnote-ref-44)
44. In a similar vein, see D. Thym, “When Union Citizens Turn Into Illegal Migrants: The Dano Case” (2015) 40 E.L. Rev. 2, 256.See alsoNic Shuibhne, “Limits Rising, Duties Ascending” (2015), 915. [↑](#footnote-ref-45)
45. Regrettably, the Court did not engage thoroughly with the thorny relationship between the Treaty principle of non-discrimination laid down in Arts. 18 and 21 TFEU and the secondary provisions adopted to give effect to this principle. SeeVerschueren, “Preventing ‘Benefit Tourism’ in the EU” (2015), 381-383; Nic Shuibhne, “What I Tell You Three Times is True” (2016), 926. [↑](#footnote-ref-46)
46. In a similar vein, see AG Richard de la Tour in *CG v The Department for Communities in Northern Ireland* (C-709/20) EU:C:2021:515. See also Nic Shuibhne, “Limits Rising, Duties Ascending” (2015), 932-933. [↑](#footnote-ref-47)
47. *European* *Commission v United Kingdom of Great Britain and Northern Ireland* (C-308/14) EU:C:2016:436 at [63-68]. [↑](#footnote-ref-48)
48. AG Pitruzzella expressed doubts as to whether the Court indeed sought to “bring Article 4 of Regulation No 883/2004 in line with Article 24(2) of Directive 2004/38, in the sense that the effectiveness of the latter would make it necessary to limit the former” (AG Pitruzzella in *Jobcenter Krefeld – Widerspruchsstelle v JD* (C-181/19) EU:C:2020:377 at [79]). [↑](#footnote-ref-49)
49. On the impact of these judgments in the Member States, seeS. Mantu and P. Minderhoud, “Exploring the Links between Residence and Social Rights for Economically Inactive EU Citizens”, (2019) 21 E.J.M.L. 3, 313; Barbulescu and Favell, “Commentary: A Citizenship Without Social Rights?” (2019), 151. [↑](#footnote-ref-50)
50. F. Wollenshläger, “Consolidating Union Citizenship: Residence and Solidarity Rights for Job Seekers and the Economically Inactive in the Post-Dano era”, in D. Thym (ed.), *Questioning Eu Citizenship: Judges and the Limits of Free Movement and Solidarity in the EU* (Oxford: Oxford University Press, 2017), p. 172; S. Giubonni, “A Certain Degree of Solidarity? Free Movement of Persons and Access to Social Protection in the Case Law of the European Court of Justice”, in M. Ross and Y. Bormann-Prebil (eds), *Promoting Solidarity in The European Union* (Oxford: Oxford University Press, 2010), p. 191. [↑](#footnote-ref-51)
51. O’Brien, “Civis Capitalist Sum” (2016), 951. [↑](#footnote-ref-52)
52. *Jobcenter Krefeld* (C-181/19) EU:C:2020:794. [↑](#footnote-ref-53)
53. AG Pitruzzella in *Jobcenter Krefeld* (C-181/19) EU:C:2020:377 at [1]. [↑](#footnote-ref-54)
54. Devetzi, “EU Citizens, Residence Rights and Solidarity” (2019), 346. [↑](#footnote-ref-55)
55. Art. 10 of Regulation 492/2011 is drafted as follows: “The children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to that State’s general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory. Member States shall encourage all efforts to enable such children to attend these courses under the best possible conditions”. [↑](#footnote-ref-56)
56. AG Geelhoed in *Baumbast* (C-431:99) EU:C:2001:385 at [41]. See also *Echternach and others v Minister van Onderwijs en Wetenschappen* (C-389/87 and C-390/87) EU:C:1989:130 at [19-20]; *Baumbast* (C-431:99) EU:C:2002:493 at [69]; *Maria Teixeira v London Borough of Lambeth, Secretary of State for the Home Department* (C-480/08) EU:C:2010:83 at [50]. [↑](#footnote-ref-57)
57. *Baumbast* (C-431:99) at [63-71]; *London Borough of Harrow v Nimco Hassan Ibrahim and Secretary of State for the Home Department* (C-310/08) EU:C:2010:80 at [30]; *Teixeira* (C-480/08) at [37-39]. SeeK. Hyltén-Cavallius, “Who Cares? Caregivers’ Derived Residence Rights From Children in EU Free Movement Law” (2020) 57 C.M.L. Rev. 2, 399. [↑](#footnote-ref-58)
58. Guild et al., *The EU Citizenship Directive* (2019), p. 172. [↑](#footnote-ref-59)
59. *Echternach* (C-389/87 and C-390/87) at [35]; *Landesamt für Ausbildungsförderung Nordrhein-Westfalen v Lubor Gaal* (C-7/94) EU:C:1995:118 at [25]. [↑](#footnote-ref-60)
60. *Ibrahim* (C-310/08) EU:C:2010:80 at [56-59]; *Teixeira*, (C-480/08) EU:C:2010:83 at [70]. [↑](#footnote-ref-61)
61. AG Wathelet in *Alimanovic* (C-67/14) EU:C:2015:210 at [120]. [↑](#footnote-ref-62)
62. AG Wathelet in *Alimanovic* (C-67/14) at [122]. [↑](#footnote-ref-63)
63. *Bundessocialgericht*, 3 December 2015, no. B4 AS 43/15 R, B 4 AS 59/13 R and B 4 AS 44/15 R. For further details, see C. Jacqueson, “EU Social Citizenship” (2018), p. 41; P. Minderhoud, “Job-Seekers have a Right of Residence but no Access to Social Assistance Benefits under Directive 2004/38” (2016) 23 Migration Journal2, 347-348. [↑](#footnote-ref-64)
64. *Jobcenter Krefeld* (C-181/19) EU:C:2020:794 at [79]. [↑](#footnote-ref-65)
65. AG Pitruzzella in *Jobcenter Krefeld* (C-181/19) EU:C:2020:377 at [59]. [↑](#footnote-ref-66)
66. *Jobcenter Krefeld* (C-181/19) at [43]. [↑](#footnote-ref-67)
67. Article 7 of Regulation 492/2011: “A worker who is a national of a Member State may not, in the terrirory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and, *should be become unemployed, reinstatement or re-employment*” (emphasis added). [↑](#footnote-ref-68)
68. *Jobcenter Krefeld* (C-181/19) EU:C:2020:794 at [44]. [↑](#footnote-ref-69)
69. *Jobcenter Krefeld* (C-181/19) at [45-7]. [↑](#footnote-ref-70)
70. *Jobcenter Krefeld* (C-181/19) at [48-9]. [↑](#footnote-ref-71)
71. AG Pitruzzella in *Jobcenter Krefeld* (C-181/19) at [74]. [↑](#footnote-ref-72)
72. *Florea Gusa v Minister for Social Protection, Ireland, Attorney General* (C-442/16) EU:C:2007:1004; *Neculai Tarola v Minister for Social Protection* (C-483/17) EU:C:2019:309; *Her Majesty’s Revenue and Customs v Henrika Dakneviciute* (C-544/18) EU:C:2019:761. [↑](#footnote-ref-73)
73. In *Gusa*, the applicant had worked as a self-employed plasterer for four years prior to becoming unemployed, whereas in *Dakneviciute* the benefit applicant had been working - either as a worker or as a self-employed - for several years when she temporarily ceased to work as a self-employed during the late stages of her pregnancy. [↑](#footnote-ref-74)
74. C. O’Sullyvan, “Europeanisation and the Irish Habitual Residence Condition” (2019) 26 Journal of Social Security Law 2, 79. [↑](#footnote-ref-75)
75. *Tarola* (C-483/17) EU:C:2019:309 at [48]. [↑](#footnote-ref-76)
76. *Tarola* (C-483/17) at [56-58]. [↑](#footnote-ref-77)
77. A. Nato, “The Self-employed and the Court of Justice: Towards New Social Protection of Vulnerable EU Citizens” (2021) 12 E.L.L.J. 1, 35. [↑](#footnote-ref-78)
78. In the same vein, see N. Cambien, “EU Citizenship and the Right to Care”, in Kochenov (ed.), *EU Citizenship and Federalism* (2017), p. 490. [↑](#footnote-ref-79)
79. O’Brien, “Civis Capitalist Sum” (2016), 951. [↑](#footnote-ref-80)
80. *Jobcenter Krefeld* (C-181/19) EU:C:2020:794 at [65]. [↑](#footnote-ref-81)
81. *Jobcenter Krefeld* (C-181/19) EU:C:2020:794 at [106]. [↑](#footnote-ref-82)
82. AG Pitruzzella in *Jobcenter Krefeld* (C-181/19) EU:C:2020:377 at [56]. [↑](#footnote-ref-83)
83. *Jobcenter Krefeld* (C-181/19) at [69-79]. [↑](#footnote-ref-84)
84. *Jobcenter Krefeld* (C-181/19) at [70]. [↑](#footnote-ref-85)
85. See, e.g. *UB v Generálny riaditeľ Sociálnej poisťovne Bratislava* (C-447/18) EU:C:2019:1098 at [39]; *Noémie Depesme and others v Ministre de l’Enseignement Supérieur et de la Recherche* (C-401/15 to 403/15) EU:C:2016:955 at [35]; *Giersch* (C-20:12) EU:C:2013:411 at [35]. [↑](#footnote-ref-86)
86. Recital 6 in the Preamble to the Workers’ Regulation. See also *Baumbast* (C-431:99) EU:C:2002:493 at [50]; Nic Shuibhne, “Reconnecting Free Movement of Workers and Equal Treatment in an Unequal Europe” (2018), 497. [↑](#footnote-ref-87)
87. *State of the Netherlands v Ann Florence Reed* (C-59/85) EU:C:1986:157 at [26]; *Martinez Sala* (C-85/96) EU:C:1998:217 at [25]; *Ioannidis* (C-258/04) EU:C:2005:559 at [25]; *Generálny riaditeľ Sociálnej poisťovne Bratislava* (C-447/18) EU:C :2019:1098 at [47-48]. [↑](#footnote-ref-88)
88. AG Pitruzzella in *Jobcenter Krefeld* (C-181/19) EU:C:2020:377 at [29]. [↑](#footnote-ref-89)
89. *Generálny riaditeľ Sociálnej poisťovne Bratislava* (C-447/18) EU:C:2019:1098 at [49]. [↑](#footnote-ref-90)
90. *Jobcenter Krefeld* (C-181/19) EU:C:2020:794 at [42]. [↑](#footnote-ref-91)
91. Turmo, “The Pernicious Influence of Citizenship Rights on Worker’s Rights in the EU - The Case of Student Finance”, in Cambien, Kochenov and Muir (eds), *European Citizenship Under Stress* (2020), p. 308. [↑](#footnote-ref-92)
92. *Gertraud Hartmann v Freistaat Bayern* (C-212/05) EU:C:2007:437; *Wendy Geven v Land Nordrhein-Westfalen* (C-213/05) EU:C:2007:438; *D.P.W. Hendrix v Raad van Bestuur van het Uitvoeringsinstituut Werknemersverzekeringen* (C-287:05) EU:C:2007:494; *Commission v Netherlands* (C-542/09) EU:C:2012:346; *Giersch* (C-20:12) EU:C:2013:411; *Bragança Linares Verruga and Others v Ministre de l’Enseignement Supérieur et de la Recherche* (C-238/15) EU:C:2016:949; *Nicolas Aubriet v Ministre de l’Enseignement Supérieur et de la Recherche* (C-410/18) EU:C:2019:582; *Landkreis Südliche Weinstraße v PF and others* (C-830:18) EU:C:2020:275; *Caisse pour l’avenir des enfants (Child of the spouse of a frontier worker) v FV, GW* (C-802/18) EU:C:2020:269. [↑](#footnote-ref-93)
93. AG Wathelet in *Bragança Linares Verruga and Others* (C-238/15) EU:C:2016:389 at [69]. [↑](#footnote-ref-94)
94. *Commission v Netherlands* (C-542/09) EU:C:2012:346 at [65]. [↑](#footnote-ref-95)
95. AG Wathelet in *Bragança Linares Verruga and Others* (C-238/15) at [68-69]. [↑](#footnote-ref-96)
96. *Giersch* (C-20:12) EU:C:2013:411 at [63]; *Bragança Linares Verruga and Others* (C-238/15) EU:C:2016:949 at [49]; *Aubriet* (C-410/18) EU:C:2019:582 at [32]. [↑](#footnote-ref-97)
97. *Giersch* (C-20:12) at [65]. [↑](#footnote-ref-98)
98. In a similar vein, seeJacqueson, “Any News from Luxembourg? On Student Aid, Frontier Workers and Stepchildren: *Bragança Linares Verruga and Depesme*” (2018) 55 C.M.L. Rev. 3, 901. [↑](#footnote-ref-99)
99. Turmo, “The Pernicious Influence of Citizenship Rights on Worker’s Rights in the EU” (2020), p. 318-321; Jacqueson, “Any News from Luxembourg?” (2018), 913. [↑](#footnote-ref-100)
100. Compare *European Commission v Republic of Cyprus* (C-515/14) EU:C:2016:30 at [53] with *Commission v Netherlands* (C-542/09) EU:C:2012:346 at [57]. See also J. Snell, “Economic Justifications and the Role of the State”, in P. Koutrakos, N.Nic Shuibhne and P. Syrpis (eds), *Exceptions from EU Free Movement Law – Derogations, Justification and Proportionality* (Hart Publishing, 2016), p. 21. [↑](#footnote-ref-101)
101. Nic Shuibhne, “What I Tell you Three Times is True” (2016), 926-927. [↑](#footnote-ref-102)
102. *Aubriet* (C-410/18) EU:C:2019:582; *Bragança Linares Verruga and Others* (C-238/15) EU:C:2016:949. [↑](#footnote-ref-103)
103. *Hartmann* (C-212/05) EU:C:2007:437; *Geven* (C-213/05) EU:C:2007:438. [↑](#footnote-ref-104)
104. Turmo, “The Pernicious Influence of Citizenship Rights on Worker’s Rights in the EU” (2020), p. 327-330. [↑](#footnote-ref-105)
105. Nato, “The Self-employed and the Court of Justice” (2021), 27-29. [↑](#footnote-ref-106)
106. This trend culminated in the agreement concluded in 2016 by the European Council on the UK’s renegotiation of its relationship with the EU. That agreement, which never came into force, contained far-reaching restrictions on newly arriving migrant workers’ access to the UK’s social assistance system (the so-called safeguard mechanism). See Wollenschläger, “Consolidating Union Citizenship” (2017), p. 171. [↑](#footnote-ref-107)
107. Turmo, “The Pernicious Influence of Citizenship Rights on Worker’s Rights in the EU” (2020), p. 313. [↑](#footnote-ref-108)
108. See Nic Shuibhne, “Reconnecting Free Movement of Workers and Equal Treatment in an Unequal Europe” (2018), 503. [↑](#footnote-ref-109)
109. *European Commission v Republic of Cyprus* (C-515/14) EU:C:2016:30 at [54]. [↑](#footnote-ref-110)