ECLI:EU:C:2021:595

JUDGMENT OF THE COURT (Grand Chamber)

15 July 2021 (*)

(Reference for a preliminary ruling – Freedom of movement for persons – Citizenship of the Union – Regulation (EC) No 883/2004 – Article 3(1)(a) – Sickness benefits – Concept – Article 4 and Article 11(3)(e) – Directive 2004/38/EC – Article 7(1)(b) – Right of residence for more than three months – Condition of having comprehensive sickness insurance cover – Article 24 – Equal treatment – Economically inactive national of a Member State residing legally in the territory of another Member State – Refusal by the host Member State to affiliate that person to its public sickness insurance system)

In Case C-535/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Augstākā tiesa (Senāts) (Supreme Court, Latvia), made by decision of 9 July 2019, received at the Court on 12 July 2019, in the proceedings

A

intervening party:

Latvijas Republikas Veselības ministrija,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, A. Arabadjiev, A. Prechal, N. Piçarra and N. Wahl, Presidents of Chambers, E. Juhász, M. Safjan, D. Šváby, S. Rodin, F. Biltgen, K. Jürimäe (Rapporteur), C. Lycourgos and P. G. Xuereb, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: M. Aleksejev, Head of Unit,

having regard to the written procedure and further to the hearing on 28 September 2020,

after considering the observations submitted on behalf of:

– A, by L. Liepa, advokāts,

– the Latvijas Republikas Veselības ministrija, initially I. Viņķele and R. Osis, then by R. Osis,

– the Latvian Government, initially by V. Soņeca, V. Kalniņa and K. Pommere, then by K. Pommere, acting as Agents,

– the Spanish Government, by L. Aguilera Ruiz, acting as Agent,

– the European Commission, by D. Martin, E. Montaguti and I. Rubene, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 February 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 18, Article 20(1) and Article 21 TFEU, Article 3(1)(a), Article 4 and Article 11(3)(e) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1, and corrigendum OJ 2004 L 200, p. 1), as amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009 (OJ 2009 L 284, p. 43) ('Regulation No 883/2004'), and Article 7(1)(b) and Article 24 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigendum OJ 2004 L 229, p. 35).

2 The request has been made in proceedings between A and the Latvijas Republikas Veselības ministrija (Ministry of Health of the Republic of Latvia) concerning the latter's refusal to affiliate A to the public sickness insurance system and to issue him with a European Health Insurance Card.

Legal context

European Union law

Regulation No 883/2004

3 Article 2 of Regulation No 883/2004, entitled 'Persons covered', provides in paragraph 1 thereof:

'This Regulation shall apply to nationals of a Member State, stateless persons and refugees residing in a Member State who are or have been subject to the legislation of one or more Member States, as well as to the members of their families and to their survivors.'

4 Under Article 3 of that regulation, entitled 'Matters covered':

‘1. This Regulation shall apply to all legislation concerning the following branches of social security:

(a) sickness benefits;

…

5. This Regulation shall not apply to:

(a) social and medical assistance

…’

5 Article 4 of that regulation, relating to ‘equality of treatment’ is worded as follows:

‘Unless otherwise provided for by this Regulation, persons to whom this Regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals thereof.’

6 Article 11 of that regulation sets out the ‘general rules’ on the determination of the legislation applicable. It is worded as follows:

‘1. Persons to whom this Regulation applies shall be subject to the legislation of a single Member State only. Such legislation shall be determined in accordance with this Title.

…

3. Subject to Articles 12 to 16:

(a) a person pursuing an activity as an employed or self-employed person in a Member State shall be subject to the legislation of that Member State;

(b) a civil servant shall be subject to the legislation of the Member State to which the administration employing him/her is subject;

(c) a person receiving unemployment benefits in accordance with Article 65 under the legislation of the Member State of residence shall be subject to the legislation of that Member State;

(d) a person called up or recalled for service in the armed forces or for civilian service in a Member State shall be subject to the legislation of that Member State;

(e) any other person to whom subparagraphs (a) to (d) do not apply shall be subject to the legislation of the Member State of residence, without prejudice to other provisions of this Regulation guaranteeing him/her benefits under the legislation of one or more other Member States.

…’

Directive 2004/38

7 Recital 10 of Directive 2004/38 states:

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

8 Article 7(1) of that directive, in Chapter III thereof, entitled ‘Right of residence’, provides:

‘All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:

…

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

…’

9 The first subparagraph of Article 14(2) of that directive provides as follows:

‘Union citizens and their family members shall have the right of residence provided for in Articles 7, 12 and 13 as long as they meet the conditions set out therein.’

10 Under Article 16(1) of that directive:

‘Union citizens who have resided legally for a continuous period of five years in the host Member State shall have the right of permanent residence there. This right shall not be subject to the conditions provided for in Chapter III.’

11 Article 24 of Directive 2004/38 provides:

‘1. Subject to such specific provisions as are expressly provided for in the [FEU] Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence.

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

Latvian law

12 Article 17 of Ārstniecības likums (Law on medical care, *Latvijas Vēstnesis*, 1997, No 167/168), in the version applicable to the dispute in the main proceedings (‘the Law on medical care’), provides:

‘1. Medical care funded by the general State budget and by the resources of the recipient of the care, according to the detailed rules defined in the Council of Ministers, shall be supplied to the following persons:

(1) Latvian nationals;

(2) Latvian non-citizens;

(3) nationals of Member States of the European Union, the European Economic Area and the Swiss Confederation residing in Latvia because of employment or self-employment, and members of their family;

(4) aliens authorised to reside permanently in Latvia;

(5) refugees and persons granted subsidiary protection;

(6) persons who are arrested, detained and sentenced to a custodial sentence.

…

3. Persons who are spouses of Latvian nationals and of Latvian non-citizens and who are in possession of a residence permit of limited duration in Latvia shall be entitled, according to the detailed rules defined in the Council of Ministers, to receive obstetric care funded by the general State budget and by the resources of the recipients of the care.

…

5. Persons not mentioned in paragraphs 1, 3 and 4 of this Article shall receive medical care in return for payment.’

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

13 At the end of 2015 or in January 2016, A, an Italian national, left Italy and moved to Latvia in order to join his spouse, a Latvian national, and their two minor children of Latvian and Italian nationality.

14 Before his departure, A informed the competent Italian authorities of his move to Latvia. His name was therefore included in the register of Italian nationals residing abroad. It is apparent from the request for a preliminary ruling that he can no longer, as such, receive medical care in Italy from the health care system financed by that Member State.

15 On 22 January 2016, A requested the Latvijas Nacionālais veselības dienests (National Health Service, Latvia) to enter him in the register of recipients of health care and to issue him with a European Health Insurance Card. As is apparent from the request for a preliminary ruling, registration in that register corresponds to membership of a public compulsory sickness insurance system, the financing of which is essentially public and which enables its recipients to obtain medical care financed by the State as benefits in kind (‘the system of medical care financed by the State’).

16 By decision of 17 February 2016, the Latvian National Health Service refused that request.

17 That decision was confirmed by a decision of the Ministry of Health of the Republic of Latvia of 8 July 2016 on the ground that A was not included within any of the categories of recipients of medical care financed by the State referred to in Article 17(1), (3) or (4) of the Law on medical care, since he was neither employed nor self-employed in Latvia but was staying there on the basis of an EU citizen's registration certificate. He could therefore receive health care benefits only in return for payment, in accordance with Article 17(5) of that law.

18 A brought an action against that decision, which was dismissed both at first instance by the administratīvā rajona tiesa (District Administrative Court, Latvia) and on appeal by a judgment of 5 January 2018 of the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia).

19 Both those courts considered, in essence, that a difference in treatment between, on the one hand, A, who was lawfully resident in Latvia on the basis of Article 7(1)(b) of Directive 2004/38 and could rely on Article 24(1) of that directive, and, on the other hand, economically inactive Latvian nationals could be justified by a legitimate objective of protecting the public finances and was proportionate. A is entitled to emergency medical assistance, sickness insurance premiums are not disproportionate and, once a right of permanent residence had been acquired, A could receive medical care financed by the State.

20 A brought an appeal before the referring court, the Augstākā tiesa (Senāts) (Supreme Court, Latvia), against the judgment of 5 January 2018 of the Administratīvā apgabaltiesa (Regional Administrative Court).

21 The referring court notes that Article 17 of the Law on medical care is intended to transpose into Latvian law Article 7(1)(b) of Directive 2004/38, which is applicable to the dispute in the main proceedings. However, it raises doubts concerning the applicability of Regulation No 883/2004. On the one hand, medical care financed by the State may be classified as social security benefits for the purposes of Article 3(1) of that regulation, since access to the system of medical care financed by the State is granted in the light of objective criteria and that care may constitute 'sickness benefits' within the meaning of point (a) of that provision. On the other hand, the question arises, however, as to whether that system is excluded from the scope of that regulation by virtue of Article 3(5)(a) thereof.

22 In the event that Regulation No 883/2004 is not applicable to the dispute in the main proceedings, the referring court raises the question of the compatibility of the Law on medical care with Articles 18 and 21 TFEU.

23 If, on the contrary, Regulation No 883/2004 is applicable to that dispute, it is necessary to determine the scope of Article 11(3)(e) of that regulation. The purpose of that provision is, in particular, to prevent persons falling within the scope of that regulation from being deprived of social security cover because there is no legislation which is applicable to them. A would be refused access to the system of medical care financed by the State both in Italy and Latvia and would thus be denied overall access to such protection.

24 The referring court also raises the question of the interaction between Regulation No 883/2004 and Directive 2004/38 in the light of the case-law resulting from the judgment of 19 September 2013, *Brey* (C-140/12, EU:C:2013:565). In that context, it seeks guidance on the interpretation of the principle of non-discrimination, as given specific expression in particular in Article 4 of that regulation and Article 24(1) of that directive. In its view, the difference in treatment between, on the one hand, an economically inactive Union citizen, such as A, and, on the other hand, Latvian nationals and Union citizens who are economically active could be

disproportionate to the legitimate objective of protecting the public finances of the Republic of Latvia. It is necessary to determine whether, having regard to the individual circumstances characterising A's particular situation, the Latvian authorities should have carried out an overall assessment of the burden which the grant to A of access to the system of medical care financed by the State would in fact represent for the national social assistance system as a whole. The fact that A has close personal links with Latvia could mean that it was not permissible to refuse him access automatically.

25 Lastly, the referring court notes that, according to the case-law resulting, inter alia, from the judgment of 11 November 2014, *Dano* (C-333/13, EU:C:2014:2358), a Union citizen may claim equal treatment with nationals of the host Member State under Article 24(1) of Directive 2004/38 only if his residence in the territory of that Member State meets the conditions of that directive. A satisfies the conditions for legal residence laid down in Article 7(1)(b) of that directive. The question therefore arises as to whether the fact that a Union citizen, such as A, has comprehensive sickness insurance cover is capable of justifying the refusal to grant him access to the system of medical care financed by the State.

26 In those circumstances, the Augstākā tiesa (Senāts) (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

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

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

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

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

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

(6) Should legality of residence, as provided for in Article 7(1)(b) of Directive 2004/38, be understood as both giving a person a right of access to the social security system and also being capable of constituting a reason to exclude him or her from social security? In particular, in the present case, must the fact that the applicant has comprehensive sickness insurance cover, which

constitutes one of the prerequisites for legality of residence under Directive 2004/38, be regarded as capable of justifying the refusal to include him within the health care system financed by the State?'

Consideration of the questions referred

The first question

27 By its first question, the referring court seeks, in essence, to ascertain whether Article 3(1)(a) of Regulation No 883/2004 must be interpreted as meaning that medical care, financed by the State, which is granted without any individual and discretionary assessment of personal needs to persons falling within the categories of recipients defined by national legislation, constitutes 'sickness benefits' within the meaning of that provision, thus falling within the scope of that regulation, or whether it constitutes 'social and medical assistance' excluded from the scope of that regulation under Article 3(5)(a) thereof.

28 In that regard, it should be borne in mind that the distinction between benefits falling within the scope of Regulation No 883/2004 and those which are outside it is based essentially on the constituent elements of each benefit, in particular its purpose and the conditions for its grant, and not on whether it is classified as a social security benefit by national legislation (see, in particular, judgment of 16 September 2015, *Commission* v *Slovakia*, C-433/13, EU:C:2015:602, paragraph 70, and of 25 July 2018, *A (Assistance for a disabled person)*, C-679/16, EU:C:2018:601, paragraph 31 and the case-law cited).

29 The Court has consistently held that a benefit may be regarded as a social security benefit in so far as it is granted, without any individual and discretionary assessment of personal needs, to recipients on the basis of a legally defined position and provided that it relates to one of the risks expressly listed in Article 3(1) of Regulation No 883/2004. These two conditions are cumulative (see, to that effect, judgment of 25 July 2018, *A (Assistance for a disabled person)*, C-679/16, EU:C:2018:601, paragraphs 32 and 33 and the case-law cited).

30 It should be recalled that the first of the conditions mentioned in the preceding paragraph is satisfied if a benefit is granted in the light of objective criteria which, if they are met, confer entitlement to the benefit, the competent authority having no power to take account of other personal circumstances (judgment of 25 July 2018, *A (Assistance for a disabled person)*, C-679/16, EU:C:2018:601, paragraph 34 and the case-law cited).

31 As regards the second condition set out in paragraph 29 of the present judgment, according to which the benefit at issue must relate to one of the risks expressly listed in Article 3(1) of Regulation No 883/2004, it should be recalled that point (a) of that provision expressly mentions 'sickness benefits'.

32 In that regard, the Court has already held that the essential aim of 'sickness benefits' within the meaning of that provision is the patient's recovery (see, to that effect, judgment of 16 November 1972, *Heinze*, 14/72, EU:C:1972:98, paragraph 8), by securing the care which his or her condition requires (see, to that effect, judgment of 8 July 2004, *Gaumain-Cerri and Barth*, C-502/01 and C-31/02, EU:C:2004:413, paragraph 21), and that they thus cover the risk connected to a state of ill health (see, to that effect, judgments of 21 July 2011, *Stewart*, C-503/09, EU:C:2011:500, paragraph 37, and of 5 March 2020, *Pensionsversicherungsanstalt (Rehabilitation benefit)*, C-135/19, EU:C:2020:177, paragraph 32).

33 Conversely, a benefit falls within the concept of 'social and medical assistance', which is excluded from the scope of Regulation No 883/2004 by virtue of Article 3(5)(a) thereof, where its grant is dependent on an individual assessment of the personal needs of the applicant for that benefit (see, to that effect, judgment of 16 July 1992, *Hughes* C-78/91, EU:C:1992:331, paragraph 17).

34 In the present case, as the Advocate General observed in points 40 and 41 of his Opinion, it is apparent from the request for a preliminary ruling that the benefits at issue in the main proceedings satisfy the first condition to be regarded as social security benefits referred to in paragraph 29 of the present judgment. According to the explanations provided by the referring court, medical care is guaranteed to every person residing in Latvia who falls within one of the categories of recipients of medical care defined objectively by the Law on medical care, it being noted that the competent national authority cannot take other personal circumstances into consideration.

35 As regards the second condition referred to in paragraph 29 of the present judgment, it is apparent from the request for a preliminary ruling that the medical care at issue in the main proceedings constitutes benefits in kind consisting in the provision of medical treatment, which is treatment intended to enable patients to be cured. Such benefits therefore relate to the risk arising from sickness, expressly mentioned in Article 3(1)(a) of Regulation No 883/2004.

36 Since the two cumulative conditions set out in paragraph 29 of the present judgment appear to be satisfied, medical care such as that at issue in the main proceedings must be classified as social security benefits as provided for in Article 3(1) of Regulation No 883/2004 and thus falls within the scope of that regulation.

37 That conclusion is not called into question by the method of financing such medical care. The Court has already held that the method by which a benefit is financed is immaterial for the purposes of its classification as a social security benefit (see, to that effect, judgments of 16 July 1992, *Hughes*, C-78/91, EU:C:1992:331, paragraph 21, and of 21 June 2017, *Martinez Silva*, C-449/16, EU:C:2017:485, paragraph 21).

38 In the light of the foregoing considerations, the answer to the first question is that Article 3(1)(a) of Regulation No 883/2004 must be interpreted as meaning that medical care, financed by the State, which is granted, without any individual and discretionary assessment of personal needs, to persons falling within the categories of recipients defined by national legislation, constitutes 'sickness benefits' within the meaning of that provision, thus falling within the scope of that regulation.

The second question and the fourth to sixth questions

39 As a preliminary point, in so far as the second and fourth to sixth questions, which it is appropriate to examine together, concern the interpretation of numerous provisions of EU law, namely Article 18, Article 20(1) and Article 21 TFEU, Article 4 and Article 11(3)(e) of Regulation No 883/2004 and Article 7(1)(b) and Article 24 of Directive 2004/38, it is necessary to determine which of those provisions must be interpreted in order to provide a useful answer to those questions.

40 In that regard, first of all, it must be recalled that the first paragraph of Article 18 TFEU, which prohibits any discrimination on grounds of nationality within the scope of application of the Treaties and without prejudice to any special provisions contained therein, is intended to apply independently only to situations governed by EU law in respect of which the Treaties lay down no specific rules on non-discrimination (judgment of 11 June 2020, *TÜV Rheinland LGA Products and Allianz IARD*, C-581/18, EU:C:2020:453, paragraph 31 and the case-law cited). However, that

principle of non-discrimination is specified in Article 24 of Directive 2004/38 with regard to Union citizens who, like A, exercise their freedom to move and reside within the territory of the Member States (see, to that effect, judgment of 4 October 2012, *Commission* v *Austria* C-75/11, EU:C:2012:605, paragraph 49). That principle is also specified in Article 4 of Regulation No 883/2004 with regard to Union citizens who, like A, rely in the host Member State on the benefits referred to in Article 3(1) of that regulation, which include, as follows from the answer to the first question, medical care such as that at issue in the main proceedings.

41 Next, Article 20(1) TFEU confers on every person holding the nationality of a Member State Union citizenship, which is destined to be the fundamental status of nationals of the Member States (judgments of 20 September 2001, *Grzelczyk*, C-184/99, EU:C:2001:458, paragraph 31, and of 21 February 2013, *N.*, C-46/12, EU:C:2013:97, paragraph 27). The second subparagraph of Article 20(2) TFEU expressly states that the rights conferred on Union citizens by that article are to be exercised 'in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder'.

42 Lastly, under Article 21(1) TFEU as well, the right of Union citizens to move and reside freely within the territory of the Member States is subject to the 'limitations and conditions laid down in the Treaties and by the measures adopted to give them effect'.

43 Article 7(1) of Directive 2004/38 lays down such limitations and conditions in respect of that right.

44 In those circumstances, it is necessary to reformulate the second and fourth to sixth questions as meaning that, by those questions, the referring court seeks, in essence, to ascertain whether Article 4 and Article 11(3)(e) of Regulation No 883/2004 and Article 7(1)(b) and Article 24 of Directive 2004/38 must be interpreted as precluding national legislation which excludes from the right to be affiliated to the public sickness insurance system of the host Member State, in order to receive medical care financed by that State, economically inactive Union citizens, who are nationals of another Member State and who fall, by virtue of Article 11(3)(e) of that regulation, within the scope of the legislation of the host Member State and who are exercising their right of residence in the territory of that State under Article 7(1)(b) of that directive.

45 In the first place, it should be recalled that Article 11(3)(e) of Regulation No 883/2004 lays down a 'conflict rule' for determining the national legislation applicable to the receipt of the social security benefits listed in Article 3(1) of that regulation, which include sickness benefits, which may be claimed by all persons other than those to whom Article 11(3)(a) to (d) of that regulation applies, that is to say, inter alia, economically inactive persons (see, to that effect, judgments of 14 June 2016, *Commission* v *United Kingdom*, C-308/14, EU:C:2016:436, paragraph 63, and of 8 May 2019, *Inspecteur van de Belastingdienst*, C-631/17, EU:C:2019:381, paragraphs 35 and 40). It follows that the latter are, in principle, covered by the legislation of the Member State in which they reside.

46 Article 11(3)(e) of Regulation No 883/2004 is intended not only to prevent the concurrent application of a number of national legislative systems to a given situation and the complications which may ensue, but also to ensure that persons covered by that regulation are not left without social security cover because there is no legislation which is applicable to them (judgment of 14 June 2016, *Commission* v *United Kingdom*, C-308/14, EU:C:2016:436, paragraph 64 and the case-law cited).

47 That provision as such is not intended to lay down the conditions governing the existence of the right to social security benefits. It is in principle for the legislation of each Member State to lay down those conditions (judgment of 14 June 2016, *Commission* v *United Kingdom*, C-308/14, EU:C:2016:436, paragraph 65 and the case-law cited).

48 However, when the Member States lay down the conditions establishing the right to become a member of a social security scheme, they are under an obligation to comply with the provisions of EU law in force. In particular, the conflict rules laid down by Regulation No 883/2004 are mandatory for the Member States and the latter do not therefore have the power to determine to what extent their own legislation or that of another Member State is applicable (see, to that effect, judgments of 25 October 2018, *Walltopia*, C-451/17, EU:C:2018:861, paragraph 48 and the case-law cited, and of 5 March 2020, *Pensionsversicherungsanstalt (Rehabilitiation benefit)*, C-135/19, EU:C:2020:177, paragraph 43 and the case-law cited).

49 Accordingly, the conditions establishing the right of a person to be affiliated to a social security scheme cannot have the effect of excluding from the scope of the legislation at issue persons to whom, pursuant to Regulation No 883/2004, that legislation is applicable (see, to that effect, judgments of 25 October 2018, *Walltopia*, C-451/17, EU:C:2018:861, paragraph 49 and the case-law cited, and of 5 March 2020, *Pensionsversicherungsanstalt (Rehabilitation benefit)*, C-135/19, EU:C:2020:177, paragraph 44 and the case-law cited).

50 It follows that a Member State cannot, under its national legislation, refuse to affiliate to its public sickness insurance scheme a Union citizen who, under Article 11(3)(e) of Regulation No 883/2004, comes under the legislation of that Member State.

51 In the present case, the referring court states that A is an economically inactive Union citizen and that he is no longer eligible, in Italy, for membership of the public health system. It follows that, in accordance with Article 11(3)(e) of Regulation No 883/2004, A is covered by the legislation of the Member State in which he resides, namely Latvian legislation. In those circumstances, and in the light also of the answer to the first question, that provision requires that such a Union citizen should be able to be affiliated to the public sickness insurance system of the latter Member State, such as the system of medical care financed by the State.

52 That said, in the second place, it should be noted that the questions under examination concern the situation of a Union citizen who resides in a Member State other than that of which he or she is a national for a period of more than three months, but of less than five years, and who does not therefore yet enjoy a right of permanent residence under Article 16(1) of Directive 2004/38.

53 In that regard, it should be recalled that it is apparent from Article 7(1)(b) of Directive 2004/38, read in the light of recital 10 thereof, that Member States may require Union 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 (judgment of 19 September 2013, *Brey*, C-140/12, EU:C:2013:565, paragraph 47 and the case-law cited).

54 Under Article 14(2) of Directive 2004/38, the right of Union citizens and their family members to reside in the host Member State on the basis of Article 7 of that directive continues only as long as those citizens and family members meet the conditions laid down in the latter provision (judgment of 2 October 2019, *Bajratari*, C-93/18, EU:C:2019:809, paragraph 40).

55 It thus follows from Article 7(1)(b) of Directive 2004/38, read in conjunction with Article 14(2) thereof, that, throughout the period of residence in the host Member State of more than three months and less than five years, economically inactive Union citizens must, inter alia, have comprehensive sickness insurance cover for themselves and their family members so as not to become an unreasonable burden on the public finances of that Member State.

56 That condition for residence in accordance with Directive 2004/38 would be rendered redundant if it were to be considered that the host Member State is required to grant, to an economically inactive Union citizen residing in its territory on the basis of Article 7(1)(b) of Directive 2004/38, affiliation free of charge to its public sickness insurance system.

57 In those circumstances, it is necessary, in the third place, to determine the manner in which the requirements laid down in Article 11(3)(e) of Regulation No 883/2004 and in Article 7(1)(b) of Directive 2004/38, respectively, interrelate with each other.

58 In that regard, although, as is apparent from paragraph 50 of the present judgment, the host Member State of an economically inactive Union citizen residing in its territory in accordance with Directive 2004/38 is required to affiliate that citizen to its public sickness insurance system where that citizen is, under Article 11(3)(e) of Regulation No 883/2004, covered by its national legislation, that Member State may provide that access to that system is not free of charge in order to prevent that citizen from becoming an unreasonable burden on that Member State.

59 In that regard, as the Advocate General stated in point 124 of his Opinion, the host Member State may make the affiliation to its public sickness insurance system of an economically inactive Union citizen, residing in its territory on the basis of Article 7(1)(b) of Directive 2004/38 subject to conditions intended to ensure that that citizen does not become an unreasonable burden on the public finances of that Member State. Such conditions may include the conclusion or maintaining by that citizen of comprehensive private sickness insurance, enabling the reimbursement to that Member State of the health expenses it has incurred for that citizen's benefit, or the payment, by that citizen, of a contribution to that Member State's public sickness insurance system. In that context, it is nevertheless for the host Member State to ensure that the principle of proportionality is observed and, therefore, that it is not excessively difficult for that citizen to comply with such conditions.

60 It is also important to add that no different conclusion can validly be drawn from Article 24 of Directive 2004/38 and Article 4 of Regulation No 883/2004.

61 Admittedly, a Union citizen who meets both the conditions laid down in Article 7(1)(b) of Directive 2004/38 has the right to equal treatment referred to in Article 24(1) thereof. In so far as that Union citizen falls within the scope of Regulation No 883/2004, he or she also has the right to equal treatment provided for in Article 4 of that Regulation.

62 However, since the compatibility with Directive 2004/38 of the residence of such a Union citizen for a period of more than three months and less than five years is subject, inter alia, to the condition that he or she has comprehensive sickness insurance cover in order not to become an unreasonable burden on the public finances of the host Member State, that Union citizen cannot rely on the right to equal treatment in order to claim access free of charge to the public sickness insurance system, as otherwise that condition would be rendered redundant, as has been established by paragraph 56 above. Thus, any unequal treatment which might result, to the detriment of such a Union citizen, from access which is not free of charge to that system would be the inevitable

consequence of the requirement, laid down in Article 7(1)(b) of that directive, that that citizen must have comprehensive sickness insurance cover.

63 In the light of the foregoing considerations, the answer to the second and fourth to sixth questions is that:

– Article 11(3)(e) of Regulation No 883/2004, read in the light of Article 7(1)(b) of Directive 2004/38, must be interpreted as precluding national legislation which excludes from the right to be affiliated to the public sickness insurance scheme of the host Member State, in order to receive medical care financed by that State, economically inactive Union citizens, who are nationals of another Member State and who fall, by virtue of Article 11(3)(e) of that regulation, within the scope of the legislation of the host Member State and who are exercising their right of residence in the territory of that State under Article 7(1)(b) of that directive;

– Article 4 and Article 11(3)(e) of Regulation No 883/2004 and Article 7(1)(b) and Article 24 of Directive 2004/38 must be interpreted, by contrast, as not precluding the affiliation of such Union citizens to that system from not being free of charge, in order to prevent those citizens from becoming an unreasonable burden on the public finances of the host Member State.

The third question

64 Given the reply to the first question there is no need to reply to the third question.

Costs

65 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Article 3(1)(a) of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, as amended by Regulation (EC) No 988/2009 of the European Parliament and of the Council of 16 September 2009, must be interpreted as meaning that medical care, financed by the State, which is granted, without any individual and discretionary assessment of personal needs, to persons falling within the categories of recipients defined by national legislation, constitutes 'sickness benefits' within the meaning of that provision, thus falling within the scope of Regulation No 883/2004, as amended by Regulation No 988/2009.**

2. **Article 11(3)(e) of Regulation No 883/2004, as amended by Regulation No 988/2009, read in the light of Article 7(1)(b) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, must be interpreted as precluding national legislation which excludes from the right to be affiliated to the public sickness insurance scheme of the host Member State, in order to receive medical care financed by that State, economically inactive Union citizens, who are nationals of another Member State and who fall, by virtue of Article 11(3)(e) of Regulation No 883/2004, as amended by Regulation No 988/2009, within the scope of the legislation of the host Member State and who**

are exercising their right of residence in the territory of that State under Article 7(1)(b) of that directive.

Article 4 and Article 11(3)(e) of Regulation No 883/2004, as amended by Regulation No 988/2009, and Article 7(1)(b) and Article 24 of Directive 2004/38 must be interpreted, by contrast, as not precluding the affiliation of such Union citizens to that system from not being free of charge, in order to prevent those citizens from becoming an unreasonable burden on the public finances of the host Member State.

[Signatures]

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* Language of the case: Latvian.